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ME/6743/18 – EXPERIAN/CLEARSCORE

ISSUES STATEMENT RESPONSE

1. Introduction and executive summary

1.1 Experian plc (***Experian***) and Credit Laser Holdings Limited (***ClearScore***) (together, the ***Parties***) provide below their response to the Competition and Market Authority's (***CMA***) Issues Statement dated 28 August 2018 (***Issues Statement***), following the CMA's decision to refer Experian's anticipated acquisition of ClearScore (the ***Transaction***) for a Phase 2 investigation (the ***Decision***).

1.2 As discussed in the Parties' Response to the Phase 1 Decision and at the Parties' respective site visits, and as further developed in this response, the findings set out in the Decision were based on a flawed understanding of competitive conditions in the markets in which the Parties operate. The Parties are confident that a robust review of the evidence submitted to the CMA will lead the CMA to conclude that the Transaction does not give rise to a Significant Lessening of Competition (***SLC***).

1.3 First, the evidence shows that the **frame of reference** used in the Decision and taken as a starting point for the Phase 2 investigation is incorrect (as explained in greater detail in Section 2):

(a) There is no market for the 'supply of credit checking tools' which includes free and paid-for credit checking services. Free credit checking tools are merely a 'hook' or mechanism to attract consumers to comparison platforms and thereby generate revenues from lender commissions[1] through a business model known as Financial Product Lead Generation (***FPLG***).[2] Free credit checking is also increasingly used by lenders themselves to increase customer engagement in their direct channels. It is, therefore, a component part of a much wider market and cannot be seen as a separate product. As demonstrated at the Experian site visit, Experian's paid-for product is entirely different from its free product in terms of the services offered, the consumer needs addressed, the price charged, and the monetisation model.

(b) A hypothetical product market related to the supply of Credit Comparison Platform (***CCP***) services needs to take account of the strong competitive constraint exerted by other channels through which consumer financial products are marketed, particularly the direct distribution channels of financial product providers. Even considering CCP services in isolation (which is not appropriate), the evidence does not support any segmentation of competitors on the basis of whether or not they offer

[1] The reference to "lenders" refers to any firm providing a loan or credit product.

[2] Other players also use a FPLG model, including Google and Facebook (which generate leads through advertising) and financial product providers themselves.

credit checking tools (which, as discussed at the Experian site visit, are already freely available through a large number of sources, and will become increasingly available over the next year as more players incorporate free credit checking into their propositions).

(c) Any market definition for pre-qualification services cannot ignore the significant constraint from existing alternative technologies, such as APIs, which allow lenders and FPLGs to develop self-supply solutions. As discussed at the Experian site visit, [✂].

1.4 Second, assessing the Transaction on the basis of the prevailing conditions of competition is inappropriate in this case given the dynamics of the markets in which the Parties operate. The CMA's **counterfactual** must take into account the seismic transformation that the broader market for consumer financial products is undergoing (as explained in detail in Section 3). Technological change and the wider availability of consumer data (facilitated by regulatory changes) presents a huge opportunity for all players active in the financial services arena and is significantly lowering barriers for new entrants. As discussed at the Experian site visit, competitors are already seizing this opportunity in developing new products and expanding into new markets. The plans of numerous market players, including banks and lenders, [✂], are just two examples of the extent to which competition is being fundamentally transformed in the Parties' markets in the near term.

1.5 Third, the competitive constraints faced by Experian mean that it will have no incentive to engage in the behaviour underpinning **theory of harm 1** (as set out in Section 4 below):

(a) There will be *no incentive to reduce the quality of or innovation in the free credit checking services* provided by the Parties, given the intense rivalry faced by the comparison platform side of the Parties' business (to which the free product is inextricably linked) and the fact that Experian's [✂]. Any deterioration of the Parties' free offerings following the Transaction would lead to an increase in consumers switching to other CCPs or channels with the associated loss of revenues from lenders due to reduced commissions. Moreover, any deterioration in Experian's free account [✂].

(b) There will be *no incentive to reduce the quality or increase the price of the paid subscription service* offered by Experian, given the substantial differences between the two products and the lack of a significant competitive constraint between them. Rather, Experian's incentive will be to [✂] (as demonstrated by Experian's plans shown at the site visit), in order to [✂].

1.6 Fourth, the evidence does not support any assertion that the Transaction will have a negative impact on the (hypothetical) market for CCP services as set out in **theory of harm 2** (as explained in Section 5 below):

(a) Experian will have *no ability to increase prices to lenders* following the Transaction. Lenders use many routes to market (both direct and indirect), of which the Parties represent only a very small proportion (with the same being true on an individual lender basis). In addition to significant competition from the lenders' direct channels, the Parties operate in a segment in which a number of significant CCP competitors, including MoneySuperMarket (***MSM***)/MoneySavingExpert (***MSE***), Zoopla (uSwitch/Money.co.uk), CompareTheMarket, GoCompare, and others [✂] are present. In light of these circumstances, the Parties do not enjoy significant negotiating power vis-à-vis lenders. This will not change following the Transaction, as demonstrated by the way in which the Parties' [✂] has evolved over time and the fact that barriers to entry and expansion are low.

(b) Experian will have *no incentive to deteriorate the quality of the Parties' FPLG offerings or reduce innovation* following the Transaction for the reasons stated above in relation to theory of harm 1, in particular the constraints arising from the two-sided nature of the market.

1.7 Fifth, contrary to the assumptions underpinning **theory of harm 3**, Experian has *neither the ability nor the incentive to restrict access to pre-qualification services* to foreclose its competitors (as described in detail in Section 6 below). Contractual provisions, the availability of existing technological alternatives, and [✂] CRB competitors and fintech start-ups, prevent Experian from doing so. Furthermore, [✂], Experian has no incentive to engage in a foreclosure strategy. This is supported by the fact that Experian has not engaged in any such strategy, despite hypothetically having the incentive to do so (according to theory of harm 3) after the launch of its free product and the growth of its FPLG user base.

1.8 Finally and in addition to all the above, it is important to reiterate that contrary to the suggestions in the Decision about Experian's motives, **the Transaction has a pro-competitive rationale**, as it will allow Experian to: (i) help more consumers with their finances by [✂]; (ii) innovate more and better through the combination of complementary assets and leveraging the Parties' innovation cultures; and (iii) [✂]. Experian's [✂] leave no room for any deterioration of the offerings of either Party.

1.9 The Parties welcome the CMA's decision not to investigate theories of harm around (i) horizontal unilateral effects in the supply of CCPs for mortgages; and (ii) vertical effects in the supply of Credit Reference Bureau (***CRB***) credit file data. Accordingly, these will not be considered further in this response, other than to observe that there are multiple suppliers of CRB data (including Experian), and there is strong competition between them. This competition has led to the proliferation of credit scores throughout the market to affinity partners, other FPLGs, and lenders, and this dynamic will continue.

1.10 The remainder of this response addresses the five issues outlined in paras. 1.3-1.7 above. The Parties look forward to continuing to engage constructively with the CMA throughout the investigation and remain available to discuss any of the points raised in this Response at the CMA’s convenience.

2. Frame of reference

<u>Supply of credit checking tools</u>

2.1 The Parties consider that a review of the evidence will lead the CMA to conclude that:

(a) First, there is no market for the 'supply of credit checking tools'. Paid credit checking tools are in a separate market, as free credit checking services and subscription services are complements rather than substitutes.

(b) Second, there is no market for the 'supply of free credit checking tools'. In any event, however defined, all other players offering free credit scores also compete directly in this space (including increasing availability through lenders). Moreover, the constraints on the Parties are wider than just from consumer offerings, as they arise from the loss of revenues on the lender side of the market.

Supply of credit checking tools is not a relevant product market

2.2 The Parties do not recognise the existence of a market for "credit checking tools" which includes both free and paid-for credit checking services. Even if such a market were to exist, free and paid-for services would be, at best, very distant competitors.

2.3 Free credit checking tools are merely a feature or a 'hook' offered by the Parties and a number of other players in the market for the supply of consumer financial products (including CCPs, banks and credit card providers) to attract consumers to use their services and thereby generate leads or increase consumer engagement to increase the likelihood of future sales.

2.4 In contrast, Experian's subscription product (CreditExpert) addresses fundamentally different consumer needs to its free product in providing subscribers with: (i) personalised support and guidance for credit improvement or repair, or in preparation for a significant purchase requiring credit (all of which involve providing the subscriber with a deeper understanding of the impact of certain events on their credit score and which actions to take to maximise credit score improvement); and (ii) protection against fraud and identity theft.[3]

2.5 As a result, the features of the free and subscription products are very different, as are their [✂] and monetisation models. The paid-for product operates on a subscription model, whereby the consumer pays a monthly fee for the service, while the free services are monetised through revenues from lenders generated through product commissions. In particular, the paid product operates in a one-sided market, receiving revenue from the users of the service, whereas the free product operates in a two-sided market, receiving revenue from financial product providers seeking leads from consumers but with no charge to

[3] For more detail, see Response to the Phase 1 Decision, para. 6.11.

consumers. These differences strongly indicate that it does not make sense to regard the two products as being part of the same relevant product market. This conclusion is corroborated by several precedents from the European Commission which indicate that differences in products' remuneration models are a key consideration when concluding that two products pertain to different relevant product markets.[4]

2.6 The fundamental differences between the two products were recognised by Experian in its internal documents [✂].[5] [✂].[6]

2.7 When free credit scores were first launched in the UK in 2015/16, consistent with developments in the US market, certain consumers who had previously been paying a subscription primarily as a means to access their credit scores no longer saw a need to do so and cancelled their subscription. This led to a [✂] as consumers adjusted to the new reality. Experian's subscription customer base [✂] million in 2015 (before ClearScore entered the market and Experian launched its free credit score offering) and [✂] by the beginning of 2018. As the chart below shows (Figure 1), [✂] (see Section 3 below).

