

# **Rent-to-own price cap – feedback on CP18/35 and final rules**

## **Policy Statement**

PS19/6

March 2019

## This relates to

Consultation Paper 18/35  
which is available on our website at  
[www.fca.org.uk/publications](http://www.fca.org.uk/publications)

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# 1 Summary

- 1.1** In November 2018, we consulted on introducing a price cap in the rent-to-own (RTO) market to address harm from high prices paid by vulnerable consumers.
- 1.2** This Policy Statement summarises the feedback we received on CP18/35 and our response to it.
- 1.3** We are going ahead with our proposals to introduce a price cap in the RTO market, with effect from 1 April 2019. We believe that this will be effective in reducing harm from high RTO prices.
- 1.4** In light of feedback received during the consultation process, we will review the price cap and the effect benchmarking has on product prices a year earlier than planned – beginning in April 2020.
- 1.5** We have also made some technical changes to our rules to ensure they deliver our policy intent and that the benchmarking process works in practice. We explain these changes in Chapter 2.

## Who this affects

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- 1.6** This document should be read by firms offering household goods on hire purchase and/or conditional sale, consumer groups and debt advice organisations.
- 1.7** It will affect consumers considering purchasing household goods using RTO from 1 April 2019.

## The wider context of this policy statement

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### Our interventions in the RTO market

- 1.8** We have been tackling issues in the RTO market since we took over regulation of consumer credit in 2014. We have made RTO firms be more transparent when they show the cash value of goods, the amount of interest to be paid, and the total cost to customers. Firms have made substantial improvements, particularly in the way they assess creditworthiness (including affordability) and deal with consumers in financial difficulty. Our work has also resulted in redress packages for around 340,000 consumers of RTO firms, totalling nearly £16m.
- 1.9** In November 2018, we made final rules to introduce a ban on concluding (making) the sale of extended warranties at the point of sale of the RTO agreement. This should help consumers decide whether they want to buy this product by removing the point of sale advantage that firms currently have. These rules came into force on 22 February 2019.

- 1.10** However, these measures alone do not deal with the high total costs RTO consumers pay.

### **Our consultation to introduce a price cap – CP18/35**

- 1.11** In CP18/35, we explained that we needed to intervene in the RTO market because a highly vulnerable group of consumers are paying too much for household goods. We set out our view that, although there is a cost to firms for the risk of providing credit, the prices firms charge for servicing this vulnerable consumer base can cause harm simply because they are too high.
- 1.12** Our work established clear evidence of RTO users' vulnerability. They are among the least creditworthy individuals compared with other users of high-cost credit. Only a third are in work and most have low incomes.
- 1.13** The way consumers make decisions only puts limited restraint on the total costs that firms charge. Our consumer research showed that RTO customers focus on weekly payments more than the total cost of credit. The harm in this market affects consumers that needs to be protected from high RTO prices that can lead to them paying several times more than what other people pay for goods.
- 1.14** We estimated that the benefits of a price cap would outweigh the costs. Given these consumers' vulnerability and stretched finances, the amounts they save by taking out a lower priced RTO agreement or by buying goods via other lower-cost means will be particularly beneficial.
- 1.15** We know that a potential result of our intervention is that some consumers may lose access to RTO. We estimated this figure at 5%. Many of these consumers will have to make difficult trade-offs to get the goods or go without them. Alternatives to high-cost credit could give these consumers better choices, but the availability of these alternatives will be limited in the short to medium term.
- 1.16** In CP18/35 we set out our approach to promoting the availability and awareness of alternatives to high-cost credit, and the actions we are taking. We aim to give a further update on our ongoing work in this area in Q2 2019.

### **How the price cap links to our objectives**

#### ***Consumer protection***

- 1.17** We aim to make financial markets work well so that consumers get a fair deal and to secure an appropriate degree of protection for consumers.
- 1.18** We need to intervene on the high total costs consumers pay in this market. The rules we are making now are designed to improve outcomes for vulnerable consumers paying the highest prices when using RTO, by reducing the total costs they pay.

## What we are changing

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- 1.19** We want to bring down prices on RTO agreements where the overall costs to consumers are high compared to other retailers' prices. Our price cap is designed to do this by:
- setting a total credit cap of 100%
  - introducing a requirement that firms must benchmark product base prices (including delivery and installation, but excluding any add-on products like warranties etc) against retail prices
  - preventing firms increasing their prices for other goods and services sold with an RTO agreement – for example, theft and accidental damage cover, extended warranties, or arrears charges – to recoup lost revenue from the price cap

## Measuring success

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- 1.20** In CP18/35, we estimated that our proposed price cap could deliver net consumer benefits of between £19.6m and £22.7m a year. We still believe this assessment is correct.
- 1.21** Some respondents to CP18/35 felt that strong supervision was critical for a price cap to be effective. We agree with them and will be closely monitoring the effects of the price cap on the RTO market and its consumers.
- 1.22** On an ongoing basis, we will take action where intelligence highlights potential or actual non-compliance. Later this year we will proactively engage with firms to understand how they are complying with the price cap. This is shortly after RTO firms will have been required to benchmark all of their products.
- 1.23** We will also monitor the market to identify any changes in firms' business models or approaches to RTO.
- 1.24** We will start an impact evaluation of the price cap in April 2020. We aim to complete this by the end of 2020. This will focus on firms' benchmarking. It will also look at the effectiveness of our rules on other charges – insurance, extended warranties and arrears.
- 1.25** Our work will allow us to assess how benchmarking is working in practice and the impact of the cap on the total costs that RTO consumers pay. We will act on insights gathered through our work.

## Summary of feedback and our response

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- 1.26** We received 29 responses to CP18/35. Consumer groups strongly agreed that a price cap is needed in the RTO market to address the harm caused by high prices. There was a good deal of support for our proposed approach. However, several consumer bodies suggested that the benchmarking could be strengthened if we were to require firms to price products in the middle of the market rather than allowing them to price at the

top. A number of consumer groups argued that we should cap arrears charges and impose a point of sale ban on insurance.

- 1.27** RTO firms did not agree with the rationale for the price cap and argued that we had not made a case that high RTO prices cause harm. A number of firms nonetheless signalled their willingness to work with us to ensure the price cap was implemented effectively. They also made some suggestions for amending the benchmarking rules so that they work effectively.
- 1.28** Smaller firms raised significant concerns with the cost burden the benchmarking process would create and in achieving compliance by 1 July for products they are already offering. Smaller firms were also particularly concerned about matching benchmarked prices given their limited buying power. Those with more moderate interest rates indicated they would have to raise them to continue providing RTO and would have to reduce their product ranges. Some questioned whether they would be able to continue providing RTO services under the proposed cap.
- 1.29** Having considered the feedback, we still believe that we need to intervene to tackle the high total costs of RTO in the way we set out in our consultation. We have not received evidence that persuades us that other measures would be as effective in reducing harm.
- 1.30** We are making changes to the rules to clarify some aspects of them and to ensure the benchmarking process works effectively in practice without compromising consumer protection. We explain these in Chapter 2.
- 1.31** In recognition of the limited resources of micro-enterprises<sup>1</sup>, we are giving them a further 3 months (to 1 October) to comply with the rules for products on sale before 1 April 2019.
- 1.32** We have also issued a correction to a table we published in CP18/35 – see Annex 2. This correction does not affect our analysis.

## Equality and diversity considerations

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- 1.33** We published an Equality Impact Assessment in CP18/35. In the light of respondents' feedback, we have considered the equality and diversity issues that may arise from the rules and guidance we are making in this Policy Statement. We cover this further in Chapter 2.

## Next steps

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- 1.34** The price cap rules come into force on 1 April 2019. They will apply from that date to any new products RTO firms introduce to the market for the first time.

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<sup>1</sup> A micro-enterprise is defined in our glossary as an enterprise which employs fewer than 10 persons; and has a turnover or annual balance sheet that does not exceed €2 million.

- 1.35** For products that RTO firms are already offering, the rules will apply either at the point the RTO firm raises the price or 1 July 2019 (whichever date is sooner). Micro-enterprises will have until 1 October 2019 to do this.
- 1.36** RTO firms should take steps now to ensure that they comply by these dates.
- 1.37** We will look extremely closely at any attempt by an RTO firm to introduce a new or different business model that could lead to the same harm as we have seen in the RTO market. For example, using another form of credit or consumer hire to provide household goods to vulnerable consumers at high total costs.
- 1.38** Under our rules in SUP 15, a firm is already required to inform us if it proposes to change its business model. We will use the full range of our powers to address any risk of such harm. This includes making general rules or taking pre-emptive action against individual firms, for example by imposing requirements under s55L of FSMA (also known as own initiative requirements or OIREQs).
- 1.39** We will also, as always, look carefully at whether any conduct by the firm is consistent with our Principles, including the need to have regard to customers' interests and treat them fairly (Principle 6).

## 2 Feedback to CP18/35 questions and our response

- 2.1** In this chapter, we summarise the feedback we received on our proposed RTO price cap.
- 2.2** Having considered that feedback, we still believe that we need to intervene to tackle the high total costs of RTO in the way we set out in our consultation. We have not received evidence that persuades us that other measures would be as effective in reducing harm.
- 2.3** We are making changes to the rules to clarify some aspects of them and to ensure the benchmarking process works effectively in practice without compromising consumer protection. These are:
- setting out factors that firms must take into account when deciding which prices to benchmark
  - new rules on benchmarking of products that haven't been launched in the UK and which are so technologically different from products currently on sale that it is not possible to find a genuinely comparable product
  - removing the requirement to benchmark where an RTO firm wants to reduce a product's base price
  - making clear that firms can use benchmarking carried out before the rules came into force provided it is compliant with our final rules
  - clarifying our description of catalogue credit - making clear that firms can benchmark against firms who sell goods by retail revolving credit from physical stores (ie retailers who offer 'store cards')
  - giving micro-enterprises a further 3 months to comply with the rules for their existing products
  - some technical amendments to our rules to reflect the policy intent set out in CP18/35

### Assessment of consumer harm

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- 2.4** We explained in CP18/35 how vulnerable consumers can suffer harm from high prices in the RTO market. High product prices, high interest charges and add-ons can lead to high total costs.
- 2.5** We explained that the way consumers make decisions - focusing on weekly repayments, relief at being accepted and limited other options – puts limited restraint on the total costs firms can charge. The harm in this market affects a vulnerable consumer group. RTO customers mostly have low incomes, are more likely to live in deprived areas, and are among the least creditworthy compared with other users of high-cost credit. We need to protect this group from high RTO prices which mean they can pay several times more than the price other people pay for goods.



