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Competition and Consumer Policy
Building, Resources and Markets
Ministry of Business, Innovation & Employment
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Discussion paper on Buy-Now, Pay-Later

ASB Bank Limited (**ASB**) welcomes the opportunity to provide feedback to Government on its discussion paper on Buy-Now, Pay-Later: *Understanding the triggers of financial hardship and possible options to address them (the Paper)*.

Our key points are:

- Our data supports the view of financial mentoring services that **Buy Now, Pay-Later (BNPL) customers can experience financial hardship**.
- We are **concerned that some propositions in the BNPL market do not sufficiently take into account a customers' individual circumstances** and do not assess whether that customer is going to be able to afford the ongoing payments. This therefore increases the risk of some customers falling into financial difficulty, particularly those who are vulnerable.
- This **risk increases where customers use a number of different BNPL offerings** in parallel. In this instance both the customer, and other credit providers may not have full visibility of debts that are being accrued.
- We think **there is a place for BNPL propositions that enable customers to smooth payments** for purchases, however as they are credit arrangements that can create the potential for financial hardship, we believe they should be regulated.
- We realise there is a **balance to be struck**. It's **also important for customers and merchants to benefit from innovation** in the way goods and services are bought and sold. **Any regulation needs to be right-sized and proportionate to the risk of harm** to customers.
- For that reason, we recommend that an **'Option 3A' is considered, with lighter-touch customer affordability check requirements** than those currently required under CCCFA legislation. This should apply equally across similar low value credit contracts.

Our detailed feedback and recommendations are set out in the enclosure to this letter. If you require any further information in relation to this submission, please do not hesitate to contact Jennifer Bourne, Senior Manager, Government Relations and Regulatory Affairs [REDACTED]

Yours sincerely



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ASB's feedback and recommendations

Customers who use BNPL in tandem with other credit products appear at greater risk of financial hardship

Our data supports MBIE's view that BNPL has grown rapidly over the last two years. As at September 2021, total customer spend using BNPL methods has tripled compared to September 2019.¹

The discussion document, at paragraph 49, notes that data covering the New Zealand BNPL market suggests that consumers who have both BNPL and credit cards are more likely to be in arrears with their credit card debt compared to consumers who only hold credit cards. Again, our internal analysis also shows this trend, with those using BNPL products being more likely to exceed their credit limit and be in arrears. For example, our data shows that customers who use BNPL services are three to four times more likely to be 60 or more days in arrears on their ASB credit products.

Unsurprisingly, the risk of becoming overcommitted increases where customers use a number of different BNPL offerings in parallel, as has been highlighted by financial mentoring services. Customers can accumulate limits across multiple BNPL providers and so can lack visibility, and underestimate, the extent of that credit. Analysis of our customer data shows that where customers are in arrears on credit and overdrafts, and also use BNPL products, those customers using three or more BNPL providers are c16% more likely to be in arrears than those using one BNPL provider.

We are concerned that some BNPL propositions in the market do not consider a customer's individual circumstances and whether that customer is going to be able to afford the ongoing payments, which may lead to customers becoming overcommitted. Once an account has been opened with a BNPL provider, there can be very little transactional friction in taking out further BNPL credit. This suggests over-reliance on the customer's most recent paying behaviour, without consideration of the wider circumstances of the customer such as the other debts the customer may have, be they with BNPL or other providers, and their ability to service that debt. This limited picture of whether the customer can afford the debt, and reduction in the opportunity for the consumer to fully consider their purchase, increases the risk of some customers falling into financial difficulty.

Those who are more vulnerable have the potential to be most impacted. We are aware from our engagement with community stakeholders, that BNPL products have potential to further negatively impact communities that are already in vulnerable circumstances, which goes beyond financial hardship (e.g. people with addictions, poor financial literacy, mental health).

