

97/42(1)S

**AUSTRALIAN COMPETITION AND CONSUMER COMMISSION**

**AND**

**AAPT LIMITED  
(ACN 052 082 416)**

**UNDERTAKING**

**UNDER SECTION 87B**

**OF**

**THE TRADE PRACTICES ACT 1974**

**TRADE PRACTICES ACT 1974  
SECTION 87B**

**UNDERTAKING GIVEN BY AAPT LTD  
(ACN 052 082 416)**

**1. PURPOSE**

- 1.1 Since the liberalisation of the market for telecommunications services in Australia on 1 July 1997, AAPT Limited, ACN 052 082 416 ('AAPT'), has engaged in promotional activities to compete with other providers of telecommunication services. The purpose of this Undertaking is to ensure that AAPT implements specific measures as well as a general program to ensure compliance with the Trade Practices Act 1974 ('the Act').

**2. PERSON GIVING UNDERTAKING**

- 2.1 This Undertaking is given to the Australian Competition and Consumer Commission ('the Commission') by AAPT under section 87 B of the Act.

**3. BACKGROUND**

- 3.1 As from 1 July 1997 AAPT has carried out a major public advertising campaign ('the Campaign') promoting the launch of its residential 'long distance' telephony service ('the Service'). AAPT's prices for the Service are collectively branded and described by AAPT as 'Smartchat rates' ('the Smartchat rates'). The Campaign was effected through prominent and wide spread publication of newspaper advertisements and other promotional materials ('the Campaign Materials') at the times or on the dates, and in the manner, detailed in Schedule 1.
- 3.2 In the Commission's view AAPT represented in the Campaign Materials, among other things, that its Smartchat rates:
- (a) were 'unlike' those of its competitors;
  - (b) would save consumers up to 60%, relative to competitors rates, on long distance calls, '...all day everyday...'; and
  - (c) there was no 'small print'.
- 3.3 In the Commission's view AAPT omitted to make clear or disclose in the Campaign Materials that:
- (a) Smartchat rates consist of peak, off-peak and economy rates for long distance calls within Australia, and peak and off-peak for international calls, which apply at particular times throughout each day, and in this

respect, are applied in a manner similar to rates offered by AAPT's main competitors, Telstra and Optus;

- (b) Smartchat rates are not available to consumers making calls to mobile telephones;
- (c) Smartchat rates are not available to consumers making calls to special services for example calls to '0055' numbers, '1900' numbers or 'operator assisted numbers';
- (d) Smartchat rates apply to all long distance calls within Australia regardless of the distance to destination called;
- (e) Smartchat rates may only be accessed by consumers who call from within certain call zones or areas; for example, consumers within the Sydney '(02) call area';
- (f) Before consumers access available Smartchat rates a credit check may be required;
- (g) Consumers are required to enter into a contract with, and become customers of, AAPT and are bound by certain terms and conditions ('small print') which did not appear in the Campaign Material;
- (h) The use of the override code '1414' number was available only to registered Smartchat customers of AAPT;
- (i) preselection to AAPT may occur automatically when introduced; and
- (j) The 12 c flag fall is included in the advertised rates.

3.4 The Commission was of the view that the representations and omissions referred to in clauses 3.2 and 3.3 above were misleading or deceptive or liable or likely to mislead or deceive consumers as to the nature, availability and pricing of the Service, in that the dominant overriding impression to be gained was that the Smartchat rates were a single flat rate applying to all calls regardless of the time of day the call is made, and created a false and misleading impression as to the conditions imposed and applying to the offer, and consequently was in breach of Sections 52, 53(e) and 53(g) and 55A of the Act.

3.5 On 7 July 1997 the Commission wrote to AAPT raising its concerns and detailing the grounds for those concerns which were substantially the same as those detailed in clauses 3.2 and 3.3 above.

