

# Response to consultation

## Introduction

1. As a result of our consultation on the draft Order, the Competition Commission (CC) has received a number of submissions. In this paper the CC summarizes the changes of substance it has made to the draft as a result of submissions accepted and gives its reasons for rejecting other submissions.

## Submissions accepted

### *Part 2 (Data sharing)*

#### *Summary of relevant provisions*

2. Part 2 requires the larger lenders to have a data sharing contract with two credit reference agencies (CRAs). The order names three companies as 'CRAs', but enables the Office of Fair Trading (OFT) to nominate others.

#### *Article 11(2)*

3. Under the consultation draft, before the OFT could nominate a firm as a CRA it had to be satisfied that the firm met the requirements of article 11(3). Article 11(2) has been amended so that the OFT will either have to be satisfied that it meets those requirements or that the firm is otherwise suitable to be a CRA. There is also now a provision which enables the OFT to nominate only licensed CRAs and EEA firms that can lawfully carry on a credit reference agency business without a licence.

### *Part 3 (website)*

#### *Summary of relevant provisions*

4. Part 3 requires lenders to advertise their products on a website and requires them to ensure that the website meets specified requirements. Article 17 sets out the information that has to be contained in the advertisement. One advertisement has to be published for each class of agreement, no advertisement can contain information about more than one class and a page on the website cannot contain more than one advertisement relating to the same class. 'Class' is defined.

#### *Article 14(1)*

5. A provision has been inserted in article 14(1) to make it clear that 'repayment of credit' has the same meaning as in the Consumer Credit (Advertisements) Regulations 2004. So, for example, the requirement in article 17(2)(a) for a lender to include in the advertisement 'the amounts of the repayments of credit per £100 advanced' is similar to the requirements to publish 'the amounts of the repayments of credit' under paragraph 5 of Schedule 2 to the Regulations. The Regulations provide that references to repayment of credit are references to repayment of credit with or without any other amount.

#### *Article 14(5) (previously 14(4))*

6. Article 14(5) defines 'special credit agreement'. An addition has been made to ensure that an agreement with a credit union can fall within the definition.

#### *Article 14(6) and (7) (previously 14(5) and (6))*

7. Under the consultation draft, agreements were in the same class if they had the same creditor, the same duration and the same total charge for credit per £100 advanced. Article 14(6) and (7) has been amended so that to be in the same class agreements have to have the same creditor, the same duration, the same frequency of repayments and the same APR (when rounded up to the nearest whole number).
8. The fact that frequency is now a parameter means that if two products have the same APRs and duration, but one has weekly instalments and the other monthly instalments, the products would fall into two classes. As a result two advertisements would have to be published on the website ie one for each product. Furthermore, an advertisement on the website relating to the weekly product would not be able to mention the monthly product and visa versa. Under the consultation draft, the two products would have had to be included in the same advertisement.

#### *Article 17*

9. Under the consultation draft, the lender had to state the duration of agreements in weeks. Article 17(2)(a) has been amended so that, in the case of a loan repayable in monthly instalments, the duration has to be expressed in months.
10. Under the consultation draft the lender had to state the total charge for credit per £100 to the nearest pound. Article 17(2)(b) has been amended so that it has to be rounded up to the nearest penny.
11. Article 17(2)(c) has been amended so that the amounts of repayments per £100 advanced have to be rounded up to the nearest penny. Under the consultation draft, the tolerance was not indicated.
12. Article 17(2)(f) requires the lender to state whether or not there is any charge for home collection and if so the amount of those charges. A new article 17(5) has been added to make it clear that these charges do not include any charges taken into account in determining the repayments of credit per £100 advanced.

#### *Article 18*

13. Under the consultation draft, the website was required to have a facility for searches to be made by reference to area. An amendment to article 18(1)(b) adds a requirement for it to have facilities for ranking the results of those searches according to total charge for credit per £100 advanced and according to APR.
14. Under the consultation draft, an advertisement on the relevant website could not contain anything (apart from information required by law) other than product information, one name, one postal address and one telephone number. An amendment to what is now article 18(1)(g) permits multiple names, postal addresses, email addresses and telephone numbers.
15. Under the consultation draft, every advertisement on the relevant website had to contain all the information set out in article 17. What is now article 18(1)(i) and (j) is

amended so that there is an exception. If an advertisement specifies a specific amount of an advance that may be provided (as opposed eg to a range of amounts), the advertisement will be able to omit the total charge for credit and repayments per £100 advances and instead state the actual amounts.

