

**In the High Court of New Zealand**  
**Auckland Registry**  
Commercial List

CIV-2016-

**Under** Section 100A Commerce Act 1986  
**In the matter** of a case stated by the Commerce Commission relating to the  
Harmony Limited lending transaction and ss 5, 6 and 7 of the  
Credit Contracts and Consumer Finance Act 2003.

**Between** **Commerce Commission**  
Applicant

**And** **Harmony Limited**  
Respondent

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## **Statement of essential issues**

26 August 2016

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# Statement of essential issues

## Nature of the case

- 1 This matter is proceeding by way of a case stated for the opinion of the court, pursuant to s 100A of the Commerce Act 1986.
- 2 The Commerce Commission seeks the opinion of the court on a number of questions of law which have arisen in the context of an investigation into the respondent's lending structure. The respondent (**Harmony**) currently holds a licence to provide peer-to-peer (**P2P**) lending services.
- 3 The questions are set out in the case stated. They arise out of a dispute as to whether a 'Platform Fee' Harmony charges to borrowers on all loans arranged through its P2P lending service is a "credit fee" under the Credit Contracts and Consumer Finance Act 2003 (**CCCFA**). The answer to that question will depend upon the Court's answer to a number of subsidiary questions, which will be the subject of submissions by both parties. The answers to those subsidiary questions will have their own consequences distinct from those relating to the classification of the Platform Fee; for instance, any entity deemed to be a "creditor" will be subject to responsible lending and disclosure obligations under the CCCFA.
- 4 The Commission's view is that the Platform Fee is a "credit fee" for the purposes of the CCCFA; Harmony's view is that it is not. The practical consequence is that if the Platform Fee is a credit fee, then it will be subject to s 41 of the Act, which provides that credit fees cannot be unreasonable. If the Platform Fee is not a credit fee, then the limitations imposed by s 41 will not apply.
- 5 The Commission is not asking the Court to consider whether the Platform Fee is unreasonable.
- 6 Only the Court's opinion on the questions is sought, no relief or formal orders are sought.

## Inclusion in the Commercial List


- 7 This proceeding is eligible for inclusion in the Commercial List:
  - (a) under s 24B(1)(a)(i) of the Judicature Act 1908, being proceedings relating to the ordinary transactions of persons engaged in commerce; and
  - (b) under s 24B(1)(a)(iii) of the Judicature Act 1908, being proceedings relating to the construction of commercial documents.
- 8 This proceeding relates to commercial lending transactions, specifically in the context of P2P lending. The outcome of the proceeding will directly affect ongoing commercial activity and the integrity of New Zealand's credit markets.
- 9 The proceeding will also likely involve important questions of law and its expeditious resolution is therefore desirable.

**Potential further question**

- 10 As noted in part four of the case stated, Harmony has indicated to the Commission that it is in the process of developing a proposal for a new transactional structure.
- 11 The Commission anticipates that Harmony's proposed new structure may also give rise to questions regarding the applicability and effect of the CCCFA. If that is the case, and the details are finalised in the near future, then the Commission may respectfully seek the Court's leave to add further questions in relation to that proposed structure.

This statement of essential issues is filed pursuant to r 29.3(5) of the High Court Rules.

Dated: 26 August 2016



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S Mills QC | J Cairney  
Counsel for the Commission