PRIVILEGED AND CONFIDENTIAL

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PROJECT NEPTUNE

RESPONSE TO PHASE 1 DECISION

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 Markets Authority's (***CMA***) decision dated 20 July 2018 (the ***Decision***) following its Phase 1 investigation into Experian's anticipated acquisition of ClearScore (the ***Transaction***).

1.2 The Parties are disappointed by the decision to refer the Transaction for a Phase 2 investigation. The Parties believe that the theories of harm identified in the Decision are built on some fundamental misconceptions about competitive dynamics in the relevant markets. This shortcoming is exacerbated by a misconstrued interpretation of Experian's rationale in pursuing the Transaction which is not supported by any evidence and is, in fact, contrary to all of the evidence submitted by Experian.

1.3 The Decision misrepresents the market context in which the Parties offer their services. The Parties' activities which are at issue in this case, at their core, serve a dual purpose: helping consumers access the most suitable credit products to fulfil their needs and, at the same time, assisting financial product providers (e.g., banks, credit card providers) to attract new customers. From this perspective, the Parties activities are only one of a myriad of options available to financial product providers to attract new customers. In fact, the UK is one of the most competitive and innovative markets in the world for connecting consumers with financial products. This market context dictates that the merged entity will need to continue to compete and innovate vigorously.

1.4 The Parties also do not recognise the picture of competition that has been painted in the Decision. The Decision materially understates the intense rivalry in the market today (even if just considering comparison platforms) and the dynamic nature of competition. This is characterised by the frequent entry of new players and new services and by relentless technological disruption, which allows for increasingly sophisticated ways to combine data seamlessly. These effects are being amplified by both regulatory change and increased consumer awareness of the value of their personal data. The Decision also ignores the significant competitive threats facing the Parties. Developments such as GDPR, PSD2 and the Open Banking Initiative will continue to shape the market by eliminating or greatly reducing barriers to entry and expansion through consent driven access to data. The Decision's counterfactual indicating that the prevailing conditions of competition (which the CMA has underestimated in any event) will remain unchanged is untenable.

1.5 The Parties take great exception to the suggestion that Experian's primary commercial rationale in acquiring ClearScore is to seek to undermine the ClearScore business in order to protect the revenues from Experian's subscription product, CreditExpert. There is absolutely no evidential basis for the CMA's apparent concerns in relation to Experian's motives for the Transaction. A proper review of the contemporaneous evidence shows that Experian's rationale in seeking to acquire ClearScore is entirely pro-competitive. It is inextricably linked to the fundamental transformation of the competitive landscape caused by the increasing commoditisation of credit reports and scores, and the emergence of new financial data products (often offered to the consumer for free), which leverage the wider accessibility of financial data that has been driven by changes in regulation and consumer behaviour. The Transaction is also a key building block for Experian's strategic objective [✂].

1.6 The Parties have set out their response to the Decision as follows:

(a) <u>Section 2</u> addresses the context for the Transaction, by introducing the Parties and the financial product lead generation (***FPLG***) segment;

(b) <u>Section 3</u> addresses the CMA's flawed approach to the counterfactual in the Decision;

(c) <u>Section 4</u> explains the rationale for the Transaction;

(d) <u>Section 5</u> addresses theory of harm 1 and explains why there is no prospect of horizontal unilateral effects in the supply of "Credit Comparison Platforms" (***CCPs***) for loans and credit cards in the UK;

(e) <u>Section 6</u> addresses theory of harm 2 and demonstrates why the Phase 1 finding in relation to horizontal unilateral effects in the supply of credit checking tools is misconceived;

(f) <u>Section 7</u> addresses theory of harm 3 and explains why Experian would have neither the ability nor incentive to restrict the supply of pre-qualification services to rival CCP suppliers following the Transaction; and

(g) <u>Section 8</u> includes some concluding remarks.

1.7 The Parties look forward to engaging constructively with the CMA in its Phase 2 investigation. They are confident that a robust, evidence-led inquiry addressing the market dynamics at work in this case will lead the CMA to conclude that the Transaction does not give rise to a substantial lessening of competition (***SLC***) and should be cleared unconditionally.

2. The Parties and lead generation

2.1 The Decision presents a static view of competition in FPLG, and evaluates the Transaction within artificially narrow frames of reference.[1] The Parties therefore believe it would be helpful to explain the market context for the Transaction before responding to the specific theories of harm articulated in the

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[1] Decision, paras. 51 to 61.

Decision. A proper analysis of the competitive dynamics of the market will demonstrate that there is no reasonable basis on which the Transaction could be found to result in a substantial lessening of competition.

Introduction to the Parties

2.2 Experian and ClearScore operate largely complementary businesses, which reflect their very different commercial heritage and business models.

2.3 Experian's primary activity is in business-to-business (***B2B***) services via its Credit Reference Bureau (***CRB***), with its direct-to-consumer operations accounting for only a quarter of its UK business. Experian's consumer business empowers people to take control of their credit – helping them to understand and better manage their financial position, while protecting themselves from identity theft and fraud.

2.4 Experian's historic centre of gravity within its consumer operations, has been as a provider of a paid-for subscription product, CreditExpert, offering consumers access to a rich set of features to improve their credit score and protect their personal information, including access to their credit report and credit score, individualised telephone guidance to improve a customer's credit score, monitoring of a consumer's credit report, fraud alerts, dark web monitoring, and personalised support for victims of fraud. Consistent with CreditExpert's focus on these added value features, it has never been a product with mass-market appeal. At its height in 2015, CreditExpert had nearly [✂] million subscribers and today its customer base sits at around [✂] subscribers. The [✂] following the introduction of free credit reports and credit scores, including through FPLGs. [✂] current subscribers continue to invest in the product because they value the additional features it offers (in addition to the services they can obtain for free with Experian or other players).

2.5 Until recently, Experian only provided a limited financial product lead generation service to CreditExpert customers, which dated back to before 2012. Experian redesigned and launched this service to the open market in March 2016 under the CreditMatcher name, now known as the free Experian account. As a result, Experian has had to date only a limited footprint in FPLG, although [✂] (see further in Section 4 below). Experian's revenue from FPLG was [✂] million in FY18.[2]

2.6 ClearScore's business, which launched in July 2015, is exclusively based on a FPLG model for which it is remunerated by financial product providers. Its platform provides a free credit checking tool to consumers as part of its business model to maximise the matching of consumers with an increasingly wide range of recommended financial products.

[2] See [✂].

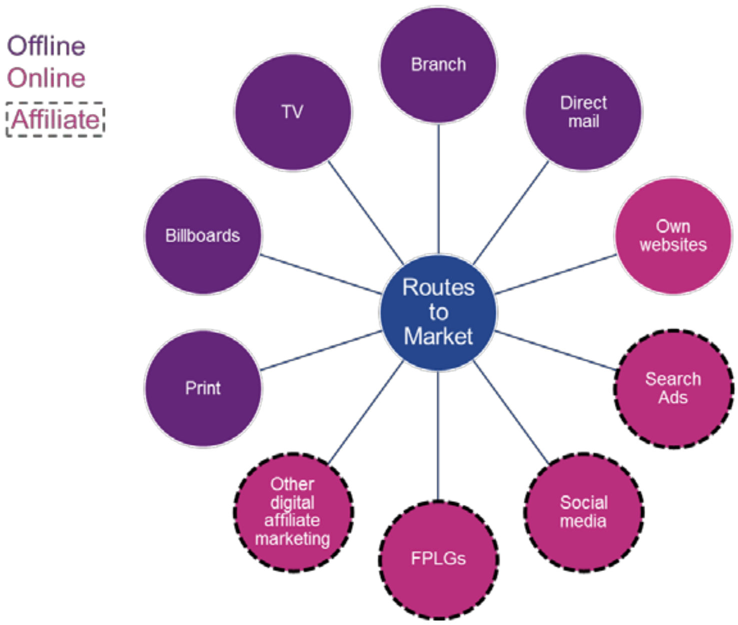
<u>How does FPLG work?</u>

2.7 As credit reports and credit scores become increasingly freely available, the only material area of overlap between the Parties relates to their FPLG activities. In this context, the Parties act as intermediaries in the sale of financial products by introducing consumers shopping for such products to lenders who are looking to attract new customers. Given that lenders have a variety of different means available to them to attract these new customers, FPLG is one (small) segment in the market for the sale of financial products to consumers. We will expand on the dynamics of this market, focusing in particular on the FPLG segment.

The consumer side of the market

2.8 When seeking to obtain a financial product such as a credit card, loan or insurance, consumers can engage directly with the lender (online or through the branch network) or through so called affiliate marketing, i.e., third parties promoting products on behalf of the lenders, which includes FPLGs, social media, search advertising through Google, etc. Given that all of these channels are available to consumers free of charge, each channel is highly substitutable from a consumer's perspective. Regardless, consumers still have a marked preference for obtaining access to financial products directly from the lender, rather than through third parties. The diagram below depicts these channels.

Figure 1 – Routes to market used by financial product providers



The lender side of the market

2.9 From a lender perspective, approximately <u>two-thirds</u> of customer introductions for credit cards and loans continue to be accounted for by: (i) direct acquisitions in the online channel by financial services product providers; and (ii) direct acquisitions by financial services product providers offline (i.e., in store or over the phone).[3] As explained in more detail in *Section 5* below, the competitive constraint exerted by these channels over FPLG providers removes any possibility of the Parties exercising any market power vis-à-vis lenders or consumers.

2.10 Only one-third of credit card and personal loan acquisitions are attributable to affiliate marketing, although this marketing channel has grown quickly over the last two to three years.[4] In this channel, third party lead generation competes directly with much larger and ubiquitous digital marketing channels, such as search spend, pay-per-click, digital display and social media, which account for a large volume of direct acquisitions (e.g., lenders will have pay-per-click arrangements with a plethora of sites). These other much larger channels compete on scale – Google and Facebook have such ubiquitous adoption in the market that they will always be able to generate significant profitable opportunities for financial product providers.

2.11 FPLGs seek to match consumers with financial products providers and, therefore, must compete to attract consumers to their comparison platforms, while at the same time also ensure that financial products providers list their products on their platforms. As we will explain throughout this submission, the two-sided nature of the FPLG segment permeates all aspects of the Parties' strategy with respect to FPLG, and effectively constrains the Parties and their competitors, preventing them from exercising any market power to raise prices, deteriorate the quality of their offering or restrict innovation.

2.12 This also means that the segment is characterised by indirect network effects: the more consumers use the comparison platform, the more attractive it becomes for financial products providers. The increase in the number of products offered on the platform, in turn, makes it more attractive for consumers. This is a delicate balance which can be easily disrupted given the ease of switching at both sides of the market, as consumers very frequently multi-home between FPLGs[5] (and generally are not loyal) and financial product providers have a multitude of channels available to them. In a market with these features it is unlikely that FPLGs could profitably deteriorate their offer to consumers or financial services providers.

The role of credit checking tools in FPLG

2.13 Third party lead generation providers drive consumers to their websites by stimulating user interest through a wide range of marketing techniques, from cashback and vouchers (e.g., uSwitch), to TV advertising (e.g., CompareTheMarket), to offering other promotional incentives either alone or in combination with other channels (e.g., 2 for 1 cinema tickets or a free cuddly toy). Providing a free credit score and report is another marketing proposition, albeit a more relevant one to the ultimate need that a customer is trying to fulfil,

[3] See Annex 10.1 to the Merger Notice, pp. 27 and 28.

[4] See Figures 4 and 5 of the Supplemental response to the Issues Letter.

[5] Decision, para. 29.

and to the services that the Parties offer. However, obtaining a credit score or report is not an end in itself; rather it is a means to allow the consumer to find affordable credit and other financial products to fulfil their particular life needs. Offering that information for free is a way to attract consumers to the comparison platform, just like large marketing campaigns or money saving tips offered by other players (e.g., by MSM) and by other channels (e.g., by banks). Moreover, credit scores and reports are becoming an increasingly ubiquitous marketing tool, as evidenced by the introduction of these services on websites such as MoneySavingExpert (***MSE***) and TotallyMoney.

2.14 Once the consumer clicks on the site, it is necessary to offer a service to help the consumer find a product which meets her or his needs and for which she or he has a reasonable prospect of being approved, to increase the number of successful applications made through the comparison platform (see paras. 5.28 to 5.36 below for more detail). Since third party FPLG revenues depend almost entirely on successful applications via the comparison platform, that is the key driver of competition in this market (over the last two years, the business model has evolved from remuneration for leads to remuneration for completed leads). The fact that the FPLG offers free credit reports and/or scores to consumers has absolutely no bearing in the product matching process, as that is a completely different and independent data analytics process carried out by the platform (even if it may also draw from credit data provided by CRBs, which is easily available anyway). In other words, the product matching will occur in exactly the same way, regardless of whether the consumer has sight of the credit report or score via the platform.

2.15 Furthermore, financial services providers will run their own credit and affordability assessment before accepting a customer, which involves the assessment of many different data points, most notably information providers ask the consumer directly in addition to the individual's score and credit report data against their own creditworthiness criteria and their own scoring. This means that a credit score and report alone only offer a guide to the consumer as to how financial services providers in general might view her or his creditworthiness.

