

9 January 2020

BXT International Limited
1301 Bank of America Tower
12 Harcourt Road
Central
Hong Kong

Attention: [REDACTED] - Director

Via email at [REDACTED]

Dear Mr [REDACTED],

Fair Trading Act 1986: Warning

1. The Commerce Commission (**Commission**) has been investigating Hong Kong based company, BXT International Limited and its related companies (together referred to as **Becextech**) under the Fair Trading Act 1986 (**FTA**). Our investigation has concerned representations made on the website www.becextech.co.nz (the **website**).
2. We have now completed our investigation and are writing to alert you about our concerns.
3. We are issuing you with this warning letter because in our view, Becextech's conduct is likely to have breached sections 10, 12A, 13(d), 13(g) and 36U of the FTA. 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
4. The Commission considers that Becextech has likely breached the FTA because it likely:
 - 4.1 Mised consumers into believing that they were buying new mobile phones at a discounted price, when in fact the phones were refurbished. In our view, Becextech likely misled consumers by failing to clearly disclose this fact.

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

- 4.2 Sold consumers extended warranties that did not contain the mandatory disclosure information for such agreements.
 - 4.3 Made unsubstantiated, false and/or misleading representations about the price of goods. Becextech represented certain goods as being available at discounted prices and 'on-sale' without having reasonable grounds to support the level of discount claimed.
5. If any of this conduct is continuing, we recommend that you take immediate action to address our concerns and seek legal advice about complying with the FTA.

The investigation

6. Becextech is an online retailer of electronic goods specialising in mobile phones, computers, tablets, and digital cameras. The Commission understands that many New Zealand consumers discovered the website because it was listed as a retailer on the price comparison website, www.pricespy.co.nz. Becextech is no longer listed as a retailer on that website.
7. The Commission has provided Becextech with guidance and compliance advice in the past. Our current investigation focussed on concerns about Becextech:
- 7.1 failing to clearly disclose to consumers that certain phones it was selling were refurbished, and not new;
 - 7.2 failing to provide consumers with certain mandatory information concerning the extended warranties it was offering for sale; and
 - 7.3 making unsubstantiated, misleading and/or false representations that goods were being offered at a special price "on sale".
8. The Commission undertook test purchases and reviewed information on the website to assess the allegations. Becextech provided information to the Commission about the sale of extended warranties and prices appearing on its website.

Becextech's response

9. Becextech responded to the Commission's enquiries by agreeing to make changes to its practices, including:
- 9.1 prominently disclosing (ie as the first word in relevant product descriptions), when a product is refurbished;
 - 9.2 stopping selling extended warranties; and
 - 9.3 altering pricing practices to ensure that any discount claims made are based on a price recently charged by Becextech, and are capable of being substantiated.

The Commission's view

10. In this case, and having fully considered relevant information received, the Commission's view is that it is likely that Becexotech's conduct breached the FTA in the following ways:

Selling refurbished goods as new

11. In our view, Becexotech is likely to have breached ss10 and 13(d) of the FTA by not clearly disclosing in the headline product description when a product was refurbished and not new.
- 11.1 Section 10 of the FTA prohibits a trader from engaging in conduct that is liable to mislead the public about the nature, manufacturing process, characteristics, suitability for a purpose or quantity of goods.
- 11.2 Section 13(d) of the FTA prohibits a person from making a false or misleading representation that goods are new or reconditioned.
12. We are concerned that refurbished products were listed on Becexotech's website without any indication in the product title that the products were refurbished and consequently consumers were likely to be misled into believing the product was new.
13. The product 'description' tab of Becexotech's website also did not disclose when products were refurbished. As this is a key characteristic of a product we consider that consumers are likely to expect that if a product was refurbished then this would be prominently disclosed near the headline description of the product.
14. We note that Becexotech has changed its website to accurately describe refurbished products.

Extended warranty agreements

15. The Commission also considers that Becexotech likely breached s36U of the FTA by failing to provide consumers who purchased an extended warranty with certain mandatory information.
16. We consider that Becexotech's agreement with consumers met the definition of an extended warranty agreement set out in 36T of the FTA because it was entered into at the same time as the goods were purchased and for an additional price.
17. Section 36U of the FTA requires that:
- 17.1 a copy of the agreement is given to the consumer at the time the consumer purchases the extended warranty; and
- 17.2 the front page of the agreement sets out:

- 17.2.1 a summarised comparison between the relevant Consumer Guarantees Act 1993 guarantees and the protections provided by the extended warranty agreement; and
- 17.2.2 a summary of the consumer's rights and remedies under the Consumer Guarantees Act 1993; and
- 17.2.3 a summary of the consumer's right to cancel the agreement under section 36V; and
- 17.2.4 the warrantor's name, street address, telephone number, and email address; and
- 17.3 all the terms and conditions of the agreement are included in the agreement, including-
 - 17.3.1 the rights and obligations of the warrantor and the consumer; and
 - 17.3.2 the duration and expiry date of the agreement (including whether or not the agreement expires when a claim is made); and
- 17.4 the total price payable under the agreement is disclosed in the agreement; and
- 17.5 the agreement is dated.
- 18. Commission staff undertook two test purchases of products from the website and at the same time purchased an extended warranty with each product.
- 19. No documentation relating to the extended warranty was provided, contrary to s36U of the FTA. When we enquired whether there was supposed to be any documentation supplied with the extended warranty, Becexotech's customer service staff replied with:

"Please allow us to inform you that the warranty (either original 1 year warranty + the extended warranty) is covered by our company. In case of breakdown, you just need to send it back to us or our repair agents in NZ.

