

**TO: ROGER WITCOMB
CHAIRMAN
COMPETITION COMMISSION**

**FROM: CLIVE MAXWELL
EXECUTIVE DIRECTOR
OFFICE OF FAIR TRADING**

24 OCTOBER 2011

REVIEW OF THE TRADING CHECK FRANCHISE AND FINANCIAL SERVICES UNDERTAKINGS GIVEN BY PROVIDENT FINANCIAL PLC (FORMERLY PROVIDENT FINANCIAL GROUP PLC)

ISSUE

1. Under section 162 of the Enterprise Act 2002 ('EA02') the Office of Fair Trading ('the OFT') has a duty to consider whether, by reason of any change of circumstances, an enforcement undertaking is no longer appropriate and need to be either varied, superseded, or parties to the undertakings need to be released from them.¹ The OFT shall give such advice to the Competition Commission ('the CC') as it considers appropriate in relation to any possible action by the CC. Pursuant to this duty, we have reviewed the Trading Check Franchise and Financial Services undertakings ('the undertakings') given by Provident Financial plc ('Provident').

BACKGROUND

2. On 28 November 1980 the Monopolies and Mergers Commission (MMC) published its report on 'Trading Check Franchise and Financial Services: a report on the supply of trading check franchise and financial services in the United Kingdom'.² This report found that that 'monopoly situations exist in the supply of trading check financial services and trading check franchise services in the United Kingdom by virtue of section 7(l)(a) of the Fair Trading Act 1973 in favour of Provident Financial Group Limited' (paragraph 9.3). This was because the MMC

¹ In this instance the OFT's duty arises under sections 88(4) and (5) of the Fair Trading Act 1973 as preserved in Schedule 24 of the Enterprise Act 2002.

² www.competition-commission.org.uk/rep_pub/reports/1981/148trading_franchise_financial_serv.htm

found that Provident supplied around 68 per cent of the trading check financial services and the trading check franchise services market, with the nearest competitor supplying around 10 per cent (paragraph 9.2).

3. The Director General of Fair Trading (DGFT), in his reference to the MMC,³ defined 'trading checks' as including 'trading vouchers' and 'trading bonds'. Trading checks were described in the MMC report as documents 'which can be used by the customers of the check traders to acquire goods or services from nominated retailers'.⁴ The report refers to the Crowther Report⁵ in its discussion of trading bonds and trading vouchers, saying that 'most check traders now issue credit documents with a higher face value, for use in a specified shop, known as vouchers or bonds'.⁶
4. At the time of the MMC report the Provident trading check consisted of a booklet of eight pages.⁷ The first page was a signed credit authority on which was written the details of issue. It also contained space for retailers to enter the consumers' separate spendings. The second page was a carbon copy of page one which was detached at the time of issue and sent to Provident's Head Office in order to record issue details. The remaining pages (usually six) were counterfoils used by retailers for recording details of spendings made by customers in order that claims for payment could be made to Provident.
5. At the time of the MMC report, Provident's trading vouchers and bonds consisted of three pages. The first page was the signed credit document on which was written, at the time of issue, the issue details and the name of the retailer with whom the voucher could be exchanged. The second page was a carbon copy of the first page. It was removed at the time of issue and was sent to Provident's head office so that it could record issue details. The third page was a counterfoil retained by the retailer for the purpose of making a claim for payment.
6. The trading check financial services market was described in the DGFT's reference as 'financial accommodation by way of the issuing of trading checks for the acquisition of goods or services other than solely from the person issuing the checks' (paragraph 1.1). The trading check franchise services market was described as 'the undertaking and performance of engagements with suppliers of

³ The reference was made on 30 December 1977 and is reproduced in the Introduction to the MMC report.

⁴ Paragraph 2.1 of the MMC report

⁵ Report of the Committee on Consumer Credit HMSO (1971) Cmnd 4596

⁶ Paragraph 2.3 of the MMC report

⁷ For more detail on this and on the operation of Provident's trading vouchers and bonds please follow this link: www.competition-commission.org.uk/rep_pub/reports/1981/fulltext/148appendices.pdf

goods or services to pay for goods or services supplied in transactions involving the use of trading checks' (paragraph 1.1).

