

Attachment A

**ACCESS DISPUTE BETWEEN AAPT LIMITED (ACCESS SEEKER)
AND
OPTUS NETWORKS PTY LIMITED AND OPTUS MOBILE PTY LTD (ACCESS
PROVIDER)**

DOMESTIC MOBILE TERMINATING ACCESS SERVICE (MTAS)

Access Dispute Notified under subsection 152CM(1) of the *Trade Practices Act
1974*
(the Act) on 21 June 2005

Interim Determination under Section 152CPA of the Act

Background

1. On 21 June 2005, the Australian Competition and Consumer Commission (the Commission) received a written notification (the notification) from AAPT Limited (AAPT) of an access dispute in relation to the supply, by Optus Networks Pty Limited, Optus Mobile Pty Ltd and Optus Vision Pty Limited (together Optus), to AAPT, of the Domestic Mobile Terminating Access Service (the MTAS). AAPT's notification was provided to the Commission pursuant to subsection 152CM(1) of the Act.
2. The MTAS is an access service for the carriage of voice calls from a point of interconnection, or potential point of interconnection, to a B-Party (the end-user to whom a telephone call is made) directly connected to the access provider's digital mobile network.¹
3. After holding a public inquiry, the Commission declared the MTAS pursuant to subsection 152AL(3) of the Act. A copy of the declaration was published in the Commonwealth of Australia Gazette No. GN 28, 14 July 2004.
4. The notification stated that Optus supplies transmission services to AAPT under an agreement dated 24 August 1999. The charges for the MTAS for the period 1 May 2003 to 30 April 2005 are set out in a Transmission Services Agreement dated 7 January 2004.
5. The notification specifies that the dispute is about the price at which the MTAS is to be supplied.
6. The Commission has determined that Optus Vision Pty Limited should be removed as a party to this access dispute.
7. The Commission has formed the view that the requirements of subsection 152CM(1) of the Act are satisfied. That is:

¹ ACCC, *Mobile Services Review Mobile Terminating Access Service Final Decision*, (the MTAS Final Report) June 2004, p. 239.

- Optus is a carrier;
 - Optus supplies the declared MTAS;
 - Optus has an obligation under subsection 152AR(3) of the Act to supply the MTAS to AAPT; and
 - AAPT is unable to agree with Optus about the price on which Optus is to comply with that obligation.
8. Pursuant to subsection 152CPA(1) of the Act, this instrument is a interim determination relating to the terms and conditions of access by AAPT to the MTAS provided by Optus.

Interim Determination

9. Except where the parties agree otherwise, the charge payable by AAPT to Optus for the MTAS is to be:
- 18 cents per minute (cpm) for the period from 28 October 2005 until 31 December 2005; and
 - 15 cpm for the period from 1 January 2006 to the period ending 12 months after 28 October 2005.
10. Except where the parties agree otherwise, other non-price terms and conditions upon which Optus currently supplies the MTAS to AAPT are to continue to apply.
11. This interim determination shall take effect as and from 28 October 2005, and will remain in force for 12 months, or until:
- i. the date a final determination comes into effect; or
 - ii. this interim determination is revoked;
- whichever is the earlier.
12. Notwithstanding anything to the contrary in this interim determination, this interim determination has no effect to the extent that this interim determination:
- i. would result in an acquisition of property within the meaning of section 152EB of the Act; and
 - ii. would not be valid, apart from this clause or section 152EB of the Act, because a particular person has not been sufficiently compensated.

Graeme Samuel

Graeme Samuel
Chairman

DATED: 28th Oct 2005

Ed Willett

Ed Willett
Commissioner