

Peter Freeman's talk at CCA Convention

Slaley Hall, 20 April 2005

Introduction

Good afternoon ladies and gentlemen. I am delighted to have this opportunity to join you today.

I am here in my capacity as Deputy Chairman of the CC and Chairman of the group that is currently conducting the inquiry into the supply of home credit services.

I intend to cover the following:

- The CC and what it does, and specifically market inquiries
- The events that led to the CC inquiry
- What has happened in the CC inquiry so far
- What we are currently doing—and our administrative timetable
- Our recently published Issues Statement
- The next stages

First I would like to explain who at the CC is involved in this inquiry. I will also outline for you the nature of a market inquiry and what the possible consequences are.

What I cannot do today is to give you any indication of the likely outcome of the inquiry. At such an early stage in the inquiry when we are still engaged in understanding how the industry works it would be folly to prejudge the outcome.

The CC team and market inquiries

A group of members was selected from the members of the CC for the purpose of conducting this inquiry. The group comprises five members, including me as the Chairman. The other members of the group are Sarah Brown, Charles Henderson, Peter Moizer and Jonathan Haskel. The first two are former civil servants; the latter two are professors of accounting and economics respectively. All have extensive experience of competition inquiries. The group carries out the inquiry and makes the decisions, answering the competition question and, if appropriate, deciding what remedial action should be taken.

The group is supported by a team of expert staff, and two members of the staff team are here today—John Kirkpatrick, the Inquiry Director who is managing this inquiry, and Carole Begent, Legal Director. They will be staying here until the end of the formal business today so that if any of you would like to know more about the CC inquiry, please feel free to find them.

Before commenting upon the detail of the home credit inquiry, I would like to speak briefly about market inquiries in general. The purpose is to enable an in-depth investigation into how a particular sector works and to ascertain whether there are any features of the market that result in what the law terms an Adverse Effect on Competition, or AEC. As a competition authority we are interested primarily in competition and what affects it, not in other aspects (for example, compliance with consumer credit law or social policy).

A 'feature' can be any one of three things: the structure of the market (including regulation governing it), the conduct of suppliers in the market or the conduct of customers. Conduct includes not just what people do, but also what they do not do, whether intentional or not.

Typically, and as in the case of the home credit inquiry, the reference is made by the Office of Fair Trading (OFT) following an initial investigation.

Market inquiries were introduced fairly recently by the Enterprise Act 2002, but they are the successors to monopoly inquiries that have formed a part of the UK competition policy for many years. You may recall, for example, the inquiries into Supermarkets conducted in the 1990s and Banking Services to small and medium-sized banks in 2002. Currently we are investigating Store Cards and the Liquid Petroleum Gas Industry and have just begun an inquiry into the Classified Directories market.

It is far too early to speculate what might happen in this inquiry. That said, it may be helpful if I explain what could happen in a market inquiry if the CC decides that features of the market do have an adverse effect on competition in the market. The CC would then consider what remedies it should adopt and/or what action it should recommend others take for the purpose of remedying, mitigating or preventing the AEC and the resulting detrimental effects on customers. By 'detrimental effects on customers' I mean things that result from the absence of competition. We see competition as a process which provides four principal benefits for customers—low prices, ample choice, high quality and innovation. So in the absence of effective competition we might expect higher prices, lack of choice, low or inconsistent quality and an absence of innovation, and would regard those as detrimental effects.

The CC has wide-ranging powers enabling it to take action itself. These include the power to make orders—for example, to require persons subject to the order to refrain from certain behaviour and the power to specify conduct to be followed. In past inquiries, orders of this kind have included price controls and requirements to provide specific information as part of the sales process. Alternatively, the CC may accept undertakings (in effect, commitments), the scope of which is not limited by the statute. Whichever form is used, that is undertaking or order, compliance is monitored by the OFT and they are enforceable through the courts, not only by the competition authorities, but in certain instances by individuals and companies.

The CC may also recommend possible action to be taken by others. For example, it could recommend legislative or regulatory changes. Of course, the CC is not able to compel Government to make legislative or regulatory changes, but the Government has given a commitment that it will consider any regulatory changes the CC recommends and to respond within 90 days of publication of the CC's report.

