

Memorandum

To: [] 12.01/14751
From: [] – Senior Investigator
[] – Senior Legal Counsel
Date: 3 May 2016
Classification: In-Confidence - Internal Use Only
Subject: Intagr8 Limited – Termination Report

Purpose

1. The Commission has been investigating Intagr8 Limited (**Intagr8**) for potential breaches of the Fair Trading Act 1986 (FTA) in relation to a number of complaints received regarding its conduct and representations made in the course of selling telephony services and business equipment.
2. This report is to:
 - 2.1 provide an overview of the Commission’s investigation into the conduct of Intagr8; and
 - 2.2 make recommendations about the appropriate enforcement response for the conduct under investigation.

Recommendations

3. We recommend that Intagr8, Murray Taylor (Mr Taylor) and Stephen Morrissey (Mr Morrissey) are warned for likely breaches of sections 13(b) and 13(g) of the FTA for making false or misleading representations:
 - 3.1 as to the price of equipment and telephony services offered; and
 - 3.2 the nature of the services offered – customers were entered into a long term rental agreement with third party finance companies when it had been implied that the services would be supplied by Intagr8.
4. A further recommendation is that each of the following finance companies that provided finance for the long term rental agreements be issued with a compliance advice letter:
 - 4.1 Advaro Limited (Advaro);
 - 4.2 TRL Leasing Limited (TRL);

4.3 Equipment Finance Limited (EFL); and

4.4 UDC Finance Limited (UDC).

Executive summary

5. Intagr8 was a telecommunications company that offered telephony services and office equipment to small - medium sized business customers, bundled over a 60 month term.
6. The telephony service was supplied to Intagr8 at a wholesale level by Vodafone NZ Limited.
7. The business equipment (telephone systems, CCTV monitoring and security systems, printers and photocopiers) was sourced by Intagr8 from suppliers such as NEC and Samsung.
8. The business equipment was financed through third party finance companies that entered into a 60 month rental agreement with customers.
9. Intagr8 provided monthly calling credits to customers over the life of the 60 month rental term. It was this ability to “off set” costs of equipment with call credits that Intagr8 used as the distinctive feature to promote sales, but which also formed the basis of most of the complaints regarding misleading representations that were made.
10. Statements made by complainants indicated that the verbal representations made by Intagr8’s salespeople were, in many cases, not what was captured by the signed documents or explained in the follow-up Quality Assurance call. Customers complained that they were led to believe that they would not pay more for their telecommunications, and in particular that they would receive calling credits that offset the cost of their new equipment.
11. Complainants stated that they were unaware that they signed a rental agreement with a company other than Intagr8, as salespeople did not disclose this to them during the sales visit.
12. The Commission believes Intagr8 is likely to have breached the FTA by making false or misleading representations to consumers regarding the:
 - 12.1 price of the equipment and services offered (s13(g)); and
 - 12.2 nature of the services offered - that they were supplied by Intagr8 when in fact customers also entered into a long term rental agreement with a third party (s13(b)).

13. On 17 December 2015 Intagr8 was placed into liquidation by special resolution of the Company's shareholder.¹ Steven Khov and Damien Grant (Waterstone Insolvency) were appointed liquidators.²
14. On 5 January 2016 it was reported that Intagr8's sole director and shareholder, Mr Taylor (along with his family) left New Zealand for Australia within two days of Intagr8's liquidation and was unlikely to return.³

Background Facts

Intagr8 Limited

15. Since its incorporation in June 2009 until the date of liquidation 17 December 2015, Intagr8 provided telephony services and business equipment to small-medium business customers located in the Auckland and Bay of Plenty regions. During 2014 Intagr8 started making sales in Wellington.
16. In March 2015 Intagr8 advised that it had approximately 2,500⁴ customers, mostly small to medium businesses as it did not provide residential customer services.⁵

Intagr8's business solution and sales method

17. The business equipment Intagr8 sold included telephone systems, CCTV monitoring and security systems, printers and photocopiers.⁶ The equipment was usually sourced by Intagr8 and financed by a 60 month rental agreement through a third party finance company. Intagr8 sold the business equipment as a bundle with telephony services wholesaled from Vodafone.
18. Intagr8 described the bundling variously as its "business solution", "bundled solution" or "Intagr8 solution" that allowed small to medium businesses to enjoy the features and benefits of the latest technology with no initial capital outlay.
19. Intagr8's salespeople visited prospective customers, described Intagr8's bundled service and used the customer's current telephone bills to calculate, and then offer, monthly calling credits. Salespeople told customers that, if they switched their telephone service to Intagr8, the company would provide them with the business equipment and pay them monthly calling credits to offset the cost of the business equipment for 60 months.

