IN THE DISTRICT COURT
AT AUCKLAND

I TE KŌTI-Ā-ROHE
KI TĀMAKI MAKAURAU

CRI-2025-085-000680
[2025] NZDC 25736

COMMERCE COMMISSION NEW ZEALAND
Prosecutor

v

HELLOFRESH NEW ZEALAND LIMITED
Defendant

Hearing:	16 October 2025
Appearances:	D Houghton and K Hazard for the Prosecutor P Hunt and L Hui for the Defendant
Judgment:	16 October 2025

NOTES OF JUDGE K MAXWELL ON SENTENCING

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[1] The defendant HelloFresh New Zealand Limited appears for sentence having entered guilty pleas to five representative charges under s 11 of the Fair Trading Act 1986.

[2] The section prohibits any person in trade from engaging in conduct that is liable to mislead the public as to the quantity nature or characteristics of services. A Body Corporate that contravenes s 11 is liable on conviction to pay a fine of up to $600,000 per charge. The aggregate maximum penalty in this case is therefore $3.5 million dollars.

[3] The following overview is taken from the agreed summary of facts. HelloFresh launched in New Zealand in 2018 and provides meal box delivery services.

Customers sign up through the HelloFresh website or the HelloFresh app to receive weekly meal box deliveries. As at 15 February 2023, HelloFresh had 77,570 active customers in New Zealand. For the year ending 31 December 2022, HelloFresh had sales revenue exceeding 210 million dollars and a net profit of just over 11 million dollars. For the year ending 31 December 2023, sales revenue was approximately 145 million dollars with net profit of just under 2.5 million dollars.

[4] During the investigation the Commerce Commission was advised that HelloFresh employed 51 staff in New Zealand primarily for the management of operations. Call centre staff and those responsible for marketing, reactivation and customer service are based outside of New Zealand. During the charge period the call centres were based in Sydney, Manila and Zagreb. The remaining marketing and reactivation services were conducted from HelloFresh Group's Sydney office.

[5] HelloFresh provides a service involving the delivery, design and compilation of regularly changing meal boxes and recipes to customers. HelloFresh extensively utilised sign up offers to entice new customers and often heavily discounted initial meal boxes. HelloFresh operates according to a soft subscription model.

[6] Customers who sign up by default receive weekly box deliveries. Customers that want to customise their next box or who do not want to receive a box for a specific week can elect to edit or skip deliveries before the weekly cut-off date. Customers who wish to cancel their subscription must also do so by the weekly cut-off date or they will be charged for that meal box the following day.

[7] Customers can reactivate but not cancel their account on the HelloFresh app. Cancellation can only be completed online after following a four-step process. Customers can engage with HelloFresh using the live chat function available on both the app and website or via Facebook Chat.

[8] Through these channels customers were given the option to speak to a customer service representative if their problem could not be resolved by Chat bot. It is not possible to contact HelloFresh by email and during the charge period, and no phone number was provided in the contact us section of the website.

[9] The Commission commenced an investigation into HelloFresh in January 2023 after receiving a high number of complaints about its sign up, cancellation and reactivation processes. The Commission received 31 complaints from HelloFresh customers in relation to reactivation calls, 16 of which are included as instances of misleading conduct in this proceeding.

[10] The Commission also requested and reviewed a sample of 36 files for customers who had made complaints to HelloFresh. Of the 36 customers the Commission identified misleading conduct in 29 of the calls. The sample of the call recordings was limited to the period between February 2023 and July 2023 due to HelloFresh's deletion processes which will be discussed further shortly. HelloFresh cooperated with the Commission's investigations and provided detailed responses.

[11] Between February 2022 and July 2023, HelloFresh engaged in conduct that was liable to mislead the public through its implementation of the call strategy. Through that campaign consumers were liable to be misled into thinking that they were only acquiring the option to purchase discounted boxes at a future time when their account was in fact being reactivated.

[12] During the charge period HelloFresh used different marketing techniques that were aimed at reactivating accounts for customers who had cancelled subscriptions including emails, unsolicited calls and direct mail. The conduct at issue relates to the reactivation of accounts through unsolicited calls.

[13] Call centre staff were heavily incentivised to reactivate customers through a commission-based remuneration scheme. HelloFresh set targets for its call centre staff who made cold calls to customers to reactivate their accounts did so with reference to a script and after receiving HelloFresh onboarding training for outboard reactivations.

