

**Undertakings to the Commerce Commission under s 113
of the Credit Contracts and Consumer Finance Act 2003
and s 74A of the Commerce Act 1986**

BHF Solutions (NZ) Pty Ltd

1 Persons giving undertakings

- 1.1 These undertakings (**Undertakings**) are given to the Commerce Commission (**Commission**) for the purposes of s 113(aa) of the Credit Contracts and Consumer Finance Act 2003 (CCCFA) and s 74A of the Commerce Act 1986 by BHF Solutions (NZ) Pty Ltd (Company No. 7374139) (**BHF**).
- 1.2 BHF is a company that was registered in Australia on the Australian Securities & Investments Commission Register on 5 March 2019. BHF was subsequently registered in New Zealand as an overseas company under Part 18 of the Companies Act 1993 on 8 April 2019.
- 1.3 BHF's principal place of business in New Zealand is located at Level 26, PwC Tower, 188 Quay Street, Auckland, 1010.

2 Context to the undertakings

BHF's registration in New Zealand and services

- 2.1 Since its registration as an overseas company in New Zealand, BHF has carried out business in New Zealand providing lending services.
- 2.2 As part of its business, BHF offered short-term loans to consumers through MyFi NZ Limited (**MyFi**). MyFi is a New Zealand registered company which provides lending services.
- 2.3 At all relevant times either:
 - (a) borrowers would make a loan application to MyFi directly; or
 - (b) MyFi would contact borrowers directly after the borrower had made a loan application to another lender.
- 2.4 BHF advises that, in addition to the above, borrowers were also given the option to be referred directly to BHF.
- 2.5 In either instance described at clause [2.3], the following steps would occur when MyFi accepted a loan application:¹
 - (a) The borrower received an email from MyFi which contained two completed agreements with the borrower:
 - (i) A loan agreement between BHF and the borrower (**Loan Agreement**).

¹ The Commission is still investigating several aspects of the loan application process. The steps stated here are steps that both parties agree occur on each loan. The steps stated do not purport to be a recitation of the complete loan application process for any borrower.

- (ii) A service provider agreement between MyFi and the borrower (**Service Agreement**).
 - (b) BHF would deposit the amount of the loan into the borrower's account.
- 2.6 The Loan Agreement provided for the imposition of fees and/or charges payable to BHF. The Service Agreement provided for the imposition of fees and/or charges payable to MyFi.
- 2.7 The Service Agreement provided that the fees and/or charges under the Loan Agreement would be collected by MyFi and disbursed to BHF on the borrower's behalf.

Commission investigation

- 2.8 In February 2020, the Commission opened a formal investigation into MyFi and BHF. As part of its investigation (which is ongoing) the Commission, among other things, considered the relationship between MyFi and BHF and between the Service Agreements and the Loan Agreements provided to borrowers, the fees charged by each company, and their compliance with the responsible lending principles in s 9C of the CCCFA.

Letter from the Commission requesting conduct cease

- 2.9 On 29 May 2020, the Commission sent MyFi and BHF a letter setting out the Commission's concerns about MyFi and BHF's potential non-compliance with s 9C of the CCCFA. The letter requested that MyFi and BHF immediately cease entering into further agreements (currently comprising the Loan Agreement and Service Agreement) with borrowers unless the companies:
- (a) drew the key features of the Service Agreement and Loan Agreement to potential borrowers' attention prior to them committing to borrowing (including, in particular, all fees and charges to be charged under the agreements);²
 - (b) ensured that it was clear to borrowers that by clicking the 'accept' button for the Loan Agreement in MyFi's online portal that they were committing to borrowing money;³
 - (c) prominently displayed a copy of both the Service Agreement and the Loan Agreement on their respective internet sites and separately advised the borrower of the information set out at clause [2.8(a)];⁴ and
 - (d) ensured the terms of the Service Agreement and the Loan Agreement were internally consistent and the interrelationship between the two agreements was made explicit.⁵

² Lenders have an obligation to assist borrowers to make an informed decision (CCCFA, s 9C(3)(b)).

³ As above, lenders have an obligation to assist borrowers to make an informed decision (CCCFA, s 9C(3)(b)).

⁴ Lenders have an obligation to meet their legal obligations to the borrower, including disclosure (CCCFA, s 9C(3)(f)).

⁵ As part of their obligation to assist borrowers to make an informed decision, lenders must ensure that the terms of the agreement are expressed in plain language in a clear, concise and intelligible manner (CCCFA, s 9C(3)(b)(ii)), and that information presented to the borrower is not presented in

- 2.10 The letter advised that in the event that MyFi and/or BHF did not agree to comply, the Commission intended to issue proceedings and apply for injunctive relief.

