

21 December 2022

Hippo Holdings Limited  
Level 3  
8 Augustus Terrace  
Parnell  
Auckland 1052

Attention: Yisi 'Louise' Liu

By email only: [REDACTED]

Dear Ms Liu

**Outcome of Commerce Commission's investigation into Hippo Holdings Limited - Warning**

1. As you are aware, the Commerce Commission (Commission) has been investigating Hippo Holdings Limited (Hippo Holdings) in relation to its compliance with the high-cost lending rules and the initial disclosure obligations under the Credit Contracts and Consumer Finance Act 2003 (CCCFA). We have now completed our investigation and are writing to inform you of the outcome.
2. The Commission has found Hippo Holdings' conduct is likely to have breached several provisions of the CCCFA, including:
  - 2.1 section 45E (interest and fees cap);
  - 2.2 sections 45F and 45G (repeat borrowing);
  - 2.3 section 45H (rate of charge cap);
  - 2.4 section 17 (initial disclosure); and
  - 2.5 section 32(1)(d) (disclosure standards).

3. We note Hippo Holdings has confirmed it stopped offering high-cost loans in May 2021.<sup>1</sup>
4. After weighing up the factors set out in our Enforcement Response Guidelines, we have decided to conclude this investigation by issuing this warning. A warning is not a finding of non-compliance. Only the courts can decide whether a breach of the law has occurred. However, the Commission has determined that at this time, we will not be bringing legal action against Hippo Holdings.
5. In addition, Hippo Holdings:
  - 5.1 was given an advance copy of this warning for review;
  - 5.2 has admitted the facts and the conduct as set out in this warning; and
  - 5.3 has offered, and the Commission has accepted court enforceable undertakings (Undertakings), pursuant to section 113aa of the CCCFA, to record Hippo Holdings commitment to make remediation payments to affected borrowers.

### **The law**

6. The following provisions of the CCCFA are relevant to the Commission's investigation into Hippo Holdings.

#### *Interest and fees cap – section 45E*

7. Section 45E(1) states that the maximum costs of borrowing (COB) that are recoverable under a high-cost loan and all related loans is an amount equal to the first advance.<sup>2</sup>
8. Section 45E(2) states that a consumer credit contract must not provide for an amount to be recoverable that will result in (or is capable of resulting in) that maximum amount being exceeded.
9. Section 45E(5) provides the definition of a related loan, which, in respect of a high-cost loan (contract A), means all other loans where:
  - 9.1 the debtor is the same person as the debtor under the contract A; and
  - 9.2 the creditor is the same person as the creditor under the contract A; and
  - 9.3 the loans (including contract A) are entered into during the period that:

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<sup>1</sup> A high-cost loan is a high-cost consumer credit contract, as defined in section 45C of the CCCFA.

<sup>2</sup> In respect of a high-cost loan that has one or more related loans, the first advance is the amount paid to the borrower (excluding any fees or charges) when the borrower drew down on the earliest high-cost loan in the series (s 45E(5)(b)).

9.3.1 begins with a high-cost loan being entered into; and

9.3.2 ends with the expiry of 15 continuous days during which there was no unpaid balance on any of the loans entered into since the start of that period.

10. Section 45E came into force on 1 May 2020.

*Repeat borrowing – sections 45F and 45G*

11. Sections 45F and 45G prohibit a high-cost lender from offering loans to borrowers who have, or have recently had, high-cost loans. These provisions prohibit lending to a borrower that:

11.1 has an unpaid balance on any high-cost loans with another lender (section 45F(1)(a));

11.2 had an unpaid balance on any high-cost loans with another lender within the preceding 15 days (section 45F(1)(b)); or

11.3 has entered into two or more high-cost loans in the preceding 90 days (section 45G(1)).

12. A lender has a defence to breaching sections 45F and 45G if the lender can prove that before entering into the contract:

12.1 it complied with section 9C in respect of the requirement to make reasonable inquiries; and

12.2 it had reasonable grounds to believe that during the relevant period the borrower did not have an unpaid balance on any high-cost loans (in relation to section 45F); or

12.3 it had reasonable grounds to believe that the borrower had not entered into two or more high-cost loans during the relevant period (in relation to section 45G).

13. Sections 45F and 45G came into force on 1 June 2020.

*Rate of charge cap – section 45H*

14. Section 45H(1) states the maximum rate of charge (ROC) that is recoverable under a high-cost loan is 0.8% per day, calculated in accordance with the regulations as a proportion of the amount of credit provided.