## Feedback received

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### **Q1:** *Do you agree with our assessment of harm to consumers from high prices?*

- 2.6** Most respondents agreed with our assessment and the need to intervene. Consumer bodies felt that RTO consumers were paying a 'poverty premium'. Respondents gave different views on the drivers of this. They included a lack of financial education, poor financial literacy, consumers' decision-making that focuses on weekly payments and the lack of alternatives for getting essential household items.
- 2.7** Several RTO firms which responded did not agree with our assessment of harm. They argued that 'high prices' was too subjective a measure, and that the prices consumers pay today reflect the costs of servicing this group of customers and other unique costs of the RTO model.
- 2.8** An RTO firm also argued that the analysis presented in CP18/35 was materially different from the analysis in CP18/12, published in May 2018. For instance, average total costs had fallen over this time. The firm also pointed out that most customers do not regret using RTO and that being rejected from RTO made life difficult for many applicants.
- 2.9** A firm also said that consumers focusing on weekly prices rather than overall costs is rational given their limited budgets. The firm argued that consumers with limited budgets will make a trade-off between term length and lower weekly payments – so paying more over a longer term to have lower weekly payments should not be viewed as a behavioural bias.
- 2.10** The firm was also concerned that CP18/35 did not fully recognise the value consumers place on RTO features and benefits, such as being able to exchange or return the product at any point without cost or any other negative consequence. One firm found that around a third of its customers used this flexibility and that 'returnability' was important to 90% of its customers. The firm noted that if consumers used other products instead, they would be at risk of stress, default and a poor credit rating.

### ***RTO costs v other types of credit***

- 2.11** Some firms asked why we were proposing a price cap for RTO, but not for catalogue credit where base prices can be similar or higher. A small RTO firm felt that our analysis was insufficient as it did not include like-for-like comparisons with the cost of credit offered by high street retailers.
- 2.12** A firm also argued that its credit prices on 1 year deals were substantially lower than home-collected credit.

### ***Lower priced RTO agreements***

- 2.13** While agreeing that high RTO prices can cause consumers harm, some firms did not believe that their prices were too high. While they acknowledged their product prices were higher than mainstream retailers, they argued their interest rates are substantially lower than those typically seen in the RTO market.

## Our response

We note that most respondents agree with our assessment of harm. RTO users are a particularly vulnerable group with limited access to alternative sources of credit.

We understand that there is a cost to firms for the risk of providing credit, and that there are significant risks involved in serving a population with low credit scores. But our view is that the prices firms charge for servicing a vulnerable consumer base can cause harm simply because they are too high. Consumers' focus on weekly payments places little restraint on the total costs firms charge.

It is unsurprising that consumers experience less regret in taking out RTO compared to, say, a payday loan. RTO consumers feel they have no other options, have got the product they wanted and are likely to have given little weight to the total cost they will pay. We also found that total cost was the main reason consumers regretted using RTO, and that this regret increased over time.

We recognise that RTO can help consumers with limited options get access to household goods and provide flexibility over returns and exchanges. But we are still of the view that total costs in the upper range are too high.

### RTO costs v other types of credit

Respondents to CP18/12 asked about how we compared RTO with other types of credit. In CP18/35, we compared the total cost of purchasing goods using RTO with the cost of using a home-collected credit loan to purchase the goods at the median retail price. We also found that:

- RTO consumers would likely have difficulty accessing credit from other sources
- most RTO customers did not consider using other forms of credit in place of RTO
- few RTO applicants who are turned down for RTO agreements end up using another form of credit

More importantly, our case in CP18/35 was not based on the differential between RTO costs and different types of credit. The harm we identified is that some vulnerable consumers are paying high prices to get household goods. This is the key issue we want to tackle.

RTO users are a particularly vulnerable group, among the least creditworthy of all high cost credit users. Our concerns focus on the way the package of goods, delivery and installation, credit, insurance and extended warranties mean these vulnerable consumers can pay several times more than the high-street cash price. We have introduced new rules – such as those on persistent debt – to address specific risks we have seen in the catalogue credit market.

As we said in CP18/35, 'shorter term RTO loans are within a similar pricing range to home-collected credit'.<sup>2</sup> The credit cost of a 52-week RTO agreement is less than that of a home-collected loan of similar length. However, because of the higher base prices of many RTO products, in many cases a consumer who used a home-collected loan to buy household goods from a mainstream retailer would pay less overall than if they bought the same product using an RTO agreement.

### Why we are not making exclusions

We are not persuaded of the need to create exclusions from our RTO price cap based on the grounds of firms' size, cost of credit or services offered.

Exclusions would risk creating loopholes that firms might exploit and cause consumer harm. For instance, an exclusion based on interest rates below a certain level could result in firms lowering their interest rates while raising their base prices, leading to consumers paying more than they would under the cap.

Exclusions based around present cost levels would result in firms needing to do some benchmarking to demonstrate to us that the price cap should not apply to them. This approach may lead to lower compliance costs for firms, but harm could still occur.

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## Alternatives to a price cap

- 2.14** In CP18/35, we explained our rationale for introducing a price cap to address the specific harm we had seen in the RTO market. We argued that other measures, such as more information ('disclosure'), would not address the harm that high prices cause.

### Feedback received

**Q2:** *Do you agree with our assessment that other measures will not be fully effective in reducing harm from high prices?*

- 2.15** Most respondents agreed that a price cap would be the most effective way to address harm. Most agreed that other measures, particularly firms disclosing more information, would be largely ineffective.

### Disclosure

- 2.16** While recognising that a price cap could lower overall costs, several respondents felt that it could be more effective to give consumers the information to make an informed decision. For example, explaining to them the costs and benefits of different term lengths.

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2 [www.fca.org.uk/publication/consultation/cp18-35.pdf](https://www.fca.org.uk/publication/consultation/cp18-35.pdf), p18, paragraph 3.49

### ***Impact of new rules on extended warranties***

- 2.17** A firm argued that new rules on extended warranty sales would reduce the overall costs that consumers pay, reducing the need for a price cap.

### ***Assessing creditworthiness***

- 2.18** Several consumer bodies believed our creditworthiness and affordability rules should be strengthened, particularly given RTO customers' stretched finances and previous poor practice in the RTO market.

### ***Promoting alternatives***

- 2.19** Several respondents said that the availability of lower-cost alternatives to high-cost credit would be important to improve consumer choice and competition, but that these are currently too limited to provide a viable alternative.

### ***The scope of our powers***

- 2.20** Two respondents asked whether the FCA had the legal powers to control the cash price of goods.

## **Our response**

We remain convinced that a price cap is the most effective way of tackling the high total costs of RTO.

### **Why we are not introducing new disclosures**

We are not introducing new disclosure requirements in this market as these will not address the harm caused by high prices. Our consumer research showed that RTO customers focus on weekly repayments more than the total cost of credit. In these circumstances, consumers are less likely to be in a position to act upon better information. For example, consumers may not have the money to pay for goods up front in cash, or be eligible for other, lower-cost forms of credit to fund these purchases.

### **Impact of new rules on extended warranties**

We agree that the point of sales ban on extended warranties will reduce some consumers' total costs. We estimated a 10-20% fall in the number of consumers buying extended warranties from RTO firms. But the benefits of the price cap are not limited to those customers who currently buy extended warranties but will no longer do so in future.

### **Assessing creditworthiness**

We agree that assessing creditworthiness (including affordability) is also important. In July 2018, we published [new rules and guidance](#) clarifying our expectations, and these came into force on 1 November 2018. We will act where we find firms are not compliant where we find inadequate affordability assessments. However, creditworthiness rules do not address high prices, which is the harm we want to address with the price cap.

### **Promoting alternatives**

An important part of our high-cost credit review is to promote the availability and awareness of alternatives to high-cost credit. We aim to give a further update on our ongoing work in this area in Q2 2019.

### The scope of our powers

On the issue of our legal powers to control base prices, we are clear that this is within the scope of our FSMA rule-making powers. We set out the powers we have relied on to make the rules in the 'powers exercised' section of the legal instrument in Appendix 1.

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## Benchmarking base prices

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- 2.21** For a price cap in the RTO market to be effective, it is important to control the base price of products. In CP18/35, we proposed doing this by requiring firms to set their base prices, including delivery and installation, at or below a level calculated using other retailers' prices.
- 2.22** We proposed that firms set their base prices by taking the following steps:
- the firm must find benchmarking prices from 3 mainstream retailers – no more than one of which can be a catalogue credit retailer
  - if one of the prices chosen is from a catalogue credit retailer, then the firm's base price must be no higher than the median of the three prices
  - if none of the prices are from a catalogue credit retailer, then the base price must be no higher than the highest of the three prices
- 2.23** Where other mainstream retailers do not sell the same product then the firm would need to benchmark by finding a 'comparable product'.
- 2.24** A firm would not be allowed to choose a price so far outside the range of retail prices it has found that no reasonably informed consumer would be likely to pay it.
- 2.25** We did not propose that firms benchmark second hand goods.

## Feedback received

### **Q3:** *Do you agree with our approach to benchmarking base price?*

- 2.26** Every consumer body that responded agreed that, for a price cap to be effective, we would need to control base prices. There were different views on how to do this.
- 2.27** Around half of consumer bodies agreed with our overall approach. They recognised that RTO firms would be able to price their goods within the upper range of genuine market prices. They also said that firms' record keeping and our supervision of firms' benchmarking would be critical to the rules proving effective. Two respondents also wanted us to keep firms' pricing of second hand goods under review.

### **The effect of benchmarking on product prices**

- 2.28** Some respondents argued that we should have tighter benchmarking rules. Several were concerned that our approach would allow firms to price at the top end of the market. One argued that the credit cap would have little impact because firms would be able to find the highest prices to benchmark to justify their current pricing levels.

- 2.29** These respondents wanted to see firms benchmark against the median of 5 or more other retailers to bring prices down further and to prevent firms gaming the benchmarking requirement. There were different views on whether we should include catalogue credit firms in this number at all. One respondent argued that it should not be for RTO firms to determine whether a price should be excluded from benchmarking because it was one that no reasonable consumer would pay.

