

## Notice of making an order to vary the Store Cards Market Investigation Order made pursuant to section 161 of the Enterprise Act 2002

### Introduction

1. In March 2006, the Competition Commission (CC) published a report<sup>1</sup> (our 2006 report) on the store cards market in the UK.
2. In July 2006, to remedy the adverse effect on competition (AEC) identified in our 2006 report, the CC implemented a remedy package through the CC's Store Cards Market Investigation Order (the Order), an enforcement order made under [section 161](#) of the Enterprise Act (the Act).<sup>2</sup> The Order came into force on 1 May 2007.

### Change of circumstances identified by the Office of Fair Trading

3. Under [section 162](#) of the Act, the Office of Fair Trading (OFT) has a duty to consider whether, by reason of any change of circumstances, an enforcement order made under sections [158](#), [160](#) or [161](#) of the Act is no longer appropriate and needs to be varied or revoked. In October 2010, the OFT advised the CC that the coming into force of the European Union's Consumer Credit Directive (CCD) constituted a change of circumstances by reason of which it may be appropriate to vary parts of the Order.<sup>3</sup>
4. The CCD<sup>4</sup> established a set of common rules for consumer credit providers on the form, content and manner of provision of pre-contractual, contractual and ongoing information on consumer credit agreements. The CCD is a maximum harmonization directive in part with respect to the areas within its scope. Maximum harmonization means that member states are unable to maintain or introduce requirements that go beyond or are different from those laid down in the directives for matters falling within the scope of the relevant directive.
5. The CCD was transposed into UK law via a group of six Consumer Credit Act 1974 Regulations (CCRs) which came into force on 30 April 2010 and 26 August 2010 and which are required to be complied with in full from 1 February 2011.<sup>5</sup>

### Our decision

6. We have examined the requirements of the Order and the requirements of the CCD and the CCRs to determine if the Order is compatible with the requirements of EU law. We have concluded that the Order is compatible with the CCD and CCRs.<sup>6</sup> We have concluded that no substantial changes to the Order are required but that minor changes should be made to the Order and Explanatory Note to ensure that the Order remains clear and effective. These changes are set out in the Store Cards Market Investigation Order Variation Order 2011 (the Variation Order).

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<sup>1</sup> *Store cards market investigation*, dated 7 March 2006. Pursuant to [section 131](#) of the Enterprise Act 2002 (the Act).

<sup>2</sup> Store Cards Market Investigation Order, dated 27 July 2006.

<sup>3</sup> [www.offt.gov.uk/OFTwork/markets-work/register-orders-undertakings/reviews/](http://www.offt.gov.uk/OFTwork/markets-work/register-orders-undertakings/reviews/).

<sup>4</sup> Directive 2008/48/EC: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:133:0066:0092:EN:PDF>.

<sup>5</sup> The Consumer Credit (EU Directive) Regulations 2010 (SI 2010/1010); The Consumer Credit (Total Charge for Credit) Regulations 2010 (SI 2010/1011); The Consumer Credit (Disclosure of Information) Regulations 2010 (SI 2010/1013); The Consumer Credit (Agreements) Regulations 2010 (SI 2010/1014); The Consumer Credit (Amendment) Regulations 2010 (SI 2010/1069); and The Consumer Credit (Advertisements) Regulations 2010 (SI 2010/1970).

<sup>6</sup> A 'store card account' and the accompanying 'store card', as defined in the Order, are within scope of the CCD's definition of 'a credit agreement'.

7. First, although we do not consider it necessary to amend the Order, we have made clear in paragraph 16 of the Explanatory Note that the requirement for direct debit provision in Article 5(2) of the Order is not part of the Standard European Consumer Credit Information (SECCI) required by Article 5 of the CCD and is made available with the store card application form.
8. Article 5(2) of the Order requires information on direct debit provision<sup>7</sup> to be made available to the customer with the application form for a store card or after an application for a store card has been made, provided that the application form contains a direct debit notice for completion).
9. Article 5 of the CCD requires that in good time before a consumer is bound by a credit agreement, the consumer must be given certain specified information in a prescribed format (the SECCI) in order to make an informed choice between offers. Article 5(1) (a) to (s) sets out the prescribed information which must be provided in a SECCI. Requirements (a) to (s) do not include information regarding method of payment. However, the last paragraph of Article 5(1) CCD (which is not numbered) says: 'Any additional information which the creditor may provide to the consumer shall be given in a separate document which may be annexed to the SECCI form.' Article 5(6) of the CCD also contemplates additional information in the form of an explanation of the SECCI which may be given to a consumer in light of the consumer's particular circumstances.
10. In our view, Article 5 of the CCD does not prevent a consumer from receiving information on methods of payment prior to entry into a contract for consumer credit and does not preclude the giving of an application form for a credit account containing information on methods of payment of the account.
11. Second, we consider that it is beneficial to change the definition of 'current APR' in Article 2 of the Order to refer to the Consumer Credit (Total Charge for Credit) Regulations 2010, which has been introduced since the Order was made.

