



Media Statement

26 May 2011

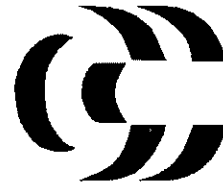
**COMMERCE COMMISSION MEDIA RELEASE – COMMERCE COMMISSION TO
ISSUE PROCEEDINGS AGAINST TELECOM**

The Commerce Commission has today released the attached media statement.

ENDS

Contact:

Mark Watts
Head of External Media
Telecom New Zealand
+64 (0)272 504 018



COMMERCE COMMISSION

Media Release

Issued 26 May 2011/No. 129

Commerce Commission to issue proceedings against Telecom for discriminating against other telco companies

The Commerce Commission is to issue proceedings alleging that Telecom is likely to have discriminated under the Telecom Separation Undertakings. The Commission alleges that Telecom failed to provide other telecommunications service providers with unbundled bitstream access (UBA) in conjunction with the sub-loop extension service (SLES), when it provided 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 unbundled exchanges in conjunction with a Telecom broadband service from a roadside cabinet.

The Commission considers Telecom's failure to provide this service to other telecommunications companies while providing it to its own retail business has caused serious harm to competition in telecommunications markets, deterred efficient investment by other companies in telecommunications infrastructure, and resulted in significant commercial gain to Telecom.

"Telecom's failure to provide this service has reduced the financial feasibility of unbundling local exchanges, reduced the extent of unbundling, and consequently reduced the extent of retail competition," said Dr Ross Patterson, Telecommunications Commissioner.

As the proceeding will be before the Courts, the Commission has no further comment.

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.

The UBA service enables access to, and interconnection with, that part of Telecom's fixed public data network that connects to the end-user's building to Telecom's first data switch (or equivalent facility) other than a digital subscriber line access multiplexer (DSLAM).

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

The SLES service provides a service provider or a Telecom business unit with access to, and interconnection with, the copper feeder cable running between a Telecom local exchange and an active Telecom distribution cabinet subtended from the exchange for the purpose of allowing the service provider or Telecom business unit to deliver services over sub-loop unbundled copper local loop (UCLL) service metallic path facilities (MPFs) from exchange based equipment, with the additional optional capability to combine exchange based services with a wholesale broadband service launched from a cabinet based DSLAM.

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. The Commission is investigating whether to take enforcement action under Part 2A of the Telecommunications Act.

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.

If the Commission finds that Telecom has failed to comply with the Separation Undertakings, the Commission may request that the High Court impose penalties of up to \$10 million for the breach, 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