

Notice of making an order to vary the Home Credit Market Investigation Order 2007 made pursuant to section 161 of the Enterprise Act 2002

Introduction

1. In November 2006, the Competition Commission (CC) published a report¹ (our 2006 report) on its investigation into the home credit market in the UK.
2. In September 2007, to remedy the adverse effect on competition (AEC) identified in our 2006 report, the CC implemented a remedy package through the CC's Home Credit Market Investigation Order 2007 (the Order), an enforcement order made under [section 161](#) of the Enterprise Act 2002 (the Act).² On 4 October 2007, the provisions of the Order came into force. The Order required home credit lenders to:
 - (a) share customer repayment data with other potential lenders. This was achieved by lenders having data sharing contracts with certain credit reference agencies. (Part 2: Articles 11 to 13);
 - (b) publish, on a 'LendersCompared' website set up for the purpose (www.lenderscompared.org.uk), information, notably price information, about the loans which they offer to customers. (Part 3: Articles 14 to 21);
 - (c) provide an account statement, at most every three months, free of charge, when any of their borrowers asks for one. (Part 4: Articles 22 and 23);
 - (d) comply with an adaption of the Consumer Credit (Early Settlement) Regulations 2004 regarding early settlement rebates. The terms were tailored to the circumstances of home credit. (Part 5: Articles 24 to 26); and
 - (e) provide further information in advertisements, in the payment books given to borrowers and in response to specific requests for information. (Part 6: Articles 27 to 32).

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 or revoke parts of the Order.³
4. The CCD⁴ 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

¹Home credit market investigation, dated 28 April 2006.

²Home Credit Market Investigation Order 2007, dated 13 September 2007.

³www.offt.gov.uk/OFTwork/markets-work/register-orders-undertakings/reviews/.

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

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 were required to be complied with in full from 1 February 2011.⁵ The OFT, together with local trading standards offices, are responsible for enforcing the CCRs. The Department for Business, Innovation and Skills (BIS) issued guidance on the implementation of the CCRs in August 2010.⁶
6. Although the CCD applies to most consumer credit agreements including home credit agreements involving credit for 200 euros (about £160) or more, as set out in more detail below, the implementing regulations were extended to apply to agreements which were outside the scope of the CCD including those involving credit of less than 200 euros.
7. In its advice to the CC, the OFT advised that parts of the Order concern matters that are harmonized by the CCD and may diverge from its provisions. Articles 17 to 19 of the Order, which require home credit lenders to publish price information on the LendersCompared website, were identified by the OFT as potentially exceeding the requirements of the CCD. The OFT recommended that the CC consider whether those and other parts of the Order should be revoked or varied so as to remove any conflict with the CCD.

Our decision

8. In reaching our decision, we have considered the advice of the OFT and discussed the requirements of the CCD and CCRs with BIS and the extent to which these overlap with the Order. In this section, we set out:
 - (a) the relevance of the CCD and the CCRs to the Order;
 - (b) aspects of the Order which we have varied;
 - (c) aspects of the Order which we have not varied; and
 - (d) our consideration of the effectiveness and proportionality of the variations.

The relevance of the CCD and the CCRs to the Order

9. Article 2 (c) of the CCD sets out that the CCD does not apply to credit agreements involving a total amount of credit less than 200 Euros (about £160). Our 2006 report stated that 34 per cent of home credit loans were less than £250.⁷ A significant percentage of home credit loan agreements are not therefore captured by the CCD.
10. However, in order to maintain the coverage and integrity of existing UK consumer credit legislation, namely the Consumer Credit Act 1974 (CCA), and avoid unnecessary complexity and duplication/dual regimes, the UK (with some exceptions

⁵The 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).

⁶Consumer Credit Regulations: Guidance on the regulations implementing the Consumer Credit Directive:

www.bis.gov.uk/assets/biscore/consumer-issues/docs/c/10-1053-consumer-credit-directive-guidance.pdf.

