

30 June 2022

Robert Bosch (Australia) Pty. Limited  
1555 Centre Rd  
Clayton, VIC 3168  
AUSTRALIA

By email: [REDACTED]  
[REDACTED];

Copy to: [REDACTED]

Attention: Directors – [REDACTED]; and Legal Counsel – [REDACTED]  
Copy to: Marketing Manager - [REDACTED]; and Manager, Corporate Communications - [REDACTED]

## **Fair Trading Act 1986: Warning for supplying chainsaws that do not comply with an Unsafe Goods Notice**

1. The Commerce Commission (**Commission**) has been investigating Robert Bosch (Australia) Proprietary Limited (**Bosch**) under the Fair Trading Act 1986 (the **FT Act**). We have now completed our investigation and are writing to inform you about our views.
2. In summary, the Commission considers that Bosch is likely to have committed an offence under section 40(1) of the FT Act, in that contrary to section 31(5) of the FT Act, it supplied the NanoBlade saw products (the **NanoBlade saws**) that did not comply with the Unsafe Goods (Chainsaws Without a Chain Brake) Indefinite Prohibition Notice 2012 (the **Notice**).<sup>1</sup>
  - 2.1 Screen captures of the NanoBlade saws are at **Attachment A**.
3. The Commission has decided in this instance to issue Bosch with a warning in respect of the conduct. A warning is not a finding of non-compliance; only the Courts can decide whether a breach of the law has occurred. In this case we have determined that at this time we will not be bringing legal action to establish fault.<sup>2</sup>

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<sup>1</sup> [www.gazette.govt.nz/notice/id/2012-go3557](http://www.gazette.govt.nz/notice/id/2012-go3557)

<sup>2</sup> Commission's published *Enforcement Response Guidelines* at [41].

**How this conduct can break the law**

4. Section 31(5) of the Act states:
  - (5) *No person shall supply, or offer to supply, or advertise to supply, goods—in respect of which there is in force a notice declaring the goods to be unsafe goods;*
5. The following chainsaws are declared unsafe goods:
  - 5.1 Any chainsaw without a chain brake; and
  - 5.2 Any chainsaw with a chain brake that does not comply with the performance requirements described under clause 7(2) of the Notice.
6. The purpose of the Notice is to reduce the risk of injury caused by kickback. The NanoBlade saws do not have a chain brake, and therefore, do not comply with the Notice, rendering them unsafe goods.
7. Supplying goods that fail to comply with the requirements of the Notice is a breach of the FT Act.

**The investigation**

8. The Commission became aware of the NanoBlade saws in June 2021, following a proactive assessment of chainsaws on the market for compliance with the Notice.
9. The Commission assessed the NanoBlade against the definitions of a chainsaw under the Notice, and are of the view that:
  - 9.1 they are powered machines;
  - 9.2 that drive an exposed chain for the purposes of cutting;
  - 9.3 are operated by being hand held; and therefore,
  - 9.4 need to be fitted with a chain brake that meets the requirements set out under clause 7(2) of the Notice.
10. Following our assessment, we had concerns that the NanoBlade saws were not compliant with the Notice as they did not appear to be fitted with a chain brake.
11. The Commission subsequently gathered marketing material for the NanoBlade saws from social media. This included material which described the NanoBlade saws as a micro chainsaw, and indicated that the saw operation was similar to a regular chainsaw, i.e. a rotating chain that revolves around a guide bar for the purpose of cutting, and that the product was suitable for cutting branches.

*Bosch's response*

12. You confirmed that Bosch supplied 3,877 units of the NanoBlade saws between 9 November 2017 to 1 July 2021.
13. During the investigation, you confirmed:
  - 13.1 the NanoBlade saws were not fitted with a chain brake;
  - 13.2 no assessment had been made of the NanoBlade saws against the Notice prior to offering for supply in New Zealand; and
  - 13.3 the NanoBlade saws were assessed for kickback risk from a qualified laboratory (Dekra) that indicate the risk is low.
14. You also advised that:
  - 14.1 After consideration of the Commissions concerns, Bosch is of the view that the Notice was not applicable to the NanoBlade saws, as they were more akin to reciprocating saws (such as a jigsaw or sabre saw) in their intended use and associated risks; and
  - 14.2 the design of the chain and how it is exposed is different to that of a regular chainsaw. Bosch advised that the NanoBlade saws are innovative and there is no equivalent tool on the market.
15. Bosch maintains that it has not received any complaints nor been made aware of any safety issues in relation to the NanoBlade saws.
16. Bosch withdrew the NanoBlade saws from supply in December 2021 and are in the process of undertaking a recall of all the units supplied in New Zealand.

**The Commission's view**

17. The Commission is of the view that Bosch is likely to have breached the FT Act by supplying the NanoBlade saws, that do not comply with the Notice for the reasons set out above at paragraph 9.
18. 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.
19. In making our decision we note that Bosch has assessed the kickback risk as low. However, our view is that the NanoBlade saws meet the definition of a chainsaw under the Notice and therefore should have been assessed against the requirements. We also note Bosch's decision to recall the product.
20. We advise and encourage Bosch to regularly review its compliance procedures and policies to ensure they're up to date. We recommend you keep up to date with and

familiarise yourselves with your obligations under New Zealand’s product safety standards, unsafe goods notices and check any regulated products you supply to ensure they meet the requirements of the applicable safety requirements. If Bosch is unsure of the applicable requirements, or believes they may not be applicable, it should seek independent legal advice.

### **Warning**

21. This warning represents our opinion that the conduct in which Bosch has engaged 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.
22. We may draw this warning letter to the attention of a court in any subsequent proceedings brought by the Commission against Bosch.
23. 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**

24. The Commission is responsible for enforcing and promoting compliance with a number of laws that promote competition in New Zealand, including the FT Act. Regulations setting mandatory safety standards for certain products are enforced by the Commission under the FT Act, as well as Notice’s declaring goods to be unsafe.
25. We have published a series of fact sheets and other resources to help businesses comply with the FT Act, other legislation we enforce. These are available on our website.<sup>3</sup>
26. We encourage you to visit our website to better understand your obligations and the Commission’s role in enforcing the FT Act.
27. You can also view the FT Act and other legislation at [www.legislation.co.nz](http://www.legislation.co.nz).

### **Penalties for breaching the Fair Trading Act**

28. 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.
29. 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.

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<sup>3</sup> [www.comcom.govt.nz/business/your-obligations-as-a-business/product-safety-standards](http://www.comcom.govt.nz/business/your-obligations-as-a-business/product-safety-standards)

30. Thank you for your assistance with this investigation. Please contact Simon Foster on 09 951 1473 or by email at [simon.foster@comcom.govt.nz](mailto:simon.foster@comcom.govt.nz) if you have any questions in relation to this letter.

Yours sincerely

A handwritten signature in black ink, appearing to read "Grant McIntosh". The signature is written in a cursive, flowing style.

Grant McIntosh

Product Safety and Consumer Information Standards Manager

## Attachment A



AdvancedCut 50

Compare



EasyCut 50

Compare

ALL 12V



EasyCut 12

Compare

ALL 18V



AdvancedCut 18

Compare