2.8 Figure 1 below also shows that the free product [✂] the membership of the paid-for service. If the free product and the paid-for product were close substitutes, and not complements, [✂].

Figure 1 - [✂][7]

2.9 This evidence indicates that consumers are now familiar with the concept of free credit scores. Former subscription consumers with an interest only in seeing their credit score have now migrated to a free product and will upgrade to a paid product only if and when they require more specific and bespoke assistance, with the option to downgrade to the free account when that need is satisfied.

2.10 In this context, the Parties strongly believe that a SSNIP (Small but Significant Non-transitory Increase in Prices) analysis – in particular, looking at whether a hypothetical monopolist of all paid or all free products could increase prices by a SSNIP profitably – would not show sufficient levels of diversion between the two products today to make a price increase unprofitable. In fact, the levels of

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[4] In *Facebook / Whatsapp* (COMP/M.7217), the Commission considered the "*difference in pricing conditions*" of the two products as a factor when considering whether traditional communications via SMS for example were in the same market as app messaging services (para. 31). In *Fox / Sky* (COMP/M. 8354), separate product markets were held to exist for (i) FTA TV channels, and (ii) pay TV channels due to market feedback citing "*significant differences in business models between FTA (mainly financed by advertisements and sometimes by public funds) and pay-TV channels (mainly financed by the fees paid by pay-TV retailers)*" (para. 80). For similar reasons, separate markets have also been held to exist between (i) basic pay TV and (ii) premium pay TV (see *Liberty Global / Corelio / W&W / De Vijver Media*, COMP/M. 7194).

[5] See Annex 12.24 to the Merger Notice.

[6] See Annex RFI7, page 14.

[7] Experian site visit presentation, [✂], slide 10.

diversion triggered by a price increase are likely to be low for the following reasons:

(a) The products have very different characteristics (as outlined in para. 2.5 above) and different monetisation models (subscription vs. FPLG);

(b) Customers use the products in very different ways for very specific and different needs; and

(c) The price differential between the two products (free vs £14.99/month) is substantial, vastly exceeding the 5-10% increase typically used for a SSNIP analysis.

2.11 In light of this evidence, it cannot be the case that the products are sufficiently close substitutes to be in the same market. The Parties consider that the evidence clearly points to the opposite conclusion that free and paid-for products belong in separate markets. As a result, there is no increment in the share of the paid product from the Transaction (as submitted at Phase 1), as ClearScore does not provide such a product, and the only overlap between the Parties would be with respect to CCPs (as the free product does not amount to a market in itself, but is only a feature of the CCP offering).

A hypothetical market for credit checking tools would need to include all sources of free credit scores

2.12 If the CMA were to conclude that there is a market for ‘credit checking tools’ encompassing free credit checking tools and paid-for credit checking tools, it would have to recognise that all players offering free credit scores should be part of that market as opposed to just CCPs. For example, banks offering free credit scores directly to their customers should also be considered competitors in this hypothetical market for credit checking tools (e.g., CapitalOne, Barclaycard, Lloyds and Vanquis). As explained in the counterfactual section, the list of providers of free credit scores is already substantial and will grow significantly in the very near future.

The market definition for the consumer-facing side of the FPLG segment should not distract from the sources of competitive constraint

2.13 The Issues Statement recognises that the Parties’ FPLG services are part of a two-sided market, in that the Parties need to offer an attractive consumer facing offering (e.g., a free credit score) to attract consumers, which is then monetised by the generation of leads.

2.14 From a market definition perspective, any reduction in the quality of the consumer-facing product would lead to consumers switching away, with a loss of profits resulting from a reduction in FPLG leads generated for the Parties’ customers (i.e., financial product providers). As a result, the constraints faced by the FPLG service are much wider than simply those arising from the pure provision of free credit checking services – consumers may well switch away to lenders’ own channels, or to other FPLGs which do not offer free credit checking services – and an artificial focus on the free credit checking aspect of the offer would fail to recognise this important part of the consumer dynamic and commercial reality.

Conclusion

2.15 The approach set out in the Issues Statement cannot be sustained. This is for the following reasons:

(a) First, there is no market for "credit checking tools". Paid credit checking tools are in a separate market, as free credit checking services and subscription services are complements rather than substitutes; and

(b) Second, there is no market for the supply of free credit checking tools. In any event, however defined, all other players offering free credit scores also compete directly in this space. Moreover, the constraints on the Parties are wider than just from consumer offerings, as they arise from the loss of revenues on the lender side of the market.

Supply of CCPs for loans and credit cards

2.16 The Parties consider that a review of the evidence will lead the CMA to conclude that:

(a) Direct channels and other indirect channels are a very strong constraint on CCPs in the FPLG segment and the constraint from the direct channel is poised to increase significantly in the very near future, indicating that the market is wider than the Issues Statement suggests (see Section 3 below on the counterfactual);

(b) There is no evidence supporting the view that CCPs with credit checking tools compete in a distinct segment from CCPs without those credit checking tools; and

(c) The supply of CCP services for loans and the supply of CCP services for credit cards are entirely substitutable from a supply side perspective and should be considered as part of the same relevant product market.

Constraint from other channels

2.17 The Parties compete in a broad market comprising all players active in the marketing of consumer financial products, including the lenders' direct marketing channels and other third party intermediaries like the Parties, all of which compete in a market for the supply of origination services for consumer financial products.[8] The evidence summarised in the Response to the Phase 1 Decision clearly shows that the direct channel accounts for the lion's share of lenders' marketing spend and sales, as consumers continue to prefer to apply for financial products directly with the provider.[9]

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[8] Response to the Phase 1 Decision, paras. 5.3 to 5.11.

[9] Response to the Phase 1 Decision, paras. 5.5 and 5.8 to 5.11.

2.18 The CMA's conclusions in the Digital Comparison Tools (***DCTs***) market study report (***DCT Report***) support this conclusion. In that report, the CMA links the degree of suppliers' negotiating power to the relative importance of DCTs as a channel and the suppliers' ability to replicate sales or profitability on other channels (including the direct channel), which depends on whether consumers engage in multi-homing and the cost-effectiveness of the channel. In financial products, the DCT Report found that the FPLG segment is relatively unimportant when compared with other channels, that consumers multi-home, and that lenders are very conscious of the cost-effectiveness of each channel. This clearly suggests that lenders can and will switch between channels and there is substitutability between the various channels.[10]

2.19 The vast majority of lenders use a number of channels to reach as many consumers as possible. Lenders will choose the channel mix to use, and how much to invest in each, by looking at marginal benefit of additional marketing across all routes and will invest more in channels that offer the highest proportion of customer acquisitions for the lowest cost.

2.20 Therefore, if a CCP were to increase commission fees to lenders, it is likely that those lenders would stop investing in the relationship (for instance, by stopping platform integration or discontinuing special offers); lenders could also potentially withdraw certain products from the platform or withdraw entirely from the CCP. Lenders are readily able to move away from those relationships, as the consumers that financial product providers can access through FPLG players are comparable to those accessible by other channels.

2.21 The Parties have provided the CMA with evidence that that their customer base [✂]. Calculations using the Parties' [✂] show that the Parties are not particularly close competitors in this respect, or materially different from other players on the market. This analysis also shows that the Parties [✂].[11]

2.22 The [✂] also shows that [✂], as shown in Figure 2 below.

Figure 2 – [✂][12]

2.23 The mere prospect of such response by lenders would dissuade CCPs from increasing prices, as the reduction in leads could be very significant. Indeed, given the number of alternatives available to consumers and their multi-homing behaviour, consumers very easily switch from a CCP to a different channel,

[10] DCT Report, Paper E, paras. 2.44-2.59.

[11] See Response to the Phase 1 Decision, at para 5.53, for further details. Delphi is one of the market leading credit scores assessing credit risk.

[12] [✂], page 20.

especially since they have a natural bias to favour the direct channel anyway.[13] A reduction in the breadth of the offer or an increase of friction in the consumer journey would drive consumers to switch. Therefore, it is clear that direct marketing channels constrain CCPs.[14] This can be evidenced by the fact that [✂], despite the growth of the FPLG channel (see Section 5 below).

2.24 Importantly, this constraint from the direct channel is [✂]. As explained in detail in the counterfactual section below, digitisation of financial services, rapid technological change and wider access to increasingly rich data about individual consumers (made possible through regulatory developments) have greatly reduced barriers to entry and expansion in the sector. In particular, these developments have given banks all the necessary tools and incentives to bolster their direct channels and disintermediate the FPLG channel (to try to save on third-party commission payments, increase customer engagement and improve conversion rates). This [✂].

Competition in the FPLG segment

2.25 When considering competition within the FPLG segment, as explained in detail in the Response to the Phase 1 Decision, CCPs with credit checking tools compete directly with CCPs without such tools.[15] In summary:

(a) From a consumer perspective, CCPs use a variety of marketing techniques to attract consumers to their websites and drive engagement. Offering a free credit score is just one of those marketing mechanics, and it is also increasingly being used by financial product providers to improve engagement with their customer bases.

