

17 January 2024

Callplus Services Limited
Level 2, 136 Fanshawe Street
AUCKLAND 1010

Attention: [REDACTED]

By email only: [REDACTED]

Dear [REDACTED],

Fair Trading Act 1986: Warning for misleading conduct and for making false and/or misleading representations around the sale of wiring & maintenance service

1. The Commerce Commission (**Commission**) has been investigating Callplus Services Limited, specifically two of its retail brands, Slingshot & Orcon (**Callplus**), under the Fair Trading Act 1986 (**FT Act**) regarding the sale of wiring & maintenance services (**W&M**).¹ We have now completed our investigation and are writing to inform you about our views.
2. The Commission has decided to issue Callplus with a warning because in the Commission's view, Callplus is likely to have breached section 11 and sections 13(e) and (h) of the FT Act.
3. 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 The purpose of this warning is to inform you of our view that there has been a likely breach of the FT Act, to prompt changes in behaviour and to encourage future compliance.³

CallPlus W&M

4. W&M was an ancillary service primarily offered by Callplus with its copper connection (ADSL/VDSL) services from approximately 2014 until approximately

¹ The retail brands of Slingshot & Orcon, owned by Callplus, both offered W&M as ancillary services that covered customers for faults occurring in integrated/internal wiring or splitters related to wear and tear.

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

³ Commission's published *Enforcement Response Guidelines* at [41].

25 July 2021 when it was replaced by a new service. The service covered customers for faults occurring in integrated/internal wiring or splitters related to wear and tear. If an applicable fault occurred, the W&M would cover the costs of repairing that fault including the call-out fee for the Chorus New Zealand Limited or local fibre company (together, **LFC**) technician attending the customers' residence/premises.

5. Customers on copper connection services benefitted from W&M by having faulty internal wiring, splitters, jackpoints and other wiring technology commonly used with copper connection services repaired at no cost.
6. However, W&M was not applicable/beneficial for customers signed up for naked fibre broadband services.⁴ These are often used without internal wiring and instead connect to devices using wireless fidelity technology (commonly known as Wi-Fi).

Background to investigation

7. Following completion of the Commission's investigation into Spark New Zealand Trading Limited (**Spark**) that resulted in a warning being issued and the provision of court enforceable undertakings,⁵ the Commission opened investigations into the sale of equivalent wire maintenance services in the wider telecommunications industry in August 2022. Callplus was one of those investigated.
8. During our investigation we obtained the following evidence, which we considered in reaching our view that there had been likely breaches of the FT Act:
 - 8.1 Callplus sold W&M as an optional service to ADSL and VDSL connection customers with and without land lines from around the early 2000s.
 - 8.2 It sold W&M to customers until around 25 July 2021, when the W&M was retired and replaced by a new optional service called "Protection Plan" (PP) that provided additional benefits than what W&M provided – for example, replacement of routers/modems or mesh units purchased by customers that are accidentally damaged.
 - 8.3 Customers with W&M on their accounts were automatically transferred to PP from around 26 July 2021 at no extra cost.
 - 8.4 Callplus was not aware of any issues around its sale of W&M until the Commission commenced its investigation and sent a request for information letter dated 26 August 2022. Callplus then commenced a review of its prior sale of W&M.
 - 8.5 During that review, Callplus identified that, since around 2014, naked fibre broadband customers had been allowed to have W&M added to their accounts as a result of W&M not been removed from optional selections in the applicable sign-up journeys. This resulted in a group of 21,800 naked

⁴ Naked fibre broadband service is a standalone fibre broadband connection without a land line.

⁵ See the Commerce Commission case register on the Spark investigation - <https://comcom.govt.nz/case-register/case-register-entries/spark-new-zealand-trading-limited7>

fibre broadband customers (**Impacted Customers**) having W&M on their accounts and had been invoiced and paid for W&M (referred to as “**Customer Incident**”).

8.6 Callplus acknowledged to the Commission its error that caused the Customer Incident and initiated a process to identify and refund the Impacted Customers (including former customers), who had selected W&M and paid the W&M fees up until its retirement.

8.6.1 Impacted Customers who were existing Callplus customers, were refunded around December 2022.

8.6.2 Impacted Customers who were former Callplus customers, were notified that refunds were available to be claimed by email and text messages after 14 February 2023, in small batches.

8.7 Callplus confirmed to the Commission in February 2023 that the Customer Incident impacted a total of 21,800 naked fibre customers that resulted in around \$1 million of W&M fees charged incorrectly and collected by Callplus.

Callplus response

9. During the investigation, Callplus advised the Commission that the cause of the Customer Incident was not intentional, and that it had failed to turn its mind to, nor taken any considered analysis of:
 - 9.1 the applicability of W&M to naked fibre broadband customers; and
 - 9.2 the suitability of processes built and established for copper connections to naked fibre broadband services.
10. Callplus advised that it had taken steps to remediate the Impacted Customers.
11. Callplus confirmed, by email of 20 February 2023, that all 9,205 Impacted Customers who were existing Callplus customers had been refunded a total of \$500,950 (including GST) before the end of 2022, which were applied as credits to customers’ accounts. It had identified 12,261 Impacted Customers who were former Callplus customers, to be refunded a total of \$507,992 (including GST); and
 - 11.1 Callplus confirmed, by letter of 30 June 2023, that it had reached out to those former customers by two separate emails and one SMS text message for each customer account.
12. Given that W&M had been retired since July 2021, Callplus advised the Commission that it did not believe there would be any need to implement further system fixes, but would remind applicable staff at all levels to proactively report any matters that required further investigation to determine whether an issue existed, and if so, promptly implement a fix.