3.6 Due to the Commission's concerns as to a history of a high level of misleading or deceptive conduct amongst telecommunications service providers and carriers, the Commission is placing priority on compliance with the Act for the

industry and has, among other things, recently prepared in consultation with telecommunications service providers and carriers, a guide to the Act for advertising in the telecommunications industry ('the Fair Call Advertising Guidelines').

- 3.7 The Commission was also of the view, and concerned, that many elements of the Campaign materials breached the Fair Call Advertising Guidelines. AAPT was advised of these additional concerns in the Commission's letter to AAPT of 7 July 1997 referred to in clause 3.5 above.
- 3.8 The Commission sought an assurance that the representations made in AAPT's future campaigns will not be in terms described in clause 3.2 above and will include clear, prominent and full disclosure of all significant information, qualifications and assumptions relating to AAPT's prices such as those matters detailed in sub clauses 3.3(a) to 3.3(j) above.
- 3.9 AAPT has agreed to implement a program to ensure compliance with the trade Practices Act and raise awareness within AAPT of the provisions of the Act and the Fair Call Advertising Guidelines.
- 3.10 AAPT has agreed to be bound by the following Undertaking given to the Commission under section 87B of the Act.

#### **4. COMMENCEMENT OF UNDERTAKING**

- 4.1. This- Undertaking come into effect when this:
  - (a) Undertaking is executed by AAPT; and
  - (b) Undertaking so executed is accepted by the Commission.

#### **5. UNDERTAKING FOR THE PURPOSES OF SECTION 87B**

- 5.1 All current and future AAPT promotions will be devised so that they neither:
  - (a) mislead or deceive, including, without limitation, by express representations or omission of material terms, limitations or assumptions; or
  - (b) seek to rely upon subsequent communications, for clarification as to important qualifications, assumptions or other information.
- 5.2 Where a qualification is made in any future promotion of AAPT's services, by way of additional text, charts or other devices, and which appears separately from the principal body of the promotional message, it will be clear and legible and clearly linked to the statement it qualifies so as to ensure the reader is fully aware of the qualification. All such qualifications will be consistent with the Fair Call Advertising Guidelines.

- 5.3 Without limiting the generality of clauses 5.1 and 5.2 above, AAPT will not in any future promotional campaigns repeat in the same form the representations contained in the Campaign Materials listed in Schedule 1 or otherwise represent that its Smartchat rates apply 'all day everyday' or that there is no 'small print' without also making clear and disclosing, where applicable, that:
- (a) Smartchat rates consist of peak, off-peak and economy rates for long distance calls within Australia, and peak and off-peak for international calls, which apply at particular times throughout each day;
  - b) Smartchat rates are not available to consumers making calls to mobile telephones;
  - (c) Smartchat rates are not available to consumers making calls to special services for example, services to '0055', '1900' or 'operator assisted numbers';
  - (d) Smartchat rates apply to all long distance calls within Australia regardless of the distance called;
  - (e) Smartchat rates may only be accessed by consumers who call from within certain call zones or areas; for example, consumers within the Sydney '(02)' number calling area;
  - (f) Before consumers access available Smartchat rates a customer credit check may be required; and
  - (g) Additional terms and conditions apply;
  - (h) Until non-code access is available, the use of the override code '1414' number is available only to registered Smartchat customers of AAPT;
  - (i) A 12 c flag fall is (or as the case may be, is not) included in the charges.
- 5.4 AAPT will ensure that management and staff procedures include a mandatory briefing of its legal advisers concerning new product launches and advertising campaigns and ensure that all of its advertising is approved by its legal advisers before it is published.
- 5.5 AAPT will review and ensure its Smartchat Call Centre ('the Call Centre') operators, and other customer service personnel inform all customers of the important charging features of the Smartchat product, including, where relevant, the matters set out in detail in clause 5.3 above, and also where relevant, that preselection to AAPT will occur automatically when introduced and the salient effects of preselection ;

