IMPLEMENTATION OF SOUTH AFRICAN NATIONAL CREDIT ACT AND ITS IMPACT ON HOME LOANS MARKET: THE CASE OF FIRST NATIONAL BANK

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Abstract

Since it has been observed that credit granting is a serious problem across the entire credit market, South Africa introduced National Credit Act 34 of 2005 in order to regulate the credit industry and protect credit consumers from becoming over-indebted. The study highlights and examines the implementation of the Act in relation to the South African home loans market, focussing on First National Bank home loans portfolio. The study documents that the current state of consumer indebtedness shows that both credit institutions and consumers were responsible for over extending retail credit. The study noticed that credit industry has significantly managed to regulate the retail credit through the implementation of the Act. Furthermore, the study finds that a new stakeholder such as a debt counsellor has been introduced into the retail credit value chain for debt counselling for over-indebted clients. However, the study recommends that internal forums within banks as well as industry-wide forums should be used in order to ensure that the implementation of a regulation that impacts the entire credit industry is implemented with all stakeholders to limit any possible misinterpretation of key sections of a new regulation.

Keywords: The National Credit Act, Home Loans, First National Bank, South Africa

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1. Introduction

A home loan or mortgage is broadly viewed as the single largest credit purchase decision for retail consumers. Since the last decade, both sub-prime lenders and consumers have been enormously affected due to the global recession that resulted in a possible slowdown of credit extension. United Nations (2009:1) stated that "it was never meant to happen again, but the world economy is now mired in the most severe financial crisis since the Great Depression. In little over a year, the mid-2007 sub-prime mortgage debacle in the United States of America (USA) developed into a global financial crisis and started to move the global economy into a recession". Following the global financial crisis of 2008-2009, it has become necessary for the banks to reconstitute their lending criteria particularly their home loans portfolios due to high household indebtedness and increased credit risk. With this respect, banks and governments are trying to reduce the household indebtedness and minimize the credit risk. Consequently, consumers are more scrutinized by the banks in terms of credit lending especially for home loans, particularly low income consumers are facing more difficulties to obtain credit. Mr. Gabriel Davel [Chief Executive Officer of National Credit Regulator (NCR), South Africa] said that "there has been long-standing concern with the extent to which low income consumers have resorted to micro-loans and have limited access to main stream credit products from banks and others" (cited in NCR, 2007:5). However, to avert the mounting debt service burden and financial and credit crisis, liquidity injections were taken place in some major developed countries such as USA and UK by their respective central banks. But still several financial institutions in USA and Europe did not perform well and subsequently collapsed. As a result, the function of inter-bank lending in many developed countries became ineffective. In terms of the global economy, South Africa is definitely not alone in its concern that increases in credit granting or client borrowing could be a key attribute of fuelling higher levels of indebtedness.

Mortgage loans were granted to over-extended home buyers by sub-prime lenders for a while. But sub-prime market started to collapse when over-extended home buyers could not pay back their mortgage loans due to high interest rates, thereby cutting off credit. This leads to a negative impact on some famous Wall Street banks like Bear Stearns and Lehman Brothers who filed for bankruptcy. As such, "banks have quietly adjusted their approaches to minimize risk and some are again granting 100% home loans to the affordable side of the housing market" (Kloppers, 2009:1). In line with this, South Africa recently introduced National Credit Act (NCA) 34 of 2005 in order to regulate the credit industry, protect credit consumers from becoming over-indebted[2] and ensure that all credit consumers are dealt with in a consistent manner. With regard to new credit regulation in South Africa, Mr. Gabriel Davel stated that "the development of the new legislative framework for the credit industry in South Africa was the result of growing concern about the high cost of credit, particularly for low income consumers, misleading disclosure and increasing over-indebtedness" (cited in NCR, 2007:5). It can be noted that it is common practice and also the responsibility of "the state" to introduce new regulation or amend existing regulations to assist with possible market failures and ensure that consumers are protected. However, new banking legislation in some way or the other, always introduces a level of uncertainty since stakeholders are not always sure what is covered and what is not covered, what has changed from the previous regulation, what it would cost to implement the new legislation as well as what resources would be required to manage, monitor and measure the effectiveness of the new legislation. Sometimes, the new regulation can have unintended consequences for stakeholders, it could also create more confusion if it is not implemented appropriately. With this respect, banks in South Africa noted that they have an important role in the process of implementation of the NCA. Thus, it is important to understand how the Act has been implemented by the banks and its impact on the credit industry especially on home loan credit. Hence, this research study aims to highlight and examine how the South African First National Bank (FNB) home loans department is facing up to its NCA commitments. The study further aims to examine the various efforts made by the FNB home loans department in implementing the NCA and where possible, analyse the reasons for client defaults on home loans.

Given the above, an analysis of the implementation of NCA and its impact in the context of a South African bank's home loans department will be of great value to government, banking sectors, and academics to understand the implementation mechanisms and the effects on the retail consumers. In addition, this study will fill the gap in the literature since a similar type of research is underdeveloped in South African context except few studies (for example, Pieterse, 2009; Goodwin-Groen, 2006) and, to our knowledge, little is known about the impact of NCA in the credit market in South Africa. In the next sections, this study provides a relevant literature review followed by a brief description of FNB home loans department, describe the research method, findings and analysis, and the conclusions.

