

ME/6743/18 – EXPERIAN/CLEARSCORE**RESPONSE TO PROVISIONAL FINDINGS****1. INTRODUCTION AND EXECUTIVE SUMMARY**

- 1.1 Experian plc (*Experian*) welcomes the opportunity to respond to the CMA's Provisional Findings (the *PFs*) of 28 November 2018 and Appendices in relation to its proposed acquisition of Credit Laser Holdings Limited (*ClearScore*) (Experian and ClearScore are together referred to as the *Parties*). For the reasons set out in this response to the PFs (the *Response*), it is clear that, on proper consideration of the evidence, there is no realistic prospect of Experian's acquisition of ClearScore (the *Transaction*) giving rise to a substantial lessening of competition (*SLC*).
- 1.2 Experian welcomes the fact that the CMA's thinking in the PFs has evolved from the Annotated Issues Statement, in particular as regards the impact of the Transaction on the lender side of the market and the likelihood and timeliness of entry. However, Experian is disappointed with, and concerned by, a number of grave errors of fact and assessment in the CMA's thinking that have only emerged at this late stage of the process. Addressing any one of these issues would allow the CMA to clear the Transaction unconditionally.
- 1.3 First, Experian shares the CMA's view that the "*markets in which the Parties operate – and markets for consumer financial products more generally – are dynamic*" (paragraph 13.55 of PFs). Experian firmly believes that the CMA is wrong to dismiss the competitive consequences of Credit Karma's acquisition of Noddle and Moneysupermarket's (*MSM*) entry into the credit checking tools (*CCT*) "market". Indeed, both of these firms have entered in the relevant markets *since the publication of the PFs*. This demonstrates how dynamic the market is, how easy entry and expansion are, and ultimately how implausible the CMA's speculative innovation theories of harm are. If proper weight is given to that dynamism, the CMA should conclude that the Transaction should be cleared unconditionally. In particular:
 - (a) The threat posed by MSM to the Parties is clear and obvious. MSM is the UK's largest credit comparison platform (*CCP*) by a significant distance, around twice as large as the merged entity, and with many times the user base, marketing budget and revenue. The PFs acknowledge MSM's importance and the fact that it is a close competitor to the Parties in the CCP market, but fail to consider or measure the constraint from MSM on the Parties. This constraint will only increase, because, since the publication of the PFs, MSM has launched an app that provides free credit scores to consumers.
 - (b) Equally, the threat posed by Credit Karma, one of the global leaders in financial product lead generation (*FPLG*), acquiring a player of the size of Noddle cannot be dismissed on the basis of statements around Noddle's past track record, particularly in light of Credit Karma's announced plans for the UK. The CMA should be aware that since the

publication of the PFs, Noddle has already introduced weekly updates of its credit score for customers and moved to email log-ins (as opposed to user ID log-ins) – i.e. it has introduced innovations consistent with Credit Karma’s product offer internationally that have improved the quality of its CCT for users.

- (c) The rapid expansion of TotallyMoney, which has acquired 10-20% of new users in the first six months of the year despite only entering the CCT “market” one year ago, further illustrates the dynamism of the market and the ability of new entrants to grow quickly.¹
- (d) Consistent with the CMA’s finding of dynamism and as evidence of the significance of these entry/expansion events, the CMA’s own analysis shows that, by the end of 2021 (the same time horizon used by the CMA), the share of new CCT user acquisitions of each of MSM and Credit Karma will be similar to the Parties’ share and much larger than the increment to that share arising from the Transaction on any scenario explored by the CMA.

- 1.4 The CMA has focused on the extent to which it is likely that MSM and Credit Karma will be successful in entering at scale and in delivering their growth projections. This is the wrong approach. The CMA needs to assess whether the entry and expansion of these players is more or less likely to be sufficient to ensure that the Parties will continue to innovate following the Transaction. The evidence overwhelmingly shows that market dynamics are, and will continue to be, more than sufficient to cause the Parties to continue to innovate. [REDACTED].
- 1.5 Experian notes that in the absence of evidence of market power in the traditional sense, the CMA has principally repositioned its concerns about the Transaction in the PFs around the Parties’ future **incentives to innovate** in the CCP and CCT “markets”. However, the CMA’s analysis of this theory of harm is inadequate for three main reasons:

- (a) the PFs fail to advance a framework for the assessment of the incentives to innovate, and in particular to determine whether any loss of incentive resulting from the Transaction is sufficient to result in an SLC, which amounts to an error of law;
- (b) the PFs fail to carry out any empirical analysis of the relevant parameters which could sway those incentives, which in turn leads to material errors of fact and assessment. The diversion between ClearScore and Experian has not been established (in fact, the evidence available to the CMA points to there not being such diversion) and the CMA has failed to estimate the impact of the Transaction on the costs of innovation. Given the existence of merger-specific benefits, there are strong reasons to believe that the Transaction will actually enhance the Parties’ incentives to innovate; and
- (c) the PFs fail to recognise that the nature of innovation competition means that rivals have a strong incentive to fill any ‘innovation gap’ (as shown

¹ [REDACTED].

by Professor Tommaso Valletti, innovation is a ‘strategic substitute’) and the CMA does not advance any evidence of barriers to innovation that would prevent such innovation responses.

1.6 The PFs assume that there could be a negative impact on innovation on the basis of statements made in historic Experian internal documents which suggest concern about ClearScore’s launch of free credit scores, a disruptive event the impact of which has, in any event, already abated. This approach is clearly inadequate:

- (a) *First*, those documents predate any indication of the entry of MSM, the acquisition of Noddle by Credit Karma and the expansion of Totally Money, and, therefore, are of no probative relevance or value in assessing the Parties’ incentives currently to respond to those recent events.
- (b) *Second*, the Parties’ future incentives are clearly articulated in their [✂] growth projections contained in strategy plans and in the fact that increasing innovation is one of the cornerstones of the Transaction’s rationale.
- (c) *Third*, there can be no presumption that the Transaction is likely to lead to a reduction in the incentives to innovate. Indeed, it is just as likely that the Transaction will increase both the ability and the incentive to innovate – by reducing the cost of innovation and expanding the user base across which innovations can be deployed (the “copy-paste” efficiency). This issue has not been explored at all in the PFs.

1.7 The evidence that **ongoing and future entry and expansion** is sufficient to constrain the Parties is equally strong. The PFs conclude that entry is timely and not improbable but fail correctly to measure the constraint from entry.

- (a) The question that the PFs should address is whether the threat of entry and expansion from all rivals and potential entrants, in aggregate, is sufficiently compelling to prevent the Parties from reducing their rate of innovation, this being the identified SLC.
- (b) The CMA’s approach to sufficiency looks exclusively at shares of user based on rivals’ existing pre-merger plans. The CMA presents no evidence that a particular size of user base is required to compete; nor that a large share of the total user base *per se* could give rise to any market power; nor that it is a key driver of innovation (otherwise fintechs would not be such a source of innovation). As such the CMA’s focus on total user base shares is misplaced. The CMA’s analysis of shares of new users demonstrates clearly that the existing entry and expansion plans of rivals vastly outweigh any increment to new user shares arising from the Transaction, even before any account is taken of responses to a hypothetical post-merger deterioration in the Parties’ innovation plans.
- (c) The CMA’s approach looks only at barriers to completely *de novo* entry and does not consider the evidence on the ease of entry and expansion from neighbouring markets, namely from CCPs with high user numbers,

recognisable brands and much larger marketing budgets, which is the most likely scenario of entry.

- 1.8 The PFs reach an adverse conclusion on entry and expansion for several reasons: (i) by incorrectly assessing each entry/expansion event separately; (ii) by looking only at existing entry/expansion events, rather than what rivals and potential rivals would do in the event of a reduction in innovation by the Parties relative to the counterfactual; and (iii) by wrongly discounting contemporaneous documents, public statements and observable facts, seemingly in favour of opinions that have been expressed to it by competitors, but which have not been disclosed to Experian adequately to allow it properly to respond.
- 1.9 In light of the CMA's continued refusal to grant further disclosure to the Parties (even through a confidentiality ring mechanism currently in place), consistent with the Court of Appeal judgment in *Ryanair*, the Parties consider that the CMA cannot rely on evidence which has not been adequately disclosed to the Parties or their legal advisors.²
- 1.10 A balanced assessment of the evidence can only lead to the conclusion that the threat of further entry and expansion is sufficient to ensure that the Parties will continue innovating in the future, given that the extensive evidence of entry and expansion events today – absent any post-merger deterioration – clearly demonstrates a lack of barriers to entry or expansion.
- 1.11 The reasoning is also manifestly deficient in relation to **closeness of competition** between the Parties and the competitive constraint exerted by competitors. The analysis of the Parties' internal documents is manifestly inadequate, inaccurate, unfair and inconsistent with CMA guidance.
- 1.12 The only empirical evidence the CMA points to – the homing analysis – clearly shows that [X] is, at least, as close a competitor to each of the Parties as they are to each other (paragraph 10.52 – 10.53 of the PFs), if not more. It simply cannot be true that [X] – will not act as a constraint over the Parties, thus incentivising them to continue to innovate in CCP and CCT in the future. Taking the available evidence truly in the round, the CMA could not reach any conclusion other than that the Parties have sufficient incentives to continue innovating.
- 1.13 Furthermore, the CMA has failed to take into account that the **Parties do not have market power on either side of the CCP market:**
- (a) On the **lender side of the market:** as acknowledged by the CMA, lenders have sufficient alternatives in the CCP channel (with or without CCTs) and third parties have described the market as “overcrowded”. Lenders' main objective is to ensure that CCPs generate the highest possible volume of successful leads. This aim drives the negotiations with all CCPs and ensures that CCPs are constantly incentivised to increase the number of users. To achieve this growth the Parties simply must continue to invest in innovation to attract new users.

² *Ryanair Holdings plc (Appellant) v Competition and Markets Authority and another (Respondents)* [2014] EWCA Civ 83, paragraph 39.

- (b) On the user side of the market: competition is focused on attracting new users. A large user base ‘per se’ does not give the Parties any market power, as those users may not make any purchases (as evidenced by the fact that [REDACTED]). Therefore, the Parties need to continue investing to engage their existing user base and, crucially, continue competing for the marginal new user, since new customers are far more likely to purchase a product via the CCP than existing users.
- 1.14 The CMA’s **theory of harm relating to a reduction in the incentive to reduce Credit Expert pricing post-merger is not developed in any detail**. In particular, despite this being a standard horizontal theory of harm, there is no attempt to assess the relevant empirical evidence on margins, relative prices, and diversion ratios. The relevant critical diversion ratios are substantially in excess of [REDACTED], as a result of the differences in the prices and margins of Credit Expert and ClearScore, and hence that there is no prospect of any post-merger deterioration.
- 1.15 Finally, there is a **general paucity of evidence** used to support wide-reaching conclusions about the Parties’ incentives. The evidence gaps are as glaring as they are numerous and the evidence presented in the PFs falls well short of the ‘balance of probabilities’ standard the CMA must adhere to in a Phase 2 review. The Parties’ internal documents continue to be interpreted in a partial and distorted way, disregarding the context in which they were prepared and the [REDACTED] (though the CMA dismissed empirical evidence provided by the Parties on these same grounds). Moreover, the interpretation of those historic documents is given weight even when the observable facts contradict that interpretation. In short, [REDACTED].
- 1.16 In Experian’s view, the PFs are deficient as the legal standards required to make an SLC finding are not met, coupled with an inadequate theoretical framework, an absence of empirical data and serious distortions in the analysis of the documentary and third party evidence. Experian would urge the CMA to reconsider its position in the light of this Response.
- 1.17 The remainder of this Response is structured as follows:
- (a) Section 2: The PFs fail to consider the dynamism of the market and its impact on the Parties’ incentives to innovate;
 - (b) Section 3: The innovation theory of harm articulated by the CMA cannot lead to an SLC finding;
 - (c) Section 4: New entry and expansion into the CCT “market” is likely, timely and sufficient to preclude any finding of an SLC;
 - (d) Section 5: There is no realistic prospect of reduction of innovation negative impact on pricing pressure in paid-for CCT; and
 - (e) Section 6: The Parties have no market power in the CCP market.
- 1.18 Experian submits three appendices together with this Response:
- (a) Appendix 1: Share of new user acquisitions; and

- (b) Appendix 2: Economic appendix;
- (c) Appendix 3: Analysis of internal documents;
- (d) Annex 1: [✂]; and
- (e) Annex 2: [✂].

