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July 2018

Competition & Consumer Policy
Ministry of Business, Innovation and Employment
PO Box 1473
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Response to *Discussion paper: Review of consumer credit regulation*

PartPay Limited (PartPay) welcomes the opportunity to provide feedback on the Ministry of Business, Innovation and Employment's (Ministry) *Discussion paper: Review of consumer credit regulation* (discussion paper). PartPay supports the Ministry's review and agrees with Minister Faafoi's statements regarding the detrimental impact poor and predatory lending can have on New Zealanders' lives.

PartPay is one of several 'buy now, pay later' (BNPL) companies operating in New Zealand that seek to disrupt and displace traditional - often cumbersome and expensive - forms of consumer credit by providing more customer-centric solutions to consumers. Fintech businesses like ours can be a powerful driver of competition and innovation in financial services, helping to reduce the cost and complexity of finance to businesses and households - increasing the availability of credit and reducing financial exclusion. We play a key role in providing consumers and businesses with better financial outcomes and in strengthening the New Zealand financial system.

PartPay is an attractive budgeting-focused alternative to traditional forms of credit because:

1. PartPay integrates directly with retailers and takes the cost of an item (or service) and splits the payment into four equal instalments over 6 weeks, charging no interest and no fees to consumers. Consumers are notified of repayments, which are automated by the PartPay platform. If a repayment does not occur, a default fee is applied (subject always to a cap).
2. Our service is provided on a transaction-by-transaction basis with relatively low levels of credit extended (our average transaction size is approximately $160). Further, the payback period is short and cannot be extended.
3. PartPay's platform utilises a third party credit check as a key component of its approval process to best ensure prudent lending decisions.
4. Customers late in paying have their accounts frozen and cannot make further transactions. PartPay's default fees are capped at $40 and do not compound - meaning debt cannot 'spiral' and potentially result in a 'debt trap' – as can happen under traditional finance such as credit cards.

5. The majority of our revenue (approximately 80% (FY18 forecast)) is derived from retailer service fees, rather than consumers. Default fees received are materially lower than the costs associated with our bad debts.

PartPay lends small amounts (<$1,500) on a non-recourse basis, for less than 42 days, and our primary product does not charge interest, credit fees, establishment or other weekly/monthly fees. Our business model relies on our customers' ability to pay us back, so we're able to lend on a recurring basis (i.e. recycle our capital). Importantly, the overwhelming majority of our income (aside from default fees) is derived from **retailers**, rather than consumers.

PartPay's products provide consumers with:

1. an improved ability to manage their household budgets by spreading the cost of goods and services;
2. markedly lower (often zero) cost credit than alternatives, especially credit cards; and
3. a transparent and simple credit solution.

We use a credit checking agency to assess potential customers' ability to pay, and have checks in place to ensure we don't extend credit to customers who have not been able to pay us back in the past. We provide extensive information to our customers designed to help them avoid any late payments, including:

1. Information at the checkout stage regarding late fees and how they may be applied.
2. Reminder texts one day before each instalment due date for first time customers, and emails four days ahead of each instalment due date.
3. In the event that the customer has insufficient funds on a due date, a text message and email stating the repayment has been unsuccessful and that a late fee may apply.
4. A reminder email sent the day after a late fee is added.

If a customer fails to make payment, PartPay will contact the customer to arrange a payment plan. We note approximately 77% of our transactions (in dollar terms, year ended June 2018) are paid for using debit cards, so we do not believe we are contributing to a disproportionate increase in credit card debt. Approximately 89% of our transactions (purchases) incur no late fees, and only 2% (approximately) default completely and incur the capped fee of $40.

Some elements of the Ministry's review appear to be related to a lack of competition in the consumer lending space (for example broker fees where using the broker is a condition of obtaining finance). Such issues are best addressed by increased competition - new players like PartPay who seek to innovate, invest, and capitalise on consumers' demand for simpler, more transparent and less expensive payment solutions.

Any changes to the current regulatory regime would require careful consideration, so they don't impede companies like PartPay from innovating and continuing to disrupt traditional forms of credit which are often expensive and cumbersome.

We note that - while our primary business activity is the provision of credit contracts (rather than *consumer* credit contracts) - PartPay's activities are governed by, among other legislation:

1. the Credit Contracts and Consumer Finance Act 2003 (CCCFA);
2. the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (FSPA);
3. the Fair Trading Act 1986;
4. the Consumer Guarantees Act 1993;
5. the Privacy Act 1993;
6. the Unsolicited Electronic Messages Act 2007; and
7. the Unsolicited Electronic Transactions Act 2002.

In addition, PartPay has elected to adopt additional measures within its platform over and above what may be considered the minimum required by relevant legislation. For example, PartPay utilises third party credit assessment data, caps our late fees and has adopted a cost recovery approach with respect to the calculation of our late fees.

We agree there are often informational asymmetries between borrowers and lenders, and address this by providing clear information to consumers e.g. regular email and text updates including amount owing, dates payable etc. Our interests are entirely aligned with the consumer in that we want the customer to repay on time and ideally use our service repeatedly. We believe PartPay and other BNPL products such as AfterPay and Laybuy compare very favourably against credit cards in terms of cost and complexity.

Issue 1: Excessive cost of some consumer credit arrangements

We support the Ministry's review of the excessive cost of some consumer credit arrangements, and agree that interest rates and fees should be reasonable and, where applicable, cost reflective.