2. Literature Review

The literature review aims to identify the key elements of the NCA 34 of 2005 and how this new credit regulation has set out to regulate the credit granting process. It also provides a theoretical review on the problem of and response to access to credit since the inception of the NCA. Apart from the regulation, it also includes the debt counselling process, the current state of house debt credit extension as analysed by South African NCR[3] and The South African Reserve Bank (SARB), specifically for the home loans credit market. Besides, the literature review briefly highlights some international credit regulatory legislations.

2.1 Credit regulation from international perspective

In the last decade, a number of new credit regulatory legislations have been introduced and implemented in many countries. For instance, UK and New Zealand have introduced the Consumer Credit Act of 2006 and the Credit Contracts and Consumer Finance Act of 2003 respectively (Pieterse, 2009:35). The UK Consumer Credit Act of 2006 was implemented in October 2008 and it replaced the previous Consumer Credit Act of 1974 (Pieterse, 2009:35). Card (2005, cited in Pieterse, 2009:35) stated that one of the objectives of the introduction of UK's Consumer

[2] Over-indebted: "A consumer is over-indebted if the preponderance of available information at the time a determination is made indicates that the particular consumer is or will be unable to satisfy in a timely manner all the obligations under all the credit agreements to which the consumer is a party" (NCA, 2005: Section 79).

[3] The National Credit Regulator (NCR) is "responsible for promoting and supporting the development, where the need exists, of a fair, transparent, competitive, sustainable, responsible, efficient, effective and accessible credit market and industry to serve the needs of historically disadvantaged persons, low income persons and communities, and remote, isolated or low density populations and communities" (NCA 2005:Section 13). It "regulates the consumer credit industry by registering credit providers, a credit bureaux and debt counsellors" (NCA 2005:Section 14).

Credit Act of 2006 is to allow the consumers to challenge the credit agreements if unfair lending practices and unfair loan agreements are found. The New Zealand's Credit Contracts and Consumer Finance Act of 2003 came into the market in April 2005 and one of the objectives of this Act is to make the disclosure provision much stronger by providing useful and understandable information to consumers about the credit agreements (Pieterse, 2009:35-36). Like UK and New Zealand, South Africa also established new credit regulation for its credit market and consumers. The next section describes the South African new credit regulation.

2.2 National Credit Act (NCA) 34 of 2005 and its implementation in South Africa

The NCA 34 of 2005 was assented by the President of South Africa in March 2006 and was promulgated on 1st June 2007. The Act was established to deal with consumer rights, limit the number of over-indebted consumers, prohibit reckless[4] credit granting by the credit providers, produce debt counselling services to over-indebted consumers, and establish NCR for regulating the credit market (NCA, 2005). The purposes of this NCA "are to promote and advance the social and economic welfare of South Africans, to promote a fair, transparent, competitive, sustainable, responsible, efficient, effective and accessible credit market and industry, and to protect consumers....." (NCA, 2005:Section 3). The NCA had played a key role in terms of improving transparency and limiting reckless credit granting by establishing responsible credit providers in the credit market since its implementation. Further, there are number positive impacts on the credit industry since the implementation of the Act. For instance, credit providers had experienced a higher rate of credit access of historically disadvantaged groups and a lower rate of risky credit (NCR, 2009a). It should be noted that the NCA repealed and replaced the Usury Act 73 of 1968 and the Credit Agreements Act 74 of 1980 after reviewing the Usury Act by South African Law Reform Commission in 1994 (Kelly-Louw, 2007; Renke, Roestoff and Haupt, 2007). The Commission observed that credit market was dysfunctional and indicated the following problems:

- Fragmented and out-dated consumer credit legislation;
- Consumer protection is not effective, particularly for consumers with low-income;
- Cost of credit is high and lack of access to credit in some areas;
- Increasing the number of over-indebted consumers; and
- Reckless behaviour by credit providers and exploitation of consumers by micro-lenders, intermediaries, debt collectors and debt administrators.

(Department of Trade and Industry South Africa, 2004:1)

However, the rationale behind the NCA is the protection of natural persons, not companies. Although it seems that the Act works against consumers, it actually protects consumers from becoming over-indebted. The Act applies[5] to all consumers who entered into the credit agreements after 1 June 2007 and it will have a direct effect on all consumers applying for any products such as bank overdraft facility, credit cards, instalment sale agreements, home loans or mortgages, and financial leases.

2.3 Debt counselling process and its status in South Africa

Debt counselling is topical due to the number of banking clients that are indebted and require assistance with their credit payment obligations. Debt counselling is new to all banks in South Africa. Since the implementation of the NCA in 2007, a retail consumer who cannot make regular payments to his/her creditors as per the credit obligation undertaken between the credit institution, the retail client can apply for what is commonly referred to as debt counselling. This is one of the new requirements of the Act and has featured in media headlines since early 2008 when the process started to be impacted by indebted consumers. Debt counselling can best be described as a service provided to consumers who are over-indebted to credit providers. It is a process regulated by the newly formed NCR in line with the Act (NCA) that provides the consumer with a level of protection against credit providers that wish to take legal action as per the previously signed and agreed credit undertaking or obligation. There are three stages of debt counselling process such as debt acknowledgement stage, debt notification stage, and debt re-structuring stage.

The ultimate goal of the debt counselling process is to assist the over-indebted consumer to create a repayment plan that is affordable to the consumer. The debt counsellor should ensure that the repayment plan provides the indebted consumer with the ability to still meet the basic living needs and expenses after restructuring the payment plan. The debt counselling process with the creditors is managed by the debt counsellor. Debt counselling is viewed as a win-win situation for the indebted consumer and the creditor. The consumer will benefit due to a more manageable monthly payment and the creditor's benefit is that the credit organization might not have to engage in a

[4] Reckless credit granting: "A credit agreement is reckless if, at the time that the agreement was made, or when the amount approved in terms of the agreement is increased, the credit provider failed to conduct an assessment as required by the Act" (NCA, 2005:Section 80).

