

MARAC FINANCE LIMITED

AND

COMMERCE COMMISSION

SETTLEMENT AGREEMENT

DATED

12 February

2013

AGREEMENT DATED

12th

day of

February

2012³

15

PARTIES

MARAC FINANCE LIMITED (Marac)

and

COMMERCE COMMISSION (the Commission) a statutory body established under section 8 of the Commerce Act 1986

Purpose of Agreement

1. The Commission has conducted an investigation into allegations that Marac has contravened the Credit Contracts and Consumer Finance Act 2003 (CCCFA) and the Fair Trading Act 1986 (FTA).
2. The Commission considers that Marac has breached sections 51 and/or 52 of the CCCFA by failing to rebate insurance premiums as required and section 13(i) of the FTA by misrepresenting the settlement amount to debtors who repaid their loan early.
3. Marac denies that its conduct has contravened the CCCFA and FTA.
4. This Settlement Agreement (**Agreement**) records the terms on which the parties have agreed to resolve the Commission's investigation.

Background

5. Marac provides vehicle finance to consumers.
6. As part of its business operations, Marac enters into consumer credit contracts (via car dealers) with debtors under which debtors purchase credit related insurance, including insurance cover in the event of the insured's disability, death, illness or unemployment. A common term for such insurance is Payment Protection Insurance or Consumer Credit Insurance.
7. The cost of that insurance is included in the amount financed through Marac.
8. Sections 51 to 53 of the CCCFA require that a creditor who arranges credit related insurance must rebate credit related insurance premiums to customers who settle their consumer credit contracts early where there is no continuing benefit to the customer under the insurance contract.
9. In November 2010 the Commission received a complaint that Marac was not rebating an insurance premium on a consumer credit contract as required by the

CCCFA. The Commission informed Marac of the complaint, and commenced an investigation.

10. The Commission's investigation has established that between January 2006 and November 2010 Marac did not rebate insurance on 1027 prepaid consumer credit contracts that were settled early.
11. The Commission considers that Marac:
 - 11.1 "arranged" insurance in terms of section 52(5) of the CCCFA in relation to the 1027 prepaid consumer credit contracts;
 - 11.2 was required under sections 51 to 53 of the CCCFA to provide a rebate in relation to those contracts; and
 - 11.3 in not providing a rebate, overstated the amount required to settle early the credit contracts as Marac required payment of the amount that should have been rebated.
12. Marac denies that it:
 - 12.1 "arranged" insurance in terms of section 52(5) of the CCCFA; and
 - 12.2 was required under sections 51 to 53 of the CCCFA to provide a rebate in relation to those contracts.
13. The Commission acknowledges that Marac does not admit liability.

Co-operation

14. Marac has co-operated with the Commission's investigation. When the Commission's concerns were brought to its attention, Marac:
 - 14.1 immediately altered its practice to rebate insurance premiums on prepaid consumer credit contracts; and
 - 14.2 undertook to:
 - 14.2.1 investigate all prepaid consumer credit contracts settled since January 2006 to ascertain whether rebates had been paid; and
 - 14.2.2 calculate and refund a rebate either where the rebate was not paid, was underpaid, or where Marac could not confirm that the rebate had been paid.
15. The Commission and Marac agreed that because of the cost of administering refunds, Marac would not be obliged to refund amounts of less than \$25.
16. There are 1027 debtors (**the debtors**) who entered into contracts between January 2006 and November 2010 and who may be affected. Marac is investigating and

calculating the appropriate refund payable (if any) to these debtors, and will make refunds as agreed in clause 14.2.2. The refunds currently calculated or in the process of being calculated are recorded on the spreadsheet "Rebate Summary" attached to this Agreement.

Refunds

17. Marac will:
 - 17.1 make all reasonable efforts to locate the debtors, including conducting internet searches (including but not limited to Google, White Pages and Facebook), checks with insurance brokers and checks of electoral records as appropriate; and
 - 17.2 refund the debtors as set out at in the Rebate Summary attached to this Agreement.
18. Where any of the debtors are not able to be located or do not respond, Marac will notify the Commission and pay all money otherwise payable to those debtors under this Agreement to the Inland Revenue Department in accordance with the Unclaimed Money Act 1971.

