

11 October 2023

[REDACTED]
Compass Communications Limited
Level 2, 162 Grafton Road
Grafton, Auckland 1010

By email only: [REDACTED]

Dear [REDACTED]

Civil infringement notice under Section 156A(1)(p) of the Telecommunications Act 2001

Purpose of this letter

1. The Commerce Commission (**Commission**) has been investigating Compass Communications Limited (**Compass**) under the Telecommunications Act 2001 (**Act**). We have now completed our investigation and are writing to inform you of the outcome.
2. In summary, the Commission considers Compass is likely to have breached section 156A(1)(p) of the Act by failing to comply with the Commission 111 Contact Code (**the Code**) without a reasonable excuse during the periods noted in this letter.
3. The purpose of this letter is to inform Compass that the Commission has decided to serve two civil infringement notices on Compass under section 156D of the Act for a likely breach under section 156A(1)(p) of the Act.

Compliance with the Code and the role of the Act

4. The purpose of the Code is to ensure that vulnerable consumers, or persons on their behalf, have reasonable access to an appropriate means to contact the 111 emergency services in the event of a power failure.
5. The Code sets out a range of obligations designed to ensure that consumers are made aware of, and are regularly informed about the Code, including the protections available to vulnerable consumers.

6. Compliance with the Code is important because it ensures that consumers are aware that modern voice services do not work in a power outage, and provides a pathway by which vulnerable users can be assured of continued voice access to 111 emergency services in the event of a power failure.
7. Non-compliance with the Code, if it is found to have occurred without a reasonable excuse, breaches section 156A(1)(p) of the Act. The Commission can take enforcement action for such breaches, under section 156B of the Act.

Compass's non-compliance with the Code

8. Compass is a provider of retail landline services to consumers. Under the Code, Compass must inform its retail landline customers about the Code, capably manage applications under the Code, and disclose information to the Commission each year. Failure to do so without a reasonable excuse gives rise to a likely breach of section 156A(1)(p) of the Act.
9. Between February 2021 and February 2023, Compass failed to comply with the Code the following ways:
 - 9.1 between 1 February 2021 and 19 January 2023, Compass failed to display any of the information required under clause 5 and specified in clause 6 of the Code, to meet its clause 7 obligations to provide Code information to consumers at the point of sale, on websites and via direct communication.
 - 9.2 Compass did not make available or operate a process for consumers to apply to be recognised as vulnerable under the Code, as required by clause 11, between 1 February 2021 and 19 January 2023; and
 - 9.3 Compass did not provide disclosure of its Code-related activities to the Commission as required by clause 38:
 - 9.3.1 at all, in the 2020/21 year, and
 - 9.3.2 its 2021/22 disclosures were provided late, on 10 February 2023, as part of this investigation.

Compass's explanation of its non-compliance with the Code

10. Compass stated, via written correspondence, and at interview that:
 - 10.1 Compass operates a wholly owned subsidiary – Connecta Limited (**Connecta**), which services consumers outside of urban areas.
 - 10.2 in the lead-up to the Code's implementation, Compass directors instructed the Compass and Connecta general managers to review the Code, and determine how it should be implemented across the businesses.

- 10.3 Compass and Connecta general managers concluded that the Code would apply to Connecta customers only, because Connecta customers would likely be outside of mobile coverage areas, and therefore the only service they would have capable of contacting 111 emergency services was their Connecta-supplied service.
- 10.4 as a result, Connecta took steps to comply with the Code, but Compass did not.
- 10.5 after the decision to implement Code compliance in Connecta, Compass experienced high staff turnover, and noted the disruptive impact of Covid upon its operations and staff not being located together, as they normally would.
- 10.6 the staff that received Code information in the email sent by the Commission were inappropriate to receive and act upon such information.
- 10.7 general awareness of the Code is low, even with experienced industry professionals.

Our view of reasonable excuse

11. A critical aspect of Compass' non-compliance is the original misapplication of the Code as being related to mobile coverage, rather than the means to contact 111 emergency services in the event of a power outage, and the resulting decision to not apply Code obligations to Compass.
12. General managers within Compass and Connecta were responsible for the review and application of the Code. It is reasonable to expect that between the two general managers, the Code's plainly written purpose and requirements would have been correctly identified and applied. This is not what occurred.
13. Between November 2020 and October 2022, the Commission sent six Code-related emails to senior managers within Compass. Compass did not acknowledge or otherwise act in response to these emails.
14. In October 2022 Compass responded to our contact seeking Code disclosure information, and then took steps to bring itself into compliance with the Code within three months of recognising its misapplication of the Code.
15. In our view, Compass does not hold a reasonable excuse for its non-compliance with the Code in the period between 1 February 2021 and 10 February 2023, giving rise to likely breaches of section 156A(1)(p) of the Act.