[5] The Act (NCA) also applies to other entities such as close corporations, companies, partnerships and trusts, but these are excluded for the purposes of this study.

costly legal and/or collections process. It is worthy of note that the debt counselling process was never designed for a consumer who is insolvent; this process is meant to assist consumers who are over-indebted but can still make repayments at an agreed lower and affordable level as per the repayment plan.

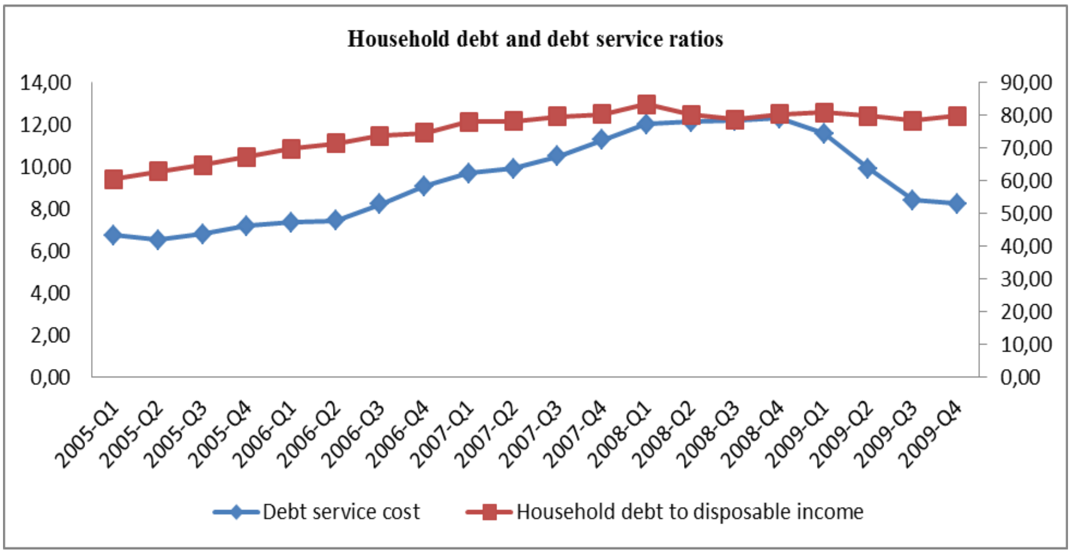
Although consumers were not fully aware of the requirements of debt counselling during 2007 and some parts of 2008, the industry view on the total number of debt counselling applicants is increasing on annual basis. By January 2010, 1642 debt counsellors are registered with NCR; almost 160,000 consumers have applied for debt counselling since the implementation of the NCA; and an average of 7,500 new applications for debt counselling being received per month (NCR, 2010a).

2.4 Current state of household debt in South African context

In response to higher perceived risk, banks apply strict lending criteria for providing credit to consumers (SARB, 2010a). Thus, the overall demand of credit to the retail or private sector is seen as weak due to tighter controls in credit granting as well as generally accepted stricter credit supply conditions by retail banks (SARB, 2010a). However, household sector debt in relation to household disposable income was slightly higher when comparing for period 2007 and for period 2009 (see Figure 1). According to Figure 1, as a percentage of disposable income, household sector debt has been steady during 2009 and in comparison to quarter 4, it has increased slightly from around 78% in quarter 3 to almost 80%. Although this is still high, it is definitely receding from the highs of 2008 where it reached almost 84% at one stage (see Figure 1). Interestingly, the debt service cost to disposable income ratio for the same period recorded a slightly improved ratio. This ratio can be broadly defined as the cost of servicing household debt as a percentage of disposable income.

It should be noted that SARB publishes data based on the collection from registered banks only. On the other hand, NCR releases data of both registered banks and non-banks credit providers. Thus, SARB figures on household credit constitute around 82% of the NCR data since non-banks credit providers' data is not included in the SARB figures. This suggests that non-banks credit providers provide 18% of formal credit (in terms of value) to South African consumers.

Figure 1. Household debt and debt service ratios[6]



(Source: SARB: 2010a)

[6] Household debt and debt service ratios – It is calculated by taking into consideration the total household debt and the total household disposable income and then expressing that as a ratio.

2.5 First National Bank (FNB) and its home loans division

FNB is one of the biggest and oldest banks in South Africa. The bank has grown over the years, having moved from an ancillary operation within FNB to a fully-fledged division within the FirstRand Group. The FirstRand Group is a financial service provider in South Africa and listed on Johannesburg Stock Exchange and Namibian Stock Exchange. However, FNB home loans division provides mortgage finance to metropolitan homebuyers (FirstRand Bank, 2011). The FNB home loans experience from a process perspective regarding the implementation of the NCA is discussed in the findings of the study.

From the brief literature review above, in light of both macro and micro environment perspective, it reveals that credit granting is a serious problem that must be confronted and actively combated. The government or other regulatory bodies cannot carry the burden of combating reckless credit granting alone. Success will ultimately depend on the commitment and co-operation of all involved - government, regulatory bodies, the financial sector and consumers. The NCA was implemented to limit over-indebtedness and ensure that credit providers do not grant credit recklessly. New or amended regulations do provide many new challenges as outlined in this literary review. South African banks have embraced the new regulation and have made a difference to the state of credit in the retail market. The tighter credit conditions for the retail consumer have been evident in the graphical representation from the SARB, as depicted in Figure 1.

