



*Competition and Consumer Act 2010*

## Section 87B Undertaking

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to Australian Competition and Consumer Commission

by **CNT CORP Pty Ltd** ACN 106 668 071



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## Part A – Persons giving this Undertaking

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1. This Undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by CNT Corp Pty Ltd (ACN 106 668 071) (**CNT Corp**) of 10/150 Chesterville Road, Moorabbin 3189, Victoria for the purposes of section 87B of the *Competition and Consumer Act 2010* (**Act**).

## Part B – Background

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2. CNT Corp carries on the business of selling wholesale fibre to the premises (**FTTP**) broadband internet services through its networks in various residential estates located in Victoria.
3. From July 2011 to early April 2012, CNT Corp purported to supply wholesale FTTP broadband internet services to its wholesale customers in the Eden Brook residential estate with downstream data transfer rates of 25, 50 and 100 megabits per second (**Mbps**).
4. The ACCC considers that CNT Corp represented that it could supply and had supplied broadband internet services with transfer rates of 25Mbps and above by:
  - (a) on at least two occasions between July and September 2011, forwarding completed 'Service Order Forms' to a wholesale customer for services with data transfer rates of 25Mbps and above; and
  - (b) between July and December 2011, sending invoices to a wholesale customer for the provision of FTTP services with data transfer rates of 25Mbps and above.
5. In fact, because CNT Corp had provisioned only 20Mbps total backhaul transmission capacity for its Eden Brook FTTP network, it could not supply services with data transfer rates of above 20Mbps.
6. In addition, in response to an inquiry from a wholesale customer in December 2011, CNT Corp represented that its wholesale FTTP broadband internet services were supplied over a network with backhaul transmission capacity of 100Mbps when this was not the case. CNT Corp did not upgrade its backhaul transmission capacity until early April 2012, and only increased it to 50Mbps at that time.
7. Following a complaint received in February 2012, the ACCC investigated the representations made by CNT Corp to its wholesale customers regarding the performance of its Eden Brook FTTP network.
8. In response to ACCC requests, CNT Corp provided detailed information regarding its network and its relationship with its wholesale customers. CNT Corp admitted

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that it had provisioned and billed for wholesale FTTTP services at data transfer rates that its network could not support.

9. The ACCC considers that by engaging in the conduct described in clauses 3 to 6 above, CNT Corp:
  - (a) in trade or commerce, engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of section 18 of the Australian Consumer Law (**ACL**), contained in Schedule 2 to the Act;
  - (b) in trade or commerce, in connection with the supply of services, made a false or misleading representation that its wholesale FTTTP services were of a particular standard, quality, value, or grade in contravention of sub-section 29(1)(b) of the ACL; and
  - (c) in trade or commerce, in connection with the supply of services, made a false or misleading representation about the performance characteristics of its wholesale FTTTP services in contravention of sub-section 29(1)(g) of the ACL.
10. CNT Corp admits that the conduct described at clauses 3 to 6 above is likely to have contravened the ACL.
11. Since being advised of the ACCC's concerns, CNT Corp has:
  - (a) committed to further backhaul transmission capacity upgrades (detailed at clause 16 below);
  - (b) changed its default wholesale supply terms so that its wholesale customers will choose how much backhaul transmission capacity to acquire to support their retail customer base;
  - (c) proposed a form of compensation (detailed at clause 17 below) for end-users in the Eden Brook estate who acquired services at 25, 50 and 100Mbps data transfer rates when those services could not be supplied;
  - (d) agreed to resolve this matter by the provision of an undertaking pursuant to section 87B of the Act and by the payment of three infringement notices totalling \$19,800 issued by the ACCC under section 134A(1) of the Act.

## Part C – Commencement of Undertaking

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12. This Undertaking comes into effect when:
  - (a) the Undertaking is executed by CNT Corp; and
  - (b) the ACCC accepts the Undertaking so executed.

13. Upon the commencement of this Undertaking, CNT Corp undertakes to assume the obligations set out in clauses 14, 15, 16 and 17 below.