2.16 As a result and as explained in more detail in *Section 5*, the offer of a free credit checking tool (for the consumer, before beginning the search to find a credit product which meets her or his needs) is not a factor that materially differentiates the Parties from the wide set of FPLG players competing fiercely with the Parties.

3. The appropriate counterfactual

<u>Recent and imminent developments</u>

3.1 The Decision has incorrectly identified the appropriate counterfactual as being the current competitive conditions, on the basis that the outcome for consumers of the acknowledged market upheaval caused by recent regulatory developments is uncertain and likely only to be felt in the medium to long-term.[6] To the contrary, the developments described below are already facilitating access to rich sets of consumer data and, as a result, precipitating the creation of new and engaging tools to guide consumers on how to fulfil their credit and financial needs.

3.2 This disruption is based on wider access to customer data and pre-dates the most recent legislative and regulatory developments. For example, for many years now Yodlee has been offering services similar to those which Open Banking is aiming to achieve on the basis of publicly available credit information which has enabled a number of financial services innovators to create offerings using that data.[7] In a post-Open Banking world, where many more players will seek to monetise bank and credit data, Yodlee will certainly adapt its strategy to remain an important competitive force in this space.

3.3 Recent regulatory and legislative developments – GDPR, PSD2 and the Open Banking initiative – have further accelerated the commoditisation of bank data, including credit data, and the transition of credit scoring and reporting from a paid-for product to one that consumers can access freely through multiple different avenues. GDPR has required CRBs like Experian to offer credit reports free of charge to consumers, which inevitably reduces the appetite for consumers to pay for credit scores and reporting services (other CCPs can also use data available from CRBs to enhance their offer). The intention of Open Banking is to reduce the natural advantage that a bank has through information asymmetry by allowing third parties to access transaction data with a consumer's permission. The CMA has recognised Open Banking will "*radically change the competition landscape*" and have a "*truly transformational impact on the competitive landscape*" in UK financial services.[8] This is further clear evidence that the Parties operate in a sector which is in the throes of transformational change.

3.4 In the immediate short-term, the Parties expect that, as a result of these regulatory developments, financial information data (including, e.g., current account turnover, credit bureau data and current account transactional data) will become central in developing digital products to help users understand and manage their finances. There are three main areas where the Parties expect that direct-to-consumer ('D2C') players will integrate credit data into their proposition in the short term:

(a) Marketplace / digital intermediary services: given the transactional nature of consumers' engagement with marketplaces or digital intermediaries (e.g., price comparison platforms), these players have historically spent significant amounts on marketing to generate market

6 Decision, paras. 21 and 41-46.

7 See https://www.yodlee.com/yodlee/europe-africa.

8 See speech given by Alasdair Smith, CMA Inquiry Chair, at the BBA Retail Banking Conference on 30 June 2017 (available at https://www.gov.uk/government/speeches/alasdair-smith-on-competition-and-open-banking).

awareness, create demand and ensure that they are "front of mind" when consumers are considering a financial product purchase, to generate revenues through lead generation.

In order to differentiate themselves and build deeper relationships with consumers, the Parties expect these providers will want to source credit bureau data and provide it to their users to drive greater consumer engagement. Examples include MoneySuperMarket's (***MSM***) CreditClub proposition and Mortgage Gym using CRB data in its mortgage broking offering.

(b) Data insight based services: over recent years, there has been a move towards the use of data to build engagement and create new services. Examples of companies pursuing aspects of this model include the banks, Zoopla, Rightmove, Autotrader, ClearScore, TotallyMoney, Experian, MoneySuperMarket, Starling, Monzo and Cleo. The most common example of such a data insight service is current account information:

(i) Monzo and Starling are planning to make current account data more engaging and insightful for consumers with monetisation provided through marketplace offers.

(ii) Cleo is integrating its software with customers' current accounts and credit accounts to provide personal finance management functionality with monetisation through lead generation to other financial service providers.

Other players which already heavily use data insight for user engagement (e.g., Zoopla)[9] will be encouraged to add credit reports/scores to their portfolios, in Zoopla's case to create a one stop shop for buying, moving and financing the entire home moving process.

(c) Digital agent services: these services build on the two categories above where users will have a relationship with a financial provider and the financial provider will have access to their credit data and other data sources (e.g., utility bills, motor / home insurance policies). This model involves a user delegating authority to their "digital agent" provider to find new financial service products and to implement a switch on behalf of the user. Early examples of this business model in the market include companies such as Labrador (energy switching) and OneDox (document storage for energy, broadband, motor/home insurance with switching capability built into the product).

[9] Zoopla's strategy has been centred on providing property market information so that users will actively come to its service to research the property market. Zoopla has built monetisation channels off the back of that data through estate agents, product advertising, financial product lead generation (Money.co.uk), and home product comparison (uSwitch.co.uk).

3.5 Further disruption in this market is to be expected following the reported plans by Amazon to enter into FPLG for insurance[10] (in addition to Amazon's existing credit card comparison offering through Amazon Money Store)[11] and Facebook seeking access to member financial data.[12]

The impact of these changes on competition is sufficiently certain and will completely transform the market

3.6 These legislative and regulatory initiatives have robust policy drivers with powerful political sponsors (and are being replicated around the world). It is not credible to conclude that the impact of these regulatory changes is, at best, uncertain. The impact of GDPR, PSD2 and Open Banking is already being felt today and there are already numerous examples of entities taking concrete steps to leverage these regulatory changes (in addition to the Parties[13]). Two recent examples:

(a) Open Banking: there are many companies setting up to use Open Banking infrastructure. The FCA have received 216 applications for the two new regulated activities, account information and payment initiation services, with already over 35 account information service providers (AISPs) and around 10 payment initiation service providers (PISPs) successfully authorised and live in the market.[14]

Many of these are focused on using consumer data (some of which is made available through Open Banking) to match consumers to the right financial products at the best prices through new consumer applications: such as Bud, Citibank, ClearScore, ConsentsOnline, Credit Kudos, Digital Moneybox, Me and MyMoney, Emma, Experian, Flux, GiffGaff, Yolt (from ING), iwoca, The IDCO, and MoneyDashboard. These are only the services which have successfully registered directly with the FCA; others, such as HSBC with their ConnectedMoney proposition are using third parties to access the data.

(b) FCA Regulatory Sandbox: in the spring of 2016 the FCA established its Sandbox programme allowing businesses to test innovative products, services, and business models in the market. In the first 12 months, the FCA has accepted 89 participants out of 276 applications, many of

[10] See press report from 16 August 2018 available here: https://uk.reuters.com/article/uk-amazon-insurance-exclusive/exclusive-amazon-considering-uk-insurance-comparison-site-sources-idUKKBN1L10HH.

[11] See https://www.amazon.co.uk/compare-credit-card-offers/b?ie=UTF8&node=367529031.

[12] See press report from 6 August 2018: https://www.wsj.com/articles/facebook-to-banks-give-us-your-data-well-give-you-our-users-1533564049.

[13] See, for example, Annex RFI2-0959 (slide 5).

[14] As per the FCA's registry webpage: https://register.fca.org.uk/shpo_searchresultspage?preDefined=AIPISP&TOKEN=3wq1nht7eg7tr. Experian has already provided extensive information on the market propositions of Open Banking participants to date. See Annex 42 to the response to RFI 3 ("*RFI 42 – Examples of new entrants*").

which are companies testing consumer financial propositions across insurance, mortgages, affordability, savings, financial management and identity.[15]

3.7 All these firms and existing players will use consumer consent to gain access to consumers' banking and credit data and leverage that data to improve consumer engagement and develop new and increasingly sophisticated services designed to match consumers with appropriate financial products at the lowest cost, in direct competition with existing FPLG services. This will in turn lead to a much more open and competitive market for consumer financial services, as is intended by these policy drivers.

3.8 Indeed, banks and financial services providers are looking to diversify their offerings and seeking to disintermediate FPLGs by encouraging direct engagement on financial credit products with consumers. For example, HSBC recently launched the app 'Connected Money', which allows customers to see bank accounts from different banks together in one place.[16] This tool also allows the customer to see what they are spending by category (e.g., travel or shopping) and to see similar transactions grouped across different retailers and providers. The app also calculates the customer's balance after regular bills are taken into account. Experian is [✂], which shows that [✂] (see para. 4.7 below).

3.9 The ready access to consumer bank and credit data reinforces the conclusion that the commoditisation of credit reports and credit scores is inevitable, as they become one out of many relevant freely available data points to match consumers with the right credit products. Experian's [✂]. This mirrors the evolution of most digital-based markets, where the availability of information has pushed players into a 'freemium' model, offering different levels of services to different sets of consumers, who upgrade (and downgrade) as and when they need to (e.g., Spotify).

The correct counterfactual

3.10 When these actual and imminent developments are taken into account and viewed in the context of this Transaction (as the CMA is required to do), it becomes evident that the Transaction cannot give rise to the theories of harm hypothesised in the Decision:

(a) Competition in FPLG is dynamic and evolving quickly, with market participants being forced to be nimble to maintain and grow their respective market positions. These market conditions completely

[15] In Annex 2 to this submission, FCA Sandbox Monitor, prepared by Experian on the basis of information obtained from the FCA regulatory sandbox on innovation generated by PSD2. The list includes Sandbox activity that has been accepted with testing agreed, that are either directly linked to PSD2 by the nature of their Sandbox activity and/or where the firm in the Sandbox has PSD2 permissions. The list was compiled on the basis of (i) the list of Sandbox firms compared against the PSD2 list of firms on the FCA's website; (ii) list of registered firms/trading names on the FCA website; and (iii) publicly available information on the firms and their projects.

[16] See https://webforms.hsbc.co.uk/ConnectedMoney/.

discredit **theory of harm 1**, in which it is suggested that the merged entity would be incentivised to raise prices to lenders or degrade its offering as a result of the Transaction (see further in *Section 5* below).

(b) Future growth will be in FPLG rather than in paid-for credit checking tools. Experian recognised this in 2014 and has adapted its strategy to meet the market shift to free offerings. Experian would have no incentive to deter innovation at ClearScore in any way following the Transaction, as to do so would mean missing out on future growth in FPLG in a world where other players would easily capture that growth, contrary to the hypothesis advanced in **theory of harm 2**. It would be futile for Experian to seek to use the Transaction as a means of inhibiting these fundamental market shifts; to the contrary, all the evidence confirms that the Transaction has been conceived as a way to capitalise on them (see further in *Section 6* below).

(c) Likewise, the Transaction does not give rise to any increased ability or incentive for the merged entity to seek to foreclose access to the pre-qualification services provided by HD Decisions to downstream competitors of Experian and ClearScore, contrary to **theory of harm 3**. Even if the Transaction hypothetically changed Experian's existing incentives in this regard, a proposition for which there is no evidential support, recent developments in market dynamics would render any hypothetical foreclosure strategy ineffective. Experian would not have the ability to implement such strategy in relation to existing customers in any event. CCPs can readily develop Application Programming Interfaces (***APIs***) designed to remove their need to purchase pre-qualification services from HD Decisions and a significant number have already done so (see further in *Section 7* below).

4. The Rationale for the Transaction

Experian strategic repositioning

4.1 The commercial driver for the Transaction is the need for Experian to find opportunities for growth when faced with existential disruption in its traditional direct to consumer business model. The commoditisation of free credit data has also meant that Experian has had to find alternative ways to generate revenue; entering the FPLG space was the natural way of achieving that objective (mirroring the evolution of other digital markets).

4.2 Against the backdrop of rapid change described above, Experian decided to [✂]. Historically Experian had regarded such data as belonging to its clients, i.e., the banks and lenders. However, Experian transformed its approach globally from being an organisation that was historically bank-centric to being an organisation that was consumer-centric, where the business mind-set and strategy was increasingly driven by the recognition that data belonged to consumers rather than the banks. This was in line with Experian's strong data analytics background, allowing Experian to draw from multiple datasets and not just credit data sourced from banks. This change in mind-set was essential in a world where the impetus behind consumer data legislation and regulation has been to place consumers in control of their data. In parallel, the significantly increased consumer awareness of the value of their data also drove the demand for more access, transparency and control over data, including credit and other financial data.

4.3 Experian therefore set out to build relationships directly with consumers in its global activities to drive growth, to enrich existing data assets and to facilitate access to new data through direct consent from consumers. [✄] and to create opportunities in markets embracing Open Banking.

The US experience and the impact in the UK strategy

4.4 The development of FPLG in the US provided Experian with a very instructive blueprint as to how the UK market was likely to develop (and did develop), including in particular: (i) the rapid proliferation of free credit scoring and reporting; and (ii) [✄]. Further details on the US market developments are provided at **Annex 1**, which clearly shows how the UK market is evolving in the very same direction.

4.5 Its experience in the US has had a direct impact on Experian's strategy to re-position its consumer business in the UK, of which the Transaction is an important component part. In particular, Experian has seen similar trends emerge in the UK as in the US, where credit scores would become commoditised in a new world of "freemium and lead generation models".[17] For some time, US consumers have become accustomed to having free access to their credit score and data linked with their financial products (primarily the FICO score) and today over 200 million consumers see their credit score regularly. It has become industry best practice, and endorsed by the Consumer Financial Protection Bureau as such.