(b) From a financial product provider perspective, the focus is on obtaining good quality leads and reducing costs through integration. Offering consumers a free credit score does not correlate to better quality leads; rather, product matching and eligibility tools and the degree of integration between the platform and the lender's application process, are the key mechanisms to improve the quality of leads.

2.26 The fact that both types of CCPs compete in the same market segment was recognised in the Decision (as part of the frame of reference analysis) and, therefore, a particular focus on CCPs with credit checking tools would not just contradict the evidence, but would also be inconsistent with that earlier conclusion.[16]

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[13] See Response to the Phase 1 Decision (para. 5.9), which refers to a consumer survey conducted for the DCT market study which found that: "*consumers showed higher levels of trust in suppliers' own sites than in DCTs for all measures except on providing the best price*" (DCT Report, para. 4.17).

[14] Issues Statement, para. 15 (a)(ii).

[15] Response to the Phase 1 Decision, paras. 5.28 to 5.41.

[16] Decision, para. 56.

2.27 In any event, the offer of free credit scores is ubiquitous across the FPLG segment and in the direct channel. CCPs such as MSE, Noddle, GiffGaff, Mortgage Gym and TotallyMoney all offer free access to credit scores. [✂]. Experian believes [✂]. Free credit scores are also available via multiple lenders, including Capital One, Barclaycard, Lloyds and Vanquis. Further proliferation of free credit scores is [✂] (see below).

2.28 Experian's strategy is [✂].[17] [✂].[18]

2.29 This evidence shows that offering free credit scores today is a decreasing differentiating factor (if it ever really was one). Moreover, there is certainly supply-side substitutability insofar as CCPs that currently do not offer those scores could start offering them easily, quickly and cheaply. Accordingly, CCPs with credit checking tools compete on an equal footing with CCPs without those tools, and the CMA's analysis should not focus on a hypothetical segment comprised of only the former.[19]

Supply-side substitutability between offering CCP services credit cards and loans

2.30 As shown in Table 1 below, all of the main CCPs have both credit cards and loans in their portfolio.

Table 1 – Credit card and loan offering by major FPLG players[20]

FPLG player	Credit Cards	Loans
Money Super Market	✓	✓
compare themarket	✓	✓
GoCompare	✓	✓
Confused.com	✓	✓
money	✓	✓
noddle	✓	✓
uSwitch	✓	✓
TotallyMoney	✓	✓

[17] See, for example, **Annex 12.5 to the Merger Notice**, [✂], pages 19-21, 79, 81, 88, 93 and 94.

[18] See Merger Notice, Figure 18, para. 14.18.

[19] Issues Statement, para. 15 (a) (i).

[20] Source: online listing of product providers.

FPLG player	Credit Cards	Loans
knowyourmoney	✓	✓
giffgaff	✓	✓

2.31 In addition, any player active in one segment of the market wishing to enter the other could do so very quickly and at very little cost (if any). The main elements required for either segment are the same: [✂]. Most of these elements can be sourced very easily from white label providers (e.g., TotallyMoney).

2.32 Therefore, both the credit card and loan CCP services segments are entirely substitutable from a supply side perspective[21] and should be considered together.[22] That said, in this response the Parties will consider the two segments separately to respond to the Issues Statement.

The market for pre-qualification services

2.33 The Parties believe that the constraint from APIs and self-supply solutions should be taken into account when considering the perimeter of the relevant product market for pre-qualification services. This is expanded upon in Section 6 below.

Conclusion on the frame of reference

2.34 In summary, the Parties believe that the frame of reference should take into account the fact that: (i) direct channels and other indirect channels are a very strong constraint on the FPLG segment of the market for the supply of origination services for consumer financial products; (ii) there is no evidence supporting the view that CCPs with credit checking tools should form a distinct segment from CCPs without credit checking tools in the FPLG segment of the market; (iii) free credit checking services and subscription services are complements rather than substitutes; and (iv) even if free and paid-for services are in the same relevant market, they are not close competitors and all other players offering free credit scores also compete directly in this space.

2.35 In any event, irrespective of the exact frame of reference chosen, as the Parties will demonstrate below, there is no SLC arising from any of the theories of harm that the CMA has identified.

3. Counterfactual

3.1 According to the Merger Assessment Guidelines (***Guidelines***),[23] at Phase 2, when the CMA has a choice between two or more counterfactual scenarios and

[21] Merger Assessment Guidelines CC2 (Revised), paras. 5.2.17-5.2.19.

[22] Issues Statement, para. 15 (a)(iii).

[23] CC2 (Revised).

that choice may make a material difference to the assessment, the CMA must carry out an additional detailed investigation before reaching a conclusion on the appropriate counterfactual.[24]

3.2 As part of this assessment, the CMA will take into account those events or circumstances (and their consequences) which are "*foreseeable*" or that the CMA can "*predict with some confidence*".[25] The Guidelines further indicate that the CMA will typically only consider "*those aspects of scenarios that appear likely on the basis of the facts available to it and the extent of its ability to foresee future developments*".[26] The Parties believe that the events and circumstances (and their consequences) described in the Response to the Phase 1 Decision meet the legal test of 'foreseeability' and accordingly should be considered as part of the counterfactual.[27]

3.3 The Issues Statement's focus on the fact that "*[f]uture changes in market conditions, such as regulation or market liberalisation, are often addressed as part of the competitive assessment*" (as quoted in para. 20 of the Issues Statement), misses the point. The focus here is not on future changes but on immediate changes already transforming this increasingly competitive marketplace (and which will continue to do so in the near future).

Summary of relevant market developments

3.4 The Parties have identified two major market developments which are already shaping competition in the market for the supply of consumer financial products, including in the FPLG segment of that market:

(a) Access to credit scores and credit data is becoming ubiquitous and banks and other players are offering those scores and data for free to consumers; and

(b) The wider availability of comprehensive data about individual consumers (e.g., current accounts, household expenses, etc.) made possible by the entry into force of GDPR, PSD2 and Open Banking is driving new products and services and further invigorating competition in the market.

3.5 These two developments are having a transformative impact on competition, as described below.

Ubiquitous access to credit scores/data

[24] Guidelines, para. 4.3.6.

[25] Guidelines, para. 4.3.2.

[26] Guidelines, para. 4.3.6.

[27] See Response to the Phase 1 Decision, Section 3. See also the slide deck entitled [✂] presented at the Experian site visit.

3.6 Experian is [✄].[28]

3.7 The diagram below presented at the Experian site visit demonstrates that [✄], credit scores will be [✄] million [✄]:

Figure 3 – [✄]

3.8 Experian is [✄].

3.9 As noted at the site visit, the prices Experian charges for providing its consumer credit scores to those third parties [✄], as depicted in figure 4 below. [✄].

Figure 4 – [✄][29] [30]

3.10 These initiatives will result in a further [✄], which has two key implications for competition:

(a) First, the market for credit checking tools as identified by the CMA (i.e., including free and paid-for tools) will become even more competitive with an increasing number of players offering free credit scores to consumers (***theory of harm 1***); and

(b) Second, the constraint of the direct marketing channel over CCPs will increase significantly as lenders are increasingly seeking to increase engagement with consumers and disintermediate indirect channels, such as FPLG (***theory of harm 2***).

Wider availability of extensive consumer financial data

3.11 As a result of PSD2 and Open Banking, consumers will be able to allow lenders, CCPs and other players to access, aggregate and use their current account, credit card and other relevant financial data, as well as credit data. This will enable financial product providers to: (i) make better lending decisions, by making more sophisticated and well-informed affordability assessments; and (ii) provide more reliable and personalised financial guidance to consumers.

3.12 At the same time, these players will be seeking to monetise the access to this data by identifying and flagging to the consumer the most appropriate financial product for their needs, either on an 'own portfolio' (showing the consumer just the products offered by the individual lender) or 'whole of market' basis (just like a CCP).

[28] [✄].

[29] [✄].

[30] [✄].

3.13 Experian is [✂].[31] [✂]. The Parties will also face increasing competition as more and more CCPs move to offering free credit scores to improve their appeal to consumers. These plans will be targeted at the vast majority of the UK population with bank accounts and will radically change the way consumers engage with and acquire financial services. [✂].

3.14 The description above only covers a fraction of the market developments, as third parties (i.e., non-lenders) are also planning to leverage Open Banking data to help consumers with their financial needs. One of the ways these new entrants will seek to monetise their offer is through FPLG. In fact, fintech companies are gearing up to leverage this data (which they will obtain for free) to offer comparison services monetised by lead generation.

3.15 Investment in fintech start-ups in London alone exceeds £800 million[32] and there are many credible new and potential entrants into the sector (e.g., Bud, Credit Kudos, Flux, to name but a few). Most of these companies have applied to the FCA under PSD2 to become Account Information Service Providers or Payment Initiation Service Providers. As part of their application, they must provide a credible business plan, a detailed description of the planned service (and not high level ideas), and an expected launch date.

3.16 From a competition perspective, these initiatives and developments will fundamentally disrupt the indirect marketing channels for consumer financial products. Traditional CCPs will see competition intensify with [✂]. The entry of highly motivated and well-resourced tech companies has the potential to very quickly disrupt the market (in the same way that Credit Karma disrupted the US market and ClearScore grew rapidly in the UK), offering an enhanced digital user experience and leveraging vast amounts of data.