[14] The script originated from a global framework and had further development from the Growth Management Team to optimise that script for the local New Zealand market. The call script is attached to the agreed summary of facts at Schedule 2 and the HelloFresh outboard training for those call centre agents is also set out in

Schedule 2. A schedule summarising the experiences of various HelloFresh customers from calls and complaints to the Commission is provided at Schedule 3.

[15] The conduct by call centre agents was not an aberration but resulted from HelloFresh remuneration structure and training. These techniques are evident in the experiences of the complainants which were summarised in Schedule 3. Following a successful phone call reactivation HelloFresh's process was that customers should then receive a confirmation text or email. Without further action by the customer the boxes would then be delivered and the customer charged.

[16] HelloFresh stated that it performed checks to ensure that all reactivated customers received a confirmation email and SMS. For many of the calls in Schedule 3 there are HelloFresh records of reactivation SMS messages. However, in at least five instances, complainants advised that they did not receive or cannot remember receiving a reactivation SMS despite HelloFresh records indicating it had been sent.

[17] At least one customer who did receive the message disregarded it on the basis of her phone call conversation, thinking it was a mistake as she had clearly stated that she did not want to reactivate her subscription or that the message was a generic template which did not apply to her.

[18] Between 1 March 2021 and 31 July 2023, HelloFresh reactivated 89,156 cancelled subscriptions through unsolicited calls, 77,939 of those occurred during the charge period. While high cancellation rates are a feature of HelloFresh's soft subscription business model this number was notably higher than that for the two other main reactivation channels, namely post and email.

[19] The exact number of complaints HelloFresh received regarding call reactivations is unknown. During the investigation HelloFresh advised that due to the way it recorded interactions with customers it was not possible to isolate which customers had made complaints without a manual review of all customer calls.

[20] In addition, HelloFresh's group IT policy requires customer audio and chat files to be archived after 90 days and deleted after 180 days. However, HelloFresh had developed a canned response script alongside the other training material. This script included the line: "It's disappointing to hear that one of our representatives hasn't made it clear that this call would also reactivate your subscription."

[21] In January 2023, HelloFresh began tracking complaints relating to reactivation calls. In the seven-month period from 1 January and 31 July 2023, 424 complaints were received from New Zealand customers relating to call reactivations. HelloFresh ultimately refunded 258 customers including some customers who HelloFresh considered did not have a valid complaint. A number of complainants expressed difficulties receiving a refund after unwanted boxes were delivered.

[22] During the course of its written responses and interview HelloFresh advised the following:

(a) The reactivation call script was developed by HelloFresh's Growth Management Team based on the pre-existing HelloFresh Group global framework and was then optimised for the New Zealand market. Customer feedback collected during the calls is used in a range of ways to inform business priorities and on an anecdotal basis rather than as direct justification for product development or business initiatives.

(b) HelloFresh acknowledged that it had identified issues relating to adherence to processes within its call centres as well as gaps in its quality assurance and training procedures. They also acknowledged there was a sub-optimal incentive structure for the Zagreb call centre.

(c) Given HelloFresh's e-commerce business model the structure of the reactivation discount offers and HelloFresh's deliberately flexible customer offering it is very common for customers to deliberately reactivate and cancel after one delivery or before any delivery.

(d) It is not in HelloFresh's interests to reactivate customers without them knowing because it would be detrimental to the business. Further, boxes sold at a 40 per cent discount are unprofitable and therefore HelloFresh relies on customers continuing with their subscriptions following reactivation and/or reactivating their subscriptions in the future.

(e) On the relationship between HelloFresh New Zealand and the rest of the HelloFresh Group it explained that HelloFresh New Zealand is a standalone New Zealand company that has support from the German parent company. Further various business responsibilities for HelloFresh New Zealand are supported by a team based in Sydney. In addition, marketing strategies are created by head office in Germany but ultimately it is up to individual members of the HelloFresh Group to execute those strategies in accordance with what will work best in that market.

(f) HelloFresh owns all of the technology infrastructure, all of the intellectual property and software rights.

[23] After being notified of the Commission's investigation, HelloFresh conducted an internal investigation into the implementation of the call strategy in June 2023. An internal audit concluded that the Zagreb call centre had the highest proportion of unsatisfactory practices.