Issue 2: Continued irresponsible lending and other non-compliance

We support the strengthening of enforcement and penalties for irresponsible lending, however we believe existing registration and licensing requirements - and requirements for affordability and advertising - are appropriate.

Issue 3: Continued predatory behaviour by mobile traders

PartPay shares the Ministry's concerns regarding predatory behaviour by mobile traders, namely:

1. the high cost of purchasing goods with some mobile traders;
2. high rates of non-compliance with consumer protection requirements; and
3. irresponsible and unconscionable behaviour.

However, while PartPay's primary activities fall outside the definition of consumer credit contracts, we strongly disagree with our inclusion in the discussion paper alongside socalled mobile traders. As discussed above, our business model relies on integrations with legitimate retail and services businesses, creditworthy customers, and hence rapid and regular repayment. Mobile traders appear to grossly overinflate the cost of consumer goods and then deliberately target vulnerable borrowers. PartPay typically integrates with retail ecommerce sites and does not allow the retailer to increase the purchase price of a particular item offering PartPay in order to pass the cost of the PartPay service to the consumer.

Any increase in compliance costs, or more onerous credit application processes, (designed to capture predatory lenders in a clearly different market and product segment to ourselves) would put severe pressure on our business model. It would restrict our ability to innovate and invest in order to benefit our existing customers and win new customers (including from more expensive/onerous credit providers like mobile traders).

PartPay supports the proposition that default fees should be fair, reasonable and reflective of the cost to the credit provider of default. However we do not support the proposition that any credit contract charging default fees should be designated a **consumer** credit contract and hence treated as akin to typical interest bearing lending under the CCCFA. This would impose significantly higher compliance costs on our business, and result in confusing disclosure statements (disclosing nil interest costs), with no apparent benefit. If the Ministry is concerned that some lenders may be charging excessive default fees, we suggest that issue should be addressed directly and independently by applying section 41 of the CCCFA (and/or section 10.5 of the Responsible Lending Code) to both consumer credit contracts **and** credit contracts. PartPay believes we comply with both section 41 of the CCCFA and section 10.5 of the Responsible Lending Code with respect to the setting and administration of default fees.

Increasing the (time and cost) compliance burden on disruptive, customer-centric companies like PartPay would drive consumers to higher cost, less consumer-friendly services that may not be captured by (or may not comply with) the legislative changes. This is obviously the opposite of what the Ministry intends.

As such, PartPay does not support Option A (the inclusion of credit contracts that charge default fees in the definition of consumer credit contracts).

PartPay supports the prohibition of the price of goods and services sold on credit from exceeding the cash price, but has concerns as to the cost and complexity of estimating the ‘fair market value’ of goods and services at the time the contract was made. For some goods and services (for example bespoke products and services) this may be very difficult.

For the reasons set out in this submission, we support an approach similar to that proposed in Australia designed to bolster the Australian Securities and Investments Commission’s (ASIC) enforcement and intervention powers.[1] If finalised, the new law will give ASIC the power to act if a financial product (not currently regulated under the Corporations Act 2001) is ‘causing, will cause or is likely to cause significant consumer detriment’. We suggest a

[1] Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018

similar legislative change expanding the Commerce Commission's powers to intervene in such circumstances would address most, if not all, the issues raised in the discussion paper.

Do you agree with our assessment of the costs and benefits of the options for covering additional credit contracts under the CCCFA? Are any costs or benefits missing? Do you have any information or data that would help us to assess the degree or estimate the size of these costs and benefits?

We broadly agree with the Ministry's assessment of the costs and benefits of the options for covering additional credit contracts under the CCCFA. We are concerned about the imposition of additional compliance costs on our business (and others like it) that will be unlikely to reduce irresponsible behaviour. Our default fees are set at a reasonable level based on legislative requirements, are capped to ensure no unreasonable outcomes, and are not designed to be punitive. As such we do not believe credit contracts that charge default fees should be included in the definition of consumer credit contract. We would support legislative change expanding the Commerce Commission's powers to intervene in circumstances detrimental, or likely to be detrimental, to consumers.

We are happy to discuss this matter further with the Ministry and, where possible, provide the Ministry information and/or data that supports our view.

Do you have any suggestions for the design of options for covering additional credit contracts under the CCCFA? If so, what would be the impact of your proposed options on borrowers, lenders and the credit markets?

Where it is obvious that the cash price of a good or service is excessive (as per the Ministry's worked example), we agree that this type of arrangement could be captured by the CCCFA.

Which options for changes to cover additional credit contracts would you support? Which would you not support? Please explain how you made your assessment.

We support an approach similar to that proposed in Australia designed to bolster the ASIC's enforcement and intervention powers.[2] If finalised, the new law will give ASIC the power to act if a financial product (not currently regulated under the Corporations Act 2001) is 'causing, will cause or is likely to cause significant consumer detriment'. We suggest a similar legislative change expanding the Commerce Commission's powers to intervene in such circumstances would address most, if not all, the issues raised in the discussion paper.

We believe such an approach would address the issues raised in the discussion paper, while not imposing excessive compliance costs – and hence hindering innovation and investment – on consumer-centric businesses like ours.

[2] Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018

Issue 4: Unreasonable fees

PartPay charges default fees that we believe are reasonable and cost-reflective.

Issue 5: Irresponsible debt collection practices

PartPay uses Baycorp as a debt collection agent and we believe our debt collection practices are fair and reasonable.

Other issues

No comment.

Thank you for considering our submission. We would welcome the opportunity to meet with the Ministry to discuss any aspect of our submission.

Yours sincerely,

John O’Sullivan.