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2. THE PFs FAIL TO CONSIDER THE DYNAMISM OF THE MARKET AND ITS IMPACT ON THE PARTIES' INCENTIVES TO INNOVATE

2.1 The CCP and CCT “markets” are highly dynamic. In fact, over the last few months, three key market developments have occurred: (i) MSM has entered the CCT segment; (ii) Credit Karma has announced the acquisition of Noddle; and (iii) TotallyMoney has been quickly growing its CCT user base. Indeed, the first two of these events post-date the PFs, rendering the reasoning in the PFs already out of date. These events are described below and demonstrate that there are no meaningful barriers to entry and expansion in the CCT and CCP “markets” (contrary to the view expressed in the PFs).

A. MSM

2.2 MSM is the clear market leader in the CCP market, with shares of [50-60]% in credit cards and [20-30]% in loans in 2017 (Table 10.1 of the PFs). This finding is confirmed by multiple pieces of evidence:

- (a) The PFs recognise MSM as a strong competitor and highlight that most CCPs identify MSM as “*their strongest competitor in the supply of financial product comparison tools*” (paragraph 10.62 of the PFs).
- (b) The Parties’ internal documents clearly identify [REDACTED]. As discussed in Section 3 below, the suggestion that there are material limits to the competitive constraint the Parties face from MSM are manifestly unfounded.
- (c) Experian’s internal documents show that Experian has [REDACTED].³
- (d) The user behaviour data mentioned in the PFs (paragraphs 10.52-10.53 of the PFs) confirms that, [REDACTED]. The data [REDACTED].⁴ [REDACTED]. Although this is the main data point quoted in the PFs, the CMA fails then to draw the logical conclusions from it.
- (e) Lenders also perceive MSM to be the market leader (unsurprisingly given its size and resources). One lender stated that the Transaction will enable the Parties to “*compete more strongly with MSM*” (paragraph 10.112 of the PFs).

2.3 On 10 December 2018, MSM launched its Credit Monitor app, effectively adding a CCT to its main comparison platform (in addition to its existing MSE Credit Club CCT offering). According to publicly available information [REDACTED]:

- (a) The app has a particularly innovative approach insofar as it is focused on pre-approved products, i.e. it will only show customers products that the customer can successfully apply for and with guaranteed rates. Experian [REDACTED] a guaranteed rates capability, which was a market first and

³ Annex 6 to the Phase 1 RFI 1 response, page 28.

⁴ This data cannot be used to dismiss the constraint of other competitors, due to the issues raised by Experian in relation to the dataset used, which the CMA notes in footnote 171 but fails to take into account in its assessment.

a real differentiator when it was launched. It took MSM just two months to bring to market the next evolution of this product. This is a real example of why the Parties need to continue innovating following the Transaction – there are well-funded market leading competitors which can launch a similar or better product in a matter of months.

- (b) [REDACTED]. This is a great example of how MSM is able to leverage its market power vis-à-vis lenders and of how MSM will drive innovation in this market, as all competitors will have to respond by adding guaranteed rates and developing additional features to differentiate themselves.
- (c) According to the information quoted in the PFs, [REDACTED]:
 - (i) 2019: [REDACTED];
 - (ii) 2020: [REDACTED]; and
 - (iii) 2021: [REDACTED].
- (d) The total number of MSM’s users by the end of 2021 would be [REDACTED]. These numbers illustrate the significant impact the app will have on competitors throughout this period. This is a very sizeable number of new user acquisitions at the expense of competitors (see market share discussion below).

2.4 The PFs wrongly contend that there is “*considerable uncertainty*” regarding the impact of MSM’s CCT product on competition and on the Parties’ incentives to innovate. Self-evidently, the introduction of a CCT product by the market leading CCP will, *by its very nature*, incentivise the Parties to continue innovating, especially given the material size of the expected user base:

- (a) The app will strengthen MSM’s leadership position in the CCP space as it will give MSM another marketing proposition and allow MSM to attract even more consumers to compare products through MSM;
- (b) MSE’s existing position in the CCT market will be reinforced. It can be expected that the app will increase engagement with users and thereby drive growth in the user base; and
- (c) The app will also benefit from MSM’s £115 million of marketing spend per year.

2.5 Having concluded that CCTs are an “*effective mechanism to attract and engage users*”, including for the purposes of growing a CCP (paragraph 10.124 of the PFs), the PFs fail to draw the necessary conclusions from this finding in relation to MSM. The PFs acknowledge that the fact that MSM did not have a CCT product was not an impediment for MSM to be an effective competitor to the Parties (paragraph 10.89 of the PFs); nor indeed is there any debate about MSM’s market leadership. Now that MSM’s position has been further strengthened by the addition of a new CCT product (supplementing its existing MSE branded Credit Club CCT), in order to compete with MSM in the future the Parties need to compete even more intensely, including through innovation to attract more users and to increase conversion.

B. Credit Karma/Noddle

- 2.6 Noddle is already an important competitor in the CCT “market”, with 4 million users and a market share of [20-30]% in 2017, which is equivalent to Experian’s share in that “market”.⁵
- 2.7 On 5 November 2018, Credit Karma – Experian’s largest competitor in the US – announced the purchase of Noddle. The Parties understand that the acquisition is currently pending regulatory approval from the Financial Conduct Authority, and is expected to close in late 2018 or early 2019.
- 2.8 Credit Karma is the leading credit comparison and credit checking player in the US with 85 million users, a \$4bn valuation and over 800 staff. Credit Karma became the market leader in the US from a standing start in just five years. As explained in the Response to the Phase 1 Decision, Credit Karma effectively created the model for lead generation based on the offer of free credit scores and revolutionised the market in the US.⁶
- 2.9 Credit Karma is now expanding internationally with great success, as evidenced by the fact that it has become the market leader in Canada in just 12 months. Credit Karma’s track record in other markets is highly relevant for the assessment of entry.⁷
- 2.10 The acquisition shows that Credit Karma has confidence in the prospects of the business even in a world where Experian and ClearScore are merged. Indeed, when the acquisition was announced, Credit Karma made public statements about its ambitious plans for Noddle:
- (a) Credit Karma announced that it expected to see “*substantial growth*” in Noddle’s business and indicated that it would seek to replicate in the UK its model which has been hugely successful in the US.
 - (b) Credit Karma’s senior management stated that entering the UK was “*a natural first step*” toward its “*much larger expansion goals*”.⁸
 - (c) Valerie Wagoner, Credit Karma’s VP of International said that the first thing Credit Karma will do after the acquisition completes is to make some paid services free to use. This would align Noddle closer with Credit Karma’s business model, where scoring and monitoring services are free and it is only the partner financial services which attract a charge. Ms. Wagoner stated: “*We will make sure 100 percent of the business is free and accessible to everyone*”. After making its CCT offering free, Ms. Wagoner added, Noddle’s users would be offered

⁵ As will be explained below, market shares based on total CCT user base are not relevant measures of competitive interaction or market power.

⁶ Response to Phase 1 Decision, Annex 1.

⁷ For example, in the CMA’s assessment of *Sheffield Taxis/Mercury Taxis*, Uber’s recent track record of taking share from incumbents in other markets was a crucial consideration in the assessment of the credibility of its entry (paragraph 95).

⁸ <https://www.ft.com/content/5d857f38-de92-11e8-8f50-cbae5495d92b>.

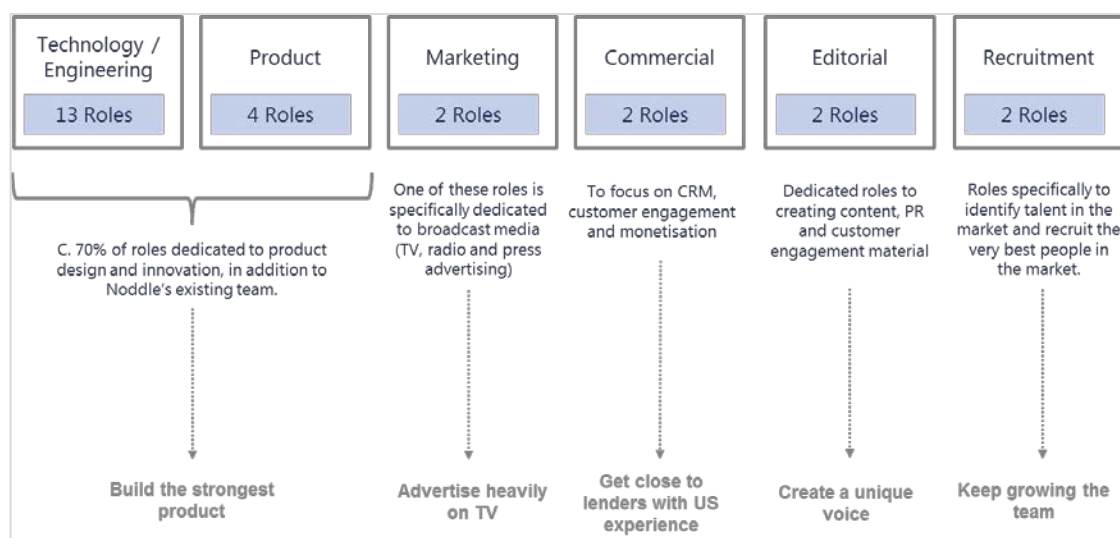
Credit Karma's services, including automotive loans, mortgages, credit cards and refinancing offers.⁹

2.11 These public statements are in line with [X]. These facts cannot be reconciled with the CMA's conclusion that there is "*uncertainty regarding the likely additional take-up of Noddle's CCT*" (paragraph 10.81 of the PFs). [X].

2.12 Since the acquisition of Noddle was announced, a number of facts have come to light, which cast further doubt on the conclusion in the PFs that there is "*uncertainty*" about the future success of Noddle:

- (a) Credit Karma is heavily recruiting staff in the UK, which indicates that they are making serious investment and are committed to expanding in the UK. Approximately ten days after the acquisition was announced, Credit Karma posted 25 job adverts for roles in London and Leeds (almost doubling Noddle's current work force, comprised of 35 employees, with ambitions to reach 100 staff in total). These include senior engineering, product management and business development roles, and a range of more junior software development and marketing roles. They are also recruiting for talent acquisition and HR roles, suggesting that they plan to continue growing headcount. In these adverts, Credit Karma says that they are "*taking an aim internationally*" by "*investing heavily in the UK with big ambitions to serve British consumers and financial institutions.*" Figure 1 illustrates that Credit Karma is looking to recruit a full team with multiple capabilities.

