ARTICLE

FCA's interim report finds credit card competition is working fairly well

The Financial Conduct Authority (FCA) published the interim findings of its credit card market study on 3 November 2015. The interim report finds that competition is working fairly well for most consumers but it also identifies a few areas of potential concern. It therefore sets out a range of potential remedies to make the market work better, including measures to reduce problematic credit card debt.

The FCA seeks feedback on its initial observations and the potential remedies by 8 January 2016.

BACKGROUND

The FCA assumed responsibility for the regulation of consumer credit in April 2014 and the credit card market is one of the largest areas of unsecured lending under its remit. There are currently around 30 million consumers holding at least one credit card, together accounting for an estimated £61 billion of outstanding balances.

After it took over consumer credit regulation, the FCA announced its intention to undertake a competition review into the UK’s £150 billion credit card market. The terms of reference for the review (or market study) were published on 25 November 2014. The study is focused on credit card services that are offered to retail consumers by credit card providers through a range of distribution channels.

INTERIM FINDINGS

The FCA’s study centres around three main areas: (i) the extent to which consumers drive effective competition through shopping around and switching; (ii) how firms recover their costs across different cardholder groups and the impact on the market; and (iii) the extent of unaffordable credit card debt (i.e. whether some consumers are over-borrowing or under-repaying and whether firms have incentives to provide unaffordable credit resulting in consumer harm).
Shopping around and switching
The FCA’s study has provisionally found that:

- in most of the market, competition is working fairly well for consumers. Consumers value the flexibility offered by credit cards and use them in different ways. There are a number of firms offering a range of products to meet these varied consumer preferences and they are competing strongly. Consumers are engaged and willing to switch. The FCA’s evidence suggests that half of those taking out a credit card shopped around first and around 14% of existing credit card consumers took out a new card in 2014;

- despite shopping around, however, consumers do not always manage to choose the best credit card for their needs because, for example: (i) they have not been able to effectively compare the different cards available; and/or (ii) they have given insufficient weight to certain product features when making their decisions;

- competition is primarily focused on a small number of features such as promotional offers and rewards with consumers while often neglecting other important features, such as long-term interest rates and other fees and charges;

- price comparison websites (PCWs) play an important role in the market but there are limitations to their effectiveness in assisting consumers because, for example, ranking criteria are not sufficiently personalised; and

- higher credit risk consumers have access to a more limited range of products and providers than lower risk consumers as a result of lower commercial viability and higher reputational and regulatory risks associated with higher risk and higher cost lending. These consumers also have concerns about whether other firms will offer them a credit card and are therefore discouraged from shopping around.

Firms’ business models and cost recovery
The FCA’s interim findings are that:

- cross-subsidisation in the credit card market does not materially restrict entry or expansion in the market. There is no evidence to suggest that firms are targeting particular groups of consumers or behavioural types with the intention of cross-subsidising others; and

- as to the potential impact of the cap on Interchange Fees to be brought in by the Interchange Fee Regulation, firms with higher levels of transacting consumers will face proportionally bigger losses in income. Firms will aim to respond to this challenge by offering more products with a small or increased annual fee and/or diluting reward schemes.

1 On 29 April 2015 the European Parliament and the Council of the EU adopted the Interchange Fee Regulation, which caps interchange fees, i.e. fees paid by the retailer’s bank to the cardholder’s bank for every individual transaction, as of 9 December 2015
Unaffordable credit card debt
The interim findings further indicate that:

- the FCA’s study has identified a mixture of people struggling under a debt burden that has become problematic and who are paying more in debt service cost and taking longer to pay off debt than they need to;\(^2\)

- whilst some bad debt is a feature of all credit activity, there are patterns of consumer behaviour that tend to lead to over-borrowing and under-repayment (e.g. optimism bias). The FCA therefore assessed whether firms have a commercial incentive to respond to these biases by over-lending or under-collecting; and

- firms make losses on defaulting consumers and therefore have a strong incentive to avoid lending that has this outcome. Consumers with systematic minimum payment behaviour or high levels of utilisation are, however, profitable, which suggests that firms have little incentive to screen these consumers out or to intervene in these instances.

