Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates

2014 - 2015

Department/Agency: Australian Securities and Investment Commission
Question: BET 82
Topic: Credit Cards
Reference: Hansard page no. 33 - 03 June 2015
Senator: Dastyari, Sam

Question:

Senator DASTYARI: Thank you. I have one other quick question on that, and then we will move on from that topic: officials from Treasury yesterday said that they produced a report which they handed to government on 25 March in consultation with other agencies—I am sorry, Minister; you were not here. There was a different minister at the table. Minister Ryan was at the table.
Senator Cormann: Which report are you talking about?
Senator DASTYARI: No; there was a paper produced for government by Treasury on 25 March this year by the Markets Group of Treasury and given to government—
Senator Cormann: What was it about?
Senator DASTYARI: About credit cards, and about the challenging space for credit cards. I should have asked the Market Groups this, but I will ask you, so from the other end: Markets Group said that in developing that document they had consulted with APRA and other relevant agencies in the preparation of the document. I imagine, if they were contacting you, it would probably have been at a level below the commissioner level, understandably. So are you able to take on notice whether or not the preparation of that document also included input—or do you know the answer to that, Mr Kirk?
Mr Kell: We have had discussions with Treasury—ASIC has—about issues around credit cards, but in relation to that particular report: yes, I would have to take it on notice.
Senator DASTYARI: Okay, so the answer is—I just want to be clear—that you have had discussions with Treasury around issues relating to credit cards. Is that both in relation to the challenges facing interest and also in relation to payments? Or is that going to more detail than Mr Kirk has with him at the moment?
Mr Kell: For example, we obviously regulate the responsible lending laws which apply to all credit products including credit cards, so Treasury are interested as to how we are seeing that operating in the credit card space. We have taken some court actions in relation to unsolicited credit card limit offers, notably against GE where we got a $1.5 million penalty so we have—
Unidentified speaker: Who was that?
Mr Kell: GE Capital.
Senator DASTYARI: And how many of those have you pursued? You just using one example. Do you have a figure with you?
Mr Kell: In relation to that issue?
Senator DASTYARI: Yes.
Mr Kell: We will have to get back to you on that one.

Answer:

In relation to the credit card report prepared by Treasury, ASIC was sent this report on 1 June 2015. ASIC has provided Treasury with its comments.

In relation to action taken by ASIC: new laws commenced on 1 July 2012 that prohibit credit card issuers from sending unsolicited credit limit increase invitations to their customers unless the customer has provided their consent. At the time, ASIC became concerned about messages card issuers were sending to customers in relation to providing consent. In particular ASIC was concerned that some of the messages may have created a misleading impression about customer rights and the consequences of customers not providing consent.

ASIC obtained public outcomes in relation to the approach taken by three credit card issuers to obtain customer consents:

- GE Capital Finance Australia;
- Commonwealth Bank of Australia; and
- Westpac Banking Corporation.

Media Releases for each of these matters are attached.

<u>GE Capital Finance Australia</u> (GE Money) (14-149MR) 3 July 2014

The Federal Court made declarations and ordered GE Money pay a penalty for making false or misleading representations to more than 700,000 of its credit card customers. The Court found that between 5 January and 27 May 2012 GE Money told some credit card customers that to activate their credit card, or apply for or obtain an increased credit limit, the customer also had to consent to receiving invitations to apply for credit limit increases.

The court found that, 'the contraventions were serious and the reach of GE Capital's conduct was extensive and substantial [and that it] was a systematic and deliberate attempt to mislead cardholders into giving their consent to receive invitations for future credit increases so as to avoid losses of up to $6 million which were projected to be suffered by GE Capital as a result of the tightening regulatory environment.'

<u>Commonwealth Bank of Australia</u> (CBA) (12-40MR) 7 March 2012

ASIC accepted an enforceable undertaking from the CBA following concerns that a message sent to CBA internet banking customers was misleading. The message sought customers' consent to receive credit card limit increase invitations. ASIC formed the view that the messages were misleading as they:

- suggested that if CBA's customers did not complete the electronic consent in response to the message they would lose the chance to receive credit limit increase offers
- suggested that if they did not consent, customers would miss out on opportunities to access extra funds should they need them, and
- created the impression that customers needed to act urgently, which may have led customers to respond without properly considering their options.

The messages were sent to CBA customers via its internet banking platform on 12 and 13 December 2011. In total, 96,000 customers provided their consent in response to the messages.

CBA agreed not to rely on the consents obtained and to contact each customer who provided consent over this period to correct the misleading impression and inform them of their rights.

Westpac Banking Corporation (Westpac) (12-79MR) 24 April 2012

Westpac withdrew and modified messages sent to customers about credit card limit increases following ASIC concerns they were misleading. These messages were sent to customers between February 2012 and March 2012 via email, credit card statements and its website. Approximately 3,700 customers provided their consent as a result of these messages. ASIC formed the view that the messages were misleading as they:

- suggested that if they did not consent, customers could miss out on accessing additional funds, and
- created the impression that customers needed to act urgently, which may have led customers to respond without properly considering their options.

Westpac agreed not to rely on the consents and contact each customer who consented to correct any misleading impression.