⁷2006 report, Table 2.1.

and a degree of flexibility) applied the modifications required by the CCD to all credit agreements covered by the CCA. This means that the requirements of Articles 4, 5, 9, 10, 11, 13, 14, 16, 17 and 21 of the CCD do apply for small loans of less than £160.⁸

11. All home credit loans are therefore covered by the requirements of the CCRs.

Aspects of the Order which we have varied

12. We have found it appropriate to make a number of minor variations to the Order, which we have explained in the remainder of this Notice and set out in the Home Credit Market Investigation Order 2007 Variation Order 2011 (the Variation Order). We consider first the information to be published on the website set out in Articles 14 to 21, and then consider other amendments to the Order which we have also made.

Information to be published on the website (Part 3: Articles 14 to 21)

13. Articles 14 to 21 set out various aspects of information that are required to be published on the LendersCompared website. Display of this information was considered to amount to 'advertising' in our 2006 report. In paragraph 9.62 of our 2007 report, it was acknowledged that any display of 'information displayed on the website would need to comply with the advertising regulations'.

CCD requirements

14. Article 4 of the CCD requires that 'any advertising for credit agreements which indicates an interest rate or any figures relating to the cost of the credit to the consumer shall include the standard information in accordance with this Article...The standard information shall specify in a clear, concise and prominent way by means of a representative example:
 - (a) the borrowing rate, fixed or variable or both, together with particulars of any charges included in the total cost of the credit to the consumer;
 - (b) the total amount of credit;
 - (c) the annual percentage rate of charge;
 - (d) if applicable, the duration of the agreement;
 - (e) in the case of credit in the form of deferred payment for a specific good or service, the case price and the amount of any advance payment; and
 - (f) if applicable, the total amount payable by the consumer and the amount of the instalments.'
15. In Article 3 of the CCD:
 - (a) the 'total cost of the credit to the consumer' is defined as all the costs, including interest, commissions, taxes and any other kind of fees which the consumer is required to pay in connection with the credit agreement and which are known to the creditor, except for notarial costs. The term 'cost of credit to the consumer' is

⁸See Explanatory Memorandum to the CCRs, www.legislation.gov.uk/ukxi/2010/1013/pdfs/ukxiem_20101013_en.pdf.

not separately defined; we have taken it to mean the same as the total cost of credit to the consumer; and

(b) the 'total amount of credit' is defined as the ceiling or the total sums made available under a credit agreement.

16. The same definitions are used in the Consumer Credit (Advertisements) Regulations 2010.

Overlap between the Order and the CCD

17. It was acknowledged in our 2006 report that any display of information on the LendersCompared website would need to comply with credit advertising regulations. Accordingly, given the requirements of the CCD and the CCRs, the website will need to display interest rates and cost of credit information by way of a representative example. We considered whether this overlap between the CCD and the CCRs and the Order had any impact on Articles 14 to 21.

- *Article 14*

18. In Article 14 of the Order, to ensure consistency with the CCRs, we have added the term 'representative APR' by reference to the Consumer Credit (Advertisements) Regulations 2010. There are also some other minor amendments to Article 14, as set out in the Variation Order.

- *Articles 17 to 19*

19. The information requirements of Part 3 of the Order are set out in Articles 17 to 19.
20. We found that Article 4 of the CCD ensures that advertisements for consumer credit which include either the interest rate or cost of credit information must include information that is represented consistently by way of a representative example. In our view, Article 4 of the CCD does not preclude requiring a credit provider to provide information on the cost of credit in addition to that required to be provided by way of a representative example. We therefore found that the requirements in the Order to display price and other information in a certain way do not conflict with the advertising requirements of the CCD.
21. Some of the requirements of the representative example required by Article 4 of the CCD are duplicated by the Order. In our view, these requirements can be achieved by Article 17 of the Order simply referring to the requirements of the CCRs:
- (a) Article 17(2)(d) on the APR is duplicated by Article (4)(2)(a) of the CCD. We have therefore deleted Article 17(2)(d) of the Order.
- (b) Article 17(3)(a) on the name and the postal address of the advertiser is duplicated by Article 3(c) and 4(b) of the Consumer Credit (Advertisements) Regulations 2010. We have therefore deleted Article 17(3)(a) of the Order.
22. Article 17(2)(a) on the duration of credit agreements is in part duplicated by Article 4(2)(d) of the CCD. However, we have retained this requirement because it is important to ensure that consumers are not misled contrary to the Consumer Protection from Unfair Trading Regulations 2008. CCD Article 4(4) makes clear that Article 4 is without prejudice to the Unfair Commercial Practices Directive.

