

TFG now joins the club

In an industry battling to hold onto customers as the economy stalls, club fees have been something of a consolation prize for the country's retailers. Take Edcon, for example. It says the cash it pocketed from club fees offset an overall decline in total revenue, to R29.3bn, for the year to the end of March 2016.



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Now, the National Credit Regulator (NCR) has declared war on these fees, hauling Edcon, Lewis and TFG - owner of Totalsports and Foschini - to the national consumer tribunal for breaching credit regulations.

"It began in 2015, when the NCR focused its efforts on investigations into charges relating to the cost of credit, with emphasis on club fees and credit life insurance charges," says Nthupang Magolego, senior legal adviser at the NCR.

"The NCR is motivated not only by the strength of the evidence that supports the contention that a club fee is being charged by retailers as part of the cost of credit, but also by the fact that the tribunal has already ruled in favour of the NCR in the matter against the Edcon group." In Edcon's case, the tribunal found that it charged for its club fee through its store card.

"The club membership was offered as a stand-alone product to be paid for in cash or by separate debit order. However, this was not successful and the option was removed in August 2013," the tribunal found. "The product was then offered via the store card."

Edcon also did not provide a separate application form for the club - instead it was included as a "tick-box" option on the credit agreement for the store card application form, which the tribunal frowned upon. It found Edcon contravened the National Credit Act by adding the club fee to its credit agreements.

Edcon has issued more than 1.4m store cards with club fees charged to them, representing 56.8% of its client base. It reported club fees of R590m in its 2016 financial year, equating to about 2% of its revenue.



Tribunal finds the club fee charged by Edcon to be unlawful

3 May 2017



The clothing retailer is appealing the tribunal judgment. Lewis, meanwhile, [won its case](#), mainly because applicants were not "forced" to join the club when applying for credit; they were given a separate application form. The furniture and appliance retailer does not disclose the money it earns from its club, but it reported R710.1m in "ancillary services" revenue for the year to end-March 2017.

"The problem we have is that the Lewis judgment opens the door for many credit providers to start introducing illegal fees and charges through supplementary agreements and documents," says Magolego. "Some can now disguise outright illegal fees and charges as stand-alone products."

TFG, which also offers a store card, is the latest to be hauled in front of the tribunal.

Electus Fund Managers equity analyst Damon Buss says the NCR has been on a drive to ensure that the credit fees charged to customers are fair. "The key dispute the NCR is raising with retailers is whether the club fee constitutes part of the total cost of credit, or if it is a separate payment for a separate service or product provided by the retailer. The NCR's interpretation of the National Credit Act is that club fees are not allowed to form part of the credit agreement."

Magolego confirms this. "The [act] has provided for a closed list of fees that credit providers are allowed to charge to consumers under a credit agreement. This does not include club fees," she says.

"This is meant to protect consumers against opaque charges and for consumers to know what they have to pay. The excessive cost of credit is one of the contributing factors to consumer over-indebtedness. We need to bring certainty to the industry on this issue."

According to Buss, TFG has said that most of its club product sales go through its call centre - well after the conclusion of the credit agreement. This makes it a separate agreement, which does not contravene the credit act.

"It is unclear how the tribunal will rule on the portion of TFG club product sales that occur at the time of signing the credit agreement," says Buss. If TFG is found guilty and Edcon's appeal fails, the companies will pay refunds of about R2.9bn and R4.3bn respectively, according to his calculations.



TFG to fight back over club charges

6 Jul 2017



TFG would not comment on revenue it derives from club fees or the number of customers signed up for club products. It referred the *Financial Mail* to a terse statement it released on 4 July, in which it said its club products were optional magazine subscriptions with insurance and other benefits. It stressed that customers could subscribe for or cancel these products at any time without penalty.

The group's results for the year to end-March show that publishing income for its magazines rose to R400.8m from R399.3m the year before. This was less than 2% of group revenue. Insurance income fell slightly to R289m from R297.8m. TFG also noted a collection cost recovery of R331.5m from R312.4m. Cost recovery refers to the practice of recouping debt and legal fees from customers with unpaid accounts.

Total "other income" for TFG - which includes income from publishing, collection cost recovery and insurance, as well as mobile One2One airtime income and sundry income - was R1.3bn, from R1.11bn in 2016.

"Assuming the tribunal rules in favour of TFG management's view that the club product is sold separately, I expect limited impact of the club fees earned by the company," says Buss.

It remains to be seen whether customers would want to remain club members now that the NCR's blitz is raising awareness of how they are being charged. From Edcon's third-quarter results to December 2016, it is clear that the company is already losing members.

In ruling in favour of Lewis, the tribunal itself questioned the usefulness of the clubs, saying they did not seem to benefit consumers.

Magolego explains: "Some of the examples of the benefits that consumers get through club membership include magazines that consumers in certain instances are expected to collect at the stores - in other words, consumers must incur further travelling costs in order to collect the magazines. Other benefits include standing a chance to win prizes - in other words, benefits of chance."

Source: Financial Mail

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