FinCoNet
INTERNATIONAL FINANCIAL CONSUMER PROTECTION ORGANISATION

Issue 2 | July 2016

## CONTENTS



# Welcome to the FinCoNet Newsletter

Welcome to the second 2016 edition of the FinCoNet newsletter.

The FinCoNet Programme of Work is progressing very quickly in 2016, with the publication of a consultation paper on Sales Incentives and Responsible Lending, and the forthcoming publication of the FinCoNet Report on On-line and Mobile Payments.

**FINCONET ANNUAL GENERAL MEETING**

15-16 November 2016
Jakarta, Indonesia

**FINCONET / INDONESIA FINANCIAL SERVICES AUTHORITY (OJK) INTERNATIONAL SEMINAR ON INNOVATION AND CONSUMER PROTECTION**

17 November 2016
Jakarta, Indonesia

# In Focus

## In Focus…

### FinCoNet 2016 Annual General Meeting and International Seminar

*The 3rd FinCoNet Annual General Meeting will be hosted by Indonesia Financial Services Authority (OJK) in Jakarta, Indonesia on 15-16 November 2016 and followed by OJK-FinCoNet International Seminar on 17 November within the topic of "Fintech Regulatory and Supervisory Perspective : Striking a Balance Between Innovation and Consumer Protection"*

**Background of Jakarta, Indonesia.**

*The Republic of Indonesia is the largest archipelago in the world comprising 13,466 large and small tropical islands, situated between the continents of Asia and Australia and between the Pacific and the Indian Oceans. It has an estimated population of over 259 million people and is the world's fourth most populous country. Jakarta is the capital and largest city of the Republic of Indonesia, located on the northwest coast of the world's most populous island of Java. Jakarta is the country's economic, cultural and political center, and with a population of 10,075,310 (2014).*

*The number of Internet users in Indonesia reached 88 million this year, or approximately 34 percent of the population, with accessing social media being the highest activity (79 million social media active users). These developments present enormous prospects for market participants in the Digital Financial Services market space in Indonesia.*

**Topic of Seminar**

*Financial technology, also known as FinTech, is an economic industry composed of companies that use technology to make financial services more efficient.[1] According to Accenture, the Management Consultants, global investment in FinTech ventures tripled to $12.21 billion in 2014, clearly signifying that the digital revolution has arrived in the financial services sector.*

*It is still unclear whether this presents more of an opportunity or a challenge for industry incumbents, but established financial services players are starting to take bold steps to*

[1] Wikipedia : https://en.wikipedia.org/wiki/Financial_technology

*engage with these emerging innovations. In addition to its opportunities and challenges, since transactions are undertaken electronically, it is also necessary to ensure that consumer protection aspects are met. Regulators and supervisors should create a framework to govern the FinTech sector and monitor closely financial technology developments with a view to thoroughly understand developments in the field of financial technology and innovation, and to be prepared to adequately respond to a rapidly changing financial sector. Regulators and supervisors need to find a way to strike a productive balance between innovation and consumer protection.*

## In Focus…

## New FinCoNet Member – Bank of Italy

*The Bank of Italy (BI) is the Italian central bank. It is part of the Eurosystem and pursues the aims of: price stability (monetary policy), stability and efficiency of the financial system (banking supervision; BI is the competent national authority for the Single Supervisory Mechanism). It is also responsible for consumer protection and anti-money laundering.*

*In April 2016 BI officially joined FinCoNet.*

*In Italy the responsibility for financial consumer protection is shared between the Bank of Italy (banking products), IVASS (the Insurance supervisory authority, for insurance products), CONSOB (Italian Securities and Exchange Commission, for financial markets), COVIP (the Pension funds supervisory authority, for pension funds), the AGCM (Italian Competition Authority, for unfair commercial practices in all markets, including financial ones).*

*Regarding banking products, in 2010 the Italian Consolidated Banking Law has extended the scope of BI in the field of customer protection. In 2014 a Directorate was established to deal specifically with customer protection (and anti-money laundering). It consists of four Divisions: anti-money laundering and usury controls; transparency and fairness controls; banking and financial ombudsman coordination; complaints and financial education.*

