ANTICIPATED ACQUISITION BY EXPERIAN LIMITED OF CREDIT LASER HOLDINGS LIMITED (CLEARSCORE)

Issues statement

28 August 2018

The reference

1. On 31 July 2018, the Competition and Markets Authority (CMA), in exercise of its duty under section 33(1) of the Enterprise Act 2002 (the Act), referred the anticipated acquisition by Experian plc (Experian), through its subsidiary Experian Limited, of Credit Laser Holdings Limited (ClearScore) (the Merger) for further investigation and report by a group of CMA panel members (the Group).

2. In exercise of its duty under section 36(1) of the Act, the CMA must decide:

   (a) whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and

   (b) if so, whether the creation of that situation may be expected to result in a substantial lessening of competition (SLC) within any market or markets in the UK for goods or services.

3. In answering these two questions we are required to apply a 'balance of probabilities' threshold to our analysis. That is, we will decide whether it is more likely than not that the Merger may be expected to result in an SLC.[1]

4. In this statement, we set out the main issues we are likely to consider in reaching our decision on the SLC question (paragraph 2(b) above), having had regard to the evidence available to us, including the evidence referred to in the CMA's phase 1 decision to refer the Merger for further investigation (the Reference Decision). This does not preclude the consideration of any other issues which may be identified during the course of our investigation.

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[1] Merger Assessment Guidelines (CC2/OFT1254), paragraph 2.12. The *Merger Assessment Guidelines* have been adopted by the CMA board (see *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), Annex D).

5. We are publishing this issues statement in order to assist parties submitting evidence to our investigation. The issues statement sets out the issues we currently envisage being relevant to our investigation and we invite parties to notify us if there are any additional relevant issues which they believe we should consider.

6. Throughout this document we refer to Experian and ClearScore collectively as 'the Parties'.

Background

7. Under the proposed transaction, Experian intends to purchase the whole of the issued share capital of ClearScore for a consideration of £275 million.

8. Experian is a global information services business listed on the London Stock Exchange. It has its corporate headquarters in Ireland and has operational headquarters in the UK, USA, and Brazil. In the UK, Experian offers a wide range of products, including credit reference bureau (CRB) data, to consumers and businesses.[2] Experian supplies both paid-for and free credit checking tools in the UK, and operates an online credit comparison platform (CCP).[3] It also supplies pre-qualification services to CCPs and lenders through its subsidiaries HD Decisions Limited (HD Decisions) and Runpath Group Limited (Runpath). Experian's UK turnover in the financial year ending 31 March 2018 was £588.5 million.

9. ClearScore is a financial technology firm headquartered in London which supplies a free credit checking tool and operates an online CCP in the UK.

Frame of reference

10. Market definition provides a framework for assessing the competitive effects of a merger. It involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger in any mechanistic way. In assessing whether a merger may give rise to an SLC, we may take into account constraints on merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others.[4]

[2] CRBs are also known as credit reference agencies e.g. for the purposes of the Consumer Credit Act 1974.
[3] We describe CCP websites and mobile apps as platforms because they provide an online platform for prospective lenders and borrowers to match with each other. As described below in paragraph 29, this has implications for the way in which we will carry out our competitive assessment.
[4] Merger Assessment Guidelines, paragraph 5.2.2.

11. The Parties both supply credit checking services and CCP services in the UK. Experian also offers pre-qualification services to CCPs in the UK.

12. Credit checking services are supplied by providing tools which allow users to assess and improve their creditworthiness. They can be free or paid-for. Free credit checking tools typically provide a credit score and a credit report and context to help consumers understand these. They sometimes also provide advice to help consumers to improve their creditworthiness. Free credit checking tools' providers use them to attract consumers to CCPs, which allow consumers to compare a variety of credit products, and to generate leads for lenders who sell credit products to some of these consumers. CCPs are remunerated for these leads by lenders. Paid-for credit checking tools also allow consumers to access their credit score and report, but typically offer additional features such as identity protection, more extensive information and/or access to a call centre. Paid-for credit checking tools charge consumers a fee (typically monthly), and can also generate leads.

