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Competition and Consumer Policy
Ministry of Business, Innovation & Employment
PO Box 1473
Wellington 6140

By Email: consumer@mbie.govt.nz

Trade Me's Submission on the Discussion Paper: Review of consumer credit regulation

Thank you for the opportunity to submit on the "Review of consumer credit regulation" discussion paper.

This submission is made by Trade Me Limited ("Trade Me"). Trade Me provides New Zealand's largest online marketplace, where our members can buy and sell items. Every day over 700,000 New Zealanders use the Trade Me Marketplace. Trade Me is not a credit provider, but:

- We do have an interest in and promote Harmoney Limited ("Harmoney").
- Our site does offer various payment products, including Afterpay.
- We do provide finance calculators on our site.

As our interest in consumer finance is reasonably limited we have only provided responses to some of the questions in the discussion document.

Question 5: Which interest rate cap options, if any, would you prefer? Which interest rate options would you not support? Please support how you made your assessment.

Trade Me would support the introduction of a cap on interest rates across consumer credit lending to help eliminate high-cost lending, together with a prohibition on providers charging unconscionable fees.

We support lenders being required to disclose to borrowers the annual percentage rate (APR), i.e. the percentage that represents the actual yearly cost of the borrowed funds over the term of the loan. The APR should include interest charges and other fees ascertainable at the time that the APR is disclosed (e.g. application fees, regular administration or account fees, discharge or security fees etc). We think default fees and late payment fees should be excluded from the APR. It's reasonable for these to be excluded as these fees may not be incurred. But these fees should be clearly disclosed to consumers before the finance contract is entered into.

APRs should be clearly disclosed (e.g. in advertising messages) to assist consumers identify the true cost of credit and more easily compare interest rates across credit providers.

We also support mandating an overall cap on interest rates to prevent unconscionable loans.

We think it is more problematic to mandate caps on fees, as the nature of fees charged may vary greatly (e.g. between online and more traditional business models). That said, we'd support a requirement that fees should not be unconscionable.

Of the different interest rate cap options, our initial preference is for Cap Option C. However, we have not considered this in depth.

Question 9: Do you consider there should be any changes to the current advertising requirement in the Responsible Lending Code? If so, what would be the impact of those changes on borrowers, lenders and the credit markets?

We support the principles-based approach in the Code. If there are changes we would encourage these to be drafted in a principles-based manner.

Principles-based legislation provides scope for innovation. In comparison, prescriptive requirements prevent innovation and prevent technological advances being introduced.

Question 13. Do you agree with our assessment of the costs and benefits of the options for covering additional credit contracts under the CCFA? Are there any costs or benefits missing? Do you have any information or data that would help us to assess the degree or estimate the size of these costs and benefits?

A number of Trade Me listings allow payment via Afterpay, a deferred payment provider. We believe that a deferred payment scheme, where the price of goods or services sold on credit does not exceed the cash price of the goods, should fall outside of the definition of 'credit contract.'

In terms of the Options proposed in the discussion paper, we have concerns with Option A (which would deem payment schemes like Afterpay to be consumer credit contracts). We think businesses which offer credit-based payment systems, such as Afterpay, will be heavily and disproportionately impacted by this Option A and would face significantly higher compliance costs, for limited consumer benefit. Borrowers would also face burdensome application processes which would generally be out of proportion to the product being offered. For example, our consumers would not reasonably expect to go through the same process to use an Afterpay-like service to purchase a $20 product in four installments, as they would when applying for say a $10,000 personal loan to purchase a car.

We also consider that there is a significant risk that Option A would inapporpriately capture other contracts. For example, there's a risk that the standard terms of trade of many businesses would be deemed to be credit contracts. Many terms of trade require payment for goods by the 20th of the following month, and also provide for default fees for late payment. In other words, it would not be unusual for terms of trade to provide for the supply of goods (or services) up front, which can be paid for in instalments or by a set date in the future, with fees or penalty interest to apply for late payment.

Finally, Option A may not be successful in targeting mobile lenders.

If there is to be a change in this space, we would see more consumer benefit in Option B (prohibit the price of goods or services sold on credit from exceeding the cash price), as these appear to the contracts where there is the most consumer concern.

Question 15. Which options for changes to cover additional credit contracts would you support? Which would you not support? Please explain.

As noted above, if there is to be a change to these provisions we would prefer Option B. However, we are not convinced that any change is necessary.

Thanks for opportunity to provide a submission. Please contact Lucy Elwood, Head of Legal and Regulatory should you wish to discuss any of the points we have raised.

Sincerely,

Trade Me