*The Directorate is involved first of all with public enforcement of transparency and fairness regulations. To this end, BI carries out regular off-site and on-site controls (both at headquarters and at banks' braches) on banks and financial intermediaries. BI may impose sanctions, forbid some activities or the offer of some products, impose that improper charging of fees is reimbursed to clients. Among the areas that have been specifically targeted over the last year are: how customer complaints are dealt with by financial intermediaries; payment protection insurances.*

*The Directorate also ensures private enforcement for single customers: a) it manages and*

*processes customer complaints (approximately 10.000 in 2015); if necessary, BI asks the intermediaries to remove the problems raised by the complainer; b) it has established a Banking and Financial Ombudsman (Arbitro Bancario Finanziario), which, through 3 independent panels (they will become 7 by the end of 2016) solves individual disputes between clients and intermediaries (approximately 13.600 disputes proposed in 2015).*

*Finally, it is strongly involved in financial education, as part of its responsibilities in the wider context of ensuring financial stability and consumer protection: we developed programs of financial education both in schools (in 2015-16 approximately 90.000 students were involved) and for adults. Sources of financial education, in the form of simple explanations on the nature and possible uses of various financial instruments, are available on BI's website.*

*The representative of the BI at FinCoNet is the Head of Consumer Protection and anti-money laundering Directorate, Magda Bianco.*

*For more information, please visit the webpage of the Bank of Italy [www.bancaditalia.it](http://www.bancaditalia.it)*

## In Focus…

## Bernard Sheridan, Chair of FinCoNet, presents to the Basel Consultative Group

*Bernard Sheridan, chair of FinCoNet, presented via teleconference to a meeting of the Basel Consultative Group on 24 May, with the aim of promoting FinCoNet and facilitating its outreach activities. The Basel Consultative Group provides a forum for deepening the Basel Committee's engagement with supervisors around the world on banking supervisory issues. In his presentation, Mr. Sheridan provided an overview of FinCoNet and its activities, including the objectives of the organisation, the current work of the three standing committees, and other recent developments of interest. Mr. Sheridan's presentation outlined the many benefits that membership of FinCoNet can bring to supervisory authorities, such as having access to all relevant information and topical discussion, together with quality research generated by FinCoNet, the opportunity to contribute to and influence the work plan of the organisation and to work on specific areas of interest and the chance to interact with supervisory authorities, international organisations and standard setting bodies across the globe with a view to sharing relevant information and best practices. FinCoNet is constantly striving to expand and broaden its membership base and encourages supervisory authorities in particular, as well as other international organisations and bodies with a consumer protection agenda, to join FinCoNet. The presentation was followed by a number of questions from those in attendance at the Basel Consultative Group meeting on the work of FinCoNet, its current and future priorities and on the challenges faced by both consumers*

*and supervisory authorities.*

# Current Issues Forum

## FinCoNet publishes a Consultation Paper on proposed Guidance to Supervisors on the Setting of Standards in the field of Sales Incentives and Responsible Lending

**Contributor: Sinéad Cawley and Aisling Ní Leidhin, Central Bank of Ireland.**

On July 1, FinCoNet published its *Consultation Paper on proposed Guidance on the Impact of Sales Incentives on the Sale of Consumer Credit Products*. The Guidance is based on the findings of the *Report on Sales Incentives and Responsible Lending* which was published in January 2016. The consultation period will end on 30 September and FinCoNet welcomes all submissions, particularly from supervisory authorities and other public bodies working in this field, consumer associations and industry bodies.

The *Report on Sales Incentives and Responsible Lending* sought to provide a holistic view of the role that sales incentives play in responsible lending regimes in relation to the full suite of consumer credit products, with a focus on consumer protection. In doing so, the Report sought to assist jurisdictions with identifying current gaps and weaknesses in their regulatory regimes in relation to sales incentive schemes, including their supervisory and enforcement capabilities. At its Annual General Meeting in Cape Town, FinCoNet decided to launch a public consultation on a number of key topics arising from the Report after publication of the Report itself, with a view to informing the development of standards and guidance in this field. To this end, the Consultation Paper sets out a number of points of guidance for responsible supervisory authorities in the field of sales incentives and responsible lending on which FinCoNet seeks views.