13. Pre-qualification services allow CCPs and lenders to identify those financial products for which a consumer is more likely to be eligible, at the time when a consumer is presented with a comparison of credit products. This allows consumers to reduce the likelihood of rejection when they apply for credit products, which can harm their credit score. To enable pre-qualification services, providers (such as HD Decisions) collect lenders' eligibility criteria and develop software to integrate this with CCPs' comparison services.

14. For the purposes of product and geographic market definition, we will consider markets in which the Parties overlap, and markets of relevance to our vertical effects analysis (as described in paragraphs 30 to 32 below). As set out in the Reference Decision, the CMA considered that the relevant frames of reference were:

(a) the supply of CCPs for loans in the UK;

(b) the supply of CCPs for credit cards in the UK;

(c) the supply of credit checking tools (paid-for and free) in the UK; and

(d) the supply of pre-qualification services to CCPs in the UK.

15. We will use the product frames of reference used in the Reference Decision as a starting point for our phase 2 investigation. From that starting point we will in establishing the appropriate product market definitions, in particular, consider:

(a) with respect to the supply of CCPs for loans in the UK, and the supply of CCPs for credit cards in the UK:

(i) the extent to which CCPs with credit checking tools compete with CCPs without credit checking tools;

(ii) the extent to which direct and offline sales of loans and credit cards constrain CCPs;

(iii) the extent to which CCPs for loans and CCPs for credit cards might be considered together due to supply-side similarities;[5]

(iv) substitutes to the Parties' CCPs in relation to both types of customers that they serve, i.e. consumers and lenders; and

(b) with respect to the supply of credit checking tools in the UK, the extent to which free and paid-for credit checking tools compete; and,

(c) with respect to the supply of pre-qualification services to CCPs in the UK, the extent to which self-supply constrains suppliers of pre-qualification services to CCPs in the UK.

16. As set out in the Reference Decision, the Parties submitted that the relevant geographic market for all relevant products is the UK and the CMA used this as the frame of reference in phase 1. We will therefore use this as the starting point for our assessment in the phase 2 investigation.

Assessment of the competitive effects of the Merger

Counterfactual

17. We will assess the potential effects of the Merger on competition compared with the competitive conditions in the counterfactual situation (ie the competitive situation absent the Merger).

18. In making our assessment, we will consider possible alternative scenarios and decide upon the most likely counterfactual situation based on the facts available to us and the extent to which events or circumstances and their consequences are foreseeable.[6]

19. As set out in the Reference Decision, at phase 1 the CMA considered that the prevailing conditions of competition was the relevant counterfactual. However,

[5] Merger Assessment Guidelines, paragraph 5.2.17.
[6] Merger Assessment Guidelines, paragraphs 4.3.2 and 4.3.6.

the Parties submitted that the counterfactual should reflect the evolving and dynamic nature of the market by, in particular, identifying several recent regulatory developments that will affect how the industry will operate in the near future:

(a) The General Data Protection Regulation (GDPR), which entered into force on 25 May 2018, allows consumers (amongst other things) to request their credit report from a CRB for free.[7]

(b) The revised EU Directive on payment services in the internal market (PSD2), which entered into force on 13 January 2018, allows third parties to access and share bank account data with customer consent (the "third-party access rule").[8]

(c) The CMA's market investigation into retail banking published its final report in August 2016. This set out a remedies package aimed at improving competition, including the Open Banking initiative, which aims to enable customers to share their financial data safely and securely with other banks and third parties.[9]

20. Future changes in market conditions, such as regulation or market liberalisation, are often addressed as part of the competitive assessment.[10] We also note that there may be uncertainty over the extent to which these changes will occur, the timing, and the impact of them in terms of the competitive conditions on the relevant market. We will therefore consider in the phase 2 investigation, on the facts available, whether an alternative counterfactual to the prevailing conditions of competition is appropriate, or whether the effects of these developments should instead be considered within the competitive assessment.

