



**UNDERTAKING TO THE AUSTRALIAN COMPETITION AND  
CONSUMER COMMISSION GIVEN UNDER SECTION 87B OF  
THE *TRADE PRACTICES ACT 1974***

**BY**

**CABLE & WIRELESS OPTUS LIMITED (ACN 052 833 208) AND OPTUS  
NETWORKS PTY LIMITED (ACN 008 570 330)**

**PERSONS GIVING UNDERTAKING**

- (1) This undertaking is given to the Australian Competition and Consumer Commission ('the Commission') by Cable & Wireless Optus Limited (ACN 052 833 208) and Optus Networks Pty Limited (ACN 008 570 330) of 101 Miller Street, North Sydney in New South Wales (hereinafter collectively referred to as 'Optus') under section 87B of the *Trade Practices Act 1974* ('the Act').

**BACKGROUND**

- (2) Optus began advertising a local residential telephone call plan, commencing on 16 March 2000, for its Optus cable network Local service. The plan was known as the Optus Unlimited Local Call Plan. On 8 May 2000, Optus began advertising the Optus Unlimited Local Call Plan for customers who do not have access to the Optus network but who want their local call service billed with an Optus long distance account. As at 27 July 2000, approximately 18,500 customers had signed up to the Local Plan and 1,770 customers had signed up to the Rebilled Local Plan. The Optus Unlimited Local Call Plan and the Rebilled Local Plan are collectively referred to as the "Plans".
- (3) Promotional material for the Plans sent to about 200,000 people stated:  
  
➤ ***your household can make hundreds or thousands of local calls a month***
- (4) In early May, Optus introduced the 'Optus Local Fair Go Policy' (the Policy). This policy attempted to limit the number of local calls a customer could make whilst on the Plans to under 500 calls per month. Advertising material from mid May made reference to the Policy. Mail outs made on 11 May 2000 and 9 June 2000 referred to the Policy as did the advertising material used by Optus telemarketing teams, retail sales channel and door-to-door sales teams.
- (5) Investigations by the Commission established that Optus advised some customers on the Local Plan that they would be required to limit the number of calls they made each month. Optus has advised the

Commission that it did not suspend or terminate any customer, even if their usage exceeded 500 local calls per month.

- (6) Some customers on the Local Plan were charged for individual local calls and were told that they had made too many local calls and had been charged for these calls in accordance with the Policy. Optus has informed the Commission that the actual reason customers were charged was due to a billing limitation rather than as a result of that particular customer exceeding calls in excess of the limit set out in the Policy.
- (7) In light of the billing limitation, Optus credited \$5 to the account of new Local Plan customers. Optus calculated the \$5 by reference to the average number of calls any residential customer was likely to make before the billing system began to rate the calls at zero.
- (8) The Local Plan was marketed as a component of the Optus OneTouch Plus Advantage package and available to customers who signed up for the Optus OneTouch Plus Advantage package for 12 months. Optus advertising stated that:

- 'Optus Unlimited Local Calls is available until 31 October 2000 unless withdrawn earlier'.

Optus has advised the Commission that the effect of this term was intended to be that although customers signed a 12-month contract under which they were preselected to Optus Long Distance, the unlimited local calls would only be available until 31 October 2000. The Commission was of the view that on a plain reading, consumers would understand that the promotion of the unlimited local call component of the Optus OneTouch Plus Advantage package would run for 12 months and be available until 31 October 2000.

- (9) The Rebilled Plan was not offered as a component of the Optus OneTouch Plus Advantage packages nor did it require a 12 month contract. Advertising for the Rebilled Plan stated that:
  - 'Unlimited Local Calls is available until 31 October 2000 unless withdrawn earlier'.
- (10) From 8 August 2000 Optus withdrew the Plans so that they are no longer available for new customers or for existing customers not currently on the Plans.
- (11) Optus has extended the availability of the offer of unlimited local calls, without applying the Policy, for existing customers currently connected to the Plans, until 31 October 2001.

## **COMMENCEMENT OF UNDERTAKINGS**

- (12) This undertaking comes into effect when:
- (a) the undertaking is executed by Optus; and
  - (b) the undertaking so executed is accepted by the Commission.