¹ The NZ Companies Register shows that Murray Taylor was the only shareholder.

² Liquidator's first report dated 27 December 2015.

³ <http://www.stuff.co.nz/business/75616950/intagr8-boss-murray-taylor-wont-return-to-new-zealand>

⁴ On 1 December 2015 Murray Taylor stated Intagr8 at the time had 2098 contracted customers and 400 billing only customers.

⁵ [] have said that residential service was part of their agreement.

⁶ [] received a payment of \$5,000 for a computer server that Intagr8 included in the deal.

20. Successful sales visits resulted in customers signing Intagr8's work order for equipment and installation, an application for telephone service form, an understanding the arrangement form, a rate card and number assignment form.⁷
21. At this time, a rental agreement and direct debit form for the business equipment was signed with a third party finance company.
22. Customers stated that they were unaware that they signed a rental agreement with a company other than Intagr8 as the salesperson did not disclose this to them during the sales visit.
23. Intagr8 rang customers following successful sales but before the business equipment was installed to verify the details of each sale. It referred to this as a quality assurance call, claiming that the rental of business equipment and the calling credits were fully explained during this call.
24. In fact, customers signed a 60 month term contract for Intagr8's telephony service which ran alongside but independently of the 60 month rental agreement in respect of the business equipment they also signed up to during the sales visit.

Intagr8's key personnel

25. Mr Taylor was the sole director and shareholder of Intagr8. The NZ Companies Register shows he holds office as a director or shareholder in 11 other companies.
26. Intagr8 was run by Mr Taylor, []([]) and []([]). Mr Taylor was in charge of the sales team, [] was the Head of Finance and Customer Service and [] filled in the gaps (she was Acting General Manager when interviewed).
27. Mr Morrissey was Intagr8's National Sales Manager from 2009 to March 2015.
28. [] was Intagr8's General Manager from 2010 to November 2014.
29. On 25 February 2015 Mr Morrissey and [] started a company called [] in direct competition to Intagr8. Intagr8 then instigated legal proceedings against Mr Morrissey and [].
30. The finance companies that wrote finance for Intagr8's equipment sales were UDC Finance Limited, Advvaro Limited (formerly RentPlus), Equipment Finance Limited and TRL Leasing (NZ) Limited (formerly Telecom Rental Leasing Limited).

Summary of the investigation

31. This investigation relates to 29 complaints that the Commission received between 14 April 2014 and 6 October 2015. Complainants claimed they were misled by Intagr8's

⁷ Document [2108154](#) is a copy of the sales package documents that Intagr8 provided in its response of 4 May 2015.

sales behavior.⁸ Additional complaints were received following Intagr8's liquidation (17 December 2015) but these complaints were not investigated because the complaint details related to the same course of conduct already under investigation.

Complainants state that verbal representations made during sales visits differ from those documented

32. The overarching allegation by complainants was that the verbal representations made by the salespeople during sales visits were not what was captured in the signed documents, or explained in the follow-up quality assurance call. Complainants stated that they paid more than expected and on different terms to what they were led to believe.
33. Complainants described Intagr8's salespeople filling out all of their details on the documentation (Intagr8's own forms and that of the finance company) during the sales visit, which the complainants were then asked to sign. Complainants stated that salespeople pressured them into signing the completed documents, and provided them with no opportunity to consider or read the documents.
34. Some complainants stated that the company logos and headings on the various documents were deliberately covered by salespeople during the signing process. They stated that the documents they signed were black and white photocopies, so each company's livery, colour and style were indistinguishable. Salespeople are also said to have placed their hand at the top of the bundle of documents only allowing the complainant the opportunity to sign where each 'x' was noted for signature required.
35. Some complainants alleged that the bank account number for the direct debit was obtained under false pretences as salespeople told them this number was required to pay the agreed trade-in or pay-out figure directly into a bank account. When complainants have followed up non-receipt of these payments they were asked to invoice Intagr8 before such payments could be paid.