[24] HelloFresh suspended all outbound reactivation calls to New Zealand customers with all call centres on 31 July 2023 and terminated its relationship with the Zagreb third party provider regarding outbound reactivation calls to New Zealand.

[25] Call centre activities resumed in August 2023 in Sydney and Manila with an amended script and a new compliance process for call reactivations. HelloFresh has also developed trading material about the Fair Trading Act 1986. HelloFresh advised only minor instances of script non-adherence were discovered.

[26] As to the detriment to customers, customers who were charged for meal boxes in some cases suffered significant financial harm as a result of the conduct. Customers who did not realise and did not want their subscriptions to be reactivated were charged between $55 and $163 at a time without their express consent.

[27] Some customers that did not manage to cancel before an order was placed highlighted that the money taken by HelloFresh was their food budget for the week. Precise figures for the number of customers referred to debt collection during the charge period is not available. However, between 1 March 2021 and 20 November 2023, HelloFresh referred 1,105 customers whose accounts had been reactivated through the call strategy to debt collection.

[28] Between 1 January 2022 and 15 February 2023, 585 debt collection referrals took place for customers reactivated across all channels, i.e., calls, emails or post. Some affected customers also faced significant time, costs and frustration as a result of the conduct.

[29] Once customers became aware of the reactivation those who did not wish to receive meal boxes had to go on to HelloFresh's website and re-cancel their subscription. This was a four-step process which was accessible on HelloFresh's website, and which was unavailable on the HelloFresh app where other account management was conducted.

[30] Forty-three thousand six hundred and fifteen customers who reactivated their subscription during the call strategy period undertook the cancellation process before two boxes could be delivered despite a 40 per cent discount being offered on both the first and second box. Customers who attempted to contact HelloFresh faced a customer service interface that was not easily reachable.

[31] Customers could use a live chat function, but that interface was AI generated at the first instance. Only if the chat bot could not resolve their issue were customers offered the option to speak to a live representative. It was not possible to contact HelloFresh by email and a phone number was not readily available on the app or website. For that reason and for the reason that HelloFresh did not collate records of

complaints regarding the call strategy until January 2023, the true level of harm cannot be quantified.

[32] The summary records that HelloFresh has no prior convictions.

[33] The Fair Trading Act 1986 is consumer protection legislation. It has been said that sentencing should begin with the objects of the same, the purposes of which are to contribute to a trading environment where the interests of consumers are protected and in which consumers and businesses participate confidently.

[34] The relevant purposes and principles of sentencing as set out in the Sentencing Act 2002 also apply. It is not in dispute that the sentencing purposes of greatest importance and denunciation and deterrence. In providing deterrence to a company in this HelloFresh New Zealand Limited the main lever is a financial penalty at a level that deters both the current defendant company and others like it who might otherwise contemplate doing the same.

[35] All are agreed that there is no tariff judgment for Fair Trading Act 1986 offending. That said it is common ground that the culpability factors set out in the *Commerce Commission v L D Nathan & Co Ltd* and then reaffirmed by the Court of Appeal in *Commerce Commission v Steel &Tube Holdings* apply.[1] The list is neither mandatory nor exhaustive and customary sentencing methodology applies.

[36] The Commerce Commission identifies four specific aggravating factors by reference to the nature of this specific case. The other facts as set out in *Steel & Tube Holdings* are largely covered in the summary of agreed facts.

[37] First, the extent to which the conduct was highly misleading. The Commerce Commission submit that it is apparent from listening to the call recordings that salespeople used deliberately ambiguous language similar to that in the call script and that at times they acted in bad faith.

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[1] *Commerce Commission v L D Nathan and Co Limited* [1990] 2 NZLR 160, *Commerce Commission v Steel & Tube Holdings Ltd* [2020] NZCA 549.

[38] In many instances customers made clear statements that they did not want their subscription to be reactivated. Call centre ignored or glossed over customer resistance and hesitation and emphasised the ability of the customer to self-manage their account.

[39] Examples of the misleading conduct include the following.:

(a) Firstly, complainant 8, Chris, he ended his call saying: "I'll wait and see what you send through and if I decide to get more boxes I'll get more boxes." The call agent rather than making it clear that his account had already been reactivated with deliveries planned said: "Awesome, yeah well of course just check it out."

