

**TELECOM NEW ZEALAND LIMITED  
COMMERCE COMMISSION**

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**DEED OF SETTLEMENT**

**DATED**

*17 June*

**2010**

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DEED DATED 17<sup>th</sup> day of June 2010

## PARTIES

**TELECOM NEW ZEALAND LIMITED** (“Telecom”)

**COMMERCE COMMISSION** (“the Commission”) a statutory body established under section 8 of the Commerce Act 1986.

### 1. PURPOSE OF DEED

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- 1.1 The Commission has investigated alleged contraventions of the Fair Trading Act 1986 (*the Act*) by Telecom in relation to the marketing and promotion of Telecom’s Basic Broadband Plan between 6 April 2008 and 30 June 2008.
- 1.2 Telecom has cooperated with the Commission in relation to the Commission’s investigation (*the investigation*).
- 1.3 This Settlement Deed (*the Deed*) records the background to the investigation, the conclusions reached by the Commission and the means by which the investigation is to be resolved.
- 1.4 By this Deed the Commission agrees to forego its right to issue legal proceedings in respect of Telecom’s marketing and promotion of the Basic Broadband Plan, on the basis that Telecom acknowledges having breached the Act and agrees to pay compensation to affected customers as detailed in Part 4 of this Deed and a payment to Consumer NZ as detailed in Part 5.
- 1.5 The parties agree to take such steps as are necessary or desirable to give full effect to the terms of this Deed.

### 2. BACKGROUND

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2.1 Between 6 April 2008 and 30 June 2008 Telecom ran a series of advertisements on billboards, bus shelters and television (*the advertisements*) which contained the phrase “Get Telecom Broadband at Dial Up Prices” and promoted an offer (*the offer*) intended to encourage consumers to purchase Telecom’s Basic Broadband plan on the basis that it would be available for the first six months for the same price as the company’s most popular dial up plan, \$16.95 a month.

2.2 At that time Telecom offered the following dial-up plans:

<b>Dial-up Plan</b>	<b>Monthly cost</b>	<b>Hours of monthly Internet Access</b>
Telecom Dial-up Prepay 30	\$10	30 hours
Telecom Dial-up Prepay 150	\$16.95	150 hours
Telecom Dial-up XVP	\$27.95	Unlimited access

2.3 Prior to the offer, Telecom’s Basic Broadband plan had a usual retail price of \$29.95 per month. Under the offer, Telecom’s Basic Broadband plan was available for \$16.95 per month, for the first six months of the 12 month contractual term and for \$29.95 per month for the remaining period of the contract.

2.4 Telecom’s Basic Broadband plan allowed a consumer to use 200MB of data per month (*monthly data allowance*). Where usage exceeded the monthly data allowance, an excess usage charge (*overage charge*) of 2 cents per MB was applied.

2.5 As part of the offer, Telecom offered a money back guarantee to those customers who decided to cancel their contract with Telecom within 30 days of purchase (*30 day money back guarantee*). The 30 day money back guarantee also applied to other Telecom Broadband plans at that time. A termination fee of \$90 was charged if the contract was cancelled after 30 days of purchase but within the 12 month contractual term.

2.6 Between 6 April and 30 June 2008, 16,248 customers purchased the Basic Broadband plan.

- 2.6.1 A total of 2719 of these customers had cancelled their contracts with Telecom within the 12 month contract period.
- 2.6.2 1413 of those customers either did so within the 30 day money back guarantee period and were refunded any amount they had paid, and/or were credited any amount they were liable to pay, under the contract or those customer cancelled after 30 days and were refunded any amount they had paid and were credited any amount they were liable to pay, under the contract.
- 2.7 The remaining 1306 customers (*the affected customers*) cancelled outside of the 30 day money back guarantee period, received no refund and were liable to have been charged a termination fee of \$90.
- 2.8 Between 6 April 2008 and 30 October 2008 Telecom received revenue of \$1,382,566 from customers who had purchased the Basic Broadband plan in that period. This figure included revenue from monthly charges and from overage charges.
- 2.9 The Commission received complaints alleging that the advertisements were liable to lead consumers to believe that:-
- 2.9.1 the Basic Broadband plan was available at the same price as a comparable dial up plan, when for the second 6 months of the required contractual term, the price was higher than for any of Telecom's dial up plans; and
- 2.9.2 the monthly data allowance would be comparable to that available on a similarly priced dial up plan when, depending on their pattern of internet usage, they would be likely to receive significantly less data than they would have had previously under the relevant dial up plans.
- 2.10 Following comments from the Commission, Telecom made changes to its television advertising to make it clear that there was a minimum 12 month contract period and what the monthly price was after the first 6 months. These changes took effect from 28 May 2008.

