

Undertakings to the Commerce Commission under section 113(aa) of the Credit Contracts and Consumer Finance Act 2003

1 Persons giving undertakings

- 1.1 These undertakings are given to the Commerce Commission (**Commission**) for the purposes of section 113(aa) of the Credit Contracts and Consumer Finance Act 2003 (**CCCFA**)¹ by Hippo Holdings Limited (**Hippo Holdings**), a company incorporated in New Zealand having its registered office at Level 1, 19 Auburn Street, Grafton, Auckland, 1023 (**undertakings**).

2 Background

- 2.1 Hippo Holdings is a creditor that provided high-cost consumer credit contracts (**high-cost loans**). In May and June 2020, new high-cost lending rules were introduced in order to protect borrowers from harm associated with high-cost loans. The new provisions seek to, among other things, place caps on interest and fees that can be charged on high-cost loans as well as restrict lenders from offering high-cost loans to repeat borrowers.
- 2.2 Section 45E provides that the maximum costs of borrowing that can be provided for or recovered under a high-cost loan and any related loans² must not exceed the amount of the first advance. Between 1 May 2020 and 31 May 2021, Hippo Holdings, in some instances, entered into high-cost loans that provided for and recovered costs of borrowing that exceeded the amount of the first advance.
- 2.3 Sections 45F and 45G prohibit a lender from providing high-cost loans to repeat borrowers.³ Between 1 May 2020 and 31 May 2021 Hippo Holdings, in some instances, provided high-cost loans to repeat borrowers.
- 2.4 Under section 17, all lenders are required to disclose the key information prescribed in Schedule 1 of the CCCFA. For all high-cost loans it entered into between 1 May and 3 June 2020, Hippo Holdings failed to disclose certain prescribed information that is required to be disclosed when entering into high-cost loans, including:
- (a) that the contract was high-cost;
 - (b) the effect of the cap on total interest and fees payable under the contract;
 - (c) the rate of charge under the contract; and/or
 - (d) that Hippo's dispute resolution scheme would not charge a fee to investigate or resolve a complaint.

¹ And, via section 113(aa) of the CCCFA, sections 74A to 74C of the Commerce Act 1986 (power to accept undertakings).

² Related loan means related consumer credit contract, as that term is defined in section 45E of the CCCFA.

³ A repeat borrower is someone to whom providing a high-cost loan is prohibited under sections 45F and/or 45G of the CCCFA.

- 2.5 The Commission first obtained information from Hippo Holdings during an industry monitoring project. The Commission started investigating Hippo Holdings in January 2021 for compliance with the new provisions and found that it had likely breached sections 17, 45E, 45F and 45G in the ways outlined above.
- 2.6 In response to the Commission’s investigation, Hippo Holdings has:
- (a) admitted that its conduct breached sections 17, 45E, 45F and 45G of the CCCFA;
 - (b) from May 2021, reduced the interest rates it offers under new consumer credit contracts to ensure that it does not commit further breaches of the rules relating to high-cost loans in the CCCFA; and
 - (c) offered these undertakings to the Commission.
- 2.7 The Commission has concluded, after reviewing the practices and criteria outlined in the Commission’s Competition and Consumer Investigation Guidelines and Enforcement Response Guidelines, that it is in the public interest to resolve this investigation by accepting these undertakings and issuing a warning.