16. Under the consultation draft, the website could not contain hyperlinks other than to other parts of the website and those authorized by the CC or OFT. Article 18(1)(k) is amended so that the restriction applies only to hyperlinks to other websites.
17. Under the consultation draft, information on the website had to be retained for 2 years. What is now article 18(1)(p) is amended so that it has to be retained for so long as the Order remains in force and it has to be available to the OFT.

#### *Article 19*

18. Under the consultation draft, an advertiser had to confirm the information contained in an advertisement on the relevant website once every 3 months. An amendment to article 19(5) changes this to once every 12 months.

### **Changes not made**

#### ***Part 2 (data sharing)***

##### *Article 11(3)*

19. Article 11 enables the OFT to nominate a firm as a CRA if it satisfies the OFT that that it meets the requirements set out in article 11(3). These include a requirement that the firm has at least '50 subscribers to shared data' and '10 per cent of shared records'. 'Subscribers to shared data' and 'shared records' have been given the same meaning as in the Rules Managing SCOR.
20. One consultee suggested that this requirement should, in some way, be confined to the UK. However, the CC considers that the test should be aligned with the requirements for becoming a member of SCOR and for that reason it has provided for the 'subscribers to shared data' and 'shared records' to have the same meaning as in the Rules Managing SCOR. Any attempt at qualifying the meaning of the requirement would be liable to defeat this policy objective.

#### ***Part 3 (website)***

21. One consultee suggested that order should not require the lenders to cause the website to meet the website requirements, but should place the obligation directly on the operator. However, the CC did not regard this as workable. Another consultee suggested that the lenders should merely be under an obligation to provide information but it did not say how the operator is to be placed under any duty to meet the website requirements.
22. The CC approaches this issue by using its power to require the lenders to publish and to do so in a particular manner. The lenders will be able to impose the requirements through their contracts with the operator and by supplying him with the information that needs to be published.
23. One consultee suggested that credit union advertisements should contain a statement to the effect that payments will not be collected from the debtor's home. The CC considers that if a lender is not proposing to collect payments from the

debtor's home, the advertisement should say so. However, the CC is not proposing to make this a requirement in the order. It considers that it can leave it to the lenders and the operator to ensure that adequate information is provided in this respect.

24. One consultee said that the large lenders should not be required to ensure that the website was available to small lenders, saying this was outside the large lenders' control. However, lenders could take steps to ensure this by making it a term of their contracts with the operator, with a provision making the term enforceable by the smaller lenders under the Contracts (Rights of Third Parties) Act 1999.

#### ***Part 4 (statements on request)***

25. Part 4 requires lender to give information to a customer within seven days of a request being received, whether the request is made orally or in writing. Receipt by an agent is deemed to be receipt by the employer.
26. One consultee said that requests should only be effective if they are made in writing. It is said that this would make it easier for lenders to monitor performance. However, this change would not necessarily achieve the certainty the consultee sought. For example, if a customer hands an agent a letter or other note or pushes it through the agent's letter box, there is no certain way of ensuring that the date of receipt is accurately recorded. Agents could be instructed to rubber stamp the date of receipt or record receipt in a book, but then agents could be instructed to note any oral requests in a book.
27. An advantage of requests having to be in writing is that, in the event of a dispute, there is less likelihood of there being disagreement over what was actually said. On the other hand, the CC considers that such a requirement might result in less use of the remedy and, as such, make it less effective.

#### ***Part 5 (early settlement)***

28. Part 5 enables a debtor to get a larger rebate that he is entitled to under section 96 of the 1974 Act. He will get the maximum rebate under the order if he settles within 13 days of giving notice. Regulations under section 97 enable a debtor to request an early settlement statement and this has to be given within 7 working days of the request. Such a statement gives the amount of rebate and the amount to discharge the debt if the debtor settles 28 days after the request.
29. Article 26 requires early settle statements to contain, in addition to the information that that they have to contain under the Regulations, the rebate and the amount to discharge the debt if the debtor settles 13 days after the request is made.
30. One consultee said 'Given that we will be unable to indicate which rebate calculation is correct and which is incorrect, this situation is likely to be highly confusing to customers and agents alike'. However, there is no question of any incorrect information being given. A statement will have to state the amount of rebate the customer will receive if he settles 13 days after his request was received and the amount of rebate he will receive if he settles 28 days after his request was received. The same applies to the amounts required to settle the debt. The figures given will, of course, all have to be correct. The CC does not consider that giving different figures for two different settlement dates will cause confusion.