## TERMS OF SETTLEMENT

### 3. ACKNOWLEDGEMENTS OF BREACH

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- 3.1 Telecom acknowledges and admits the facts referred to in Part 2 of this Deed and acknowledges and admits that it breached s11 of the Fair Trading Act in relation to:
- 3.1.1 Television advertising between 6 April and 27 May 2008, which did not adequately disclose that there would be a minimum 12 month contract period; and
- 3.1.2 Print and television advertising between 6 April and 30 June 2008, which did not adequately disclose that the Basic Broadband plan had a data cap of 200 MB per month, with an overage charge of 2 cents per MB.

### 4. COMPENSATION

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- 4.1 As soon as practicable after the signing of this Deed, Telecom will ensure that its customer services and call centre staff are informed of the terms of this Deed and are given appropriate instructions with respect to enquiries.
- 4.2 Within 90 days of the date of this Deed, Telecom will refund affected customers the charges described below, that have not previously been credited to the customer's account:
- 4.2.1 The first month's rental of the Basic plan at the promotional price;
- 4.2.2 Any data overage charges that were charged to the affected customer's account in the first month of connection;
- 4.2.3 Any additional amount paid by the affected customer for a Telecom wireless modem at the time of the promotion;



- 4.2.4 Any amount paid by the affected customer for wiring charges at the time of the promotion;
  - 4.2.5 Any early termination fees charged by Telecom when the affected customer disconnected their broadband service; and
  - 4.2.6 An adjustment for Consumer Price Index
- 4.3 Where Telecom is unable to locate or refund an affected customer, Telecom will treat the refund as money owed to that affected customer pursuant to s5 of the Unclaimed Money Act 1971.
- 4.4 Within 30 days of the completion of the refund process set out in clause 4.2, Telecom will provide the Commission with a report which includes (among other things) the following details:
- 4.4.1 Steps taken to refund affected customers;
  - 4.4.2 The total value of all refunds made; and
  - 4.4.3 The number of affected customers who did not receive a refund.

## **5. PAYMENT TO CONSUMER NZ INCORPORATED**

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- 5.1 As part of the settlement Telecom will, as soon as is reasonably practicable after the signing of this Deed, pay \$75,000 to Consumer NZ Incorporated to be used to assist in the funding of a Telecommunications Price Comparison Project which is intended to provide an internet based tool for consumers to compare the prices of different telecommunications products.

**6. NO FURTHER ACTION BY COMMISSION**

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6.1 The Commission shall close its investigation upon satisfying itself as to completion of the matters set out in Parts 4 and 5, and undertakes to take no further action in respect of the matters that are the subject of the investigation.

**7. UNAFFECTED RIGHTS**

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7.1 Nothing in this Deed shall limit or affect the ability of any person who has not consented to be bound by the terms of this Deed from pursuing any rights available to him, her or it under the Act or under any other law.

7.2 Nothing in this Deed shall limit or affect the ability of the Commission to bring proceedings against Telecom in respect of any conduct engaged in after the date of this Deed, or any conduct that was not the subject of the investigation or which falls outside the matters referred to in Part 2 above.

7.3 If there is any material breach by Telecom in fulfillment of this Deed, the Commission may in its complete discretion recommence the investigation and take any action it deems appropriate including commencing civil proceedings or prosecution under the Act, or issuing civil proceedings for breach of this Deed.

7.4 If the Commission commences any Court proceedings pursuant to clause 7.3 above, Telecom waives any limitation defence that may be available to each in respect of those proceedings.


**EXECUTED** by and under the name and seal of **THE COMMERCE COMMISSION**  
by:

*Marie Jennings*

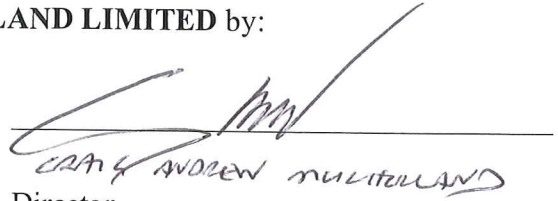


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EXECUTED by TELECOM NEW ZEALAND LIMITED by:



TRISTAN MURRAY GILBERTSON  
Director



CRAG ANDREW MULLETT  
Director