



MEDIA RELEASE

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Data Tails Case: Telecom considering penalty judgment

The High Court has today issued a penalty judgment of \$12m in relation to the historic 'data tails' case, which stems from the introduction of retail and wholesale pricing for data services, more than ten years ago, in a regulatory and competitive environment that was very different from today's.

Telecom is already appealing against the High Court's decision on liability (dated 9 October 2009) in this case and will consider today's penalty judgment carefully in that context.

The appeal is scheduled to be heard in September 2011.

The Commerce Commission alleged a widespread breach of the Commerce Act relating to all high speed data pricing between 1999 and 2004. However, the court found that breaches only occurred in the much more limited 'two data tails' scenario. Today's judgment recognises that this *"affected only a small proportion of [Telecom's] data transmission business"* – the balance of which pricing the Court held was compliant.

Telecom continues to believe that the 'two data tails' breach was technical and unintentional, and this is the basis of its appeal.

While today's judgment notes that Telecom's pricing strategy was deliberate, it emphasises that Telecom did not engage in a *"flagrant or willful"* breach of the Act.

The Commission's claim related to pricing that was superseded in late 2004 by regulated data transmission service pricing. Further regulation and, more recently, operational separation have meant that market

conditions at the relevant time also no longer exist and have not existed for more than five years.

As the case is currently before the court, Telecom has no further comment.

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