A limited view of customer's circumstances may contribute to potential financial hardship

In the absence of regulation or standards, BNPL providers take different approaches to assessing customers. Some BNPL providers do use credit checking in some form, as the Paper notes. Given the short-term nature of the products, the credit reporting footprint can be limited. This can make it difficult to get a full visibility of the debts and more importantly the potential credit limits that a customer may be accruing from BNPL providers. In addition, from an affordability perspective, a credit check will only provide part of the picture of a customer's overall circumstances.

Regulated credit providers, such as banks, do take into account other known debts of the customer. For example, when prospective customers apply for regulated credit products at ASB, checks are

¹ Source: ASB data

made to establish whether the customer also has BNPL products. Where external liabilities such as current BNPL utilisation are identified, these are considered in the customer's affordability assessment and will contribute to whether a regulated credit provider, such as a bank, chooses to lend and how much. However, often BNPL products are taken up after their bank lending.

BNPL late fees can be significantly higher than credit cards

The discussion document notes that financial hardship may be triggered by a missed instalment fee which can lead to late fees. While we note that late fees are c26% of a BNPL provider's revenue, (the majority of revenue derived from fees charged to merchants) comparative to the purchase value, they are significantly higher when compared to credit card fees and interest, as the example below, using the average BNPL purchase amount of \$300² illustrates.

Example: \$300 purchase with late payment fees added

BNPL Provider

Applying the features of a major BNPL provider, the customer will have to pay \$75 upfront on day 1 of purchase and remaining \$225 will be paid in three instalments over three fortnights. For a \$300 spend, a customer gets 42 + 1 = 43 days, to fully repay their purchase. A late payment fee will be charged for each of three missed payment dates. If a customer missed each of the three instalment dates, the customer's total accrued late payment fee will be capped at \$68 at the end of 43rd day.

Credit card

Applying the features of an ASB Platinum retail credit card, if the customer has a zero outstanding balance at the date of purchase, then they will have 55 days interest-free to fully pay-off the \$300 purchase. A grace of 3 days will be applied and after 58 days, and where a minimum instalment has not been made, a \$9 late payment fee is applied. In addition, 58 days of interest is applied as follows: $\$300 \times 19.95\% \times 58 / 365 = \9.51 . The total cost for not repaying the purchase amount in full is the sum of the late payment fee + interest = \$18.51 (assuming the balance is paid in full on day 58).

Credit customers should have similar protections

Our data shows there is the potential for financial hardship – as there is with all credit products, especially where used or promoted irresponsibly. While we think there is a place for BNPL propositions in the market, as we set out below, they are a provider of credit and we believe that all providers of credit, whatever the proposition, should be subject to similar responsible lending requirements (like those under CCCFA) and customers should have the same protections.

We recognise that BNPL propositions have a place in the market

We agree with MBIE's suggested overall objective to deliver long-term benefits to consumers by protecting the interests of consumers so that they are confident and informed participants in a transparent, competitive and innovative BNPL sector.

As noted above, we think there is a place for BNPL credit propositions that enable customers to smooth payments for purchases, giving them the flexibility to spread or delay payments, which can be a useful tool for people to manage their finances when used appropriately and can provide more choice for consumers on how they pay for goods and services. That is why we have a strategic

² \$300 is used as it is the current average monthly spend of ASB customers using BNPL services

relationship with Klarna. Klarna is a well-established BNPL provider in the European market as well as being fully licenced as a bank in Europe. Klarna is committed to responsible lending and recently came out in support of regulation for the BNPL sector in the United Kingdom. Klarna carries out eligibility checks, including for each new purchase request, and regular credit checks on its customers.

We recommend proportionate regulation for the BNPL sector

As we note above, we believe that all providers of credit, whatever the proposition, should be subject to similar responsible lending requirements and customers should benefit from appropriate protections. The European Union's Expert Group on Regulatory Obstacles to Financial Innovation (ROFEIG) has recommended that regulation of the financial sector should follow the principle of 'same activity creating the same risks should be regulated by the same rules'.