Figure 1 – breakdown of roles advertised by Credit Karma



- (b) Noddle is already marketing an improved product by introducing weekly refreshes of its credit score and a more user friendly sign-in process that uses emails rather than user IDs. This brings Noddle into line with Credit Karma's US product, which also offers weekly refreshes. [X].

⁹ <https://www.techradar.com/uk/news/credit-karma-buys-noddle>.

- (c) It is rumoured within the lender base that Credit Karma is planning to spend around £40 million on marketing, and that heavy spend would be consistent with Credit Karma's strategy in other markets in which it operates. By way of comparison, Experian's marketing spend [REDACTED].
- (d) In addition, the CMA itself notes that the threat of Credit Karma's entry is identified in both Parties' internal documents (paragraph 10.79 of the PFs). There are multiple other references to Credit Karma in the Parties' internal documents; by way of example as quoted in the PFs: paragraphs 8.6(c), 8.38, 8.53(a), 8.65, 8.66 and 8.69. [REDACTED].¹⁰

¹⁰ MN Annex 8.5, pages 3 and 8.

Figure 2 – [REDACTED]

[REDACTED]

- 2.13 It cannot be the case that a player of the scale of Credit Karma and one that revolutionised the business model in the US will not – at the very least – be seen as a competitive threat that will spur the Parties to continue innovating. Credit Karma is a hugely successful well-funded company and will undoubtedly significantly reinforce Noddle’s competitive position.

C. TotallyMoney

- 2.14 TotallyMoney is a recent entrant in the CCT space, having launched its CCT offering in the last 9-12 months (paragraph 10.25(b) of the PFs). In a short period of time TotallyMoney has achieved significant growth in the number of CCT users: it accounted for [10-20]% of new users per month between January and June 2018 (Table 11.1 of the PFs). The significance of this data point (showing very rapid growth by a recent entrant) appears to be lost on the CMA, as it is not even discussed in the PFs, which is particularly surprising given the relevance of dynamic competition and new entry and expansion in this market.
- 2.15 Furthermore, TotallyMoney has also invested considerable sums in marketing including TV¹¹ and pay per click advertising, [REDACTED]. Today, TotallyMoney has announced a further injection of capital to grow its business.¹² These strategic moves suggest that TotallyMoney is committed to expansion and that its market presence is likely to increase.
- 2.16 [REDACTED]. To lenders it confirmed that it is [REDACTED], i.e. it expects to [REDACTED] its user base over the next year.

D. Measuring the impact of these entry/expansion events

- 2.17 The CMA has attempted to measure the impact of MSM’s entry and Credit Karma/Noddle’s expansion by estimating their and the Parties’ future share of the total CCT user base. According to the CMA’s calculations, the Parties’ combined total share of free CCT users will be [50-60]% by the end of 2021, whilst Noddle and MSM were forecast to hold [REDACTED] and [REDACTED] respectively (paragraph 10.129 of the PFs). However, this statistic has little relevance to estimate the future competitive constraint exerted by those Parties for two main reasons:
- (a) First, it looks at the wrong side of the market (as the revenue is all generated on the lender side of the market).
 - (b) Second, the CMA’s methodology and analysis is incorrect:
 - (i) The CMA looks at shares of the total user base, rather than shares of new users, which is the relevant metric to assess competition (as the CMA recognises in the PFs).

¹¹ TotallyMoney has advertised heavily the fact that it has won an award for Best Credit Report provider by Moneynet.co.uk. For more information on Moneynet.co.uk, see [here](#).

¹² See press report [here](#).

- (ii) The CMA ignores the growth of players other than Credit Karma/Noddle and MSM, despite the rapid recent growth of Totally Money (in particular).
- (iii) The CMA wrongly looks at the combined share of the Parties, rather than the increment arising from the Transaction.

2.18 When the correct analysis is carried out, as summarised briefly below and explained in detail in **Appendix 1**, it is clear that these entry events more than fill any gap in new user shares resulting from the Transaction.

i. No calculation of impact on CCP market

- 2.19 First, the CMA has incorrectly measured the degree of future constraint posed by those three players by focusing on the number of CCT users that those competitors will be able to acquire. The most relevant impact to be measured is the extent to which they will reinforce their position in the CCP market, as that is the main driver of competition and innovation (see Section 3 below). However, the CMA has not attempted to make this calculation and has presented no evidence that higher user base shares give rise to any market power or lead to worse outcomes.
- 2.20 The CMA's position seems to be rooted in a fundamental error of fact in relation to the role of CCTs in the CCP market. The PFs state that CCPs with CCTs are able to offer more personalised credit products (paragraph 3.28 and Figure 2 of the PFs), which would explain the (erroneous) inference that users would perceive CCPs with CCTs differently from other CCPs when they look for credit comparison. In fact, the ability to offer more personalised credit products stems from the quality of the eligibility tools used by the comparison platform, which a number of CCPs already offer or are able to obtain from HD Decisions or directly from lenders. The degree of integration with lenders is also relevant. Lenders have confirmed that eligibility is a key factor when choosing a CCP and negotiating the price paid for leads (paragraph 10.117 of the PFs). To be clear, this functionality has nothing to do with the offer of free CCTs to consumers.¹³
- 2.21 This error is compounded by the fact that the PFs fail to adequately define the frame of reference for the assessment (paragraph 9.26 of the PFs) and do not articulate a clear conclusion on whether all CCPs are part of one and the same relevant product market. The analysis seems to infer erroneously that CCPs with CCTs form a discrete relevant segment, despite previous findings to the contrary¹⁴ and the wealth of evidence supporting those findings demonstrating substitutability from a demand and supply perspective.

¹³ The point raised by some third party CCPs about the possibility of “*us[ing] credit file data to assist in providing a seamless customer journey and reduce the number of questions asked to customers*” is unrelated to the offer of credit scores as a marketing hook to attract new users.

¹⁴ Phase 1 Decision, paragraph 56.

ii. ***The CMA's analysis is based on several incorrect assumptions***

2.22 There are three main problems with the CMA's analysis any one of which would be sufficient to invalidate the conclusions.

2.23 First, CMA is incorrect to focus on the total user base, rather than shares of new user acquisitions. In reality, competition is focused on acquiring new users because they are far more likely to purchase a product via the CCP – and hence to generate some revenue – than the existing customer base. [REDACTED].

2.24 [REDACTED].

Figure 3 – [REDACTED]

[REDACTED]

Figure 4 – [REDACTED]

[REDACTED]

2.25 This is consistent with the CMA's findings elsewhere in the PFs, for instance in paragraph 11.8 of the PFs: *"We consider user acquisitions over the last six months to be particularly informative of the current competitive dynamic amongst free CCTs since they illustrate the success of a supplier's recent competitive activity as opposed to the stock of customers a supplier may have acquired over a significant period of time"* (emphasis added). The CMA does not explain why it has ignored this conclusion in its future shares analysis.

2.26 Second, the CMA has ignored the growth plans of all firms other than MSM and Credit Karma/Noddle. This is clearly incorrect, particularly in light of the recent substantial growth of TotallyMoney in particular.

2.27 Third, the CMA wrongly considers the combined size of the Parties, whereas the relevant question in a merger context is the increment to share arising from the Transaction.

2.28 The Parties' economic advisers have updated the CMA's analysis to fix all these issues. In particular, as set out in **Appendix 2**, they have (i) estimated the share of new users based on the CMA's analysis; (ii) included TotallyMoney as well as MSM and Credit Karma/Noddle; and (iii) considered the increment to the Parties' share arising from the Transaction. The results¹⁵ of this analysis are set out in Table 1 below:

¹⁵ These calculations are based on (a) the CMA's base case assumptions for the Parties, MSM and Credit Karma/Noddle (set out in paragraph 10.129 of the PFs), (b) customer acquisitions data for the Parties, MSM and Credit Karma (submitted in the CMA's event analysis), and (c) [REDACTED].

Table 1 – Share of new user acquisitions (Base Case and Sensitivity Case)

Party	Share of new user acquisitions (end 2021) Base Case with TM	Share of new user acquisitions (end 2021) Sensitivity Case with TM
ClearScore	[REDACTED]	[REDACTED]
Experian	[REDACTED]	[REDACTED]
Noddle	[REDACTED]	[REDACTED]
MSM	[REDACTED]	[REDACTED]
TotallyMoney	[REDACTED]	[REDACTED]

2.29 This analysis finds that by the end of 2021, the increment to new user share arising from the Transaction will be [REDACTED] for other parties individually, let alone jointly. In particular:

- (a) In the CMA’s base case, Experian will acquire [REDACTED] of the new users acquired by Credit Karma/Noddle and [REDACTED] of the new users of MSM, and [REDACTED] of the new users of Totally Money.
- (b) Even on the sensitivity case, Experian will acquire [REDACTED] of the new users acquired by Credit Karma/Noddle, [REDACTED] of the new users of MSM, and [REDACTED] of new users as Totally Money.


2.30 The Parties also note that this calculation is conservative insofar as it assumes no reduction in innovation. If the Parties were to innovate less, their share of new users would be even lower. It is clear that when looked at properly, the future shares arising from recent entry events by themselves demonstrate that there can be no competitive concern arising from the Transaction.

E. The Parties are already innovating to respond to these developments

2.31 These recent developments of entry and rapid expansion demonstrate that the market is highly dynamic, that it is not particularly difficult to attract new users (i.e., barriers to entry and expansion are low) and that the CMA’s concerns about the Parties’ allegedly high share of user base are unfounded. This dynamism and the aggregate constraint exerted by these players will ensure that the Parties will continue innovating in their free CCTs to attract as many users as possible (and avoid losing users to those new entrants).

2.32 In fact, [REDACTED]. For example:

- (a) [REDACTED].
- (b) [REDACTED].
- (c) [REDACTED]:
 - (i) [REDACTED];
 - (ii) [REDACTED];
 - (iii) [REDACTED]; and
 - (iv) [REDACTED].

2.33 [].

3. THE INNOVATION THEORY OF HARM ARTICULATED BY THE CMA CANNOT LEAD TO AN SLC FINDING

3.1 The CMA has provisionally concluded that the Transaction will potentially lead to an SLC in the user side of the CCP market due to a reduction in the Parties' incentives to innovate as a result of the loss of rivalry between the Parties. This reduction in incentives, the PFs argue, would take the form of substantial reduction in the rate of product development and improvements in the user experience.

3.2 As a preliminary point, it is essential to define the precise scope of the SLC identified by the CMA. In order to establish the existence of an SLC, it is not sufficient to claim that the merger leads to a reduction of rivalry (as suggested at the Response Hearing); it is essential to establish that such reduction of rivalry is likely to lead to a negative effect on one or more parameters of competition in the market. The latter cannot be presumed. This is because:

(a) The Enterprise Act does not define what constitutes an SLC, but indicates that an SLC must involve an “*anti-competitive outcome*”, which indicates that there must be an analysis of the precise effects the merger is likely to have on the market. According to section 36(1)(b) of the Enterprise Act, the CMA is under a duty to decide whether the Transaction “*may be expected to result in a substantial lessening of competition*”. The Act further states in section 36(2) that “*if [the CMA] has decided on a reference under section 33 that there is an anti-competitive outcome*” it must decide on the need and appropriateness of remedies (emphasis added).