Investigation identifies 2 categories of potential misrepresentations by Intagr8

36. Of the 29 complaints initially received, we have spoken to 23 complainants whose experience with Intagr8 appears to be representative of the majority of complaints that the Commission has received. The experience of these complainants showed that the breaches which Intagr8 has committed fall into two broad categories.

Price Representations

37. A number of complainants were told that they would receive monthly calling credits of a certain amount, usually enough to offset the rental cost of the new equipment

⁸ Document [2234965](#) is a spreadsheet that provides details of these complaints.

(see table below). In reality, it was an “up to” amount and dependent on the type and quantity of “eligible⁹” calling activity.

Complainant	Credit offered	Monthly Rental	Credit Received	Intagr8 Invoice Date
[]	299	345	45.86	Dec 2013
[]	402.50	402.50	59.74	Oct 2015
[]	230.00	420	0	Nov 2014

38. The second representation within this category made to some complainants was that they would pay no more in the future, including the equipment rental, than what they had paid their existing telephony service providers. In fact, there were always additional charges not covered by the credits and complainants ended up paying more after switching to Intagr8.

Equipment Rental Representations

39. Complainants were not informed that they would enter into a rental agreement with a finance company, paying by direct debit, and that separate accounts would be issued for the telephony services and equipment rental.
40. Complainants were surprised when they learned that they had signed a separate rental agreement and had agreed to a direct debit with a finance company unrelated to Intagr8.

Allegations against Taylor and Morrissey

41. Mr Morrissey was the salesperson in the majority of complaints investigated.
42. The Commission only investigated one complaint about the sales conduct of Mr Taylor.
43. The allegations were that during the sales visit(s) they had made false or misleading representations as to the price of equipment and telephony services and the nature of the services offered.

Contact with Intagr8

Voluntary interview with Intagr8 held 25 March 2015¹⁰

44. On 25 March 2015 [](Acting General Manager) and [](Finance and Compliance Manager) attended a voluntary interview where they confirmed they had the authority to speak on behalf of Intagr8.

⁹ “Eligible calls” are explained in the Rate Card and Number Reassignment Authority form as standard local, national, land to cellular and international calls. On a case-by-case basis broadband was added as eligible for credits also.

¹⁰ See document [2017231](#).

45. At that interview Intagr8 disputed all of the allegations made by complainants, including those made against Mr Morrissey. Mr Morrissey was Intagr8's National Sales Manager until he resigned in March 2015.
46. Intagr8 stated that the complaints discussed at that interview were in part caused by the actions of a competitor in the Bay of Plenty - []. [] had sent emails to its customers claiming Intagr8's service was a scam and should be avoided. Intagr8 took legal action and the claims were withdrawn.
47. Intagr8 claimed that the documentation customers signed and the quality assurance calls it made to customers shortly after each sales visit, cleared them of any wrong doing.
48. Intagr8 provided the Commission with the quality assurance call recordings for our complainants. The caller [] gave the monthly call credit amount (for eligible calls on an "up to" basis) that Intagr8 would provide. The caller described the business equipment and gave the monthly rental figure to be paid to the finance company which she named. The call duration was generally no more than 5 minutes and you can hear that the recipient of the call was for the most part unengaged with what was being said.
49. Intagr8 said it had continually strengthened its compliance programme following receipt of the Commission's compliance advice letter¹¹ (issued 10 December 2012 that covered the same conduct). [] (Intagr8's General Manager at that time) drafted compliance manuals¹² and provided training to all sales and call centre staff. Intagr8 reiterated that customers had signed all of the necessary documentation and received quality assurance calls.

Voluntary interview with Murray Taylor held 1 December 2015

50. On 1 December 2015 Mr Taylor attended a voluntary interview accompanied by his legal counsel.
51. []
-].
52. Mr Taylor stated that, since the 25 March 2015 interview with the Commission, Intagr8 had made further compliance improvements by revamping its Work Order form to make it clearer the equipment was rented and had removed any mention of shortfall (the balancing figure between the monthly calling credit and rental figures) on the form. However we note that the words "up to" were absent from the words "monthly calling credit" so the form didn't reference the variable nature of the credits.

