



Media Release

Issued 14 October 2011/No. 42

Telecom pays \$31.6 million in compensation in settlement of sub-loop extension discrimination claim

The Commerce Commission has reached a \$31.6 million settlement with Telecom over alleged discrimination under the Telecom Separation Undertakings.

The settlement follows a decision by the Commission in May to issue legal proceedings alleging that Telecom had discriminated against other telecommunications companies in breach of the Undertakings by failing to provide them with unbundled bitstream access (UBA) in conjunction with the sub-loop extension service (SLES) when Telecom was providing an equivalent service to its own retail business.

The UBA/SLES service was intended to allow other telecommunications companies to provide their own voice services from their exchange based equipment in conjunction with a Telecom broadband service from a roadside cabinet. The Commission considered that Telecom's failure to provide this service to other telecommunications companies, while providing it to its own retail business, caused serious harm to competition in telecommunications markets, reduced the extent of local loop unbundling, and resulted in significant commercial gain to Telecom.

While Telecom does not accept that its conduct was in breach of the Undertakings, it acknowledges that it failed to meet expectations that it would provide a UBA service with SLES in a timely manner, and has agreed to pay compensation to its wholesale competitors who have been adversely affected.

“The \$31.6 million settlement means that Telecom has returned its commercial gain through the compensation it has agreed to pay to telecommunications companies Vodafone, Orcon, CallPlus, Compass and Airnet. This will enable these companies to invest further in local loop unbundling and provide competitive services to consumers. We are pleased that Telecom has worked constructively with the Commission to reach a settlement which has avoided lengthy and expensive litigation, and resolved the matter prior to structural separation coming into effect,” said Dr Patterson, Telecommunications Commissioner.

“In addition, Telecom is now in the process of rolling out its new Access Seeker Voice service which is intended to provide telecommunications companies with the equivalent functionality as the UBA with SLES service.” said Dr Patterson.

A copy of the settlement can be found on the Commission’s website at:

www.comcom.govt.nz/telecom-compliance-with-the-undertakings-uba-with-sles

Background

Unbundled Bitstream Access (UBA) service allows telecommunications companies to supply broadband services to retail customers without the need to replicate Telecom’s copper local loop.

Sub Loop Extension Service (SLES) is the copper connection between the local exchange and the roadside cabinet.

Separation Undertakings

In December 2006, the Telecommunications Act 2001 was amended. A key component of the amendments to the Act was Part 2A, which set out the requirement for the operational separation of Telecom.

The Act states that the purpose of operational separation is to:

- promote competition in telecommunications markets for the long-term benefit of end-users of telecommunications services in New Zealand;
- require transparency, non-discrimination, and equivalence of supply in relation to certain telecommunications services; and
- facilitate efficient investment in telecommunications infrastructure and services.

Part 2A was implemented by the Telecom Separation Undertakings, provided by Telecom to the Minister of Communications on 25 March 2008 in accordance with section 69K(2)(c) of the Telecommunications Act 2001.

Non-discrimination obligations were imposed on Telecom through clauses 31 and 56 of the Undertakings. The Commission is responsible for enforcing the Undertakings.

Penalties

While the Commission can take enforcement action, it is up to the courts to impose penalties. It is important to note that the penalties set out below are the maximum. It would be up to the courts to set appropriate penalties.

The High Court could impose penalties of up to \$10 million for a breach of the Separation Undertakings, plus \$500,000 per day for breaches continuing after the decision by the High Court. In addition, the High Court may order Telecom to pay damages to injured parties and may issue orders requiring Telecom to undertake other remedies, including injunctions restraining Telecom from behaviour that breaches the undertakings.

Media contact:

Allanah Kalafatelis, Communications Manager

Phone work (04) 924 3708, mobile 021 225 4417

Victoria Parry, Senior Communications Adviser

Phone work (04) 924 3709, mobile 021 225 4454

Commission media releases can be viewed at www.comcom.govt.nz