(b) The CMA's Merger Assessment Guidelines (**CMA Guidelines**)¹⁶ also confirms the need for evidence of an “*adverse effect*” for a finding of an SLC. According to the CMA Guidelines, “[a] merger that gives rise to an SLC will be expected to lead to an adverse effect for customers. Evidence on likely adverse effects will therefore play a key role in assessing mergers” (paragraph 4.1.3, emphasis added). When explaining the role of theories of harm, the CMA Guidelines mentions that the purpose of the theories of harm is to “*provide the framework for assessing the effects of a merger and whether or not it could lead to an SLC*” (paragraph 4.2.1). The CMA Guidelines further clarifies that “[the CMA] will consider how rivalry might be affected”, looking in particular at “*those aspects of the merger firms' competitive offers to customers over which firms compete and which could worsen as a result of the merger, whether in terms of price or non-price aspects such as the quantity sold, service quality, product range, product quality and innovation*” (paragraph 4.2.3).

3.3 In this case, the CMA articulated the nature of the SLC it has provisionally identified in paragraph 10.134 of the PFs: “*the significant rivalry between the Parties will be lost and the combined entity would be likely to face materially reduced competition because there are insufficient post-Merger competitive*

¹⁶ Merger Assessment Guidelines (CC2 (Revised)) September 2010.

*constraints to ensure that rivalry continues. Furthermore, the evidence indicates that competition in this market creates an incentive to innovate and make improvements in product quality and range. It follows that **the potential harm arising from the loss of rivalry between the Parties is likely in particular to take the form of a substantial reduction in the rate of product development and improvements in the user experience***” (emphasis added).

- 3.4 The PFs are, therefore, silent on any conventional manifestation of market power and instead focus on a vague and poorly evidenced concern about incentives to innovate, based on conjecture rather than fact. As explained in the remainder of this section, the CMA’s approach errs in law and is anchored on multiple errors of fact.

A. Error of law

- 3.5 The CMA’s conclusion incorrectly interprets the legal test for an SLC, insofar as it implies that any reduction in incentives to innovate would lead to the conclusion that there is an SLC (even assuming that such a reduction would occur, which is not the case as will be explained in this Response).
- 3.6 Under the CMA Guidelines, “*some mergers will lessen competition but not substantially so because sufficient post-merger competitive constraints will remain to ensure that rivalry continues to discipline the commercial behaviour of the merger [sic] firms*”.¹⁷ Accordingly, a reduction in the incentive to innovate is only liable to have a significant impact on competition or generate significant consumer harm in cases where existing and future competitors are not able to mitigate any innovation dynamism lost as a result of the Transaction. This approach follows the standard rules of merger review, which require the CMA to investigate whether (i) a merger leads to a sufficiently material loss of competition (in this case loss of innovation); and, if so, (ii) whether the “*competitive constraint*” eliminated by the merger cannot be replaced by the competitive constraint imposed by current or future competition.¹⁸
- 3.7 This is why an innovation theory of harm has only been applied in very specific circumstances such as those arising in *Dow/DuPont*.¹⁹ What such cases have in common are specific features around the role and cost of innovation: heavy and expensive R&D investment required to innovate,²⁰ innovation closely linked to IP rights,²¹ a long period to bring innovation to market,²² barriers to innovation,²³ innovation aimed at replacement products (not just product enhancements which

¹⁷ CMA Guidelines, paragraph 4.1.3.

¹⁸ CMA Guidelines, paragraph 5.4.1.

¹⁹ Case COMP M.7932, *Dow/DuPont*.

²⁰ *Dow/DuPont*, paragraphs 2196 and 2209.

²¹ *Dow/DuPont*, paragraphs 2056 to 2064.

²² *Dow/DuPont*, paragraph 2216.

²³ *Dow/DuPont*, paragraph 2226.

are straightforward to replicate)²⁴ and an innovation race with only one winner (customer switching gains are very sizeable).²⁵ Furthermore, this theory of harm has been raised in cases where competitors did not have the financial resources or capabilities to innovate²⁶ and the merging parties were focused on the same innovation areas or spaces, which made the prospect of future consumer harm sufficiently tangible to be deemed significant.²⁷ None of these facts are found in the markets at issue in the Transaction.

- 3.8 In the present case, the CMA has not expressed its innovation theory of harm in any detail or provided any empirical analysis to support it. This lack of analysis makes it *impossible* for the CMA to determine whether, on a balance of probabilities standard, there is a sufficient loss of competition as a result of reduced innovation for there to be a *substantial* lessening of competition. Instead the CMA has simply assumed that any reduction in innovation in the future would lead to an SLC. This is not a presumption which the CMA is entitled to rely on and is wrong in both law and economic theory and on the facts of this case.
- 3.9 The Parties' economic advisors have explored the key empirical features that the CMA would need to evaluate in this regard by developing a model of the incentives for the Parties in relation to innovation (see **Appendix 2**). This analysis shows that there are strong parallels between the factors that are relevant to the assessment of the innovation theory of harm, and the factors that are relevant to the assessment of a standard horizontal theory of harm, as measured by GUPPI and similar pricing pressure approaches.
- 3.10 In particular, the key empirical factors that the CMA would need to explore to demonstrate whether the merged entity has an incentive to reduce its investment in innovation comprise of the determinants of "sales cannibalisation" (the first three factors) and merger efficiencies (the last two factors) listed below:
- (a) The level of switching between ClearScore and Experian's free account that would result from the innovation (and vice versa);
 - (b) The proportion of customers that purchase from the Parties' platforms (i.e. conversion rates);
 - (c) The margins that the Parties earn from the customers that purchase through them;
 - (d) Whether there are complementary assets and skills between the Parties that would lead to innovations being cheaper to develop or of a higher quality; and

²⁴ Dow/DuPont, paragraph 2065.

²⁵ Dow/DuPont, paragraph 2052.

²⁶ Dow/DuPont, paragraphs 2204 - 2205 and paragraph 2217.

²⁷ Dow/DuPont, paragraph 2353.

- (e) Whether the innovation could be applied to both Parties or just one (the “copy-paste” efficiency).
- 3.11 It can be readily seen that the first three terms above are broadly the same terms as would be considered in a standard GUPPI analysis. This is because the basic mechanism to determine whether a deterioration in innovation would be profitable is the same as in a standard horizontal merger case: post-merger, any customers that divert from ClearScore to CreditExpert/free Experian account are no longer lost to the merged entity, so there is some profit recapture (which is the ‘sales cannibalisation’ effect in **Appendix 2**).
- 3.12 However, the situation for the CMA’s innovation theory of harm is more complex:
- (a) The cost saving that is made by the merged firm from not innovating is the fixed cost of that innovation (there is no per unit price benefit from higher prices as in the case of the standard horizontal theory of harm).
 - (b) It is therefore necessary to look at the absolute number of customers that would switch between the Parties relative to the counterfactual (so that we are looking at absolute profits and comparing these to absolute costs).
- 3.13 Moreover, there are good reasons to believe that innovation may also become more attractive following the Transaction and that these benefits would not arise in the absence of the Transaction:²⁸
- (a) The costs of innovating may be lower, if for example the merged firm is putting together complementary assets (e.g. better data from Experian and quicker management processes from ClearScore, as the Parties have regularly submitted throughout this process).
 - (b) Innovations in this market often benefit from “copy-paste” efficiencies. This is where an investment by one firm could be applied to both firms’ user bases and websites at limited cost since the type of product developments at play in this market (software changes) are likely to involve primarily fixed costs, and so could be included on both websites at less than a proportionate increase in cost.
- 3.14 We provide evidence on the existence of these factors arising from the Transaction in paragraphs 3.41-3.49 below.
- 3.15 The CMA has provided no theoretical analysis of the post-merger incentive to reduce innovation, nor has it explored any of the empirical factors in paragraph 3.10 (a) to (d) above. These factors demonstrate that there can be *no presumption* that the merger will lead to *any* reduction in innovation competition, let alone a substantial lessening of competition.
- 3.16 In contrast, the Parties have submitted empirical evidence on several of these factors, notably that [§]. The CMA has cast doubt on the Parties’ empirical analysis which shows this, but it has not sought to replace it with any alternative

²⁸ For these reasons amongst others the CMA is mistaken to say that the Parties have advanced any evidence on relevant customer benefits. See paragraph 4.11 of the Response to the Phase 1 Decision.

analysis, and indeed has dropped the one piece of empirical analysis that it had carried out that might inform this question (the event analysis) at the Working Papers stage. As a result, there is no evidence supporting the CMA's theory of harm or that would undermine the analysis in **Appendix 2**.

- 3.17 The CMA's reliance on the Parties' internal documents instead of this empirical analysis is manifestly unreasonable, as the CMA does not apply its concerns about the Parties' empirical analysis to its evaluation of the internal documents even though they suffer from the same shortcomings but to a much greater extent. In particular, to the extent that any analysis was carried out to support those documents, it would have controlled for far fewer, if any, additional factors and was based on a more limited time period. The CMA does not therefore have any evidence whatsoever to support this aspect of its innovation theory of harm.
- 3.18 Moreover, the parallel with the GUPPI analysis makes clear that the CMA needs to assess whether any loss of innovation would be substantial. In the standard GUPPI analysis, the CMA uses a threshold (typically 5%-10%) for assessing whether there is a concern. For any given level of margins and price ratio, this provides a minimum level of switching which the CMA needs to show is present before a substantial lessening of competition conclusion can be drawn.
- 3.19 Furthermore, the CMA has failed to explore the incentive of rivals to fill any innovation gap. This is particularly concerning given that Federico, Langus and Valletti²⁹ show that innovation is a 'strategic substitute', so that reductions in innovation by one firms lead to increased incentives for other firms to innovate.³⁰ As a result, if the Transaction were to decrease the incentives of the Parties to innovate, it would also increase those incentives for rivals (even though the Parties would naturally anticipate this response from rivals and adjust their actions accordingly). The relevant question is, therefore, whether there are any barriers to innovation to those rivals. The PFs contain no evidence that this would be the case.
- 3.20 In conclusion, the absence of any coherent theoretical framework for assessing the innovation theory of harm, or any assessment of the relevant empirical evidence, means that the PFs fall well short of being able to support a conclusion, on the balance of probabilities, that the innovation theory of harm will lead to a substantial lessening of competition. As a matter of law, the CMA cannot *presume* that any reduction in the Parties' incentives to innovate would constitute a substantial lessening of competition.

B. Errors of fact:

- 3.21 The CMA's position with respect to the impact of the Transaction on innovation is anchored on the following findings of fact:³¹

²⁹ A Simple Model of Mergers and Innovation, 2017

³⁰ This is the opposite effect from the standard price increase theory of harm. Prices are "strategic complements" i.e. if one firm puts up prices, others also have an incentive to put up prices. The CMA cannot therefore rely on reading across from standard price increase approaches.

³¹ Articulated in paras. 10.133 and 10.134 of the PFs.

- (a) Innovation pressure on the Parties stems from the degree of competition faced in the CCT “market”;
- (b) The Parties are close competitors and, absent the Transaction, they would remain an important driver of each other’s innovation;
- (c) Post-merger competitive constraints are insufficient to incentivise the Parties to continue innovating following the Transaction; and
- (d) The loss of competition between the Parties is likely to lead to a “substantial reduction in the rate of product development and improvements in the user experience”.

3.22 None of these facts is supported by the evidence or by the way the markets actually function. We will take each of these findings in turn below.

iii. First error of fact: Innovation pressure stems from competitive pressure in the CCP market and not from competition between CCTs

3.23 As in any business, the Parties invest in innovation with the expectation that it will lead to increased profits. The Parties have a lead generation model, which means that their profits are derived from commissions paid by lenders for financial products acquired through their comparison platforms.³² The desire to increase the volume of successful leads is the driver of all investment in both the comparison platform and in the free CCTs used to attract users to the platform (as free CCTs generate no revenue on their own). It is not possible to divorce the decision to invest in innovation from how the Parties expect to monetise that investment.