These developments are current, not future, and their impact is already being felt

3.17 These developments are neither future nor speculative changes. The market is already changing, as key players in the market have adapted their strategies to respond to regulatory and technological change. They are putting in place concrete plans which are in advanced stages of implementation and which will [✂].

3.18 It is important to highlight that the impact of these changes is not uncertain, given the number of banks and fintech companies which are making large investments in these propositions. [✂]. And finally, [✂].

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[31] See slides 9-10 of slide deck entitled "[✂]" presented at the Experian site visit.

[32] See: https://www.ftadviser.com/investments/2017/11/21/brexit-may-boost-london-s-fintech-boom-not-hinder-it/ and https://uk.reuters.com/article/us-britain-fintech-investment/uk-fintech-investment-set-for-record-breaking-year-in-2017-idUKKBN1CO026. Original source: https://www.londonandpartners.com/media-centre/press-releases/2017/20171019-europes-number-one-fintech-hub-for-global-investors.

3.19 The Parties urge the CMA to ensure that these transformative market developments are fully taken into account as part of its investigation and appropriately reflected in the counterfactual assessment.

4. Theory of harm 1: the Transaction will not give rise to unilateral effects in the supply of credit checking tools

4.1 This theory of harm appears to reflect a concern from the CMA that the Parties would deteriorate either the quality of the free credit checking offer, or the price or quality of the paid-for offer. However, the reasoning underpinning this theory of harm is based on two flawed premises:

(a) First, the approach in the Decision implies that the right way to think about competition is to consider the Parties to be providers of "credit checking tools". This is incorrect. As explained above, free and paid-for credit checking products are in separate markets (or at least are very distant competitors) and the Parties' respective offerings of free credit scores are merely a 'hook' to attract consumers to the Parties' price comparison services. As for Experian's subscription product, it addresses needs which go considerably beyond allowing consumers to check their credit scores and credit reports and, as a result, involves substantially higher costs. The paid-for product should therefore properly be regarded as a complement to the free product rather than a substitute.

(b) Second, the Decision assumes that it is possible to consider the provision of credit checking tools separately from the constraints imposed by the FPLG side of the market. However, the CMA's assessment with respect to credit checking tools cannot ignore that the Parties are subject to intense competition in the provision of FPLG services and, therefore, must constantly improve their credit checking offering to remain competitive in their customer and marketing offering in order to attract consumers and generate leads. The competitive pressure of the FPLG segment prevents any deterioration of the offer of free credit checking tools.

4.2 To dispel these misconceptions, and demonstrate that there is no foundation for any concern in relation to this theory of harm, in this section of the response we will: (i) describe how consumers choose between credit checking tools; (ii) outline the evidence showing that ClearScore and Experian's paid-for service are not close competitors; (iii) explain how Experian will have no incentive following the Transaction to deteriorate the free offerings to benefit the paid-for product; and (iv) demonstrate that, in addition to constraints from other FPLGs and alternative routes to market, the Parties are constrained by all players offering credit checking tools (a constraint which [✂]).

<u>How consumers choose between credit checking tools</u>

4.3 From a consumer perspective, free and paid-for credit tools address different needs and are complementary products. As mentioned in Section 2 above, the drivers of choice are different:

(a) Free credit checking tools are offered as ancillary services to the provision of credit comparison services, and exist only as part of a consumer's journey in comparing and buying financial products. As consumers only have credit needs periodically, banks and FPLG players will seek to attract consumer attention through a variety of ways (e.g., free cuddly toys or cinema tickets, TV advertising, eligibility marketing, cross-selling from other product comparison verticals), which is a large driver of the multi-homing behaviour observed in the market. Ultimately, consumers will choose the service provider which is more likely to allow them to easily obtain the most suitable financial product and which attracts their attention. Consumers have a general bias in favour of lenders' direct channels (see paras. 2.17 and 2.23 above).

(b) Paid-for credit checking tools (such as Experian's) focus on personalised guidance on factors affecting credit score or credit score improvement and/or protection against fraud and identity theft.[33] Like most paid services, consumers will choose on the basis of a price/quality ratio, and in this case, given the sensitivity around credit data, consumers are likely to rate quality elements, such as reputation and trust, highly.

4.4 The choice between a free credit checking tool and a paid-for credit checking tool depends on the needs of the consumer. If the consumer only wishes to know their credit score to get some indication of how likely it is they will obtain credit, that consumer will opt for a free product. Conversely, if from time to time the consumer has a specific need for either personalised guidance to improve their credit-worthiness score (ahead of a large purchase requiring credit) or for protection against fraud and identity theft, then that consumer has the option to subscribe to the paid-for product, knowing that they can downgrade their subscription to a free product at any time.

ClearScore and Experian's paid-for service do not compete closely

4.5 According to Experian's direct to consumer strategy, [✂].[34]

4.6 Providing these differentiated features to consumers entails significantly different [✂]. As the CMA had the opportunity to see at the Experian site visit, the CreditExpert call centre offers tailored and very personalised guidance and support by trained staff, which is a strikingly different proposition from the entirely generic automated chatbot services offered by some free credit score providers.[35]As mentioned at the site visit, the call centre involves an investment of £[✂] million per year just on labour costs (excluding premises, technology and overheads), and £[✂]million in training and quality assurance. In comparison, ClearScore estimates that its chatbot solution costs approximately £[✂] per year.

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[33] For more detail, see Response to the Phase 1 Decision, para. 6.11.

[34] Experian site visit presentation, [✂], page 5.

[35] See also Response to the Phase 1 Decision, para. 6.12.

4.7 CreditExpert's fraud prevention and identity theft detection features involve other costly inputs such as web and dark web monitoring costs, the cost of which is not included in the figures above. Moreover, Experian regularly [✂].

4.8 Experian's free and paid-for propositions [✂], as shown in Figure 5 below and explained in more detail in the Response to the Phase 1 Decision and at the site visit.[36]

Figure 5 – [✂][37]

4.9 Experian's [✂] is based on the possibility of consumers [✂]. Indeed, on average [✂] consumers upgrade their free account to a CreditExpert subscription [✂] and [✂]consumers downgrade their CreditExpert account to the free account [✂].[38]

4.10 Today, CreditExpert acquisitions depend [✂], as shown in Figure 6 below. Since the launch of its free product in June 2016, Experian has [✂];[39] [✂].

Figure 6 – [✂][40]

4.11 Figure 6 also shows that [✂] of the customers who upgrade [✂].[41] [✂] strong indicator that those consumers see particular value in the [✂]. The existence of substantial numbers of [✂], which further confirms that the products are very distant competitors (if at all).

4.12 Moreover, customers tend to subscribe to CreditExpert [✂]. The median length of time for which a customer uses the product is [✂]. In general, the average tenure tends to be [✂]. In the same vein, the [✂].

4.13 Finally, the Parties' internal documents show that both Parties monitor [✂].[42]

4.14 As described below, both the free and the paid-for products of the Parties will continue to evolve and more services and features will be added as a result of Experian's continued investment in innovation, which is critical to its ability to compete in the future (see para. 4.33 below).

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[36] Response to the Phase 1 Decision, Section 4, and Experian site visit presentation, [✂].

[37] Experian site visit presentation, [✂], page 9.

[38] Source: calculated from data in response to RFI 3, Q1, average for 12 months to July 2018.

[39] RFI 3, Q1, data for July 2018.

[40] Experian site visit presentation, [✂], page 8.

[41] Source: calculated from data in response to RFI 3, Q1, average for 12 months to July 2018.

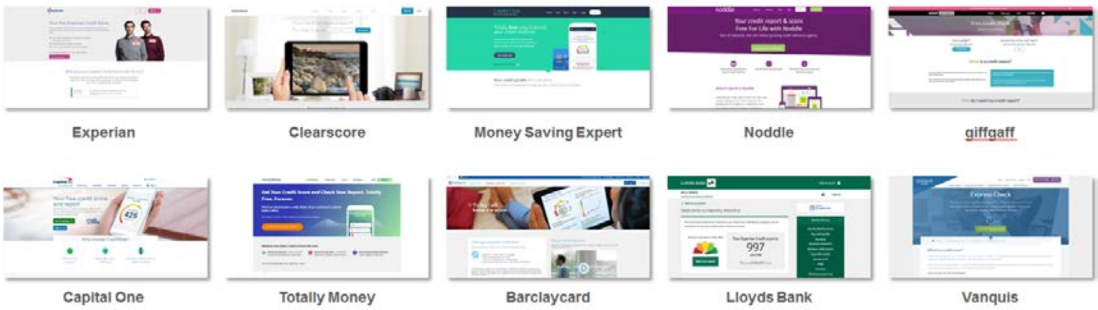
[42] Response to the Phase 1 Decision, paras. 5.6 and 5.50-5.51.

<u>Experian will have no incentive to deteriorate its free offering following the Transaction</u>

4.15 Deteriorating the free offer[43] following the Transaction would be self-defeating, as it would reduce the Parties' attractiveness to consumers, reduce the number of consumers using the comparison platform, and consequently reduce lead generation revenues. Since [✂] on the success of the FPLG business, the negative impact would be significant.