Those of you who are interested to know more about the CC's powers and procedures may like to read some of the CC's publications. These too are available on the CC's web site but also free of charge by contacting our Information Centre. There are quite a few documents available. Of particular interest will be:

- Guidance for Market Inquiries (CC3), which provides an explanation of the economic analysis that is applied when considering the market and also the considerations that are taken into account when determining what remedies are appropriate (though, as I have said, it is premature to begin thinking about remedies at this stage);
- General Advice and Information (CC4), which outlines the CC's role, powers and procedures. It also comments on the obligations that are imposed upon the CC when handling sensitive information provided to it; and
- Chairman's Guidance to Groups on Disclosure of information in Merger and Market inquiries.

I turn now to the Home Credit inquiry.

The events that led to the CC Home Credit inquiry

First, the events leading up to the making of the reference, which will be familiar to many of you. I have mentioned that the reference was made by the OFT. This was on 20 December last year, the Act requiring us to complete our inquiry and publish our report within two years. In fact, as I shall explain, we intend to publish our report well within this two-year period.

The OFT's investigation was prompted by a complaint made the National Consumer Council (NCC) on 14 June 2004. The complaint highlighted a number of features about which it had concerns:

- little evidence of switching by home credit (HC) customers to other HC suppliers or other other products;
- significant switching costs;
- information asymmetries making it difficult for HC consumers accurately to assess the costs of HC or compare them with other types of credit;
- high market concentration which may reduce consumer choice and limit extent of competition;
- barriers to entry; and
- high prices.

The OFT chose to treat the complaint as a so called 'super-complaint'. By treating the NCC complaint as a super-complaint, the OFT committed itself to considering the super-complaint within a 90-day timescale and publishing a response stating what action it proposed to take.

During this period, the OFT gathered information from a number of lenders, met five lenders and the Consumer Credit Association (CCA) and met Citizens Advice. The OFT took the view that it did have reasonable grounds for suspicion that features are having an adverse effect on competition. It published its response to the super-complaint on 10 September and then a consultation paper on a market investigation reference which listed the features it suspected were causing or contributing to an adverse effect on competition. Both these documents are publicly available on the OFT's web site. As is of course clear to you all here, the outcome of the OFT's investigation and consideration of responses to the consultation was to make a market reference to the CC. The reasons for the reference can be found on the OFT's web site, and in large part reflect those identified in the super-complaint. They focus on:

- the poor bargaining position of customers;
- customers' difficulty in comparing loans;
- step-up and rollover loans, and the relationship between the customer and the agent, as factors tying customers to existing lenders; and
- barriers to entry created by market structure.

As my brief account illustrates, the home credit sector was already the subject of scrutiny by a competition authority prior to the CC becoming involved. There is some overlap with the OFT's work but the CC group begins the inquiry with an open mind, the views of the OFT forming but a part of the large quantity of information the group will receive in the course of the inquiry. We are also well aware that the industry has been the subject of considerable

public scrutiny for many years, and not only on competition grounds. Many of those who have commented on the industry in the past have given or will give evidence to our inquiry. I would reiterate that we start with an open mind, that we will weigh all the evidence that is put in front of us in a thorough, fair and objective fashion, and that our concern is with competition in the market and competitive pressures bearing on the market.

Many home credit lenders as well as the CCA assisted the OFT during its investigation, and many of you have already provided evidence to us, either directly or, I suspect, through the CCA. We are very grateful for those contributions. We appreciate the burdens that a market inquiry can impose and endeavour to minimize those burdens while ensuring that the quality of our inquiry is not prejudiced. That said, what is important is that we come to the right decision for the right reasons so that it is inevitable that the inquiry will place pressures on all those involved.

What has happened in the CC inquiry so far?

Since receiving the reference, we have been engaged in what I will broadly describe as information-gathering stages.

We started off the very beginning of the inquiry writing to all the home credit firms, large and small, for whom we had addresses; and to those third parties whom we knew to be interested. We explained the purpose and scope of the inquiry and asked for written submissions in reply. We received 47 initial submissions from home credit lenders, of which 16 are already on our web site. We also asked the five largest firms to supply us with a range of preliminary information about themselves. This mainly covered readily available, off-the-shelf material relating to those companies. We would welcome more.