3.24 As a result, the Parties’ incentives to innovate depend, in the first instance, on the intensity of competition for leads. At this level, the Parties compete with other CCPs (regardless of whether they have a CCT) to, first, attract users to their website and, second, to convert those users into successful leads.

3.25 First, the Parties innovate to attract more users:

- (a) The Parties are competing with all CCPs to attract as many users as they can on to their platforms in order to maximise their chances of successful leads being generated, as acknowledged in paragraphs 10.122, 10.128, 13.21, 13.23-24 and 13.38 of the PFs.
- (b) Therefore, the Parties are not just looking to attract the users which are currently being served by the other Party or even by other CCPs with CCTs, but also users not currently in the market (e.g., using other channels or looking for credit for the first time) and users currently using other CCPs, whether or not those CCPs have CCTs to attract users. [X]. In light of MSM’s strong position in the market, the CMA has had to acknowledge that a free CCT is not the only effective tool to attract users (paragraph 10.89 of the PFs).

³² The impact of the Transaction on innovation in paid-for CCTs is assessed in Section 5 below.

- (c) The fact that the Parties compete with all CCPs (not just CCPs with free CCTs) to attract new users is supported by the evidence:
- (i) The homing data quoted in the PFs confirms this fact, as it indicates that the Parties [REDACTED] to attract users to their comparison platform (paragraph 10.52 of the PFs).
 - (ii) Lenders have confirmed that volume is one of the two key factors when choosing a CCP and negotiating the price paid for leads (paragraph 10.117 of the PFs). Moreover, the CMA has correctly concluded that there is not a specific consumer constituency that lenders are only able to target through CCPs with CCTs (paragraph 10.108 of the PFs), which confirms that the Parties have to compete to attract all users to their comparison platform (and not just those users who are also looking for a free credit score or report).
 - (iii) User experience is recognised as the most important method of attracting users (paragraph 7.24 of the PFs), and the [REDACTED]. No analysis is carried out in the PFs on the relative effectiveness of marketing techniques used by other CCPs to attract users, which would be appropriate when assessing competitive constraint from other CCPs.
 - (iv) In any event, as will be explained below, [REDACTED] the ubiquity of credit scores throughout the market, in addition to competition in the CCP market, [REDACTED].

3.26 Second, the Parties have to invest in innovation to convert users:

- (a) The Parties' goal is to ensure that users turn to their platform to find products to meet their financial needs, instead of other channels or other CCPs. Monetising users in circumstances where a significant proportion of those users use CCTs primarily to find out their credit score, rather than to look for financial products, is the key challenge for the Parties, as indicated by the Parties' research (paragraphs 7.19 and 10.32 of the PFs), confirmed by third parties (paragraph 10.34 of the PFs) and acknowledged in the PFs (paragraph 10.36 of the PFs). If the Parties are not able to convert users, their FPLG business will not be sustainable.
- (b) The fact that a CCT user has signed up to view their credit score or report does not mean they will use the platform to apply for a credit product, especially as credit needs are not constant and consumers will not rely on the same channel each time. [REDACTED]. This evidence directly contradicts the unsupported opinions expressed by competitors that [REDACTED].
- (c) Improving conversion rates is a strategic priority for the Parties and drives the majority of the Parties' innovation investments (see below).³³ The Parties [REDACTED] to maintain consumer engagement with the brand and website, improve the user journey from the home page to the application

³³ [REDACTED]

and assist the consumer to find the most suitable products (e.g., eligibility, pre-population of application forms).

- (d) Innovation in the comparison and user journey is completely independent from the CCT offering (i.e., it does not improve the CCT product) and relates solely to the CCP market. Innovation in this area drives more revenues and, therefore, is [REDACTED] from a commercial perspective. As explained in the Parties' Response to the Phase 1 Decision, there is a pronounced positive relationship between revenue per lead for the CCP and the degree of integration with the lender. The vast majority of the comparison and user journey improvements that consumers experience in the platform are underpinned by deeper integration with lenders. [REDACTED]. In other words, there is a positive correlation between integration with the lender and conversion rates.

Table 2 – Experian's revenue per lead (RPL) according to lender integration levels

[REDACTED]

- 3.27 The Parties' investment in innovation [REDACTED] is also critical for [REDACTED]. The competition they face and will continue to face in those areas alone will provide sufficient incentive for the Parties to continue innovating to attract and convert more users.
- 3.28 This evidence shows that innovation is aimed at attracting and converting users and to launch new verticals and is not driven by the degree of competition the Parties face in the CCT "market" (contrary to the conclusion in paragraph 7.21 of the PFs). Therefore, any hypothetical reduction of competition in the CCT market or between CCPs with CCTs will not affect the Parties' overall incentives to continue investing in innovation. Rather, it is the intensity of competition in the CCP market that is the main driver of innovation (in addition to competition in other verticals). This is explored in the next sub-section.
- 3.29 Finally, the evidence quoted by the CMA to argue that CCT is particularly effective as a marketing hook (paragraphs 10.25 of the PFs) does not contradict the facts above and actually confirms them. [REDACTED].

iv. Second error of fact: the CMA's closeness of competition analysis is flawed

- 3.30 Paragraphs 10.134 and 11.6 of the PFs conclude that the Parties' CCPs and CCTs respectively are close competitors. The absence of robust empirical evidence to support these conclusions is striking. Indeed, it is clear that the evidence put forward in the PFs in support of these conclusions falls far short of the standard required to meet the 'balance of probabilities' test:
 - (a) First, the CMA has failed to articulate or apply a robust analytical framework to assess the evidence it cites in support of these conclusions. As a result the position advanced in the PFs suffers from logical inconsistencies and conclusions that lack a clear evidential foundation.
 - (b) Second, properly assessed within the standard economic framework used by the CMA in merger control reviews, the evidence contained

within the PFs does not support the view that the Parties are close competitors with respect to either their CCTs or CCPs.

- 3.31 Indeed, the only quantitative analysis that appears to have been conducted by the CMA is the multi-homing analysis (paragraph 10.51 of the PFs), which indicates that [REDACTED]. The Parties note that the CMA had previously attempted to carry out an entry analysis, but this analysis has been entirely dropped and the PFs focus solely on an analysis of the Parties' internal documents. As noted above (paragraph 3.18), it is manifestly unreasonable to use these documents as the sole evidence supporting an SLC.
- 3.32 Without additional analysis, the CMA has not been able to quantify the level of switching between the Parties (and its materiality) and, therefore, is unable to conclude that the Parties are particularly close competitors in trying to acquire users to their CCP (contrary to paragraph 10.125 of the PFs).
- 3.33 Second, the CMA's discussion of CCT user data is of limited relevance when discussing incentives to innovate in CCP.³⁴ Success in acquiring new CCT users is only one aspect contributing to a CCP's success due to challenges in monetising users. A free product user who does not generate any leads makes no contribution to revenues. As such, the PFs should have instead focused on conversion rates, commission revenue and number of leads. Each of these directly relate to the monetisation of users and therefore a firm's success as a CCP. The CMA's focus on the size of the total user base in isolation is therefore misguided, quite aside from the concerns set out in Section 2(D) above.
- 3.34 Third, there is limited evidence of innovation competition between the Parties, with the exception of the historic market shift brought about by the launch of the free product (and even that reading of the evidence is questionable, since Experian launched its free proposition following the emergence of Credit Karma in the US). Subsequent comparisons between free features and paid-for features actually show that the products are going in different directions (as acknowledged at paragraph 11.44 of the PFs). In particular:
- (a) First, the CMA recognises that [REDACTED] (paragraph 11.38(d) of the PFs). This indicates that ClearScore's innovations are not a response to Experian.
 - (b) Second, there is also a lack of evidence that innovation is driving diversion between the Parties. Despite the difference in the level of innovation between the two Parties, Experian's free account continues to grow at a good pace and CreditExpert churn has subsided (paragraph 11.52 of the PFs).
 - (c) Third, the evidence cited in the PFs to establish that the Parties are close competitors is historical and identifies similarities at a very high level, which are also likely to apply to other competitors given, for example, the recognised importance of improving user experience (paragraphs 10.46-10.47 of the PFs). There is no other evidence provided from [REDACTED],

³⁴ User data is referred in paras. 10.24, 10.41-10.42, 10.56.

nor any economic assessment to back up the assertion that the pipelines are similar (paragraphs 10.45-48 of the PFs).

- (d) Fourth and more importantly, [X]. Against this fast moving background, [X] have little or no relevance. [X].

3.35 Finally, the CMA has not engaged with the body of evidence clearly indicating that there are limits to the ability of a free CCT to monetise more costly features offered for free (see Section 5 below).

v. ***Third error of fact: post-merger competitive constraints are sufficient to incentivise the Parties to continue innovating following the Transaction***

3.36 The CMA has received undisputable – and undisputed – evidence that the CCP market will remain sufficiently competitive following the Transaction:

- (a) First, lenders are unconcerned by the Transaction due to the remaining competition between CCPs (paragraph 10.112 of the PFs). The PFs recognise that lenders have sufficient alternatives (paragraph 10.135 of the PFs) and third parties have described the market as “overcrowded” (paragraph 13.48 of the PFs). Given that lenders value the volume of leads generated (paragraph 10.117 of the PFs), in a two-sided market it is inconceivable that alternatives which are viable for lenders are not viable for a significant proportion of users as well. The only logical conclusion from this fact is, therefore, that existing competition would be sufficient to maintain the Parties’ incentives to innovate.
- (b) Second, the CMA has failed to adequately assess the strength of competitors. The analysis in the PFs fails to assess the ability and incentive of these players to react to any decrease in innovation and the impact of that reaction (or the prospect of that reaction) on the Parties’ incentives to innovate.

3.37 Furthermore, the CMA has completely failed to take into account the incentives of competitors when faced with a (hypothetical) reduction in innovation post-merger. When faced with a post-merger price rise, the incentive of rivals is to increase their prices as well. By contrast, when faced with a decrease in innovation by the merging parties, the incentive of rivals is to ‘fill the gap’ left by that reduction in innovation. Given the availability of credit data and the fact that most innovation in this market is software-based, barriers to innovate are low (and the PFs advance no evidence to the contrary). Moreover, the likely entrants have recognisable consumer brands, a proven track record, significant penetration in other verticals and substantial financial backing. Any reduction in the pace of innovation would therefore be highly likely to prompt a response from among these ready, willing and able competitors. It therefore does not follow that any reduction in innovation by the Parties would necessarily lead to a reduction in innovation across the market and, hence, to an SLC.

3.38 The Parties will in any event face sufficient competition from other CCPs with CCTs following the Transaction. Not only do these players have a strong position today, but they are also ready to capture any diversion which would inevitably arise if the Parties were to decrease their pace of innovation, since these players

are not capacity constrained and are able to invest in marketing to capture additional users for their CCP business.