Available enforcement responses for a breach under 156A(1)(p)

16. Under section 156B(1) of the Act, the Commission may take one of the following actions where a person has failed, without reasonable excuse, to comply with section 156A(1)(p):
 - 16.1 serve a civil infringement notice under section 156D incorporating a pecuniary penalty of \$2,000;
 - 16.2 enter into enforceable undertakings; or
 - 16.3 apply to the High Court for an order requiring payment of a pecuniary penalty to the Crown.

Our decision to serve civil infringement notices

17. Section 156C of the Act sets out matters the Commission must consider when deciding what enforcement action to take under 156B of the Act.
18. The Commission uses its enforcement criteria to assist it in deciding whether to take enforcement action in response to a statutory contravention, and to assist it in deciding what enforcement action to take.¹
19. The enforcement criteria applicable are:
 - 19.1 the extent of detriment and gain;
 - 19.2 the circumstances, seriousness and culpability relating to non-compliance; and
 - 19.3 public interest.
20. Our assessment is that detriment is limited. Compass has a reasonable number of retail landline customers who did not receive information about the Code prior to February 2023. Compass' failure to provide Code disclosures in November 2021, and by 30 November 2022 did not cause significant impairment to the Commission's duty to monitor compliance with the Code under section 9A(1)(c) of the Act.
21. In our view, Compass' approach to complying with the Code was inappropriate. Compass has not provided further requested information regarding how its original decision to implement compliance with the Code was communicated to its board.
22. While there is nothing to indicate that Compass' failure to comply with the Code has resulted in actual harm to consumers, the nature of the Code and the information

¹ Further detail regarding our enforcement criteria can be found in our Enforcement Response Guidelines [here](#).

and protections it requires extended to consumers mean that non-compliance with the Code will always create an opportunity for harm to occur.

23. We consider that there is significant public interest attached to the purpose of the Code. It is ultimately designed to protect the vulnerable, at times when they are at increased risk.
24. In making our decision, we also considered that Compass does not have any history of non-compliance with the Act.
25. Based on our assessment of Compass' non-compliance against the enforcement criteria, we have decided in this case to issue two civil infringement notices.

Further information about the infringement notice.

26. We note that Compass is likely to have committed numerous contraventions of the Act though its complete failure to comply with the Code during the periods described in this letter. We are required to prescribe the particulars of an offence when issuing an infringement notice. To meet this requirement, we have elected to refer to the following breaches:

'between 10 October 2022 until 19 January 2023, Compass failed (without a reasonable excuse) to display any of the information required under clause 5 and specified in clause 6, to meet its clause 7 obligations to provide Code information to consumers at the point of sale, on websites and via direct communication.

&

'between 10 October 2022 until 19 January 2023, Compass failed (without a reasonable excuse) to make available or operate a process for consumers to apply to be recognised as vulnerable under the Code, as required by clause 11.'

27. The penalty for each of the alleged breaches is \$2,000, which is due for payment by **8 November 2023**.
28. Payment can be made by bank account transfer to the account of the Commission [REDACTED] or by cheque.
29. The infringement notices are attached to this letter. It is important that you read all the information on the infringement notices.
30. You may object to these infringement notices by making an objection to the Commission under section 156E of the Act by **8 November 2023**. You may also appeal any Commission decision on an objection to the District Court under section 156I of the Act.

31. We intend to include information about this enforcement response on our Case Register after any objections or appeals have been resolved. We may also issue a media release or make public comment about the outcome.

Our expectations regarding Compass's future compliance

32. We take non-compliance with the Code seriously. We expect Compass to ensure it maintains compliance with the Code.
33. While we will not be taking any further action against Compass at this time, we will take these infringement notices into account if this issue arises again, or if Compass engages in similar conduct in the future. We may also draw these infringement notices to the attention of a court in any subsequent proceedings brought by the Commission against Compass.

Further information

34. If you have any questions about this letter or the civil infringement notice, please contact Zeb Walker, Principal Investigator by email at [REDACTED].

Yours sincerely,

[REDACTED]

Tristan Gilbertson
Telecommunications Commissioner