4.6 Experian concluded that, [✄].[18] Equally, ClearScore had [✄].[19]

4.7 The trend now has widespread adoption in the UK, following the launch of credit scores by Barclaycard in 2015. Experian has been a key enabler of this trend through its [✄] and make its credit education products available to [✄].[20] Experian is committed to [✄] and is currently [✄].[21] [✄].

Becoming a price comparison player

4.8 In the light of these developments, Experian's [✄], which represents the [✄]. Experian recognised that [✄].[22] It also acknowledged that [✄] to those Experian

[17] Annex 12.4 to the Merger Notice, page 3. [✄] (Annex RFI 6, page 24).

[18] Annex RFI 6, page 24.

[19] Annex 13.1 to the Merger Notice, Slide 45.

[20] This strategy of [✄] predates Open Banking.

[21] [✄].

[22] Annex RFI 6, page 22. [✄].

had at the time.[23] Experian's long-term strategy is to find ways to help consumers save time, money and effort, provide them with a great user experience and [✂] and to select the financial products which are most suited for their needs.

4.9 Experian aims to achieve this by:

(a) [✂]: Experian intends to [✂] with the Experian brand and to [✂].

(b) [✂]: Experian will [✂] (see para. 4.14 below).

(c) [✂]: Experian's strategy is to [✂]. Following its [✂], Experian is [✂].

4.10 Experian is therefore in the midst of implementing in the UK the approach now widely adopted in the US with two different direct-to-consumer propositions: (i) free access to [✂] credit scores for those consumers who wish to know their score and shop around for credit deals (and other products, e.g., insurance, energy, etc.) monetised through a FPLG model; and (ii) a paid-for subscription service for those consumers seeking personalised help in improving and protecting their credit position or identity (for when the consumer so requires).

4.11 Experian's rationale for the Transaction is summarised below:

(a) <u>Speed to scale:</u> Acquiring ClearScore will provide Experian with a large and growing consumer base to expand its position in FPLG in the UK and take advantage of the expected growth in this area.[24] The Transaction will give Experian instant relationships with approximately [✂] million consumers, [✂]. Acquiring ClearScore will also provide Experian with an existing consumer-facing brand with a digitally savvy brand image and consumer friendly proposition. [✂]. Experian's growth projections for ClearScore further illustrate the commitment to this strategy (see para. 4.12(b) below).

[✂] will also further [✂]. It will further [✂].

(b) <u>Acceleration of innovation</u>: Experian believes that the combined capability of the Parties will accelerate innovation resulting in increased value to consumers and improving the merged entity's competitiveness in consumer financial services because:

(i) *Start-up culture*: ClearScore has demonstrated a very nimble culture consistently deploying new products and features due to ClearScore's focus on FPLG, as well as technology talent and [✂]. Experian hopes to leverage ClearScore's technology stack, retain their talented engineers (over [✂] people in London) and accelerate the infusion of Experian with an agile development approach.

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[23] Annex 12.13 to the Merger Notice.

[24] See Annex RFI2-0002 (slide 3).

(ii) *Complementary assets*: Experian has a number of assets that ClearScore would have immediate access to, including data science and advanced analytics, data aggregation and categorisation capabilities that can be used in Open Banking, and expertise in customer servicing. These assets will materially accelerate ClearScore's innovation pipeline allowing ClearScore to launch more products and features that appeal to a wider segment of the population.

(iii) *Increased investment*: technology investment is essential to compete against bigger players and keep up with a rapidly changing market and consumer expectations. Currently Experian consumer services and ClearScore each invest approximately £[✂] million per annum on product and technology innovation. More investment would enable the Parties to leverage fully new opportunities [✂].

Current investment in innovation is a fraction of the amounts being invested by larger technology companies and venture capital backed start-ups. [✂]. Combining the two entities will generate savings of over £[✂] million per annum, much of which will be reinvested in product and technology thus increasing investment in innovation. Experian anticipates investing £[✂] million [✂].

(c) International expansion: Experian is a global company with ambitions to launch a direct consumer proposition in other markets, as part of its global consumer engagement strategy. ClearScore has demonstrated that it can enter new markets (South Africa and India) effectively, quickly and cost effectively. Experian believes that this is an attractive aspect to the ClearScore platform and approach which, combined with Experian's existing global footprint, will facilitate international expansion.

4.12 Experian's rationale for the Transaction is evident in its internal documents, [✂]:

(a) Experian's governance provides a very disciplined approach to the use of capital, which has been consistently identified to Experian investors and the wider market. In addition, investment opportunities go through a rigorous, multi-stage approval process, ultimately requiring approval of the Experian plc Board of Directors. The presentation of the Transaction by senior management to the Experian Limited and Experian plc boards contains no reference whatsoever to the Decision's interpretation of the Transaction rationale.[25] To the contrary, every aspect of the Transaction rationale presented to executive management and Boards [✂]. It is inconceivable that Experian senior management would espouse one rationale for the Transaction to the Board and

[25] Decision, paras. 152-153.

investors of their publicly-listed company, but harbour a different motive and pursue a diametrically opposed strategy upon completion.

The growth projections for the ClearScore business in Experian's financial planning documents entirely contradict the premise in theory of harm 2 that Experian's rationale is designed to frustrate the development of a close competitor. [✂] million in 2017 [✂] million by 2023.[26] These projections were a key consideration in Experian plc's Board of Directors decision to pursue the Transaction.[27] This conclusion was based on [✂].

It is evident that such [✂] growth (in a competitive market) would not be achievable if Experian were to slow down or otherwise interfere with ClearScore's innovation efforts.

(b) The ClearScore [✂] million [✂] million, [✂].[28] Accordingly, Experian has [✂] that would prevent it from impeding the growth of the business following the implementation of the Transaction.[29] [✂]. Thus, it is simply incorrect to conclude that Experian could or would even attempt to restrict a business that is designated to be a growth driver for Experian.

[✂] Experian's paid-for product (CreditExpert)

4.13 Against the background of free credit reports and scores becoming increasingly ubiquitous, Experian believes that there is still a market for its premium CreditExpert product which provides consumers valuable services on a paid-for basis. In this context, the free and paid-for services [✂]. While the free product strategy [✂] the paid-for service is based on [✂].

4.14 In this context, Experian's paid-for product [✂]. Experian is focused on [✂] (further explained in paras. 6.4-6.12 below). These matters are addressed in further detail in *Section 6* below.

Transaction rationale for ClearScore

4.15 ClearScore's rationale in pursuing the Transaction is also important to an understanding of the market dynamics at play. From its market entry in July 2015, ClearScore has successfully acquired a significant user base quickly and cost effectively, with a small but talented team and limited deployment of capital.

4.16 However, managing an increasing customer base and continuing to innovate is exceptionally challenging. ClearScore has now reached a stage where it needs to compete more effectively with much larger competitors such as MSM and

[26] See Annex RFI2-1705.

[27] Annex 10.5 to the Merger Notice.

[28] See Annex 1 to the Merger Notice (SPA, Schedule 17). [✂].

[29] See Annex 1 to the Merger Notice (SPA, Schedule 17, paragraph 8.1.5).

the major banks, in order to continue growing its FPLG business. ClearScore needs to add capability quickly which will allow it to innovate further and remain competitively relevant, serving users with high quality services.

4.17 A few examples of initiatives which could be brought to market more quickly and efficiently through the combination of the Parties are set out below:

(a) One example is the OneScore product that ClearScore announced in July 2018. OneScore will be a comprehensive score that represents the financial well-being of a user. It relies on data assets from credit reports and scores, Open Banking, other data sources such as affordability and user collected data. Critical to OneScore is the customisation aspect of the tool, which will allow it to offer a service tailored to each consumer. [✂].

Affordability is increasingly critical to lending decisions and therefore goes to the heart of the ClearScore business model.[30] Experian already has effective affordability models. For ClearScore to develop this independently would take several years and require significant effort from users.

The combination of Experian and ClearScore capabilities will allow OneScore to innovate rapidly and become much more useful to users more quickly. This means that millions of users will be able to enjoy more control over their financial information faster than would have otherwise been the case, and that by attracting more users, ClearScore will be able to generate more leads. [✂].

(b) Another example of the potential of the Transaction to generate efficiencies and benefits for consumers is the possibility of increasing customer switching [✂]. In addition to saving time for consumers, [✂] information could be used to provide a more accurate list of [✂] quotes.

This development would likely not be possible absent the Transaction – and certainly not as quickly and cost-effectively – [✂]. It will also be much easier to achieve if ClearScore can interact with the data set, in order to understand the quality of the data, its format, its idiosyncrasies and its limitations, rather than relying on descriptions of the data or limited quantities of trial data.

4.18 The combination of ClearScore with the capabilities and international footprint of Experian will allow more innovation, more quickly, with the aim of serving more users around the world and staying competitively relevant in a dynamic and changing market.

[30] In this context, affordability means lenders' judgement as to each consumer's ability to fund debt, both in the short and long term.

5. TOH 1: the Transaction does not give rise to horizontal unilateral effects in the supply of CCPs for loans and credit cards in the UK

5.1 The Decision suggests that the Transaction will result in a substantial lessening of competition because of horizontal unilateral effects in the supply of CCPs for loans and credit cards.[31] This conclusion is predicated on the CMA's assessment that:

(a) the Parties are each other's closest competitor in the supply of CCPs for each of loans and credit cards;

(b) the Parties operate the most popular free credit checking tools in the UK and their respective offerings are differentiated from the offerings of their competitors; and

(c) the collective constraint imposed on the Parties by third parties, with the exception of MSM, is limited (including from other marketing channels for financial products).

5.2 As will be explained in this section, this theory of harm is not supported by the evidence and the Decision's analysis includes a number of substantive inadequacies. This section is structured around the four key shortcomings of the Decision in relation to theory of harm 1:

(a) The Decision fails to adequately reflect the dynamic nature of competition in the provision of financial products and the competitive pressures on the FPLG segment of the market by adopting an excessively narrow view of the market;

(b) The Decision significantly understates the competitive constraint exerted on the parties by other CCPs by focusing unduly on players offering credit checking tools;

(c) The Decision overestimates the degree of closeness between Experian and ClearScore; and

(d) The Decision fails to adequately consider the incentives and negotiating position of financial product providers.

The Decision fails to adequately address the nature of competition for the provision of credit products and the competitive pressures on the FPLG segment of the market

Relevance of other online and offline channels

5.3 The Decision fails to take account of the constraint imposed by other channels for generating financial product leads outside the frame of reference identified by the CMA.[32] The CMA has completely disregarded the body of evidence at

[31] Decision, para. 131.

[32] Decision, paras. 125-126.

its disposal in favour of speculation and a misinterpretation of feedback received from financial product suppliers, which is, at best, inconclusive.[33]

5.4 The CMA's interviews with financial product providers support the notion that they use a variety of marketing channels for their products and that they keep the effectiveness and return on investment of the different channels under close review.[34]

5.5 The Parties have also adduced a significant body of evidence on the importance of other channels, showing that financial product providers invest in multiple online and offline channels to reach consumers. This data also reveals that expenditure on FPLGs is very limited in comparison with other channels ([✄]% of expenditure), reflecting the relatively small importance of the channel for financial products providers. TV advertising accounts for [✄]% of marketing expenditure and online display and online search (mainly through Google, Facebook and other similar players) accounts for [✄]% of spend.[35] It is reasonable to assume that the distribution of spend broadly corresponds to the relevance of the channel for financial products providers.

5.6 Contrary to para. 58 of the Decision, Experian's internal documents explicitly list their competitors as [✄], for example shortly after the launch of the Experian free product [✄].[36]

Figure 2 – [✄]

5.7 The competitive constraint exerted by banks cannot be overstated. As incumbents with existing relationships with consumers, banks are the natural avenue through which the large majority of consumers will obtain financial products. This constraint is likely to increase in the future as banks are also incentivised to maximise the number of consumers who come to them directly (thereby saving the costs associated with third-party FPLGs). To this end, banks are taking steps to engage more closely with consumers, including through leveraging the wider access to credit and transaction data.

5.8 The Digital Comparison Tools Market Study Final Report (***DCT Report***) also points firmly in the same direction. In that report, the CMA found that FPLGs are a much less important channel for credit cards when compared with other products (e.g., motor insurance), thus confirming that consumers use a plethora of avenues to reach the credit card supplier.[37] Figure 3 below compares the sales

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[33] Decision, para. 59.

[34] Decision, para. 59.

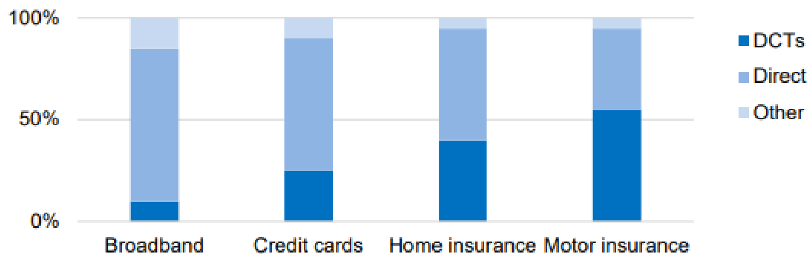
[35] Merger Notice (paras. 14.2-14.3), Issues Meeting presentation (slides 5-7) and response to Issues Letter (paras. 5.19-5.20).