Report Requirement

19. Marac has engaged an independent expert, Staples Rodway (Chartered Accountants), to conduct the matters referred to in clause 14.2 of this Agreement.
20. Marac will further instruct Staples Rodway, or another suitably qualified third party to be approved by the Commission, to provide the Commission with a report (the **independent report**) verifying completion of the payment process, which will include the following details:
 - 20.1 the total value of all payments made;
 - 20.2 the details of debtors (if any) who have not received a payment, and the steps taken to trace those debtors; and
 - 20.3 an opinion as to whether the terms of this agreement have been complied with.
21. The independent report must be provided to the Commission on or before 1 June 2013.

No Further Action by Commission

22. The Commission will close its investigation upon the signing of this Agreement.
23. The Commission undertakes not to issue or encourage any civil or criminal legal proceeding against Marac in relation to any of the contracts referred to in clause 10 of this Agreement.

Unaffected Rights

24. If there is any material breach by Marac in fulfilment of this Agreement (such breach to be determined solely by the Commission), the Commission may in its complete discretion bring proceedings against Marac for breach of the terms of this agreement.
25. Nothing in this Agreement constitutes an admission of legal liability by Marac.
26. Nothing in this Agreement will limit or affect the ability of the Commission to issue proceedings against Marac in respect of matters not related to this Agreement, or in respect of conduct engaged in by Marac after the date of this Agreement.

Giving Effect to Agreement

27. All parties agree to take such steps as are necessary or desirable to give full effect to the terms of this Agreement.
28. If necessary to give effect to the Agreement, the terms of this Agreement may be amended by the agreement of the parties.

Miscellaneous

29. The fact that this Agreement has been entered into is not confidential. The parties agree that none of the contents of this Agreement, other than the Schedule, are confidential and that this Agreement (except the Schedule) may be published on the Commission's website and may be released to the public.
30. The Commission acknowledges that some of the information provided by Marac to the Commission may be privileged, confidential and/or commercially sensitive (**Marac's information**). In this context, the Commission agrees that, if it receives a request pursuant to the Official Information Act 1982 (**OIA**) which covers or might cover and/or record or reveal all or some of Marac's information it will notify Marac, as required, of that request and will consult with Marac as to whether there are grounds for the requested material to be withheld under Part 1 of the OIA. The Commission will:
 - 30.1 Take full and proper account of the confidential and/or commercially sensitive nature of Marac's information, and of any views expressed by Marac in accordance with the provisions of the OIA when considering any information request; and
 - 30.2 Notify Marac at least 5 working days prior to complying with the request if, notwithstanding such consideration, it determines that no grounds exist on which it may refuse to comply with the request for information.
31. The parties may make public statements in relation to the settlement. Any public statement must be consistent with the matters set out in this Agreement.

32. Marac agrees that it will not make any public comment in relation to this settlement until after the Commission has issued a media release notifying the public of this settlement.

33. Any notice or communication that is given or served under or in connection with this Agreement must be given in writing in the following manner:

33.1 If addressed to the Commission, by hand delivery or email to the following address:

Commerce Commission
Level 19, ASB Building
135 Albert Street
AUCKLAND 1143
Email - Jennifer.davies@comcom.govt.nz

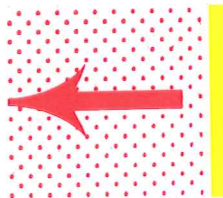
33.2 If addressed to Marac, by hand delivery or email to the following address:

Marac Finance Limited
35 Teed Street,
Newmarket
AUCKLAND 1023
Email – chris.flood@heartland.co.nz


EXECUTED by and under the name of the **COMMERCE COMMISSION** by:




Dr Mark Berry, Chair



EXECUTED on behalf of **MARAC FINANCE LIMITED** by:



Director



Director