For further information about warranty, please refer to:

<https://www.becexotech.co.nz/warranty-information-pg-20.html?CDpath=0>
- 20. The link was to Becexotech's general warranty information and did not contain the mandatory information about the extended warranty purchased. In our view, the information provided to consumers failed to comply with s36U of the FTA.
- 21. We note that Becexotech has since advised that it no longer sells extended warranties.

22. We set out further information on the requirements of s36U of the FTA at **Appendix A**.

Unsubstantiated representations of price

23. The Commission is also concerned that Becextech has made representations about discounts in its pricing that were unsubstantiated in likely breach of s12A of the FTA. We have reached this view because Becextech did not provide reasonable grounds for the pricing representations that we asked to be substantiated.
24. Section 12A of the FTA prohibits unsubstantiated representations, and states that a representation is unsubstantiated if the person making the representation does not have reasonable grounds for the representation, at the time it is made.
25. When asked to substantiate a range of price representations, Becextech indicated:
- 25.1 it was unable to provide any information in support of its pricing claims as that information could not be located; or
- 25.2 that the information it relied upon was outdated; or
- 25.3 in some cases, it estimated what the recommended retail price of an item would be, prior to that item being released to the market by the manufacturer.
26. We consider that Becextech did not have reasonable grounds for these representations, contrary to s12A of the FTA. Businesses must have reasonable grounds for a representation at the time it is made. Where representations are made on an ongoing basis, a business must ensure that it has reasonable grounds at all times to support the representations it makes.

Misleading representations of price

27. Section 13(g) of the FTA prohibits a person from making a false or misleading representation with respect to the price of any good or service.
28. The Commission considers that Becextech made misleading representations on its website by claiming that the goods were "on sale". We have reached the view that these representations were likely to be misleading because claiming goods are on sale is commonly understood to mean that the prices have been reduced from what a business normally sells goods for. Becextech does not offer consumers discounts from the prices it normally charges.
29. In relation to Becextech's practice of comparing the price it is charging, against a recommended retail price, or price charged elsewhere, we have reached the view that in some cases this practice is likely misleading. In some instances, Becextech claimed discounts from the price of new products, when selling refurbished

products. New and refurbished products are not the same, and in our view it is misleading to compare the prices of these products.

30. Claiming that goods are subject to a sale and representing that a discount is being provided without detailing what that discount refers to, likely misleads consumers into forming the incorrect impression that Becextech is offering discounts from prices it has charged previously.

Warning

31. 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.
32. One of the factors influencing our decision to warn Becextech was the steps it has taken to remedy its conduct, including stopping selling extended warranties and other steps to improve compliance.
33. This warning represents our opinion that the conduct in which Becextech has engaged is likely to have breached the FTA, 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 Becextech.
34. This warning letter is public information and will be published in the case register on our website. We may make public comment about our investigation and conclusions, including issuing a media release.

The Commission's role

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

Penalties for breaching the FTA

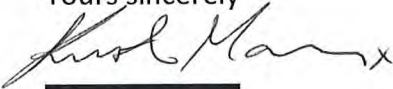
36. As indicated above, only the courts can decide if there has actually been a breach of the FTA. The court can impose penalties where it finds the law has been broken. A company that breaches the FTA can be fined up to \$600,000 and an individual up to \$200,000 per offence.
37. A company that breaches section 36U of the FTA can be issued with an infringement notice requiring payment of a fine of up to \$1,000. An infringement notice can be issued by the Commission if it has reasonable grounds to believe a trader has not complied with the disclosure requirements relating to extended warranty agreements. If the non-compliance is more serious, the Commission may choose to prosecute. Companies are liable to a fine of up to \$30,000 for each breach of the FTA. Individuals can be fined up to \$10,000.

38. 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

39. We recommend that you continue to seek legal advice and encourage you to regularly review your compliance procedures and policies.
40. We have published a series of fact sheets and other resources to help businesses comply with the FTA and the other legislation we enforce. These are available on our website at www.comcom.govt.nz. Enclosed with this letter are copies of our fact sheets "Pricing", "Buying and Selling Online" and "Extended Warranties" for your consideration.
41. We encourage you to visit our website to better understand your obligations and the Commission's role in enforcing the FTA.
42. You can also view the FTA and other legislation at www.legislation.co.nz.
43. Please contact [REDACTED] on [REDACTED] or by email at [REDACTED] if you have any questions about this letter.

Yours sincerely



[REDACTED]
Consumer Manager Wellington

Cc , Julian Technology NZ Limited, [REDACTED]
[REDACTED]

APPENDIX A

Section 36U of the FTA requires that:

- (1) A warrantor must ensure that every extended warranty agreement
 - (a) is in writing; and
 - (b) is expressed in plain language; and
 - (c) is legible; and
 - (d) is presented clearly
- (2) a copy of the agreement is given to the consumer at the time the consumer purchases the extended warranty; and
- (3) the front page of the agreement sets out:
 - (a) a summarised comparison between the relevant Consumer Guarantees Act 1993 guarantees and the protections provided by the extended warranty agreement; and
 - (b) a summary of the consumer's rights and remedies under the Consumer Guarantees Act 1993; and
 - (c) a summary of the consumer's right to cancel the agreement under section 36V; and
 - (d) the warrantor's name, street address, telephone number, and email address; and
 - (e) all the terms and conditions of the agreement are included in the agreement, including
 - (i) the rights and obligations of the warrantor and the consumer; and
 - (ii) the duration and expiry date of the agreement (including whether or not the agreement expires when a claim is made); and
 - (iii) the total price payable under the agreement is disclosed in the agreement; and
 - (iv) the agreement is dated
- (4) where reasonably practical, give the consumer oral notice, before the agreement is entered into, of
 - a. the consumer's right to cancel within 5 working days; and
 - b. how the consumer may cancel the agreement.