[36] Annex RFI 7.

[37] DCT Report, paras. 3.6-3.13 and 4.78. This further underscores the specificities of the FPLG segment, making it inappropriate for the CMA to draw inferences from precedents relating to services such as *Google Shopping*. In the same vein, the DCT Report also refers to data showing a difference between

volumes generated via digital comparison tools or DCTs (which broadly corresponds to FPLGs and includes the Parties) and other channels (based on acquisition data from between 2013 and 2015 provided by financial product providers), clearly confirming that the direct channel is the preferred channel for consumers when purchasing credit cards:

Figure 3 – The significance of DCTs as a sales channel in terms of sales volumes in 2013-2015



Source: CMA, DCT Report (para. 3.7)

5.9 Moreover, a consumer survey conducted for the DCT market study found that: "*consumers showed higher levels of trust in suppliers' own sites than in DCTs for all measures except on providing the best price*".[38]

5.10 The generic statement that different channels tend to attract different kinds of customer is not supported by the evidence either.[39] [✂] (see below, paras. 5.56 to 5.61).[40]

5.11 When the competitive constraint of those other channels is taken into account, the Parties' market shares for the supply of loans and credit cards are below any threshold of concern. As shown in the charts below, based on the number of transactions, the Parties would account for [5-10]% of those markets.

Figure 4 – [✂]

Figure 5 – [✂]

Two-sided market

5.12 Turning to CCPs, the Decision fails to take the two-sided nature of the operation of CCPs appropriately into account in its assessment of unilateral effects. The CMA has undertaken a standard assessment focusing on the alleged closeness

the number of consumers visiting multiple sites and those obtaining quotes from each of those sites (DCT Report, Paper E, Appendix 1).

[38] DCT Report, para 4.17

[39] Decision, para. 59.

[40] Slides 8-9 of the Issues Meeting presentation and response to Issues Letter.

of competition between the Parties and the supposed weak third party constraints, to then conclude that quality degradation or price increases would necessarily ensue.[41] This does not satisfy the CMA's burden of proof and is contradicted by the fundamentals of the functioning of this type of business model.

5.13 The Decision recognises that the FPLG segment is two-sided with indirect network effects.[42] Therefore, the merged entity – as any other competitor – will be required to maintain a strong customer base both among consumers and financial product providers in order to remain a relevant player in the market. This imperative means that the merged entity will have no incentive to engage in the behaviour underpinning this theory of harm (increase commissions for lead generation, reduce service quality or hinder innovation) for two reasons:

(a) <u>Risk of reduction in user base and/or customer engagement</u>: any deterioration of the consumer offer would greatly reduce the number of consumers using the website, as there is ample evidence that consumers have multiple alternatives when searching and applying for credit card and loan products (see below) and multi-home between different digital comparison platforms.[43] There is also compelling evidence that the user experience is critical for consumers when choosing a comparison platform (as acknowledged by the CMA).[44] In this type of digital market, consumers are very quick to judge whether a brand is on their side. Poor service and lack of innovation often lead to significant swings in sentiment and engagement with brands (even small mistakes can be immediately amplified across millions of users). In this context, a strategy of suppressing innovation and quality improvements is completely futile.

Accordingly, deteriorating service quality or reducing or delaying innovation would reduce the number of leads and would also potentially decrease the number of successful applications as more customers would apply for unsuitable products. As the Parties are both remunerated predominantly on the basis of successful applications, each of these would lead to declining revenues for the Parties.

(b) <u>Risk of adverse reaction from financial product providers</u>: an increase in commission fees charged to financial product providers would result in the latter having far less incentives to engage with the post-merger group to innovate and optimise the offer. The financial product provider could even decide to terminate its contractual relationship, forcing a

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[41] Decision, paras. 84 and 130-131.

[42] Decision, paras. 25-29.

[43] Decision, para. 29. DCT Market Study Report, para. 3.18.

[44] See DCT Market Study Report, para. 4.56: CMA highlights the importance of the user experience, stating that "*[f]or DCTs to be effective they need to present relevant and accurate information in an engaging way, while making the overall experience – 'the consumer journey' – easy*".

delisting,[45] as each successful lead will be less profitable for the financial product provider and they have plenty of suitable alternatives to market their products (see below). In turn, this would undermine the strength of the offer for consumers, as consumers would be able to find better offers elsewhere.

As a result, if the Parties attempted to engage in the behaviour contemplated in the Decision, they would suffer an unsustainable decline in customer numbers and revenues for the FPLG business.

5.14 As an illustration of the potential negative impact of a strategy to deteriorate quality or reduce innovation, the table below shows the [✂].

Table 1 – [✂]

5.15 Furthermore, in the DCT Report, the CMA reached numerous findings which underscore the existence of other drivers and constraints which have not been taken into account in the Decision. The DCT Report concluded that commissions are an important driver in the DCTs' decision to invest in improving their services to consumers.[46] Given that those commissions generally are based on successful leads (i.e., the customer actually applying for and being accepted for the product), there is considerably more incentive to have the best interface possible and the widest range of offers on the website rather than to engage in strategies which deteriorate the consumer offer.

The Decision underestimates the competitive constraint exerted on the parties by other FPLGs by focusing solely on players offering credit checking tools

5.16 The Decision's cursory analysis of other FPLGs active as competitors to ClearScore and Experian does not reflect competitive conditions in FPLG. While the Decision correctly identifies MSM as a "*significant competitor*",[47] it fails to recognise the disciplinary effect of many other providers of lead generation services for credit cards and loans in the UK market, including TotallyMoney, uSwitch, Money.co.uk, Noddle, GiffGaff, CompareTheMarket, GoCompare and many others. As can be seen in Figures 4 and 5 above, several of these are [✂] in terms of their market share for credit card and loan originations. Most of these players attract very large numbers of users, often benefit from [✂] than the Parties, have a wider product offering in more mature markets for comparison platforms (e.g., insurance or energy) allowing them to easily cross-sell financial products and, in some cases, are backed by well-resourced corporate groups.

[45] Contracts normally have [✂].

[46] DCT Final Report, para. 4.83.

[47] Decision, para. 113.

5.17 The Decision also fails to draw the necessary conclusions from the findings articulated in relation to the frame of reference, namely that it should include players with and without credit checking tools.[48]

5.18 Moreover:

(a) The market share analysis presented in the Decision draws inappropriate conclusions as regards the strength of third party providers. Had this data been interpreted correctly, it would have provided a strong indication that the merged entity will face competitive pressure from a number of other providers;

(b) The FPLG services provided by ClearScore and Experian are not differentiated in any material way from the equivalent services provided by these competitors; and

(c) The extent of this third party constraint is demonstrated in the Parties' internal documents, which are disregarded in the Decision.

Market share analysis and strength of competitors

5.19 First, the Decision draws the wrong conclusions from the market share data referring to the CCP segment. These data demonstrate that the Transaction will not create a combined share position that gives rise to *prima facie* concerns. It will rather provide the merged entity with the ability to compete with the leading FPLG player, MSM, more effectively. According to the Decision (Table 1), MSM accounts for 50-70% of the FPLG segment for credit cards and 30-50% of that segment for loans. On the basis of this data, the Parties would be a distant challenger with shares of 25-40% (for credit cards) and 15-30% (for loans).

5.20 As a result, the Parties do not have any market power and would be prevented from deteriorating quality or reducing innovation by the prospect of very significant diversion of consumers to MSM. Equally, any attempt to increase commissions to financial services providers would be met with greater willingness of those customers to work much more closely with MSM, rather than the Parties (with a knock-on effect on consumer perception and a consequential reduction in lead generation and revenues).

5.21 The Decision is also wrong to dismiss the competitive constraint imposed upon the Parties from other competitors as "*weak*".[49] This flows from the fact that the CMA only analysed the constraint exerted by competitors that offer credit checking tools. This approach disregards the CMA's own conclusions with respect to the frame of reference analysis, according to which FPLGs of all types should be included within the same product market (i.e., with or without credit checking tools).[50]

[48] Decision, para. 56.

[49] Decision, para. 128.

[50] Decision, para. 56.

5.22 The majority of the evidence cited in this regard in the Decision supports the notion that FPLGs with and without credit checking tools constrain each other and should therefore be included in the same market. Even the evidence cited by the CMA allegedly pointing the other way ("*credit checkers are taking market share from [price comparison websites]*")[51] highlights the fact that FPLGs with credit checking tools are directly competing for business with platforms that do not have those tools. Furthermore, the competitive constraint exerted by price comparison websites is evident from numerous Experian internal documents.[52]

5.23 Having regard to the correct frame of reference, it becomes evident that there are many other strong competitors in FPLG, some of which (e.g., TotallyMoney, uSwitch) have a share equivalent to Experian. Given the relatively low market shares of the Parties in this segment, the Transaction will not change that *status quo* in any meaningful way. This is the case across several data metrics which can be used to calculate shares in this segment:

Table 2: Shares in the FPLG segment by revenue

Competitor	Credit cards: shares in the UK	Loans: shares in the UK
Experian	[5-10]%	[5-10]%
ClearScore	[20-30]%	[10-20]%
Combined	***[25-40]%***	***[15-30]%***
MSM (incl. MSE)	[50-70]%	[30-50]%
Zoopla (uSwitch and Money.co.uk)	[5-15]%	[15-30]%
TotallyMoney	[5-10]%	[0-5]%
Noddle	[0-5]%	[0-5]%
CompareTheMarket	[0-5]%	[0-5]%
Others (incl. Knowyourmoney, GoCompare)	[0-5]%	[10-20]%

Source: Decision, Table 1

Figure 6 – [✂]

Source: Parties' estimates

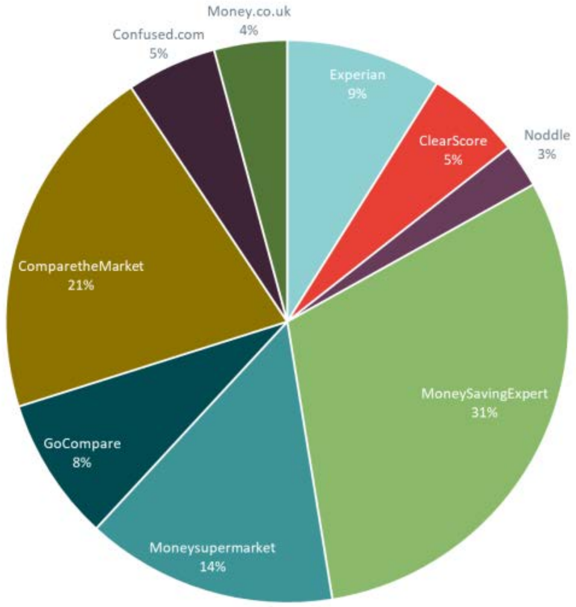
Figure 7 – [✂]

Source: Parties' estimates

[51] Decision, paras. 55 and 121.

[52] See Annex RFI2-0152 (p. 5).

Figure 8 – Share of total website traffic for financial product matching services, 2017



Source: Hitwise[53]

5.24 Annex 3 includes profiles of the Parties' key competitors in FPLG. This analysis demonstrates that there is extensive rivalry in the FPLG segment, with a number of dynamic and innovative players competing to attract consumers to their platforms.

5.25 These competitors are not capacity constrained and, as barriers to expansion are low (see below), they would be able and highly motivated to capture additional customers diverting from the merged entity if it were to increase commissions, deteriorate quality or delay innovation. As will be explained below, the Parties are not any closer competitors than these other players, which means that diversion is not more likely to benefit the merged entity than its competitors.

5.26 The DCT Report also concluded that the FPLG segment for credit cards is highly competitive and the CMA identified no issues relating to lack of rivalry between players.[54]

[53] Note that, for some websites, the Parties are unable to distinguish website visits to separate sections of the website reliably using Hitwise data. For example, Experian is unable to determine from Hitwise data which visitors access its paid-for credit checking service, rather than its financial product matching service. The Parties have therefore provided a single figure for the total number of visits to Experian's website, which will overstate its share of the market. The data for other firms may pose similar issues if there is a reason for consumers to visit the website other than to access financial product matching services.

[54] DCT Market Study, para. 1.15: "*For the most part we have found competition to be effective in our focus sectors; there are a number of DCTs competing hard with each other for people's attention, particularly through advertising*".

