

ANTICIPATED ACQUISITION BY EXPERIAN PLC OF CREDIT LASER HOLDINGS LIMITED

Notice of possible remedies under Rule 12 of the CMA's rules of procedure for merger, market and special reference groups¹

Introduction

1. On 31 July 2018, the Competition and Markets Authority (CMA), in exercise of its duty under section 33(1) of the Enterprise Act 2002 (the Act), referred the anticipated acquisition by Experian plc, through its subsidiary Experian Limited (Experian), of Credit Laser Holdings Limited (CLHL), the holding company of Clear Score Technology Limited (ClearScore) (the Merger), for further investigation and report by a group of CMA panel members (the Inquiry Group).
2. In its provisional findings on the reference notified to Experian and ClearScore (the Parties) on 28 November 2018, the CMA, among other things, provisionally concluded that the Merger would result in the creation of a relevant merger situation, and that the creation of that situation may be expected to result in a substantial lessening of competition (SLC) in (a) the supply of credit comparison platforms (CCPs) for loans and credit cards in the UK; and (b) the supply of credit checking tools (CCTs) in the UK.
3. This Notice sets out the actions which the CMA considers it might take for the purpose of remedying the SLC and/or any resulting adverse effects identified in the Provisional Findings Report.
4. The CMA invites comments on possible remedies by 12 December 2018.²

¹ CMA Rules of Procedure for Merger, Market and Special Reference Groups (CMA17, 2014).

² Responses to the Notice of Possible Remedies are typically requested within 14 days of publication of the Notice (and in any event, no less than seven days) so that they can be considered before response hearings (CMA 2 Mergers: guidance on the CMA's jurisdiction and procedure, paragraph 13.1)

Criteria

5. In deciding on a remedy, the CMA shall in particular have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to remedy the SLC and any adverse effects resulting from it.³
6. To this end, the CMA will seek remedies that are effective in addressing the SLC and its resulting adverse effects and will select the least costly and intrusive remedy that it considers to be effective.
7. The CMA will seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects.⁴

The Provisional SLC

8. The CMA has provisionally concluded that the relevant merger situation may be expected to result in an SLC in the supply of CCPs for loans and credit cards in the UK, and in the supply of CCTs in the UK. The CMA has provisionally found that:
 - (a) the Merger is likely to lead to a substantial reduction in the rate of product development and improvements in the Parties' user-facing aspects of their CCPs, in particular their free CCTs; and/or
 - (b) the Merger is likely to lead to a substantial reduction in the Parties' incentives to reduce prices or improve the quality in relation to Experian's paid-for CCT.

Possible remedies on which views are sought

9. In determining an appropriate remedy, the CMA will consider the extent to which different remedy options would be effective in remedying, mitigating or preventing the SLC or any resulting adverse effects that have been provisionally identified.
10. The CMA will also consider whether a combination of measures is required to achieve a comprehensive solution – for example whether any behavioural remedies would be required in a supporting role to safeguard the effectiveness of any structural remedies. The CMA will evaluate the impact of any such combination of measures on the SLC or any resulting adverse effects.

³ Sections 35(4) and 36(3) of the Act.

⁴ *Merger Remedies: CC8* (November 2008), paragraph 1.7. This has been adopted by the CMA board.