- 5.6 AAPT will at its expense, whilst the Call Centre is in operation, cause an independent agency to conduct statistically significant test calls of its customer service operators to ensure that they are conveying complete and correct charging information to prospective customers and will require regular written reports from that independent agency. AAPT will provide an annual written certification to the Commission that the agency has satisfactorily carried out its obligations, including regular reporting to AAPT, and AAPT has, where relevant, taken appropriate corrective measures relating to any adverse findings reported by the agency.
- 5.7 AAPT will ensure that calls made by persons who have not registered as customers of AAPT, where the code number "1414" has been dialled before an area code or country code are:
- (a) transferred to a Call Centre operator who advises the person of the matters referred to in clause 5.5 above; or
  - (b) met by a recorded voice message indicating that the consumer must become a registered Smartchat customer of AAPT in order to use the service and providing a customer service phone number to call.
- 5.8 AAPT will within 14 days of the execution of this Undertaking send a letter, in the form set out in Schedule 2, addressed to each Smartchat customer. Four months after the execution of this Undertaking AAPT will provide to the Commission a written report indicating the total number of responses to the letter, howsoever received, and the results of those responses in terms, or in a form, which clearly indicates, without limitation, total numbers of Smartchat Customers who have opted to cancel their Smartchat agreements, and the total amount refunded or paid by way of compensation.
- 5.9 AAPT will ensure, if it is in receipt of any customer complaints, that they will be dealt with promptly and will be treated with courtesy and sensitivity having regards to the concerns raised by the Commission.
- 5.10 AAPT will within 7 days of the execution of this Undertaking place newspaper advertisements, in the form set out in Schedule 3, which will appear in the publications and materials and in the manner set out in Schedule 4 and publish a notice on the AAPT World Wide Web Site in the form and manner set out in Schedule 5.
- 5.11 AAPT will on execution of this Undertaking immediately intensify the development and application of its current trade practices compliance program and take all reasonable steps to ensure that all staff engaged in compiling advertising and promotional material are aware of their obligations under the Act, including the information contained in the Fair Call Advertising Guidelines.

5.12 Without limiting the generality of the foregoing undertaking, AAPT will within 2 months of signing this Undertaking prepare and submit for consideration by the Commission a written analysis and explanation of its Trade Practices Compliance Program ('the Compliance Program') confirming or demonstrating the Compliance Program has the following characteristics and objectives:

### Compliance Program

(a) Aim

To create a culture of compliance throughout AAPT and to prevent, so far as is reasonably possible, any contraventions of the Act by AAPT, its directors, employees or agents.

(b) Policy

The formal adoption by AAPT, of a policy of strict compliance with both the letter and spirit of the Act within AAPT.

(c) Compliance Infrastructure

The appointment of a senior manager or in-house lawyer as the AAPT Compliance Officer, with overall responsibility for Trade Practices compliance.

(d) Coverage

The compliance program is to cover all directors, employees and agents of AAPT whose duties could result in them being concerned in conduct that might breach the Act ("relevant staff").

(e) Education

Develop and implement an education program using the Commission's Fair Call Advertising Guidelines and have the relevant staff conversant with the provisions of the Act to a level where general staff can avoid obvious contraventions and can identify more complex potential trade practices problems for referral to the appropriate person in the AAPT compliance infrastructure.

5.13 The Compliance Program is to ensure, in general, that the AAPT company as a whole and its personnel abide by the spirit and terms of the Compliance Program and more specifically to ensure all staff engaged in compiling advertising and promotional material are especially aware of their obligations under the Act.

- 5.14 AAPT will implement agreed revisions to the Compliance Program within 1 month of the Commission approving the Compliance Program.
- 5.15 The Compliance Program will remain in force for the term of this Undertaking.
- 5.16 Within 3 months of signing this Undertaking AAPT will adopt a complaints handling system that complies with Australian Standard AS 4269-1995 (complaints handling).

