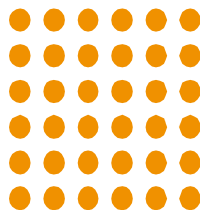
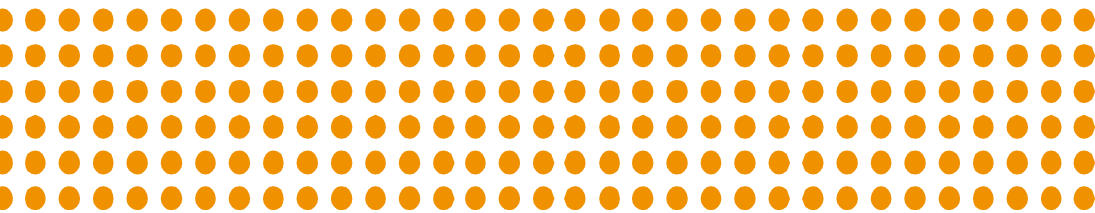


Consumer Protection through Enforcement: Case Studies

*There can be no proper Regulation and Consumer Protection
without scrutiny of market conduct, formal investigations and
enforcement!*

*Adv Jan Augustyn
Head: Investigations and Enforcement
AFI Conference: Bali, Indonesia 2010*



National Credit Regulator

Life or Debt?



It's your choice,
use credit wisely!

Using credit wisely means being smart and budgeting for the things you really need – not simply buying everything you want right now. You should be able to put a little money away every month to save for any unexpected expenses. Repay more than just the minimum amount on your accounts on time. Credit may seem convenient, but it is truly a matter of life and debt.