### ***Other aspects of benchmarking***

- 2.30** Consumer bodies also made other suggestions about amending the benchmarking rules. These included:

- benchmarking second-hand products by the age of the product
- requiring firms to disclose their benchmarking process when asked
- requiring firms to benchmark frequently enough to reflect changes in mainstream prices
- a clear redress mechanism so that consumers can take a case to the Financial Ombudsman Service
- the FCA publishing a list of retailers that firms could use to benchmark

### ***Options for controlling base prices***

- 2.31** Some respondents suggested the level of the price cap be set based on firms' costs in buying the goods. One respondent said that CP18/35 should have included a comparison of different approaches to setting base prices.
- 2.32** Some firms raised concerns that matching the benchmarking price for all products would be difficult, due to their limited purchasing power. Two firms said that, if a product was only sold by larger retailers, they would be forced to benchmark against those prices and potentially set their own prices below cost.
- 2.33** These firms also argued that selling at a benchmarked price would mean they had to make substantial changes to their business models or require them to raise interest rates to offset lost revenue. This would lead to some products, which were already priced at or below the benchmark, becoming more expensive.

## **Our response**

Controlling product prices is an important part of ensuring an effective price cap for RTO agreements. In designing the proposals in CP18/35, we sought to strike a balance between requiring RTO prices to be benchmarked against real market prices to prevent gaming the cap, while recognising that relatively small RTO firms cannot always offer products for the same price as larger mainstream retailers. Retailers' pricing strategies mean that their competitiveness on particular products is likely to differ across their range, including some products which are heavily discounted but others which are less competitively priced.

### **The effect of benchmarking on product prices**

In some cases, increasing the number of benchmarks may give a better indication that a firm's base price is within the range of prices a reasonably informed consumer would pay. But this makes it more likely that firms would need to include comparable products rather than exact product matches. Our final rules do not require a firm to benchmark

against more than 3 prices as we do not believe the benefits of doing this would be greater than the additional compliance burden to firms.

We do not agree with the argument that allowing firms to benchmark against the highest price (where catalogue credit is not benchmarked against) will mean that the cap has limited impact. RTO firms often sell products that are not widely sold (eg end-of-line products) and so in many cases there will be few other prices to choose from. Our research also shows that typical ranges above median for individual products are between 6% and 20% depending on product category. There will be some examples of products with a wider range but this is unusual. We do not believe that firms will find benchmark prices which are consistently and substantially higher than the market median in such a way as to cancel the effect of the credit cap.

We consulted on a rule that prevents firms from benchmarking against prices that are 'so far outside the range...it has found that no reasonably-informed consumer is likely to pay that cash price...'. To ensure this rule has the intended effect on preventing benchmarking against extreme prices, we are making some additions to the final rule. These set out non-exhaustive factors that firms must take into account in deciding whether a price is one that a reasonably informed consumer would pay. These are:

- how it compares with the other two benchmarked prices
- evidence suggesting the price is out of date – eg out of stock
- factors which suggest the seller does not expect to sell the product at that price

### **Other aspects of benchmarking**

We have considered whether it would be possible to limit RTO firms to selecting first from a predefined list of retailers. However, that would require us to establish, regularly monitor and update a list of retailers across each product category. Firms are better placed to determine which retailers they benchmark against. We will expect them to be able to evidence how they do so.

We do not believe it is necessary that firms benchmark second hand goods. This would be disproportionate, as the price of new goods will limit the price of second hand goods.

Similarly, we are not proposing that firms re-benchmark when non-RTO firms change their retail prices as we believe this would be disproportionate. This would require RTO firms to continually monitor the market at significant compliance cost. It would also lead to RTO firms replicating other retailers' pricing strategies, which may not be viable given retailers' different cost prices. And nor are we requiring that firms publicly disclose how they have benchmarked. Our rules in this area are not designed to facilitate shopping around or address information imbalances between firms and consumers.

However, firms will be required to keep records that we can review. We have clarified in our final rules that these records must make clear the point in time they relate to.

Any consumer unhappy with their RTO product price once the rules are in effect will be able to complain to the firm and, ultimately, to the Ombudsman in the usual way.

The benchmarking mechanism should be viewed in the context of the credit cap. Together, they strike the right balance between addressing the high total costs of RTO and allowing for some flexibility for RTO firms to price within the range of market prices.

### **Options for controlling base prices**

We considered a number of ways to control base prices ahead of publishing CP18/35:

- Setting a benchmark based on wholesale prices. We did not propose this approach for a number of reasons. These were primarily the lack of transparency of the arrangements between suppliers and retailers, the risks of creating perverse incentives between suppliers and retailers and the risk that firms would have to disclose commercially sensitive information about their wholesale pricing through their product prices.
- Controlling base prices compared to recommended retail prices (RRP). We did not propose this as RRP is not commonplace. Any approach along these lines would need to be used alongside an alternative for products with no RRP, making benchmarking more complex. We proposed benchmarking against other retailers' product prices as a more transparent mechanism that was relatively straightforward for RTO firms to implement and for us to supervise.

We do not accept some respondents' arguments that our benchmarking rules will mean that firms will be forced to set their retail prices below cost prices. If there are fewer than 3 retail prices for a specific product, which could constrict the set of prices for benchmarking, a firm will be able to include benchmarks of comparable products.

RTO firms are relatively small and we do not expect them to be the most competitive in the market. But we believe we have struck the right balance in controlling base prices.

### **An earlier review**

We acknowledge that pricing in the retail market is complex and constantly shifting. So we are bringing forward the start of the proposed review of the price cap, with a focus on the impacts of benchmarking, from April 2021 to April 2020. This will give us the opportunity to assess how benchmarking is working in practice. As explained in Chapter 1, our supervisory activity will look at firms' compliance.

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### ***Benchmarking – compliance costs and practical challenges***

**2.34** Firms were concerned about the compliance cost of benchmarking and proposed ways to reduce the burden. These included:

- reducing the number of benchmarks needed per product
- not requiring firms to benchmark old stock, which they may already be selling at a loss
- not requiring firms to benchmark low value items
- allowing firms with prices already below the cap to either set their own cash price, provided they still benchmark to demonstrate compliance with the total credit cap, or only benchmark top selling or highest priced items
- removing furniture from the benchmarking because of the difficulties in finding suitable benchmarks

**2.35** Firms also argued that our proposed rule to re-benchmark a price if they reduce the price would create an additional compliance burden that would act as a barrier to lowering prices.

**2.36** Respondents raised a number of points where they considered the proposals would not work in practice.

**2.37** Some firms and consumer bodies wanted greater clarity on our proposals on comparable products. Suggestions included better defining comparability across product types, setting out a hierarchical model for comparison and the FCA providing validation of benchmark prices. One respondent argued that if the product being benchmarked is not wholly comparable, firms should be allowed to set a different price based on the different features but justified against other benchmarks.

### ***Products new to market***

**2.38** Firms raised practical concerns with benchmarking products that are new to market and that no other retailer sells yet. They pointed out that firms will decide whether to offer these products some months before they come to market. In such cases, our draft rules would require firms to benchmark against comparable products. Firms raised two problems that could make it unviable for them to offer new products:

- products that have new features may not be sufficiently comparable to other products on the market
- comparable products may have been discounted in anticipation of the new product launch

### ***Product bundles***

**2.39** Firms also raised challenges with benchmarking product 'bundles', pointing out that comparison is difficult where product bundles are exclusive to the firm. Several firms proposed that where there were no comparable bundles, firms could benchmark products in the bundle separately and then establish a single 'bundle' price.

### ***Firms offering store cards***

**2.40** Our draft rules prevent RTO firms from benchmarking against (a) another RTO firm and (b) more than one catalogue credit firm. The following questions were asked about these rules.

- How will firms be able to identify other RTO and catalogue credit firms.

- Whether we were casting the net too widely by using the existing Handbook definition of 'retail revolving credit'. That definition includes both firms traditionally called catalogue credit firms and others that offer store cards. Respondents said that the draft rules would prevent RTO firms from benchmarking against a retailer that offers any form of retail revolving credit, regardless of their business model or interest rate. Respondents questioned whether this was the right outcome.
- Whether our rules were right in framing the definition by reference to 'firms'. One respondent pointed out that in some cases the relationship between the retailer and lender means that the retailer who sells the goods is not a 'firm' within the meaning in our rules.

### Our response

We do not believe that we can implement all of respondents' suggestions to reduce the compliance burden of benchmarking without reducing consumer protection.

Consumers buying a product using RTO should have the same level of protection irrespective of the value or popularity of that product. We therefore do not agree that there should be any *de minimis* (a value below which products aren't included) threshold for low value products, or those bought in low volumes.

Nor do we accept that firms will find it impossible to benchmark furniture. Firms should make reasonable judgements in identifying comparable products, taking account of factors that are known to the firm.

If we prescribed what is a comparable product, we would need to establish, monitor and update a set of common attributes and parameters for each type of product. Firms are better placed to determine which products they benchmark against. We will expect them to evidence how they do this.

Where a firm is benchmarking a product no longer sold by other retailers, we would expect the firm to benchmark against comparable products.

### Lowering prices

However, we accept that our draft rules on re-benchmarking before making any change to prices could discourage firms from lowering their prices. We have amended the final rules so that lowering the product price does not require re-benchmarking.

### Products new to market

We also accept the issue firms raised about benchmarking new products. The price cap is not intended to prevent RTO firms from selling new products. We are therefore amending our rules so that a firm has to follow a different process when a product is:

- not own-brand
- new to the UK market and
- so technologically different from products currently on sale that there is no genuinely comparable product to benchmark against.

In such cases, the firm will have to establish a reasonable benchmark price for the product taking into account factors including (where available):

- advertised prices of the new product
- recommended retail price (RRP) of the new product
- any other recommended price from the supplier
- the pricing differentials between previous versions of the product when a new product was launched.

However, 3 months after product launch, the price would need to be re-benchmarked in the normal way (ie against the actual prices at which the product is sold by other retailers).

### **Product bundles**

On benchmarking product bundles, we do not agree with some respondents that firms should be able to benchmark individual items and sell them for a single 'bundled' price unless they can't find a comparable bundle to benchmark against. This approach could encourage firms to bundle secondary goods to evade the intended effects of benchmarking. In particular, firms may bundle secondary products that are of low value to RTO consumers and which firms can buy for low cost, but which are available for sale at high cost in the market. For example, pre-installed computer software which may be of limited value to many consumers and may be available to retailers at much lower costs than when sold on a stand-alone basis.

To strike the right balance we have therefore amended the rules so that firms can sell items by RTO for a single 'bundled' price - but only where they can benchmark against comparable bundles that don't include goods of a significantly different value. In all other cases, the firm would need to benchmark and set separate prices for each of the goods being sold.