(b) Complainant 10, Glenis, was reactivated after specifically stating she did not want the subscription at this stage and checking that: "I'm not committed am I at this stage if I don't click on anything."

(c) Complainant 12, Adrian, declined the voucher saying he wasn't interested in HelloFresh. The agent then told him he could email the offer with an activation link for him to scrutinise at a later stage. The email link was in fact the confirmation text message confirming Adrian's subscription had been reactivated and a delivery scheduled.

(d) Complainant 13, Rhys, specifically asked at the end of his reactivation call: "It's not going to charge me until login and do anything is it?" Rather than the agent confirming that payment would be taken unless Rhys cancelled the order, he used ambiguous language and assured Rhys you will not be charged today.

(e) Complainant 24, Matt, was reactivated after ending the call saying: "I'm actually not looking to buy any HelloFresh at the moment." And when asked if he is happy to manage his account he says: "No, I think it's all good thank you."

[40] There are other examples.

[41] The Commission submits that there is an inherent dishonesty or fraudulent aspect to signing customers up for a service that they have made it clear they do not want. That this is what happened here, the Commission submits that the extent to which the calls were misleading is a highly aggravating factor and I agree.

[42] The second aggravating factor referred to by the Commission is the company state of mind and compliance systems. The Commission submit that the conduct in this case was not only wilful on the part of call centre staff but also driven by a wholly inadequate approach on HelloFresh's part to managing the campaign. That the training materials and script lent themselves to being implemented in a misleading way and agents remuneration structure incentivised sign ups over accuracy.

[43] The Commission make three points in this regard:

(a) Firstly, the remuneration structure incentivised reactivations. All call centre staff were heavily incentivised to reactivate consumers through a commission-based remuneration scheme with between 17 and 53 per cent of staff's total earnings coming from commission.

(b) Zagreb's call centre's agents received commission even if a box was cancelled prior to the delivery significantly increasing the prospect of call centre agents pushing to initiate reactivations at the expense of genuine customer buy-in.

(c) Call centre agents who were less successful in reactivating consumers received less pay and risked falling short of HelloFresh's targets which required call centre staff to make 20 calls and achieve two reactivations per hour.

[44] The Court also notes that the targets in the probation period for call centre agents feature at the start of the HelloFresh onboard training manual. The section in question headed "The Nitty Gritty".

[45] The second point made by the Commission are that the scripts created clear scope for misleading conduct. As already noted, call centre staff were provided with the script. That script operated from the inception of the call strategy and in the Commission's submission firmly created a context in which consumers were liable to be misled. This for the following reasons:

(a) Firstly, the premise of the call was to collect feedback with a discount offer put forward as a token of appreciation for that feedback.

(b) Secondly, reactivation is explicitly mentioned only once and at the very end of the script. In the purpose column agents are told to inform the customer: "We will apply the discount to their account." Not to inform that their account has been reactivated or that they will be charged.

(c) Thirdly, the Commission make the point that the concept of reactivation is phrased as a hypothetical namely in order to apply that discount customers would need to order a box, that you would save x amount per box. The script further sets out that customer's will not be charged today, re-emphasising the idea that consumers are not signed up to be reactivated as opposed to having a voucher applied to their account.

[46] The result of this ambiguity is seen in the call recordings summarised in Schedule 3 and calls have also been played in court today.

[47] Arguably the choice of the term 'script' lacks accuracy, there being no direction to follow the same. In any event it is clear from the attachments that the script is simply identified as an example for call centre agents.

[48] HelloFresh in submissions appear to accept that training did not have an emphasis on compliance. The Court's response is that there is no mention of compliance. If HelloFresh wish to argue that the intention of HelloFresh was unlikely to reactivate customers without their knowledge or consent, then that was not reflected in how it chose to manage the campaign. It cannot blame others, whoever they may be, for inadequate guidance of call centre agents.

[49] The third point raised by the Commerce Commission in relation to the question of the company's state of mind and compliance systems is inadequate training increased risk misleading tactics. Despite the premise of the phone calls to be to collect customer feedback the feedback was only used anecdotally.

[50] The calls were performed by the reactivations team rather than for example a customer care team. HelloFresh's outbound reactivations training document indicate that the true purpose of the feedback component of the call was reactivation.

