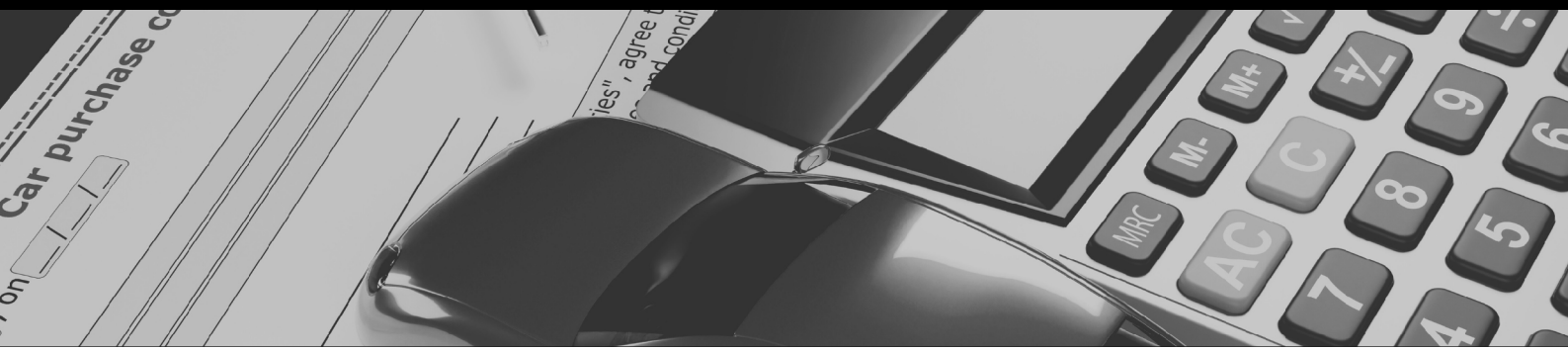




REGULATORY

The Road Ahead: The SCA Gives Green Light to Vehicle Lenders “On the Road Fees” Under the NCA – Subject to Strict Disclosure Requirements

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In a recent judgment, the Supreme Court of Appeal (“SCA”) considered if, in terms of the National Credit Act No 34 of 2005 (“NCA”), a credit provider could include (and ergo finance) “on the road fees” (“OTR”) in a vehicle instalment sale agreement. The SCA clarified that the NCA did not prohibit OTR fees where it reasonably formed part of the vehicle’s purchase price (constituting the principal debt). The Court however laid down strict rules for credit providers requiring transparency of OTR fees. In this article, we discuss this impactful decision and what it means for credit providers and consumers alike.

OTR fees and the long road to the SCA

Where a consumer is approved to purchase a vehicle on credit, the credit provider will buy the vehicle from the vehicle dealer and resell it to the consumer under an instalment sale agreement (a form of “credit agreement” under the NCA). The total principal debt under the instalment sale would comprise of the vehicle price and any other costs (less the deposit or trade in value of the vehicle). Included in the costs are OTR fees, which refers to various services / items such as a pre-delivery inspection, roadworthy certificate, vehicle licensing, and fuel (noting that this is not a closed list).

It is these OTR fees that were the subject of the SCA decision in National Credit Regulator v National Consumer Tribunal and Others and Similar Matters (667/2023) ZASCA 132 (12 September 2025). The judgment related to three consolidated matters on appeal from the High Court. The credit providers concerned were Volkswagen Financial Services, BMW Financial Services, and Mercedes-Benz Financial Services (the “credit providers”).

The dispute’s lineage began when the National Credit Regulator (“NCR”) determined that by including OTR fees in the credit agreements, the credit providers were contravening the NCA: the OTR fees were prohibited charges and not included under the permissible fees for credit agreements nor instalment sale agreements (sections 100(1)(a), 101(1) and 102(1)).