MyFi and BHF's response to the Commission's letter

- 2.11 On 8 June 2020, MyFi and BHF responded to the Commission's letter. MyFi and BHF denied any non-compliance and contended that the Commission's concerns arose from a misunderstanding of the application process and the relationship between MyFi and BHF. In their response, MyFi and BHF raised a number of factual issues which the Commission is considering as part of its ongoing investigation.
- 2.12 MyFi and BHF's response also advised that both companies:
- (a) had already decided to exit the New Zealand market;
 - (b) since 13 March 2020, were not trading save for MyFi providing services to currently active accounts;
 - (c) had ceased entering into new agreements with customers in New Zealand;
 - (d) had no intention to recommence trading in the future;
 - (e) were willing to give the Commission undertakings not to enter into new contracts with borrowers in New Zealand; and
 - (f) were willing to discuss alternative or additional undertakings to address the Commission's concerns.

3 Purpose of the Undertakings

- 3.1 BHF contends that it is already complying with the requirements set out in clause [2.9], however, despite the factual issues that are still to be considered as part of its ongoing investigation, the Commission is not currently satisfied of that. Accordingly, in order to obviate the need for the Commission to seek injunctive relief, and in light of BHF's confirmation that it is no longer entering into new agreements and intends to exit the New Zealand market, BHF agrees to give the undertakings in clause 4.
- 3.2 These Undertakings are not intended to limit or affect the ability of the Commission to continue its ongoing investigation into BHF's and/or MyFi's conduct in any way, including its ability to take enforcement action if considered appropriate.

4 Undertakings

- 4.1 BHF undertakes to the Commission that, from the date the Undertakings are executed and accepted by the Commission, in respect of any new or existing customers:
- (a) it will provide the Commission with four weeks' notice of any intention to advertise for or enter into any new contracts with consumers in New Zealand,

or to refer any application or expression of interest in relation to any products or services offered by BHF to any other person;

- (b) it will not carry out any of the activities specified in clause 4.1(a), unless it has:
- (i) ensured that a copy of the all of the proposed terms of the Loan Agreement and the Service Agreement have been given to every borrower before the Loan Agreement and the Service Agreement are entered into;
 - (ii) drawn to the attention of each borrower the key features of the proposed terms of the Loan Agreement and the Service Agreement prior to borrowers committing to borrowing, including all fees and charges that will be charged under those agreements;
 - (iii) ensured that the proposed terms of the Loan Agreement and the Service Agreement are internally consistent and the interrelationship between the two agreements is made explicit in the agreements themselves;
 - (iv) displayed prominently and clearly on its website the sum and description of all credit fees, default fees and any annual rates of interest in relation to the standard form Loan Agreement and any Service Agreement terms;
- (c) it will not sell, transfer or otherwise dispose of all or any part of the arrangements covered by the Loan Agreements or the Service Agreements, without giving fourteen working days prior written notification to the Commission of its intention to do so. Any such written notification is to be addressed to Deputy General Counsel Credit, Commerce Commission. As at the date of signing, the Deputy General Counsel – Credit is [REDACTED] email: [REDACTED]

5 Effect of the Undertakings

- 5.1 The Undertakings are Court enforceable undertakings in terms of s 113(aa) of the CCCFA and s 74A of the Commerce Act 1986.

6 Commencement of the Undertakings

- 6.1 The Undertakings come into effect when:
- (a) executed by BHF; and
 - (b) the Commission confirms its acceptance of the Undertakings by signing the Undertakings.

7 Duration of the Undertakings

- 7.1 These Undertakings will continue to have until the Commission agrees to vary them or discharge BHF from the Undertakings.

8 Compliance with the Undertakings

- 8.1 If BHF becomes aware of a breach of these Undertakings, whether advertent or inadvertent, it will notify the Commission within seven days of becoming aware, giving full particulars of the breach.
- 8.2 For the avoidance of doubt, nothing in clause 8.1 above prevents the Commission from directly seeking any information from BHF at any time for the purpose of checking compliance with the Undertakings.

9 Miscellaneous

- 9.1 No amendment to the Undertakings will be effective unless it is in writing, executed by BHF, and signed as accepted by the Commission.
- 9.2 These Undertakings are properly executed if each of BHF and the Commission signs the same copy, or separate identical copies of the execution page. Where separate copies are signed by BHF or by the Commission, the signed copy can be the original document, or a faxed or emailed copy.
- 9.3 BHF acknowledges that:
- (a) The Commission will make the Undertakings publicly available including by publishing them on the Commission's enforcement response register on its website.
 - (b) The Commission may, from time to time, make public reference to the Undertakings including in new media statements and in the Commission's publications.
 - (c) Nothing in the Undertakings is intended to restrict the right of the Commission, or the right of any other person, to take action under the CCCFA or any other statute or law.
- 9.4 The Commission acknowledges that it will provide BHF with 48 hours' written notice prior to the undertakings being made publicly available in accordance with clause 9.3(a).

Execution

Signed by and on behalf of BHF Solutions
(NZ) Pty Ltd



Director/authorised signatory



Name

In the presence of:



Signature of witness



Name of witness

Admin

Occupation

Southport, QLD

City/town of residence

23-11-20

Date

Acceptance

Signed by and on behalf of the Commerce
Commission by:



Chair

ANNA RAWLINGS, CHAIR
New Zealand Commerce Commission

In the presence of:



Signature of witness



Name of witness

EXECUTIVE ASSISTANT
Occupation

WELLINGTON
City/town of residence

1/12/20.
Date