4.16 Consumers have plenty of choice if they are looking for a free credit score. The Decision overlooked the increasingly large number of market players, including lenders, offering free credit scores as part of their FPLG business.[44] In fact, lenders such as Capital One, Barclays, Lloyds and Vanquis also offer free scores to their customers:

Figure 7 – Examples of current free credit checking tool offerings[45]



4.17 The competitive constraint exerted by these players is reflected in the Parties internal documents, which explicitly list their competitors as including [✂].[46] In addition, ClearScore actively monitors the [✂]. By way of example, [✂][47] [✂][48] [✂].[49]

4.18 In addition, as detailed in paragraphs 3.6 to 3.10 above, this constraint is increasing and will increase further in the future as many other lenders and CCPs will start offering free credit scores to their customers in very short order, further increasing the number of routes by which customers can receive free credit scores. [✂] indicates that barriers to entry are low. The increasing ubiquity of free credit checking tools is also facilitated by the technical ease with which a firm can start offering free credit scoring and reporting, and the

[43] Understood as Experian's and ClearScore's free products following the Transaction.

[44] Decision, paras. 160-161.

[45] Experian site visit presentation, [✂], page 3.

[46] Annex RFI 7.

[47] [✂].

[48] [✂].

[49] See, for example, [✂] provided as [✂].

low cost to run it. All three major CRBs (Equifax, CallCredit and Experian) offer their credit information to multiple competing FPLG players.[50]

4.19 For example, [✂]. Accordingly, any hypothetical competitive disadvantage vis-à-vis the Parties based on the lack of a free credit checking tool (which the Parties do not believe exists) will soon disappear, contradicting the CMA's position that "*credit checking is much less important to MSM Group's business model, which differentiates its offerings from those of the Parties*".[51]

4.20 The market shares used in the Decision do not reflect the number of customers lenders are able to reach. If Experian were to deteriorate its free offering following the Transaction, many consumers would be able to turn to their bank to find a free credit score (and in some cases other free credit data and other features). Given the critical importance of traffic and consumer engagement and the natural incumbency advantage of banks, the prospect of such consumer reaction acts as a powerful constraint over Experian.[52]

4.21 In addition, the Decision has underestimated entirely the competitive strength of more established competitors.[53] Indeed, independent customer surveys [✂]. The brand tracking report produced [✂][54] [✂].[55]

4.22 In summary, this evidence underscores the large and increasing number of routes by which consumers can access free credit scores, which means that the Parties would have no incentive to deteriorate their free proposition following the Transaction.

Experian has no incentive to deteriorate its free offering to benefit the paid product

4.23 As free credit checking tools do not compete with paid-for subscription services (or at least compete significantly more closely with each other rather than with paid-for offerings), following the Transaction, Experian will have no incentive to deteriorate the quality of the free product to drive consumers to the subscription paid-for product (or vice-versa).

4.24 First, it is implausible that a deterioration in the quality of the free product would lead to significant diversion to paid-for products (with a price of £14.99 per month), as consumers would simply switch to another free offering, of which

[50] Issues Statement, para. 26 (c)(iii).

[51] Decision, para. 113.

[52] Issues Statement, para. 26 (c)(i) and (ii).

[53] Issues Statement, para. 26 (c)(ii).

[54] [✂].

[55] Annex 17 to the Merger Notice, pages 9-11. [✂].

there are many today and even more in the near future. Given the fact that [✂],[56] [✂].

4.25 As the Parties are not particularly close competitors (see below), Experian could not be sure that a sufficient proportion of free Experian users would be recaptured by ClearScore (or vice-versa [✂]), given the number of competing free offers today and [✂]. This also means that [✂] as well if the free product were to be underinvested, as there would be [✂].

4.26 Second, if Experian were to <u>deteriorate the quality or increase the price of the paid CreditExpert offering</u>, customers would not switch to a free product that does not provide the personalised credit improvement and fraud prevention features that customers pay for. The characteristics of the two products are so different that such a switching pattern is implausible.

4.27 It is much more plausible that consumers would turn to other suppliers of personalised credit advice or fraud prevention services, of which there are several such as Equifax, Noddle, CheckMyFile, Credit Angel, UK CreditRatings, My Credit Monitor and CreditReportMatters all of which offer paid credit checking tools with premium features similar to CreditExpert (as recognised in the Decision).[57]

4.28 Even if CreditExpert's consumers were to switch to a free product, there is no guarantee they would switch to ClearScore's free product (as explained in para. 4.25 above) given the wide (and growing) array of alternative free credit score providers.

4.29 Finally, to the extent that there was an impact of the introduction of the free product on the paid product, this was a reflection of consumers adjusting to a new proposition and its effects have now dissipated. In particular, [✂].[58]

4.30 An econometric analysis of the Parties' historic customer acquisition data shows that there has been [✂], while there was a [✂].[59] Moreover, there appears to have been [✂]. **<u>Annex 1</u>** has further details on this econometric analysis.

4.31 In spite of this [✂] of the free Experian FPLG service on CreditExpert, Experian [✂] with its strategy [✂]. This strategy has paid off by leading to [✂].

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[56] Response to Phase 1 Decision (para. 6.17): FPLG revenues are projected to [✂] million in FY 2018 [✂] million in FY 2022 ([✂] million in FY 2023), [✂] the revenues from the subscription service will [✂] throughout the same period and will be [✂] generated by the free FPLG channel by FY 2022 (see Annex RFI2-1705).

[57] Decision, paras. 160-161.

[58] See Experian site visit presentation, "[✂], slide 8.

[59] Issues Statement, para. 26 (b) (i) and (ii).

Conclusion

4.32 In light of the above, the Transaction creates an incentive for Experian to improve its free product to [✄] and to [✄], rather than any incentive to deteriorate any aspect of the proposition.

4.33 Accordingly, following the Transaction, Experian's incentive will be to continue investing and innovating in the [✄].[60] This is reflected in Experian's [✄] and in ClearScore's [✄] (see para. 5.43 below).

4.34 As described in the Response to the Phase 1 Decision and at the site visit, Experian plans to [✄]. Following the Transaction, ClearScore's co-founder and CEO, Justin Basini, will [✄]. The notion that innovation could somehow be stifled after the Transaction is quite simply incorrect and at odds both with the Parties' stated plans and ambitions and with the demands of this dynamic market.

4.35 All available evidence therefore clearly demonstrates that the Transaction does not give rise to an SLC in the supply of credit checking tools in the UK.

5. Theory of harm 2: the Transaction will not give rise to horizontal effects in the supply of CCPs for loans or credit cards

5.1 Theory of harm 2 appears to reflect a concern from the CMA that Experian would either increase prices to lenders (by becoming a more significant route to market following the Transaction), deteriorate the quality of their CCP offering or reduce innovation. However, the reasoning underpinning this theory of harm ignores a cogent body of evidence which demonstrates that Experian would not have any ability to exercise market power in the FPLG segment of the market:

(a) The Parties face very significant competitive constraints, due to the fact that lenders have many alternative routes to market, of which the Parties represent only a very small part, even when considering the FPLG segment in isolation;

(b) The Parties are not a particularly important route to access specific groups of consumers or for individual financial product providers;

(c) Experian and ClearScore have not been able to [✄];

(d) Barriers to entry and expansion in this sector are low and, therefore, new entry can occur or existing players can expand quickly; and

(e) Experian's post-Transaction strategy is consistent with the [✄].

The Parties are a very small route to market for credit cards and loans

Lenders use a variety of market channels interchangeably

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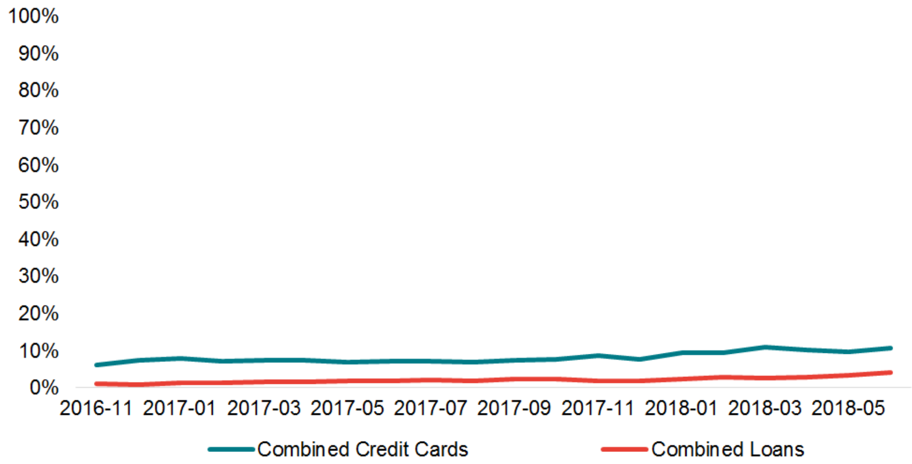
[60] Issues Statement, para. 26 (b)(iii).

5.2 As described in the Response to the Phase 1 Decision and recognised in the Decision, financial product providers use a variety of marketing channels in order to reach customers, including direct channels (online and offline), and indirect channels, for example third party CCPs.[61] The direct channel is a particularly important competitive constraint over the Parties, given consumers' preference to apply for financial products directly with lenders.[62] The Parties have pointed to their respective internal documents which show that they [✂].[63]

5.3 Experian's [✂].[64] As shown in Figure 8 below, the Parties [✂].

Figure 8 – [✂][65]



5.4 This [✂] demonstrates conclusively that the Parties [✂], and therefore it is implausible to assume that following the Transaction the Parties will have any increased ability to increase commissions, [✂].

5.5 Finally, it cannot be overstated that the relative importance of the direct channel will increase further in the very near future, as [✂] are in the [✂] stages of launching new propositions which are aimed at [✂] (as described in the counterfactual above).