The NCR issued compliance notices that were then challenged by the credit providers at the National Consumer Tribunal (“NCT”), leading to conflicting NCT decisions. The matters were consolidated on appeal in the High Court, and the majority of the Court found in favour of the credit providers, reasoning that they did not “charge” the fees but merely financed a pre-determined principal debt agreed upon between the dealer and the consumer. The minority, however, sided with the NCR, stating that once a dealer charges the OTR fees, they cannot be unlawfully imposed on the consumer through the credit agreement as this was prohibited by section 100 as read with the list of costs referred to in section 102(1).

Red light: the “closed list” of instalment sale charges under section 102(1)

The Court first considered section 102(1) (the “Instalment Sale Charges List”) of the NCA which lists the fees and charges that the credit provider may include as part of the principal debt in an instalment sale agreement, namely: (a) an initiation fee; (b) the cost of an extended warranty agreement; (c) delivery, installation and initial fuelling charges; (d) taxes, licenses or registration fees; and (f) credit insurance premiums. This is in contrast to section 101(b) to (g) which also contains a closed list, but of the charges provided by credit providers: the initiation fee, service fee, interest, cost of credit insurance, administration charge, and collection costs.

The SCA agreed with the NCR that the Instalment Sale Charges List was a closed list. The Court referred to the wording “any of the following items” followed by a specific list, and the absence of a general catch-all phrase, to indicate the legislature’s intention. It held that these costs were specifically prescribed to protect consumers.

Green light: OTR fees as part of the principal debt

The SCA held that the NCA prohibits similar charges to those contained in the Instalment Sale Charges List to be added to the principal debt; but it does not regulate any other costs that a consumer and the credit provider may agree to (as part of the principal debt). This is evidenced by the fact that section 102 was headed “Fees or charges” and not “costs”.

The NCA defines “principal debt” as “the deferred amount in terms of the agreement plus the value of any item covered by section 102(1)” (section 101(1)(a)). The “amount deferred” is not however defined in the Act: the Court held that in the context of a motor vehicle, it would include more than just the price of the vehicle but also any other charges that could reasonably be regarded as part of the price. These would include optional accessories and services, like alloy wheels, a navigation systems, maintenance plans, tyre warranties, and roadside assistance. These items / services are not the “fees or charges” targeted by the Instalment Sale Charges List which is a closed list.

The SCA concluded that it was the nature of the charge is what matters, not its name. An extra charge should be examined to determine whether it forms part of the purchase price or falls within the category of fees listed in the Instalment Sale Charges List (e.g. “delivery” or “registration fees”). If it is a similar charge, it will be prohibited. For example, a credit provider is not allowed to impose a related charge on a consumer under a general line item such as “service charge”, “on the road fee” or “administration fee”.

Orange light: transparency requirements

The SCA ultimately dismissed the NCR’s appeals, meaning that the NCR’s compliance notices remained set aside. The Court however expressed concerns over the lack of transparency of OTR fees, noting that financing even small amounts over time could generate substantial profits for credit providers and massive costs for consumers.

To address this and align industry practice with the Act’s purpose of protecting consumers, the SCA laid down three key requirements for all future transactions:

1. Any OTR items added to the purchase price must be individually specified, and the nature and cost of each item must be clearly stated.
2. Consumers must be explicitly asked whether they wish to pay cash for these items or finance them as part of the principal debt.
3. To ensure an informed choice, consumers must be shown the difference between the cash price of the items and the total cost (including interest) if financed.

Speeding ahead: the significance of the Judgment

The judgment brings legal clarity to what are permissible charges can be included under an NCA instalment sale agreement. OTR fees can be financed, provided they are reasonably related to the vehicle and are not similar to the fees and charges set out in section 102(1): the Instalment Sale Charges List. Additionally, credit providers must clearly disclose OTR fees and what their financing would like look compared to the consumer paying for them in cash.

Credit providers will need to update their documents and processes, working together with the dealers who are on the floor. Consumers are well minded to compare the financed price of the OTR fees with a cash payment. They should consider which option is preferable, given the high cost of financed OTR fees, which are subject to compound interest over time.



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