

13 March 2023

TNP Investments Pvt Limited
Unit 6, 2 Progressive Way
East Tamaki
Auckland, 2019

Attention: []

By email only: []; []

Dear []

Outcome of Commerce Commission's investigation into TNP Investments Pvt Limited and its compliance with the Credit Contracts and Consumer Finance Act 2003: Warning

1. As you are aware, the Commerce Commission (Commission) has been investigating the conduct of TNP Investments Pvt Limited (trading as: Fair Value NZ) (Fair Value) under the Credit Contracts and Consumer Finance Act 2003 (CCCF Act). We have now completed our investigation and can inform you of the outcome.
2. In summary, the Commission considers that, between 31 January 2020 and 21 January 2021 (the relevant period), Fair Value likely breached two of its disclosure obligations under the CCCF Act, namely:
 - 2.1 the initial disclosure obligations (section 17(1)); and
 - 2.2 the disclosure standards (sections 32(1)(c) and (d)).
3. The Commission has determined that, in the circumstances of this case, it is appropriate to issue Fair Value with a warning letter instead of filing charges against Fair Value. The Commission will not be bringing legal action against Fair Value at this time.¹ We note that a warning is not a final finding of non-compliance. Only the Courts can decide whether a breach of the law has occurred.

The law

4. The CCCF Act protects consumers when they borrow money or buy goods on credit. It sets out the rules that must be followed by creditors when they provide loans to consumers in New Zealand.

¹ Please refer to the Commission's published *Enforcement Response Guidelines*, available [here](#).

5. The following provisions of the CCCF Act are relevant to the Commission's investigation into Fair Value covered in this letter.

Initial disclosure

6. Section 17(1) states that:

Every creditor under a consumer credit contract must ensure that disclosure of as much of the key information set out in Schedule 1 as is applicable to the contract is made to every debtor under the contract before the contract is entered into.

Disclosure standards

7. Sections 32(1)(c) and (d) state that:

(1) Disclosure must—

...

(c) express the required information clearly, concisely, and in a manner likely to bring the information to the attention of a reasonable person; and

(d) not be likely to deceive or mislead a reasonable person with regard to any particular that is material to the consumer credit contract, guarantee, consumer lease, or buy-back transaction (as the case may be).

The investigation

8. Since 1 June 2020, all credit sales entered into by mobile traders are treated as consumer credit contracts for the purposes of the CCCF Act.² This means that, in addition to their existing obligations under laws like the Fair Trading Act 1986 (FT Act) and the Consumer Guarantees Act 1993, mobile traders now have the same obligations as lenders under the CCCF Act.³
9. In October 2020, the Commission opened a monitoring project to better understand the business model of mobile traders and assess their compliance with the CCCF Act and FT Act. This project included the monitoring of all mobile traders known to the Commission across New Zealand, including those who were not subject to the CCCF Act prior to 1 June 2020.
10. Fair Value was identified as a mobile trader to be monitored under the monitoring project. On 21 January 2021, Commission staff met with Fair Value to discuss its operating model and lending practices.
11. In October 2021, the Commission opened an investigation into Fair Value to assess its compliance with the disclosure obligations and the lender responsibility principles under the CCCF Act.
12. Fair Value gave limited assistance to the Commission during the investigation. Fair Value complied with two statutory notices served on it on 2 June 2022.

² Refer to see section 16A of the CCCF Act.

³ Please refer to the Commission's published *Mobile Trader Guidelines* (May 2020), available [here](#).

Fair Value was a mobile trader for the purposes of the CCCF Act

13. Having conducted our investigation, we consider that:
- 13.1 The two standard form credit contracts used by Fair Value between 31 January 2020 and 11 September 2020 were both:
- 13.1.1 consumer credit contracts under section 11 of the CCCF Act; and
- 13.1.2 layby sales agreements for the purposes of section 36B of the FT Act.
- The three other standard form contracts used by Fair Value since 12 August 2020 are layby sales agreements only.
- 13.2 Until 21 January 2021, Fair Value was a mobile trader for the purposes of section 5 of the CCCF Act, as it carried on a business of offering or agreeing to supply, in person and outside of fixed premises, consumer goods to natural persons under credit sales.
14. On this basis, we consider Fair Value was subject to obligations under the CCCF Act during the relevant period.

Initial disclosure

15. Having conducted our investigation, we consider that, during the relevant period, Fair Value failed to ensure that disclosure of as much of the key information set out in Schedule 1 of the CCCF Act as was applicable to the contracts was made to every borrower under the contracts before the contracts were entered into, as prescribed by section 17 of the CCCF Act.
16. We consider, having reviewed the standard form initial disclosure statements used by Fair Value during the relevant period that each standard form failed to include some of the key information from Schedule 1, for example full details of:
- 16.1 the default interest charges and default fees;
- 16.2 the debtor's right to apply for relief on grounds of unforeseen hardship;
- 16.3 the frequency with which continuing disclosure would be provided;
- 16.4 the dispute resolution scheme Fair Value was a member of; and
- 16.5 Fair Value's name and registration number under the register of financial service providers.
17. Our review of nine customer files found that Fair Value failed to provide adequate initial disclosure before entering into consumer credit contracts with customers in every file.⁴

⁴ We note that the remaining 11 customer files provided by Fair Value under statutory notice were not considered as part of our assessments under the CCCF Act as the contracts were entered into after 21 January 2021.