3. Research Methodology

This study was conducted within the quantitative and qualitative paradigm since the new regulation has had an impact on both ends. The methodology is a combination of a literature review survey, an analysis of FNB home loans portfolio and interviews with specialists. The study used the total consumer credit market, the total consumer home loans market, and the total number of indebted clients as a broad framework to analyse the consumer credit market holistically over time before integrating the level of indebtedness and the debt counselling impact. Further, the study used the debt counselling angle to illustrate the impact of the NCA on FNB home loans focussing on debt counselling as one of the new requirements of the Act. Information was therefore collected from SARB, NCR, an independent debt counselling company, and from the FNB home loans division. The debt counselling process at FNB home loans were analysed via discussions with key stakeholders by using semi structured interviews. The following persons at FNB home loans division participated in the interviews: the CEO, the Head of Debt Review Centre and the Head of Collections. In addition, the study also undertook an interview with the CEO of IDM Group (a debt counselling organization).

The NCA may undergo changes to the legislative framework due to the interpretation of some of the requirements. The implementation of the Act during this research study was at undergoing discussions in terms of some of the requirements from a clarity perspective, e.g. Section 129 of NCA. Apart from possible changes to the Act, client sensitive information was not available from banks, credit bureaus, the NCR or even the debt counselling organizations. For this and other practical reasons, such as non availability and sensitivity of clients' personal information, the study decided to limit the research sample to the consumer credit market, the home loans market and the debt counselling process at FNB home loans. The data utilised is published information.

Further, the study analysed client data from a debt counselling perspective due to the fact that one of the researchers was introduced to a debt burden concept during discussions with home loans stakeholders and was asked about the debt trend during a client's default experience. Consequently, a sample of client records was analysed. Due to the sensitivity of client's personal information (such as client's debt information) from a contractual perspective and after many efforts, only 10 clients' records were obtained by the time of collecting data during 2011. These clients were selected due to them being FNB clients, but clients in debt distress are usually multi banked. Of these clients, the researchers asked for a spread of equal male and female clients. The clients selected comprised of the following:

- Born between 1960 and 1969 – 20% clients (10% female, 10% male)
- Born between 1970 and 1979 – 60% clients (30% female, 30% male)
- Born between 1980 and 1989 – 20% clients (10% female, 10% male)

In order to create a single view of the credit terms used, the NCR has articulated some definitions to ensure that all users of the information have a similar understanding of the terms used. As such, the study used the NCR definitions illustrated in Table 1.

Table 1. Definitions of terms

Terms used	Definitions
Credit-active consumers	Consumers obligated to pay credit providers, service providers, etc. These obligations result in transactional entries on the consumer's credit record at the credit bureaus.
Impaired record	A record on which any of the accounts are either classified as three or more payments in arrears, or has an "adverse listing", or that reflects a judgment or administration order.
Good standing	An account which is current or on which the client has not missed more than one or two instalments, which has no adverse listings and has no judgments.

(Source: NCR, 2009b)

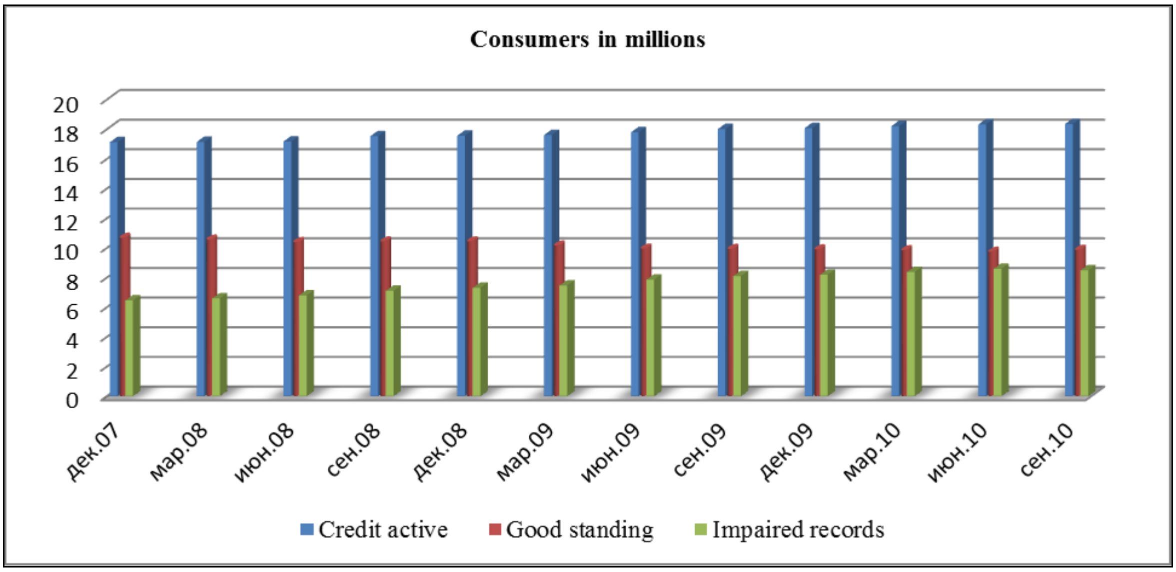
4. Findings and Discussion

4.1 Consumer credit market

According to credit bureaus' records in South Africa, there were more than 39.48 million consumers on their database at the end of September 2010, of which 18.35 million (46.5%) were credit active (NCR, 2010b). The researchers have defined the total consumer credit market to be that of credit active consumers, and as at September 2010, this market was made up of 18.35 million consumers. The home loans market was analysed for a trend over time. Due to the sensitivity and competitive advantage of actual client numbers, the value of home loans was analysed.