[51] In other words, to build impulse and remind them that being the customers, how good HelloFresh is so that they will jump at the discounts. Staff were encouraged if they showed positive signs to get straight to the discounts, so you do not lose the impulse. The training encouraged call centre agents to create a sense of urgency and persist in the face of objection from customers.

[52] In the manual it records: "When a customer makes an objection at the end of your pitch this is not them saying no, they're just enquiring more information. Sometimes we found we have to re-loop multiple times and that's okay." The Commerce Commission make the point that this persistence is evidence in the experiences of the complainants. Arguably, in the eyes of HelloFresh 'yes' meant 'yes', 'maybe' meant 'yes', and 'no' meant 'yes'.

[53] The final point raised by the Commission is as regards a failure to act when issues were raised. HelloFresh did not start keeping records of complaints related to reactivation calls until January 2023 when the Commission investigation commenced. Prior to that complaints were not collated to enable recognition of negative consumer experiences.

[54] In the seven-month period between January 2023 and July 2023 HelloFresh received 424 complaints relating to call reactivations. Complaints at or around this volume during the charge period necessarily put the company on notice of issues in relation to the campaign.

[55] As noted earlier, HelloFresh developed a canned response script alongside other training materials which referred specifically to reactivation. Despite this canned response being in use during the charge period, HelloFresh did not take any effective steps to identify and resolve the scope of the issue.

[56] The Commission submits in short that the conduct by the call centre agents was wilful and sometimes executed in bad faith, that this is apparent when listening to the call recordings. At a more senior company level, the Commission submits that the contact was at least highly careless if not reckless.

[57] They submit that in many ways the call strategy ultimately functioned the way it was designed. It was the predictable result of HelloFresh's strategy and documents in terms of its script training and remuneration structure which prioritised reactivations over informed consent and told staff that when a customer makes an objection at the end of your pitch that is not them saying no.

[58] The third aggravating factor identified by the Commission is that campaign and call strategy was extensive. More than 1.2 million calls were made as part of the call strategy. In the 18-month charge period over 300,000 calls were answered and the call strategy elicited 77,939 customer reactivations.

[59] It is said that this is a significant number. Whilst it is not possible to quantify the precise portion of those customers who were actively misled the Commission submit that the evidence before the Court indicates that the conduct was at least reasonably widespread.

[60] The Commission refers to the approach to drawing inferences about the extent of likely dissemination based on the evidence available. They refer to authority which indicates that it is open to a Judge to find a pattern or course of conduct having regard to the particular factual matrix before it.

[61] The Commission submit that the conduct directly followed from a script, the training and the poor oversight practices that were developed by HelloFresh and

applied across three call centres. That examples of very similar misleading conduct have been identified in each call centre notwithstanding their geographical separation.

[62] As regards cancellations of the call reactivations during the charge period approximately 31.2 per cent cancelled before any box was delivered. Further, approximately 17.7 per cent cancelled after one box. That is 48 per cent of customers in total cancelling after one week or less notwithstanding that the discount voucher applied for four weeks. The Commerce Commission again make the point that this is in stark contrast to cases where customers accepted reactivation discounts via email.

[63] Ultimately the submission is made that there is a clear factual basis to infer the misrepresentations were at least reasonably common or widespread within the call strategy. That in the context of this case the size of the campaign is a significant aggravating factor.

[64] Whilst HelloFresh is critical of the Commerce Commission reference to cancellation figures in assessing the extent of the issue, that is not the only consideration.

[65] The Court does accept the submission that the misrepresentations appear to have been reasonably common. The source document namely the example script which guided call centre agents together with the additional training materials would indicate the same. Moreover, the fact that HelloFresh took the steps it did after the Commerce Commission involvement suggests that extensive corrective measures were in fact required. Suffice to say had HelloFresh kept records an even clearer picture may have emerged.

[66] The final aggravating factor relied upon by the Commission is the harm to consumers from a subscription trap. The Commerce Commission submit that this offending amounts in effect to a subscription trap. That is a deceptive sales tactic where customers are lured into recurring subscriptions payments often involving misleading or unclear terms and/or complex cancellation processes.

[67] In this case, customers could reactivate and fully manage but not cancel their account on the HelloFresh app. As mentioned, cancellation could only be completed online after following a four-step process. There were other challenges in contacting HelloFresh, complainants describing the process as difficult, complicated or not straightforward.