Theories of harm

21. Theories of harm describe the possible ways in which an SLC could arise as a result of a merger and provide the framework for the analysis of the competitive effects of a merger. We have set out below the theories of harm that we are currently minded to investigate. However, we may revise our theories of harm or investigate other theories of harm as our investigation

[7] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016, p. 1–88 (EN).
[8] Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC, OJ L 337, 23.12.2015, p. 35–127 (EN).
[9] The Retail Banking Market Investigation Order, CMA, 2 February 2017.
[10] Merger Assessment Guidelines, paragraph 4.3.2.

progresses. The identification of a theory of harm does not preclude an SLC being identified on another basis following further work by us, or the receipt of additional evidence.

22. We welcome views on the theories of harm described below.

Theory of harm 1: horizontal unilateral effects in the supply of credit checking tools (paid-for and free)

23. Unilateral effects can arise in a horizontal merger where one firm merges with a direct competitor that previously provided a competitive constraint, allowing the merged firm to raise prices (or reduce quality) on its own and without needing to coordinate with its rivals.[11] Where products are differentiated, for example by branding or quality, unilateral effects are more likely where the merger firms' products compete closely.[12]

24. If the products of the merger firms are close substitutes, unilateral effects are more likely because the merged firm will recapture a significant share of the sales lost in response to a price increase, making the price rise less costly.[13] Unilateral effects are also more likely if the variable profit margins of the products of the merger firms are high, because the value of sales recaptured by the merged firm will be greater, making the price rise less costly.[14] Unilateral effects resulting from a merger are more likely where the merger eliminates a significant competitive force in the market or where customers have little choice of alternative suppliers.[15]

25. We will examine whether the Merger may be expected to result in an SLC from horizontal unilateral effects in relation to the supply of credit checking tools (both paid-for and free). This could entail both loss of competition between the Parties' free products, and loss of competition between Experian's paid-for CreditExpert tool and ClearScore, potentially leading the merged entity to:

(a) increase prices of its paid-for credit checking tool, or maintain prices higher than in a more competitive counterfactual (since some lost users would divert to ClearScore);

(b) lower the quality or range of its credit checking tools; and/or

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[11] Merger Assessment Guidelines, paragraph 5.4.1.
[12] Merger Assessment Guidelines, paragraph 5.4.6.
[13] Merger Assessment Guidelines, paragraph 5.4.9 (a).
[14] Merger Assessment Guidelines, paragraph 5.4.9 (b).
[15] Merger Assessment Guidelines, paragraph 5.4.12.

(c) reduce innovation in the development of its credit checking tools.

26. In our competitive assessment, we will examine:

(a) how people choose credit checking tools;

(b) the closeness of competition between the Parties (ie the extent to which people consider them to be alternatives), taking into account:

(i) the past impact of the entry of ClearScore's free credit checking tool on CreditExpert, and of Experian's free credit checking tool on ClearScore;

(ii) the extent to which each Party affects the other's decision-making;

(iii) the Parties' future plans to develop their free and paid-for credit checking tools; and

(c) the extent to which other suppliers could replicate the competitive constraint which the Parties exert on each other, taking into account:

(i) the past impact of third party entry on the Parties;

(ii) the extent to which third parties affect the Parties' decision-making; and

(iii) third parties' future plans to develop free and paid-for credit checking tools.

