

16 August 2016

Adelphi Finance Limited  
91 Dixon Street  
Te Aro  
Wellington 6011

Attention: Mr Carroll Smith, Director

Dear Mr Smith

### **Credit Contracts and Consumer Finance Act 2003: Warning**

As you know, the Commerce Commission (Commission) has been investigating the conduct of Adelphi Finance Limited (Adelphi Finance) under the Credit Contracts and Consumer Finance Act 2003 (CCCFA). The investigation has now been completed and we write to alert you to our concerns.

The Commission considers that Adelphi Finance is likely to have breached section 17 of the CCCFA by failing to disclose to customers key information applicable to consumer credit contracts as set out in Schedule 1 of the CCCFA.

After weighing up the factors set out in our Enforcement Response Guidelines<sup>1</sup>, we have decided to conclude this investigation by issuing this warning letter.

#### **The investigation**

On 17 December 2015, the Commission obtained a copy of Adelphi Finance's standing disclosure document (ie Adelphi Finance's Disclosure Statement for Consumer Credit Contracts and Terms and Conditions) (**Disclosure Statement**) as part of our industry wide review of the terms and conditions of creditors engaged in third tier lending.

We decided to investigate Adelphi Finance after reviewing the Disclosure Statement because it appeared not to comply with the CCCFA requirements.

During our investigation, the Commission considered information provided by you and reviewed sample copies of contracts for your consumer loans (**consumer credit contracts**).

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<sup>1</sup> The Enforcement Response Guidelines are available at <http://www.comcom.govt.nz/the-commission/commission-policies/enforcement-response-guidelines/>.

#### **AUCKLAND**

L13, Forsyth Barr  
55 Shortland Street  
P.O. Box 105-222  
AUCKLAND 1143, NEW ZEALAND  
2585260.1

#### **WELLINGTON**

L9, 44 The Terrace  
P.O. Box 2351  
WELLINGTON 6140, NEW ZEALAND  
Tel: (04) 924 3600 Fax: (04) 924 3700  
**Main Office**

The information that we gathered established to our satisfaction that:

- Adelphi Finance only enters into consumer credit contracts and offers these exclusively at its premises in Porirua, Lower Hutt, Newtown, Mangere and Otahuhu.
- Between 6 June 2015 and 30 March 2016 Adelphi Finance entered into 2,889 consumer credit contracts with 1,542 different customers.
- The disclosure provided to customers when entering into these consumer credit contracts did not include all of the key information applicable to the contracts as set out in Schedule 1 of the CCCFA.
- Once made aware of the Commission's views, Adelphi Finance:
  - Updated its standard form disclosure statement. All consumer credit contracts entered into from 31 March 2016 used the updated disclosure statement.
  - Provided an updated disclosure statement to customers with outstanding loan balances. These customers were given time (in accordance with section 27 of the CCCFA) to cancel their consumer credit contract or agree to continue with the loan on the updated terms.
  - All customers (including those who had already fully repaid their loans, cancelled their contracts or agreed to continue with their loans on the updated terms) were credited or refunded their costs of borrowing, including credit fees (including establishment fees), default fees and all interest charges.
- The total amount refunded or credited by Adelphi Finance to date is \$1,452,494.45.
  - A total of \$1,400,833.25 was credited to 1,381 current debtors.
  - A total of \$51,661.20 was refunded to 161 past debtors.
- A further \$6,826 remains outstanding to be refunded to past debtors. We understand that Adelphi Finance will continue to attempt to contact those debtors to refund those amounts.

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

In this case, the Commission's view is that Adelphi Finance was likely to be in breach of section 17 of the CCCFA.

Section 17 of the CCCFA requires lenders to provide borrowers with disclosure of key information applicable to the loan. A list of potentially applicable key information is set out in Schedule 1 to the CCCFA.

The consumer credit contracts we reviewed as part of our investigation did not comply with section 17 because they did not disclose the following:

- a full description and explanation of the security interest taken in the goods (as required by Schedule 1(q) of the CCCFA);
- the borrower's right to apply for changes on the grounds of unforeseen hardship (as required by Schedule 1(sa) of the CCCFA);
- the borrower's right to cancel in the event that disclosure was made via electronic communication or post (as required by Schedule 1(s) of the CCCFA);
- Adelphi Finance's obligation to provide the debtor with continuing disclosure statements at least every six months (Schedule 1(t) of the CCCFA); and
- Adelphi Finance's registration number under the register of financial services providers (as required by Schedule 1(ub) of the CCCFA).

Under section 99(1A) of the CCCFA, a debtor is not liable for the costs of borrowing in relation to any period during which the creditor has failed to comply with section 17 or 22.

We acknowledge that Adelphi Finance has taken the steps outlined above to refund affected customers and correct its disclosure. We have taken these remedial actions into account in reaching our decision to issue this warning letter.

### **Warning**

While we will not be taking any further action against Adelphi Finance at this time, we will take this warning into account if such conduct were to continue or if you were to engage in similar conduct in the future. We may also draw this warning to the attention of a court in any subsequent proceedings brought by the Commission against Adelphi Finance.

This letter is public information and will be published on our website. We may also make public comment about our investigations and conclusions, including issuing a media release or making comment to media.

### **The Commission's role**

The Commission is responsible for enforcing and promoting compliance with a number of laws that promote competition in New Zealand, including the CCCFA. The CCCFA is designed to protect consumers when they are borrowing money and enable them to make informed choices about using credit.

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

Only a Court can decide if there has actually been a breach of the CCCFA and a Court can impose penalties where it finds the law has been broken.

Lenders who breach the CCCFA may:

- be unable to enforce the contract or any right to recover property or any security interest;
- have to refund money or pay compensation;
- have to pay statutory damages;
- be convicted of a criminal offence and fined up to \$600,000 per offence for companies and \$200,000 for individuals;
- be issued with an infringement notices with a fine of \$1,000 for each infringement offence;
- have contracts changed by the court if the contracts are oppressive; and
- be banned from operating within the finance industry.

You should be aware that the decisions outlined in this letter do not prevent any other person or entity from taking private action through the courts.

#### **Further information**

We have published a series of fact sheets and other resources to help businesses comply with the CCCFA and the 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 your obligations and the Commission's role in enforcing the CCCFA.

You can also view the CCCFA and other legislation at [www.legislation.co.nz](http://www.legislation.co.nz).

Thank you for your assistance with this investigation. Please contact Crystal Euden on 09 920 3495 or by email at [crystal.euden@comcom.govt.nz](mailto:crystal.euden@comcom.govt.nz) if you have any questions about this letter.

Yours sincerely



John Lyall  
Manager  
Competition Branch - Auckland