Disclosure standards

18. We consider that, during the relevant period, some of the key information from Schedule 1 of the CCCF Act was not consistently disclosed across the documents that form each of Fair Value's standard form consumer credit contracts and initial disclosure statements. For example, information relating to:
 - 18.1 the trading name of the creditor;
 - 18.2 the interest charges, credit fees and/or other charges payable under the contract;
 - 18.3 the date the first repayment under the contract is due;
 - 18.4 the full details on full prepayment option;
 - 18.5 the debtor's right to apply for relief on grounds of unforeseen hardship; and
 - 18.6 the creditor's consent to receive notices or other communications electronically.
19. We consider that because Fair Value did not consistently disclose the key information listed in paragraph [18] across the documents that make up the initial disclosure statement resulted in Fair Value's initial disclosure statement being unclear and misleading as to key information regarding the contracts. This is a likely breach of the disclosure standards under section 32 of the CCCF Act.
20. Having reviewed nine customer files, we consider that the nine customers who received an initial disclosure statement from Fair Value were impacted by Fair Value's likely breach of the disclosure standards.

The Commission's view

21. In this case, having fully considered the relevant information and documents received, the Commission's view is that Fair Value likely breached two of its disclosure obligations under the CCCF Act during the relevant period, namely:
 - 21.1 the initial disclosure obligations under section 17(1), by failing to provide initial disclosure of as much of the key information set out in Schedule 1 as is applicable to the contract to its customers before the contract is entered into; and
 - 21.2 the disclosure standards under section 32(1)(c) and (d), by failing to consistently disclose some of the key information across the documents that form Fair Value's standard form initial disclosure statements, resulting in the initial disclosure statements being unclear and misleading regarding the key information in the contract.

Warning

22. After weighing up the factors set out in our *Enforcement Response Guidelines*, the Commission has decided it is appropriate to conclude our investigation into Fair Value

for the likely breaches of sections 17 and 32 of the CCCF Act by issuing this warning letter.

23. The Commission has taken the following key factors into account:
 - 23.1 Fair Value stated that it exited the mobile trading market on 21 January 2021;
 - 23.2 Fair Value has been using layby sales agreements only since it ceased to operate as a mobile trader on 21 January 2021. Since then, it is no longer subject to the CCCF Act for new contracts entered into;
 - 23.3 Fair Value has advised that it entered into its last credit contract on 30 November 2021 and, since then, is only servicing existing contracts; and
 - 23.4 Fair Value has advised that it is winding down its business.
24. This warning records our view that the conduct which Fair Value engaged in is likely to have breached the CCCF Act and that legal action remains available to the Commission in future if the conduct continues or is repeated.

Consequences of the Warning

25. This warning letter is public information and will be published on the Commission's case register on our website. We may be making public comment about our investigation into Fair Value and the conclusions we have reached, including issuing a media statement which will also be available on our website.
26. This warning will form part of the information that the Commission's certification team considers should Fair Value make an application for fit and proper person certification under section 131F of the CCCF Act.
27. We may draw this warning letter to the attention of the Courts in any subsequent proceedings brought by the Commission against Fair Value.

Penalties for breaching the CCCF Act

28. As stated above, only the Courts can decide if there has been a breach of the CCCF Act. The potential penalties for each of the likely breaches of section 17 (initial disclosure) and section 32 (disclosure standards obligations) are set out below.
29. Where a lender fails to comply with sections 17 or 32, it may:
 - 29.1 In the case of a breach of section 17:
 - 29.1.1 Be required to refund the costs of borrowing paid by borrowers during the period in which the lender failed to comply with section 17 in accordance with sections 48 and 99(1A).
 - 29.1.2 Be required to pay statutory damages to borrowers in accordance with sections 88 to 92.

29.1.3 Where the lender has breached section 17 by failing to disclose some of the key information required to be disclosed:

- (a) Be issued with an infringement notice and required to pay an infringement fee of \$1,000 per notice.⁵
- (b) Be liable to an infringement fine of up to \$10,000 in the case of an individual and \$30,000 in the case of a company.

29.2 In the case of a breach of section 32:

29.2.1 Be required to pay statutory damages to borrowers in accordance with sections 88 to 92.

29.2.2 Commit an offence and be liable on conviction in the case of an individual to a fine not exceeding \$200,000 and in the case of a company of up to \$600,000.⁶

30. Please note that our decision to issue this warning letter does not prevent any other person or entity from taking private action through the Courts.

Further information

31. We recommend that Fair Value continues to seek legal advice on its obligations as it winds down its business.

32. We have published a series of fact sheets and other resources to help businesses comply with the CCCF Act as well as other legislation we enforce. These are available on our website at: www.comcom.govt.nz. We encourage Fair Value to visit our website to better understand its obligations and the Commission’s role in enforcing the CCCF Act.

33. The CCCF Act and other legislation can be viewed at www.legislation.govt.nz.

34. Please contact [] on [] or by email at [] if you have any questions about this letter.

Yours sincerely

[]

[]
Credit Investigations and Compliance Manager
Credit Branch – Auckland

⁵ Refer to Reg 4 of the Credit Contracts and Consumer Finance (Infringement Offences) Regulations 2015.

⁶ We also note that a complete failure to give or send a disclosure statement to a debtor in accordance with s 17 is an offence under s 103 of the CCCF Act.

Copy sent by email only to:

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