



**Australian
Competition &
Consumer
Commission**

Our Ref: M2005/110
Your Ref:
Contact Officer: Nicole Hardy
Contact Phone: 03 9290 1957

PO Box 1199
Dickson ACT 2602
470 Northbourne Ave
Dickson ACT 2602
ph (02) 6243 1123
fax (02) 6243 1122
www.accc.gov.au

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Ms Elise Margow
Corporate Counsel
Primus Telecommunications Pty Ltd
Level 3, 528 Collins Street
MELBOUNRE VIC 300

Mr Justin Forsell
Corporate Counsel
Vodafone Pty Limited
799 Pacific Highway
CHATSWOOD NSW 2067

By facsimile 02 9923 3699

By facsimile 02 9415 7041

Dear Ms Margow and Mr Forsell,

MTAS DISPUTE – INTERIM DETERMINATION

I refer to the access dispute notified by Primus Telecommunications Pty Ltd (Primus) to the Australian Competition and Consumer Commission (the Commission) in relation to the supply of the Domestic Mobile Terminating Access Service (MTAS) to it by Vodafone Pty Limited (Vodafone).

I refer also to my letter dated 1 July 2005, in which the Commission requested that parties make written submissions on the Commission's draft interim determination and accompanying draft statement of reasons.

After considering all submissions made by parties on this issue, the Commission's view is that an interim determination should be made in this arbitration.

Attachment A to this letter sets out the Commission's interim determination in this arbitration, pursuant to subsection 152CPA(1) of the *Trade Practices Act 1974* (the Act).

Attachment B sets out the Commission's statement of reasons for making the interim determination, pursuant to subsection 152CP(5) of the Act.

Please contact Nicole Hardy, on (03) 9290 1957, if you have any queries in relation to these matters.

Yours sincerely

Graeme Samuel

EXECUTIVE OFFICE



Attachment A

Interim Determination

**ACCESS DISPUTE BETWEEN PRIMUS TELECOMMUNICATIONS PTY LTD (ACCESS
SEEKER) AND
VODAFONE NETWORK PTY LIMITED (ACCESS PROVIDER)
DOMESTIC MOBILE TERMINATING ACCESS SERVICE (MTAS)**

Access Dispute Notified under subsection 152CM(1) of the *Trade Practices Act 1974*
(the Act) on 7 March 2005

Interim Determination under Section 152CPA of the Act

Background

1. On 7 March 2005, the Australian Competition and Consumer Commission (the Commission) received written notification (the notification) from Primus Telecommunications Pty Ltd (Primus) that an access dispute exists in relation to the supply by Vodafone Network Pty Limited (Vodafone) to Primus of the Domestic Mobile Terminating Access Service (the MTAS). Primus' 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 states that Primus and Vodafone entered into an access agreement dated 14 September 1999 for the supply of various services between the parties, including the supply by Vodafone to Primus of the MTAS. The access agreement has been amended from time to time and remains on foot, without a specified termination date. The parties have been unable to agree on the terms and conditions for access to the MTAS for any period subsequent to 1 January 2005.
5. The Commission understands that whilst the dispute is continuing, Vodafone continues to supply Primus with the MTAS at an interim price of 19.38 cents per minute from 1 January 2005. The parties have no formal interim agreement in place.

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

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. whether certain other price-related terms and conditions on which Vodafone proposes to supply the service should apply. Specifically, Primus does not accept Vodafone's proposal that the supply of the MTAS be subject to a 'pass through mechanism' that would require Primus to reduce its retail price for fixed-to-mobile calls that terminate on the Vodafone network.
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 Primus; and
 - Primus is unable to agree with Vodafone about the price and the 'pass through mechanism' 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 Primus to the MTAS provided by Vodafone.

Interim Determination

8. Except where the parties agree otherwise, the charge payable by Primus to Vodafone for the MTAS is to be:
 - 18 cents per minute (cpm) for the period from 2 August 2005 until 31 December 2005; and
 - 15 cpm for the period from 1 January 2006 to the period ending 12 months after 2 August 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 Primus are to continue to apply.

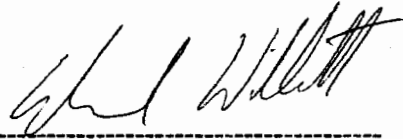
This interim determination shall take effect as and from 2 August 2005, and will remain in force for 12 months, or until:

 - 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



Ed Willett
Commissioner

DATED: 2/8/2005