### **Firms offering store cards**

To better reflect our original policy intent, we have also made technical changes to our rules so that firms can benchmark against retailers who sell products by retail revolving credit from physical stores (i.e. retailers who offer 'store cards').

The purpose of limiting firms to one catalogue credit firm was to ensure the benchmarks included a range of prices from retailers who do not mainly sell by combining products with credit, a feature of the catalogue credit business model. Based on current market characteristics, we consider that the revised rules will achieve that aim in a more targeted way.

In light of the clarification of the rules we think firms should be able, following a reasonable search, to establish whether or not a firm they are benchmarking against is a catalogue credit firm or not. If a firm made a mistake in this respect when benchmarking, then the reasonableness of the efforts it had made would be a factor we would consider when taking any necessary action.

## Total credit cap

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- 2.41** In CP18/35, we proposed a total credit cap of 100%. This would mean that consumers do not pay credit costs (total interest payable) that are higher than the price of the product, including delivery and installation. We proposed that for agreements in breach of the total credit cap the obligation to pay all credit charges cannot be enforced against the borrower.

## Feedback received

### **Q4: Do you agree with proposals for a total credit cap?**

- 2.42** Most respondents supported this proposal. One commented that a total credit cap would be the most effective way of preventing spiralling costs, while also giving consumers clarity. A consumer body felt the cap struck the right balance between controlling costs, while allowing firms to continue offering credit to consumers who may not have alternatives.
- 2.43** We did, however, receive a range of views on the treatment of add-ons and arrears charges, which we have covered separately in questions 5 and 6 later in this chapter.
- 2.44** One firm did not agree with the total credit cap proposal. If a cap were implemented, the firm would prefer a more phased implementation or for it to be set higher than 100%, to minimise risks to the sector.
- 2.45** Another firm argued that a 100% cap would prevent charities or other small firms from entering the market. It suggested a 120% cap to reflect charities' and other small RTO firms' lower buying power and a de minimis threshold to exclude firms with fewer than 10,000 customers from the cap. The firm was concerned that a 100% cap would prevent firms offering RTO to higher-risk consumers because of bad debt costs.
- 2.46** A small firm felt that the price cap did not reflect the lower risk smaller firms pose – particularly those that do not sell add-ons or charge a customer for being in arrears.

### **Extra point of sale restrictions**

- 2.47** A consumer body recommended that consumers be given more choice about how to pay for delivery and installation – eg paying the RTO firm up-front (incurring no credit costs) or buying the services elsewhere.

### **Annual Percentage Rate of Charge (APR) cap**

- 2.48** An alternative credit provider preferred an APR cap on RTO firms, as is the case with credit unions.

### **Technical amendments**

- 2.49** A firm suggested that one of our draft rules (CONC 5B.2.8R(1) in CP18/35) could cause confusion. It said that the rules would inadvertently allow a firm to set a product price (plus delivery and installation) below the benchmark price and, in turn, set the 100% total credit cap using the benchmark price. This would lead to consumers paying more than 100% of the product price (plus delivery and installation) in credit.
- 2.50** A firm also questioned whether our draft rules achieved our intention of excluding agreements entered into prior to a cap coming into force, but modified afterwards.

## Our response

Our proposal for a credit cap of 100% was based on balancing the impact this would have on firms and the availability of credit, and the benefits to consumers of reduced RTO prices. We estimated that there would be a limited – less than 5% - reduction in the number of consumers able to access RTO under a 100% credit cap. We have not seen evidence to suggest that this assessment is wrong. We have also heard from small firms that they will be able to adapt their business models to continue to operate under the cap.

### Rationale for 100% credit cap

As we noted in the CP, we understand that there is a cost to firms for the risk of providing credit and significant risks in serving a population with low credit scores. Our view remains that the prices firms charge for servicing a vulnerable consumer base can cause harm simply because they are too high. We consider that a 100% credit cap is at an appropriate level to reduce harm and allow consumers to continue to access RTO.

### Extra point of sale restrictions

We do not think it would be appropriate to impose additional point-of-sale restrictions on delivery and installation. The harm we are targeting is the overall cost of RTO agreements and requiring firms to benchmark delivery and installation costs will ensure these charges are in line with the retail market.

### Why we rejected an APR credit cap

Before consulting, we considered whether an APR cap would be more appropriate. If set at the right level, an APR cap could affect those agreements where consumers incur the highest total costs. But doing so would also affect shorter term agreements where total costs are already lower.

### Technical amendments

We have made some technical changes to our final rules in light of feedback and to reflect our policy intent.

We have made clear that the cost of credit cap must be calculated by reference to the firm's cash price for a product rather than the benchmarked price. This addresses the risk that a firm could set a cash price lower than the benchmarked price, but then set its credit costs by reference to the benchmarked price - thereby charging consumers more than 100% of the cash price for the credit.

We have also made absolutely clear that the price cap rules only apply to arrangements to vary or supplement an existing RTO agreement if those arrangements provide for the supply of additional or different goods.

## Theft and accidental damage cover and extended warranties

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- 2.51** In CP18/35, we proposed excluding theft and accidental damage (TAD) cover and extended warranties from a price cap. But we proposed an 'anti-avoidance' rule to prevent RTO firms from attempting to recover revenue that may be lost due to complying with the total cost of credit cap rules by increasing the price for other connected goods or services.

### Feedback received

**Q5:** *Do you agree with our proposals on controlling the price of TAD cover?*

- 2.52** Most consumer groups supported the anti-avoidance rule. However, they raised concerns about how TAD cover is sold today. In particular, they were concerned about the point-of-sale advantage RTO firms have in selling TAD cover. One respondent felt that a lack of competitive pressure was contributing to high prices of insurance and extended warranties, and that these add-ons can make up a significant proportion of the overall costs consumers pay.
- 2.53** Some respondents encouraged us to go further if the anti-avoidance rules proved ineffective. They were keen for us to monitor firms' practices. Some respondents asked us to go further now – for example by requiring firms to:
- reduce the cost of add-ons in line with reduction in base prices (currently these add-on prices tend to be a proportion of the base price)
  - discount TAD cover prices if a customer is buying more than one product
  - ask customers whether they already have insurance that would cover the RTO goods
  - allow customers to replace their TAD cover with a cheaper product at any point
  - give consumers a 14-day cooling-off period after purchase to shop around for aftercare and insurance
  - direct their customers to other insurance providers
  - restrict TAD sales in the same way we have for extended warranties
- 2.54** Two respondents did not agree with our view in CP18/35 that benchmarking TAD cover would be impractical. A consumer body felt all insurance and aftercare should be benchmarked in the same way as we proposed for base prices. The respondent considered it was less risky for RTO firms to insure hire-purchase items compared to other insurers covering a broader range of products.
- 2.55** Another respondent identified insurance cover offered through social landlords, which, for products above £600 not intended to be removed from the home, would save consumers money compared to RTO firms' insurance cover. This respondent asked us to do more to encourage the development of lower cost alternatives to RTO firms' TAD cover.
- 2.56** RTO firms were generally neutral on our proposal for TAD and extended warranties, so long as in practice they can raise prices in response to higher costs of providing these products. Not all RTO firms sell add-ons - one such firm felt that the price cap was effectively lower compared to firms that do sell add-ons.

- 2.57** We did not receive any different views from respondents on the treatment of extended warranties.

### Our response

Given the broad support, we are proceeding with our anti-avoidance rule.

We found that there is some value in TAD insurance for many RTO customers and, unlike with extended warranties, we have not found alternative TAD cover that consumers would be able to buy which matched that offered by RTO firms. This would also make it difficult to require firms to benchmark the price. We are not imposing additional requirements, including new disclosures or point-of-sale restrictions, on TAD.

The two largest RTO firms require customers to hold insurance (most customers do not have home contents insurance with comparable cover). We accept that this is reasonable, given the risk to the consumer that they have to continue paying for an item which has been stolen or damaged beyond use. There is value to consumers in the convenience of buying this cover at the point of sale.

This contrasts with extended warranties, which customers aren't required to take out. We concluded that the appropriate remedy for these products was to ensure firms give consumers more time to consider whether they need the extended warranty without the firm enjoying a point-of-sale advantage.

We will look at the effectiveness of these rules as part of our review starting in April 2020.

## Arrears charges

- 2.58** In CP18/35, we proposed that arrears charges be excluded from the cap. However, we included guidance reminding firms that CONC 7.7.5R makes clear that firms can't impose charges for arrears that are higher than is necessary to allow a firm to recover its reasonable costs. And, as with add-ons, we proposed an anti-avoidance rule to prevent firms from raising charges to recoup revenue lost through the price cap.

## Feedback received

**Q6:** *Do you agree with our approach to controlling the price of arrears charges?*

- 2.59** We received mixed views on this proposal. Several consumer bodies agreed with our proposal. However, some thought that we needed to do more to limit arrears charges, particularly given RTO customers' vulnerability.

- 2.60** Several respondents argued that arrears charges should form part of the 100% cap to give consumers clarity on what they will pay overall. Two considered that a cap of 90% would not significantly affect firm viability, and so arrears charges could be accommodated in a cap of 100%.
- 2.61** Others wanted arrears charges to be capped separately - eg £15 per year or once every 3 months up to a maximum of £10. There were also concerns that our proposed anti-avoidance rule would not prevent firms levying arrears charges more often than they do today, even if they do not increase these charges.
- 2.62** One firm felt that the price cap was effectively lower for firms that use arrears charges compared to those that do not. Another was concerned that our proposal may force charities and not-for-profit firms to charge for arrears rather than build the cost of bad debt into their APR.
- 2.63** Another felt it was important to allow justifiable increases to arrears charges.

### Our response

As we noted in the CP, following our supervisory action, the two largest RTO firms have responded to the concerns we raised over how they treat consumers in long-term financial difficulty by adopting reasonable practices that limit arrears charges. In practice, we do not see consumers accumulating large arrears charges, and the harm this could cause, nor are arrears charges a significant source of firm revenue.

CONC 7.7.5R prevents firms from imposing arrears charges unless the charges are no higher than necessary to cover the reasonable costs to the firm. We recognise that firms need to recover reasonable costs through arrears charges which, for an RTO firm, may include contact with the consumer. But we consider that any increase in the levels or frequency of arrears charges simply to offset the effects of the price cap - rather than recover reasonable arrears handling costs - would be a breach of this rule.