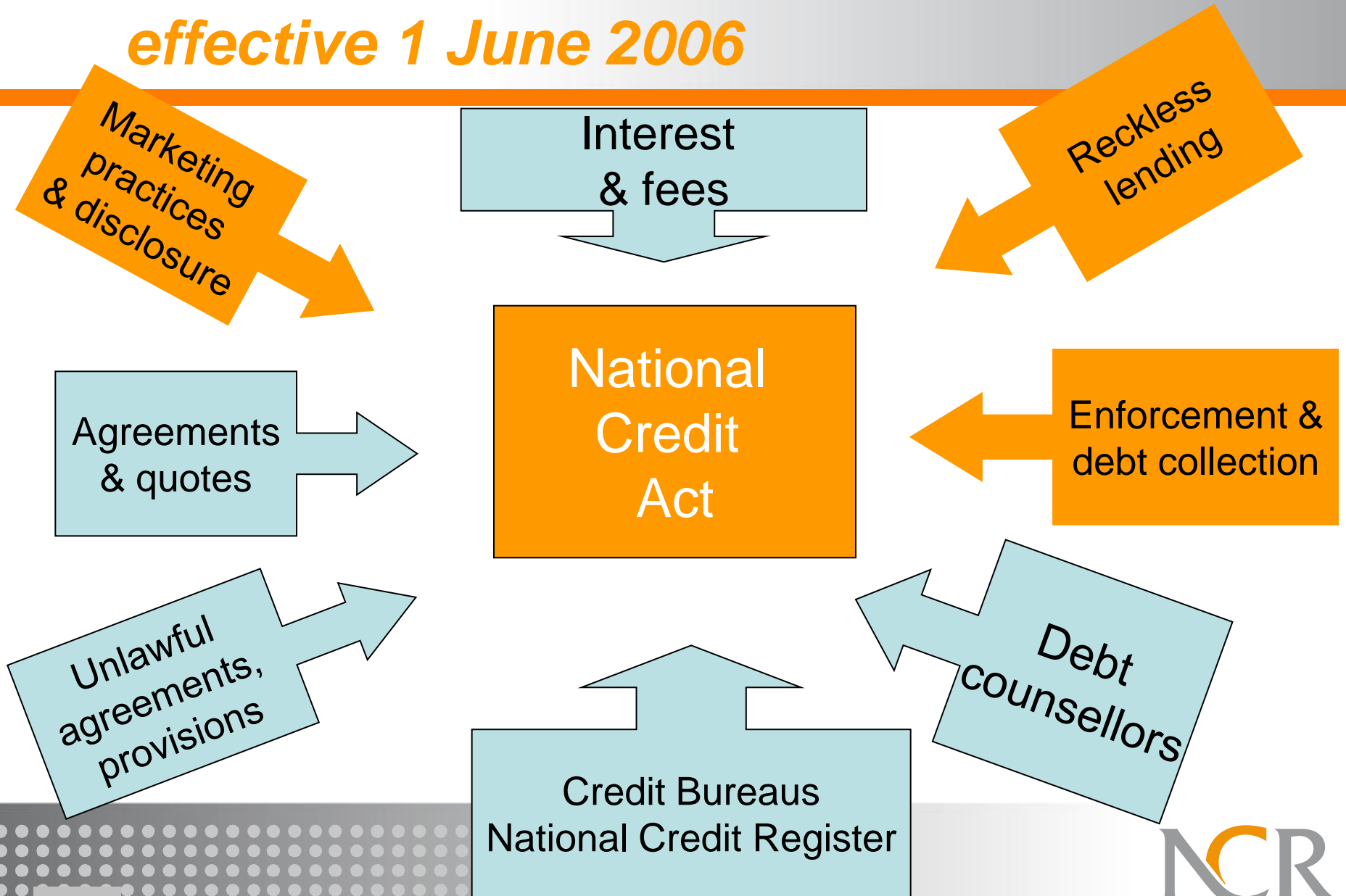
UN Guidelines for Consumer Protection

- “... to address imbalances in economic terms, educational levels, and bargaining power
- “... create market conditions to provide consumers with greater choice at lower prices.
- “... adequate information to make informed choices ... individual wishes and needs
- “... protected from contractual abuses as one-sided standard contracts, exclusion of essential rights in contracts, and unconscionable conditions of credit by sellers.

National Credit Act

- To promote a fair and non-discriminatory marketplace for access to consumer credit
- To promote responsible credit granting and use and for that purpose to prohibit reckless credit granting;
- To provide for debt re-organisation in cases of over-indebtedness

National Credit Act became effective 1 June 2006



Consumer Credit Market in South Africa

Credit Providers



11 x Credit Bureaus



**R1.1 trillion
\$164 Billion
consumer credit**



**18 million
Credit Consumers**



Credit Providers = 4,120
Branches = 33.500



**1,571
Debt Counsellors**

Credit Provider Statistics

Approximately \$164 billion consumer credit, provided to 17 million consumers & consisting of 35 mil accounts as at March 2010

	Value of outstanding debtors book(\$000)	Number of outstanding accounts
Mortgages	\$106 567 416 630	1 814 448
Secured Credit consists of (Motor and furniture finance)	\$30 222 467 369	4 882 995
Credit Facility consists(credit cards, bank overdrafts and store cards)	\$18 453 833 175	22 084 147
Un-Secured	\$8 184 817 752	5 215 082
Short Term	\$102 893 525	419 623
Total	\$163 531 428 450	34 416 295

Importance & role of debt counselling

- Role of debt counselling, in the context of the lack of appropriate personal insolvency mechanisms in SA.
 - No appropriate “personal insolvency mechanisms”. US, UK & EU have range of different mechanisms for personal insolvency. The mechanisms in SA are outdated and ineffective.
 - As result, when debt stress occurs there is no effective mechanisms to resolve the issues, or for creating a “settlement” in which the obligations of the consumer and the demands of different credit providers are reconciled.
- Negative social impact of debt stress
 - No mechanism to resolve a personal financial crisis and enable an individual to get another chance.
 - Household income is permanently reduced through debt payments. Household needs not met and social welfare receipts are diverted to debt servicing.
 - School fees not being paid, arrears on municipal service payments and a multitude of related areas.

Investigations & Enforcement

It is impossible for Regulators to be involved in each and every case.

Need to deal with precedent setting cases and give feedback through to industry, media and consumer bodies

Legislation and education must be reinforced through enforcement

Legal Framework

- ❖ A single National Credit Act, NCR and Tribunal
- ❖ Register and regulate Credit Providers, Debt Counsellors
- ❖ Introduced debt counselling, reckless lending provisions, marketing and advertising, plain language contracts, pre-agreement disclosure and quotes, credit life insurance etc.
- ❖ Prohibited conduct vs Criminal Conduct but only civil courts may declare contracts unlawful
 - ❖ But without any value if not investigated, enforced, example is made of those that don't comply
 - ❖ Create framework for parties to engage but leave regulating for the Regulator

Investigation Statistics

Investigations Conducted	453
Debt Counselling Investigations	110
Credit Provider Investigations	328
Credit Bureau investigations	15

Enforcement Statistics

Instructional letters	110
Formal undertakings	20
Compliance Notices	47
Referrals to Tribunal	20

Types of issues investigated

- ❖ Charging of unlawful and disguised fees and charges
- ❖ Fraudulent schemes devised to deprive blacklisted consumers with equity in homes from their homes
- ❖ Taking upfront payments without providing loans
- ❖ Loan agreements containing unlawful provisions
- ❖ No pre-agreement statements, disclosure and quotes
- ❖ Preferential deduction facilities
- ❖ Inadequate disclosure in marketing and advertising
- ❖ Debt counsellors not complying with their obligations towards consumers under debt review
- ❖ Non-disclosure
- ❖ Credit life insurance
- ❖ Reckless lending and affordability assessments

Case Study 1 - PKA Financial Services (unregistered credit provider)