## **6. TERM OF THE UNDERTAKING**

- 6.1 The term of the Undertaking is for 2 years from the date of execution, subject to the release of AAPT from the Undertaking by the Commission after 1 year in accordance with clause 6.2 below.
- 6.2 The Commission will review AAPT's compliance with the Undertaking 1 year from the date of execution and, after taking into consideration any submissions from AAPT relating to its compliance, may in its discretion, provided it is satisfied on reasonable grounds that AAPT has complied with the Undertaking, release AAPT from the Undertaking.

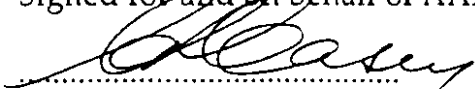
## **7. ACKNOWLEDGMENT**

- 7.1 AAPT notes that the Commission may from time to time publish and publicly refer to this undertaking in its discretion, including by way of press release.
- 7.2 AAPT acknowledges and accepts that this undertaking in no way derogates from the rights and remedies which may be available to any other person arising from the conduct the subject of this Undertaking.

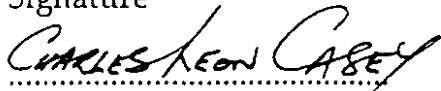


EXECUTED on the 23rd day of July 1997

Signed for and on behalf of AAPT Ltd (ACN 052 082 416)

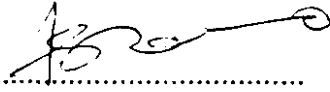


Signature

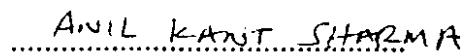


Name of Authorised Person

CHAIRMAN OF DIRECTORS



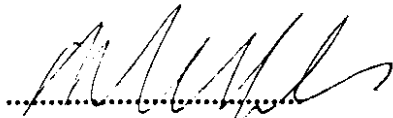
Signature



Name of Authorised Person

SECRETARY

Accepted by the Australian Competition and Consumer Commission Pursuant to Section 87B of the Trade Practices Act 1974.



Chairperson

This 27 day of July 1997

## SCHEDULE 1

### List of Advertising Materials

<b>Date</b>	<b>Publication</b>
01/07/97	Daily Telegraph, SMH
02/07/97	Adelaide Advertiser, West Australian
03/07/97	Age, Melbourne Herald Sun
04/07/97	SMH, Canberra Times, Courier Mail
07/07/97	Daily Telegraph, SMH, Age, Melbourne Herald
08/07/97	Daily Telegraph, SMH, Canberra Times, Age, Herald Sun, Courier Mail, Adelaide Advertiser, West Australian
09/07/97	Daily Telegraph, SMH, Courier Mail

**SCHEDULE 2**  
**[TO BE TYPED ON AAPT LIMITED LETTERHEAD]**

[Date]

[AAPT customers who joined  
Smartchat between 1 & 10 July 1997]

Dear Customer

**TO OUR VALUED SMARTCHAT CUSTOMERS: AAPT'S LOW PRICING POLICY EXPLAINED**

Thank you for joining AAPT Smartchat. By now you should have received our information pack containing the Smartchat Application for Service. If you have not yet returned it to us, please do so using the enclosed Reply Paid envelope.

Following discussions with the Australian Competition & Consumer Commission, we are writing to you today to further explain some of the features of our Smartchat service.

You are a valued customer, and we would like to do all we can to ensure you are completely satisfied with our service. If you would like further information about the following matters or any aspect of our services, please contact us immediately on 1300 36 4243. We will treat any communications which you have with us in confidence, and will deal with any query you may have with the utmost urgency.

AAPT is committed to 100% customer satisfaction. If we didn't make clear the terms of AAPT's Smartchat offer, we will be happy to refund your deposit (if any), cancel the cost of any calls you made as a result, terminate our agreement and return you to your former service provider at no cost to you.

When non-code access (called "pre-selection") is available, you will not need to dial 1414. By filling out and returning your Smartchat Application for Service, you will automatically be pre-selected to AAPT as your long distance telephone company when pre-selection becomes available in your area.

