

Attachment B

ACCESS DISPUTE BETWEEN HUTCHISON 3G AUSTRALIA PTY LTD (H3GA) (ACCESS SEEKER) AND OPTUS NETWORKS PTY LIMITED, OPTUS MOBILE PTY LTD AND OPTUS VISION 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 24 February 2005

Interim Determination under Section 152CPA of the Act

Background

4. On 24 February 2005, the Australian Competition and Consumer Commission (the Commission) received a written notification (the notification) from Hutchison 3G Australia Pty Ltd (H3GA) that an access dispute in relation to the supply, by Optus Networks Pty Limited, Optus Mobile Pty Ltd and Optus Vision Pty Ltd (together Optus), to H3GA, of the Domestic Mobile Terminating Access Service (the MTAS). H3GA's notification was provided to the Commission pursuant to subsection 152CM(1) of the Act.
5. 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.²
6. 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.
5. The notifications stated that H3GA and Optus entered into an access agreement for the supply by Optus to H3GA of the MTAS. The access agreement was last amended on 7 July 2004 and the review date specified in the agreement is 31 December 2004.
8. The notification specifies that the dispute is about the price at which the MTAS is to be supplied. H3GA states that, consistent with past practice, negotiations concerning the price of the MTAS have been conducted simultaneously by H3GA and Hutchison Telecommunications (Australia) Limited (HTAL) (together as Hutchison) and Optus.
9. In a letter to parties on 12 May 2005, the Commission proposed a single administrative process for the HTAL and H3GA access disputes with Optus. The Commission (as constituted for each arbitration) indicated, however, that it would separately make decisions with respect to each arbitration. For the purposes of administrative simplicity, however, the Commission proposed that only one set of correspondence,

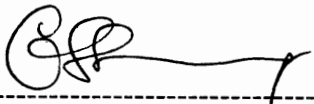
² ACCC, *Mobile Services Review Mobile Terminating Access Service Final Decision*, (the MTAS Final Report) June 2004, p. 239.

submissions and decision papers would be prepared to cover both disputes. The Commission did not receive any objection to this approach from the parties.

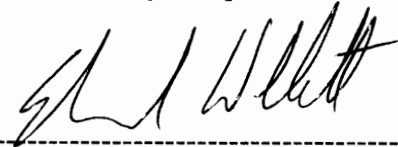
10. The Commission has formed the view that the requirements of subsection 152CM(1) of the Act are satisfied. That is:
- Optus is a carrier;
 - Optus supplies the declared MTAS;
 - Optus has an obligation under subsection 152AR(3) of the Act to supply the MTAS to H3GA; and
 - H3GA is unable to agree with Optus about the price on which Optus is to comply with that obligation.
13. Pursuant to subsection 152CPA(1) of the Act, this instrument is an interim determination relating to the terms and conditions of access by H3GA to the MTAS provided by Optus.

Interim Determination

14. Except where the parties agree otherwise, the charge payable by H3GA to Optus for the MTAS is to be:
- 18 cents per minute (cpm) for the period from 5 August 2005 until 31 December 2005; and
 - 15 cpm for the period from 1 January 2006 to the period ending 12 months after 5 August 2005.
15. Except where the parties agree otherwise, other non-price terms and conditions upon which Optus currently supplies the MTAS to H3GA are to continue to apply.
16. This interim determination shall take effect as and from 5 August 2005, and will remain in force for 12 months, or until:
- iii. the date a final determination comes into effect; or
 - iv. this interim determination is revoked.
17. Notwithstanding anything to the contrary in this interim determination, this interim determination has no effect to the extent that this interim determination:
- iii. would result in an acquisition of property within the meaning of section 152EB of the Act; and
 - iv. 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
Chairman



Ed Willett
Commissioner

DATED: 5/8/05 2005