The consultation paper consults on what the Report identified as the necessary pre-conditions of the regulatory framework if supervisory initiatives are to be effective in the field of sales incentives and responsible lending, and on the following Guidance to Supervisors on the Setting of Standards in the field of Sales Incentives and Responsible Lending:

- Guidance on Appropriate Oversight
- Guidance on Cross Selling
- Guidance on Consumer-focused Culture
- Guidance on General Duties and Specific Responsibilities
- Guidance on Oversight of Different Sales Networks
- Guidance on Oversight and Governance
- Guidance on Monitoring
- Guidance on Disclosure

Guidance on the Benefit of Promotional Incentives versus the Cost of the Credit Product

FinCoNet is uniquely positioned to canvas views on the above Guidance in the context of the findings of the *Report on Sales Incentives and Responsible Lending* and aims to further contribute through this work to the promotion of sound market conduct and strong consumer protection through the

efficient and effective conduct supervision of sales incentives and responsible lending.

The consultation paper can be found here on FinCoNet's website along with details for making submissions.

## Consumer Research on Complaints Handling

**Contributor: Sinéad Cawley, Central Bank of Ireland.**

In May 2016, the Central Bank of Ireland published the findings of commissioned research undertaken to understand consumers' perception of the complaints handling process in regulated firms in Ireland. The Central Bank of Ireland has put in place a strong regulatory framework for complaints handling in the Consumer Protection Code 2012 with which regulated firms must comply. In undertaking this research, the Central Bank of Ireland sought to better understand consumers' experiences and perceptions of how firms are applying this framework.

The main findings from the research were:

- The majority of complainants had a poor opinion of several aspects of the complaints process.
- Respondents who were given a named contact during the process were more satisfied with how their complaint was handled.
- The knowledge, experience and authority of the point of contact were considered to be among the most important aspects of the complaints process.
- Timely resolution of the complaint was also considered an important aspect of the complaints process.

The full report can be read here.

## PRICELab: An Investigation of Consumer's Capability with Complex Products

**Contributor: Sinéad Cawley, Central Bank of Ireland.**

The Central Bank of Ireland has been co-funding a laboratory-based research programme called 'PRICELab' (Programme of Research Investigating Consumer Evaluation Lab), looking at consumers' ability to compare products, especially more complex products. In particular, the research sought to establish how complex a product has to be in order for the consumer to be unable to accurately compare it to another product. The answer is: not very complex at all!

The findings of the research, which included consumers completing a number of controlled experiments, showed that consumers' judgements of the value of products against prices were generally inaccurate. In particular, the research shows that the number of factors that consumers must simultaneously take into account when

making choices among products has a substantial impact on the quality of choices. Interestingly, even consumers with a relatively high degree of numeracy and educational attainment (including for example the researchers themselves) made mistakes.

The research also found that consumers generally overestimated what products at the top end of the range were worth and underestimated what products at the bottom end of the range were worth.

The full report can be read here.

## Complaints handling: an oversight tool (the Portuguese approach)

**Contributor: Rita Jorge Pinheiro, Banco de Portugal**

Banco de Portugal, under its oversight mandate, uses complaints as a tool for retail banking market supervision and to ensure consumer protection. In particular, it assesses the supervised institutions' compliance with laws and regulations when providing financial products and services in order to increase consumer confidence in the market and its quality standards.

The Portuguese model of handling complaints against banks is unique, especially considering the mandatory involvement of the supervisory authority in the analysis of complaints: every citizen has the right to lodge a complaint related to the actions of a credit institution, a financial company, a payment institution or an electronic money institution (hereinafter "institutions"), completely free of charge, with Banco de Portugal, using for example the Complaints Book or the Bank Customer Website. Consequently, Banco de Portugal will thoroughly review the actions of that institution. When an institution is deemed to have acted inappropriately, either before or during the life of an agreement or when selling any banking service in violation of the law or regulations, Banco de Portugal makes use of its enforcement powers – it has the power to issue specific determinations and recommendations in order to oblige the institution to adapt or correct its practices to fully comply with laws and regulations, or to initiate administrative proceedings to penalise infringements of banking conduct rules.

