

Attachment A

ACCESS DISPUTE BETWEEN POWERTEL LIMITED (ACCESS SEEKER) AND VODAFONE PTY LIMITED (ACCESS PROVIDER)

DOMESTIC MOBILE TERMINATING ACCESS SERVICE (MTAS)

Access Dispute Notified under Sub-section 152CM(1) of the *Trade Practices Act 1974*
on 16 December 2004

Interim Determination under Section 152CPA

Background


1. On 16 December 2004, the Australian Competition and Consumer Commission (the Commission) received written notification (the notification) from PowerTel Limited (PowerTel) that an access dispute exists in relation to the supply, by Vodafone Pty Limited (Vodafone) to PowerTel, of the Domestic Mobile Terminating Access Service (the MTAS). PowerTel's notification was provided to the Commission pursuant to subsection 152CM(1) of the *Trade Practices Act 1974* (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.⁴
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 states that PowerTel and Vodafone entered into an access agreement dated 20 September 2001 for the supply of various services between the parties, including the supply by Vodafone to PowerTel of the MTAS. The Commission notes the access agreement was last amended on 17 August 2004 and the parties have not reached an agreement on terms and conditions for access to the MTAS for the period 1 January 2005 to 31 December 2005.
5. The notification specifies that the dispute is about two principal issues:
 - i. the price at which the MTAS is to be supplied; and
 - ii. Vodafone's insistence of a 'pass through obligation' that would require PowerTel to reduce its average retail price of fixed to mobile (FTM) calls that terminate on Vodafone's network to a specified ceiling.

⁴ ACCC, *Mobile Services Review Mobile Terminating Access MTAS, Final Decision*, (the MTAS Final Report) June 2004, p239.

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

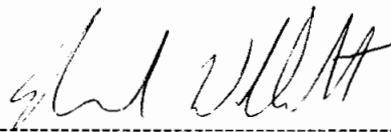
Interim Determination

8. Except where the parties agree otherwise, the charge payable by PowerTel to Vodafone for the MTAS is to be:
- 18 cents per minute (cpm) for the period from 14 July 2005 until 31 December 2005; and
 - 15 cpm for the period from 1 January 2006 to the period ending 12 months after 14 July 2005.
9. This charge will not be subject to a FTM pass-through obligation.
10. Except where the parties agree otherwise, other non-price terms and conditions upon which Vodafone currently supplies the MTAS to PowerTel are to continue to apply. This interim determination shall take effect as and from 14 July 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.
11. 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
Chairman

DATED: 15/7/2005



Ed Willett
Commissioner