## Part D – Undertakings

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14. CNT Corp undertakes for the purposes of section 87B of the Act that, for a period of 3 years from the commencement of this Undertaking, it will not, and will ensure that its subsidiaries do not, in trade or commerce:
- (a) make a representation to the effect that a wholesale broadband internet service it offers to supply can deliver a specified data transfer rate when this is not the case; or
  - (b) misrepresent the level of backhaul transmission capacity that it has provisioned for a telecommunications network in its control.
15. CNT Corp undertakes for the purposes of section 87B of the Act that it will, at its own expense:
- (a) within three months from the commencement of this Undertaking, establish and implement a Trade Practices Compliance Program (**Compliance Program**) in accordance with the requirements set out in Annexure A, being a program designed to minimise CNT Corp's risk of future breaches of sections 18 and 29 of the ACL and to ensure its awareness of the responsibilities and obligations in relation to the requirements of the Act;
  - (b) maintain and continue to implement the Compliance Program for a period of three years from the date of this Undertaking coming into effect; and
  - (c) provide, at its own expense, a copy of any documents required by the ACCC in accordance with Annexure A.
16. CNT Corp also undertakes for the purposes of section 87B of the Act that it will within nine months from the commencement of this Undertaking, provision at least 250Mbps of additional backhaul transmission capacity for its Eden Brook FTTP network PROVIDED ALWAYS THAT the undertaking in this clause 16 shall lapse if within nine months from the commencement of this Undertaking CNT Corp has ceased to carry on business as a provider of wholesale FTTP broadband internet services.
17. CNT Corp also undertakes for the purposes of section 87B of the Act that it will use its best endeavours to ensure that, within one month from the commencement of this Undertaking, end-users who acquired retail FTTP broadband internet services during the period July 2011 to April 2012 (inclusive) are provided with vouchers (valid for up to 12 months) for credits against future retail charges with any retail service provider operating in the Eden Brook residential estate as follows:
- (a) 100Mbps customers: four vouchers, each for \$34.95.

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(b) 50Mbps customers: three vouchers, each for \$34.95.

(c) 25Mbps customers: two vouchers for \$34.95 –

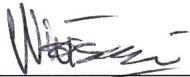
provided that CNT Corp may satisfy its obligations under clause 17 by paying an equivalent cash amount to a customer.

## Part E – Acknowledgments

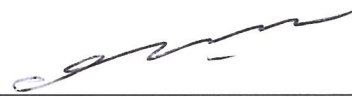
18. CNT Corp acknowledges that:

- (a) the ACCC will make this Undertaking publicly available including by publishing it on the ACCC's public register of section 87B Undertakings on its website;
- (b) the ACCC will, from time to time, make public reference to the Undertaking including in news media statements and in ACCC publications; and
- (c) this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

Executed by **CNT CORP Pty Ltd** ACN 106 668 071 in accordance with section 127 of the Corporations Act



Ing Wibisono Tjahjo Oentoro – Director



David Setiady – Secretary

9/8/12.

Date

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the *Competition and Consumer Act 2010*



Rodney Graham Sims – Chairman

15/10/12

Date

## **Annexure A – Trade Practices Compliance Program Requirements**

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CNT Corp Pty Ltd (CNT Corp) will establish a Trade Practices Compliance Program (Compliance Program) that complies with each of the following requirements:

1. Appointments

Within one month of the date of the Undertaking coming into effect CNT Corp will appoint a Director or a Senior Manager of the business to be responsible for the development, implementation and maintenance of the Compliance Program (Compliance Officer).

2. Compliance Officer Training

- (a) CNT Corp will ensure that, within two months of the Undertaking coming into effect, the Compliance Officer attends practical training focusing on sections 18 and 29 of the Australian Consumer Law (contained in Schedule 2 to the *Competition and Consumer Act 2010*) (**ACL**).
- (b) CNT Corp shall ensure that the training is administered by a suitably qualified compliance professional or legal practitioner with expertise in trade practices law;
- (c) Within 14 days of completion of the training conducted in accordance with points 2(a) and 2(b) above, CNT Corp will provide the ACCC with a written statement from the compliance professional or legal practitioner who conducts the training, confirming the training was completed within the time frame specified in point 2(a) above and was conducted in accordance with points 2(a) and 2(b) above.