Presenting a complaint contributes to increasing market efficiency of retail banks and allows improper market conduct to be identified. Furthermore, complaints allow a cross-market analysis that may reveal a need for regulatory intervention or the development and implementation of financial literacy programmes for bank customers. The information collected through complaints analysis is an undeniably valuable resource. When combined with other supervisory tools, such as on- and off-site inspections, it may lead to a more focused and detailed analysis of a particular segment of supervised matters.

All complaints received by Banco de Portugal are sorted and classified according to the subject under analysis, considering the product or service that generated the complaint (e.g. payment accounts, payment instruments, consumer credit, mortgage credit), and the main issue addressed in the complaint (e.g. pre-contractual information, fees and other charges, APR and interest rates). This classification process, which is dynamic and periodically adjusted, enables the development of statistical analyses of the collected data in order to better identify the most important infringements in a given

period. In fact, bank customers may choose to file a complaint by completing a form in the Complaints Book[1] or presenting it directly to Banco de Portugal by whatever means deemed appropriate by the bank customer.

The Complaints Book, which came into force at the beginning of 2006, is a tool applicable to all suppliers of goods or services to the general public. By law, all supervised institutions must have one Complaints Book in each branch and make it immediately available to customers upon request. When a bank customer writes a complaint in the Complaints Book, the institution must send the original of the form to Banco de Portugal, within 10 working days, give the duplicate to the complainant and keep the triplicate in the Complaints Book. Here, it should be noted that, besides the complaint form, the supervised institution must also send a statement to Banco de Portugal, all relevant documents and a copy of the letter addressed to the bank customer justifying its conduct and presenting the conclusions of its analysis of the complaint.[2]

Besides writing in the Complaints Book, the bank customer may present the complaint directly to Banco de Portugal, either on the Bank Customer Website, by e-mail, fax, or letter. Banco de Portugal will then notify the institution. After receiving the complaint, the institution has 20 working days to handle and remedy the situation, communicate the result of its analysis to the bank customer and send a copy of that letter to Banco de Portugal. If no answer is received or if the institution has not resolved the complaint in a favourable manner, Banco de Portugal may request the institution to provide any arguments it deems appropriate.

After completing the analysis, Banco de Portugal informs the bank customer of the outcome of its inquiries.[3]

This supervisory tool requires the intensive work of the Banking Conduct Supervision Department's legal team. In fact, during 2015, Banco de Portugal received 13,487 complaints from bank customers about institutions' actions.[4][5] This information is made publicly available in Banco de Portugal's half-yearly reports, where institutions are ranked by number of complaints received about them (considering a weighted average of the number of payments accounts, of credit agreements or mortgage credit agreements, for example). Furthermore, Banco de Portugal publishes the number of specific determinations and recommendations or the number of administrative proceedings that are initiated for breaches of the law or regulations according to the complaints' classification (for example, number of specific determinations and recommendations on mortgage credit and the number of institutions subject to measures in a given year).

---

[1] Regulated by Decree-Law No 156/2005 of 15 September 2005, as amended (in Portuguese only).

[2] Circular Letter of Banco de Portugal No 6/2008/DSB of 24 January 2008 (in Portuguese only).

[3] Circular Letter of Banco de Portugal No 25/2008/DSB of 26 March 2008 (in Portuguese only).

[4] Please note that the Portuguese resident population over 18 years old amounts to 8.7 million (Instituto Nacional de Estatísticas – Statistics Portugal, Censos 2011) with a financial inclusion rate at around 94 per cent.

[5] For further developments, please see Banco de Portugal, *Relatório de Supervisão Comportamental 2015*, 123, available at *http://clientebancario.bportugal.pt* (in Portuguese only).

# Responsible payday lending and the use of automated systems: the Nimble Case Study

**Contributor: Jacqui Cavanagh, Australian Securities and Investments Commission**

Like many regulators around the world, ASIC is embracing the opportunities and challenges that fintech presents. All segments of Australia's credit market have seen digital innovation and process automation, including payday lending.