POTENTIAL REMEDIES
The FCA has also identified a range of potential remedies to make the market work better for consumers. Its proposals relate to two areas:

- **Shopping around and switching** – the FCA is considering the need for remedies to improve consumers’ ability to make better decisions and boost the role of third party intermediaries, including: (i) with the consumers’ consent, opening access to their credit card usage data to other market participants to allow bespoke quotations linked to the consumers’ patterns of spending and repayment; and (ii) providing timely information reminders for consumers to repay their credit card debt or shop around before promotional offers expire.

- **Unaffordable credit card debt** – the FCA has also identified possible measures to reduce over-borrowing and promote prompt repayment, including: (i) increased disclosures in monthly statements, for example, on how long it will take the consumer to repay the current balance; (ii) providing a wider range of pre-set repayment options (such as different pre-set payment options for regular automated payments, for example, reflecting target time to repay); (iii) providing timely information to remind consumers to consider how much they are borrowing; (iv) giving consumers more control during the lifetime of the credit card on variations; and (v) earlier forbearance procedures (to identify and address potentially problematic debt sooner, before consumers miss payments and accumulate interest and charges that could have been avoided).

NEXT STEPS
The FCA seeks feedback on its interim findings, including on the need for, and form of, potential remedies, by 8 January 2016. It expects to publish its final report in spring 2016. If appropriate, it will consult (at the same time or subsequently) on any proposed remedies.

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\(^2\) For example, the FCA found that an estimated 6.9% of cardholders were in arrears or default; a further 6.6% have persistent high levels of credit card debt which they may be struggling to repay, and another 5.2% make systematic minimum repayments while incurring interest.
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## SOURCES

FCA, *Interim Report on credit card study*, 3 November 2015


Mergers

CMA PHASE 1 DECISIONS

1. **CMA approves Stagecoach Devon / Plymouth Depot merger** – The Competition and Markets Authority (CMA) has published its decision not to refer the anticipated acquisition by Stagecoach Devon Limited of the Plymouth Depot Business and certain associated assets of First Devon & Cornwall Limited for a Phase 2 investigation. The parties were found to overlap in the supply of commercial and tendered bus services in the South Devon area. However, the CMA found that there was little competitive interaction between them, with the result that the merger would not give rise to a realistic prospect of a substantial lessening of competition (cma.gov.uk, 4 November 2015).

CMA PHASE 2 DECISIONS

2. **CMA clears the completed acquisition by Pennon Group plc of Bournemouth Water Investments Limited** – The CMA has approved the completed acquisition by Pennon Group plc (the owner of South West Water Limited) (South West Water) of Bournemouth Water Investments Limited, after making its first mandatory reference under the Water Industries Act 1991. The Water Services Regulation Authority (Ofwat) did not agree with the CMA’s provisional finding that the merger would not prejudice Ofwat’s ability to make comparisons between water enterprises and, though it did not oppose the merger, had advised the CMA to seek appropriate remedies to address its concerns. The CMA, however, confirmed its provisional conclusions and approved the acquisition without considering remedies. South West Water separately gave voluntary commitments to Ofwat that it would enact the following measures: (i) improving services, innovation and reducing bills for customers; (ii) separately reporting the merging parties’ regulatory performance; and (iii) keeping separate the merging parties’ brands and business plans (cma.gov.uk, ofwat.gov.uk, 5 November 2015).

FINAL UNDERTAKINGS

3. **CMA accepts final undertakings in respect of the acquisition by Reckitt Benckiser of the K-Y brand** – The CMA has accepted final undertakings from Reckitt Benckiser Group plc, Reckitt Benckiser (Brands) Limited (together, Reckitt Benckiser) and Johnson & Johnson Consumer Inc. (Johnson & Johnson) in respect of Reckitt Benckiser’s acquisition of the K-Y brand from Johnson & Johnson. In its final report, the CMA found that there would be a substantial lessening of competition in relation to the UK market for the supply of personal lubricants to grocery retailers and national pharmacy chains as a result of the acquisition and decided that an appropriate remedy would be for the K-Y brand in the UK to be licensed to a third party for a total period of eight years. The parties gave undertakings to this effect, and acceptance of the undertakings is subject to the CMA’s approval of the licensee or, if a licensing agreement is not concluded within the specified time period, subject to the appointment of a monitoring trustee (cma.gov.uk, cma.gov.uk, 4 November 2015).