15. Section 45H(2) states that a high-cost loan must not provide for an amount to be recoverable that will result in that maximum rate being exceeded, or that is capable of resulting in that maximum rate being exceeded.

16. No person may be a creditor under a high-cost loan that contravenes section 45H, or accept a payment, or debit a fee or charge to the debtor's account, in a way that results in the maximum rate being exceeded (section 45H(3)).
17. Section 45H came into force on 1 June 2020.

*Initial disclosure – section 17*

18. Under section 17, every creditor under a consumer credit contract must ensure disclosure of as much of the key information set out in Schedule 1 as is applicable to the contract. It needs to be made to every borrower under the contract before the contract is entered into.
19. From 1 May 2020, the CCCFA introduced additional disclosure obligations for lenders offering high-cost loans. These are found in Schedule 1 of the CCCFA, namely:
  - 19.1 a statement that the contract is a high-cost loan contract (na);
  - 19.2 a statement of the effect of the cap on total interest and fees payable under the contract, which must include the maximum costs of borrowing, how the costs are calculated, and the total amount that is recoverable (nb); and
  - 19.3 a statement that the lender's dispute resolution scheme will not charge a fee to investigate or resolve a complaint (uaa).
20. From 1 June 2020, high-cost lenders have also been required to include in their initial disclosure a statement of the rate of charge under the contract ((nc), Schedule 1).

*Disclosure standards – section 32(1)(d)*

21. Section 32(1)(d) states that disclosure must not be likely to deceive or mislead a reasonable person with regard to any particular that is material to the consumer credit contract.

**The Commission's Investigation**

22. In October 2020, pursuant to its monitoring functions, the Commission issued Hippo Holdings with a statutory notice requiring it to provide a sample of borrower files so that the Commission could assess Hippo Holdings' compliance with the new provisions of the CCCFA relating to high-cost lending and initial disclosure obligations. In November 2020, Hippo Holdings provided 25 borrower files to the Commission.
23. On 15 March and 2 June 2021, Hippo Holdings attended a voluntary interview with the Commission. Hippo Holdings also subsequently responded to the Commission's request for further information.

*Interest and fees cap*

24. Out of the 25 borrower files reviewed, we found no loan contracts with new borrowers where the COB exceeded the initial advance. However, we found five borrowers who had received ‘top up’ loans from Hippo Holdings (i.e. borrowers receiving a new loan, which consolidated an existing balance with a further loan advance). As those loans were entered into during the period described in paragraph 9.3, they are ‘related loans’. In respect of those five related loans:
- 24.1 the loan contracts allowed for the COB to exceed the amount of the first advance; and
- 24.2 of the five, four borrowers were in fact charged the COB in excess of the first advance (when combined with the interest and fees charged under the earlier loan in the series).
25. Hippo Holdings further advised the Commission in an email of 5 December 2021 that it had identified a total of 67 borrowers who entered into related loans from May 2020 to May 2021. Having reviewed records for those borrowers, we have reasonable grounds to believe that these contracts were likely to provide for, and did in fact charge, the COB that exceeded the amount of the first advance. This is because:
- 25.1 the cap on interest and fees for these loans was set without reference to the interest and fees charged under the earlier ‘related loan’; and
- 25.2 evidence shows that Hippo Holdings typically enters into loans for a duration sufficient to bring the COB near to the interest and fees cap (irrespective of whether there is an earlier ‘related loan’).

*Repeat borrowing*

26. Our review of the initial 25 borrower files, identified the following:
- 26.1 Seven borrowers had:
- 26.1.1 at the time of entry into the loan, an unpaid balance on a high-cost loan with a different lender (which is prohibited by section 45F(1)(a)); and
- 26.1.2 during the 15 preceding days, an unpaid balance on a high-cost loan(s) with a different lender(s) (which is prohibited by section 45F(1)(b)).
- 26.2 One borrower had entered into two or more high-cost loans during the preceding 90 days (which is prohibited by section 45G(1)).
27. In Hippo Holdings’ email of 5 December 2021, it also advised it provided high-cost loans to a total of 65 repeat borrowers from June 2020 to November 2020. These

repeat borrowers either had or recently had loans with one or more other high-cost lenders.

#### *Rate of charge*

28. Of the initial 25 borrower files, all the high-cost loans entered into after 1 June 2020 (the date section 45H came into force) did not correctly state the rate of charge (there were 18 borrowers in total). The daily rate of charge was wrongly stated as the same amount as the daily interest rate.
29. By using the prescribed formula in regulation 6B of the Credit Contracts and Consumer Finance Regulations 2004, we were able to identify that four of those 18 borrowers had a daily rate of charge on their respective loan contract exceeding 0.8%.