While ASIC supports digital innovation where it brings benefits to businesses and their customers, the Nimble Australia Pty Ltd (Nimble) case study is a good reminder to lenders to build robust systems, and regularly monitor those systems, to ensure they meet their obligations for each and every loan. We discuss this case study further below.

## ASIC's approach to innovation

ASIC has recently developed the "Innovation Hub", an online space with tailored content for fintech businesses that are developing innovative financial products or services. We have also released guidance to assist fintech companies to be aware of, and comply with, their regulatory requirements.[1]

In relation to responsible lending laws, ASIC considers that technology can provide an important role in facilitating lenders' compliance.[2] However, where a lender uses automated systems and tools, the lender must ensure that the systems are appropriate and that they are designed to satisfy the relevant regulatory obligations imposed on the lender. Lenders must also continually monitor and review their systems to ensure that they are effective.

## The Australian payday lending market

One industry where we have seen recent innovative changes is payday lending. ASIC refers to 'payday loans' to mean loans under $2,000 with a term of less than 1 year, however, in reality most payday loans are under 90 days in duration.[3]

Payday lending continues to grow in Australia and over recent years we have seen a number of online lenders entering the market. In August 2015, ASIC conducted a voluntary survey of the payday lending industry. Based on these responses, the payday lending industry provided over $831 million in credit in the 2014–15 financial year through close to 1.5 million loans.[4] Other research shows that the market share of online payday lenders is growing and it is predicted that by 2018, over 80% of payday loans will be applied for online.[5]

Research has also highlighted that online lenders may attract a broader range of consumers than traditional shopfront lenders, including consumers on higher incomes.[6] Many of these lenders run advertisements on

1 See for example ASIC's INFO 123: Guidance to Marketplace Lenders.

2 ASIC's Regulatory Guide 209: Credit Licensing: Responsible Lending Conduct.

3 s5 of the National Consumer Credit Protection Act 2009 (Cth) (National Credit Act) defines a "small amount credit contract." ASIC uses the term "payday loan" as this is the term understood by consumers.

4 Review of the small amount credit contract laws: Submission by the Australian Securities and Investments Commission October 2015, p 12.

5 Digital Finance Analytics and Monash University Centre for Commercial Law and Regulatory Studies, "The stressed finance landscape data analysis", October 2015, p 27.

6 Australian Centre for Financial Studies, Banks et al, "Trends in the Australian small loan market", October 2015, pp 14 and 36.

television and social media which contain language and graphics that target particular segments of consumers, including those who may have not previously considered a payday loan.

### Nimble's conduct

Nimble is one of the largest online payday lenders in Australia. Nimble extensively markets itself through a series of comedic television and online advertisements as providing a quick solution to consumers' short-term funding needs. Nimble uses algorithms in its credit decision making process to enable it to make rapid lending decisions, allowing consumers to receive very quick loan approvals.

The National Consumer Credit Protection Act (Cth) 2009 requires all lenders to meet responsible lending conduct obligations on each loan.[7] All lenders must make inquiries into the consumer's financial situation, as well as their requirements and objectives in relation to the loan.

Further, in 2013, a suite of provisions were introduced specifically for payday loans to combat 'debt spiralling' (where vulnerable consumers are more likely to end up in an ongoing debt cycle), including obtaining 90 days of bank (or current) account statements.

Consumers applied for Nimble loans by filling in application forms either online or via a smartphone app. The forms asked consumers about their requirements and objectives in relation to the loan. However, the inquiries were of a general nature and did not gather enough information to allow Nimble to fully understand the consumer's needs.

Further, when assessing a consumer's bank statements Nimble's automated systems did not take into account all of a consumers' relevant financial information. Nimble's system also failed to consistently recognise other payday loans. Where other loans were identified, Nimble did not sufficiently consider the impact of these loans before providing another loan to the consumer.

### The outcome

All lenders need to consider the individual situation of each borrower. It is imperative that the shift to adopt automated processes includes a focus on rigorous and continual testing of processes and systems to ensure that the lender complies with their responsible lending obligations.

