

21 March 2019

Ms [REDACTED]
General Counsel
Callplus Services Limited

AUCKLAND
Level 13, 55 Shortland Street
PO Box 105-222, Auckland 1143
New Zealand
Tel: +64 4 924 3600

www.comcom.govt.nz

Via email only: [REDACTED]

Dear Ms [REDACTED],

Fair Trading Act 1986: Warning

The Commerce Commission (the **Commission**) has been investigating Callplus Services Limited, trading as Slingshot (**Slingshot**) under the Fair Trading Act 1986 (**Act**). We have now completed our investigation and are writing to you to alert you to our concerns.

In summary, the Commission considers that Slingshot is likely to have misled consumers by failing to make it clear that the advertised discount for bundling broadband and electricity services was conditional on consumers paying their invoices promptly.

We are issuing you with this warning letter because in our view, Slingshot's conduct is likely to have breached s13(g) of the Act. 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 to establish fault.¹

The investigation

Between July 2017 and May 2018, Slingshot ran an advertising campaign offering consumers a discount if they bundled Slingshot broadband and electricity services (**promotion**). A link to a video providing an example of advertising, and the consumer sign-up process is provided as **Attachment A**.

The specific terms of the promotion were that consumers would receive a 10% discount on the cost of the broadband plan and charges for electricity services, provided they entered into a contract to receive both services from Slingshot *and* then paid their invoices by the due date for prompt payment specified on the invoice.

It was this final condition (payment of invoices by the specified prompt payment due date) that the Commission was concerned was not adequately disclosed to consumers in Slingshot's advertising of the promotion. The Commission accordingly initiated an investigation into whether consumers were liable to be misled by the promotion.

The law

Section 13(g) of the Act prohibits false or misleading representations of price.

¹ Commission's published *Enforcement Response Guidelines* at [41].

Slingshot's response

Slingshot responded to the Commission's enquiries by amending its website to clearly reflect that prompt payment was required to receive the 10% discount.

The Commission's view

In this case, and having considered relevant information received, the Commission's view is that Slingshot's conduct is likely to have breached section 13(g) of the Act.

We have reached this view because consumers viewing the representations about the promotion on Slingshot's website were likely to have formed the impression that it was the act of bundling broadband and electricity services that provided them with a discount.² Where, in actuality, the act of bundling broadband and power services only provided consumers with the ability to receive a discount *if* their invoices were then paid by the prompt payment due date.

After consumers had entered Slingshot's sign-up process, Slingshot provided information in an Offer Summary which accurately portrayed the promotion. In our view, presenting the correct information at a later point in a purchasing process does not remedy the impression created by the initial representation.

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 issuing legal proceedings.

This warning represents our opinion that the conduct in which Slingshot has engaged is likely to have breached the Act, and that legal action remains available to the Commission in future if the conduct continues or is repeated. We may also draw this warning to the attention of a court in any subsequent proceedings brought by the Commission against Slingshot.

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

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 Act. The Act prohibits false and misleading behaviour by businesses in the promotion and sale of goods and services.

² We also note that consumers may have formed the view that the payment by the due date earned them an additional discount.

Penalties for breaching the Fair Trading Act

Only the courts can decide if there has actually been a breach of the Act. The court can impose penalties where it finds the law has been broken. A company that breaches the 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 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 Act.

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

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

Yours sincerely



[REDACTED]
Wellington Consumer Manager

Attachment A – Link to Example Advertising

<https://youtu.be/rMa&zTdw7Xw>