- 3.39 Furthermore, the Parties will face other constraints which have been incorrectly discounted, including from CCPs without CCTs, direct channels and from regulatory and technology change, which is propelling innovation across the market.
- 3.40 The PFs' assessment of these constraints is inadequate as each factor is analysed in isolation, when in reality the Parties' innovation incentives are determined by the aggregate effect of these constraints. By refusing to consider the evidence as a whole, the PFs fail to appreciate the proper extent of the constraints driving innovation decisions. This approach is also inconsistent with previous CMA decisional practice in which the constraint exerted collectively by new entrants was not only examined but decisive to the findings in those cases.³⁵ For example, in *Omnicell / SurgiChem*, despite acknowledging the uncertainty of competitor plans to enter/expand, the CMA "*found that there is a material chance that at least one would [enter/expand] and that the collective impact of their attempts may act as a constraint on the parties*".³⁶ The CMA further concluded that "*taken together, th[e]vidence on existing constraints and further potential for entry and expansion leads us to conclude that the merger is unlikely to result in an SLC*".³⁷

vi. **Fourth error of fact: there is evidence that the Parties will continue innovating and the Transaction will enhance efficiency**

- 3.41 As set out above, there are strong theoretical reasons to believe that the Transaction will enhance efficiency, and the Parties have previously submitted evidence to substantiate these points.
- 3.42 First, the Parties will put together their complementary skills and assets to reduce the cost and increase the effectiveness of their innovations. As set out in the Merger Notice, "*the impact of the Transaction is best understood in light of its rationale, which is motivated by a drive to innovate and increase consumer engagement in a rapidly evolving commercial, technological and regulatory environment*" (paragraph I). Moreover, the Merger Notice stated:

(a) "*In particular, from Experian's perspective, the Transaction will allow it to improve its consumer proposition through several routes:*

i) *access to ClearScore's [X].*⁵

ii) *access to ClearScore's [X].*

iii) *access to ClearScore's [X], as a nimble technology entrant.*

³⁵ See, for example, *Sheffield Taxis/Mercury Taxis* (paras. 4 and 95); *Coopervision/Sauflon* (paragraph 132); *McGill's/ASW* (paragraph 18); *Pure Gym/The Gym* (paragraph 87); *Zipcar/Streetcar* (paragraph 22); and *NBTY/Julian Graves* (paragraph 7.7).

³⁶ *Omnicell, Inc. / MTS Medication Technologies, Inc. / SurgiChem Limited*, Final Report, 8 August 2014, paragraph 9.139.

³⁷ *Idem*, paragraph 9.145.

- (b) *From ClearScore’s perspective, the Transaction will also allow it to improve its consumer proposition through the following routes:*
 - i) *use of Experian’s [REDACTED]. ClearScore is seeking to use its post-Transaction [REDACTED], to the benefit of consumers. This would be less feasible absent the Transaction due to [REDACTED]; and*
 - ii) *access to [REDACTED].*
- (c) *There will also be further mutual benefits for both Parties, which will be combined for the benefit of consumers, including:*
 - i) *[REDACTED]; and*
 - ii) *[REDACTED].”*

3.43 These points were extensively developed in Section 24 of the Merger Notice (“Efficiencies and customer benefits”) provided at the very start of the Phase 1 process, so this evidence has been with the CMA since February 2018. Further, the Parties have made additional submissions in this regard during Phase 2 and during the Site Visit.³⁸ It is therefore entirely incorrect for the CMA to state that “the Parties have not submitted any evidence as to why these cannot be achieved without the Merger” (13.64). Rather, the CMA has simply failed to engage with this evidence.

3.44 Second, there is clear evidence that these markets lend themselves to “copy-paste efficiencies”, whereby an innovation developed by one Party can readily be applied to the other Party at zero (or less than proportionate) additional cost. This is because many innovations in these markets are software-based, and hence once the time and effort has been incurred once, it can readily be applied to the other Party’s platform. Experian has reviewed its recent and forthcoming innovations and many of these will benefit from a copy-paste efficiency. For instance, the following Experian innovations could readily be copy and pasted across to ClearScore’s platform post-merger to the benefit of ClearScore’s customers.

- (a) [REDACTED]
- (b) [REDACTED]
- (c) [REDACTED]
- (d) [REDACTED]
- (e) [REDACTED]
- (f) [REDACTED]
- (g) [REDACTED]
- (h) [REDACTED]

³⁸ See, for example, Response to the Phase 1 Decision at paragraph 4.11, Response to the Issues Statement at paragraph 4.34; and Response to the Annotated Issues Statement at paragraph 2.3.

- 3.45 As such, there are strong reasons to believe that the Transaction will enhance rather than reduce innovation.
- 3.46 Indeed, in response to the recent entry of MSM and the acquisition of Noddle by Credit Karma, [REDACTED].
- 3.47 Furthermore, the Parties have pointed the CMA to the revenue projections following the Transaction to demonstrate that the Parties have [REDACTED] growth ambitions for their FPLG business. The CMA dismisses these projections by stating that they are inherently uncertain (paragraph 11.63 of the PFs). However, this evidence cannot be ignored when the CMA is assessing the Parties' strategy and incentives to continue innovating following the Transaction. Indeed, [REDACTED] have to go much beyond merely benefiting from any hypothetical reduction in switching between the Parties. [REDACTED].
- 3.48 The same applies to [REDACTED].
- 3.49 To conclude, it is much more likely that the Transaction will enhance than reduce innovation; this is true both in theory and on the evidence in this case. It is not open to the CMA to rely on a presumption of an SLC in relation to innovation incentives and the PFs contain no evidential underpinning for the CMA's position. This is not a sufficient basis on which to make an SLC finding.

4. NEW ENTRY AND EXPANSION INTO THE CCT MARKET IS LIKELY, TIMELY AND SUFFICIENT TO PRECLUDE ANY FINDING OF AN SLC

- 4.1 The PFs conclude that new entry and expansion in the CCT market is timely (paragraph 13.27 of the PFs) and not improbable (paragraph 13.29 of the PFs) but ultimately not likely or sufficient (paragraphs 13.35 and 13.40 of the PFs). In order to assess the likelihood and sufficiency of market entry / expansion, the relevant legal test is whether the combined entry and expansion of rivals is likely and sufficient, in the event of a decrease in innovation by the Parties following the Transaction, to make any such decrease unprofitable. Given the facts outlined in Section 2 and the evidence presented in Section 3 above, the answer is undoubtedly yes.
- 4.2 The CMA's assessment fails to consider the most likely entrants to the market (CCPs), dismisses other players' entry plans due to their early stage (paragraphs 13.31-13.33 of the PFs) and excludes recent entrants from its forward-looking assessment, regardless of whether those factors are perceived as a threat by the Parties and therefore might drive a competitive response. This is inconsistent with the fact that demand for free CCTs is forecast to continue growing (paragraph 13.28 of the PFs) and, as such, there would be a gap in the market if the Parties' pace of innovation decreased.
- 4.3 In this section, the Parties focus on the entry and expansion in the CCT market, given that the CCP market overall is sufficiently competitive and to respond to the CMA's concerns which are (erroneously) focused on the segment of CCPs with CCTs. However, as a preliminary point, it is worth highlighting that the CMA has "*not found it necessary*" to properly define what constitutes a CCT, in particular what services are needed to comprise a CCT (paragraph 3.12 of the PFs). This is a fundamental gap in the CMA's assessment, as it does not allow the Parties to understand what, from the CMA's perspective, would be required for a competitor to be considered a credible constraint or for an entry event to be considered sufficient.

A. Errors of law

- i. **First error of law: entry must be sufficient to prevent or mitigate the potential harm identified**
- 4.4 The approach to sufficiency of entry in the PFs fails to take into account the hypothetical harm which that entry would be mitigating or preventing. In this case, the CMA should have investigated whether entry would be sufficient in the event of a deterioration/reduction of innovation by the Parties following the Transaction, to make such a deterioration unprofitable.
- 4.5 In the present context, the standard assessment of scale of entry and expansion is manifestly inadequate to determine whether the prospect of that entry will create the necessary incentives for the Parties to continue innovating. This assessment must take into account the fact that decisions on innovation are taken on the basis of a longer term view of how the market will evolve and respond to the investment in innovation and the lead time for that innovation to bear fruit.

- 4.6 As a result, the legal test to assess whether that entry is sufficient should be whether that entry and expansion would be sufficiently compelling to ensure that the Parties will continue to innovate. In this context, the assessment of the immediate scale of entry in a pre-merger/pre-deterioration context is irrelevant, except insofar as it demonstrates low barriers to entry, expansion or innovation. An approach based on how compelling entry is for the Parties finds echo in the CMA Guidelines which indicate that “*in some cases, the fear of entry might deter the merged entity from exploiting any market power resulting from the merger*”.³⁹
- 4.7 In a scenario where entry is likely and timely, the sufficiency of entry must be assessed by reference to any barriers to entry, expansion and innovation (which are very low in this case) and to a number of factors determining the Parties’ decision-making with respect to innovation:
- (a) Identity and overall strength of the entrant or competitor which is expanding;
 - (b) Dynamism of the new entrant or competitor which is expanding, including track record of entry and expansion into new markets;⁴⁰
 - (c) Prospects of expansion after new entry; and
 - (d) Dynamism and likely evolution of the market.
- 4.8 The CMA also seems to suggest that for entry to be sufficient, the new entrant would need to achieve “*the same success*” as the Parties (paragraph 13.39 of the PFs). Again, this approach is at odds with the relevant legal test: entry needs to be sufficiently compelling for the Parties not to risk a future reduction of revenues due to the lack of innovation.⁴¹
- ii. **Second error of law: entry must be sufficient to constrain the Parties’ incentives from the Parties’ perspective**
- 4.9 The PFs also fail to consider the extent to which the Parties perceive the threat of entry and expansion to be credible, and to what extent that will prompt them to keep competing/innovating. This reasoning underpins the assessment of the role of potential entry in the CMA Guidelines: “[i]n some cases, the merged firm may not be able to exploit any loss of competition arising from the merger because of the threat of potential entry”.⁴²

³⁹ CMA Guidelines, paragraph 5.8.2.

⁴⁰ In *Sheffield Taxis/Mercury Taxis*, the Competition Commission took particular note of Uber’s recent entry and track record of taking share from incumbents in other markets and its fast growth rate to conclude that Uber’s recent entry – in addition to another recent entrant – was sufficient to constrain the merging parties post-merger, paragraph 95.

⁴¹ Even if this were the right test, the CMA should also look at the increment arising from the Transaction, not the combined share of the Parties (in line with the new user shares analysis in Section 2 above).

⁴² CMA Guidelines, paragraphs 5.8.15-5.8.15.

4.10 In previous cases, the CMA has recognised this very point and assessed whether the threat of entry was “*perceived to be*” sufficient.⁴³ In the *McGill/ASW* case, for example, the Competition Commission concluded that the threat of potential entry was sufficient to constrain the merged entity in view of the size of the potential entrant and their ability to respond to a small worsening of the merged entity’s offer.

4.11 These precedents suggest that:

- (a) Potential entry by large players in neighbouring markets (e.g., CCPs entering the CCT market or PCWs entering the CCP market, in addition to MSM and Credit Karma) would be sufficient to ensure no reduction of innovation, as the Parties clearly see those players as a threat (see paragraph 2.10(a - c) above); and
- (b) The fact that the Parties believe that Open Banking and PSD2 will foster further entry and competition in the CCP and CCT space (and have made investments on this basis) would be enough to consider that threat as sufficient. Equally, the fact that a “*number of firms are exploring and investing*” would also be sufficient (paragraph 6.11 of the PFs).

B. Errors of fact

4.12 Since the CMA must consider whether entry and expansion could mitigate or prevent an SLC, it must take into account the aggregated effect of all prospects of entry and expansion, rather than assess individual entrants in isolation. The CMA has failed to do so which is a material flaw in the assessment. The CMA has only attempted to estimate the individual impact of MSM’s entry and Noddle’s expansion into the CCT market (by calculating forecast user base market shares under conditions of no post-merger deterioration), but has not considered the combined effect of such entry/expansion, nor has it included the likely impact of TotallyMoney’s continued expansion or calculated the impact in terms of new user acquisitions. It is unclear whether the CMA questioned TotallyMoney specifically on its expansion plans and barriers to innovation.