According to Figure 2, the total consumer credit market has increased gradually from 17.1 million in December 2007 to 18.35 million consumers in September 2010. Interestingly, consumers with impaired credit records have grown over this period from 6.4 million during December 2007 to 8.49 million in September 2010. This means that the consumers with good credit standing or without impaired records decreased from 10.6 million in December 2007 to 9.8 million consumers in September 2010. This is a concerning sentiment for a country the size of South Africa. However, Figure 2 shows that September 2010 was the first quarter that saw a decrease in the total number of consumers with impaired records with 8.49 million consumers compared to the previous quarter where 8.59 million consumers were recorded to have had impaired records.

Figure 2. Consumer credit market, good standing and impaired records

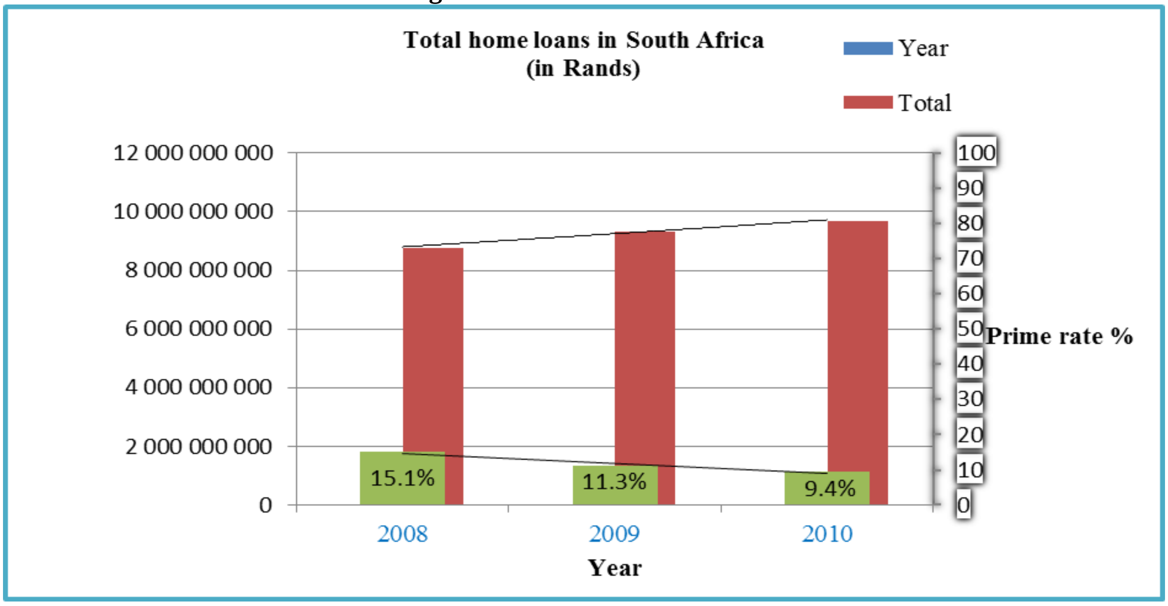


(Source: NCR, 2010b)

4.2 Home loans (Industry perspective – 3 year view)

In order to understand the total home loans market from a value perspective, information contained in various bank submissions to the SARB were consulted. The industry perspective (see Figure 3) shows a growth trend year on year from a home loans perspective. Evident is also the decline in the prime lending rate year on year. This correlation could mean that the growth in consumer home loans coincided with the lowering of interest rates.

Figure 3. Total home loans value

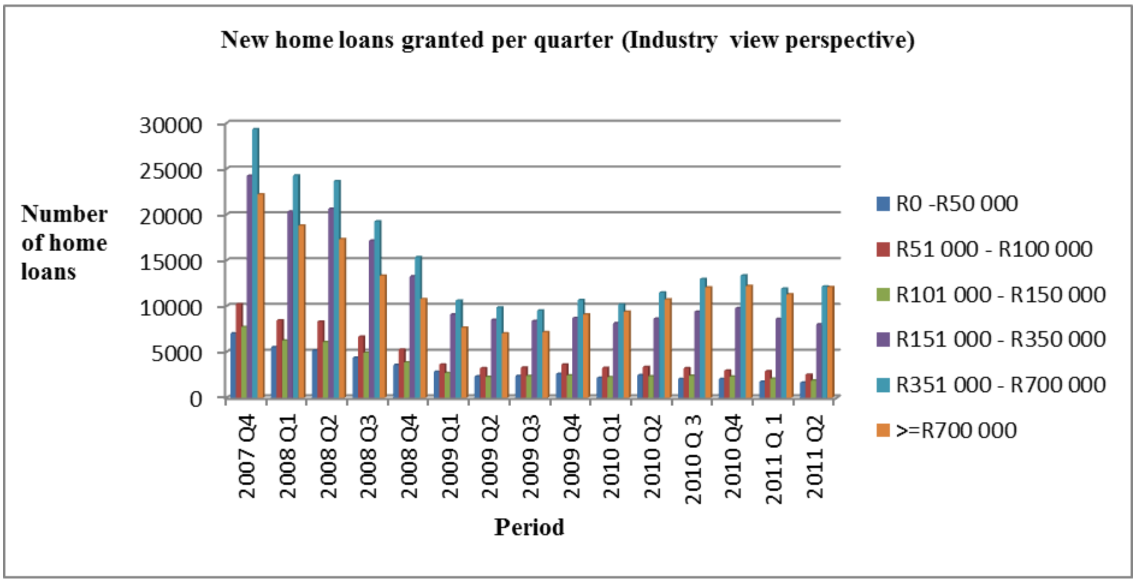


[Source: SARB, 2010b (BA 100 Aggregated Balance sheets, January 2008 - December 2010)]