Our Smartchat rates are available for national long distance calls and international calls. Each national long distance call and international call which you make using AAPT Smartchat will start with a 12 cent flag fall.

For national long distance calls, we have Peak, Off-Peak and Economy rates. These rates apply to calls anywhere in Australia when you dial 1414 + area code + local number. From Friday 6pm to Sunday midnight, you can make Economy calls to anywhere in Australia for only 9 cents a minute. If you make your calls between the Peak times of 9am to 6pm Monday to Friday, our Peak rate of only 25 cents a minute applies. Off-Peak rates of 15 cents a minute apply at all other times.

For international calls, we have Peak and Off-Peak rates. Our Peak rates for international calls apply between 9am and 6pm Monday to Friday. Off-Peak rates apply at all other times. The rates card which we provided to you in the information pack sets out the international Peak and Off-Peak rates for calls to 232 destinations.

At the moment, we can only offer Smartchat prices if you live in Melbourne, Geelong, Sydney, Adelaide, Perth, Canberra, Brisbane or the Gold Coast. AAPT Smartchat will be available in other places soon. So if you have friends or relatives who would like to take advantage of our low prices nationally and internationally we'd be happy to talk to them. It is also important for you to remember that our Smartchat prices do not apply to calls to mobiles and special services calls (eg. 0055 and 1900 numbers).

Yours sincerely

Cassandra Peters  
Manager, Smartchat Services

To our valued Smartchat members

# AAPT low pricing policy explained.

Since we began advertising our Smartchat rates in the first week of July, we've tried to make our low pricing policy as clear as possible. Following discussions with the Australian Competition and Consumer Commission, we felt we should make clear the details of the offer.

**1. NATIONAL LONG DISTANCE\* CALLS**

Our peak, off-peak and economy national Smartchat rates apply to long distance calls anywhere within Australia.

**2. PEAK AND OFF PEAK CALL RATES ACROSS THE GLOBE**

You can call internationally Off-Peak with AAPT from 6pm to 9am Monday to Friday, and all weekend. Which means our International Peak rates only apply 9am to 6pm Monday to Friday. (Of course, our Peak rates are low too.)

The chart below has a few examples from 232 destinations world-wide.

Now it's also important to realise what we can't do. Our Smartchat prices don't apply to mobiles or special services calls (eg. 0055 and 1900 numbers).

And at the moment, we can only offer you Smartchat prices if you live in Melbourne, Geelong, Sydney, Adelaide, Perth, Canberra, Brisbane or the Gold Coast. We'll be available in other places soon.

If you haven't called yet and you'd like to access these Smartchat prices, you can simply register over the phone. All we do is collect enough details to run an instant credit check and, on approval, to organise the switchover.

Call now on 1300 65 1414.

\*Before non-peak rates, Smartchat rates will apply when you dial 1414 + Area Code + Local Number.

For more information about AAPT Smartchat, complete this coupon and fax to 1 800 688 842 or send to:  
AAPT Smartchat, Reply Paid 1238 GPO Box 474 SYDNEY NSW 2001

PHONE US NOW  
**1300 65 1414**  
**smartchat**  
www.aapt.com.au

Name \_\_\_\_\_  
Address \_\_\_\_\_  
Postcode \_\_\_\_\_ Phone \_\_\_\_\_



**AAPT**  
The latest news in communications

AAPT LIMITED A.C.N. 105 991 474

## SCHEDULE 4

### List of Publications and Dates for Running of Full Page Corrective Advertisements

<b>Date</b>	<b>Publication</b>
ASAP	Sydney Morning Herald
"	Daily Telegraph
"	Adelaide Advertiser
"	Perth West Australian
"	Melbourne Age
"	Herald Sun
"	Canberra Times
"	Brisbane Courier Mail

## **SCHEDULE 5**

The text of the website information will be as for schedule 3, and will appear for a minimum of 2 weeks, in a prominent and immediately accessible point of display for persons accessing the AAPT website.