4.13 In this sub-section, the Parties will point out the most material errors of fact made in the PFs in relation to entry and expansion.

i. First error of fact: no barriers to entry or expansion for the most relevant competitors

4.14 In relation to the provision of CCTs, the CMA identifies a number of potential barriers to entry which it argues would prevent entry from occurring on a sufficient scale in response to a reduction in CCT innovation by the Parties following the Transaction. However, when analysed properly, it is obvious that these barriers to entry relate only to “greenfield” entrants, rather than entrants currently active in closely related areas such as existing CCPs.

⁴³ Competition Commission, Report on the completed acquisition by McGill’s Bus Services Limited of the business and assets of Arriva Scotland West (ASW) Limited.

4.15 In many cases, the alleged barriers to entry and expansion are based on clear errors of fact:

- (a) The PFs state that future users will be more difficult to acquire for CCPs⁴⁴, based on the views of ‘some’ third parties. Evidence of multi-homing in the market⁴⁵ and the importance of user experience to competing⁴⁶ indicate there is no barrier to CCPs acquiring customers from other CCPs or new customers. The evidence of significant investment in the sector suggests competitors are still positive about being able to acquire profitable user relationships.
- (b) The PFs conclude that CCP expansion via white label solutions do not allow product differentiation, making the CCP less able to compete.⁴⁷ This is contradicted by third-parties,⁴⁸ successful existing competitors using white label solutions (e.g. GoCompare) and ClearScore’s own success creating an engaging brand initially using a white label solution.⁴⁹ This implies that white label solutions lower barriers to entry by providing an easy one-stop solution for potential entrants to add a cards and loans verticals.

4.16 The CMA’s analysis of likelihood of entry into the CCT sector (paragraphs 13.28-13.35 of the PFs) also completely ignores the possibility of existing CCTs expanding their offering. The CMA concludes that “*we therefore do not think it is likely that a third party, other than those we have already considered as part of our competitive assessment, would enter or expand in the provision of CCTs*” (paragraph 13.35 of the PFs, emphasis added).

4.17 The practical issue with this approach is that at no point does the CMA consider in full:

- (a) the incentives of a CCP without a CCT to launch or acquire a CCT as a result of a post-merger deterioration in the Parties’ offer, and the barriers (if any) to their doing so; or
- (b) the incentives of an existing CCP with a CCT (or a CCT) to expand as a result of a post-merger deterioration in the Parties’ offer, and the barriers (if any) to their doing so; or

⁴⁴ Paragraph 10.128 of the PFs.

⁴⁵ Paragraphs 10.51-52 of the PFs.

⁴⁶ Paragraph 7.24 of the PFs.

⁴⁷ Paragraphs 13.47 and 13.58 of the PFs.

⁴⁸ Paragraph 13.47 of the PFs.

⁴⁹ CMA cites ClearScore’s success in acquiring over six million users over 3 years (paragraph 10.24 of the PFs).

- (c) the incentives of an existing CCP with a CCT (or a CCT) to increase the pace of their innovation as a result of a post-merger deterioration in the Parties' rate of innovation, and the barriers (if any) to their doing so.⁵⁰

4.18 These errors of assessment result in the CMA reaching an erroneous conclusion about the post-merger constraints that the Parties would face. In particular, by only considering the barriers that would be faced by a *de novo* entrant, the CMA fails to take into account the most likely sources of entry.

4.19 Table 3 below illustrates how the barriers to entry identified by the CMA do not apply to players active in neighbouring markets such as CCPs.

Table 3 – Analysis of barriers to entry

Barrier to entry	PFs	Barrier applies to existing CCPs? ⁵¹
Need for existing users	13.16	No – existing CCPs already have large customer bases (often larger than the Parties combined)
Need for recognised brand	13.16	No – many existing CCPs already have much more recognised brands than the Parties
Early mover advantage / incumbency	13.38	No – many existing CCPs entered several years before the Parties
Ability to convert existing users to CCT proposition	13.16	No – ClearScore and Experian are relatively new entrants and have succeeded in attracting free CCT users. TotallyMoney has only recently launched a free CCT and has attracted a sizeable number of users in the first six months of the year.
Access to data	13.17	No – it is possible to obtain credit scores and indeed the credit file from any CRB, as recognised by at least one third party (paragraph 13.22 of the PFs)
Marketing and user acquisition costs	13.17	No – existing CCPs have much larger marketing budgets than the Parties. The incremental costs of marketing a free CCT are likely to be <i>de minimis</i> .
Data security and handling	13.17	No – existing CCPs already have this technology
Access to underlying data	13.18	No – ClearScore and TotallyMoney have succeeded in gaining access to underlying credit data and Experian, TransUnion and Equifax have demonstrated that they are willing to supply data to all-comers

⁵⁰ As set out in Section 3 above, innovations are “strategic substitutes”, so there is a strong incentive for rivals to fill any innovation gap created by the Parties post-merger.

⁵¹ [X] which will only have a greater incentive to do so if there is a deterioration in the Parties' CCTs post-merger.

Barrier to entry	PFs	Barrier applies to existing CCPs? ⁵¹
Customer care	13.17	No – this is a standard requirement which only requires recruitment and some financial investment
Regulatory clearance	13.17	No – it is easy to obtain if any CCP does not have this already

4.20 The extent of entry independent of the Transaction (paragraph 6.17 of the PFs) indicates that entry is already sufficient (see Section 2), and also suggest it would be even more so after any post-merger deterioration by the Parties. The existence of entry independent of the Transaction is a good indication (i) of a lack of material barriers to entry; and (ii) that such entry would be more pronounced or accelerated if the Parties were to reduce the pace of innovation following the Transaction.

4.21 The Parties’ internal documents indicate that they are concerned about the threat of entry by other PCWs. For example, [REDACTED] of the PFs [REDACTED].

4.22 All this evidence confirms that the threat of entry by CCPs is sufficient to constrain the Parties and incentivise them to continue to innovate in the future.

ii. Second error of fact: entry/expansion by MSM, Credit Karma/Noddle and TotallyMoney is sufficient

4.23 As explained in Section [2] above, given MSM’s market position and the effectiveness of CCTs to attract users on to CCPs (in the CMA’s reasoning), it is simply not credible to think that MSM would make the investment to develop its position in CCTs with its new app if it did not believe it would succeed. The impact of this investment will be felt in both the CCP and CCT “markets”. Similarly, Credit Karma’s investment plans are credible and its expertise and track record in the US ensures that the prospect of expansion by Noddle will constrain the Parties. TotallyMoney’s rapid growth also shows that barriers to entry/expansion into the CCT market are not high for CCPs (as set out in Table 3 above). [REDACTED].

4.24 Given the relevance of these competitors, when assessed collectively, these entry/expansion events exert a combined competitive constraint over the Parties which more than meets the legal standard of ‘sufficient’ entry. The existence of these competitive actions today (pre-merger) and the absence of the CMA presenting any evidence on the barriers to entry, expansion or innovation demonstrates that it is highly unlikely these barriers will change following the Transaction.

5. THERE IS NO REALISTIC PROSPECT OF REDUCTION OF INNOVATION IN PAID-FOR CCT OR OF NEGATIVE IMPACT ON PRICING PRESSURE

- 5.1 The CMA concludes that free and paid-for CCTs are in the same relevant product market, disregarding evidence to the contrary based on the SSNIP test and without offering alternative empirical analysis (paragraphs 9.46-47 of the PFs). The justification used to indicate that those two products are in the same relevant market is based on a vague concept of similar “competitive dynamics” and is contradicted by the CMA’s own acceptance that the revenue models are different and that differentiation by price and quality makes products less close competitors (paragraph 7.26 of the PFs).
- 5.2 In the CMA’s view of the CCT “market” (including free and paid-for products), the prospect of entry by a free CCT player would remove any concerns around CreditExpert innovation and pricing. Therefore, the above analysis should be sufficient to conclude that no SLC would arise in this regard.
- 5.3 Even putting the entry analysis to one side, there is no reasonable prospect of an SLC in relation to paid-for CCTs, as the PFs present no reasoned or evidenced basis for the Transaction having an adverse effect in this regard.

A. Innovation

- 5.4 First, the CMA incorrectly relies on the Parties’ internal documents to evidence the alleged *current* constraint from free CCTs on CreditExpert (paragraphs 8.4 and 11.13 of the PFs):
- (a) The PFs incorrectly rely [REDACTED].
 - (b) The PFs also incorrectly rely on selective and factually incorrect interpretations of the Parties’ internal documents and ignore contradictory evidence within the same document and even on the same page.
 - (c) [REDACTED] (paragraph 13.15 of the PFs). In any case, any potential competitor can obtain free credit scores from TransUnion or Equifax.
- 5.5 Second, although the CMA acknowledges the “*differences in the product development pipelines for free and paid*” (paragraphs 11.44 and 11.50 of the PFs), the PFs choose to focus on [REDACTED] to conclude that Experian is still concerned about the effects of ClearScore’s free credit scores on CreditExpert. However, the PFs fail to properly assess or give adequate weight to more tangible evidence of recent behaviour, [REDACTED].
- 5.6 As outlined in section 4 above and in **Appendix 1**, [REDACTED].
- 5.7 The Parties have submitted evidence which explains the additional costs of providing premium services at the core of the paid-for service which the PFs completely ignore. There is a limit to the product improvements which can be offered for free in a FPLG model. The costs of providing certain premium services available through CreditExpert are prohibitive for players with a FPLG model only: it costs ClearScore approximately [REDACTED] per user per year to provide a free credit score and report, whereas the cost of supplying each CreditExpert user

is [REDACTED] per year (paragraph 6.12 of the Response to the Phase 1 Decision). Experian's total spend in its direct-to-consumer service amounts to approximately £[REDACTED] per year, whereas ClearScore estimates that the ongoing investment to continue supporting its coaching functionality (the 'chatbot') is approximately £[REDACTED] per year (paragraph 6.11 of Response to the Phase 1 Decision). This evidence indicates that there are separate business cases for innovation in the premium space and in free CCTs, as there is a limit to the ability to recover costs through FPLG. The CMA's assertion that ClearScore could develop products with similar functionality to CreditExpert over time⁵² is entirely unsubstantiated; [REDACTED].⁵³

5.8 Finally, Experian's business strategy is to continue innovating in CreditExpert and free:

- (a) [REDACTED]. This decision has been taken due to [REDACTED]. Continued innovation [REDACTED] will assist in capturing a share of the growing free CCT user base. As for CreditExpert, innovation is driven by very different need-states (i.e., personalised credit-worthiness advice and fraud/identity theft prevention and assistance) and a [REDACTED].
- (b) Since the realignment of the market following the entry of ClearScore (as discussed in Section 3 above), there is no evidence that [REDACTED].
- (c) Figure 5 below plots the [REDACTED]. It illustrates that: (i) [REDACTED]; and (ii) [REDACTED] consumers becoming aware of a set of differentiated product offerings that appeal to different users (paragraph 11.53 of the PFs), as well as the change in Experian's website and marketing strategy.

Figure 5 – [REDACTED]

[REDACTED]

- (d) Although continued disruptive entry has generated market uncertainty, the Parties' [REDACTED], which is in part also driven by lender expectations around lead volume growth.
- (e) As explained in paragraph 3.49 above, [REDACTED].

5.9 This evidence alone should be sufficient to dispel any concerns around innovation in the paid-for CCT space.

B. Pricing pressure

5.10 In addition to its concerns relating to the Parties' incentives to innovate following the Transaction, the CMA is also "*concerned that the Merger is likely to lead to a substantial reduction in the Parties' incentives to reduce prices*" of CreditExpert (paragraph 11.69 of the PFs). However, this concern is neither

⁵² Paragraph 11.47 of the PFs.