13. As at 10 October 2023, 3,758 Impacted Customers who were former Callplus customers had been refunded approximately \$247,500. This left another \$260,492 still to be refunded to 8,503 others. Callplus informed the Commission that any unclaimed refunds would be treated as unclaimed money in accordance with the Unclaimed Money Act 1971.

How this conduct can break the law

Section 11: misleading conduct in relation to services

14. Section 11 of the FT Act prohibits any business from engaging in conduct that is liable to mislead the public as to the nature, characteristics, suitability for a purpose, or quantity of services.
15. We consider that Callplus likely engaged in conduct liable to mislead the public as to the characteristics and/or suitability for a purpose of W&M, and by:
- 15.1 offering it for sale to any naked fibre broadband customers; and
- 15.2 invoicing the Impacted Customers,
- Callplus' conduct was liable to mislead customers that the service was suitable for naked fibre broadband connections when it was not.
16. In addition, Callplus failed to advise the Impacted Customers and any potential Callplus naked fibre broadband customers that W&M's characteristics were not applicable/beneficial to naked fibre broadband services.
17. It is likely that this conduct was liable to mislead the Impacted Customers and any potential Callplus naked fibre broadband customers as to the nature, characteristics, and suitability for purpose of the W&M.

Section 13: false or misleading representations

18. Under section 13(e) and s 13(h) of the FT Act, no businesses shall, in connection with the supply or possible supply of goods or services, make false or misleading representations that services have any performance characteristic, uses or benefits;⁶ or concerning the need for any services.⁷
19. We consider that:
- 19.1 Callplus represented by continuing to invoice the Impacted Customers for W&M until it was retired around 25 July 2021 that the Impacted Customers had a need for W&M, and were receiving some use or benefit from W&M, despite it not being applicable/beneficial for those connections.

⁶ s 13(e), Fair Trading Act 1986

⁷ s 13(h), Fair Trading Act 1986

- 19.2 Callplus failed to inform the Impacted Customers and any potential Callplus naked fibre broadband customers that W&M was not applicable/beneficial for those connections.
20. It is likely these representations were false or misled the Impacted Customers that W&M had performance characteristics, uses or benefits which were applicable to naked fibre broadband services, and/or that the Impacted Customers had a need for W&M when they might not have.

The Commission's view

21. We consider that the nature of W&M (and internet connection services in general) makes it difficult for customers without knowledge of telecommunications technology to identify its suitability for them, any potential use or benefits, and whether they have a need for the type of service.
22. In those circumstances, it was important for Callplus to provide accurate, clear and complete information to customers about W&M before they made any purchase decisions. That included the benefit that the service might have, given their connection type.

Warning

23. The Commission has concluded, after assessing Callplus' conduct against the factors set out in our Enforcement Response Guidelines, that it is in the public interest to conclude our investigation by issuing this warning letter rather than by issuing legal proceedings.
24. This warning represents our opinion that the conduct in which Callplus has engaged is likely to have breached the FT Act. If this (or similar) conduct is continued or repeated, it is open to the Commission to take legal action in respect of that continued/repeated conduct. This warning would also be brought to the attention of a Court in any subsequently proceedings brought by the Commission against Callplus.
25. Based on the latest information provided by Callplus, we also note that the majority of the Impacted Customers who were former Callplus customers have not yet been refunded their W&M fees. It is unclear whether those customers could be reached by direct emailing and SMS messages.
26. While we acknowledge Callplus' confirmation that it would treat any unclaimed refunds as unclaimed money in accordance with the Unclaimed Moneys Act 1971, Callplus should:
- 26.1 explore any further efforts necessary to reach out to Impacted Customers who were former Callplus customers, other than just by direct communications, eg, regular newsletters, publicised webpages about the refunds; and

- 26.2 ensure that Callplus does not benefit from any unclaimed WMS fees that are yet to be refunded to those Impacted Customers who were former Callplus customers.
27. In reaching our decision to issue a warning, the Commission took into consideration that Callplus had offered W&M since the early 2000's, and that the lapse of time before Callplus was aware of the issue likely resulted in difficulties in reaching some of the Impacted Customers who were former Callplus customers to provide them remediation. The Commission acknowledged the steps taken by Callplus to attempt to communicate with those customers. The Commission also acknowledged Callplus's co-operation with our investigation.
28. 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 investigation and conclusion, including issuing a media release.

Additional guidance

29. To assist it with on-going compliance with the FT Act, we encourage Callplus to regularly review its internal compliance procedures and policies. While this investigation did not include the new PP service, Callplus should review its sale of the PP to customers (in light of the information contained in this letter) to ensure compliance with the FT Act.

The Commission's role

30. 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 Fair Trading Act

31. 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.
32. Callplus 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

33. 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 the obligations of Callplus and the Commission's role in enforcing the Act.
34. You can also view the FT Act and other legislation at www.legislation.co.nz.

35. Thank you for your assistance with this investigation. Please contact us if you have any questions about this letter.

Yours sincerely



Rachael Manttan

Acting Fair Trading Investigations and Compliance Manager