Theory of harm 2: horizontal unilateral effects in the supply of CCPs for loans and the supply of CCPs for credit cards

27. We will examine whether the Merger may be expected to result in an SLC from horizontal unilateral effects in relation to the supply of CCPs for loans and the supply of CCPs for credit cards. The concern is that the Parties may be each other's closest competitors in the supply of CCPs on both the consumer and lender sides of the market. This closeness is due to the similarities of their offers in terms of the way consumers are introduced via associated credit checking tools, the ability to provide personalised product recommendations for consumers, and a consequent degree of consumer engagement which is attractive to lenders. The removal of this competitive constraint may result in:

(a) increased prices (commission rates) that lenders pay to CCPs for leads (due to the loss of a closely competing independent alternative option);

(b) lower quality or range of services provided by CCPs to consumers; and/or

(c) lower levels of innovation, for example in new product features.

28. In our competitive assessment, we will examine:

(a) how consumers compare loans and credit card offers;

(b) how lenders acquire leads to prospective borrowers;

(c) how lenders negotiate lead prices with CCPs;

(d) the closeness of competition between the Parties' CCPs, from the perspective of both consumers and lenders, taking into account;

(i) the past impact of the entry of each of the Parties' free credit checking tools on the other's CCP;

(ii) the extent to which each Party affects the other's decision-making;

(iii) the Parties' future plans to develop their CCPs; and

(e) the extent to which the Parties' CCPs will be constrained by competing CCPs and other credit sales channels, taking into account:

(i) the past impact of third party entry on the Parties;

(ii) the extent to which third parties affect the Parties' decision-making; and

(iii) third parties' future plans to develop CCPs.

29. We note that, as described in paragraphs 25 to 29 of the Reference Decision, CCPs are two-sided platforms. We will therefore assess the closeness of competition between the Parties and the other constraints they face from the perspective of both consumers and lenders. We will adopt a pragmatic approach to this assessment, first considering competitive constraints on each side of the market separately and then capturing and factoring in indirect network externalities, to the extent that they are material to the behaviour of suppliers.

Theory of harm 3: vertical effects (input foreclosure) in the supply of pre-qualification services to CCPs

30. A merger may result in vertical effects if the merger firms operate at different levels of the supply chain. In this case, the Parties both supply CCPs, but only Experian supplies the pre-qualification services used by CCPs, through its

subsidiaries HD Decisions and Runpath. Therefore, the potential for harmful vertical effects arising from the Merger is present in this case. Vertical theories of harm typically involve the merger firm harming the ability of its rivals to compete post-merger, for example by raising effective prices to its rivals, or by refusing to supply them completely.[16] When assessing the likelihood of vertical effects arising, we typically investigate the following three questions:[17]

(a) Would the merged firm have the ability to harm rivals, for example through raising prices or refusing to supply them (the ability to cause competitive harm)?

(b) Would it find it profitable to do so (the incentive to cause competitive harm)?

(c) Would the effect of any action by the merged firm be sufficient to reduce competition in the affected market to the extent that, in the context of the market in question, it gives rise to an SLC?

31. In practice, the analysis of these questions may overlap and the relevant factors may affect more than one question.[18] We will use this framework to examine whether the Merger may be expected to result in an SLC from vertical effects in the supply of pre-qualification services to CCPs. We will consider, in particular, whether the Merger raises the prospect of partial or total input foreclosure. The merger significantly increases Experian's downstream presence in CCPs, potentially giving it a greater incentive to worsen rival CCPs' competitive positions. This might materialise in the form of:

(a) increased prices for pre-qualification services, raising rivals' costs; and/or

(b) reducing the quality of its pre-qualification product supplied to competitors (eg making it slower than the product supplied internally to the merged entity's own CCPs, or differentiating the scope and accuracy of results provided to competitors and its own CCPs).

32. In our competitive assessment, we will examine:

(a) the Parties' ability to harm rival CCPs, including:

[16] Merger Assessment Guidelines paragraph 5.6.5.
[17] Merger Assessment Guidelines paragraph 5.6.6.
[18] Merger Assessment Guidelines paragraph 5.6.7.