3 Interpretation

- 3.1 In these undertakings:
- (a) **Affected borrower** means a person who had a high-cost loan with Hippo Holdings between 1 May 2020 and 31 May 2021 that was entered into in breach of sections 45E, 45F, 45G and/or 17 of the CCCFA.
 - (b) **Disclosure** means, in terms of section 17 of the CCCFA, disclosure of as much of the key information set out in Schedule 1 of the CCCFA as is applicable to the contract (including the matters set out in 2.4 above).
 - (c) **First advance** means, in respect of a high-cost loan and all related loans (as that term is defined in the CCCFA), the first advance under the earliest high-cost loan in the series.
 - (d) **High-cost loan** means a high-cost consumer credit contract (as that term is defined in section 45C of the CCCFA).
 - (e) **Remediation amount** means an amount calculated as the greater of (as applicable):
 - (i) for affected borrowers in respect of a breach of section 45E of the CCCFA who were charged costs of borrowing (credit fees, default fees, interest charges, charges for an optional service and fees and charges passed on by the creditor)⁴ in excess of the amount of the first advance, the amount by which the costs of borrowing exceeded the first advance;
 - (ii) for affected borrowers who are repeat borrowers (as defined below), the amount of any interest charges, credit fees, and default fees that were payable under the contract; and

⁴ Section 45E(5) of the CCCFA.

- (iii) for affected borrowers who, before entering into their loans, did not receive complete disclosure, the costs of borrowing (credit fees, default fees and interest charges)⁵.
- (f) **Repeat borrower** means an affected borrower who, at the time of entering into a high-cost loan with Hippo Holdings:
 - (i) had an unpaid balance on any high-cost loan provided by a lender other than Hippo Holdings;
 - (ii) had an unpaid balance within the preceding 15 days on any high-cost loan provided by a lender other than Hippo Holdings; or
 - (iii) had entered into two or more high-cost loans within the preceding 90 days.

4 Purpose of undertakings

- 4.1 These undertakings are given by Hippo Holdings to record its commitment to make remediation payments to affected borrowers.

5 Undertakings

- 5.1 Hippo Holdings undertakes to the Commission that it will pay the remediation amount to the affected borrowers in accordance with clauses 5.2 to 5.8 below.
- 5.2 Unless clause 5.3 applies, within 60 days of the date of these undertakings, Hippo Holdings will, if it has not done so already, in respect of each affected borrower:
- (a) apply the remediation amount to any outstanding balance the affected borrower has on a loan with Hippo Holdings (**account credit**);
 - (b) pay any positive difference between the remediation amount and the account credit required to bring the affected borrower's balance to zero into the bank account of the affected borrower that Hippo Holdings has on file; and
 - (c) write to that affected borrower with a letter and/or email in a form approved by the Commission informing them that the remediation amount has been applied as an account credit and/or paid to them (as applicable), including details of the bank account any payment has been made into, and the reason why the credit and/or payment has been made.
- 5.3 If, an affected borrower is owed a remediation amount in excess of that affected borrower's outstanding loan balance with Hippo Holdings, and, for reasons outside of its control, Hippo Holdings is unable to make payment of the remediation amount into a bank account held on Hippo Holdings' file for the affected borrower, it will take the following steps:
- (a) Within 90 days of the date of these undertakings, Hippo Holdings will take all reasonable steps using the contact details and information that it holds to make

⁵ Section 5 of the CCCFA.

contact and obtain instructions for payment including a nominated bank account into which the remediation amount owing can be paid.

- (b) If, having complied with clause 5.3(a) above, Hippo Holdings has not been successful in obtaining payment instructions from an affected borrower, it will engage the assistance of a credit reporter to assist in attempting to contact and obtain instructions from that affected borrower (acting in accordance with the Credit Reporting Privacy Code 2004).
- (c) If Hippo Holdings successfully obtains instructions from any affected borrower, it will make the payment within 10 working days of receipt of those instructions.

5.4 If any affected borrower is deceased or bankrupt, Hippo Holdings will seek direction from the Commission as to remediation for that affected borrower.

Independent Report

5.5 Hippo Holdings undertakes, at its own expense, to provide a report to the Commission within five months of the date of these undertakings (the **independent report**).

5.6 The independent report is to be prepared by an independent accountant approved by the Commission (the **reviewer**). The reviewer will review the steps taken by Hippo Holdings to remediate affected borrowers in accordance with these undertakings. Hippo Holdings will provide the reviewer with all information and access to Hippo Holdings' information systems reasonably necessary to prepare the independent report.

