

15 October 2021

Callplus Services Ltd

For the attention of: Emily Acland - General Counsel

By email only: [REDACTED]

Dear Ms Acland,

Fair Trading Act 1986: Warning for misleading notifications of price increases not permitted by customers' contracts

The Commerce Commission has been investigating Callplus Services Ltd (**Callplus**)¹ under the Fair Trading Act 1986 (**FT Act**) regarding representations it made when notifying in-contract customers about price increases for their broadband services.

We have now completed our investigation and are writing to alert Callplus of our concerns.

The Commission considers that Callplus communicated price increases to 20,533 in-contract customers in January 2019 when the price increases in question were not in fact permitted under the terms and conditions of those customers' contracts.

We are issuing you with this warning letter because in our view Callplus's conduct is likely to have breached s 13(i) of the FT Act on the basis that this price rise communication constituted a false or misleading representation of the existence of a right.

A warning is not a finding of non-compliance; only the courts can decide whether a breach of the law has occurred, and we have determined that at this time we will not be bringing legal action.²

We recommend that you consider the views described in this letter in the event of any future price rises affecting in-contract customers.

The investigation

During the investigation, the Commission considered complaints about Callplus increasing the price of its services, representations made by Callplus about these increases to customers, and the information contained in Callplus's contractual terms and conditions.

Callplus's terms and conditions for in-contract customer provided that:

¹ Trading as Slingshot and Orcon.

² Commission's published *Enforcement Response Guidelines* at [41].

If you have a minimum term contract with us, the charges for the Services covered by that contract will not increase until the end of that contract, unless an increase is as a result of a change in the price from a supplier for an input required for your Slingshot [or Orcon] Broadband Service (emphasis added).

Callplus provided a range of information about price increases, including that in January 2019 it increased prices for 20,533 in-contract customers by \$1 per month. This price increase followed an increase in input costs for Callplus and reflected a combination of:

- (a) increased recurring monthly access costs for each customer of between 27c and 33c/month; and
- (b) an anticipated increase in the cost of *non-recurring* charges associated with copper-based services, averaged out across the total number of customers with copper-based broadband services.

Affected customers were notified of the price increases by emails advising that “*your monthly broadband service cost will increase*” or that “*we’ll move you to our Unlimited Gigantic Fibre plan at \$99.95 per month*”.

How this conduct can break the Law

Section 13(i) of the FT Act prohibits traders from making false or misleading statements concerning the existence, exclusion or effect of any condition, warranty, guarantee, right, or remedy.

The Commission considers that Callplus’s notification of the January 2019 price increases represented to in-contract customers that it had a unilateral right to increase prices by that amount. In our view, this representation was false or misleading as Callplus did not have the right to increase prices to cover the anticipated non-reoccurring costs that formed the major component of this price increase. These non-reoccurring costs were not “*inputs required for*” the broadband services of the customers to whom they were charged as required by Callplus’s terms and conditions. Rather they are costs that may or may not be incurred for individual customers on an ad-hoc basis depending on each customers’ needs.

Callplus’ response

Callplus responded to the Commission’s enquiries by updating its terms and conditions to clarify the circumstances in which it may increase prices for in-contract customers and the rights that this will trigger for in-contract customers in response. It has also taken steps to refund in-contract customers who terminated their agreements and were charged early termination fees following the January 2019 price increase.

The Commission’s view

In this case, and having fully considered relevant information received, the Commission’s view is that it is likely that Callplus’s conduct breached s 13(i) FT Act.

We have reached this view because we consider in-contract customers receiving the January 2019 price increase communication would have been led to believe that Callplus had a right

to make the price increases set out in that notification. This was not in fact the case, leading to more than 20,000 consumers making increased payments they were not obliged to make.

Warning

After weighing up the factors set out in our Enforcement Response Guidelines, we have decided it is appropriate and sufficient to conclude our investigation by issuing this warning letter rather than by issuing legal proceedings.

This warning represents our opinion that Callplus's conduct is likely to have breached the FT Act and that legal action remains available to the Commission in future if the conduct continues or is repeated.

We may draw this warning letter to the attention of a court in any subsequent proceedings brought by the Commission against Callplus.

This warning letter is public information and will be published on the case register on our website. We may also make public comment about our investigations and conclusions, including issuing a media release or making comment to media.

The Commission's role

The Commission is responsible for enforcing and promoting compliance with a number of laws that promote competition in New Zealand, including the FT Act. The FT Act prohibits false and misleading behaviour by businesses in the promotion and sale of goods and services.

Penalties for breaching the FT Act

As indicated above only the courts can decide if there has actually been a breach of the FT Act. The court can impose penalties where it finds the law has been broken. A company that breaches the FT Act can be fined up to \$600,000 and an individual up to \$200,000 per offence.

You should be aware that our decision to issue this warning letter does not prevent any other person or entity from taking private action through the courts.

Further information

We have published a series of fact sheets and other resources to help businesses comply with the FT Act and the other legislation we enforce. These are available on our website at www.comcom.govt.nz. We encourage you to visit our website to better understand your obligations and the Commission's role in enforcing the FT Act.

You can also view the FT Act and other legislation at www.legislation.co.nz.

Thank you for your assistance with this investigation. Please contact [REDACTED] – Senior Investigator on [REDACTED] or by email at [REDACTED] if you have any questions about this letter.

Yours sincerely



[REDACTED]
Investigations and Compliance Manager
Fair Trading Branch