11. In merger investigations, the CMA will generally prefer structural remedies, such as divestiture or prohibition, rather than behavioural remedies because:
 - (a) structural remedies are likely to deal with an SLC and its resulting adverse effects directly and comprehensively at source by restoring the rivalry that would be lost as a result of the merger;
 - (b) behavioural remedies may not have an effective impact on the SLC and its resulting adverse effects, and may create significant costly distortions in market outcomes; and
 - (c) structural remedies do not normally require ongoing monitoring and enforcement once implemented.⁵
12. At this stage, the CMA's view is that the only effective remedy is prohibition of the Merger. Prohibition of the Merger would prevent an SLC from resulting in any relevant market. Prohibition would represent a comprehensive solution to all aspects of the SLC the CMA has provisionally found (and consequently any resulting adverse effects) and its provisional view is that the risks in terms of the implementation and effectiveness of prohibition are low.
13. The CMA is currently of the view that no other structural or behavioural remedy is likely to be an effective remedy to the provisional SLC or any resulting adverse effect that it has provisionally identified as:
 - (a) The SLC finding relates to both the supply of CCPs for loans and credit cards and the supply of CCTs by the Parties. It is not possible to split either the ClearScore or Experian CCT or CCP businesses into any constituent parts that would enable a partial acquisition to take place of any element of ClearScore business that was not part of the SLC finding, or a partial disposal of part of Experian's business.
 - (b) Product development and innovation in CCTs and CCPs is central to the whole of ClearScore's business. Improvements and innovation in product development therefore not something that can be separately safeguarded through a divestment of only part of ClearScore.
 - (c) The SLC relates to a decrease in the Parties' incentives to improve and innovate in terms of product development, quality and range. As the exact nature of product development and innovation is not predictable it does not appear possible to design a behavioural remedy that would effectively

⁵ [Merger Remedies: CC8](#) (November 2008), paragraph 2.14. This has been adopted by the CMA board.

address all potential product developments and innovations by the Parties over the lifetime of the SLC.

14. The CMA invites views on whether prohibition would be an effective remedy.
15. The CMA will also consider any other effective and practicable remedies that the Parties, or any interested third parties, propose in order to address the provisional SLC finding and/or any resulting adverse effects. Accordingly, the CMA also invites views on any other such effective and practicable remedies.

Cost of remedies and proportionality

16. In order to be reasonable and proportionate, the CMA will seek to select the least costly remedy, or package of remedies, that it considers will be effective. The CMA will also seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects. Between two remedies that the CMA considers equally effective, it will choose that which imposes the least cost or restriction.
17. The CMA invites views about proportionality and the costs that are likely to arise in implementing prohibition, as well as in relation to any alternative remedy the Parties or interested third parties put forward.

Relevant customer benefits

18. In deciding the question of remedies, the CMA may have regard to the effects of any remedial action on any relevant customer benefits in relation to the creation of the relevant merger situation.⁶
19. Relevant customer benefits are limited by the Act to benefits to customers in the form of:
 - (a) 'lower prices, higher quality or greater choice of goods or services in any market in the United Kingdom ... or
 - (b) greater innovation in relation to such goods or services.'⁷
20. The Act provides that a benefit is only a relevant customer benefit if:

⁶ Section 36(4) of the Act, see also [Merger Remedies: CC8](#) (November 2008), paragraph 1.14.

⁷ Section 30(1)(a) of the Act, see also [Merger Remedies: CC8](#) (November 2008), paragraph 1.14.

- (a) it accrues or may be expected to accrue to relevant customers within the UK within a reasonable period as a result of the creation of that situation; and
- (b) it was, or is, unlikely to accrue without the creation of that situation or a similar lessening of competition.⁸

21. The CMA welcomes views on the nature of any relevant customer benefits and on the scale and likelihood of such benefits and the extent (if any) to which these are affected by the remedy option we are considering.

Next steps

22. Interested parties are requested to provide any views in writing, including any practical alternative remedies they wish the CMA to consider, by 12 December 2018 (see Note (i)).

23. A copy of this notice will be posted on the [CMA website](#).

Roland Green
Group Chair
28 November 2018

Note

- (i) This notice of possible actions to remedy, mitigate or prevent the SLC or any resulting adverse effects is made having regard to the Provisional Findings announced on 28 November 2018. The main parties have until 19 December 2018 to respond to the Provisional Findings. The CMA's findings may alter in response to comments it receives on its Provisional Findings, in which case the CMA may consider other possible remedies, if appropriate.

⁸ Section 30(3) of the Act, see also [Merger Remedies: CC8](#) (November 2008), paragraph 1.16.