23. Some other minor amendments have been made to Articles 17 to 19 to reflect the changes made in other articles.⁹
24. In our view, for the reasons set out in paragraph 20, all other requirements in Articles 17 to 19 are outside the scope of the CCD and we have retained those requirements.

Other amendments to the Order

25. We have made the additional changes to the Order set out in paragraphs 15 and 31 to 34 of the OFT's advice to ensure the Order is consistent with the CCD and CCRs. These changes include:
 - (a) Article 2(1)—'the Advertisements Regulations' has been redefined as 'the Consumer Credit (Advertisements) Regulations 2010'; and
 - (b) Articles 27, 29, 30 and 31 and Schedule 1—these have been subject to minor changes to refer to the 'representative APR', to refer to the Consumer Credit (Advertisements) Regulations 2010 as necessary, and to delete spent clauses.
26. The changes are set out in full in the Variation Order.

Aspects of the Order which we have not varied

27. In this section we set out those aspects of the Order which in our view do not require variation. We consider first the part of the Order regarding early settlement rebates, which the OFT raised as a possible area that might need to be amended. For clarification, we then set out those other parts of the Order which we believe to be unaffected by the CCD and CCRs.

Early settlement rebates (Articles 24 to 26)

28. Articles 24 to 26 set out the changes that were made to the Consumer Credit (Early Settlement) Regulations 2004 to provide specific early settlement entitlements for home credit customers.

CCD requirements

29. Article 16 of the CCD, which relates to early repayment, provides that a consumer shall be entitled at any time to discharge fully or partially his obligations under a credit agreement and shall be entitled to a reduction in the total cost of the credit. This reduction consists of the interest and the costs for the remaining duration of the contract less any compensation to the creditor for possible costs linked directly to the early repayment.

Overlap between the Order and the CCD

30. For the reasons set out in paragraphs 26 to 28 of the OFT's advice, it is also our view that it is permissible for Article 25 of the Order to provide for a settlement date which is 13 days following receipt of notice by the lender and with no deferment of the settlement date.

⁹On the advice of the OFT, in Article 17 we have also changed 'rounded up to the nearest penny' to 'rounded to the nearest penny' as we were told that the current wording has caused some difficulties with the accuracy of the information appearing on the website.

31. We have also considered whether the CCD requires the calculation of early settlement rebates to be based on actual payments rather than contractual payments, as mentioned in paragraph 29 of the OFT's advice. In our view, Article 16 of the CCD draws no explicit link to early settlement rebates being based on actual rather than contractual payments and we do not therefore find it necessary to make a variation to the Order to this effect.

Other unaffected articles

32. We have also concluded that the other articles in the Order do not overlap with the CCD and do not need amending. The requirements of these articles are outside the scope of the CCD and the CCRs. Paragraph 35 of the OFT's advice sets out which articles these are.

Effectiveness and proportionality

33. In our view, the changes we have made to the Order do not materially alter the effectiveness of the Order as varied. In addition, the changes do not create any significant costs in addition to those already created by the CCD and the CCRs. We therefore find that the Order as varied continues to remain an effective and proportionate remedy to the AEC and detrimental effects.

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34. On 19 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 Home Credit Market Investigation Order 2007 (the Notice).
35. The CC did not receive any representations following publication of the Notice.
36. The CC now gives notice 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 accompanying Explanatory Note including the variations.

Peter Freeman
Group Chairman
Competition Commission
24 February 2011