5.27 As previously explained to the CMA, the data used by the CMA to estimate market shares from a user perspective (number of users making credit eligibility checks through HD Decisions) has severe limitations which do not allow the CMA to draw any meaningful conclusions from that data.[55] Table 2 of the Decision is therefore irrelevant for the purposes of drawing any conclusions as to market shares of FPLGs. It is particularly disappointing that this incorrect data was included in the Decision because the Parties had already submitted estimated market shares controlling for these limitations (response to RFI 2, Q.10):

Table 3: Shares in the FPLG segment (HD Decisions data)

Competitor	Credit cards market share in the UK	Loans market share in the UK
Experian	[5-10]%	[5-10]%
ClearScore	[20-30]%	[20-30]%
Noddle	[0-5]%	[0-5]%
Totally Money	[0-5]%	[0-5]%
Money Supermarket	[40-50]%	[30-40]%
CompareTheMarket	[0-5]%	[5-10]%
GoCompare	[0-5]%	[5-10]%
Confused.com	[0-5]%	[5-10]%
uSwitch	[5-10]%	[5-10]%
Money.co.uk	[0-5]%	[0-5]%
Lovemoney	[0-5]%	[0-5]%
Other	[0-5]%	[0-5]%

No material differentiation from other competitors

5.28 Second, the FPLG services provided by ClearScore and Experian are not differentiated in any material way from the equivalent services provided by these competitors.

5.29 From a consumer perspective, the offer of a credit checking tool is not a material differentiating factor for comparison platforms. As explained above, credit checking is one of many 'hooks' used by FPLGs to attract more users to the website (e.g., vouchers, money savings, marketing, Google search rankings, etc.), but it is not a differentiator when it comes to the actual comparison and transaction services provided. Rather, [✄]

(a) [✄]

[55] In response to CMA questions on customer overlap following the Issues Meeting, the Parties' provided the CMA with data on consumers using pre-qualification services on websites supplied by HD Decisions. The Parties' noted that this data [✄].

(b) [✄].

(c) [✄][56] [✄].

5.30 Offering a free credit checking tool *per se* is not a relevant driver for consumers (and financial products providers for that matter) when choosing to use a comparison platform to shop around for a financial product and conclude a transaction; it is only one of many types of driver for consumer engagement and for brand consideration of different providers. Moreover, FPLGs with free credit checking tools are not sufficiently differentiated from other players with respect to any of these criteria to warrant a segmentation of the market along those lines.

5.31 In addition, as the CMA acknowledges, there is significant consumer multi-homing behaviour on both the consumer and financial product provider sides of the market.[57] According to the DCT Report, multi-homing is a key incentive for FPLGs to offer better deals and improve the user experience.[58] The remedies designed by the CMA in the context of the DCT Market Study are geared towards closing the gap between customers superficially checking multiple sites and actually requesting multiple quotes for comparison. This will further intensify the constraining effect of multi-homing.

5.32 Even if it were true that offering a credit checking tool could be a differentiating factor, the commoditisation of credit scores and credit reports would greatly dilute the value of such differentiation.

5.33 The use of credit scoring in FPLG was established by Noddle,[59] which has since attracted over 3 million users and is owned by CallCredit, which was acquired by Trans Union in April 2018. Trans Union has fuelled the expansion of FPLG in the US, and Experian expects similar behaviour in the UK given the revenue benefits it has enjoyed in the US market. In July 2015, ClearScore started to offer a free credit report and score (from Equifax). In September 2016, the UK's largest and most well-known financial site, MSE, backed by the consumer champion Martin Lewis, launched Credit Club which provides an Experian credit score and report to users for free. MSE regularly attracts over 30 million visits each month.[60] MSE in combination with its owner MoneySupermarket.com (***MSM***) is the largest financial site in the UK. TotallyMoney launched a "live" free credit report and score product in August 2017 with a national TV campaign.

5.34 More recently free credit scores and often reports have been made available by a wide range of other players (often combined with other services): from lenders such as Capital One with their Credit Wise product; to the banks such as Barclaycard and Lloyds offering a free Experian credit score to all their

[56] Examples of [✄].

[57] Decision, para. 29. See also DCT Report, para. 3.18.

[58] DCT Final Report, para. 4.86.

[59] See https://www.noddle.co.uk/.

[60] See https://www.similarweb.com/website/moneysavingexpert.com.

customers; and even to challengers, such as GiffGaff, providing free access to CallCredit's credit report and score (also available through Noddle and ClearScore). Moreover, Experian has [✂], which would [✂].

5.35 The plurality of services which now present free credit report and score data should be celebrated. Today, UK residents can access and stay on top of their different credit reports and scores more easily. It should also be noted that all of this innovation occurred prior to the entry into force of GDPR, which has since legislated free access to credit data from the CRBs.[61] Credit reports and scores are therefore largely a free commodity.

5.36 From a <u>financial product provider perspective</u>, whether or not the FPLG offers a credit checking tool to the consumer does not matter either. The key drivers for lenders when selecting and interacting with FPLGs (or any other marketing channels) are (i) the quality of leads; and (ii) the reduction of operational costs from application processing, through increased integration between the financial product provider and the FPLG platform (see paras. 5.16 and 5.17 above).

5.37 Allowing consumers to view their credit report or score has no bearing in relation to the quality of leads. Rather, it is the sophistication of the eligibility matching capabilities of the FPLG itself and the degree of integration between the lender and the FPLG that are likely to increase the likelihood of 'warm' leads. The vast majority of FPLGs offer eligibility checks which fulfil that very purpose from a financial product provider point of view, as they generate warmer leads, i.e., customers with greater prospects of successfully purchasing the product in question.

5.38 The CMA concluded in the DCT Report that most DCTs offer some form of eligibility indicator to match customers with the most suitable offer and inform the customer of the likelihood of success in the application (and avoid a negative impact on their credit report arising from being rejected).[62] The CMA found that this is particularly the case for credit cards (the same should also apply to loans) and concluded that the general availability of data post-GDPR would further expand that trend.[63] This is consistent with the evidence already provided by the Parties.[64] As will be explained in detail below (see *Section 7*), the development of such eligibility tools is relatively inexpensive, especially with the development of self-supply solutions (through APIs).

5.39 The Parties have already provided compelling evidence that the vast majority of financial product providers have active relationships with one or more

[61] Three main UK CRBs are Experian, Equifax and TransUnion/CallCredit.

[62] DCT Market Study, para. 3.21.

[63] DCT Market Study, para. 3.28: "*In credit cards for example, DCTs are working with third party providers to give indicators of eligibility and acceptance*".

[64] Merger Notice (para. 13.19, figures 5-7 and Annex 14), Issues Meeting presentation (slide 11) and response to Issues Letter (paras. 5.15-5.18).

additional FPLGs,[65] which demonstrates that there is no set of financial product providers for which the Parties are a particularly important route to market (even considering only the FPLG segment which is overly narrow).

5.40 The results of this analysis find echo in the DCT Report, where the CMA acknowledged that, due to multi-homing by consumers, FPLGs are "*more substitutable*" from the suppliers' point of view and, as a result, it constrains FPLGs' negotiating power.[66] This demonstrates that no sub-set of FPLGs is sufficiently differentiated to be able to exert market power over financial services providers. According to this analysis, 81% of all credit cards listed on the Parties' websites were also available through at least two other FPLGs.

5.41 Finally, the wealth of freely available data (including credit reports and scores) post-Open Banking and the sophistication of consumer matching services already in the pipeline mean that any differentiation based solely on the offer of a credit checking mechanism in the FPLG segment will be entirely diluted (if it ever really existed). Therefore, it is not credible that the Parties will be able to exert any market power on the basis of such alleged differentiation.

Barriers to entry and expansion

5.42 The competitive dynamics in the FPLG segment are quickly evolving; the threat of new entry by providers active in adjacent markets or in other geographies is real and provides an additional constraint on the merged entity's activities. This factor is cursorily dismissed out of hand in the Decision, which underestimates the constraint from potential entry.[67] Furthermore, despite the lists of potential new entrants provided by the Parties,[68] it is not evident that any evidence was solicited from those players at Phase 1.

5.43 The CMA's conclusion that barriers to entry and expansion into FPLG are high is based on unsubstantiated statements from third parties according to which growing a new <u>credit checking tool</u> from a low share would be difficult, expensive and uncertain. This statement is both untrue and irrelevant.

5.44 Indeed, it is clear that the investment required of new entrants in the FPLG segment is low, as they can rely on 'out-of-the-box' third party solutions for all key inputs, namely for an up-to-date catalogue of third party financial products (also possible through direct connection to credit providers' APIs), contractual relationships with financial providers and an attractive consumer-facing proposition. Even if providing a free credit report or score were a key differentiating factor or helpful to facilitate entry (which is not the case on both accounts), again this would be very easy and inexpensive to obtain from existing CRBs (see para. 5.34 above). Technological developments are further

[65] Issues Meeting Presentation (slide 10), Response to Issues Letter (paras. 5.37 and 5.38).

[66] DCT Final Report, para. 4.86.

[67] Decision, para. 118.

[68] Merger Notice, paras. 22.23-22.26.

facilitating entry, as tech start-ups are using alternative data to challenge existing scoring methodologies, as shown in the Parties internal documents.[69]

5.45 The most persuasive evidence of ease and speed of entry is the rapid rise of ClearScore, which was incorporated in September 2014, launched its website in July 2015 and reached [✄] million users by March 2018.[70] ClearScore grew its customer base very rapidly, despite not having any inherent differentiating factor that could not be easily replicated by any other existing or new player in the market to achieve similar growth.

5.46 The CMA itself reached that same conclusion in the DCT Market Study, stating that "*[p]latforms and comparison engines are readily available from third parties and in many sectors DCT operators can effectively purchase a 'DCT-in-a-box' solution from a white label provider*".[71] For example, TotallyMoney offers a white label supply of comparison tools in the financial product space. The impact of recent regulatory change and the advent of APIs will only contribute to reduce those barriers further by facilitating the access to data which is one of the key inputs for CCPs. [✄]:

Figure 13 – [✄]

Figure 14 – [✄]

5.47 The leading players in the US market achieved success through a variety of methods, including diversifying the market they served (e.g., from mortgage to credit cards and loans), search engine optimisation, social media advertising, television advertising, content development and blog posts, or some combination of those strategies. For example, NerdWallet has become a leading player (drawing over 100 million users annually) through the development of good quality content at a low cost and leveraging that content on the website for free to drive traffic and achieve significant share of the market.

5.48 Moreover, the approach adopted in this part of the Decision is at odds with the conclusions with respect to the frame of reference. Theory of harm 1 relates to the potential impact on the FPLG segment, which the CMA accepts includes players which do not have credit checking tools. That is the correct frame of reference to assess the extent to which new entry and expansion could constrain the Parties' future behaviour. In any case, as will be explained in more detail in relation to theory of harm 2 (see para. 6.26), even if FPLG players wanted to offer credit checking tools (though these tools are not necessary to compete),

[69] See Annex RFI2-1009 (slide 12).

[70] See https://www.clearscore.com/about-us.

[71] DCT Market Study Report, para. 3.27.

they could do so easily through CRBs, which offer competitive conditions to make their data available.

The Decision overestimates the degree of closeness between Experian and ClearScore

5.49 As well as underestimating the constraint of the Parties' rivals, the Decision also overstates the degree of closeness of competition between CreditExpert and ClearScore.[72]

Monitoring

5.50 The Parties' internal documents track each other as part of their regular monitoring activity. But they also track the performance of other competitors, which is not captured in the Decision's analysis. When assessing the FPLG segment, Experian routinely includes [✂] within the set of relevant FPLG competitors.

Figure 15 – [✂]

Source: Experian internal documents[73]

5.51 Similarly, when assessing the market, ClearScore's internal documents and commissioned assessments routinely refer or allude to FPLGs such as [✂],[74] as well as customers who are also competitors such as [✂].[75]

Access to a unique set of customers

5.52 The Decision states that the Parties allow financial product providers to access a unique set of consumers.[76] This statement, however, is merely based on assertions with no evidentiary support. The Decision itself includes evidence that price comparison websites with and without credit checking tools compete closely with one another.[77]

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[72] Decision, paras. 91-105.

[73] See Annex RFI2-0150 (slide 5). See also Annex RFI2-0312.

[74] See, for example, [✂].

[75] See, for example, [✂].

[76] Decision, para. 53.

[77] Decision, paras. 54-55. In particular, the fact that the Parties have gained market share from price comparison websites (especially MSM) merely reflects MSM's status as the clear market leader and reinforces the conclusion that FPLGs with credit checking tools compete directly with price comparison websites for the same customers.

5.53 The Parties have provided the CMA with evidence that their customer set [✂].[78] The Parties have [✂].[79] These calculations show that the Parties [✂]. The analysis also shows that the Parties are [✂].

Figure 16 – [✂]

Source: HD Decisions

5.54 ClearScore's users have an [✂] for the UK adult population as a whole. The credit score of Experian's consumers reflects a similar picture: the average score of Experian's consumers is [✂] and the average Experian credit score for the UK population is [✂] – lenders would regard consumers with scores at those levels as being within the [✂] segment of the population.

5.55 The fact that financial product providers offer their products through the Parties and through multiple other FPLGs (see above) is inconsistent with the proposition that other FPLGs are not able to access a particular set of consumers to which the Parties have privileged access.

5.56 Moreover, there is no reason why it should only be possible to access a set of consumers through the Parties. There is no market dynamic or unique ability of either entity which could prevent others from accessing that hypothetical set of consumers. The Parties offerings are similar in many respects to all other competitors and there are no unique data assets, scoring tools, or platforms which could explain this alleged distinctiveness.

5.57 Finally, even if the Parties' consumer base was somewhat skewed towards a particular consumer group (which is not the case), this fact would be meaningless unless it gave the Parties any market power over suppliers of financial products. Given the size and importance of those players and their wider relationships with the Parties (see below), it is not credible that the Parties would have negotiating power over those suppliers.

