

MARKET INVESTIGATION INTO PAYDAY LENDING

Notice of 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 and report on the supply of payday loans.
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.¹
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. In its provisional findings on the reference notified on 11 June 2014, the CMA Inquiry Group (the Group) concluded provisionally that there are features of the relevant market which, either alone or in combination with each other, prevent, restrict or distort competition in connection with the supply of payday lending such that there is an adverse effect on competition (AEC).

¹ 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).

5. On 11 June 2014 the CMA consulted on a request for a variation of the terms of the reference made by the Group, constituted by the Chair of the CC and now continuing as a Group constituted by the Chair of the CMA² in respect of the reference (the Group), pursuant to [section 135](#) of the Act, so that the relevant activities of credit brokers³ such as lead generators are brought clearly within the scope of the investigation.
6. The Group's provisional findings identify the operation of the lead generator channel as contributing materially to the 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.
7. The Notice of possible remedies issued on 11 June 2014 sets out the actions which the Group considers might be taken to by the CMA, or recommended for implementation by others, for the purpose of remedying, mitigating, or preventing the AEC and/or any resulting detrimental effect on customers. This includes one remedy option (Remedy 5) comprising measures to increase the transparency of the role of lead generators. This remedy would require credit-brokers (and other intermediaries) such as lead generators that are active in the UK payday lending market to state explicitly the nature of their business and the commercial relationship that they have with lenders in the market.

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

³ Credit brokers are persons who hold a permission under Part 4A of the Financial Services and Markets Act 2000 (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.

8. The original terms of reference issued on 27 June 2013 are at [Annex A](#) and on the [CMA's webpages](#).
9. The three-week consultation period stipulated by the CMA for a variation of the terms of reference to include lead generators ended on 4 July 2014. A summary of responses received is discussed in paragraph 10.

Summary of responses to consultation

10. The CMA received 19 responses, six of which commented directly on the request for a variation of the terms of reference, and 13 supported aspects of Remedy 5 relating to lead generators. None of the responses disagreed with the request. Of the six direct responses received five supported the request and one said that the terms of reference were a matter for the CMA alone.

Variation of terms of reference

11. Having considered the representations received the CMA has on 22 July 2014 varied the terms of reference pursuant to [section 135\(1\)](#) of the Act.
12. The CMA now therefore, pursuant to [section 172\(1\)\(b\)](#) of the Act, gives notice of the variation so made.
13. The terms of reference as varied by the CMA are as follows:
 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 agreements,⁴ credit cards,⁵ 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.

(signed) DAVID CURRIE
Chairman of the Competition and Markets Authority
22 July 2014

Notes

- (i) A copy of this Notice will be placed on the CMA's webpages on 22 July 2014.

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 the 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.

Original terms of reference

Terms of reference

1. On 27 June 2013, the OFT made the following reference to the CC:
 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 agreements,¹ credit cards,² credit unions and overdrafts.³

(signed) **CLIVE MAXWELL**
Office of Fair Trading
27 June 2013

¹ As defined in the CC's Home Credit Market Investigation Order 2007.

² Credit-token agreements as defined in the Consumer Credit Act 1974.

³ Authorised overdrafts within section 74(1) (b) and overdrawings within section 74A of the Consumer Credit Act 1974.