Answer to question in writing:

HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON ECONOMICS

REVIEW OF THE ASIC ANNUAL REPORT (SECOND REPORT) 2019

ASIC16QW

Question

ASIC used its product intervention power to ban a short-term lending model that caused significant consumer detriment used by Cigno (Source: ASIC).

(a) Has ASIC done any calculations regarding the cost of this model to affected consumers?

Answer

Yes, ASIC has done calculations comparing the overall cost of short term credit facilities obtained through the short term lending model to other similar credit products. We refer to Tables 2, 3 and 4 in ASIC *Consultation Paper 316: Using the product intervention power: short term credit.*

ASIC considers that consumer financial losses arising from the short term lending model include:

- Consumers being charged significant upfront, ongoing and default fees under the short term lending model, in excess of the fees permitted under the short term credit exemption.
- Additional fees and charges from third parties are often incurred, including bank charges in relation to dishonoured direct debits and overdrawn fees.
- As a result of the significant fees and charges and subsequent increase in debt, consumers are often unable to meet other financial commitments.

ASIC observed that approximately 98% of the fees that were charged under the short term lending model exceeded the fees that could be charged under the short term credit exemption in s6(1) of the National Credit Code, being a fee of 5% of the loan amount and 24% interest p.a.

Question

(b) What is ASIC doing to ensure redress for affected consumers?

Answer

In 2015 ASIC was unsuccessful in civil proceedings against Teleloans Pty Ltd (Teleloans) and Finance & Loans Direct Pty Ltd (FLD), who operated an earlier version of the short term lending model. The Federal Court found that Teleloans and FLD's short term lending model did not breach the *National Consumer Credit Protection Act 2009 (National Credit Act).*[1]

In the absence of a breach of the National Credit Act or anti-avoidance provisions, ASIC sought to address the significant detriment arising out of this type of lending using the product intervention powers when those powers were introduced in 2019.

We note the product intervention orders made by ASIC are not retrospective. Per s1023C of the *Corporations Act 2001*, a product intervention order does not apply to a financial product held by a person if the person acquired or entered into a contract for the acquisition of the product before the order comes into force.

The *ASIC Corporations (Product Intervention Order—Short Term Credit) Instrument 2019/917* (short term credit product PIO) came into force on 14 September 2019. Therefore, ASIC is unable to intervene or provide redress for consumers in relation to short term credit facilities using the short term lending model entered into prior to 14 September 2019.

For short term credit that is issued to consumers by short term credit providers after 14 September 2019, the total fees are capped in line with s6(1) of the National Credit Code, being a fee of 5% of the loan amount and 24% interest p.a.

Question

(c) Did ASIC's intervention include any agreed standards Cigno would be required to meet with future lending models – does intervention lead to routine 'health checks' against future lending behaviour.

Answer

ASIC's short term credit PIO is an industry wide order which prohibits all short term credit providers in the market from charging fees in excess of the short term credit exemption in s6(1) of the National Credit Code (as discussed in the answer above).

The short term credit PIO did not mandate particular conduct by individual firms, such as Cigno, in relation to future lending models and products. ASIC notes that the product intervention power only gives ASIC the ability to impose conditions on specified conduct in relation to the relevant financial product, or class of financial product, which is the subject of the product intervention order, in this case short term credit facilities.

ASIC has continued to monitor the behaviour of short term credit providers , including Cigno, and has recently consulted on a new proposed product intervention in relation to a different financial product, namely a continuing credit contract, which has been provided to consumers in a similar manner to the short term lending model. Further, on 30 September 2020, ASIC commenced proceedings in the Federal Court against Cigno and another party, seeking declarations of contravention, as well as interim and permanent injunctions.

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[1] *Australian Securities and Investments Commission v Teleloans Pty Ltd* [2015] FCA 648.