¹¹ On 10 December 2012 a compliance advice letter was issued to Intagr8 as a result of project 13738 (see [1476359](#)).

¹² See Exhibit Intagr8/002 Commerce and Fair Trading Act Synopsis.

53. Mr Taylor said the complaints that surfaced after the 25 March 2015 interview were a direct result of the media campaign orchestrated by the Sunday Star Times.
54. Mr Taylor denied he had made any misrepresentations personally. He said that he had fully disclosed all aspects of Intagr8's telephony service and the rental agreement with the finance company during the sales visit with []. He said that he had made over 150 sales for Intagr8 yet the only complaint against him was from []. He attributed this complaint to the Sunday Star Times media campaign. We have no other complaints about Mr Taylor's sales conduct during the investigation period.

Contact with ex-employees of Intagr8

Voluntary interview with Intagr8's former National Sales Manager- Stephen Morrissey - held 3 November 2015¹³

55. [

]

56.

[

]

57. [

]

58. Mr Morrissey denied the alleged misrepresentations about the sales he had made, stating that he had fully disclosed all aspects of Intagr8's telephony service and the rental agreement with the finance company during his sales visits. He said that he explained each form to customers as they were signed and all of his sales were confirmed by quality assurance calls.

Voluntary interview with Intagr8's former General Manager [] - held 3 November 2015¹⁴

59. [

]

¹³ See document [2269667](#).

¹⁴ See document [2269669](#).

60. He added that Intagr8 had many complaints from customers (covering sales made by a range of salespeople) who were not receiving what they were promised by Intagr8's salespeople. He said he spent most of his last year at Intagr8 dealing with customer complaints and negotiating payment terms with suppliers.

Summary of ex Intagr8 employee's evidence

61. It was evident from the independent interviews with Mr Morrissey and [] that the finance component of the agreement was most important to Intagr8, hence the emphasis throughout their interviews on salespeople 'writing finance' and Intagr8 settling the finance with the finance companies promptly. This was how Intagr8 made its money.
62. [] said that the average agreement was worth about [] to Intagr8 and it made [] sales per month, resulting in revenue of over [] per month.
63. Mr Morrissey and [] both said the main focus was to get the equipment installed (even partly installed) quickly (within 3-4 days) so that each finance agreement was settled promptly, thus ensuring that Intagr8 was paid by the finance company.
64. Mr Morrissey and [] state that during 2013 and 2014 Intagr8 was only delivering on the complete package offered by its salesmen in the case of squeaky wheel customers. These customers complained loudly, threatened court action against Intagr8 or started complaining directly to the finance companies, thus jeopardising Intagr8's finance relationships.
65. Intagr8 liquidated on 17 December 2015 Intagr8 was placed into liquidation by special resolution of the Company's shareholder. Steven Khov and Damien Grant (Waterstone Insolvency) were appointed liquidators.¹⁵
66. The Liquidator's first report dated 27 December 2015 reported that the estimated debt owed by Intagr8 was unknown at this date and that the business (and its customer database) had been sold to a third party purchaser.¹⁶ This company was RS Comms Limited.
67. The Liquidator's initial investigation indicated that Intagr8's business failure was due to its inability to pay its debts as they fell due, running an unsustainable business model and a major supplier withdrawing telco services. To date no further Liquidator's reports have been listed with the Companies Office.

¹⁵ Liquidator's first report dated 27 December 2015.

¹⁶ Ibid

68. On 5 January 2016 it was reported that Intagr8's sole director and shareholder of the company, Mr Taylor (and his family) had left New Zealand for Australia¹⁷.
69. Media reporting on a creditors meeting held on 14 January 2016 estimated debts owed by Intagr8 would exceed \$4 million.¹⁸

Contact with Finance Companies

70. On 22 December 2015 we wrote to Advaro, TRL, EFL and UDC requesting:
- 70.1 the number of Intagr8 customer contracts they held,
 - 70.2 the number of complaints about Intagr8's alleged misleading conduct they had received, and
 - 70.3 what support they were offering customers as a result of Intagr8's liquidation.