There is a balance to be struck. It's also important for customers and merchants to benefit from innovation in the way goods and services are bought and sold. Any regulation needs to be right-sized and proportionate to the risk of harm to customers.

For those reasons, we do not support Option 1, the status quo, or Option 2, a sector code of conduct, as we do not believe this meets the principle outlined by ROFEIG above. We support bringing BNPL products into consumer credit regulation, as is contemplated under Option Three in the discussion paper.

We agree that s137A of the Credit Contracts and Consumer Finance Act 2003 (CCCFA) could be used to bring BNPL into the scope of the CCCFA. We're also supportive of the proposals under Option 3 to:

- Apply the Lender Responsibility Principles under s9c of the CCCFA
- Apply existing unreasonable fees; and changes on the grounds of unforeseen requirements to BNPL
- Apply the Responsible Lending Code to BNPL providers.

The use of affordability assessments will help to reduce the risk of financial hardship and we believe that BNPL providers should have to undertake a level of affordability checks on their customers. Recent changes to the CCCFA regulations have introduced prescriptive, rigorous affordability and suitability requirements for credit providers captured. However, we think a proportionate approach to regulation of low-value credit arrangements will better meet the objectives set out by MBIE, and suggest that lighter-touch regulation be explored for arrangements which fall outside of high cost lending, reflecting factors such as (a) the term of the repayment; (b) the nature of the lending, being unsecured; (c) the quantum of the lending; and (d) the time elapsed since a prior full assessment.

We therefore **recommend an Option 3A** which introduces affordability requirements for low value credit arrangements that allow for a pragmatic, less prescriptive approach to income and expense verification and reconciliation, which supports a level of judgment, supported by skill, robust processes and guidelines. For example, CCCFA's detailed expense verification requirements, in particular as they relate to extent of verification of a customer's expenses and commitments, could be made lighter-touch, through more flexible use of customer declaration of expenses and data-led insights in lending.

We recognise that bringing in affordability requirements has the potential to introduce friction for customers using a BNPL service and we do not want to disadvantage customers that rely on instalment type payments to manage their budget. We note that, with a Consumer Data Right as well as a digital

identity framework coming to New Zealand, that these have the potential to enable the use of real-time data to assess customer affordability and deliver better customer experiences.

We do not think the sequential introduction of aspects of CCCFA is preferable, particularly if it were to begin with disclosure requirements, which will not address potential financial hardship issues in the same way that affordability checks could.

Noting that recent changes to the CCCFA will be in over the next few months, it may be beneficial to review the operation of the changes prior to bringing BNPL providers within scope, to understand the impacts on lending and ensure the regulation is right-sized and operating appropriately.

We support a clear monitoring and evaluation plan

ASB is supportive of a monitoring and evaluation plan to measure any intervention's impact on the objective of ensuring long-term benefits to consumers. This should include the review of data from financial advice services and BNPL providers on levels of payment declines, non-performing lending and financial hardship; and a review of any regulatory intervention for impact on customers and providers.

Connection with other legislative developments

We welcome the Government's recognition of the interconnectedness of this issue with other developments such as regulation of the retail payments system, legislation to create a consumer data right, and legislation governing the conduct of financial institutions.

We submitted to the Select Committee on the Retail Payment System Bill, noting given the broad definitions in the Bill, that we expect BNPL providers to be in scope. As the Paper notes, BNPL providers earn most of their revenue by charging merchants a fee for using the BNPL service and therefore these fees are likely to be of interest to the regulator under the new legislation, given an objective of the Bill is to ensure that the retail payment system operates efficiently for the long-term benefit of merchants and consumers.

As noted earlier, a consumer data right in the banking sector is likely to facilitate new ways of making payments and allow consumers to share their financial data to demonstrate their ability to pay; and providers of finance to make better, prompter, lending decisions.