Closeness of competition for consumers

5.58 Similarly, there is no support for the statement from "*several third parties*" that "*the user experience and features of a CCP with a credit checking tool gives these CCPs a significant advantage over other CCPs*" and that "*the offer of a free credit checking tool differentiated the Parties proposition*".[80]

5.59 [✂], the Parties have previously [✂] which shows that other FPLGs (without a credit checking tool) are clearly alternatives in the eyes of consumers.

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[78] Merger Notice (para. 15.11), Issues Meeting presentation (slides 8-9) and response to Issues Letter (paras. 5.28-5.29).

[79] Delphi is one of the market leading credit scores assessing credit risk.

[80] Decision, paras. 55 and 98.

Figure 17 – [✄]

Figure 18 – [✄]

5.60 This data demonstrates that the overlap between Experian and ClearScore is [✄].

5.61 This data read in conjunction with the clear evidence of multi-homing across the FPLG segment (and the widespread use of other channels) demonstrates that FPLGs with a free credit checking tool are not more attractive to consumers than those without this function.

Closeness of competition for financial product providers

5.62 The evidence quoted by the CMA in paras. 101-103 of the Decision does not support the conclusion that the Parties offer a more similar proposition than other FPLGs for financial product providers.

5.63 It is clear from the interviews quoted in para. 101 of the Decision that high conversion rates are the key consideration for lenders and that this is best achieved through matching profile with product which provides lenders with ‘warm’ leads. Offering a credit checking tool to consumers has no bearing in this regard (as explained above in paras. 5.37).

5.64 The assertion in para. 103 of the Decision that credit card providers more reliant on the Parties pay higher commissions to the Parties in comparison with other FPLGs is not based on any evidence which has been put to the Parties. The CMA failed to raise this issue during Phase 1, thus denying the Parties an opportunity to exercise their rights of defence and address it at an earlier stage.[81] In any event, it is not possible to determine from the Decision whether all or just a number of providers pay those allegedly higher prices or whether that difference in prices, if it exists at all, is material.

5.65 The CMA then infers that those providers would “likely” be more dependent on the Parties without any analysis of, for example, the share of spend of those providers and their commission fees to verify that inference. The fact that credit card providers have a clear incentive to use as many FPLGs as possible to increase their chances of a successful sale directly contradicts the CMA’s assertion.

5.66 In reality, “reliance” has no bearing in how commission rates are set. Commissions are set on the basis of a combination of channel volume and the profitability of the consumers that are attracted through the channel. There is

[81] The assertion in para. 103 of the Decision was not included in the Issues Letter, nor was it raised by the CMA at the Issues Meeting or at any other point during the Phase 1 investigation. In particular, the Parties did not receive a supplementary Issues Letter setting out this assertion.

some variance driven by negotiation, exclusive promotions / air time, or the depth and quality of the integration between the platform and the lender.

5.67 In any event, given the plethora of other marketing channels and alternative players in the FPLG segment of the market, even if certain financial product providers were heavy users of the Parties, that would not mean that they would remain so if the Parties were to increase commissions following the Transaction. Lenders monitor the profitability of each channel very closely and can quickly adapt their acquisition strategies, including to change their marketing channel mix (see para. 5.4 above). Moreover, there is no rational basis to believe that other FPLG competitors would not be able to attract those suppliers.

5.68 The evidence quoted above (namely in paras. 5.56-5.61) also contradicts the assertion made in para. 104 of the Decision that the Parties attract a defined sub-set of consumers, i.e., those seeking a credit checking tool. Furthermore, financial services providers have no guarantee that those consumers will conclude their purchase through the Parties' websites, given the gap between website visits and actual purchases. Therefore, this would be an ineffective way of targeting a set of consumers and makes it unlikely that the Parties could ever exploit any hypothetical degree of market power.

<u>The Decision fails to adequately consider the incentives and negotiating position of financial product providers</u>

5.69 As recognised in the DCT Report, financial product providers have negotiating power and are able to put pressure on commissions charged by DCTs.[82] This finding corroborates the credibility of the threat to terminate the contractual relationship with an individual FPLG. This threat would be sufficient to prevent the merged entity from increasing commission fees following the Transaction.

5.70 Indeed, financial product providers have a myriad of alternative channels and FPLGs they already use and which are not capacity constrained. As already explained, the Parties do not have negotiating power vis-à-vis those suppliers as they are not an irreplaceable route to market to target particular types of customers. As in any other markets, intermediaries can only survive if they can succeed in generating additional business for providers, incremental to that which those providers already derive from direct channels. This can only be achieved if intermediaries offer a very attractive service and excellent customer experience. As providers improve their direct channels (which is happening, as explained above in the counterfactual), intermediaries have no choice but to innovate more and continue to improve their offering.

5.71 Finally, as previously explained, Experian [✄] through its [✄]. The B2B business relies on financial product providers as sources of data and as customers – these are the same players that market their products through the

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[82] DCT Market Study Report, para. 4.84: "*In our focus sectors where DCTs are less developed (broadband, energy and <u>credit cards</u>), we have fewer concerns about competition between DCTs at this stage, as suppliers are in a stronger position to put pressure on DCTs' commissions)*" (emphasis added).

Parties in the B2C FPLG channel. It would not make commercial sense for Experian to put these considerable revenues at risk for an uncertain and much smaller upside (as commission fees in the FPLG channel would still be a [✂] of Experian's B2B revenues).

5.72 The risk to B2B revenues is considerable, as financial product providers could easily switch to other CRBs such as Equifax or CallCredit, for example. Moreover, the prospect of increased commission fees is uncertain, as those fees are based on successful leads which depend on the consumer applying for the product through Experian's website (which is very often not the case) and being successful in that application (which depends on a number of factors outside of Experian's control). This uncertainty means that Experian – as any other FPLG player – must attract the maximum number of consumers possible to its website and make its matching tools as effective as possible, to maximise the chances of a successful application via its platform.

Conclusion

5.73 On the basis of the evidence presented above, the Parties consider that the Transaction does not give rise to an SLC "*as a result of horizontal unilateral effects in the supply of CCPs for (separately) loans and credit cards in the UK*".[83]

6. TOH 2: the Transaction does not give rise to horizontal unilateral effects in the supply of credit checking tools

6.1 This theory of harm relates to concerns that the Transaction could result in a loss of competition in the supply of credit checking tools, leading to: (i) increased prices for paid credit checking tools; (ii) lower quality free credit checking tools (e.g., through reduced services); and/or (iii) less innovation in the development of free credit checking tools.

6.2 In particular, the CMA identified concerns that the closeness of competition between ClearScore's free credit checking tool and Experian's paid-for credit checking tool may lead to an incentive for the merged entity to not develop ClearScore's (and Experian's) free credit checking tool to preserve revenue from Experian's paid-for credit checking tool. The CMA argues that there is insufficient potential competition from third parties to off-set this alleged loss of competition.[84]

6.3 As will be explained in this section, this theory of harm is not supported by the evidence and the Decision's analysis includes a number of substantive shortcomings as follows:

[83] Decision, para. 131.

[84] Decision, paras. 133-135.

(a) The Decision adopts an overly static assessment and fails to take into account the impact of recent developments in business models and the Parties' future incentives;

(b) The Decision overestimates the degree of closeness of competition between Experian's paid-for product and ClearScore and underestimates the competitive strength of other players; and

(c) The Decision is predicated on a misconstrued interpretation of the rationale for the Transaction and misinterprets internal documents.

<u>The Decision adopts an overly static assessment and fails to take into account the impact of recent developments in business models and the Parties' future incentives</u>

The need to adopt a FPLG model and reposition CreditExpert

6.4 This theory of harm fails to recognise that the shift towards the FPLG business model was an inevitability, in the face of rapid technological evolution and empowerment of consumers over their own data, which completely transformed the level of access and use of credit data and, as a result, the credit checking sector (as explained in Section 3 above). The finite potential universe of subscribers of Experian's paid-for service also meant that Experian needed to adapt and tap into a wider market of comparison services (funded by FPLG). The evolution of the market in the US confirms this, as the introduction of free checking tools caused an irreversible change in the market (see Annex 1 on the US market evolution).

6.5 Experian recognised that [✂] and also [✂],[85] as shown in Figure 19 below:

Figure 19 – [✂]

6.6 In early 2015, Experian conducted a survey of UK price comparison websites, which observed the same trend. In particular, it noted that [✂], with the market moving quickly and further rapid change to be expected.[86] [✂]. Figure 20 below shows this convergence trend:

Figure 20 – [✂]

6.7 Other industries have faced similar types of disruption, with the emergence of new players offering products for free for the consumer. In order to successfully monetise those services, players have either leveraged the user data they gather and/or the potential for advertising (e.g., newspapers, social media) or created subscription services which sit alongside the free product and target heavier users (e.g., Spotify). For example, companies like Nutmeg are disrupting the

[85] [✂] (Annex 12.13 to the Merger Notice).

[86] Annex RFI 6, page 25.

traditional fund management market by providing free fund management via innovative customer interfaces and a low cost business model.[87]

6.8 Against this background, Experian decided to [✂], which addresses [✂].

6.9 As a result, [✂], in other words, [✂].[88] Conversely, [✂].

6.10 The background and strategic rationale for [✂] is clearly articulated in Experian's internal documents.[89] As described in [✂].[90] [✂].[91] This shows that [✂] would not have the anti-competitive objectives insinuated in the Decision.[92]

6.11 In this context, Experian is focused on continuing to develop two key premium services:

(a) Personalised guidance: CreditExpert offers access to expert and data driven credit support to help consumers improve their creditworthiness. This service effectively "interprets" or contextualises the elements of the individual consumer's credit report and includes tailored guidance by trained staff through Experian's call centre. This proposition is strikingly different from automated chatbot services (like ClearScore's), which are incipient and generic. Experian's total spend in its direct-to-consumer service amounts to approximately £[✂] million per year, whereas ClearScore estimates that the ongoing investment to continue supporting its coaching functionality (the 'chatbot') is approximately £[✂] per year.[93]

As an example of innovation in this area, Experian has [✂] which is [✂].[94] Other examples include [✂].

(b) Fraud prevention and identity theft detection: this service gives consumers a secure way to access online services and protects their personal information and identity against fraud (e.g., fraud report, social media monitoring, transaction monitoring, monitoring the Dark Web). It also enables consumers to reclaim their online identity in case of fraud or data breach and ensure that their personal details have not been stolen in the process. Consumers can also benefit from the Victims of Fraud Service, which offers personalised case-management support for consumers who have had their identity stolen (from identification to

[87] See https://www.nutmeg.com/.

[88] See Annex RFI2-0950.

[89] See Annex RFI2-1061 – This document identifies the reasons [✂]. See also Annex 12.4 to the Merger Notice.

[90] See Annex 12.24 to the Merger Notice – [✂].

[91] See Annex RFI7, page 14

[92] Decision, para. 153.

[93] [✂].

[94] Experian's internal documents [✂]See Annex RFI2-1047.

remediation). This is a costly service and quite distinct from generic guidance and, therefore, justifies the charging of a fee. Further [✂].

6.12 As previously explained, the costs of providing these premium services are prohibitive for players with a FPLG model only: it costs ClearScore approximately £[✂] per user per year to provide a free credit score and report, whereas the cost of supplying each CreditExpert user is as high as £[✂] per year.[95]

Future incentives

6.13 The recent move towards free-of-charge credit checking tools will only accelerate post-Transaction, facilitating the entry and/or expansion of a number of other FPLG providers offering products equivalent to ClearScore's offering and impacting consumers' perception of the value of ClearScore's service creating an important incentive to continue to innovate to remain relevant. As more information is made available free-of-charge, FPLGs will have to continue to refine their offer, in particular through more sophisticated free eligibility tools, to increase the likelihood of successful leads and reducing transactional friction for consumers. Maintaining a superior user interface, offering new services and developing a trusted brand will continue to be key for growth in the FPLG segment.

6.14 Against this backdrop, the merged entity cannot afford to deteriorate its free credit checking tool or dampen or somehow "divert" innovation following the Transaction, since it must continue to attract increasing numbers of consumers to generate leads. A number of very capable and motivated competitors are well-positioned to take advantage of any lessening in ClearScore's current emphasis on service and innovation (e.g., MSM, Zoopla, TotallyMoney, etc.). Furthermore, [✂], further reducing any incentive to deteriorate the free offer.

6.15 In this context, the Decision places undue weight on the market shares of the Parties in credit checking.[96] This narrow view of the market is flawed, making the consequent market share levels entirely irrelevant. Indeed, credit information is widely accessible for free in the market, as all three CRBs must provide credit information for free to consumers. Moreover, other FPLGs and banks (e.g., Barclaycard, Lloyds) make use of, and show consumers, credit information, yet are excluded from the shares calculations. Any reliance on the market shares in table 3 of the Decision would ignore the fact that credit checking tools are easily accessed and copied by competitors.

6.16 The Decision further suggests that the [✂] would give Experian an incentive to preserve its [✂] revenues in the paid-for service. This hypothesis is completely contradicted by the facts and Experian's internal documents.