4.3 New home loans granted since the enactment of NCA

The NCR has been tracking the growth of all credit granted by retail banks for the consumer segment since the enactment of the NCA in 2007. The illustration (see Figure 4) depicts the total new home loans granted per quarter in South Africa. This does not take into account the total historical home loans as per the banks' balance sheet. This refers to new home loans and possible re-advances on existing home loans since the implementation of NCA. Figure 4 shows that there is a decline since the last quarter in 2007 until the third quarter in 2009. This could have been due to stricter lending conditions as applied by the banks or purely a lack of appetite from the consumer market to engage in more home loans credit transactions. Although there was a slight increase in the home loans granted from the fourth quarter in 2009, the numbers still reflect that the market was still below the fourth quarter of 2008.

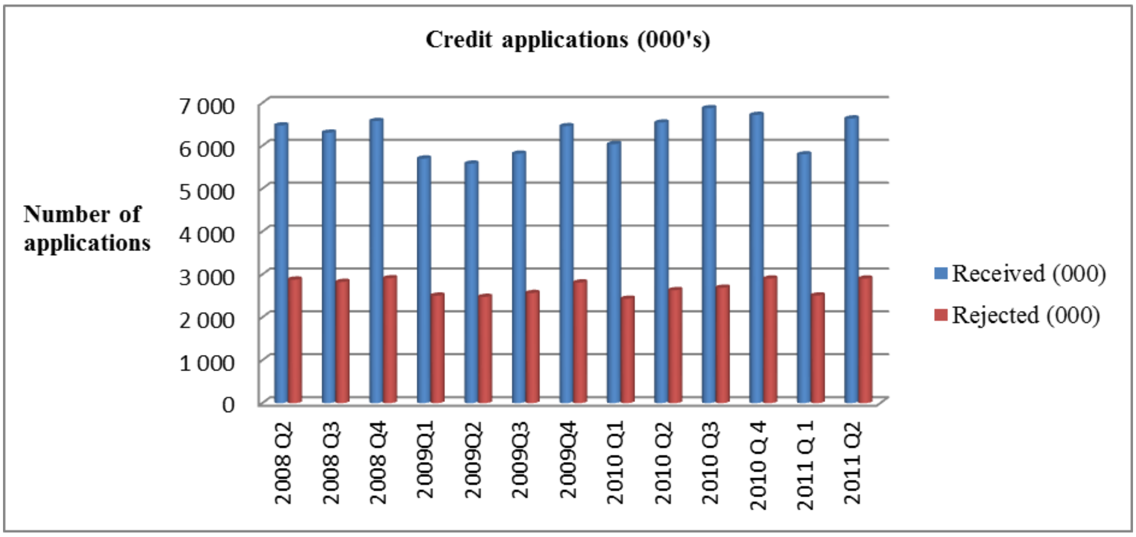
Figure 4. New home loans granted since the enactment of NCA



(Source: NCR, 2011)

4.4 Credit applications

Figure 5. Total credit applications



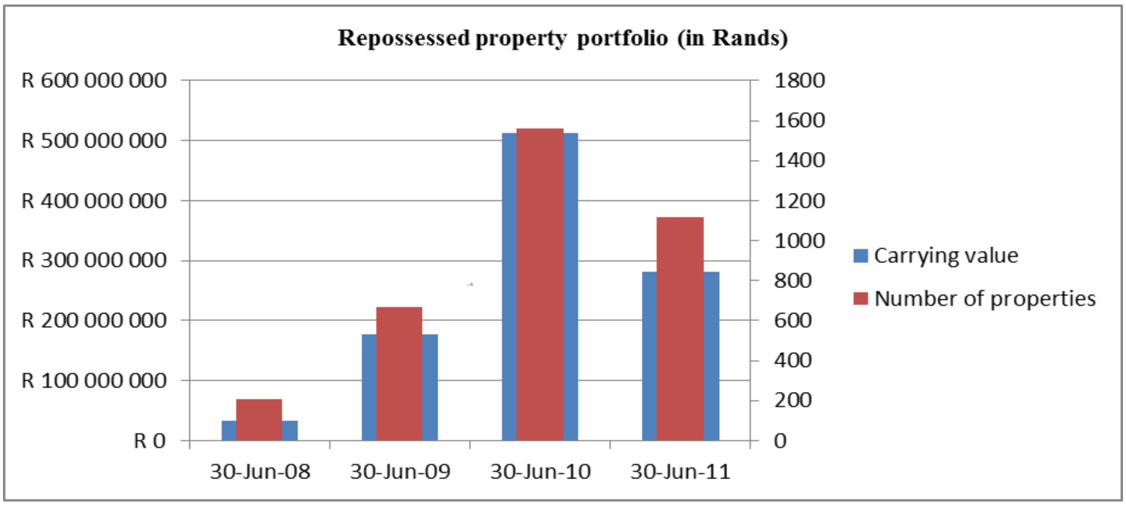
(Source: NCR, 2011)