Following negotiations, Nimble entered into an enforceable undertaking (akin to a 'consent order') with ASIC in March 2015. Under that undertaking Nimble is required to:

- pay more than 7,000 consumers in excess of $1.5 million through a consumer remediation program;
- make a $50,000 contribution to Financial Counselling Australia; and
- engage an independent external compliance consultant to review their current business operations and compliance with the consumer credit regime and report back to ASIC.

### Further reforms

During the second half of 2015 and early 2016 a review was conducted into the consumer leasing and small amount lending laws in Australia. The review's final report was released in March 2016 and the Government has consulted further on the review's recommendations.[8]

7 The responsible lending obligations are contained in Chapter 3 of the National Credit Act.

8 Review of the Small Amount Credit Contract Laws: Final Report, March 2016.

## UK Financial Advice Market Review

**Contributor: Claire Lawrie, Financial Conduct Authority, United Kingdom**

In March, the UK Financial Conduct Authority (FCA) and the UK Treasury published the final report of the Financial Advice Market Review, which was launched in August 2015 to examine the barriers to consumers in the UK accessing financial advice. The review was conducted jointly by the FCA and the UK Treasury, and was set up in response to growing concerns that the advice market was not working as well as it could for everyone.

The review was launched against a backdrop of socio-demographic changes in the UK (such as an ageing population and concerns over the housing market and employment) as well wide-reaching government reforms in the area of pensions, for example, which means that individuals are being required to take more personal responsibility for their finances, and make increasingly complex decisions. It also follows the FCA's Retail Distribution Review (RDR), which has significantly raised standards in the investment advice market following its introduction in 2013.

The review explored the supply and demand sides of the market for financial advice and guidance, the barriers to providing those services, and the potential remedies. Its recommendations are aimed at stimulating the development of a market that provides accessible and affordable guidance and advice.

As a result, the UK government and FCA have committed to a range of actions, including;

- UK Treasury to amend the definition of advice to align it with the definition set out in the European Markets in Financial Instruments Directive (MiFID), and FCA to produce guidance for firms offering support services.
- FCA to produce case-study guidance on 'streamlined advice'.
- FCA to establish an 'Advice Unit,' as part of 'Project Innovate,' to provide regulatory feedback to firms wishing to establish new models for automating financial advice.
- UK Treasury to improve pre-retirement tax incentives for accessing advice on pensions
- FCA and the UK Pensions Regulator to develop a 'factsheet' designed to help employers give more support to their staff in financial matters, and UK Treasury to improve the existing tax breaks for employer-arranged advice.
- FCA to consider how to make the FSCS levy more manageable for adviser firms
- The UK Financial Ombudsman Service to increase its transparency in the way it handles consumer complaints and increase engagement with industry

Delivering the recommendations from the Financial Advice Market Review is a key priority for the FCA in 2016/17. Details about the actions the FCA will be taking can be found in our 2016/17 Business Plan (https://www.fca.org.uk/static/documents/corporate/business-plan-2016-17.pdf)

The final report from the Financial Advice Market Review is available online (https://www.fca.org.uk/your-fca/documents/financial-advice-market-review-final-report)

---

# FinCoNet

Established in 2013, FinCoNet is an international organisation of supervisory authorities which have responsibility for financial consumer protection. It is a member based organisation and has been set up as a not-for-profit association under French law.

FinCoNet promotes sound market conduct and strong consumer protection through efficient and effective financial market conduct supervision.

Each member of FinCoNet has responsibility for and an interest in protecting the interests of consumers of financial services. FinCoNet seeks to enhance the protection of consumers and strengthen consumer confidence by promoting robust and effective supervisory standards and practices and by the sharing of best practices among supervisors. It also seeks to promote fair and transparent market practices and clear disclosure to consumers of financial services.

FinCoNet's initial focus is on banking and credit consumer issues.

## Contacts

**FinCoNet Chair**
Mr. Bernard Sheridan
finconet@centralbank.ie

**FinCoNet Secretariat**
Mr. André Laboul
andre.laboul@oecd.org

Ms. Sally Day-Hanotiaux
sally.day-hanotiaux@oecd.org

Mr. Mike Chapman
mike.chapman@oecd.org