Number of Intagr8 customers financed

71. The finance companies advised they had the following customer base by virtue of their association with Intagr8:

Company	Number of contracts	Balance of contracts owing	Number of complaints pre liquidation	Number of complaints post Liquidation
Advaro	[]	[]	[]	[]
TRL Leasing	[]	[]	[]	[]
EFL	[]	[]	[]	[]
UDC	[]	[]	[]	[]
Total	[]	[]	[]	[]

72. Only Advaro [] and TRL [] admitted to having customers complain that Intagr8 had misled them, prior to the date of liquidation. Advaro [] and EFL [] admitted to receiving such complaints after the date of Intagr8's liquidation.
73. Advaro stated that [] pre-liquidation claims were resolved with [] of these contracts being settled by Intagr8 and [] being written off by Advaro.
74. All of the finance companies have argued that their rental agreement is separate from the telephone service agreement signed with Intagr8 and that they believe customers signed in good faith. They also noted that Intagr8 had been fully paid out for the contracts.

¹⁷ <http://www.stuff.co.nz/business/75616950/intagr8-boss-murray-taylor-wont-return-to-new-zealand>

¹⁸ <http://www.stuff.co.nz/business/industries/75909326/Intagr8-debts-approach-4m-staff-to-recover-only-half-of-unpaid-wages>

How have the finance companies supported customers following Intagr8's liquidation

75. All of the finance companies have said that they had proactively contacted customers (phone and email) to engage with them and offer assistance where they could. EFL & TFL said they had talked to suppliers to ensure ongoing connectivity for customers prior to and through the Xmas period.
76. All say that they have committed to a case by case assessment when customers complain that they were misled about the rental agreement by Intgar8. Absent this they have said it is business as usual.
77. Advaro advised that it had engaged an independent mediator (Resolvit) to work through customers that complained they were misled by Intagr8.
78. EFL has advised that it is registered as a financial service provider and as such customers have access to a dispute resolution scheme overseen by Financial Services Complaints Limited. All of the finance companies are registered financial service providers so all customers have access to a resolution service.
79. Advaro and TRL have said that they would flex the rental agreement by adding additional time to pay without any profit or interest element being charged to the customer. In addition customers would be offered a discounted payout figure to settle the rental agreement on a case by case basis.

Breaches of the Fair Trading Act

Intagr8

Representations about price of equipment and telephone service - Section 13(g)

80. Section 13(g) of the FTA prohibits false or misleading representations with respect to the price of any goods or services.
81. The available evidence suggests that Intagr8, through its salespeople, has made false or misleading representations to complainants in relation to the price of telephony services and business equipment to be provided, by representing that:
 - 81.1 the cost would not exceed what they were paying their current provider, when in fact there were additional charges added, resulting in increases in monthly accounts following switching; and/or,
 - 81.2 the indicated amount of calling credits would be received every month and would be enough to offset the rental amount for the business equipment, when in fact it was described in the fine print as an "up to" amount dependant on the type and volume of call activity. This resulted in instances where complainants did not get the level of credits offered at the sales visit.
82. The potentially false or misleading representations resulted from information that Intagr8s' salespeople did not provide to complainants. The nature and amount of "Eligible calls", although disclosed in the fine print of agreements, was not explained

during the sales visit. Credits could only be earned from eligible calls and might not be at the amount estimated, should telephone bills vary from month to month.

83. We consider there is sufficient evidence to establish breaches of section 13(g) of the FTA by Intagr8.

Equipment rental representation - Sections 13(b)

84. Section 13(b) of the FTA prohibits false or misleading representations that services are of a particular kind or that they are supplied by any particular person.
85. Available evidence suggests that Intagr8's salespeople did not always disclose to complainants that they were in fact entering into a separate long term rental agreement with a finance company unrelated to Intagr8.
86. Through this omission, Intagr8 may have made a misleading representation that the agreement would be one for bundled services and equipment entered into between complainants and Intagr8. Having complainants signing the rental agreement unknowingly resulted in the misleading representation that they had agreed to acquire the equipment on a rental basis from the finance companies.
87. The failure by Intagr8 to provide important information regarding the nature of the service may be considered to be representations by silence.
88. In *CC v Telecom NZ Ltd*¹⁹, Judge Abbott discussed the authorities as suggesting that silence could constitute a false or misleading representation only in three particular circumstances:
- 88.1 Where there is a duty to disclose a relevant fact (the "duty to advise" situation);
- 88.2 Where in making a representation a party omits to mention an important fact (the "half-truth" situation); and,
- 88.3 Where a representation which is true when made becomes false because of intervening events (the "changed circumstances" situation).
89. In this instance, complainants had a reasonable expectation that important information regarding the nature of the service and the agreements entered into would be communicated to them by Intagr8's salespeople.
90. The significant number of complaints received, and the similarity of complainant evidence provided to the Commission, suggest that the documentation signed by customers and the verification call soon after the sales process may have been insufficient to correct any misleading impression initially conveyed. Therefore we consider there is likely to be sufficient evidence to establish breaches of section 13(b) of the FTA by Intagr8.