We are confident that our approach is an effective and proportionate way of constraining arrears charges. We will look at the effectiveness of this approach as part of our review starting in April 2020. The transaction data we got from firms to inform our pre-consultation analysis will give us a baseline to inform our review of the price cap's effects in this area.

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## Implementation timetable

- 2.64** In CP18/35, we explained that, depending on respondents' views, we were proposing to finalise rules at the beginning of March 2019 and for them to come into force on 1 April 2019.
- 2.65** We proposed that rules would apply immediately to any new products RTO firms introduce to the market for the first time. But for products that RTO firms were already



offering, the rules would apply either at the point the RTO firm makes a price change or by 1 July (whichever date is sooner).

## Feedback received

### Q7: *Do you have any views on the implementation timetable?*

- 2.66** In general, consumer bodies supported introducing a price cap in April 2019, while firms had concerns.
- 2.67** Consumer bodies wanted a price cap on RTO introduced as soon as possible, given the vulnerability of consumers. Some respondents wanted us to review the price cap after one year rather than two.
- 2.68** Some respondents were also concerned that consumers may be confused by different implementation dates, depending on whether or not a product was new. The consumer bodies wanted rules to apply to all products from 1 April 2019 to ensure vulnerable customers benefited from lower prices. One estimated that consumers would save an additional £6.5-7.6 million as a result.
- 2.69** Most firms asked for more time to implement any price cap. RTO firms raised practical concerns with the proposed timetable, including:
- current timeframes of 6-8 weeks to select and price products would make it difficult to comply
  - that it was too tight for firms to prepare and publish marketing material
  - benchmarking a high number of products where a firm has a particularly extensive range
  - time needed for significant IT changes
- 2.70** Firms suggested an implementation period of 6 to 12 months would be more achievable.
- 2.71** A firm was also concerned that CP18/35 did not consider the impacts of a possible no-deal Brexit coinciding with the implementation date or the time needed to consider business model changes. The firm also argued that our proposed timetable, alongside a requirement to re-benchmark products every year, would mean that benchmarking in the first couple of years would be concentrated between April and June rather than spread across the year.
- 2.72** Small firms with few staff felt it would be difficult to devote enough resources to benchmarking existing products within our proposed timeframe.
- 2.73** One firm asked whether, given the proposed timeframes, it could rely on benchmarks it carries out before the rules come into effect for new and existing products.

### Our response

We have balanced requests for a longer implementation period with the continuing risks to RTO consumers, who are currently entering into potentially long contracts with the high prices we wish to tackle.

The rules will take effect from 1 April 2019 for products introduced to the market for the first time. But for products that RTO firms were already offering, the rules would apply either at the point the RTO firm makes a price change or by 1 July (whichever date is sooner).

We acknowledge that this timetable will be challenging for some firms. But we believe it is important to act as soon as possible to ensure that vulnerable consumers are protected from harm caused by high prices. This is consistent with our Mission and continued prioritisation of issues affecting vulnerable customers. However, we also acknowledge that firms will need to review and, where appropriate, refine their approaches, policies and procedures as they develop experience of benchmarking.

To help firms' implementation, we have made some changes to our Handbook text.

We have added guidance on the proposed rules to make it explicit that firms are able to use benchmarking carried out before 1 April 2019. However, they would also need to comply with other relevant rules as finalised, such as not choosing a price so far outside the range of retail prices it has found that no reasonably informed consumer would be likely to pay it.

We are also giving micro-enterprises a further 3 months to comply with the rules for their existing products. So, for products that a micro-enterprise RTO firm offered for sale before 1 April 2019, the rules would apply either at the point the RTO firm makes a price change or by 1 October 2019 (whichever date is sooner). Due to the market share of these firms, we do not consider this 3 month period will materially reduce the benefits we expect from the cap and will affect only a very small number of consumers.

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## Cost Benefit Analysis

- 2.74** When we propose rules, we must publish a cost benefit analysis (CBA) under Section 138(2)(a) of FSMA. The CBA must include an analysis and estimate of the costs from, and the benefits delivered by, our proposed rules.
- 2.75** We published a CBA for our proposals in CP18/35. This estimated ongoing benefits of £23.5-24.1m per year (£37.0-37.8m when weighted for low incomes). We also estimated ongoing costs at £29.9-32.4m per year (£30.1-34.2m when weighted for low incomes) and one-off costs of £770,000.
- 2.76** We estimated that our proposed cap would lead to around 5% of consumers losing access to the RTO market, as firms would no longer find them profitable. We also explored the impacts of RTO firms exiting the market due to a price cap.
- 2.77** This chapter sets out our response to the CBA feedback.

## Feedback received

### **Q8:** *Do you agree with our assessment of the costs and benefits of these proposals?*

- 2.78** We received a limited number of comments on our CBA. Some consumer bodies supported our approach to quantifying consumer benefits, giving greater weight to the vulnerability of RTO customers. Other consumer bodies doubted the consumer benefits would be as high as we estimated, mainly because of the perceived flexibility for firms around benchmarking.
- 2.79** We received mixed views on consumers finding it harder to access RTO because of our proposals. One consumer body felt there would be few negative impacts; another was concerned that restricted access to household goods would affect the most vulnerable consumers.
- 2.80** A firm urged us to exercise caution in introducing any price cap. To reduce the risk of firms exiting the market, the firm proposed several alternatives – eg introducing benchmarking without a credit cap, a less restrictive cap, or delaying implementation until the effects of our extended warranties rules are clearer.
- 2.81** The firm was also surprised that our survey did not identify consumers using home-collected credit having been denied access to RTO. It was concerned about consumers paying more for this type of credit compared to RTO.
- 2.82** A small RTO firm did not agree with our estimate of a 5% reduction in consumers having access to RTO agreements. This firm estimated that their revenue would fall 23%, which would lead them to reduce the number of agreements they are willing to offer by more than 5%. The firm was unconvinced that consumers would be able to access alternatives to RTO. It considered that alternative finance providers would be unwilling to lend to RTO customers, who are typically a higher credit risk than other borrowers.
- 2.83** Some consumer bodies stressed the importance of monitoring firms' compliance with any cap. This included a desire for firms to report data to us as a matter of course, and for us to dedicate more supervisory resource than the 0.5 FTE we estimated in CP18/35.
- 2.84** One firm suggested the pricing of bundles is likely to be problematic, as bundles are often exclusive to individual firms. They suggested that we had not taken into account the value of bundles in our analysis of RTO pricing and total cost. They proposed benchmarking unique bundles using the sum of benchmarked prices of the individual components of the bundle. Doing so would reduce the amount by which we calculated technology was priced above mainstream retail prices.
- 2.85** A firm disagreed with our assessment in CP18/35 that the total credit cap will not affect agreements with lower total costs. This is because it considered it highly impractical to lower prices and raise interest rates on individual products. As a consequence, it would need to increase prices for products that are at or below the benchmarked price.
- 2.86** Another firm felt a distinction needed to be drawn by profit-motivated RTO firms and not-for-profit firms. It argued that not-for-profit firms' pricing is designed to make a

surplus that can be reinvested to offer a service to consumers who often have little choice.

- 2.87** One firm said that firms cannot carry out benchmarking in the proposed timeframe. It also said it is not practical to do so for the range of products it offers (around 3,000 product lines a year) given its size and resources. The firm argued this will result in firms withdrawing products from the market. The firm also argued that benchmarking costs will be the same regardless of the cost of credit.
- 2.88** A firm did not agree with the survey findings that showed consumers very rarely use illegal money lenders instead of RTO. It considered that consumers would be reluctant to disclose this, even anonymously.

### Our response

None of the feedback we received on our CBA has given us reason to make material changes to it. At paragraph 2.3, we set out the changes we have made to the rules we consulted upon. The changes we have made to benchmarking of new products and bundling will enable firms to continue offering these, albeit with some changes in firms' processes. We do not expect the time taken to benchmark products has changed materially from what we estimated in the CP. Changes to the rules prohibiting benchmarking against prices that a reasonably informed consumer would not pay and the technical amendments align the proposed rules with our policy intent that we set out in CP18/35. This intent was the basis on which we undertook the CBA. Allowing micro-enterprises additional time to comply would make only a marginal impact on the overall costs and benefits of the policy. Our assessment of costs and benefits therefore remains the same.

We recognise that firms will have some flexibility around the application of the benchmarking process. We might expect that firms will choose comparable prices that are as high as possible in the range of reasonable prices allowed for in the rule preventing firms from choosing a price so far outside the range that no reasonably informed consumer would pay. While our analysis of pricing did look at the range of comparable prices sold by RTO firms, we did not collect exhaustive information on the distribution of available prices for all products sold.

However, our research shows that firms will not generally be able to find benchmarks which match their current prices, where their current prices are substantially higher than median prices in the market. Consequently, we believe our estimates of the benefits are still appropriate. Additionally, if we find in our review that the price cap is not delivering the benefits to consumers we would expect, we would consider how we could alter the cap, including the benchmarking requirement.

### Customers losing access

We have carefully set the cap at a level to ensure that most consumers do not lose access to RTO products while protecting consumers from very high prices we observe in this market. Our CBA showed that while we expect a small proportion of consumers to lose access, the loss

to these consumers is outweighed by the benefits the cap delivers to consumers overall from lower prices. Further, our survey found that many consumers who were unable to access RTO managed to source their product from somewhere else (usually without credit).

In our survey, it was clear that most RTO consumers did not consider home-collected (and indeed other forms of credit) as a substitute for RTO credit. We agree that this is surprising given that RTO consumers are more likely than average to use home-collected credit. However, consumers do not seem to consider it as an alternative to financing a specific product purchase.

Across the RTO sector, we expect a 5% reduction in access to RTO because of our cap. We have not seen any evidence to suggest that the loss of access would be greater than this. There will be different effects for different firms. For those individual firms that are more affected by the cap, there will be a greater reduction in access for their customers. However, the firms that face the greatest reduction in revenues will be those who charge the highest prices, so consumers will avoid paying the very highest prices. Those who still buy from such firms will also see a larger price reduction. As we noted above, our survey found that consumers who could not access RTO products did not typically use credit products to finance their product purchase.

### **Reviewing the price cap**

Later this year we will proactively engage with firms to understand how they are complying with the price cap. We will also review the price cap, starting in April 2020, to ensure that it is having the intended effect. We expect that firms will incur some additional costs in dealing with these initiatives but we would not expect the costs to be large.