Even within the FPLG segment, lenders have plenty of alternatives

5.6 In addition to the constraint from direct channels, the Parties face intense competition from other CCPs active in the FPLG segment. Experian is part of a long 'tail' of small and medium-sized competitors challenging larger players. A distinction between CCPs with free credit checking tools and CCPs without

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[61] See also Response to the Phase 1 Decision, paras. 5.3 to 5.11.

[62] As demonstrated by the evidence included in the Response to the Phase 1 Decision (namely paras. 5.8 to 5.11). See also paragraphs 2.17 and 2.23 above.

[63] Response to the Phase 1 Decision, paras. 5.6 and 5.50-5.51.

[64] [✂].

[65] [✂].

those tools is irrelevant, as more players add those tools to their offer and the cost of doing so is very low given the wide availability of CRB data.[66]

5.7 The Decision described MSM as a "*significant competitor*". This is a demonstrable understatement, as all data provided to the CMA and publicly available demonstrates that MSM is the clear leader in the FPLG segment by a significant margin. [✄] lags significantly behind [✄]:[67]

(a) In terms of the <u>size of the customer base</u>, Experian currently has [✄] million unique visitors per month and ClearScore has [✄] million, the combination of which amounts to [✄]of MSM (at [✄] million per month). Experian currently has [✄] million free customers and ClearScore has [✄], the combination of which amounts to just over [✄] of MSM (at £[✄] million);

(b) In terms of <u>marketing spend</u>, Experian spends £[✄] million on marketing per year and ClearScore is budgeting to spend £[✄] million in 2018, the combination of which amounts to just over [✄]of MSM (at £[✄] million) and around [✄] of GoCompare (at £[✄] million); and

(c) In terms of <u>consumer engagement</u>, Experian has an NPS[68] score of [✄] (free Experian account) and [✄] (CreditExpert) and ClearScore has a score of [✄], while MSM and MSE score much higher at [✄] and [✄], respectively.

5.8 As mentioned above, [✄]. This will further increase MSM's engagement with consumers and hence its position as a route to market for lenders.

5.9 In addition to MSM (and MSE), there are many other major competitors active in FPLG for credit cards and loans in the UK, including TotallyMoney, Zoopla[69] (through uSwitch and Money.co.uk), Noddle, GiffGaff, CompareTheMarket, GoCompare, LoveMoney and many others.[70] Indeed, even if one were artificially to restrict the analysis to FPLG players, there would be many options for lenders.

5.10 The constraint exerted by these players is much greater than suggested by the data used to calculate market shares in the Decision.[71] High brand awareness and website traffic are key metrics to assess competitive strength in the FPLG segment, given that the service is offered to the consumer at no cost. For

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[66] See also Response to the Phase 1 Decision, paras. 5.28 *et seq.*

[67] Experian site visit presentation, [✄], page 13.

[68] Net Promoter Score, which is an index from -100 to 100 that measures the willingness of customers to recommend a company's product or services to others, and if often used as proxy for gauging customer's overall loyalty to the brand and engagement.

[69] In May 2018, private equity firm Silver Lake announced the acquisition of ZPG (the owner of Zoopla) for £2.2 billion. Silver Lake is also the key investor in Credit Karma.

[70] See Response to the Phase 1 Decision, Figures 4 and 5 at pages 22-23.

[71] Decision, Tables 1 and 2.

example, in January 2018, Zoopla reported a record-breaking 68 million visits across all its websites.[72] Such players are able to leverage their brand and website traffic generated by adjacent verticals to cross-sell credit cards and loans.

5.11 This is also evidenced by the factors monitored by the Parties to measure their performance relative to their competitors. Experian, for example, [✂].[73] Similarly, ClearScore's [✂].[74] [✂][75] [✂].[76]

5.12 The [✂] also shows that [✂] (see Figure 9 below). The report further observed that the [✂].[77]

Figure 9 – [✂][78]

<u>The Parties do not attract a unique customer base and are not a crucial route to market for any lender</u>

The Parties' consumer bases are not different from their competitors

5.13 The evidence that the Parties account for only a very small share of credit cards and loans taken out in the UK is conclusive. In addition and as shown below, there is no particular set of consumers who can only be reached via the Parties and (as a corollary) there are no lenders who have a particularly high share of originations from the Parties.

5.14 The Parties have provided evidence that shows that their customer set [✂] (see also paras. 2.21 to 2.24 above).[79] The data shows that the Parties are not close competitors in respect of [✂], which are not materially different from other players in the market, and are [✂] in comparison with other players. As a result, [✂] for accessing a particular group of consumers [✂].

The Parties are not a material route to market for individual lenders

5.15 The Parties have carried out additional analysis which confirms the conclusion that the Parties are not a particularly significant channel for individual lenders.

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[72] See https://www.zpg.co.uk/media/press-releases/2018/09-02-2018.

[73] See, for example, **Annex 12.43 to the Merger Notice**, [✂], February 2018, page 7.

[74] [✂].

[75] [✂].

[76] [✂].

[77] Annex 17 to the Merger Notice, page 14.

[78] Annex 17 to the Merger Notice, page 13.

[79] Response to the Phase 1 Decision, para. 5.53.

5.16 First, when looking at the relative importance of each Party to different financial product providers, in terms of the share of originations generated through each Party as a proportion of total originations by that financial product providers,[80] the data shows that when financial product providers are ranked on this basis, the ordering is different for each Party (which further reinforces that the Parties are not close competitors).

5.17 Figure 10 below depicts those rankings of credit card providers in respect of each Party. This figure shows that the credit card providers with the highest share of their originations [✂], while the credit card providers with the highest share of their originations [✂].

Figure 10 – [✂][81]

5.18 The same picture is true of loans. Figure 11 below shows that the loan providers with the highest share of their origination [✂], while the loan providers with the highest share of their originations [✂]. Moreover, this data shows that [✂].

Figure 11 – [✂][82]

5.19 Second, looking at the same data, no financial product provider has a particularly high share of its originations arising through the Parties. This means that the Parties are not a particularly important channel for any individual lender (or overall as outlined above), and that the Parties do not appear to offer a more similar proposition than other FPLGs for financial product providers.

5.20 In terms of credit cards, as can be seen in Figure 12 below, the Parties account for [✂] of originations (i.e., sales) for [✂]. The increment arising from the Transaction for [✂], as Experian is only a minimal route to market for them.

Figure 12 – [✂][83]

5.21 The same is true for loans, with the Parties accounting for [✂] of originations for [✂] (see Figure 13 below.) The increment arising from the Transaction for [✂].

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[80] "Originations" are sales of new products.

[81] [✂].

[82] [✂].

[83] [✂].

Figure 13 – [✂][84]

5.22 Third, financial product providers typically use a large number of other FPLGs in addition to the Parties, as well as their own direct online channels and offline routes. Figure 14 shows that [✂] the credit card providers that list on Experian also list on [✂], as well as ClearScore, while [✂] of these providers also list on [✂].

Figure 14 – [✂][85]

5.23 Figure 15 below shows there is also [✂] at the individual product level for the credit cards listed on Experian and other FPLGs, with ClearScore [✂].

Figure 15 – [✂][86]

5.24 Figure 16, at the provider level, and Figure 17, at the individual product level, show similar pictures for [✂]. It can be seen again that [✂].

Figure 16 – [✂][87]

Figure 17 – [✂][88]

5.25 This data confirms that the Parties are [✂] route to market for individual providers or specific products – the same providers and products can be found across the vast majority of FPLGs. Again, this shows that there are many options for lenders, which means that lenders will not face increased bargaining power from the Parties following the Transaction (contrary to the assumption underpinning theory of harm 2).

5.26 Moreover, all those lenders that list [✂]. Figure 18 shows that, for the [✂].[89] These results show that providers have and use numerous other FPLG routes to market.

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[84] [✂].

[85] [✂].

[86] [✂].

[87] [✂]

[88] [✂].

[89] [✂].

Figure 18 – [✄][90]

The Parties have *[✄]* ***despite the increase in their respective user bases***

5.27 An alternative way of considering whether theory of harm 2 is hypothetically plausible is to look at the Parties' historic behaviour. If the hypothesis underpinning this theory of harm were correct, then, as the Parties have increased their user base over time and the share of originations for individual lenders that they account for, [✄].

5.28 In reality, however, [✄] to financial product providers have [✄], as illustrated in Figures 19, 20, 21 and 22 below. This is due to the Parties continuing to be a [✄] route to market for lenders and being subject to [✄].

Figure 19 – [✄][91]

Figure 20 – [✄] [92]

Figure 21 – [✄][93]

Figure 22 – [✄][94]

5.29 These figures show that [✄] in the level of commissions from lenders, even as the share of ClearScore and Experian has increased substantially since entry.[95] This reflects the reality of how financial product providers negotiate commission fees with FPLG players. As indicated in the Response to the Phase 1 Decision, commission rates are influenced by a variety of different factors, namely the depth and quality of the integration between the platform and the lender (which reduces costs for lenders and improves revenue per lead for the FPLG player), profitability of the consumer base (taking into account, for example, activation rates and consumer spend) and volume of leads generated

[90] Source: online listing of product providers from [✄].

[91] Source: [✄].

[92] Source: [✄].

[93] [✄].

[94] Source: [✄].