- Unregistered credit provider granting homeloans
- Investigated on information received from media
- Credit Provider took deposits without actually granting loans
- Issued Compliance Notice and instructed them to cease acting as credit provider and to refund deposits
- Resulted in numerous consumers getting their deposits back
- Activities of credit provider stopped through Compliance Notice
- Over 300 consumers refunded

Case Study 2 - Rudco Finance (Credit provider):

- Home Loans targeted at blacklisted consumers at ridiculous low interest rates
- Caveat: payment for 6-12 months prior to actually receiving the loan
- Nobody received loans – CP claimed await funds from overseas
- NCA used as a tool to commit fraud and take upfront fees
- Investigated – 3 months
- Issued a Compliance Notice
- Simultaneously opened a criminal case and assisted the Police/NPA
- Referred the matter to NCT
- CP never complied with CN nor NCT order to repay
- Non compliance then criminal offence and again referred for criminal sanction
- NCR then proceeded with provisional and final liquidation
- Father and son – son already pleaded guilty – father in jail awaiting criminal prosecution
- Affected 3000 consumers to the tune of R7 mil (USD 1 MIL)

Case Study 3 - Brusson Finance (unregistered credit provider):

- Intricate scheme targeting blacklisted clients who have property with good equity
- Involved Brusson a credit provider, a third party called an investor and the consumer
- Referred to erroneously as a reverse mortgage scheme
- Consumers apply for loans – end up with various contracts and selling their homes to so-called investors for a loan amount with right to repurchase
- Criminal in nature – Brusson ends up with the property for a bargain price.
- Investigated
- Referred the matter to the police and prosecuting authority for criminal sanction
- Approached high court in a test case for declaratory order on scheme and to declare all the contracts in scheme unlawful.
- Obtained court order to return property to consumers
- Liquidation order against Brusson
- Scheme declared unlawful by courts

Case Study 4 – Bornman (Debt Counsellor)

- Complaints received regarding Debt Counsellor's non-compliance
- Formal onsite investigation conducted – report compiled
- Debt Counsellor charges fees in excess of fee guidelines
- Approximately 5000 consumers affected and approximately an amount of R6mil overcharged
- Consumers losing assets such as motor vehicles and homes
- Debt Counsellor bringing Debt Counselling and the Industry into disrepute hence immediate application to the Tribunal for cancellation of his registration

Case Study 5 Telsek (credit provider)

- Onsite investigation as a result of a formal complaint
- Utilisation of unlawful supplementary agreements by the credit provider in contravention of the Act affecting more than 300 consumers
- Credit Provider obtained an unlawful preferential payment right via payroll with Employer
- Compliance notice was issued – credit provider is challenging the compliance notice at the Tribunal.
- Compliance Notice was placed on NCR website - Credit provider took matter to High Court, was unsuccessful and penalised with a cost order

Case Study 6 – Barko Financial Services (credit provider)

- Follow-up investigation subsequent to a compliance notice issued
- Investigation revealed that the Credit Provider uses a payment system but the costs thereof is incurred by consumer in contravention of the National Credit Act
- Compliance notice was issued – credit provider challenged compliance notice at the Tribunal
- Outcome pending

Case Study 7– Piet Cash Loans (Credit Provider)

- Fellow Credit Provider informing the Regulator of unlawful collection practices utilized by Piet Cash Loans as a method of enforcement
- Onsite investigation revealed Credit Provider retains bank cards and pins of consumers as an enforcement mechanism
- Application to the Tribunal for cancellation of Credit Provider's registration
- Credit Provider voluntarily closed all branches and as well as agreed to a consent order whereby it's registration is formally cancelled at the Tribunal
- Regulator instituted criminal proceedings and Piet Cash loans paid fines
- Enforcement resulting in change in behaviour

Case Study 8 – Zilo (Debt Counsellor)

- Complaint received from a Payment Distribution Agency (PDA) who detected fraudulent behaviour by a Debt Counsellor
- Debt Counsellor creating a fictitious credit provider in respect of consumers under debt review
- Fictitious credit provider a company of which Debt Counsellor's brother is account holder
- Money to the value of R169,258.00 stolen by Debt Counsellor through this fictitious credit provider from consumers
- Criminal case opened – assisted in criminal prosecution – Debt Counsellor arrested
- Application to Tribunal for cancellation of Debt Counsellor's registration
- Re-enforces the principle of having monies distributed by a PDA and not by Debt Counsellor's in order to prevent fraud.

Enforcement Achievements

- Closed down non-compliant credit providers/debt counsellors
- Actually returned houses cars other assets to consumers
- Successful in criminal cases
- Obtained declaratory orders in High Court, with interdicts and had loan agreements declared unlawful
- Repayments to consumers by NCR and through orders
- Through Compliance Notices ordered repayments
- Change in behaviour
- Greater awareness – massive media interest



Thank You !
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