7. The MMC found that certain business practices employed by Provident could contribute to the existence of this monopoly situation. In particular, Provident had in its agreements with retailers a restriction on dealings with other suppliers of trading checks, preventing them from accepting any other brand of trading check but Provident's. This was considered to be contributing to the existence of the monopoly situation in favour of that company (paragraph 9.68).
8. On 5 March 1982 the Secretary of State accepted undertakings from Provident, a summary of which can be found on the OFT's website.⁸ Provident undertook:
 - to procure that none of its subsidiary companies will enter into any agreement for the supply of trading check services to a retailer (other than an agreement of the type described below) which contains a provision restricting that retailer from acquiring such services other than from Provident or any subsidiary company of Provident
 - to notify any retailer who is party to an existing agreement with Provident, or any subsidiary company of Provident for the supply of trading check services, that Provident or any subsidiary company of Provident will not enforce that part of that agreement which comprises a restrictive provision as is described in undertaking above.
9. The undertakings did not apply to any agreement for the supply of trading check services entered into by Provident with a retailer who was a 'scheme operator', that is a retailer who was allowed by Provident or any subsidiary company of Provident to sell goods or services direct to a customer in the customer's own home either by accompanying an agent of Provident or by relying on the agent to make the sale.
10. The effect of the undertakings was that Provident could not insist on retailers accepting only trading checks issued by Provident, with the exception noted at paragraph 9 above.

CHANGE OF CIRCUMSTANCES

11. The OFT believes that there have been significant changes in this sector which amount to a 'change of circumstances' for the purposes of section 162(2)(b) of the EA02. The way in which Provident carries out the business which is the

⁸ www.offt.gov.uk/shared_offt/monopolies/tradingcheckfranchiseandfinancia

subject of the report has changed to the extent that the three products referred to in the undertakings are now not available for use by consumers. For this reason we consider that there has been a 'change of circumstances' which means that either Provident should be released from the undertakings, or that they require significant amendment.

12. Provident has informed the OFT that it no longer offers trading checks, trading bonds or trading vouchers (in the form described in the MMC report) as forms of payment method to consumers, and neither do any of its subsidiary companies.
13. We do not consider the reintroduction of any of these products to be likely, and the CC's report into *Home Credit*⁹ does not list trading checks among the products offered by any of the leading six home credit providers. Cash is the leading product, followed by vouchers (with regard to the possible relevance of vouchers to the issue of change of circumstances see paragraph 14 below). In fact, it appears that the role of trading checks has been declining since before the time of the MMC's report. The MMC report refers to a submission made by Provident that 'competition from other forms of credit was growing, and customers were increasingly using other forms of credit available to them'.¹⁰
14. The OFT has considered whether the undertakings can be interpreted in such a way as to apply to successor products offered by Provident. Provident has informed the OFT that it does not offer trading checks or bonds of any description, but that it does offer vouchers. However, the vouchers offered by Provident are 'Love2shop' vouchers, which are not Provident products. 'Love2shop' vouchers are owned (and offered) by HighStreetVouchers.com, part of Park Group Ltd. As such, the 'Love2shop' vouchers differ from the trading vouchers defined in the Appendix to the report in that they are owned by a company other than Provident, are offered by a company other than Provident (as well as being offered by Provident), and are accepted by multiple retailers. We therefore do not consider that the undertakings should be interpreted as applying to 'Love2shop' vouchers as a successor product. In any event, in the year to December 31 2010, vouchers represented only 1.6 per cent of Provident's home credit lending in the UK.

⁹ www.competition-commission.org.uk/rep_pub/reports/2006/517homecredit.htm

¹⁰ Paragraph 8.3

CONCLUSION AND RECOMMENDATION

15. The original problem that these undertakings were designed to remedy (the monopoly situation enjoyed by Provident in the market for trading checks, trading vouchers and trading bonds) no longer exists, nor is it likely to re-emerge. We therefore consider that there has been a material change of circumstances as described under section 162(2)(b) of the EA02. The undertakings should be either superseded, varied or Provident should be released from them, as described in section 162(3)(a) of the EA02.
16. This advice has been published on the OFT website, consistent with paragraph 22 of the Memorandum of Understanding between the OFT and the CC on the variation and termination of merger, monopoly and market undertakings and orders under the Fair Trading Act 1973 and the EA02¹¹.

¹¹ www.offt.gov.uk/shared_offt/595316/595319/oft1060.pdf