#### *Initial disclosure*

30. Under section 17, all lenders are required to disclose the key information prescribed in Schedule 1 of the CCCFA. On 1 May 2020, Schedule 1 was amended to introduce additional disclosure obligations for lenders offering high-cost loans. From that date, high-cost lenders must also include in their disclosure statements:
  - 30.1 a statement that the contract is a high-cost loan contract (na);
  - 30.2 a statement of the effect of the cap on total interest and fees payable under the contract, which must include the maximum costs of borrowing, how the costs are calculated, and the total amount that is recoverable (nb); and
  - 30.3 a statement that the lender's dispute resolution scheme will not charge a fee to investigate or resolve a complaint (uaa).
31. From 1 June 2020, high-cost lenders must also disclose a statement of the rate of charge under the contract (nc).
32. Of the 25 borrower files, we found six borrowers where Hippo Holdings did not make the additional disclosure set out at paragraph 30, and two borrower files where Hippo Holdings failed to disclose any rate of charge.
33. In the email, Hippo Holdings advised from 1 May to 3 June 2020, there was a total of 20 high-cost loans it entered into with borrowers where it failed to disclose all of the additional disclosure requirements set out at paragraphs 30 and 31. From 4 June 2020, Hippo Holdings' disclosure contract was updated to include all of the additional disclosure information required for high-cost loans.

#### *Disclosure standards*

##### Rate of charge

34. We found that all of Hippo Holdings' high-cost loans (from 1 June 2020 onwards) did not state the correct rate of charge. Hippo Holdings simply recorded the daily interest rate applicable to the loan as the rate of charge, failing to consider the effect of credit fees that Hippo Holdings also charges under its contracts. We consider the incorrect daily rate of charge is likely to be misleading to consumers.

#### Amount of final payment of the loan

35. We found Hippo Holdings misstated the amount of the final payment required under the loan. Although we found no evidence of Hippo Holdings overcharging the borrowers, its failure to state the correct value of the final payment is likely to be misleading.

#### **Hippo Holdings' response**

36. In its email of 4 February 2022, Hippo Holdings admitted breaching the interest and fees cap (section 45E), repeat borrowing (sections 45F and 45G) and initial disclosure provisions (section 17) of the CCCFA, and expressed willingness to resolve these issues by remedying all the affected borrowers. Hippo Holdings made the following offer of remediation in respect of each breach:
- 36.1 Interest and fees cap: Hippo Holdings proposed to refund each borrower any amount by which the costs of borrowing exceeded the first advance under the first loan in the series.
- 36.2 Repeat borrowing: Hippo Holding proposed to refund all interest, credit fees and default fees in relation to the loans that were in breach of sections 45F and 45G.
- 36.3 Initial disclosure: Hippo Holdings proposed to refund any interest and fees it received in respect of the 20 loans entered into between 1 May 2020 and 3 June 2020.
37. We note no remediation offer has been made in respect of the rate of charge and disclosure standards issues.

#### **The Commission's view**

38. In this case, having fully considered the relevant information received, the Commission's view is that Hippo Holdings likely breached the CCCFA by:
- 38.1 providing for, and charging interest and fees that exceeded the amount of the first advance (section 45E);
- 38.2 providing high-cost loans to borrowers who either had or recently had loans with one or more high-cost lenders (sections 45F and 45G);
- 38.3 providing for, and charging a rate of charge over 0.8% per day (section 45H);

- 38.4 failing to disclose the high-cost disclosure information as prescribed in Schedule 1 of the CCCFA (section 17); and
- 38.5 failing to provide disclosure that was not likely to deceive or mislead a reasonable person with regard to any particular that is material to the consumer credit contract (section 32(1)(d)).