5.7 The independent report will be based on random sample checks and include:

- (a) the reviewer's assessment of whether Hippo Holdings has undertaken the steps it has committed to take in these undertakings, including whether it has:
 - (i) identified all affected borrowers;
 - (ii) correctly calculated the remediation amounts owing to affected borrowers; and
 - (iii) made contact with, and (where applicable) payment to, those affected borrowers in accordance with clauses 5.2 and 5.3 above.
- (b) details of any steps that have not yet been completed, including the reviewer's assessment of whether or not they are likely to be completed by Hippo Holdings and, if so, by when;
- (c) the reviewer's assessment as to any further steps that Hippo Holdings could reasonably take to contact affected borrowers who have been unable to be contacted at the time of the report;
- (d) a summary of the remediation amounts made; and
- (e) the following information, prepared by Hippo Holdings in excel format:
 - (i) the customer number of each affected borrower who is entitled to receive a remediation amount;

- (ii) the remediation amount each affected borrower is entitled to receive;
- (iii) where remediation amounts have been credited and/or paid to affected borrowers, the date, method (credit and/or payment), and total amount credited/paid;
- (iv) where Hippo Holdings has been unable to obtain payment instructions from an affected borrower who is entitled to receive payment of a remediation amount, the steps that Hippo Holdings took to locate and contact the affected borrower; and
- (v) the total amount of remediation amounts yet to be paid.

Dealing with unclaimed remediation amounts

5.8 Following receipt of the independent report, the Commission will consider the amount of money which remains unpaid to affected borrowers (if any), and Hippo Holdings will agree with the Commission as to whether that remaining unpaid amount will be either:

- (a) treated as unclaimed money under the Unclaimed Money Act 1971; and/or
- (b) paid to a charity to be nominated by Hippo Holdings and approved by the Commission.

5.9 Hippo Holdings will pay any unclaimed amount in accordance with the Commission's direction given under clause 5.4, or the agreement made under clause 5.8, within 10 days of having received that direction.

6 Effect of undertakings

6.1 These undertakings are Court enforceable undertakings in terms of section 74A of the Commerce Act 1986 (via section 113(aa) of the CCCFA).

7 Commencement of undertakings

7.1 These undertakings come into effect when:

- (a) executed by Hippo Holdings; and
- (b) the Commission confirms its acceptance of, and executes, these undertakings.

8 Duration of undertakings

8.1 These undertakings will continue to have effect until the earlier of:

- (a) the Commission for any reason discharging Hippo Holdings from these undertakings; or
- (b) three years from the date the Commission confirms its acceptance of these undertakings.

9 Compliance with undertakings

- 9.1 If Hippo Holdings 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.
- 9.2 For the avoidance of doubt, nothing in paragraph 9.1 above prevents the Commission from directly seeking any information from Hippo Holdings at any time for the purpose of checking compliance with these undertakings.

10 Variation of undertakings

- 10.1 The Commission and Hippo Holdings may agree at any time to vary these undertakings.
- 10.2 No variation to these undertakings will be effective unless it is in writing, executed by Hippo Holdings, and signed as accepted by the Commission.

11 Miscellaneous

- 11.1 These undertakings are properly executed if each Undertaking Party signs the same copy, or separate identical copies of the execution page. Where separate copies are signed by Hippo Holdings or by the Commission, the signed copy can be the original document, or a faxed or emailed copy.
- 11.2 Hippo Holdings acknowledges that:
- (a) The Commission will make these 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 these undertakings, including in media statements and in the Commission's publications.
 - (c) Nothing in these 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.

Execution

**Signed by and on behalf
of Hippo Holdings
Limited**

Signed _____
Director/authorised signatory

Name

Acceptance

**Signed by and on behalf of
the Commerce Commission
by:**

Signed _____
Chair

Commerce Commission

In the presence of:

Signed _____
Signature of witness

Name of witness

Occupation

City/town of residence

Date