[95] Response to the Issues Letter, paras. 6.14-6.15.

[96] Decision, para. 137.

6.17 First, Experian's financial projections show that FPLG will generate [✂] and, more importantly, that those revenues will [✂].[97] The FPLG revenues from the free channel are projected to [✂] million in FY 2018 to £[✂] million in FY 2022 ([✂] million in FY 2023), [✂] the revenues from the subscription service will [✂] throughout the same period [✂] generated by the free FPLG channel by FY 2022.[98]

6.18 These projections are entirely incompatible with any strategy designed to "protect" subscription revenues by failing to develop the FPLG business, as it would be commercially irrational for Experian to seek to reduce investment in the business area [✂]. These projections also reflect Experian's recent experience in the US market (see paras. 4.4-4.5 above).

6.19 Experian's growth projections are based on:

(a) Growth in the number of users: Experian has the objective to [✂].

(b) Considerable growth opportunities in the FPLG space [✂] (estimated to be £5.5 billion).[99]

(c) Prospect of Experian [✂]. Across all product verticals, revenue in price comparison was worth £1 billion in 2017.[100]

6.20 Second, the Decision's static view also ignores the commercial imperatives dictated by the rapid changes in the market and Experian's strategic direction, let alone the clear rationale for this Transaction which completely contradicts the assertion that Experian will invest less in the free product [✂].

6.21 Third, as explained above, there is a growing divergence between paid-for premium credit monitoring and reparation services (like CreditExpert) and FPLG products such as ClearScore. Since they increasingly fulfil different consumer needs, the growth in FPLG will, to a large extent, no longer occur at the expense of the revenues from the paid-for service. This is evidenced by Experian's [✂] in para. 6.17 above, [✂] (as mentioned in para. 2.4 above). [✂]. Those revenues will be recaptured by other FPLG players.

The Decision overestimates the degree of closeness of competition between the Parties and underestimates the competitive strength of other players

6.22 This theory of harm is predicated on the proposition that the Parties face "*weak*" competition from alternative suppliers of credit checking tools, despite a cogent

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[97] Annex RFI2-1705.

[98] [✂]. See Annex RFI2-0858 (slide 38): [✂].

[99] Annex 10.1 to the Merger Notice (slide 10).

[100] Annex 10.1 to the Merger Notice (slide 7). See also Annex RFI2-1027 (slide 30). Experian made a £43 million investment in the acquisition of 25% of London & Country (a UK fee-free mortgage advisor company) in December 2017, which demonstrates Experian's commitment in expanding its FPLG business into new financial products (see https://www.experianplc.com/media/news/2017/experian-and-lc-form-pioneering-new-partnership/). Experian also has [✂]. This is [✂].

body of evidence pointing in the opposite direction. As shown in relation to theory of harm 1 (paras. 5.21-5.45 above), this supposition is incorrect and at odds with the frame of reference outlined elsewhere in the Decision. Moreover, third parties provided the CMA with a long list of alternative paid-for credit checking tools (Equifax, CheckMyFile, Credit Angel, UK CreditRatings, My Credit Monitor and CreditReportsMatter) who provide similar advance credit checking features as CreditExpert including personalised support, fraud alerts and dark web monitoring. The Decision also stated that the Parties "*also face competition from free credit checking tools*".[101]

6.23 Although the CMA acknowledges that Noddle and Equifax have a "*significant presence*" in the market,[102] the Decision fails to draw any conclusions as to their ability to discourage the Parties from engaging in the behaviour underpinning this theory of harm (as consumers could divert to them in the event that the merged entity's free service did not give them what they needed).

6.24 The Decision contains no meaningful assessment of the competitive threat posed by another key player, [✂].[103] Equally, the Decision does not consider the current and future competitive constraint posed by banks and other players with credit checking tools.

6.25 The CMA's conclusion that expansion is difficult is also not substantiated and is contradicted by the rapid entry and expansion of ClearScore in only three years, which is clear evidence to the contrary (as explained above, para. 5.49).

6.26 The Parties have also provided extensive evidence that barriers to entry and expansion in the market for the supply of credit checking tools are low, which the Decision fails to address.[104] Experian's [✂], as does the fact that the three CRBs (Equifax, CallCredit and Experian) offer their credit information to multiple competing FPLG players (see above, para. 5.34). As further evidence of the prospect of new market entry disciplining existing competitors, the Parties believe that, given its scale, recent influx of funding,[105] and expansion ambitions, it is likely that the leading US player, Credit Karma, is poised to enter the UK market.[106]

The Decision is predicated on a misconstrued interpretation of the rationale for the Transaction and misinterprets internal documents

Rationale for the Transaction

[101] Decision, paras. 160-161.

[102] Decision, para. 163.

[103] Decision, para. 142(c).

[104] Merger Notice (para. 22.21).

[105] Earlier this year, Silver Lake invested USD 500 million in Credit Karma (in exchange for a minority stake). See https://www.creditkarma.com/about/releases/credit-karma-silver-lake-500-million-investment.

[106] See Annex RFI2-0002 (slide 3).

6.27 Theory of harm 2 is predicated on a misinterpretation of Experian's rationale for the Transaction. As described in Section 3 above, the Transaction aims to improve Experian's offer in FPLG. The rationale for the Transaction is not to "protect" Experian's paid-for credit checking tool, but rather to reinforce the [✂] of Experian towards a FPLG business model, by growing its customer base rapidly, increasing consumer trust, accelerating innovation and investing in international expansion.

6.28 At the heart of the CMA's interpretation of the rationale for the Transaction is the misconception that Experian launched its free product in the UK in September 2016 solely in response to ClearScore's entry in 2015.[107] This is not accurate. Although the public launch of Experian's free product occurred after ClearScore's entry into the market, [✂].[108] [109] As described in Section 4 above, the pressing need for transformation was due to the inevitability of the disruption arising from the offer of free products (following Experian's US experience) and the fact that [✂], and therefore would [✂].[110]

6.29 Experian's plans to move to a FPLG model led to the public launch of its free product (sometimes referred to as 'CreditMatcher') in 2016,[111] which gives consumers access to their Free Experian credit score alongside a money comparison feature that displays the products they are most likely to be eligible for based on their Experian score. As a result, the acquisition of ClearScore is entirely consistent with Experian's existing strategy [✂].

Internal documents

6.30 This proposition is supported by Experian's internal documents. As mentioned in paras. 6.17 and 6.18 above, Experian's financial planning documents [✂] any notion that Experian will degrade ClearScore's free credit checking tool to divert consumers to its paid-for service.

6.31 The Decision acknowledges that any strategy aimed at deteriorating the ClearScore proposition would affect its ability to compete effectively in the FPLG segment,[112] but fails to consider the implications in the context of the Transaction rationale (which is predicated on ClearScore becoming a stronger, and not a weaker competitor, in FPLG).

6.32 The Decision cites some isolated extracts [✂] as evidence of a potentially different strategy. However, [✂]. Furthermore, this is a third party report and,

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[107] Decision, para. 94.

[108] See Annex RFI2-1620.

[109] RFI2-1061 includes [✂].

[110] See Annex RFI2-0884. [✂].

[111] Prior to that date, the service had been made available only to existing Experian customers (the product was named "Lower My Bills").

[112] Decision, para. 155.

as such, has less evidential value than Experian's own internal documents to establish Experian's intentions and strategy with respect to the Transaction.

6.33 [✂] (the source of the Decision's analysis on theory of harm 2) [✂]. [113]

6.34 In any event, the report contains a plethora of references to the commercial imperatives that are at the heart of Experian's real rationale for the Transaction. Indeed, the report is very clear that [✂].[114] [✂] and drive cost synergies.

6.35 Later in the document the consultants advise that [✂].[115] This directly contradicts the CMA's assertion that following the Transaction, when faced with conflicting incentives, Experian would prioritise its paid-for service and reduce or redirect ClearScore's innovation.[116]

6.36 In summary, a full contextual analysis of the Transaction rationale and the key document relied upon by the CMA demonstrates conclusively that Experian's rationale for the Transaction is linked to its strategic imperative to expand its presence in FPLG, at the same time as [✂] as credit scoring and reporting continues to commoditise in the UK market. The documentary evidence stands testimony to this fundamental motivation, which is far removed from the interpretation put forward in the Decision.

Conclusion

6.37 On the basis of the evidence presented above, the Parties consider that the Transaction does not give rise to an SLC "*as a result of horizontal unilateral effects in the supply of credit checking tools in the UK*".[117]

7. TOH 3: No ability or incentive to foreclose competitors by restricting the supply of pre-qualification services to rival CCPs

7.1 The vertical theory of harm advanced in the Decision is premised on Experian's presence upstream in the provision of pre-qualification services to other FPLG businesses.[118] Despite recognising that the threshold for sustaining a foreclosure theory of harm is high ("*The CMA only regards such foreclosure to be anti-competitive where it results in an SLC in the foreclosed market(s), not merely where it disadvantages one or more competitors*"),[119] the Decision advances no evidence to support its assertion that the merged entity would have the ability and incentive to foreclose its competitors by restricting the supply of pre-

[113] Annex 20.1 to the Merger Notice.

[114] Annex 10.1 to the Merger Notice, slide 57.

[115] Annex 10.1 to the Merger Notice, slide 58.

[116] Decision, paras. 156-158.

[117] Decision, para. 167.

[118] Decision, paras. 168-192.

[119] Decision, para. 168.

qualification services to other FPLGs, and that such a hypothetical foreclosure strategy would significantly harm competition in the downstream market.

<u>No ability to foreclose</u>

7.2 The Decision concludes that the merged entity would have the ability to engage in input foreclosure.[120] This conclusion is not supported by the evidence. On the contrary, the evidence confirms that Experian has neither the present ability nor will have the ability post-merger to withhold or degrade the provision of its pre-qualification services to third parties for at least the following reasons:

(a) Experian's supply contracts with FPLGs contain [✂]; and

(b) Experian's pre-qualification solutions are not essential inputs for competition in FPLG; Experian's customers can switch to a number of alternative self-supply options, and indeed have used the threat of a move to self-supply to extract more favourable contract terms from Experian.

Contractual position prevents any foreclosure strategy

7.3 First, the CMA's analysis of the contractual position vis-à-vis Experian's pre-qualification services customers is deficient in several material respects. In para. 176 of the Decision, the CMA concludes that "*these contracts may not be sufficient to protect the Parties' competitors from every way in which the Parties could worsen their terms of supply for pre-qualification services*".

7.4 It is clear that the CMA has reached this conclusion without undertaking any analysis of HD Decisions' existing contracts and without any knowledge of the reality of contractual negotiations between HD Decisions and its customers. Had the CMA undertaken such a review, it would have found that the majority of HD Decision's contracts with third parties [✂].

7.5 The CMA's conclusion that these contracts may not protect the merged entity's competitors "*from every way in which the Parties could worsen their terms of supply*" also fails to recognize that Experian's pre-qualification customers are sophisticated entities with significant negotiating power. These customers may (and do) negotiate not only favourable price and supply terms, but also provisions preventing or protecting them from any hypothetical foreclosure strategy post-merger, including [✂] Experian's pre-qualification services.

7.6 By way of example, [✂].

7.7 A review of HD Decisions' contracts reveals a variety of other protections against a reduction in service or quality, including:

(a) Service level requirements, such as performance and operating metrics, relating to response time and service availability; HD Decisions may [✂];

[120] Decision, paras. 171-177.

(b) Requirements that Experian [✂];[121]

(c) Monthly review meetings between the parties regarding service changes.

7.8 It is clear from these contractual provisions that the merged entity will have no ability to withhold or degrade access to HD Decisions' pre-qualification services post-merger.

Experian's pre-qualification services are not an essential input

7.9 Second, an input foreclosure theory of harm requires the CMA to establish that the relevant foreclosure relates to an important input for the downstream product. The CMA has not undertaken an assessment of the importance of the inputs provided by Experian for competition in the downstream market but rather relies on assertions that having a pre-qualification service is important and that third parties would be at a significant disadvantage if they were unable to purchase pre-qualification services from HD Decisions.[122] This falls short of the requisite evidential standard for a credible foreclosure theory of harm.

7.10 Contrary to the position taken in the Decision, Experian's customers have a number of alternative supply options to HD Decisions to which they can turn, including self-supply.[123] Given the availability of credible alternatives, Experian neither currently has, nor will have post-merger, the practical ability to increase the price, degrade the quality of, or withhold access to pre-qualification services.

7.11 Customers already have alternative suppliers to which they can turn. For example, [✂][124] [✂]. To mitigate [✂], Experian noted that [✂].[125]

7.12 Further, as recognised in the Decision, at least some third parties consider self-supply of pre-qualification services through APIs to be an alternative to supply from Experian.[126] In fact, the Decision explicitly recognises that some of the lenders that responded to the CMA in Phase 1 confirmed that they had <u>already</u> replaced HD Decisions with their own direct API solution to provide pre-qualification services.[127] This fact, which has been disregarded in the Decision,

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[121] HD Decisions' financial product provider customers either [✂]. Any attempt by Experian to limit or withhold services to FPLGs would stimulate the financial product providers to find alternatives to reach those FPLG channels, including through self-supply.

