

3 June 2020

The Directors  
Auckland Commercial Solar Ltd, previously Country Connect Solar Ltd T/A Supercharged  
Energy

[www.comcom.govt.nz](http://www.comcom.govt.nz)

Attention: [REDACTED]

Via email: [REDACTED]

**Fair Trading Act 1986: Warning letter to Auckland Commercial Solar Ltd, previously Country Connect Solar Limited t/a Supercharged Energy**

1. The Commerce Commission (**Commission**) has been investigating Auckland Commercial Solar Ltd, previously Country Connect Solar Limited trading as Supercharged Energy (**Supercharged**) under the Fair Trading Act 1986 (the **Act**).
2. We have now completed our investigation and write to issue you with this warning that in our view Supercharged is likely to have breached sections 12A and 13(g) of the Act by:
  - a. making unsubstantiated claims in contravention of s12A, on its website at [www.superchargedenergy.co.nz](http://www.superchargedenergy.co.nz) (the **website**) as to:
    - i. the number of installations completed by Supercharged;
    - ii. the monetary savings made as a result of its installations;
    - iii. the total carbon emissions saved as a result of its installations; and
    - iv. the savings prospective customers could expect to their energy costs.
  - b. making false or misleading representations in contravention of section 13(g) that the advertised prices were GST inclusive when that was not the case.
3. A warning is not a finding of non-compliance; only 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.<sup>1</sup>

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<sup>1</sup> Commission's published Enforcement Response Guidelines at [41]

### **The investigation**

4. The Commission investigation was opened after complaints were received from consumers about Supercharged's activities in the King Country and other areas.
5. The complaints received related to Supercharged's conduct in advertising and making various representations to complainants including that it would supply "free" solar panels and that the price of the panels advertised on the website suggested that the prices were GST inclusive. There were also complaints that the panels provided as part of the "free" solar panel system would not generate sufficient electricity to meet the electricity savings claimed on its website. There was a concern at the length of contracts being offered to customers with significant break fees.
6. As part of our investigation, we gathered information from complainants to the Commission, from the Energy Efficiency and Conservation Authority (**EECA**), the Electricity Authority (**EA**), and reviewed statements made on the website.
7. Supercharged co-operated with the Commission's investigation and voluntarily supplied information and documents. Supercharged's Director also attended a voluntary interview with the Commission.

### *Issues investigated*

8. The Commission's investigation looked at the complaints received, and also focused on whether the claims made on the website to induce members of the public to contact Supercharged to use its services, were accurate and could be substantiated.
9. The particular claims made on the website which were investigated were that:
 

Attachment A: "our solar panels to date have avoided 324,000 tonnes of carbon emissions and we have saved our clients over 82 million dollars in power charges with just 25,000 installations."
10. The Commission had also received complaints that the advertised claim that consumers could "save up to 70% on your energy costs" was not accurate.
11. These claims were located on a page on Supercharged's website which made them appear to relate to its residential installations and retail contracts.
12. We also investigated a complaint relating to pricing by Supercharged on its website that alleged that the advertised prices failed to disclose that prices referred to were GST exclusive.

### *Supercharged's response to allegations*

13. The Director of Supercharged, Mr Richard Homewood, responded to the Commission's request for information and said in response to the allegations during an interview that:

- c. He did not think that Supercharged had advertised savings of up to 70% off their power bill, and thought that statement was likely in relation to another, possibly commercial, product;
  - d. That it wasn't immediately clear to Supercharged that the representations around price were exclusive of GST, and therefore GST would need to be added on and that since it had been raised by the Commission it was now explicitly advertised and made clear in over the phone sign ups;
  - e. That the claim relating to 25,000 installations was based on the total number of installations done across a number of companies (related to Supercharged through a shared Director) over a 15 year period across Australia and New Zealand. The following representations flowed from that same figure:
    - i. That Supercharged had saved \$82m of power charges for its clients; and
    - ii. That Supercharged's solar panels had avoided 324 000 tonnes of carbon emissions.
14. Mr Homewood, on behalf of Supercharged, subsequently advised that it has rebranded the company to Auckland Commercial Solar Limited to reflect a change in focus for the business from retail to commercial activities.
15. It has now advised its residential customers they would be released from their 'free solar contracts'; no break fees would be applied; customers could keep their solar panels free of charge, and customers would be free to switch away from Supercharged at any-time.
16. Supercharged has proactively refunded or credited the GST component of any purchases made by customers who approached it through the website.
17. Mr Homewood confirmed that the website had now been amended so that pricing is only available on request, and staff members who receive price enquiries are being trained to make clear whether the price is GST inclusive or exclusive.
18. It is no longer acquiring any new retail customers (for "free" solar or otherwise). It has further reviewed its website and advertising material, which has resulted in a number of changes to reduce, as much as possible, the risk of a customer misunderstanding the nature of the product or the price.