Our staff team held a series of meetings designed to build up our understanding of how the industry works and the basis of the super-complaint and relevant background. Our staff thus met, for example, representatives of the CCA, each of the five largest home credit firms, the NCC, the OFT and of the Financial Services Authority.

Still in the information-gathering phase, we issued questionnaires to all home credit suppliers known to us. Our purpose was to compile a picture of the financial and market structure of the home credit industry and of the parts played by different sizes and types of lenders. We tailored the questionnaires to what we thought companies of different sizes could reasonably be expected to provide. We have so far received 232 responses to these questionnaires from CCA members, which we regard as a very encouraging response and we are very grateful to all those who have responded.

More recently, we commissioned two surveys to build on the already existing research into the industry and to help us in particular with the role of agents and the views of customers. The first and smaller qualitative survey is now almost complete. The second and larger quantitative survey is about to get under way. We appreciate the help we have had from many of you in enabling us to build up representative samples of customers to talk to.

We have supplemented our assembly of factual information in other ways. All of the group members and staff team members either have visited or shortly will visit at least one home credit lender and have accompanied an agent on her or his round. I have accompanied agents on rounds in Kent and in Cambridge, for example. As you told us they would, these visits have provided us with immensely useful insights into how the industry actually operates, for example, into relationships between agents and customers. We are very grateful both to those of you who have organized them for us and those who have offered to do so but whose offers we have declined. We have visited branch offices of consumer credit companies, and had the opportunity to talk informally to managers and staff. We have had

an informal briefing on experience of life on a low income and the significance of credit for low-income groups from academics and researchers active in the field. And at the invitation of Church Action on Poverty, some of us visited a community project in Tyneside and heard first hand from some home credit customers and advisers working with them. I would stress, however, that what we saw and heard on all these occasions was background designed for our own education, rather than formal evidence to the inquiry.

Secondly, the group has now held an initial round of formal hearings with certain parties. This has enabled us to explore points which those parties made earlier in submissions responding to our very first letter or at meetings with staff. The parties concerned were the OFT, the Department of Trade and Industry, the Treasury, the NCC, Citizens' Advice Bureaux, Debt on our Doorstep, and the Consumer Credit Counselling Service. There will be, as I shall explain later, ample opportunity for the group to hear from main parties to the inquiry (that is, the home credit firms and their representatives) at forthcoming stages of the inquiry.

You will already find on the inquiry web page accessible via the CC web site¹ a number of key documents, including the terms of reference and non-confidential summaries of third party views as well as those of some home credit lenders. As the inquiry progresses, we will be adding more relevant material relating to the surveys and a number of what we call 'working papers' which are papers that reflect our developing analysis based upon the information that we are collecting. For example, we may produce a paper concerning market definition.

As you may appreciate, in a market involving approximately 500 suppliers of home credit, there are real practical difficulties associated with gathering evidence from suppliers, particularly when those suppliers vary from banks to one-man firms. We have endeavoured to take this into account when making requests for information (for example, we modified the questionnaires to make them more manageable for suppliers, as I mentioned) and by the use of surveys. If you have not already done so, I would encourage you to reply to our information requests, and to react to what you see on our web site. We welcome contributions from all home credit suppliers. Please make known your views. I will mention later how you might do this.

What we are currently doing—and our administrative timetable

Within a few weeks of beginning our inquiry we published an administrative timetable which provides an indication of the key stages in the inquiry. This too can be found on our web site. We are able to change the timetable (subject to the overall maximum period of two years in which we must publish our report) and if we do alter it, we will publish a revised version on the inquiry web page.

I have highlighted some of the future key stages on this slide and we have brought with us a number of copies of the administrative timetable for you to take away with you. And, of course, the latest version is accessible via the inquiry page. I would urge you to look at this occasionally because I anticipate that the timetable will change as the inquiry develops.

We have recently published the Issues Statement. We have sent it to you; it is available on our web site and we have copies available here today for those who have not seen it. The next stage is to hold formal hearings with some of the main parties. We cannot hope to hold hearings with every supplier. We certainly expect to hold hearings with the largest suppliers, but are keen to hear from others, and we will be happy to consider meeting other credit

¹www.competition-commission.org.uk.

suppliers, individually or in groups, if you indicate that you would like to do so. We will consider any format you might suggest which might assist us in hearing a range of views.