¹⁹ *CC v Telecom NZ Ltd* [2005] DCR 160

91. Intagr8's conduct and agreements appear to fall outside the scope of the Credit Contracts and Consumer Finance Act (CCCFA) as customers were small businesses and contracts were not primarily for personal, domestic or household purposes.

Individual liability

Murray Taylor

92. Mr Taylor was the sole director of Intagr8. Mr Taylor controlled the sales team and gave salespeople monthly rental and credit figures during each sale. Salespeople then entered the figures onto the Intagr8 work order and the finance company rental agreement.
93. We are only aware of one instance where Mr Taylor acted as an Intagr8 salesperson and made representations to [] directly. Three representatives of this company were present during the sales visit and all confirm the representations made by Mr Taylor.
94. All three [] representatives were firm in their view that Mr Taylor made false or misleading representations regarding the price of the telephony service and equipment offered, as well as the nature of the agreement entered into for the equipment and the method of payment.
95. When interviewed, Mr Taylor denied making any misrepresentations during the particular sales visit. He claimed to have disclosed to the prospective customer representatives all aspects of Intagr8's telephony service and the rental agreement entered into with the finance company.
96. The witnesses appeared to be reliable and we consider it likely that Mr Taylor has made the alleged representations during the sales visit. We consider there to be sufficient evidence to warn Mr Taylor for likely breaches of sections 13(b) and 13(g) of the FTA.
97. For Mr Taylor to be liable as secondary party to the Intagr8 conduct, we need to establish that he:
- 97.1 assisted or encouraged the conduct through a deliberate act;
- 97.2 had knowledge of the essential matters of the principal offence; and,
- 97.3 intended by his conduct to assist Intagr8 to perform the act constituting the offence.
98. Apart from Mr Taylor instructing salespeople to make sales happen "whatever it is" and being involved with providing the monthly rental amount and telephone credits, we have no evidence of his direct instruction, assistance or knowledge of the misleading representations made by the salespeople.

Stephen Morrissey

99. Mr Morrissey was the National Sales Manager for Intagr8 until his resignation during March 2015. Mr Morrissey was responsible for training and motivating sales and telemarketing staff. Mr Morrissey attended a voluntary interview on 3 November 2015 and by his own admission accounted for 60-70% of all sales made by Intagr8.
100. Mr Morrissey denied the misrepresentations he was alleged to have made to customers during the sales visits.
101. However, there is available evidence of misrepresentations from a significant number of complainants who appear to be credible and consistent in what they were told during the sales visits.
102. With regards to these complaints involving Mr Morrissey, it is likely that he made the alleged representations personally and would potentially be principally liable.
103. We consider there is sufficient evidence to warn Mr Morrissey for likely breaches of sections 13(b) and (g) of the FTA.

Finance companies

104. Intagr8 used a number of finance companies to fund the business equipment supplied to customers. Their respective customer bases are set out in the table in 71 above.
105. Our inquiries of the finance companies indicated that they had comparatively few customers complaining to them about misleading conduct by Intagr8 salespeople, were investigating complaints individually and were trying to resolve these as far as possible.
106. With regards to any potential secondary party liability, we have insufficient evidence to suggest that the finance companies were aware of the misrepresentations being made by the Intagr8 salespeople during sales visits. Without this awareness, finance companies could not be held liable as parties to the offending by Intagr8.
107. Section 45 of the FTA can in some circumstances attribute the conduct of Person A to Person B, even if Person B had no knowledge of it. Under s 45 of the FTA, the finance companies could potentially be held liable for breaches of the FTA as a result of the alleged false or misleading representations made by Intagr8 salespeople. That liability could arise if the Court found that:
 - 107.1 Intagr8 salespeople made those representations while acting at the direction of, or with the consent or agreement of, Intagr8; and
 - 107.2 Intagr8 was at that time acting as agent of the finance companies, for signing customers up to the rental agreements.
108. We consider that there may be sufficient evidence to establish that Intagr8 was acting as agent of the finance companies when signing customers up to the rental

agreements. For the reasons outlined below, we do not consider that their culpability is sufficient to justify prosecution.

