

PAYDAY LENDING MARKET INVESTIGATION

Notice of a request for a variation of the terms of reference under Rule 11 of the Competition and Markets Authority Rules of Procedure (CMA 17)

Introduction

1. On 27 June 2013 the Office of Fair Trading (OFT), in exercise of its powers under sections 131 and 133 of the Enterprise Act 2002 (the Act), made a reference to the Competition Commission (CC) for an investigation into the supply of payday lending in the UK.
2. On 1 April 2014, the Competition and Markets Authority (CMA) took over many of the functions and responsibilities of the CC and the OFT. Accordingly, the functions of the CC in relation to the reference were transferred to the CMA, under Schedule 5 to the Enterprise and Regulatory Reform Act 2013 and the Schedule to the Enterprise and Regulatory Reform Act 2013 (Commencement No. 6, Transitional Provisions and Savings) Order 2014 (the Order).
3. In its final decision the OFT stated that:

The evidence relied upon by the OFT does not itself indicate that the features identified above relate to the activities of lead generators and the OFT has not thought it appropriate to conduct research into those activities. However, should the CC [now CMA] in the course of gathering evidence during its detailed investigation, consider that the role of lead generators should be within the scope of their investigation, then it may request that the OFT expands the terms of reference. It is likely that the OFT would need to re-consult on doing so at that stage.
4. On 11 June 2014 the Group, constituted by the Chair of the CC and now continuing as a Group constituted by the Chair of the CMA¹ in respect of the reference (the Group), requested a variation to the terms of reference pursuant to section 135 of the Act, so that the relevant activities of credit

¹ Pursuant to paragraph 2(3) of the Order.

brokers² such as lead generators are brought clearly within the scope of the investigation.

5. In the annotated issues statement published by the Group on 31 January 2014, the Group indicated that the role of lead generators was under consideration.³ The Group's provisional findings, a summary of which has been published today, identify the operation of the lead generator channel as contributing materially to the adverse effect on competition (AEC) that it has provisionally identified. The Group has set out in paragraph 8.5(d) of the provisional findings its main findings on the contribution of lead generators in the market and how they affect the AEC. In particular, the Group has provisionally found that many online customers take out their first loan with a lender via a lead generator, and the value for money represented by different lenders' loan offerings will not be taken into account in the auction process which is used by these intermediaries, who instead sell customer applications to the highest bidder. Furthermore, there is often a lack of transparency in how the service that lead generators provide is described in their websites – particularly the basis on which applications are matched with lenders – and many customers do not understand the nature of the service offered by lead generators. Consequently, lenders acquiring customers through lead generators are unlikely to have a strong incentive to lower their prices and, in some cases, the opposite may be true, in so far as lenders offering cheaper loans to customers may not be able to bid as much for leads. In reaching its provisional view on this matter, the Group had regard to evidence gathered from lead generators and payday lenders, as well as from its own customer survey. Given the nature of the Group's provisional findings, the Notice of possible remedies contemplates a remedy directed at lead generators as part of a potential package of measures to address the AEC and resulting customer detriment.
6. The CMA is now consulting on the request to vary the terms of reference. As part of that request, the Group has proposed wording for the amended terms of reference in the event that the CMA Board agrees to the request.
7. The proposal for revised terms of reference is at the annex to this Notice. The original terms of reference issued on 27 June 2013 are on the [CMA website](#).

² Credit brokers are persons who hold a permission under Part 4A of the FSMA in respect of the regulated activity in Article 36A(a)–(c) of the FSMA 2000 (Regulated Activities) Order 2001 (SI 2001/544) introducing potential borrowers to potential lenders.

³ [Annotated issues statement](#), paragraphs 49 & 50.

Next steps

8. Anyone wishing to comment on the request to vary the terms of reference, or on the wording of the amended terms of reference proposed by the Group, is now invited to provide the CMA with their comments in writing. Persons commenting are requested to provide reasons for any views expressed as to whether the terms of reference should or should not be varied and as to the terms or scope of any variation.
9. These comments should be received by no later than 5pm on Friday 4 July 2014.
10. The CMA reserves the right to publish all or some of the responses to this consultation and persons responding should indicate any reasons as to why their comments may not be published.
11. The CMA will have regard to any such reasons in making its decision.

(signed) DAVID CURRIE
Chairman of the Competition and Markets Authority
11 June 2014

Notes

- (i) A copy of this Notice will be placed on the CMA website on 11 June 2014.
- (ii) Comments should be sent by email to executiveoffice@cma.gsi.gov.uk or in writing to:

The Executive Office
Competition and Markets Authority
Victoria House
Southampton Row
LONDON
WC1B 4AD

Proposal for varied terms of reference

1. The OFT, in exercise of its powers under sections 131 and 133 of the Enterprise Act 2002 (the Act), hereby makes a reference to the Competition Commission for an investigation into the supply of payday lending in the United Kingdom.
2. The OFT has reasonable grounds for suspecting that a feature or a combination of features of the market or markets for the supply of payday loans in the UK prevents, restricts or distorts competition in this market.
3. For the purposes of this reference, payday lending consists of the provision of small-sum cash loans marketed on a short-term basis, not secured against collateral, including (but not limited to) loans repayable on the consumer's next payday or at the end of the month and specifically excluding home credit loan agreements⁴, credit cards⁵, credit unions and overdrafts.⁶
4. For the purposes of this reference, the definition of suppliers of payday loans and the associated definition of the market or markets in paragraph 2 above shall also include credit-brokers⁷ (and other intermediaries) such as lead generators who collect and pass on to providers of payday loans (generally for a fee) details, including personal contact information, of individuals seeking loans.

⁴ As defined in the CC's Home Credit Market Investigation Order 2007.

⁵ Credit-token agreements as defined in the Consumer Credit Act 1974.

⁶ Authorised overdrafts within section 74(1) (b) and overdrawn within section 74A of the Consumer Credit Act 1974.

⁷ Credit brokers are persons who hold a permission under Part 4A of FSMA in respect of the regulated activity in Article 36A(a) to (c) of the FSMA 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) introducing potential borrowers to potential lenders.