[122] Decision, paras. 177, 187-188.

[123] Merger Notice (paras. 19.27-19.41), Issues Meeting presentation (slide 26), Response to the Issues Letter, paras. 7.7-7.16.

[124] See Annex RFI2-1711 (slide 51).

[125] See Annex RFI2-1711 (slide 51).

[126] Decision, para. 184.

[127] Decision, para. 75.

is conclusive evidence that self-supply is a real alternative to the services provided by HD Decisions.

7.13 The Decision significantly overestimates the degree of complexity and cost involved in developing an API solution. The development of pre-qualification services is nowhere near as difficult or as complicated as appears to have been represented to the CMA during the Phase 1 procedure:

(a) APIs have already been successfully introduced by a number of financial product providers (e.g., CapitalOne, Zopa, Oakbrook, Shawbrook);

(b) The skills and technology required to create an API are widely available and can be acquired at a reasonable cost, which shows that smaller financial product providers and FPLGs would be capable of adopting this technology;

(c) The API model has already been proven by the experience in the US where the market developed without an equivalent to HD Decisions, and FPLGs connect directly with some financial product providers via APIs. For example, in the US, Credit Karma uses a mix of credit provider APIs and its own modelled assumptions to determine the latest products available and to match customers' profiles to products.

7.14 This [✂].

7.15 For example, [✂] [128] [✂] [129] Experian considers [✂].[130]

Figure 21 – [✂]

7.16 HD Decisions is [✂] are also looking at [✂].

7.17 Moreover, the Decision selectively quotes from the HD Decision strategy document below in support of its finding that API integration is not a replacement for HD Decisions. However, this very same document expressly recognises [✂].[131]

Figure 22 – [✂]

7.18 The risk of an even quicker development of those self-supply solutions is sufficiently serious to deter Experian from engaging in a foreclosure strategy, and will continue to constrain Experian post-merger.

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[128] See Annex RFI2-1711 (slide 15).

[129] See Annex RFI2-1711 (slide 16).

[130] See Annex RFI2-1711 (slide 49).

[131] Annex 8.9 to the Merger Notice.

7.19 In addition to the threat from direct lender APIs, the merged entity will also face the threat that rivals may develop their own alternative pre-qualification solutions to replace HD Decisions. For example, Experian's internal documents include a number of references to [✂].[132] In addition, [✂].[133]

7.20 Experian's competitors, including TransUnion and Equifax, could develop their own pre-qualification solutions in a number of ways beyond APIs, including:

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

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

(c) **Inferred Model**: FPLGs could reverse engineer a financial product provider's credit policy through customer CRB data and past acceptances for credit products.[134]

7.21 For example, as discussed in the Response to the Issues Letter,[135] ClearScore's internal documents reflect that [✂], and that, [✂]:

(a) In terms of [✂], ClearScore's internal documents [✂].[136]

(b) In terms of [✂], ClearScore estimated that [✂].[137]

7.22 Further, HD Decisions' own history reflects the ease of de novo entry into the provision of pre-qualification solutions. Based on the information HD Decisions has available, HD Decisions estimates that the cost of developing its pre-qualification solution was [✂] million. HD Decisions also achieved success relatively quickly. The company was founded in 2008 and by 2009, [✂], it had entered into an agreement with Barclaycard.

7.23 Thus, rival FPLGs would have a number of alternative options for self-supply to which they could switch in the event that the merged entity were to attempt to foreclose supply to those competitors. Importantly, not only do customers have a number of other supply options to turn to, but customers already leverage that knowledge and the threat of self-supply to extract more favourable supply terms from HD Decisions. For example:

(a) [✂] obtained [✂].

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[132] Annex 8.9 to the Merger Notice.

[133] Annex 8.9 to the Merger Notice.

[134] Response to the Issues Letter, paras. 7.10-7.7.12.

[135] Response to the Issues Letter, paras. 7.10-7.12.

[136] Annex 13.1 to the Merger Notice.

[137] Annex 13.1 to the Merger Notice.

(b) [✂].

(c) [✂] is moving to [✂].

(d) [✂] is moving to [✂] and [✂].

(e) [✂] contract, which [✂], included [✂].

(f) [✂], which has the potential to [✂].

7.24 The Transaction does not alter customers' ability to threaten self-supply credibly in negotiating contract terms. On the contrary, post-merger, customers' threat of self-supply will continue to constrain Experian in the supply of pre-qualification services.

7.25 Moreover, there are a number of examples of contractual negotiations between HD Decisions and third parties in relation to the supply of pre-qualification services where [✂]. The fact that [✂] is strong evidence that [✂]. HD Decisions believes that [✂] in order to [✂]; for example, [✂].

7.26 By way of example, HD Decisions currently supplies pre-qualification services to [✂]. The initial period of the [✂]. HD Decisions had [✂].

7.27 HD Decisions has also recently entered into an agreement to supply pre-qualification services to [✂] in order that [✂] shows that HD Decisions' pre-qualification services are not a necessary input for FPLGs to be effective competitors.

7.28 It is clear from the above that Experian will not have the practical ability to foreclose rival FPLGs post-merger because Experian's pre-qualification offerings are not essential inputs for competition in the downstream market, and the threat of self-supply will constrain the merged entity's ability to engage in input foreclosure post-merger.

No incentive to foreclose

7.29 The Decision also concludes that the merged entity would have the incentive to foreclose its FPLG competitors from access to pre-qualification services.[138] Again, this is not supported by the evidence in this case.

No merger specific effect

7.30 The Decision fails to put forward any coherent explanation as to why any hypothetical change in Experian's incentives to provide pre-qualification services to FPLGs post-merger would lead to an SLC in the allegedly foreclosed market. More concretely, 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. Notwithstanding its vertical integration, Experian has never previously engaged in any conduct consistent with a foreclosure strategy. Rather, [✂]. The Decision

[138] Decision, paras. 178-189.

is entirely deficient in failing to explain how any change in Experian's incentives post-merger would be sufficiently material to lead Experian to foreclose its FPLG rivals post-merger when it does not so currently.

7.31 In fact, both pre- and post-merger, [✂], and therefore has [✂]. Any attempt by HD Decisions to foreclose rival FPLGs from access to HD Decisions' pre-qualification services risks losing significant customer volume, which would be counter to HD Decisions' financial incentives and [✂].

No consideration of Experian's track record and wider commercial incentives

7.32 Experian's commercial strategy is to [✂]. For example, Experian [✂], in addition [✂]. In light of Experian's strategy, Experian does not have the incentive to foreclose rival FPLGs. The Transaction will not change Experian's incentives: adding to Experian's downstream business does not change the fundamentals of its business model.

7.33 The CMA's assessment of incentives only considers potential losses in pre-qualification services, and does not account for the importance of Experian's broader relationships with financial product providers. The merged entity would have no incentive to deteriorate these relationships – by reducing the routes to market for financial product providers – in order to encourage some switching downstream towards the merged entity's FPLG products.

7.34 HD Decisions provides prequalification services by connecting FPLGs with financial product providers. HD Decisions earns revenue from both financial product providers (for whom it develops bespoke matching solutions to pair a consumer's data to their credit policies) and FPLGs (which it supplies with the technology to match consumer input data to financial product providers lending criteria). HD Decisions [✂].

7.35 As such, [✂] revenue is derived from financial product providers who are Experian's main clients in its core CRB business (as well as the main suppliers of its core CRB credit file data). The revenue earned from the sale of HD Decisions' solutions to financial product providers represents [✂] of Experian's business with these customers.[139] For example, for [✂], Experian only derives [✂]% of its revenue from the sale of pre-qualification services – the rest of its revenue is derived from the sale of CRB credit file data and supporting decision analytic services. Experian would therefore have no incentive to frustrate [✂] (or any other major financial product providers') routes to market owing to the commercial difficulties this could create for Experian in other markets (i.e., CRB credit file and decision analytics) where it faces very strong competition from Equifax and CallCredit.

7.36 In addition, a reduction in the use of HD Decisions' services could also result in [✂], because [✂]. This would be a further source of lost revenue that would

[139] Overall, Experian's pre-qualification services and its revenues from FPLG account for [✂] of its total UK revenues.

need to be factored in as part of any assessment of Experian's alleged incentive to foreclose. As mentioned above, [✂].

7.37 Furthermore, HD Decisions' service depends on financial product providers' participation, and such providers will only engage with HD Decisions if HD Decisions offers access to at least a substantial portion of FPLGs or Credit Report propositions, as the financial product providers could otherwise serve FPLGs directly. Absent access to a substantial portion of the marketplace, financial product providers, who already have relationships with the FPLGs, will find alternative mechanisms, such as direct APIs, to support the foreclosed channels. As the pre-qualification space is characterized by two-sided network effects, any attempt to foreclose one or more FPLGs would also put the [✂] of HD Decisions' revenue from pre-qualification services at risk, i.e., the revenue HD Decisions generates from financial product providers. However, HD Decisions would not only risk losing revenue from pre-qualification services, but the loss of a financial product provider relationship risks further revenue losses across Experian more broadly. Specifically, given that financial product provider relationships are critical to Experian's FPLG offering, and given that that the FPLG industry is characterized by indirect network effects, any harm to a broader customer relationship risks compounding any profit lost as a result of the lost pre-qualification business. Experian therefore does not have the incentive to foreclose FPLGs from access to HD Decisions' pre-qualification services as it could damage Experian's business as a whole.

7.38 The Decision's finding that ClearScore's internal documents [✂] does not support a conclusion that "*Experian already has some incentive to foreclose rivals*".[140] Rather, HD Decisions [✂]. HD Decisions has considered [✂] since the acquisition by Experian in order to [✂].[141] HD Decisions has [✂] and instead [✂], such as [✂], as part of [✂]. In fact, [✂].[142] Experian concluded that, among other reasons, [✂].[143] That Experian did not foreclose ClearScore is further evidenced by the fact that within a few months [✂], and by the fact that [✂].

7.39 As described above, the effect of any hypothetical foreclosure strategy would, in any event, be limited, since other, credible options are available to Experian's customers.

<u>Inconsistency between the CMA's input foreclosure and horizontal theories of harm</u>

7.40 The CMA's theory regarding Experian's incentives to foreclose is fundamentally inconsistent with the CMA's two horizontal theories of harm, which are predicated on unilateral effects and the Parties being particularly close competitors. Specifically, the CMA concludes with respect to input foreclosure that the Transaction will increase Experian's incentives to foreclose because the

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[140] Decision, para. 183(b).

[141] Annex RFI2-1711, at 51.

[142] Annex RFI2-0924, at 19.

[143] Annex RFI2-0924, at 19.

merged firm will capture diverted leads from other FPLGs through ClearScore.[144] For sufficient customers to be diverted from rival FPLGs to ClearScore to make a foreclosure strategy profitable, the platforms would need to be particularly close substitutes such that customers consider ClearScore and Experian to be their first and second best alternative choices.

7.41 The Decision fails to consider the inconsistency between the above fact pattern on which the input foreclosure theory is predicated and the horizontal theories of harm, which are based on the Parties being differentiated from other FPLGs and that the merged entity may degrade the quality of the ClearScore product sufficiently to result in a substantial lessening of competition.

No negative impact on competition

7.42 The Decision is also deficient in that it fails to consider how any hypothetical harm to competitors that may arise as a result of a foreclosure strategy would lead to increased prices in the downstream market thereby substantially lessening competition. Instead, in conclusory terms, the Decision states that the change in the merged entity's ability and incentives to foreclose "*may have a significant detrimental effect on competition in the supply of CCPs for credit cards and loans*".[145] As highlighted above, even if the merged entity were to attempt to foreclose competitors by withholding services or raising rivals' costs, it is unlikely that this would result in higher prices or reduced output or quality downstream. In fact, any attempt at foreclosure would likely *accelerate* the entry of self-supply solutions or alternative pre-qualification tools, and reduce Experian's revenue *permanently* from its pre-qualification products.

7.43 Moreover, as discussed above, financial product providers and FPLG customers have and may exert strong buyer power to prevent a hypothetical foreclosure strategy from succeeding, including by demanding contract concessions and leveraging their other relationships with Experian.

7.44 Therefore, even if the merged entity had the ability and incentive post-merger to foreclose rival FPLGs from access to Experian's pre-qualification offerings, which is not the case, there is no prospect that such a foreclosure strategy would substantially lessen competition in the downstream market.

Conclusion

7.45 On the basis of the evidence presented above, the Parties consider that there is no SLC "*as a result of vertical effects in the supply of pre-qualification services to CCPs*".[146]

[144] Decision, para. 189.

[145] Decision, para. 191.

[146] Decision, para. 192.

8. Concluding Remarks

8.1 The evidence outlined above shows clearly that the Parties operate in a very competitive and dynamic sector and that the theories of harm hypothesised in the Decision are nothing more than that – theories which have no adherence to the reality of the market. As a result, the Parties believe that the CMA can only conclude that the Transaction does not give rise to an SLC and should be cleared unconditionally.

8.2 The Parties look forward to continuing to engage with the CMA in its investigation and would be happy to expand on any of the points made above if that would be of assistance.

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List of Annexes: