

8. Features which prevent, restrict or distort competition

- 8.1. In this section we assess which of the supply- and demand-side factors and aspects of conduct we identified in Section 7, and which we think explain the market outcomes we have found, can be regarded as features of the market within the meaning of section 131(2) of the Act.
- 8.2. Section 131(2) of the Act says that features of the market may be:
- the structure of the market concerned or any aspect of that structure;
 - any conduct (whether or not in the market concerned) of one or more than one person who supplies or acquires goods in the market concerned; or
 - any conduct relating to the market concerned of customers of any person who supplies or acquires goods or services. 'Conduct' in this context includes any failure to act (whether or not intentionally) and any other unintentional conduct.¹
- 8.3. Although the Act sets out three types of feature that could have an adverse effect on competition, in practice there may be no clear divide between structural features and conduct features. For example, exclusionary conduct by firms in the market will affect structure to the extent that it raises barriers to entry. We recognized in our Emerging Thinking that these different kinds of feature are not wholly independent of one another. In particular, we noted that customer and supplier conduct may be mutually reinforcing. In this section we indicate how particular features interact with other features. The Act does not require us to identify the category or categories into which a feature falls. In this section we discuss features under thematic headings, but seek to identify each feature as structural or relating to lender or consumer conduct. The fact that a feature is so identified does not mean that we regard it as falling solely within that category.
- 8.4. In identifying features of the market, we seek to compare what we have found with levels of competition which we might reasonably expect to find in a well-functioning market. In doing so we recognize that some of the characteristics of home credit may themselves serve to make it less likely that the market for home credit could be as competitive as some others. These characteristics are those which, in large part, define the product.
- 8.5. We have found (in Section 7) that the factors which prevent, restrict or distort competition in this market fall into three categories:
- two factors which contribute to the weakness of price competition (see paragraphs 8.6 and 8.7);
 - two information shortfalls which collectively contribute substantially to incumbency advantage (see paragraph 8.8); and
 - three factors which contribute to the preservation of incumbency advantage and the absence of price competition (see paragraph 8.9).

¹Section 131(3).

We conclude that these are features of the market within the meaning of the Act, and that there is therefore an adverse effect on competition.

8.6. We found (in paragraph 7.7) that price competition was weak. Two features inhibit price competition. We consider one to be conduct on the part of customers:

- the insensitivity of customers to measures of price other than the level of weekly repayment (see paragraph 7.14). We consider that this is exacerbated by the difficulties of comparing products outlined in paragraph 7.15.

We consider the other to be conduct on the part of suppliers responding to the incentives acting on them:

- the failure of lenders to compete in any significant way using price as a competitive weapon (see paragraph 7.17); we consider that this encompasses failure to compete on rebates.

8.7. We consider the features set out in paragraph 8.6 to be mutually reinforcing, and that the conduct of both suppliers and customers can be seen as rational given the conduct of the other. We consider that the weakness of price competition has two consequences: incumbency advantage is not overcome (which we might otherwise expect) and prices remain high to the detriment of customers. We also found no other aspect of competition which compensates for the weakness of price competition.

8.8. Two information shortfalls collectively contribute substantially to incumbency advantage by inhibiting lenders which do not currently have a relationship with customers from competing for their business. We consider these to be structural features:

- the inability of customers to convey information (on which lenders can confidently rely) about their creditworthiness to lenders with whom they do not currently have a relationship; and
- the asymmetry of information about customers' creditworthiness between lenders which have a relationship with the customer and lenders which do not.

8.9. Three further features contribute to the continued existence of information shortfalls and thus to the preservation of incumbency advantage. We consider them to be structural features:

- the lack of data sharing (the asymmetry of shares of supply in the market is one among several factors which contributes to a pattern of incentives which discourages data sharing—see paragraph 7.25);
- the inability of agents not already known to a customer to convey their reliability to that customer (see paragraph 7.31—this is significant because of the importance which customers attach to a relationship of trust with an agent); and
- the regulatory prohibition on door-to-door canvassing of cash loans (see paragraph 7.32).

8.10. We might expect that incumbency advantage would be of most benefit to the largest lenders. We consider that Provident is the greatest beneficiary of these incumbency advantages simply by virtue of its size and its share of customer relationships. We did not find that Provident's share of the market for home credit is in itself a feature which prevents, restricts or distorts competition.

- 8.11. We consider that the detrimental effect on customers which has resulted from or may be expected to result from the adverse effect on competition identified in paragraph 8.5 is that customers pay higher prices for home credit than would be expected in a competitive market.
- 8.12. Accordingly, we find, on the statutory questions we have to decide pursuant to section 134(1) of the Act, that there are features of the relevant market, either alone or in combination with each other, that prevent, restrict or distort competition in connection with the supply of home credit and hence that there is an adverse effect on competition within the meaning of section 134(2). The features are those we identify in paragraphs 8.5 to 8.9.