### **Legal framework**

19. Section 12A of the Act prohibits a person, in trade, from making an unsubstantiated representation.

#### **12A Unsubstantiated representations**

- (1) A person must not, in trade, make an unsubstantiated representation.

(2) A representation is *unsubstantiated* if the person making the representation does not, when the representation is made, have reasonable grounds for the representation, irrespective of whether the representation is false or misleading.

(3) This section does not apply to a representation that a reasonable person would not expect to be substantiated.

(4) In this section and [sections 12B to 12D](#), *representation* means a representation that is made—

(a) in respect of goods, services, or an interest in land; and

(b) in connection with—

(i) the supply or possible supply of the goods or services; or

(ii) the sale or grant or possible sale or grant of the interest in land; or

(iii) the promotion by any means of the supply or use of the goods or services or the sale or grant of the interest in land.

20. Section 13(g) of the FTA prohibits a person, in trade, in connection with the supply or possible supply of goods or services, from making a false or misleading representation with respect to the price of any goods or services.

#### **The Commission's view**

21. Having considered the available evidence, including the information provided by Mr Homewood on behalf of Supercharged, the Commission's view is that Supercharged has likely contravened section 12A for making unsubstantiated claims on its website as to:
- f. the number of installations completed by Supercharged (25,000 in New Zealand);
  - g. the monetary savings made as a result of its installations (\$82 million in electricity savings for its customers);
  - h. the total carbon emissions saved (324,000 tonnes); and
  - i. the possible savings prospective customers could expect of up to 70% off their energy costs.
22. Based on information received from EECA and the Electricity Authority website, and Mr Homewood's admission in interview that these claims related to other companies based in Australia, and were not intended as a reference solely to Supercharged in New Zealand (which is the clear impression given to consumers in the statement), Supercharged made the representations without reasonable grounds and we consider that there is sufficient evidence of a likely breach of the Act.
23. In addition, we consider that there is evidence of a likely breach of section 13(g) of the Act, in that the Supercharged website failed to make it clear that its advertised prices were in fact GST exclusive. In failing to make it clear that advertised prices

excluded GST, consumers may have been misled as to the total price of the solar panels.

24. As a result of the Commission's view, we recommend that Supercharged seeks legal advice and takes all steps necessary to ensure that it complies with its obligations under the Act. We also encourage Supercharged to regularly review its compliance procedures and policies.
25. Based on the information provided by Supercharged as to the steps it has taken to address the concerns identified by the Commission, including changes to the company's operating model, and the transfer of its residential retail contracts to another provider, we will not be taking any further action against Supercharged at this time. However, we will take this warning into account if this conduct continues or if Supercharged engages in similar conduct in the future. We may also draw this warning to the attention of a court in any subsequent proceedings brought by the Commission against Supercharged.
26. We suggest that in the future Supercharged should also take care to ensure that any statements made in its advertising that Supercharged is a 'leading' provider of solar in New Zealand are made on reasonable grounds. We query the basis for this representation given the number of ICPs that Supercharged advised it had at the time of the investigation. Care also needs to be taken to ensure that when using the word 'free' in connection with the supply of goods and services, that the items are truly free and the cost not built into the price of the product or in this case, continue to remain the property of Supercharged.
27. This warning letter is public information. We may make public comment about our investigations and conclusions, including issuing a media release or making comment to media.



#### **The Commission's role**

28. 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.

#### **Penalties for breaching the Act**

29. Only the courts can decide if there has actually been a breach of the Act and impose penalties where 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 breach.
30. 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**

31. 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](http://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.
32. You can also view the Act and other legislation at [www.legislation.govt.nz](http://www.legislation.govt.nz).
33. Thank you for your assistance with this investigation. Please   
 if you have any questions about this letter.