[95] Note that [✄].

by the channel, with some variance also driven by negotiation and exclusive promotions/air time.[96]

5.30 The data provided above supports the conclusion that [✂], as they have access to a plethora of marketing channels and alternative players in the FPLG segment, thus [✂] (see above, para. 5.28, Figures 19 to 22).

5.31 This constraint is particularly acute in the case of [✂].

5.32 The same constraints would prevent the Parties from deteriorating quality or reducing innovation following the Transaction.

<u>Barriers to entry and expansion are low</u>

5.33 Barriers to entry and expansion are low for providing credit comparison services, reducing even further any hypothetical concern about the Parties' ability to exert any market power.

5.34 Many established players with significant experience in data-insight based businesses, such as banks and fintech firms, are well positioned to leverage their existing focus on, and know-how in, using data insight to drive user engagement, and their existing customer base. Existing CCPs are looking to grow and will respond to the developments outlined above.[97] [✂] (see para. 4.19 above).

5.35 As detailed in the counterfactual section above, wider access to data and increased digitisation are disrupting the FPLG segment of the market. [✂] are actively preparing to leverage data to strengthen their direct marketing channels [✂] and, in some cases, enter into the FPLG segment with 'whole of market' comparison propositions.

5.36 As a result, direct channels will be bolstered and other FPLG players will grow and expand, thus further confirming that this theory of harm is not borne out by the facts.

<u>The Parties' strategy is to continue investing and innovating</u>

5.37 Finally, this theory of harm is inconsistent with Experian's and ClearScore's future plans. Given the proliferation of credit scores and the increasing level of competition within the FPLG segment and from the direct channel [✂], the Parties must continue innovating to offer the best customer experience possible. Indeed, the Parties can no longer rely on [✂]to remain a relevant player in the FPLG segment. This is evidenced by the Parties' [✂] pipelines (see para. 5.43 below).

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[96] Response to the Phase 1 Decision, para. 5.66.

[97] For example, [✂].

5.38 Experian's revenue projections for the next five years [✄] and are predicated on [✄]. The management team [✄]. This [✄] cannot be achieved by underinvesting in quality or innovation.

5.39 Innovation to further engage consumers and increase the likelihood of converting leads into sales is all the more important due to the fact that the FPLG business model involves [✄]. Figure 23 below shows that [✄].

Figure 23 – [✄][98]

5.40 This [✄] of the business model is also illustrated by the [✄] operates on. [✄].

Figure 24 – [✄]

5.41 As noted above, and as explained at the Experian and ClearScore site visits, in the UK credit scores and reports have become ubiquitous and freely available through a myriad of sources. As a result, the mere offer of free credit scores and reports alone will no longer suffice to attract [✄] of consumers and to [✄].

5.42 Furthermore, the FPLG segment is highly competitive and competitors are forced to continuously innovate by broadening and improving the services they provide to consumers for free in order to recover the upfront costs they incur. [✄]. To put it another way: if the financial products are not "on the shelf", they cannot be purchased, which reduces the likelihood of upfront costs being recovered.

5.43 This is reflected in both Parties' [✄]:

(a) [✄]. In addition, [✄].[99]

(b) [✄].

Figure 25 – [✄]

5.44 As Experian plans to [✄], to ensure that the merged entity's FPLG offering remains competitive. This strategy is entirely consistent with Experian's [✄] for the merged entity's FPLG business [✄].

<u>Conclusion</u>

5.45 All the available evidence therefore clearly demonstrates that the Transaction does not give rise to an SLC in the supply of CCPs for credit cards or loans in the UK.

[98] [✄].

[99] Annex RFI2-0883, page 21.

6. Theory of harm 3: the Transaction will not give rise to vertical effects (input foreclosure) in the supply of pre-qualification services to FPLGs

6.1 Experian neither currently has, nor will have following the Transaction, the ability or incentive to foreclose rival FPLGs from access to its pre-qualification services. This lack of ability and incentive is evidenced by HD Decisions' behaviour after the introduction of the free Experian offer, where HD Decisions continued to provide its services widely. Even if it were to have the ability and incentive to foreclose competitors – which it does not – any such foreclosure would not result in an SLC.

No ability to foreclose[100]

6.2 Experian neither has, nor will have following the Transaction, the ability to harm rival FPLGs by withholding access to, raising the price of, or degrading the quality of Experian's pre-qualification services, including for the following reasons:

(a) Experian's [✂], that would preclude any hypothetical foreclosure strategy; and

(b) Experian's pre-qualification solutions are not essential inputs for competition in FPLG. Rather, Experian's customers can switch to a number of alternative self-supply options, [✂].[101]

Contract terms prevent any foreclosure strategy

6.3 Experian's pre-qualification contracts with FPLGs contain [✂].[102] [✂].[103] [✂].[104] [✂] reflects not only the negotiating leverage customers have,[105] but is also strong evidence that the pre-qualification services provided by HD Decisions are not essential for competing successfully in the FPLG space.

6.4 Furthermore, Experian's pre-qualification contracts with FPLGs typically [✂] and many include contractual protections for third parties in terms of the quality of the services they receive, such as:[106]

(a) A requirement that [✂];

(b) Service-level requirements, such as performance and operating metrics, relating to response time and service availability. [✂]; and

[100] Issues Statement, para. 32(a).

[101] Response to the Phase 1 Decision, paras. 7.15-7.17.

[102] Issues Statement, para. 32(a)(ii)-(iii).

[103] [✂].

[104] Response to the Phase I Decision, paras. 7.26-7.27.

[105] HD Decisions believes that [✂].

[106] Response to the Phase 1 Decision, paras. 7.3-7.8.

(c) Where requested, monthly review meetings between the parties regarding service changes.

6.5 In addition, several lender contracts require that Experian [✂], which would preclude a foreclosure strategy.

6.6 Pursuant to these contractual provisions, HD Decisions and Runpath must continue to supply pre-qualification services to rival FPLGs, must provide these services [✂], and must maintain high quality services. Thus, these contractual provisions preclude HD Decisions and Runpath from withholding access to, raising the price of, or degrading the quality of the pre-qualification services they offer to rival FPLGs.

6.7 Moreover, Experian has no ability to withhold the supply of its services, as [✂]."[107] HD Decisions therefore has effectively no ability to withhold access to its pre-qualification services to other FPLGs.

Experian's pre-qualification services are not essential inputs

6.8 In addition to contract terms that prevent foreclosure conduct, Experian lacks the ability to foreclose rival FPLGs because its pre-qualification services are not essential inputs for FPLG competition.[108]

6.9 First, customers already have alternative pre-qualification suppliers to which they can turn, and may leverage the threat of switching to another supplier to extract more favourable contract terms.[109] For example, [✂] – which currently supplies pre-qualification services for loans – is a credible alternative to whom customers can switch. [✂]. The threat of customer switching to alternative pre-qualification solution providers will continue to constrain Experian post-merger.

6.10 Second, rival FPLGs increasingly have the ability to obtain pre-qualification services through lender self-supply options, such as APIs. APIs, which allow FPLGs to acquire information directly from credit providers regarding the likelihood that a consumer will be accepted for a credit card or loan product, are [✂]. [✂].[110] Numerous lenders of various sizes and capabilities – including [✂]– currently have API solutions or are in the process of developing API solutions. At least two of these lenders – [✂] – have direct lender APIs for at least some FPLGs, and have thereby disintermediated HD Decisions and Runpath entirely for a portion of their FPLGs.

6.11 The large number of lenders [✂] API solutions demonstrates the ease with which these can be developed. As mentioned at the Experian site visit, developing APIs is neither complex nor particularly expensive. In fact, APIs

[107] Annex RFI2-1732 (Section 4, paras. 4-5).

[108] Issues Statement, paras. 32(a)(i), (iii). Response to the Phase 1 Decision, paras. 7.9-7.28.

[109] Issues Statement, para. 32(a)(ii).

[110] Response to the Phase 1 Decision, paras. 7.14-7.17.

are a familiar technology for the FPLG industry, serving as the interfaces powering the FPLG industry today. The skills and technology required to create an API are widely available, and a new API solution could be developed relatively quickly. For HD Decisions to build an API for a new service [✂]. In addition, the cost of developing an API is not prohibitive, and the API could be built for around £[✂].

6.12 Given the ease of API development, any attempt to engage in foreclosure would likely further accelerate the development of APIs and the deployment of existing APIs, and is a [✂] Experian from engaging in a foreclosure strategy.

6.13 Third, Experian will continue to face the threat that its competitors [✂].[111] As explained during the Experian site visit, [✂]. This has significantly improved the consumer experience and has benefitted all FPLG players.[112]

6.14 However, now that HD Decisions has invested in and created a market for pre-qualification services, [✂], in particular [✂], have the capability and existing relationships with lenders and other FPLGs to replicate its pre-qualification services role and build an additional direct competitor to HD Decisions and Runpath. In fact, [✂] already supplies pre-qualification services directly to certain clients, and could readily expand to offer its services to other FPLGs. In addition, other players could easily enter the market by gaining access to credit data, which all CRBs make available at a reasonable cost. Experian's competitors could develop proprietary pre-qualification solutions through a number of potential routes beyond APIs relatively quickly and at low cost, including through the following potential paths:

(a) **Black-Box Solution**: Financial product providers share key characteristics of their credit policy with an FPLG, which the FPLG uses to estimate customer eligibility;

(b) **Customer Files**: Financial product providers share with FPLGs a list of customers whom they would approve for certain products; or

(c) **Inferred Model**: FPLGs reverse engineer a financial product provider's credit policy through customer CRB data and past acceptances for credit products.