[68] The Commission submits that the increasing prevalence of digital platforms for services makes consumers especially vulnerable to harm from subscription traps and related conduct. That for many consumers the sums can be material at an individual level.

[69] For example, complainant 11, Angel, had her account reactivated despite saying she could not do it because her mortgage payments had gone up and she really can't afford it though. Another customer stated that the money deducted from their account was their food budget for the week. As already mentioned, a number of customers were referred to debt collection.

[70] Whilst subscriptions traps were historically less prevalent the courts have recognised that the inherent dishonesty and fraudulent nature of signing someone up to a contract that they have not entered into and then billing them is serious. Given HelloFresh's conduct, size and position as a large digital platform the Commission submits that a stern penalty is required for denunciation as well as both specific and general deterrents.

[71] I note that the Commerce Commission does not attempt a more refined assessment of harm and associated gain to HelloFresh. To do so would be impossible. I also do not see such an assessment as necessary to determine culpability in the specific case.

[72] Bearing in mind the aggravating factors the Court turns to the question of a starting point.

[73] The parties have referred to various authorities from both the High Court and the District Court. The Court is required to have regard to such authorities to ensure

transparency and consistency in sentencing practice. That said, each case falls to be considered on its own facts and each case is unique. HelloFresh is no exception. The Commerce Commission suggest a starting point in the order of 1.5 to 1.6 million.

[74] Relevant authorities referred to include the High Court judgment in *Commerce Commission v Vodafone ('FibreX')*.[2] The District Court decisions in *Commerce Commission v Youi Insurance Group Ltd* and the *Commerce Commission v Jetstar.*[3]

[75] On behalf of HelloFresh it is submitted that a starting point in the order of $900,000 is available. Reference is also made to the District Court decisions in *Commerce Commission v Auckland Academy of Learning*, *Commerce Commission v Go Healthy New Zealand Ltd,* and *Commerce Commission v Two Degrees Mobile Ltd*.[4]

[76] The FibreX judgment concerned 18 charges under s 11 for misleading customers about the nature and availability of its internet services nine of which related to branding. *Vodafone's* FibreX used a cabling which placed some limitations on the internet service which was not expected of true fibre connections.

[77] The Court was satisfied that the branding over approximately 17 months was grossly careless, that *Vodafone* did not have a sufficiently robust compliance structure and adopted a cavalier approach to its responsibilities under the Fair Trading Act 1986.

[78] The District Court declined to make any assessment of *Vodafone's* revenue of commercial gain noting to do so would be speculative. Some 1.8 million of the starting point was attributed to the misleading FibreX branding campaign.

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[2] *Commerce Commission v Vodafone* [2023] NZHC 2149.
[3] *Commerce Commission v Youi Insurance Group Ltd* [2016] NZDC 25857; and *Commerce Commission v Jetstar Airways Pty Limited* [2025] NZDC 18366.
[4] *Commerce Commission v Auckland Academy of Learning Ltd* [2017] NZDC 27148; *Commerce Commission v Go Healthy New Zealand Ltd* [2019] NZDC 25295; and *Commerce Commission v Two Degrees Mobile Ltd* [2025] NZDC 2446.

[79] In *Youi* the company was sentenced on 15 charges under s 11 for employing misleading sales techniques when attempting to sell policies to customers who were seeking a quote. The charge period covered 20 months.

[80] In written submissions, the Commerce Commission advised some 28,280 policies were sold via the quote process. The Commerce Commission in that case submitted that the company state of mind ranged from reckless to deliberate at the individual level and reflected systemic issues within the company. A starting point of $700,000 was adopted.

[81] In *Jetstar* there were 20 representative charges for having misrepresented consumers rights in relation to compensation claims following flight cancellations and delays that were within *Jetstar*'s control. During the relevant period of just over two years, just under 100,000 passengers were affected by flight cancellations.

[82] The representations were widely disseminated in messages and emails and reinforced by *Jetstar* training and policy documents that were inconsistent and contained incorrect information. Representations were misleading as they claimed limitations or restrictions on *Jetstar*'s liability that do not exist under New Zealand Aviation law. A number of concerns were also raised with *Jetstar* during the charge period.