⁵³ Paragraph 11.47 of the PFs.

adequately explained nor evidenced. And at no point in the PFs is the analytical framework for assessing this concern set out.

- 5.11 The Parties note that the standard analytical framework used by the CMA for assessing a theory of harm of this nature is GUPPI analysis. The CMA has applied this approach in numerous horizontal merger cases both at Phase 1 and Phase 2. To implement this framework, which would imply that Experian had an incentive to increase prices on CreditExpert, the CMA would need to assess:
- (a) the gross profit margins on ClearScore products;
 - (b) the relative prices of the Parties' products; and
 - (c) the level of diversion between the Parties' products.
- 5.12 The CMA would also need to identify whether any loss would be "substantial" as with any standard horizontal theory of harm. To do this, it would need to identify the critical GUPPI that it will use – presumably 5%-10% as typically employed.
- 5.13 Together with the relative financials of paid-for and free CCTs (average revenue per user and ClearScore's margin), the degree of switching necessary for the Parties to have the incentive to deteriorate the paid CCT product by increasing its price is highly unlikely.
- 5.14 For example, given the ClearScore margin of [REDACTED]⁵⁴ and the relative prices prevailing on CreditExpert and ClearScore (proxied by the average revenue per customer given the free nature of ClearScore)⁵⁵, the critical diversions for Experian to have an incentive to increase the price of CreditExpert are as follows:
- (a) for a GUPPI of 5% at CreditExpert, the critical diversion from Experian to ClearScore would need to be [REDACTED]; while
 - (b) for a GUPPI of 10%, the critical diversion would be [REDACTED]; and
 - (c) even if ClearScore's margin were [REDACTED] the diversions would need to be [REDACTED] and [REDACTED] for GUPPIs of 5% and 10% respectively.
- 5.15 These levels of diversion are obviously impossible, [REDACTED].⁵⁶ As a result, the CMA cannot reach any conclusion other than the Transaction will have no significant negative impact on competition with respect to CreditExpert pricing.

⁵⁴ Phase 1, RFI3 response. This is the highest possible estimate of ClearScore's variable margin.

⁵⁵ This is [REDACTED] for ClearScore and conservatively [REDACTED] for CreditExpert (the average CreditExpert customer uses the platform for [REDACTED], including the trial month, paying [REDACTED] for each of the other months; this excludes any lead generation revenue).

⁵⁶ See Annex 1 to the Response to the Issues Statement and Annex 4 to the Response to the Annotated Issues Statement.

- 5.16 The Parties note that this analysis – which is entirely conventional and regularly carried out by the CMA in merger cases – has strong parallels to the analysis of the incentives to deteriorate the rate of innovation post-merger.⁵⁷
- 5.17 The Parties note that paragraph 11.40 of the PFs sets out the CMA’s views on the factors influencing the current level of prices on CreditExpert. While the Parties do not dispute that these factors affect the level of CreditExpert’s prices, the CMA has presented no evidence that the Transaction would alter any of them in such a way as to result in significant deterioration of the CreditExpert offer that would be consistent with an SLC. In particular:
- (a) The “value that consumers attribute to different features” should not change post-merger as the features offered (which customers value) will not be deteriorated. [X].
 - (b) Product profitability and appropriate margin as factors that influence price setting [X], and the CMA has not identified any contrary evidence.
 - (c) Competitive forces will still exist post-merger and it is not explained how ClearScore, in particular, affects the pricing level of CreditExpert, which has not changed its price since ClearScore entered the market. [X].
 - (d) Any suggestion that changes to CreditExpert’s promotional mechanics are less likely post-merger is entirely speculative.
 - (e) “The value provided by Experian and others through free products” [X]. However, the PFs do not address the value of these products post-merger.
- 5.18 In conclusion, there is a complete lack of empirical evidence for the conclusion in the PFs that there could be an SLC in relation to CreditExpert pricing. The PFs do not set out a GUPPI framework, do not identify the relevant threshold for a “substantial lessening of competition”, do not identify what the critical diversion would need to be, and contain no direct evidence on any of the key empirical factors. Furthermore, even leaving these points aside, the PFs do not present evidence on how the factors influencing price setting would significantly change following the Transaction. As a result, the finding in the PFs is unsound and unsupported.

⁵⁷ The Parties note that it would be inappropriate to calculate the critical level of diversion associated with a standard 5% or 10% GUPPI for an increase of prices at ClearScore, as given ClearScore is a free product it would not have a meaningful interpretation. Instead, the appropriate economic framework for assessing the incentives to deteriorate ClearScore post-merger are set out in **Appendix 2**.

6. THE PARTIES HAVE NO MARKET POWER ON EITHER SIDE OF THE CCP MARKET

- 6.1 It is worth reiterating that the Parties face sufficient competitive constraints even in a static view of the market. Indeed, the Transaction will lead to an increment in market share in the CCP market of only [5-10]% (Table 10.1 of the PFs). The Parties' combined market shares are a far cry from the market leader, MSM, with market shares of [50-60]% for credit cards and [20-30]% for loans. In these circumstances, it is highly unusual that the CMA could have identified an SLC arising from the Transaction.
- 6.2 The theory of harm articulated by the CMA rests on the unsubstantiated hypothesis that it could be profitable for the Parties to reduce innovation with no significant reduction in user acquisition. This theory, however, is inadequately defined and contradicted by the evidence indicating that the Parties have no market power on either side of the CCP market.

A. Lender side of the market

- 6.3 The CMA's argument that "*given the merger-related competition concern identified on the user side of the platform, in the longer run this may have a negative impact on lender side participants if it were to result in fewer consumers signing up to and being accessible to lenders via the Parties' CCPs*" (paragraph 37 of the PFs) is entirely without foundation. The CMA has found no ability for the Parties to raise prices to lenders post-merger and so the statement above is not a competition concern (a reduction in volumes through one party does not lead to any reduction in competition). Moreover, the CMA does not provide any framework or evidence for exploring this concern.
- 6.4 First, the CMA has acknowledged that the Transaction does not raise any concerns in the lender side of the market, which would indicate that lenders would be able to defeat any hypothetical market power the Parties could have following the Transaction.⁵⁸ In particular, the PFs confirm that lenders are not captive to the Parties and have alternative options (paragraphs 10.110 and 10.135 of the PFs). Lenders have told the CMA that they are unconcerned by the merger on the basis of remaining competition between CCPs and one lender suggested that the Parties may be able to compete more strongly with MSM (paragraph 10.112 of the PFs), which would directly contradict the CMA's conclusion that there are limits to the competitive constraint exerted by MSM (in paragraph 10.65 of the PFs). The concern articulated in paragraph 10.136 of the PFs about a reduction in consumers being available to lenders is very unlikely to arise for the reasons set out above and as it would not be profit maximising for the Parties.
- 6.5 The existence of credible alternatives for lenders is solid evidence that the Parties' combined platform will not have market power over lenders following the Transaction. It would be contradictory to conclude that those same alternatives are not sufficiently credible in the user side of the market (see below).

⁵⁸ The CMA did not assess whether the position of lenders as powerful buyers could function as an additional countervailing constraint over the Parties in the CCP market. The PFs only assess this point in relation to pre-qualification services (paragraph 13.4 of the PFs).

- 6.6 Second, the CMA recognises the two-sided nature of the market, but fails to draw the necessary inferences from the impact of constraints from the lender side of the market on the Parties' incentives to continue innovating to acquire more users. The PFs acknowledge that volume is one of the central factors for lenders when assessing CCPs. However, the CMA does not seem to appreciate that lenders are indifferent as to where that volume comes from, which means that CCPs have every incentive to grow the traffic coming through their platforms.
- 6.7 Third, the ability to convert a large proportion of users into leads (i.e monetisation) is key for the success of CCPs as it increases the revenue per user and consequently improves the return on investment. As acknowledged in the PFs, the monetisation of users is very challenging (paragraphs 10.34 and 10.36 of the PFs and paragraph 3.27 above), [REDACTED]. Therefore, any reduction of innovation efforts would carry a serious risk of reducing the Parties' ability to monetise users and, accordingly, of declining revenues.
- 6.8 Taking these market dynamics into consideration, a strategy under which the Parties stopped or reduced innovation would be doomed to failure and is unsupported by any commercial logic or facts.

B. User side of the market

- 6.9 Competition in the CCP market is focused on attracting new users, given (i) the low levels of engagement of existing users; and (ii) the fact that the vast majority of leads are generated within the first two months of a consumer joining. As a result, having a large user base 'per se' does not give the Parties any market power. Taking each of those conclusions in turn.
- 6.10 First, on user engagement, the vast majority of users [REDACTED]. In addition, [REDACTED]. This evidence is completely in line with the CMA's position in the PFs which acknowledges that converting users is challenging (paragraphs 10.34, 10.36 and 11.8 of the PFs).
- 6.11 As consumers multi-home (paragraph 10.55 of the PFs and paragraph 3.18 of the DCT market study), alternatives to the Parties are a very credible threat in the user side of the market as well as on the lender side of the market (where the PFs accept this constraint), since switching costs for consumers are zero. Indeed, consumers can simply sign up to, or carry out comparisons through, another service without de-registering from their initial CCP provider. This is also evidenced by the fact that, [REDACTED]. The PFs suggest that CCPs with CCTs are perceived in a different way by users. However, as no consumer survey was carried out, there is little evidence to support this assertion especially given the weight of conflicting evidence.⁵⁹
- 6.12 Second, users are far more likely to purchase a product via the CCP in the first two months than any time after that, as Figures 2 and 3 at paragraphs 2.23-2.24 above make clear.

⁵⁹ In particular, that lenders did not have strong views on the relative merits of CCPs with or without CCTs (paragraph 10.108 of the PFs) and that the homing analysis showed [REDACTED].

- 6.13 In summary, these findings show that the Parties face sufficient constraints on both sides of the CCP market, as both lenders and users are able and do turn to alternative providers very easily. Accordingly, the Parties need to continue investing to engage their existing user base and, crucially, continue competing for the marginal new user, regardless of the size of their existing user base.
- 6.14 These basic market dynamics ought to be sufficient in and of themselves to persuade the CMA that an SLC is unlikely to arise from this Transaction. The other factors addressed in this Response put that conclusion beyond any doubt. In particular:
- (a) The CMA has failed to assess correctly whether the entry and expansion of MSM, Credit Karma/Noddle and TotallyMoney is more or less likely to be sufficient to ensure that the Parties will continue to innovate following the Transaction. In fact, the Parties face abundant constraints to cause them to continue to innovate and these moves by rivals have prompted further recent management action by Experian.
 - (b) The innovation concern is poorly articulated in theory and entirely lacking in supporting evidence, as the PFs include no empirical evidence of switching and ignore the Parties' submissions on merger efficiencies.
 - (c) Lenders have raised no concerns about the Transaction and have sufficient alternatives. Given the intense competition for the marginal new user, the Parties will not have any market power on the user side of the market either.
 - (d) [REDACTED].
- 6.15 Experian would therefore strongly urge the CMA to reconsider its position in the PFs, as correcting for any of these errors would result in a finding that the Transaction does not give rise to an SLC.

LIST OF APPENDICES AND ANNEXES

Appendix 1: Share of new user acquisitions; and

Appendix 2: Economic appendix;

Appendix 3: Analysis of internal documents;

Annex 1: [REDACTED]; and

Annex 2: [REDACTED].