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Dear Sir / Madam

The FSA has read with interest the Competition Commission's (CC) provisional decision report following remittal of the Point-of-sale Prohibition (POSP) Remedy by the Competition Appeals Tribunal.

We welcome the Commission's provisional decision to retain the POSP remedy for the significant portion of the PPI market. The conclusions of the CC's further analysis are consistent with our assessment of the PPI market. We maintain that addressing the point of sale advantage of credit distributors through temporal separation of the credit and insurance transactions will allow consumers time to evaluate their purchase and the opportunity to shop around for PPI, and to make use of tools such as the PPI comparison tables.¹

Whilst we agree that a possible consequence of a POSP may be a reduction in the number of policies sold, we consider that this will not necessarily lead to an increase in consumer detriment. Indeed, it is our view that any loss of consumer convenience will be outweighed by a reduction in the potential for consumer detriment by the reducing the risk of firms selling PPI which customers do not want or need at the point of sale of credit. (An example of such a risk, identified in the research undertaken for the CC by both BRMB and Accent, is that a significant number of PPI customers believe that failure to take out PPI at the point of sale will adversely effect their credit application.)

We note the Commission's assessment that the market for PPI products has become increasingly concentrated, with consumer demand for PPI products declining as the supply of primary credit products has fallen, and the challenging economic conditions have contributed to a rising number of claims. However, we agree with the CC's conclusion that despite these factors and continuing regulatory action the underlying problems identified in the market have not abated.

¹The tables were established by the FSA in 2008 but since April 2010 they come under the auspices of the new Consumer Financial Education Body¹ (CFEB). CFEB is an independent body, established by the Financial Services Authority as required by the Financial Services and Markets Act 2000 (as amended by the Financial Services Act 2010).

Retail PPI remedies

Removal of retail PPI from the scope of the POSP

Whilst the FSA has not undertaken any specific analysis of PPI sold to protect repayments for purchases made through home catalogues (Retail PPI), we have considered it as part of our thematic work on PPI, and have taken enforcement action against a firm selling retail PPI.¹ We have no reason to believe that the problems associated with sales of other PPI products do not exist in the retail PPI market. The FSA notes the CC's conclusion that the limited development of the retail PPI market and the relatively low likelihood of retail PPI consumers actively searching the market would diminish the effectiveness of the POSP as a solution to the competition problems identified. However, we consider that as with any set of remedies designed to enhance competition, it is not possible to predict exactly how the market might develop or how consumers and firms will respond.

There are other potential benefits to consumers from the application of a POSP aside from the competitive pressure which it aims to assert by addressing the point of sale advantage of credit providers and enabling searching by consumers. These include providing consumers with sufficient separation between the credit sale and the PPI sale, in order that consumers have the opportunity to consider whether they actually want the product, and that they feel able to decline it if this is not the case. This means that even where consumers are unlikely actively to search the market, a POSP means they may still avoid suffering detriment as a result of buying products they do not value or want.

The CC's analysis of consumer behaviour suggests that "there would not be many retail PPI customers who would in practice search for alternative policies". We consider that without a significant change in this pattern of consumer behaviour, the remedies provided in the 2009 paper may be ineffective in producing the necessary dynamic competitive pressure. However, some of the lower cost remedies may provide a first step in driving changes which may create an improved competitive environment, and may therefore yield positive benefits relative to their cost. We consider the new remedies separately below.

Remedy Option 7 (Obligation to remind customers of their cancellation rights and key messages)

If the CC is minded to remove retail PPI from the scope of the POSP on the basis that consumers are unlikely in practice to switch to alternative policies, we consider that the obligation on firms to remind customers of their cancellation rights and of key messages (Option 7) would be beneficial to competition. This remedy would help to mitigate the competitive advantage of credit providers in PPI sales by providing an additional opportunity for consumers to consider whether to cancel their policy following the point of sale.

¹ The Final Notice of our enforcement action against Redcats (Brands) Limited, dated 20 December 2006, may be found at http://www.fsa.gov.uk/pubs/final/redcats_20dec06.pdf.

Remedy Option 8 (Obligation to renew retail PPI policies annually on an opt-in basis)

We consider that the obligation for firms to seek an active decision by consumers to renew on an annual basis in subsequent years (Option 8) would also be beneficial to competition. An opt-in arrangement provides a definite advantage over a simple annual review of the policy. Such a measure would encourage customers actively to consider the benefits and costs of their retail PPI policy on an annual basis, which might help to address the problem of consumer inertia.

The CC has invited views on a range of issues, including the impact of the requirement to renew PPI policies upon consumers. Examples of insurance products where annual renewal is standard practice include car, household and private medical insurance (albeit on an opt-out basis), indicating that this is a workable remedy. However, as with any remedy there are potential issues which should be considered. For example consumers who may be left without cover if they unintentionally miss the renewal deadline. FSA rules require firms to contact consumers in good time if they wish to invite renewal of the policy. In existing annually renewable insurance markets, renewal of a product in effect represents the inception of a new contract with the insurer. However, where a customer renews with the same provider, that provider may carry over or take into account certain factors, to the advantage of the customer, whereas a new provider may penalise the customer either through higher premiums or exclusions to the cover. Consumers may find that they are not covered around renewal, for example if they were subject to an initial exclusion or waiting period, in particular if switching provider. Additionally, premiums may be affected by changes in a consumer's circumstances during the previous period of cover.

Remedy Option 9 (Price Caps)

The CC's remedy options include introducing a temporary price cap to address directly the customer detriment resulting from high PPI prices (Option 9). Whilst this remedy may have an immediate downward impact on the prices consumers pay, it does not directly address the specific competition concerns identified by the CC, and as such is unlikely to result in the kinds of 'dynamic' benefits to consumers which the CC has indicated it would expect to arise from increased competition in the provision of retail PPI. However, given the nature of the market and relatively low propensity to search and switch and problems of consumer inertia identified by the CC, a temporary price cap may provide the only sure way of reducing retail PPI prices which are higher than the competitive price level amongst the measures proposed by the CC to date.

If this remedy were to be implemented, we are sure that the CC would take great care in setting the level of the price cap, to ensure that there were no unintended consequences.

Ensuring the effectiveness of the final remedies package

We urge the CC to continue to give careful consideration to the potential for firms to alter their processes to evade the intended effects of the remedies package. In deciding not to apply the POSP to retail PPI the CC must be aware of the potential for regulatory arbitrage by firms seeking to avoid the remedy by repackaging other PPI products as retail PPI. We consider that this will require retail PPI to be strictly defined in the Remedies Order.

Another potential route firms selling PPI may consider using as a means of avoiding the POSP may be to offer PPI which is initially free for a period. This would have the effect of bridging the seven-day period from the credit sale, when PPI sales are prohibited, in order to facilitate a subsequent sale of PPI in reliance on consumer inertia. For this reason the CC needs to be clear that such free offers are within the scope of the POSP and that the definition of the POSP in the Remedies Order excludes this possibility.

Going forward

We hope the Commission finds this response helpful and will be happy to discuss further at working level. We will continue to work closely with the CC and the OFT to help ensure that the optimal remedies package and effective implementation process is achieved.

Yours faithfully

Edward Harley

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FINANCIAL SERVICES AUTHORITY