It is also our intention to hold a public hearing on 19 May in Manchester. We will publish details as soon as they are finalized and information about the public hearing will be posted to the inquiry web page. I would encourage as many of you as are able to do so to attend.

Other stages that I wish to highlight include publication of Emerging Thinking, Notice of Provisional Findings and, dependent upon our findings, Notice of Possible Remedies. I will explain these in more detail in due course.

The issues that we have outlined in the recently-published Issues Statement

The Issues Statement is our best judgement at this stage of the key questions which the inquiry needs to ask. It groups the grounds for concern into the three broad categories of market structure, conduct of firms and conduct of customers which I described earlier and refers to a number of specific topics such as entry, and prices and profitability, as indicators of the extent of competition. Inevitably, at this early stage, it is a fairly comprehensive list of topics. However, we have tried to be helpful by indicating, in section J of the statement on the last page, the areas where we think it is most likely that we will focus our attention. I stress that even in these areas we have reached no view as yet; these simply seem to us to be the most worthy of detailed investigation. If you think that we have got the issues wrong, or given too much or too little attention to any, feel free to tell us so in your responses. We have asked for responses by 6 May.

The next stages

Turning now to the next stages. As I explained, we will be holding hearings with interested parties over the next few weeks. These hearings will be exploring the various matters set out in the Issues Statement. We will also continue to analyse the data we have received.

Following the hearings and further analysis, we will be publishing what we are calling 'Emerging Thinking' in September 2005 and inviting views. This is an important stage in our inquiry. If the Issues Statement sets out the questions which the group needs to answer, the Emerging Thinking sets out the group's first thoughts, based on its analysis of the evidence, on what the answers might be. It is designed to give you and other home credit lenders the opportunity to consider the summary analysis of the group and a further opportunity to make your views known. I must stress that the Emerging Thinking is not the final decision but is a stepping stone towards that decision.

Following publication, the group will continue with its analysis and consideration of the evidence submitted to it (including responses to the Emerging Thinking) and will begin to prepare what is called 'Provisional Findings'. This publication will set out the proposed decision of the group on whether any feature or features are having an adverse effect on the market. The current Administrative Timetable anticipates that the Provisional Findings will be published in December 2005. We will consult on the Provisional Findings; you and other interested persons will have 21 days in which to respond.

In the event that the group does provisionally conclude that there is an anti-competitive outcome, the CC will then consider whether remedial action is appropriate. It will publish a notice of possible remedies (around January/February next year), seeking views from you and other interested parties.

At the end of this process, the CC will finalize its report and publish it. We hope to do so by February/March 2006 if we do not find an AEC or by March/April if we do find an AEC. If the

group have decided that remedial action is necessary, it will proceed following publication of the report to implement those remedies. I have mentioned already the scope of the CC's powers.

I hope that I have helped to highlight certain key stages. I would urge you to take the opportunity to look at our web site from time to time and to participate by answering any specific questions directed to you or commenting upon material posted to our inquiry page. In particular, your views on the Emerging Thinking and Provisional Findings are important to us but also please do comment on other material that is posted, including the results of the surveys we have commissioned and views of others. We are currently waiting for the results of the surveys but plan to post information about these on the web page, when received (probably in May and June though I cannot be precise about the date).

But please do not wait for these publications. If you have relevant information that you wish to provide, please do so. You will find details of who to contact on materials we have sent to you—Douglas McCreadie (0207 271 0273) is the Inquiry Secretary and the main point of contact for home credit lenders. You can also reach us by email via our inquiry web page, and I am sure that Mr Lamidey, your director, will also be willing to provide such details. More immediately, my colleagues, John Kirkpatrick and Carole Begent are to hand.

May I leave you with an assurance of our commitment to thoroughness, objectivity and open-mindedness in this inquiry, and of our willingness to listen.

Ladies and Gentlemen, I conclude with thanks for the assistance that many of you have provided already and in anticipation of your continued cooperation. Thank you also to your Director, John Lamidey, who kindly invited me to speak today and thank you also for your patience in listening. If there are any questions about our work, then I am happy to take these, as indeed are my colleagues.