### **Benchmarking bundles**

We do not agree that our analysis of RTO pricing should have used the sum of the benchmarked prices of the individual components of a bundle. It is often the case that bundled retail products, such as pre-installed software, are priced much lower than the sum of the individual prices of the components. This is because consumers who want to buy the main product may not value the additional components very highly (or at all). Consumers who choose to buy such a product separately are likely to place a much higher value on it. Consequently, we do not think we need to update our pricing analysis or revenue simulation used for our CBA.

### **Adjusting base price and interest rates**

Our CBA assumed that firms with prices where the base price is above a benchmarked price, but total costs below what the cap would allow, would adjust interest rates and product prices so that they meet the cap but leave repayments unchanged. However, we acknowledge that this will not be possible in some cases. Where firms cannot adjust interest rates for individual products, we would expect firms to change their pricing strategy at the product category level. We might expect this will have small effects on consumer costs, raising total costs for some consumers and lowering them for others. That is, firms might increase the interest rate for a product category to recoup revenue

lost on products where the price of a product needs to be reduced to meet the benchmark. If firms do this in a way that is revenue neutral, consumers buying the product with a lower base price from benchmarking would pay slightly less in total, and consumers buying other products in the same category would pay slightly more. Firms in this situation may also make changes to their business lines, which could affect consumer choice. However, the overall impact will depend on the firm's response as they develop strategies to minimise the costs of complying with the cap. The overall impacts are therefore difficult to predict with any certainty. We do not think they will materially differ from the impacts we estimated in our CBA.

We believe the protections from high prices the cap gives consumers should apply whatever the objectives of the provider, including non-profit providers. The effect on consumers of high prices is the same regardless of the type of provider.

### **Timetable for the new rules**

Firms that are not micro-enterprises will have until 1 July to benchmark products that they are already offering. Firms which have larger numbers of product lines or smaller levels of sales will be more affected by the fixed costs of benchmarking. We estimated the benchmarking costs in our CBA. For some firms, the fixed costs of benchmarking may lead them to stop offering some products. We think this effect would be quite marginal; for it to occur, the costs of benchmarking would need to be larger than the expected profit on the product. The individual costs of benchmarking each product is relatively small and therefore we do not expect significant changes to product offering.

Similarly, the requirement that any new products released on or after 1 April comply with the cap could lead to firms delaying the release of new products. This effect should also be small, as the lost profits from the delay would be less than the costs of benchmarking the product to release it sooner.

### **RTO customers use of illegal money lenders**

Where a consumer is unable to access RTO, we were careful to ask questions that would get honest answers about the use of illegal money lenders and are confident in our survey results. However, we will consider negative effects such as this when monitoring the effects of the RTO price cap.

### **Store closures**

We note that BrightHouse, the largest RTO firm, has recently announced that it is closing 30 stores (just over 10% of its stores). As we explained in CP18/35, the largest firms are still adjusting their business models in response to lower sales following our regulatory activity to ensure compliance with affordability requirements. We also said that it is not reasonably practicable to predict how the market will evolve in a lower sales environment.

Consequently, we assumed that firms continue operating at their current sales levels in our baseline to the CBA. Including these store closures in

our baseline would have lowered both the costs and benefits of the cap but does not affect the proportionality of the price cap.

While we believe that the store closures are mainly driven by other changes in the market, some of these store closures may be influenced by the price cap. In CP18/35, we noted that the lost profits due to the cap will be less than we estimated in the CBA if firms decide to exit rather than continue to operate. A similar argument applies to store closures. Any store closure will also have an impact on consumers. Our analysis shows that only some of the consumers would be worse off and some consumers will find alternative products or other channels to get products. However, given that there is no evidence to suggest that a proposed price cap caused these store closures, and the relatively small proportion of RTO sales affected by these closures, we have not updated our CBA to take store closures into account.

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## Equality Impact Assessment

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**2.89** In CP18/35 we considered whether our proposals could have a potentially discriminatory impact on groups with protected characteristics. In our Equality Impact Assessment (EIA) we found that:

- particular demographics are disproportionately represented among RTO users compared to the general population
- our proposals would have a net positive impact on consumers, but there may be negative impacts for some, particularly loss of access
- so, while there may be a disproportionate impact on groups with protected characteristics compared with the wider population, we consider these impacts to be net positive

## Feedback received

**Q9:** *Do you agree with our initial assessments of the impacts of our proposals on the protected groups? Are there any others we should consider?*

**2.90** We received few comments on our EIA. Most consumer bodies agreed with our assessment.

**2.91** A consumer body proposed two additional groups - those experiencing in-work poverty and younger people on low to middle incomes. Another consumer body felt that vulnerable consumers found it difficult to shop around.

**2.92** We received mixed views on how our proposals might result in consumers losing access to the RTO market. For instance, one consumer body thought it was important that firms remained viable as, high prices aside, RTO was meeting a consumer need. However, another thought loss of access would benefit consumers in the longer term,

particularly as our survey found half of consumers who were declined for RTO found an alternate means of buying the product.

- 2.93** Firms highlighted risks of reduced access to the RTO market from the lack of alternatives for consumers. Several respondents argued that more should be done to increase the availability and awareness of these alternatives. One RTO firm was concerned that restricted access would have the greatest impact on women, particularly those with families. The firm considered a consumer going without or relying on family would cause harm.
- 2.94** One firm believed that our proposals would cause its prices to rise and its product range to shrink. The firm considered this would disproportionately affect older consumers, who tend to buy lower priced, entry-level products.
- 2.95** Another firm highlighted the wider impacts of our proposals potentially pushing smaller RTO firms out of business – for example, job losses.

### Our response

We do not consider there to be any evidence that would alter or contradict the view we reached in our initial assessment. We have covered loss of access and firm exit earlier in this paper. We do not believe that loss of access will disproportionately affect women. Although it is possible older consumers might be more affected, the number will be very small compared to the price cap's overall benefits.

As stated in Chapter 1, we will take account of any equality and diversity implications as part of monitoring the impact of the price cap.

### Fostering high-cost credit alternatives

An essential part of our overall package is the work we are doing to foster the growth of alternatives to high-cost credit. Over time, these alternatives should provide greater options for consumers who may no longer be able to access RTO.

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## Annex 1

### List of non-confidential respondents

Association of British Credit Unions

Blackpool Council

BrightHouse

Capital Credit Union

Carnegie UK Trust

Centre for Responsible Credit

Chartered Institute of Credit Management

Christians Against Poverty

Citizens Advice

Citizens Advice Scotland

Consumer Credit Trade Association

Debt Camel

End Child Poverty

Fair by Design

Financial Services Consumer Panel

Just Finance Foundation and Church of England Mission & Public Affairs Council

Lance Gordon

Leeds City Council

Money Advice Scotland

Money Advice Trust

PerfectHome

Ray Prince

Smarterbuys Store

StepChange

The Consumer Council

The Money Charity

## Annex 2

### Erratum – Table 3.1 in CP18/35

1. We are publishing a corrected version of Table 3.1: "Extract of analysis of RTO pricing (October 2018)" from the CP18/35.
2. Following an enquiry from a respondent, we discovered an error in how three columns in the table – "Total Relative Financing Multiple", "Plus Insurance", and "Plus Extended Warranties and Insurance" – were calculated for two product categories for Firm 2. This resulted from an incorrect treatment of delivery charges, which were double-counted when calculating these columns. We also discovered a typographical error affecting one number in the results reported for Firm 1.
3. We note that while the costs relative to the high street for the two affected product categories are slightly lower, the overall picture of the cost of RTO, especially at the highest end, is unaffected.
4. The error does not affect any other calculations in the CP, including the average overall relative cost of RTO or any calculation in the CBA.

**Table 3.1: Extract of analysis of RTO pricing (October 2018<sup>3</sup>)**

**Longest Financing Term**

Firm	Product Category		Base Price Multiple (includes delivery and installation) Relative to High Street	Term (weeks)	Relative to High Street		
					Total Relative Financing Multiple	Plus Insurance	Plus Extended Warranties and Insurance
Firm 1	Appliances	Mean	1.6	156	3.1	3.7	4.4
		Highest	1.8		3.6	4.2	5.3
	Technology	Mean	1.4	80	2.3	2.8	2.9
		Highest	1.5		2.4	3.0	3.1
	TV & Audio	Mean	1.6	156	3.1	3.6	3.9
		Highest	1.7		3.3	3.8	4.2
Firm 2	Appliances	Mean	1.1	156	2.2	2.5	3.1
		Highest	1.4		2.8	3.2	4.0
	Technology	Mean	1.3	78	2.0	2.4	2.8
		Highest	1.7		2.7	3.1	3.6
	TV & Audio	Mean	1.0	156	2.0	2.3	2.6
		Highest	1.1		2.1	2.4	2.7

## Annex 3

### Abbreviations used in this paper

<b>APR</b>	Annual percentage rate of charge
<b>CBA</b>	Cost benefit analysis
<b>CONC</b>	Consumer Credit sourcebook
<b>CP</b>	Consultation paper
<b>EIA</b>	Equality Impact Assessment
<b>FCA</b>	Financial Conduct Authority
<b>FSMA</b>	Financial Services and Markets Act
<b>PS</b>	Policy statement
<b>RRP</b>	Recommended retail price
<b>RTO</b>	Rent-to-own
<b>TAD</b>	Theft and accidental damage

We have developed the policy in this Policy Statement in the context of the existing UK and EU regulatory framework. The Government has made clear that it will continue to implement and apply EU law until the UK has left the EU. We will keep the proposals under review to assess whether any amendments may be required in the event of changes in the UK regulatory framework in the future.

All our publications are available to download from [www.fca.org.uk](http://www.fca.org.uk). If you would like to receive this paper in an alternative format, please call 020 7066 7948 or email: [publications\\_graphics@fca.org.uk](mailto:publications_graphics@fca.org.uk) or write to: Editorial and Digital team, Financial Conduct Authority, 12 Endeavour Square, London E20 1JN

# Appendix 1

## Made rules (legal instrument)

## CONSUMER CREDIT (RENT-TO-OWN COST CAP) INSTRUMENT 2019

### Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137A (The FCA’s general rules);
  - (2) section 137C (FCA general rules: cost of credit and duration of credit agreements);
  - (3) section 137D (FCA general rules: product intervention);
  - (4) section 137T (General supplementary powers); and
  - (5) section 139A (The FCA’s power to give guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

### Commencement

- C. This instrument comes into force on 1 April 2019.

### Amendments to the Handbook

- D. The Consumer Credit sourcebook (CONC) is amended in accordance with the Annex to this instrument.