### **Notice of making an order to vary the Store Cards Market Investigation Order**

12. On 6 January 2011, in accordance with paragraph 2 of Schedule 10 to the Act as applied by section 165 of the Act, the CC gave notice of its intention to vary the Store Cards Market Investigation Order (the Notice).
13. The CC did not receive any representations following publication of the Notice.
14. The CC now gives notice of the making of the Variation Order, which is published alongside this Notice. At the same time, we have also published for ease of reference an updated version of the Order and Explanatory Note showing the variations.

Peter Freeman  
*Group Chairman*  
Competition Commission  
10 February 2011

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<sup>7</sup>'Direct debit provision' is defined in the Order as 'the information or documentation that enables or facilitates the establishment of a direct debit facility'.

## Store Cards Market Investigation Order Variation Order 2011

### Background

1. In March 2006, the Competition Commission (CC) published a [report](#) of its investigation of the store cards market in the UK. The CC found that there was a detrimental effect on customers resulting from the adverse effect on competition and set out a remedy package intended to address the adverse effect on competition which it had found.
2. The CC decided to implement the remedy package through an enforcement order made under [section 161](#) of the Enterprise Act 2002 (the Act). The Store Cards Market Investigation Order came into force on 1 May 2007.
3. Under [section 162](#) of the Act, the Office of Fair Trading (OFT) has a duty to consider whether, by reason of any change of circumstances, an enforcement order made under sections [158](#), [160](#) or [161](#) of the Act is no longer appropriate and needs to be varied or revoked. The OFT advised the CC that the coming into force of the Consumer Credit Directive (CCD) constituted a change of circumstances by reason of which it may be appropriate to vary parts of the Store Cards Market Investigation Order.
4. The CCD has been transposed into UK law via a group of six Consumer Credit Act 1974 Regulations which came into force on 30 April 2010 and 26 August 2010 and which are required to be complied with in full from 1 February 2011.
5. The CC has decided to make an order varying the Store Cards Market Investigation Order to take account of the change of circumstances advised by the OFT.
6. On 6 January 2011 the CC in accordance with paragraph 2 of Schedule 10 to the Act as applied by section 165 of the Act gave notice of its intention to vary the Store Cards Market Investigation Order (the Notice).
7. The CC did not receive any representations following publication of the Notice.
8. The CC makes this order exercising its powers under section 161(4) of the Act for the purpose of varying the Store Cards Market Investigation Order.

### The Order

The CC makes this order in exercise of the powers it has in [section 161](#) (4) of the Enterprise Act 2002, for the purpose of varying the Store Cards Market Investigation Order having received advice from the OFT that by reason of a change of circumstances variation or revocation is appropriate. The Store Cards Market Investigation Order was made to remedy, mitigate or prevent the adverse effect on competition and any detrimental effects on customers so far as they have resulted, or may be expected to result, from the adverse effect on competition specified in the report of the CC entitled *Store cards market investigation* (7 March 2006).

## PART 1

### 1. Citation, Commencement and Purpose

- 1.1 This order may be cited as the 'Store Cards Market Investigation Order Variation Order 2011'.
- 1.2 This order shall come into force on 10 February 2011 which is the date this order is signed.
- 1.3 The purpose of this order is to vary the Store Cards Market Investigation Order.

### 2. Interpretation

- 2.1 In clause 2 of the Store Cards Market Investigation Order, the definition of '**current APR**' is varied as follows:
  - (a) insert 'or the Consumer Credit (Total Charge for Credit) Regulations 2010 (as applicable)' immediately following 'Consumer Credit (Total Charge for Credit) Regulations 1980'; and
  - (b) insert 'or the Schedule to the Consumer Credit (Advertisements) Regulations 2010 (as applicable)' immediately following 'Schedule 1 to the Consumer Credit (Advertisements) Regulations 2004'.

Signed by authority of the CC

Peter Freeman  
*Group Chairman*  
Competition Commission  
10 February 2011