OTHER DEVELOPMENTS OF INTEREST

4. **CMA publishes new guidance on its procedure and assessment of water and sewerage mergers** – The CMA has published new guidance on the merger control regime for mergers involving two or more water and sewerage or water-only companies in England and Wales in light of the changes to the water merger regime that come into effect later this year. The guidance covers merger control processes, as well as the CMA’s approach to analysing mergers, assessing the impact on customers and its approach to remedies (cma.gov.uk, 13 November 2015).
Market Investigations

5. **CMA publishes the provisional findings of its remittal investigation into the private healthcare market in central London** – The CMA has published the provisional findings of its remittal investigation into the private healthcare market in central London. The CMA has provisionally found that high concentration in central London and high barriers to entry and expansion are leading to an adverse effect on competition and increased prices for customers. In particular, the CMA has provisionally found that Hospital Corporation of America’s (HCA) high market share, combined with high barriers to entry and expansion, results in HCA facing weak competitive constraints and this leads to HCA charging higher prices to private medical insurers than would be expected in a well-functioning market. The CMA has published a notice setting out possible structural and behavioural remedies for public consultation and requests views by 3 December 2015 (cma.gov.uk, 10 November 2015).

General Competition

6. **CMA publishes speech on the UK steel tanks criminal cartel case** – The CMA has published a speech given by Stephen Blake, the CMA’s Senior Director – Cartels and Criminal Group, discussing the recent trial of the UK steel tanks criminal cartel and the implications for UK criminal cartel enforcement. Mr Blake sets out the background and rationale of the criminal cartel offence and, drawing on examples of cases brought by the CMA, discusses whether the UK has an effective criminal cartel regime. In Mr Blake’s view, the steel tanks case represents an "important staging post" in the UK's development of an effective criminal cartel regime and that the CMA is well-placed to pursue this objective (cma.gov.uk, 13 November 2015).

7. **CMA publishes speech on approach to competition enforcement** – The CMA has published a speech given by Michael Grenfell, the CMA’s new Executive Director for Enforcement, on the CMA's approach to tackling cartels and anti-competitive practices. Mr Grenfell highlighted the CMA's commitment to fairness in its dealings with businesses and individuals, the safeguards in place to guarantee fair and robust investigations and the CMA's objectives to address cases, both large and small, more efficiently and to act as an effective deterrent from future anti-competitive conduct (cma.gov.uk, 12 November 2015).

Regulatory

ENERGY

8. **Ofgem confirms decision to fine Utilita for breach of customer transfer obligations** – The Office of Gas and Electricity Markets (Ofgem) has confirmed the financial penalty it will impose on Utilita Energy Limited (Utilita) for breach of certain provisions contained in Standard Licence Condition (SLC) 14 of its gas and electricity supply licences. In particular, Utilita breached its obligations (subject to certain conditions) not to block requests from domestic customers to transfer to other suppliers. Utilita admitted the breaches and Ofgem has decided to impose a nominal fine of £1 to be deducted from the £450,000 that Utilita has agreed to pay to the UK debt charity StepChange. Utilita will also refund up to £110,000 to customers who suffered financial loss from being wrongly prevented from switching (ofgem.gov.uk, 12 November 2015).

9. **Ofgem announces its intention to fine E.ON for its breach of metering obligations** – Ofgem has proposed to fine E.ON UK Plc and E.ON Energy Solutions Ltd (together, E.ON) for failure to comply with SLC 12 of its electricity supply licence. Under SLC 12.21, licensees must not, from 6 April 2014, supply electricity to relevant premises other than through an advanced meter. SLC 12.22 provides that this obligation falls away if the licensee is unable to install or arrange for the installation of an advanced meter at those premises, having taken all reasonable
steps to do so. In breach of the obligation under SLC 12.21, E.ON was found to have supplied electricity to relevant premises through 7,011 meter points, other than through an advanced meter, and could not demonstrate that the exception under SLC 12.22 applied. Ofgem has proposed a nominal fine of £2 to be deducted from the £7 million that E.ON has agreed to pay in consumer redress to the Carbon Trust, to help small and medium-sized enterprises save energy. E.ON will pay an additional £7 million if it does not achieve an installation for outstanding meter points by 2 November 2016 (ofgem.gov.uk, 9 November 2015).