### Notes

- E. In the Annex to this instrument, the note (indicated by “**Note:**”) is included for the convenience of readers but does not form part of the legislative text.

### Citation

- F. This instrument may be cited as the Consumer Credit (Rent-to-Own Cost Cap) Instrument 2019.

By order of the Board  
28 February 2019

## Annex

## Amendments to the Consumer Credit sourcebook (CONC)

After CONC 5A (Cost cap for high-cost short-term credit) insert the following new chapter, CONC 5B. The text is not underlined.

**5B Cost cap for rent-to-own agreements**

**5B.1 Application and guidance**

Application

5B.1.1 R This chapter applies:

- (1) to a **RTO firm** with respect to any **RTO agreement** that has been entered into on or after one of the following dates:
  - (a) for a **RTO agreement** that relates to *goods* that have not been offered or made available to *consumers* by the **RTO firm** immediately before 1 April 2019, that date; or
  - (b) for a **RTO agreement** that relates to any other *goods*, the earliest of the following dates:
    - (i) any date on or after 1 April 2019 on which the **RTO firm** has increased the *cash price* of the *goods* to which the agreement relates; or
    - (ii) 1 July 2019.
- (2) to a **RTO firm** with respect to an arrangement to vary or supplement an existing **RTO agreement** so as to supply one or more additional or different *goods* under that agreement, that has been entered into on or after one of the following dates:
  - (a) for an arrangement that relates to additional or different *goods* that have not been offered or made available to *consumers* by the **RTO firm** immediately before 1 April 2019, that date; or
  - (b) for an arrangement that relates to any other additional or different *goods*, the earliest of the following dates:
    - (i) any date on or after 1 April 2019 on which the **RTO firm** has increased the *cash price* of the additional or different *goods*; or
    - (ii) 1 July 2019.

- (3) Where an **RTO firm** is a *micro-enterprise* the references in *CONC* 5B.1.1R(1)(b)(ii) and *CONC* 5B.1.1R(2)(b)(ii) to 1 July 2019 are to be read instead as references to 1 October 2019, and all other references to those provisions are to be read accordingly.

5B.1.2 G (1) This chapter applies to **RTO firms** when they are entering into new **RTO agreements**, and when they are varying or supplementing an existing **RTO agreements** so as to supply additional or different *goods* under the agreement. This chapter does not therefore apply where the variation or supplementation of an existing **RTO agreement** does not involve the supply of additional or different *goods*.

- (2) Where *CONC* 5B.1.1R(2) applies, this chapter does not apply in relation to *goods* that had been supplied under an existing **RTO agreement** prior to the relevant date as provided in *CONC* 5B.1.1R(2)(a) and (b).

5B.1.3 G **RTO firms** are reminded that, as set out in *GEN* 2.2.1R, the provisions of this chapter have to be interpreted in light of their purpose.

Guidance on application and interpretation

5B.1.4 G In this chapter, a word or term in bold (other than in headings and titles) has the meaning given in *CONC* 5B.7.

## 5B.2 Prohibition on RTO firms from entering into RTO agreements

Entering into, varying or supplementing agreements: requirements as to the cash price of new goods

5B.2.1 R A **RTO firm** must not enter into, vary or supplement a **RTO agreement** where the *cash price* of the *goods* (which are not second-hand *goods*) supplied under the agreement exceeds the **benchmarked price**.

5B.2.2 R Except where *CONC* 5B.2.4R(1) applies, a **RTO firm** must establish the **benchmarked price** by taking the following steps:

- (1) The **RTO firm** must find three benchmarking *cash prices*.
- (2) A benchmarking *cash price*:
  - (a) must be a *cash price* at which the *goods* are currently offered or available for sale to *consumers* in the *United Kingdom*, but not by another **RTO firm** or an **associate** of the **RTO firm** establishing the **benchmarked price**;
  - (b) save where paragraph (3) applies, must be for the same *goods* as the **RTO firm** intends to supply under the **RTO agreement**;



- (c) where paragraph (3) applies, must be for *goods* comparable, by reference to any features or characteristics of the *goods* that might reasonably be expected to affect the *cash price*, to those which the **RTO firm** intends to supply under the **RTO agreement**; and
  - (d) may be a *cash price* charged by a **retail revolving credit business** provided the other two benchmarking *cash prices* are not.
- (3) This paragraph applies where, following a reasonable search of the market, the **RTO firm** has been unable to find three benchmarking *cash prices* that satisfy the requirements in paragraph (2)(b).
  - (4) Where paragraph (2)(d) applies, the median of the three benchmarking *cash prices* is the **benchmarked price**.
  - (5) Where paragraph (2)(d) does not apply, the highest of the three benchmarking *cash prices* is the **benchmarked price**.
  - (6) Each item of *goods* being supplied under one **RTO agreement** must be benchmarked individually except where the **RTO firm** is offering a bundle of *goods* to be supplied for one *cash price*.
  - (7) Except where paragraph (8) applies, where a bundle of *goods* is being supplied under one **RTO agreement** for one *cash price*, the **RTO firm** must benchmark against other *goods* supplied as bundles, in the way described in paragraphs (1) and (2) above.
  - (8) This paragraph applies where:
    - (a) a **RTO firm** wishes to supply a bundle of *goods* under one **RTO agreement** for one *cash price*;
    - (b) the **RTO firm** has been unable to find three benchmarking *cash prices* based on the same bundle of *goods*; and
    - (c) any comparable bundle of *goods* that the **RTO firm** would need to rely upon to establish a **benchmarked price** contains one or more *goods* of significantly different value from those in the bundle that the **RTO firm** wishes to supply.
  - (9) Where paragraph (8) applies the **RTO firm** must:
    - (a) separately benchmark each item in accordance with paragraphs (1) and (2) above; and
    - (b) set separate *cash prices* for each of those items.
  - (10) Where a **RTO firm** reasonably considers that a particular *cash price* is so far outside the range of *cash prices* it has found that no

reasonably-informed *UK consumer* is likely to pay that *cash price*, the **RTO firm** must not use that *cash price* as a benchmarking price.

- (11) In assessing whether a particular *cash price* is so far outside the range of *cash prices* it has found that no reasonably-informed *UK consumer* is likely to pay that *cash price* a **RTO firm** must, in particular, consider:
  - (a) the difference between that *cash price* and the other two benchmarking *cash prices* the **RTO firm** has found;
  - (b) evidence suggesting that the *cash price* is out of date, for example where the item is no longer in stock; and
  - (c) any other factors suggesting that the seller does not expect to sell the *goods* at that *cash price*.

- 5B.2.3      G      (1) New *goods* are *goods* which are not second-hand *goods* and include, for example, ex-display *goods*.
- (2) The range of features which **RTO firms** might consider under *CONC 5B.2.2R(2)(c)* when identifying comparable *goods* includes brand, quality, functionality, performance, size and colour, but only where these features could reasonably be expected to affect the *cash price*.
- (3) In relation to *CONC 5B.2.2R(10)*, examples of cases where the *FCA* would expect a **RTO firm** to exclude a *cash price* include, but are not limited to:
- (a) *cash prices* that have been set primarily for a non-*UK* market; and
  - (b) *cash prices* that have clearly been set in error.

Establishing a benchmarked price for goods that will be new to the UK market

- 5B.2.4      R      (1) This paragraph applies to *goods*:
- (a) that will not be sold exclusively by a **RTO firm**;
  - (b) that are not currently offered for sale on the *UK* market; and
  - (c) that have features so technologically different from those of *goods* currently for sale on the *UK* market that it is not possible to identify *goods* that are genuinely comparable.
- (2) Where paragraph (1) applies, a **RTO firm** must establish a **benchmarked price** for the *goods* that is reasonable, having regard in particular to:
- (a) any price at which the *goods* have been advertised in the

*United Kingdom* prior to launch;

- (b) any recommended retail price for the *goods*;
- (c) any other recommended price for the *goods* that has been provided by a supplier;
- (d) where the *goods* replace an existing model:
  - (i) the *cash price* at which the existing model was first offered for sale in the *United Kingdom*; and
  - (ii) where the existing model replaced a previous model, the difference between the *cash price* of the previous model and the *cash price* of the existing model at the time the existing model was first offered for sale.

#### Timing

- 5B.2.5 R A **RTO firm** must establish the **benchmarked price** for *goods*:
- (1) by the time it offers to supply the *goods* under a **RTO agreement** for the first time;
  - (2) by the time it increases the *cash price* at which it offers to supply the *goods* under a **RTO agreement**;
  - (3) where a **benchmarked price** has been established under *CONC* 5B.2.4R(2), by the end of the period of 3 *months* that begins on the day on which the *goods* were first offered for sale on the *UK* market; and
  - (4) no later than 12 *months* after the last time it established a **benchmarked price** in accordance with any provision of this *rule*.
- 5B.2.6 G The fact that a **benchmarked price** for *goods* has been established before the coming into force of *CONC* 5B does not prevent it satisfying the requirements of *CONC* 5B.2.5R(1). Subsequent benchmarking then has to be carried out in accordance with 5B.2.5R(2), (3) or (4) in the normal way.

Entering into, varying or supplementing agreements: requirements as to the cash price of delivery and installation of goods

- 5B.2.7 R A **RTO firm** must not enter into:
- (1) a **RTO agreement**;
  - (2) an arrangement to vary or supplement an existing **RTO agreement** by the supply of additional or different *goods* under that agreement; or
  - (3) a **connected agreement**,

where the *cash price* for delivery and/or the *cash price* for installation exceeds the relevant **benchmarked price**.

- 5B.2.8 R (1) A **RTO firm** must establish the **benchmarked price** for delivery or installation of *goods* supplied under a **RTO agreement** by selecting the *cash prices* charged for, as relevant, delivery or installation of the same category of *goods* by three retailers (who must not include a **RTO firm** or an **associate** of the **RTO firm** establishing the **benchmarked price**) and taking the median of those prices.
- (2) A **RTO firm** must establish the **benchmarked price** for delivery and/or installation:
- (a) by the time it offers to supply the relevant *goods* under a **RTO agreement** for the first time;
  - (b) by the time it increases the *cash price* at which it offers to provide delivery or installation in relation to *goods* supplied under a **RTO agreement**; and
  - (c) no later than 12 *months* after the last time it established a **benchmarked price** in accordance with any provision of this *rule*.
- 5B.2.9 G The fact that a **benchmarked price** for delivery and/or installation has been established before the coming into force of *CONC 5B* does not prevent it satisfying the requirements of *CONC 5B.2.8R(2)(a)*.
- 5B.2.10 G (1) The *FCA* does not expect **RTO firms** to identify the *cash prices* for delivery and/or installation of identical goods. It will be sufficient for **RTO firms** to select *cash prices* for the delivery and/or installation of the category of *goods*. For example, **RTO firms** would need to find *cash prices* for the delivery and/or installation of washing machines but not for a particular model of washing machine.
- (2) When selecting benchmarking *cash prices* for delivery, **RTO firms** should select prices which apply in comparable circumstances to those that apply to the **RTO firm**, for example in terms of distance or timing.