[83] The Court considered that the conduct must be considered reckless. This described as a conclusion not lightly drawn by the Court. The Court considered the consequent harm to be extensive. A starting point of 2.5 million dollars was adopted.

[84] On behalf of HelloFresh it is submitted that the *Youi* authority is broadly comparable. That is said by reference to a similar number of representations, contact by agents acting contrary to the company intentions as a result of systematic failures, steps taken to remedy and cooperation.

[85] The Court notes the *Youi* decision is relatively concise. It reflects some agreement being reached between the parties as to outcome. The facts and authorities relied upon are not touched on in any detail.

[86] The Court in *Youi* referred to a table with eight areas which involved *Youi* failing to deliver. Namely, that the website gave the impression a quote was available online; a salesperson represented that payment details were required to generate a quote; that customers would not be charge; that they could cancel via email; invoices were sent without specifying there was no obligation to pay; cancellation was a problem; the company failed to action such requests; and the company charged or attempted to charge customers for unsolicited policies.

[87] The offending appeared to involve pressured sales and policies without consent in circumstances where there was more than one salesperson who fell short of the standards expected by the company. Whilst the offending in this took place over a similar period of time, the HelloFresh campaign by comparison was more extensive and was by a more well-known brand.

[88] *Youi* by contrast was targeted to those who sought quotes. Further, unlike in *Youi* sales agents in this case persisted even when the customer denied wanting the product. I accept that any starting point must be greater than that identified in *Youi.*

[89] At the other end of the scale there is *Jetstar*. I also agree that *Jetstar* is more serious having regard to the duration of the offending and the overall harm caused. That said, as in *Jetstar*, HelloFresh training and compliance systems contributed directly to the offending in this case and in both cases, customers being misled.

[90] FibreX similarly involved a major trader. The offending occurred over a similar timeframe as HelloFresh. As in FibreX, HelloFresh's conduct at the senior company level was more so grossly careless rather than wilful. The same cannot be said for the call centre agents.

[91] That said there is something unappealing about those at the senior company level blaming the call centre agents, those were tasked to secure business and who

were largely reliant on commission. HelloFresh should have known that its choice of campaign was liable to mislead. Whether HelloFresh intended to or not is not the critical question.

[92] As against that, FibreX case involved more sophisticated offending and a more extensive marketing campaign. Three times as many customers were secured, and the misrepresentation went to the fundamental characteristic of the product.

[93] Any starting point must be less than FibreX. It follows that any starting point falls somewhere between the authorities of *Youi* and FibreX. I adopt a starting point of 1.3 million dollars. I see the starting point as being proportionate to the offending.

[94] I turn to personal mitigating factors as there are no aggravating factors. By way of mitigation the Commerce Commission accepts that 20 to 25 per cent is available for plea. I allow the latter. Whilst pleas were entered at the case review hearing the same were intimated in advance.

[95] The Commerce Commission also accepts that allowance may be made for cooperation and previous good character. That five to 10 per cent may be considered appropriate. I allow 10 per cent. This reduces the nominal starting point to $845,000.

[96] The Commerce Commission then seeks an uplift for financial capacity. This is where the concept of a fine which said to 'sting' is engaged. That said, the fine must also maintain proportionality to the offending. The specific financial circumstances of HelloFresh are relevant to sentencing.

[97] In *Commerce Commission v Steel & Tube Holdings Ltd*, the Court observed that a wealthy defendant's means cannot be characterised as an aggravating factor in itself, rather they may justify increasing a fine to ensure it serves its purpose. It follows that in the likes of *Jetstar*, deemed a very large corporate, there was a 25 per cent increase for reasons of deterrence.

[98] An affidavit has been filed on behalf of the company which addresses recent financial issues. This would suggest that an uplift is not justified. I accept the contents

of the affidavit on that point and therefore decline to include an uplift. The fine in itself is a significant penalty. Moreover, it is not lost on the Court that the public nature of these proceedings has already likely had a cooling effect on the company beyond the scope of any fine that may be imposed.

[99] Given that HelloFresh is entitled to a discount of 35 per cent from the starting point of 1.3 million the aggregate fine of $845,000 is apportioned equally across the five charges, each charge being a fine of $169,000.

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Judge K H Maxwell
District Court Judge | Kaiwhakawā o te Kōti ā-Rohe
Date of authentication | Rā motuhēhēnga: 13/11/2025