10. Ofgem proposes to fine Economy Energy for its breach of licence marketing obligations – Ofgem has proposed to fine Economy Energy Trading Limited (Economy Energy) for failing to meet the standards set by SLC 23 and 25 of its gas and electricity supply licences for communicating to customers key contractual terms, charges, future price increases and price comparisons with other energy suppliers. Economy Energy admitted the breaches and Ofgem has proposed a nominal fine of £1 to be deducted from the £250,000 to be paid by Economy Energy to Citizens Advice. The redress payment will be used towards providing advice and information to vulnerable customers with prepayment meters. Economy Energy will also attempt to trace and refund customers who lost out financially due to the SLC breaches (ofgem.gov.uk, 5 November 2015).

11. Ofcom publishes its final determination of the dispute brought by Gamma and Vodafone against BT – The Office of Communications (Ofcom) has published its final determination of the dispute, brought by Gamma Telecom Holdings Limited (Gamma) and Vodafone Limited (Vodafone) against British Telecommunications plc (BT), finding that BT had overcharged Gamma and Vodafone for Average Porting Conveyance Charges (APCC). APCCs are charges that are factored into the charges levied between communication providers (CP) to recover costs associated with enabling subscribers to retain their telephone numbers when they switch between CPs. Under General Condition 18.5(a) of Ofcom’s General Conditions of Entitlement (which apply to all communications networks and service providers), APCCs must be reasonable, cost oriented, and based on the incremental costs of providing portability. Ofcom found that BT had overcharged Gamma and Vodafone for APCCs and ordered BT to amend its APCCs accordingly and repay the amount of overcharge with interest (ofcom.org.uk, 11 November 2015).

12. Ofcom publishes provisional determination of the dispute between Vodafone and BT – Ofcom has published for consultation its provisional determination of the dispute between Vodafone and BT relating to BT’s use of Deemed Consent and non-payment of service level guarantee payments for Ethernet services. Vodafone had alleged that BT had misused a clause in its Connectivity Service Agreement (CSA), allowing it to deem Vodafone to have consented to extend the contractual delivery dates for the provision of Ethernet services. Ofcom has provisionally determined that certain of BT’s actions are not in accordance with the CSA or BT’s regulatory obligations. Ofcom invites comments on its provisional conclusions by 5pm on 20 November 2015 (ofcom.org.uk, 6 November 2015).

13. Ofcom publishes its advice to the Secretary of State for Culture, Media and Sport on a measurement framework for media plurality – In response to a request from the Secretary of State for Culture, Media and Sport, Ofcom has published its advice for developing a framework for assessing media plurality in the UK and each of the nations. Media plurality is aimed at ensuring that citizens remain informed of a wide range of viewpoints, while preventing too much influence over the political process being exercised by any one media owner. The framework measures plurality across four elements: (i) the availability of a number of different news sources on each media platform;
(ii) quantifying the consumption of news sources; (iii) measuring the impact and influence of news sources on consumers; and (iv) a description of the qualitative differences between different news sources (ofcom.org.uk, 5 November 2015).

Procurement

14. The Crown Commercial Service publishes a note on procurement of steel in major projects – The Crown Commercial Service has published guidance to central government departments on the procurement of steel for projects with a value of £10 million or more. This guidance reflects the provisions in the Public Contracts Regulations 2015 and is aimed at promoting effective competition for UK suppliers of steel. The note sets out the following priorities: (i) signalling future demand for steel; (ii) early engagement with the market to incentivise effective competition; (iii) transparency in supply chains and advertising opportunities to participate in supply chains; (iv) assessing potential suppliers’ compliance with health and safety and employment related legislation; (v) ensuring value for money across the whole life of the project; and (vi) evaluating social and environmental benefits and impacts (ccs.gov.uk, 3 November 2015).

Consultations

15. Ofcom consults on its review of BT’s cost attribution methodologies (ofcom.org.uk, 13 November 2015).

16. Ofcom consults on revisions to charge controls for leased line services (ofcom.org.uk, 13 November 2015).


18. Ofgem consults on potential RIIO-T1 and GD1 mid-period review (ofgem.gov.uk, 12 November 2015).


21. DECC consults on the government’s proposal to amend the Contracts for Difference (Definition of Eligible Generator) Regulations (decc.gov.uk, 4 November 2015).

Publications

22. DEFRA publishes summary of responses to the consultation on the Government’s charging guidance to Ofwat (defra.gov.uk, 9 November 2015).

23. DECC publishes response to the European Commission’s consultation on a new energy market design (decc.gov.uk, 6 November 2015).