6.15 HD Decisions' own history demonstrates the relative ease of entry into pre-qualification services. HD Decisions was founded in 2008 and [✂], achieved success very quickly, [✂]. HD Decisions estimates that the cost of developing its pre-qualification solution was £[✂] million.

6.16 In addition, ClearScore's internal documents show that [✂], and that, [✂]:[113]

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[111] Response to the Phase 1 Decision, paras. 7.19-7.22.

[112] Experian site visit presentation, [✂], slide 3.

[113] See [✂].

(a) ClearScore's [✂].

(b) ClearScore estimated that [✂] (see Figure 26 below), [✂].[114]

6.17 However, ClearScore decided [✂]:

(a) First, [✂].

(b) Second, [✂].[115]

(c) Third, [✂].

6.18 In addition to [✂] potential entry by Experian's CRB competitors, at least two other players could readily begin supplying pre-qualification services in the UK. [✂] is a registered company that [✂]. In addition, [✂] currently supplies pre-qualification services for automotive loans in the UK, and could readily expand to supply pre-qualification services for unsecured loans.

6.19 Any suggestion that lenders may be reluctant to share their lending criteria with third parties would be belied by the fact that lenders have already shared their lending criteria with [✂], for example. Furthermore, under at least two potential routes of entry – the customer file and inferred model options – a new entrant could circumvent any purported difficulty in reaching agreements with financial product providers to access their proprietary lending criteria by obtaining information on which customers the lender would approve (customer files) or through reverse engineering this criteria (inferred model).

6.20 Therefore, given the availability of a number of credible alternatives to Experian's pre-qualification services, including direct lender APIs, Experian neither currently has nor will have post-Transaction the practical ability to favour its own FPLG business by raising the price of, or lowering the relative quality of, the pre-qualification services Experian offers to rival FPLGs.[116]

6.21 Finally, customers not only can switch to self-supply, but have also leveraged the knowledge that Experian's pre-qualification services are not essential inputs and threatened self-supply to extract better contract terms.[117] The Response to the Phase 1 Decision contains numerous examples of [✂].[118] Likewise, [✂]. For example:

(a) [✂] obtained [✂]; and

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[114] The Parties also note that [✂].

[115] Evidence of ClearScore's consideration that middle-player, pre-qualification services were [✂].

[116] Issues Statement, para. 32(a)(iii).

[117] Response to the Phase 1 Decision, paras. 7.23-7.24.

[118] Response to the Phase 1 Decision, para. 7.23.

(b) [✂].[119] [✂].[120]

6.22 The Transaction does not affect customers' ability to threaten self-supply or other alternatives in negotiating pre-qualification contracts. Rather, post-Transaction, customers will continue to constrain Experian in the supply of pre-qualification services by credibly threatening to switch to alternative supply options.

6.23 Experian therefore neither has nor will have post-merger the ability to harm rival FPLGs by withholding access to, raising the price or, or degrading the quality of Experian's pre-qualification services, because [✂] preclude a foreclosure strategy, and because Experian's pre-qualification solutions are not essential inputs given the availability of alternative supply options.

No incentive to foreclose[121]

6.24 There is also substantial evidence that Experian does not have the incentive to foreclose its FPLG competitors from access to pre-qualification services.

No merger-specific effect

6.25 As discussed in the Response to the Phase 1 Decision,[122] the Transaction does not create a new vertical relationship: Experian is already vertically integrated and supplies pre-qualification services to a number of FPLGs, as well as to itself. Under the potential theory of harm outlined in the Issues Statement, Experian would have had the incentive to engage pre-merger in a foreclosure strategy since the launch of Experian's free account in June 2016, and increasingly so as the free account user base grew.

6.26 However, Experian has not engaged in any such conduct. To the contrary, [✂]. The fact that [✂]. Moreover, [✂]. In fact, [✂].

6.27 The fact that HD Decisions has not attempted to foreclose rival FPLGs is supported by the evidence. First, HD Decisions has [✂] of its services to customers over this period. As shown in Figure 29 below, [✂] since the launch of the Experian free product.[123] [✂].

Figure 29 – [✂][124]

[119] See Annex RFI2-1711, slide 51.

[120] See Annex RFI2-1711, slide 51.

[121] Issues Statement, para. 32(b).

[122] Response to the Phase 1 Decision, paras. 7.31-7.31.

[123][✂]d.

[124] Source: HD Decisions.

6.28 The only [✂] in the effective price charged by HD Decisions [✂]. In any event, [✂] has been used to attempt to engage in any foreclosing behaviour (as theory of harm 3 would suggest).

6.29 Second, HD Decisions [✂]. Figure 30 shows [✂].

6.30 [✂].

Figure 30 – [✂][125]

6.31 Finally, HD Decisions [✂] the launch of the free Experian account.

6.32 For example:

(a) [✂];

(b) [✂]; and

(c) [✂].

6.33 [✂].[126] [✂], as shown in Figure 31 below.

Figure 31 – [✂][127]

6.34 As a result, there is no evidence whatsoever that HD Decisions has engaged in any foreclosing behaviour designed to enhance Experian's free proposition. Experian's conduct since the launch of its free account is unequivocal evidence that Experian lacks the incentive (and ability) to foreclose rival FPLGs.

6.35 Even assuming that "*[t]he merger significantly increases Experian's downstream presence in CCPs*," any greater presence downstream should not lead to the conclusion that HD Decisions would have "*a greater incentive to worsen rival CCPs' competitive positions*."[128] [✂]. As HD Decisions generates revenue [✂], HD Decisions has the incentive [✂]. However, it is notable that [✂].

6.36 The Transaction [✂]: adding to Experian's downstream business [✂]. As explained at the Experian site visit, [✂](see Figure 32 below). Any foreclosure strategy would see [✂]. Notably, [✂], which indicates that [✂].

Figure 32 – [✂][129]

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[125] [✂].

[126][✂].

[127] [✂], at 2.

[128] Issues Statement, para. 31.

[129] Experian site visit presentation, [✂], slide 12.

Experian's track record and wider commercial incentives

6.37 Experian's broader commercial incentives further demonstrate that Experian does not have the incentive to foreclose or otherwise frustrate rival FPLGs' access to its pre-qualification services.[130]

6.38 HD Decisions connects financial product providers with FPLGs. HD Decisions [✂] (£[✂]m) of its revenue from financial product providers (for whom it develops bespoke matching solutions to pair a customer's data to its credit policies) and [✂] (£[✂]m) from FPLGs (to whom it supplies the technology to match consumer input data to financial product providers' lending criteria). As such, HD Decisions generates [✂]of its revenue from financial product providers who are Experian's [✂]. The revenue Experian earns from the sale of HD Decisions' solutions to financial product providers accounts for [✂] of Experian's business with these providers. Experian therefore has no incentive to frustrate financial product providers' routes to market and risk damaging Experian's broader commercial relationships with these providers, as these relationships are [✂] to Experian's B2B business (e.g., CRB credit file data and decision analytics) and to Experian's UK business as a whole.[131]

6.39 Specifically, HD Decisions' service depends on the participation of both financial product providers and FPLGs. In deciding to acquire pre-qualification services from HD Decisions rather than serve FPLGs directly, financial product providers demand that HD Decisions provide access to [✂] of FPLGs so that their products will be available on as many channels as possible. [✂].[132] Any harm to a rival FPLG risks HD Decisions sacrificing the revenue it generates from not only FPLGs but also from financial product providers, who would be able to find or develop alternative mechanisms, such as direct APIs, to support the foreclosed channels. Moreover, Experian would not only risk losing revenue from pre-qualification services via HD Decisions, but would also risk further losses across Experian more broadly. Given that financial product provider relationships are [✂] to Experian's FPLG offering, and given the existence of indirect network effects, any harm to a broader customer relationship risks compounding any profit lost as a result of the lost pre-qualification business.

6.40 Any assessment of Experian's incentives to foreclose rival FPLGs must account for the impact of these broader commercial considerations.[133] In any event, it is evident that Experian does not have an incentive to foreclose rival FPLGs,

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[130] Response to the Phase 1 Decision, paras. 7.32-7.37.

[131][✂].

[132] Annex RFI2-1714, slide 9.

[133]Issues Statement, para. 32(b). [✂].

given that doing so would threaten Experian's broader business and would be entirely contradictory to HD Decisions' business model and strategy.

No harm to competition[134]

6.41 Given the availability of alternative pre-qualification solutions to which FPLGs can switch, any attempt at foreclosure would be wholly unsuccessful in harming competition in FPLG or eliminating even a single FPLG. In fact, any attempt at foreclosure would likely *accelerate* the entry of self-supply solutions or alternative pre-qualification tools.

6.42 Additionally, as discussed above, financial product providers and FPLGs have and may exert strong buyer power to prevent a hypothetical foreclosure strategy from succeeding, including by demanding contract concessions and/or leveraging their broader relationships.

6.43 Therefore, even if the merged entity had the ability and incentive post-merger to foreclose rival FPLGs – which it will not – such a foreclosure strategy would be unsuccessful and would not result in a substantial lessening of competition.[135]

Conclusion

6.44 All the available evidence therefore clearly demonstrates that the Transaction does not give rise to an SLC in the supply of pre-qualification services to FPLGs in the UK.

[134] Issues Statement, para. 32(c).

[135] Issues Statement, para. 31.