(i) the importance of the supply of pre-qualification services to rival CCPs;

(ii) the constraints on the Parties from existing contractual arrangements and other suppliers of pre-qualification services;

(iii) the extent to which the Parties could favour their own CCPs by raising prices or lowering relative quality of service provided to rivals; and

(b) the Parties' incentives to harm rivals:

(i) the Parties' profitability at each level of the supply chain;

(ii) the extent to which consumers and lenders would switch to the Parties' products, if they successfully worsened their rivals' offerings, and what that is likely to mean for the Parties' profitability; and

(c) the effect on competition of any foreclosure, including the extent of any remaining constraints from competitors unaffected by foreclosure.

Theories of harm we are not currently minded to investigate

Horizontal unilateral effects in the supply of CCPs for mortgages

33. The Reference Decision found that the Parties have a low share of the supply of CCPs for mortgages, that they face extensive constraints from larger competing CCPs and that they also face constraints from outside the market.

34. The Reference Decision therefore concluded that there was no realistic prospect that the Merger would result in an SLC in the supply of CCPs for mortgages.

35. Subject to any further evidence submitted in response to this issues statement or in the course of the investigation, we are not currently minded to investigate this theory of harm further. We do, however, welcome reasoned submissions any parties may wish to make in this regard.

Vertical effects (input foreclosure) in the supply of CRB credit file data

36. We note that Experian supplies CRB credit file data to a range of firms active as lenders and CCPs, some of which provide credit scores to their customers.

37. Subject to any further evidence submitted in response to this issues statement or in the course of the investigation, we are not currently minded to investigate

this theory of harm further. We do, however, welcome reasoned submissions any parties may wish to make in this regard.

Vertical effects (input foreclosure) in the supply of technical services to CCPs

38. We note that Experian supplies technical services to other CCPs which allow them to match lenders and consumers, including by keeping up-to-date lists of financial products and their features.

39. Subject to any further evidence submitted in response to this issues statement or in the course of the investigation, we are not currently minded to investigate this theory of harm further. We do, however, welcome reasoned submissions any parties may wish to make in this regard.

Countervailing factors

40. We will consider whether there are countervailing factors which are likely to prevent or mitigate any SLC that we may find.

Entry and expansion

41. We intend to consider whether entry or expansion by effective competitors would be timely, likely and sufficient to prevent any SLC. To do this, we will in particular:

(a) look at the history of actual entry, expansion and exit by the Parties and by their competitors (including any repositioning of their offering) and review any future plans;

(b) take into account the extent to which recent regulatory changes, such as the GDPR, PSD2 and Open Banking remedies, may facilitate entry or expansion;

(c) consider the costs and time necessary for competitors to develop and launch competing products; and

(d) examine other factors that might inhibit entry or the expansion of competitors, such as any scale or incumbency advantages enjoyed by the Parties.

Efficiencies

42. We will also examine any evidence available to us in relation to efficiencies arising from the Merger. In particular, we will examine whether there are

Merger-specific rivalry-enhancing efficiencies that can be expected to mean that the Merger would not result in an SLC.

Buyer power

43. We will assess the extent of any countervailing buyer power that lenders or CCPs have as part of our evaluation of their options in our competitive assessment. To the extent that any customers have buyer power, we will consider the extent to which the buyer power of these customers would be sufficient to protect other customers from any effects of an SLC.

Possible remedies and relevant customer benefits

44. Should we provisionally conclude that the Merger may be expected to result in an SLC in one or more markets, we will consider whether, and if so what, remedies might be appropriate, and will issue a further statement.

45. In any consideration of possible remedies, we may in particular have regard to their effect on any relevant customer benefits that might be expected to arise as a result of the Merger and, if so, what these benefits are likely to be and which customers would benefit.

Responses to the issues statement

46. Any party wishing to respond to this issues statement should do so in writing, by no later than 5pm on 11 September 2018. Please email Experian.ClearScore@cma.gov.uk or write to:

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