The NCR has also started to track the total number of credit applications received versus the total number of credit applications rejected. This information includes the total consumer market and not just banks; it also covers all applications and not bank specific credit products. This illustration is to understand the credit appetite from the consumer market as opposed to any level of statistical correlation with the home loans consumer market. It is interesting to note that the consumer market generally has not shown a decline for credit over the period as depicted by the graphical representation (see Figure 5). The number of applications rejected has also been fairly static. If we correlate this with the prime lending rate trend, it is interesting to note that unlike the home loans consumer market there was a healthy increase in 2009 and in 2010.

4.5 FNB repossessed property portfolio

Banks in general have been plagued with home loans related bad debts during the financial crisis, especially during 2008 and 2009. The South African banks have also disclosed higher than normal bad debts realizations in their home loans portfolios during this period. As per Figure 6, the experience at FNB shows a similar trend. The FirstRand financial period runs from July through June the following year; this makes comparison with the other banks difficult. It is important to note that the level of bad debts in the FNB home loans portfolio is starting to have a positive trend in the 2011 financial period for the first time since the previous three consecutive financial periods.

Figure 6. FNB repossessed property portfolio

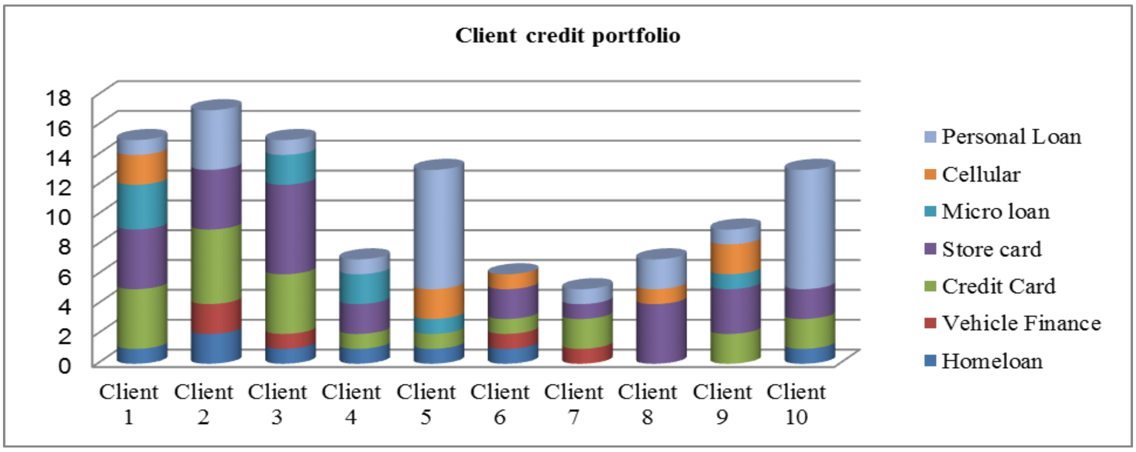


(Source: FirstRand Bank, 2011)

4.6 An analysis of client credit portfolio from a debt counselling perspective

The study analysed a client's perspective on what happens when the client is indebted. In order to accomplish this, a sample of 10 clients in default was used to depict a behaviour pattern of indebted clients. The information contained herein is client sensitive and as such, client specific details were excluded from the analysis. All clients are FNB clients who are currently part of the debt review process and under the debt counselling process.

Figure 7. Client credit portfolio (March, 2011)



As per Figure 7, it is evident that all clients have multiple credit products across different credit institutions. The largest portion of credit products is made up of store cards (such as Woolworths card, Edgars card and Truworths card) followed by personal loans and then bank credit cards. It can be argued that credit across the spectrum was easily available when looked at the number of credit products within the clients' portfolios. While Client 2 had 17 credit facilities, Clients 1 and 3 had 15 credit facilities and Clients 10 and 5 had 13 credit facilities. This snapshot of indebted retail consumers constitutes just 10 of the total of 8.49 million indebted consumers in South Africa till September 2010. These 10 consumers are engaged in the debt counselling and debt review processes. Based on this finding, the following question arises: should a retail consumer have access to this number of facilities? This sample does resonate with the credit regulator's perception that credit was easily available, hence the level of indebtedness amongst retail consumers.

4.7 An analysis of client default trend from a debt counselling perspective

In order to understand a client's behaviour pattern when signs of indebtedness start to appear, the facility or credit product was analysed against the same 10 clients to provide a view of the human behaviour when faced with a debt situation. Although the analysis provides a basis of an argument, the sample of 10 clients is not representative of the population of South Africa but of 10 clients undergoing a debt counselling process with a registered debt counsellor. However, in terms of the client sample, as depicted in Figure 8, 7 out of the 10 indebted clients had a home loan. 3 of the total clients defaulted first on their home loans and one other client defaulted second on the home loan. The home loan and vehicle finance loan are the only securitised assets in terms of this portfolio. The analysis assumes that since the home loan is the largest securitised asset, a client in debt will continue to pay off credit cards and vehicle finance before the home loan. The reasoning based on client information is that credit cards, and sometimes store cards such as Woolworths cards, are used for basic daily needs such as food and the vehicle is the source of getting to and from work. This is a practice of using debt to pay off debt and unfortunately a retail consumer will never alleviate the debt pressure by doing this, unless the debt pattern changes drastically.