Recommended outcome

Intagr8 Limited

109. On 10 December 2012 a compliance advice letter (see document [1476359](#)) was sent to Intagr8 for similar conduct.
110. Prior to Intagr8's liquidation we had considered prosecution action was the most appropriate enforcement outcome.
111. The first liquidator's report and subsequent media articles about Intagr8's financial position would indicate that any fine achieved by prosecuting would likely remain unpaid. The possibility of reparation for customers would appear to be even more remote.
112. In this case our view is there is no reason to seek permission from the liquidator to commence prosecution because any penalty paid to court would likely be at the expense of creditors.

Individuals

Murray Taylor

113. In terms of the factors to be considered under the Commission's Enforcement Response Guidelines, we recommend warning Mr Taylor for the following reasons:
 - 113.1 There is only evidence of one complaint against Mr Taylor's sales conduct.
 - 113.2 There is insufficient credible evidence of Mr Taylor instructing sales staff to make misrepresentations during the sales process.
 - 113.3 There is insufficient credible evidence linking Mr Taylor directly to the misrepresentations made during the sales process.
 - 113.4 As the only shareholder he may have benefitted personally from the offence.

Stephen Morrissey

114. In terms of the same Guidelines, we recommend warning Mr Morrissey because:
 - 114.1 He was employed as the National Sales Manager and not an office holder within Intagr8.
 - 114.2 He was a subordinate of Mr Taylor and a conduit for carrying out the instructions of more senior staff.
 - 114.3 Being a salaried employee rather than a commission based salesman there is insufficient evidence to suggest he benefitted personally from the alleged conduct.

114.4 Mr Morrissey resigned from Intagr8 during March 2015.

114.5 In light of Intagr8's liquidation and lack of evidence of Mr Taylor's wider involvement in the misrepresentations, we consider it in the interest of equal treatment to be inappropriate to prosecute only Mr Morrissey. Further it is unlikely that a prosecution would result in any significant reparation for affected businesses.

Finance companies

115. In light of the developments regarding Intagr8 and the relatively low level of culpability of the finance companies, it would not be appropriate to prosecute them in reliance on the deeming provision of s 45 of the FTA.

116. Although there is a prima facie case of liability there is no suggestion of knowledge or negligence by these companies. Accordingly their culpability is low.

117. The purpose of compliance advice letters would be to inform the finance companies of our view that there has been a likely breach of the law and to encourage them to better monitor their potential agents.

118. Based on the particular circumstances in this instance, it is our recommendation that the appropriate enforcement outcome is a low-level response in the form of a Compliance Advice Letter to all of the finance companies involved.

Bringing Civil proceedings for affected customers

119. The Commission could, in theory, approach the court for orders under s 43 against the finance companies. In our view, civil action on behalf of all affected businesses would be inappropriate; any recovery would be fact specific for each affected business.

120. For example, establishing loss would require the Commission to establish an appropriate causal connection between the conduct and any loss, and to exclude other causes. A defendant would likely argue that businesses contributed to any loss through their own failure to carefully review the contract documents. Resolving these issues would require the Court to undertake a business specific and intensely factual analysis.

121. It is therefore more appropriate for affected businesses to take private action where they consider it appropriate.

122. We also note that the finance companies indicated that customers would have access to dispute resolution schemes which will provide for alternative dispute resolution options between them and customers.

123. In addition, we have been advised that the new owners of the Intagr8 business provided some relief to existing customers by offering to extend the credits and switch them to digital systems that would reduce the amount they would have to pay for telephony accounts.

124. We recommend advising the complainants of their right to bring applications under s 43 of the FTA in their own right and offer our assistance by making a public version of this report available on the Commission's website.