Entering into, varying or supplementing agreements: total cost of credit cap

- 5B.2.11 R (1) A **RTO firm** must not enter into a **RTO agreement** for *goods* that provides for the payment by the *borrower* of one or more **charges** that, alone or in combination with any other **charge** under the **RTO agreement** or a **connected agreement**, exceed or are capable of exceeding the *cash price* of the *goods* plus, where relevant:
- (a) the *cash price* for delivery;

- (b) the *cash price* for installation; and
- (c) the *cash price* of *goods* or services supplied under a **connected agreement**.

(2) A **RTO firm** must not enter into an arrangement to vary or supplement a **RTO agreement** by the supply of additional or different *goods*, where the arrangement provides for the payment by the *borrower*, in relation to the additional or different *goods*, of one or more **charges** that, alone or in combination with any other **charge** under the **RTO agreement** or a **connected agreement**, exceed or are capable of exceeding the *cash price* of the additional or different *goods* supplied, plus, where relevant:

- (a) the *cash price* for delivery;
- (b) the *cash price* for installation; and
- (c) the *cash price* of *goods* or services supplied by a **connected agreement**.

5B.2.12 G Where more than one item of *goods* and/or services is supplied under one **RTO agreement**, the total amount of the **charges** that may be payable by the *borrower* under that agreement should be calculated with reference to the sum of the *cash price* of each of the *goods* and, where relevant, services. For example, where a **RTO agreement** covers the supply of a washing machine and dryer, and delivery and installation of both:

Washing machine:	<i>cash price</i>	=	£200
Dryer:	<i>cash price</i>	=	£250
Delivery:	<i>cash price</i> total	=	£30
Installation:	<i>cash price</i> total	=	£20
The sum of the <i>cash prices</i>		=	£500
The total amount of <b>charges</b> that may, in addition, be payable by the <i>borrower</i> must not exceed £500.			

### 5B.3 Anti-avoidance

5B.3.1 R **RTO firms** must not attempt to recover revenue that may be lost due to compliance with the total cost of credit cap *rules* through the price for other *goods* or services provided by the **RTO firm** in connection with a **RTO agreement**.

5B.3.2 G (1) For example, **RTO firms** should not seek to increase the price of theft or accidental damage insurance, or extended warranties in order to recover revenue lost due to the cost cap *rules*.

- (2) **RTO firms** are also reminded of the *rule* in *CONC 7.7.5R* which states that *firms* must not impose charges on *customers* in default or arrears difficulties unless the charges are no higher than necessary to cover the reasonable costs to the *firm*.

#### **5B.4 Policies and procedures for establishing benchmarked prices**

5B.4.1 R A **RTO firm** must:

- (1) establish, implement and maintain clear and effective policies and procedures to enable it to establish **benchmarked prices** under *CONC 5B.2.2R*, *CONC 5B.2.4R* and *CONC 5B.2.8R*;
- (2) set out the policies and procedures in (1) in writing, and have them approved by its *governing body* or *senior personnel*;
- (3) assess and periodically review:
  - (a) the effectiveness of the policies and procedures in (1); and
  - (b) the **RTO firm's** compliance with those policies and procedures and with its obligations under *CONC 5B*; and
- (4) in the light of (3), take appropriate measures to address any deficiencies in the policies and procedures or in the **RTO firm's** compliance with its obligations.

#### Obligations in competition law

5B.4.2 G **RTO firms** are reminded of their obligations to ensure compliance with competition law (including the prohibitions against anti-competitive agreements and abuse of a dominant position in Chapters 1 and 2 of the Competition Act 1998 and the criminal cartel offence in Section 188 of the Enterprise Act 2002 as amended by the Enterprise and Regulatory Reform Act 2013). Those obligations include:

- (1) not entering into any agreements with other firms where the agreement has as its object or effect an appreciable prevention, restriction or distortion of competition – for example to agree sale prices or to allocate customers. For example, if a **RTO firm** director called another **RTO firm** or a non-**RTO firm** and agreed to sell their products at a certain price, this would be restrictive of competition and illegal. The individuals involved could also be prosecuted for the criminal cartel offence; and
- (2) not disclosing to, or accepting from, competitors any commercially sensitive information such as pricing or price planning, customer or market information or company strategy. For example, if a **RTO firm's** employee met or called another **RTO firm's** employee to find out any current or future pricing information whatsoever, that was not otherwise publicly available, whether for the purpose of

attempting to fulfil any obligation under these *rules* or not, that could be illegal anti-competitive activity, even if the recipient of the information stayed silent.

5B.4.3 G **RTO firms** should also note the following points.

- (1) The disclosure or receipt of commercially sensitive information may amount to a breach of competition law and could lead to infringement findings and fines not only in relation to the firm disclosing the information but also in relation to other firms receiving the information.
- (2) A person commits the criminal cartel offence if they agree with one or more others to make or implement (or cause to be made or implemented) certain prohibited cartel arrangements relating to two or more businesses, namely price fixing, market sharing, bid-rigging, and limiting output. The maximum penalty on conviction for the criminal cartel offence is five years imprisonment and/or an unlimited fine.
- (3) It is the responsibility of each firm to assess its own position under competition law (for example by taking its own legal advice) and to ensure all its staff are compliant with competition law and in particular that they know what is, and is not, lawful practice.
- (4) Relevant guidance on competition law has been published by the Competition and Markets Authority.

[**Note:** for example, see:

Competition Law Risk a Short Guide at:

<https://www.gov.uk/government/publications/competition-law-risk-a-short-guide>

Limiting risk in relation to competitors' information at:

<https://www.gov.uk/government/publications/limiting-risk-in-relation-to-competitors-information>

Quick Guide to Complying with Competition Law at:

[https://www.gov.uk/government/publications/how-small-businesses-can-comply-with-competition-law.](https://www.gov.uk/government/publications/how-small-businesses-can-comply-with-competition-law)]

## 5B.5 Record keeping

5B.5.1 G **RTO firms** are reminded of their obligations in SYSC 9.1.1R to keep orderly records, which must be sufficient to enable the *FCA* to monitor the *firm's* compliance with the requirements of the *regulatory system*. Records which the *FCA* would consider to be sufficient to show compliance with the

benchmarking requirements in *CONC 5B* include:

- (1) point-in-time evidence of other benchmarking *cash prices* such as screengrabs or outputs of third party benchmarking data, together with evidence establishing the point in time to which it relates;
- (2) evidence to show how the **RTO firm** took reasonable steps to ascertain whether the same item of *goods* or bundle of *goods* was available for sale by other retailers; and
- (3) evidence to show how the **RTO firm** established that *goods* benchmarked against were comparable to those supplied by the **RTO firm**.

## **5B.6 Consequences of contravention of the total cost of credit cap**

5B.6.1 R Where a **RTO firm** enters into a **RTO agreement** in contravention of a *rule* in *CONC 5B.2.11R*:

- (1) an obligation in or under a **RTO agreement** that requires the *borrower* to pay **charges** which in total would exceed the total cost of credit cap, is unenforceable in its entirety; and
- (2) the *borrower* is entitled to recover any amount paid in **charges**. If that is the case, at the written or oral request of the *borrower*, the **RTO firm** must, as soon as reasonably practicable following the request and in any case within 7 *days* of the request, repay to the *borrower* any **charges** paid by the *borrower* under or in connection with the **RTO agreement**.

5B.6.2 G Taking the example in *CONC 5B.2.12G*, if the agreement provided that the total amount of **charges** that may be payable by the *borrower* were £600 (so exceeding the sum of the *cash prices* which was £500), the obligation to pay the £600 **charges** would be unenforceable, and where a *customer* had paid part or all of the £600, they would be entitled to have the amount of **charges** they had paid refunded by the **RTO firm**.

## **5B.7 Interpretation**

5B.7.1 R In this chapter, words or terms used in *CONC 5B* which appear in bold (other than headings and titles) have the following meanings:

- (1) “**associate**” means any *person* whose business or domestic relationship with a **RTO firm**, whether directly or indirectly, might reasonably be expected to give rise to a community of interest between them which may involve a conflict of interest in dealings with *consumers*;
- (2) “**benchmarked price**” means a price calculated in accordance with *CONC 5B.2.2R*, *CONC 5B.2.4R* or *CONC 5B.2.8R*;



- (3) “**charge**” is a charge payable, by way of interest or otherwise, in connection with the provision of *credit* under a **RTO agreement**, whether or not the agreement itself makes provision for this, and whether or not the *person* to whom it is payable is a party to the **RTO agreement** or an *authorised person*, and which would form part of *the total charge for credit*;
- (4) “**connected agreement**” is an agreement:
  - (a) for delivery and/or installation of *goods* supplied under a **RTO agreement**; and/or
  - (b) which provides for a payment in connection with a **RTO agreement** where that payment would form part of the *total charge for credit*;
- (5) “**household goods**” means *goods* which are normally found in a residential home and includes but is not limited to furniture, kitchen appliances (such as cookers, washing machines and dryers, microwaves, refrigerators and freezers), electronic and technological goods (such as vacuum cleaners, televisions and accessories, music systems and accessories, games consoles and accessories, computers, tablets and accessories, and mobile phones);
- (6) “**retail revolving credit business**” means a *person*:
  - (a) whose business comprises or includes the sale of *goods* financed by a form of *retail revolving credit*; and
  - (b) whose business does not comprise or include the sale of such *goods* from one or more physical stores.
- (7) “**RTO agreement**” means a *regulated credit agreement* which is a *hire-purchase* or *conditional sale agreement* that supplies one or more items of **household goods**, but excluding those in relation to *goods* acquired principally for business purposes; and
- (8) “**RTO firm**” means a *firm* whose business comprises or includes the *regulated activity* of *entering into a regulated credit agreement as lender* and/or *exercising or having the right to exercise the lender’s rights and duties under a regulated credit agreement*, in relation to one or more **RTO agreements**, as defined in CONC 5B.7.1R(7) and in relation to more than one category of **household goods**.