Figure 8. Client default trail

Client Make up - default trail							
	Homeloan	Vehicle Finance	Credit Card	Store card	Micro loan	Cellular	Personal Loan
Client 1	1st				3rd	2nd	
Client 2			1st	3rd			2nd
Client 3				1st	2nd		3rd
Client 4							1st
Client 5	1st						
Client 6	1st						
Client 7			1st				
Client 8	2nd			1st			
Client 9						1st	
Client 10			3rd				1st

4.8 Key findings from interviews

As indicated earlier that the study conducted semi structured interviews with relevant personnel from FNB home loans division and IDM Group (a debt counselling organization). The study observed that the debt counsellor used to receive an upfront payment from the indebted consumers and it can be argued that the debt counsellor might not have acted in the creditors' or indebted clients' best interest if he/she was remunerated upfront as part of the application process. This practice has since been stopped and the debt counsellor now receives partial payments and not a full upfront payment.

This is similar to the model previously used by home loan originators where they would source the best possible home loan deal for a potential client from banks and they would receive their upfront commission when the home loan was granted. With this respect, if the client had defaulted on the home loan, the originator had nothing to lose because the originator had already benefited (i.e. commission received already) from the upfront sale, but the bank would need to deal with the default credit agreement between the client and the bank.

In addition, the section 129 requirement of the NCA rules that a credit provider may not start any legal proceedings against a consumer who is in arrears, or enforce an agreement between the parties without first giving written notice of this default to the consumer. Interestingly the consumer would have signed a binding credit agreement with the credit provider when he/she agreed to the credit product initially. The written notification must also clearly state that the consumer can approach a debt counsellor for restructuring of the debt. There have been some high profile court cases regarding this section of the Act from an interpretation perspective. Over the period of the enactment, these interpretative issues have caused many consumers and credit providers a lot of confusion.

However, the interviewees are of the view that the NCA is now operating as it was intended to. This pointed out to the fact that many stakeholders were not ready after the enactment of the Act in June 2007 and the issues experienced with the debt counselling process, readiness of banks, readiness of courts etc, that surfaced in 2008 and 2009 were all rectified along the journey to date and the Act is now fully operational. The interviewees believe that the Act has brought about much needed regulation to the retail credit industry and it has achieved its primary objective of limiting indebtedness. While some of the interviewees said that retail credit pricing did not factor in all aspects of credit risk due to the competitive pre-NCA period, some interviewees expressed that the readiness for the implementation of the Act was not at required levels by all stakeholders. The interviewees are also of the view that although clients with impaired records continue to grow, this could be due to easily available credit granted to clients prior to the enactment of the NCA.

5. Conclusions and Recommendations

The primary objective of the research study is to highlight and examine the implementation of the NCA by FNB home loans department. The NCA was introduced and enacted in June 2007 with one of the primary aims of the Act being to limit the level of indebted retail credit consumers. The study reveals that current state of consumer indebtedness shows that both credit institutions and consumers were responsible for over extending retail credit.

It is clear from the findings that the level of indebtedness amongst South African retail consumers is one which yields a rather sombre read. The study noticed that the number of clients with impaired records has continued to grow throughout the period that the NCR has tracked this ratio. Findings show that, of the 18.35 million credit active consumers, 8.49 million had impaired credit records as at September

2010 which has increased from 6.4 million in December 2007 (see Figure 2). Further, by March 2011, the number of consumers with impaired records has increased to 8.63 million and the total credit active consumers is now at 18.6 million (NCR, 2011). The study is therefore of the view that although the clients with impaired records have increased, if the clients in good standing are factored in, this has also increased since the base of credit active consumers has seen a slight increase.

The value of new home loans granted from a trend perspective has been negatively influenced and has not reached some of the values that 2007 showed. Although the recorded values of credit granted over the 2008, 2009 and 2010 periods for home loans have not yielded positive growth, the number of credit applications received by all credit providers for all types of credit has not slowed or stopped. Consequently, it implies that this can be viewed as consumers possibly wanting access to more short term credit than secured long term debt.

The Act was much needed for the regulatory framework within South Africa and has yielded many benefits to date, the first being the alleviation of indebted consumers. However, in summary, the research findings have shown that the implementation of the Act has been overall successful and the key aim of limiting indebtedness to retail consumers has been achieved. By introducing a new stakeholder into the retail credit value chain, that being a debt counsellor, the process of debt review has been made more accessible to consumers but has also introduced its own complexity. New regulatory requirements cannot be a success purely by the written legislative framework; the regulation must be implemented within the spirit of the law and not purely as a compliancy exercise to meeting the law. The Act has many stakeholders (such as consumers, lending institutions, debt counsellors and the judiciary) with many different needs but for this to be successful, they all need to engage each other and work together.

The main limitation of the study is that the impact of unemployment was excluded from this study and did not afford the researchers the ability to conclude what impact unemployment during the periods 2008 or 2009 would have had on this study. It would be beneficial to link the retail credit market prior to the enactment of the Act and after, as well as the interest rate trend and the unemployment over the same periods to understand the impact of unemployment and its contribution to indebtedness. Further, bank specific financial information other than published information was not used in this study. This limits the understanding of the actual impact of indebtedness prior to and after the enactment of the Act within a bank or within a specific credit product. As such, this study will motivate to carry out more studies on the implementation of NCA and its effects on the credit industry.

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