3. Staff Training

CNT Corp will cause all employees of CNT Corp whose duties could result in them being concerned with conduct that may contravene sections section 18 and 29 of the ACL to receive regular (at least once a year) practical training administered by the Compliance Officer (once trained) or a qualified compliance professional or legal practitioner with expertise in trade practices law, that focuses on sections 18 and 29 of the ACL.

4. Complaints handling

CNT Corp will within two months of the Undertaking coming into effect:

- (a) develop procedures for recording, storing and responding to complaints in relation to broadband service and/or network performance; and
- (b) provide the ACCC with an outline of the complaint handling system implemented by CNT Corp.

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5. CNT Corp will ensure that the Compliance Officer reports to its director(s) or governing body every six months on the continuing effectiveness of the Compliance Program.
6. **Review** – CNT Corp shall, at its own expense, cause an annual review of the Compliance Program elements (**Review**) to be carried out in accordance with each of the following requirements:
  - 6.1 **Scope of the Review** – CNT Corp shall ensure that the Review is broad and rigorous enough to:
    - (a) provide CNT Corp and the ACCC with a supportable verification that CNT Corp has in place a Compliance Program that complies with the requirements of the Undertaking and is suitable for the size and structure of CNT Corp; and
    - (b) provide the Review Report and opinions detailed at point 7 below.
  - 6.2 **Independence of Reviewer** – CNT Corp shall ensure that the Review is carried out by a suitably qualified, independent compliance professional with expertise in trade practices law (the Reviewer). The Reviewer will qualify as independent on the basis that he or she:
    - (a) did not design or implement the Compliance Program;
    - (b) is not a present or past staff member or director of CNT Corp;
    - (c) has not acted and does not act for CNT Corp in any trade practices related matters;
    - (d) has not and does not act for or consult to CNT Corp or provide other services on trade practices related matters other than Compliance Program reviewing; and
    - (e) has no significant shareholding or other interests in CNT Corp.
  - 6.3 **Evidence** – CNT Corp shall use its best endeavours to ensure that the Review is able to be conducted on the basis that the Reviewer has access to all relevant sources of information in CNT Corp's possession or control, including without limitation:
    - (a) enquiries of any employees, representatives, agents and stakeholders of CNT Corp; and
    - (b) documents created by CNT Corp's consultants, legal practitioners and accountants for use in CNT Corp's Compliance Program.
  - 6.4 CNT Corp shall ensure that the first Review is completed within one year and one month of this Undertaking coming into effect. Each subsequent Review shall be completed at least one month before the anniversary of the date of the Undertaking coming into effect.
7. Reporting
  - 7.1 CNT Corp shall use its best endeavours to ensure that the Reviewer sets out the findings of the Review in a Compliance Program Review Report, which will



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provide particular and specific information regarding the scope of the Review and the effectiveness of the Compliance Program including:

- (a) details of the evidence gathered and examined during the Review;
- (b) the name and relevant experience of the person appointed as CNT Corp Compliance Officer;
- (c) the Reviewer's opinion on whether CNT Corp has in place effective staff training and complaints handling programs that comply with the requirements of the Undertaking; and
- (d) actions recommended by the Reviewer to ensure the continuing effectiveness of CNT Corp's Compliance Program.

- 7.2 CNT Corp shall ensure that each Compliance Program Review Report is completed and provided to CNT Corp within one month of the completion of the Review.
- 7.3 CNT Corp will cause the Compliance Program Review Report to be provided to the ACCC within 14 days of its receipt from the Reviewer.
- 7.4 CNT Corp shall implement promptly and with due diligence any recommendations made by the Reviewer or required by the ACCC that are reasonably necessary to ensure that CNT Corp maintains and continues to develop the Compliance Program elements in accordance with the requirements of this Undertaking.
- 8. CNT Corp shall, at its own expense, provide copies of documents and information in respect of matters which are the subject of the Compliance Program, within 14 days of a written request from the ACCC.
- 9. In the event the ACCC has sufficient reason to suspect that the Compliance Program is not being implemented effectively, CNT Corp shall, at its own expense and if requested by the ACCC, cause an interim or additional Review to be conducted and cause the resulting Compliance Program Review Report to be provided to the ACCC.