### **Warning**

- 39. After weighing up the factors set out in our Enforcement Response Guidelines, the Commission has decided it is appropriate and sufficient to conclude our investigation into Hippo Holdings by issuing this warning letter and accepting the Undertakings rather than by issuing legal proceedings.
- 40. The Commission has taken the following factors into account:
  - 40.1 Hippo Holdings' admission of the likely breaches of interest and fees cap, repeat borrowing and initial disclosure provisions;
  - 40.2 that Hippo Holdings sought legal advice in respect of the changes to the high-cost rules (albeit the advice was insufficient or inadequate);
  - 40.3 the likely breaches did not occur for a prolonged period of time;
  - 40.4 the initial disclosure issue was identified and rectified by Hippo Holdings without intervention from the Commission;
  - 40.5 Hippo Holdings' offer of remediation for the likely breaches of the interest fees cap, repeat borrowing and initial disclosure provisions being congruent with the statutory remedies under the CCCFA; and
  - 40.6 that Hippo Holdings stopped offering high-cost loans in May 2021, and none of its high-cost loans are active meaning the risk of ongoing consumer harm is minimal.
- 41. This warning represents our opinion that the conduct, which Hippo Holdings has engaged in, is likely to have breached sections 45E, 45F, 45G, 45H, 17 and 32 of the CCCFA, and that legal action remains available to the Commission in the future if the conduct continues or is repeated.
- 42. We may draw this warning letter to the attention of the courts in any subsequent proceedings brought by the Commission against Hippo Holdings.
- 43. Please note this warning letter and the signed Undertakings are public information and will be published on the Commission's case register on our website. We will be making public comment about our investigation into Hippo Holdings, and the conclusions we have reached, including issuing a media release.



### **Penalties for breaching the CCCFA**

44. As indicated above, only the courts can decide if there has been a breach of the CCCFA. The potential penalties for each of the likely breaches is set out below:

#### *Interest and fees cap*

45. Where a lender fails to comply with section 45E, it may:
- 45.1 be ordered to provide a refund or credit of the payment or charges that the lender was not entitled to receive (section 48); and/or
  - 45.2 be ordered to pay pecuniary penalties of up to a maximum of \$200,000 in the case of an individual and \$600,000 in the case of a company (section 107A); and/or
  - 45.3 be subject to orders made under section 94 including allowing for the affordable repayment of any unpaid debt (including the amount and timing of payments).

#### *Repeat borrowing*

46. Where a lender fails to comply with sections 45F or 45G, it may:
- 46.1 be required to pay statutory damage to each affected borrower in an amount equal to the interest charges, credit fees, and default fees that have become payable under the contract that was entered into in breach of the relevant section (section 89(1)(aad)); and/or
  - 46.2 be ordered to pay pecuniary penalties of up to a maximum of \$200,000 in the case of an individual and \$600,000 in the case of a company (section 107A); and/or
  - 46.3 be subject to orders made under section 94 including allowing for the affordable repayment of any unpaid debt (including the amount and timing of payments).

#### *Rate of Charge*

47. Where a lender fails to comply with section 45H, it may:
- 47.1 be ordered to provide a refund or credit of the payment or charges that the lender was not entitled to receive (section 48); and/or
  - 47.2 be ordered to pay pecuniary penalties of up to maximum of \$200,000 in the case of an individual and \$600,000 in the case of a company (section 107A).

#### *Initial disclosure*

48. Where a lender fails to comply with section 17, it may:
- 48.1 be required to refund the costs of borrowing (section 99(1A)); and/or
  - 48.2 be required to pay a fine of up to \$30,000 for each disclosure statement that did not meet the disclosure standards (section 102A); and/or
  - 48.3 be required to pay statutory damages to each affected borrower of the lesser of \$6,000 or 5% of the total of all advances made and agreed to be made under the contract (section 89(1)(d)(iii)).

*Disclosure standard*

49. Where a lender fails to comply with section 32(1)(d), it may:
- 49.1 be required to pay statutory damages to each affected borrower of the lesser of \$6,000 or 5% of the total of all advances made and agreed to be made under the contract (section 89(1)(d)(iii)).

**Further information**

50. You should be aware that our decision to issue this warning letter does not prevent any other person or entity from taking private action through the courts.
51. We recommend Hippo Holdings seeks legal advice and encourage it to regularly review its compliance procedures and policies.
52. We have published a series of fact sheets and other resources to help businesses comply with the CCCFA and other legislation we enforce. These are available on our website at [www.comcom.govt.nz](http://www.comcom.govt.nz). We encourage you to visit our website to better understand Hippo Holdings' obligations and the Commission's role in enforcing the CCCFA.
53. You can also view the CCCFA and other legislation at [www.legislation.co.nz](http://www.legislation.co.nz).
54. Please contact [REDACTED] on +[REDACTED] or by email at [REDACTED] if you have any questions about this letter. We are also happy to discuss this letter with you if that would assist.

Yours sincerely



Kylie Higgs  
Credit Investigations and Compliance Manager