## **UNDERTAKINGS**

- (13) Optus will not apply any limit on the number of local calls that are made by customers whilst on the Plans.
- (14) Optus will inform all customer service personnel and sales channel staff that the Policy has been terminated.
- (15) Optus has placed a stop on advertising the Plans. No further 'above the line' material (television, press, magazine inserts, radio, billboards) will be commissioned by Optus for the Plans and stocks of press inserts will be pulped. Optus will take all reasonable steps to ensure that all advertising material which Optus has not been able to withdraw immediately, being material used, in conjunction with other material by Optus sales and service channels who have been instructed no longer to offer the Plans, will be replaced by 20 September 2000.
- (16) Optus will review the accounts of all customers on the Plans with a view to identifying any customer who has been charged for calls in excess of the flat monthly fee that applies in relation to the Plans. Any customer so identified will be advised that the excess charge is not applicable. In the event that any customer has in fact paid in excess of the Plan's flat fee, those customers will be reimbursed by way of a credit to their account.
- (17) Optus will ensure that all customers on the Plans are advised that they are able to continue on the Plan until 31 October 2001. In the event that a customer wishes to terminate their membership of the Plan, Optus will not impose any termination fee or similar cancellation charge.
- (18) Optus will use its best efforts to contact all previous members of the Plans and make available to them the benefits of this undertaking and treat such customers as if they were current members of the Plans if they elect to re-join the Plan. Past members of the Plans will also be offered reimbursement for disconnection and reconnection costs incurred if they terminated the Plans on account of the Policy.
- (19) Optus will convene a specific customer support team responsible for the resolution of complaints from customers on the Plans.

- (20) Optus will write to all customers on the Plans and advise them of the arrangements arising in relation to this Undertaking, including the reasons why the Undertaking was provided to the Commission.
- (21) Within 3 months of the date of this Undertaking, Optus will, at its own expense, review its Trade Practices Compliance Program, to improve procedures and mechanisms to minimise the likelihood of contraventions of the Act and section 52 in particular. Optus will provide the Commission with a report of the findings of the review.
- (22) The object of implementing the compliance program is to create and maintain compliance consistent with Australian Standard AS-3806. In the program, Optus will continue to use its best endeavours to:
- (a) demonstrate commitment to a policy of compliance and embed a culture of compliance throughout the organisation;
  - (b) analyse and correct the trade practices concerns identified by this undertaking;
  - (c) identify risk areas for trade practices breaches and develop management procedures to eliminate or minimise these risks;
  - (d) communicate to all staff that Optus will take internal disciplinary action against those responsible for breaches and may not indemnify them against legal proceedings arising from such conduct; and
  - (e) provide practical and verifiable training for all relevant staff and management so that breaches and potential breaches may be prevented or otherwise detected, referred and acted upon.

## **ACKNOWLEDGMENTS**

- (23) Optus acknowledges that its actions regarding the implementation of the Policy misled some consumers. In particular, some consumers were led to believe that Optus placed a limit on the number of local calls that could be made under the Plans.
- (24) Optus acknowledges that the ambiguity in the advertising material relating to the Plans may have misled customers about the date on which their entitlement to make unlimited calls is to cease.
- (25) Optus acknowledges the Commission's right to make this undertaking available for public inspection and notes that the Commission will, at its discretion, from time to time, publish and publicly refer to this undertaking.

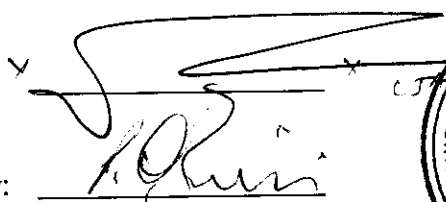
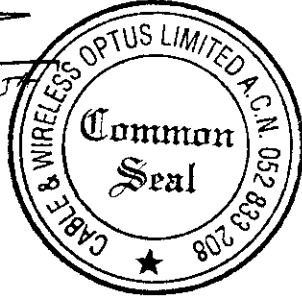
- (26) Optus acknowledges and accepts that this undertaking in no way derogates from the rights and remedies available to any third person arising from Optus' conduct.

**IN WITNESS TO THESE UNDERTAKINGS**

The Common seal of **CABLE & WIRELESS OPTUS LIMITED**  
(ACN 052 833 208) was hereunto affixed in the presence of:

Director:

Director / Secretary:

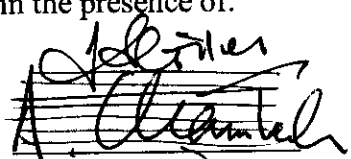
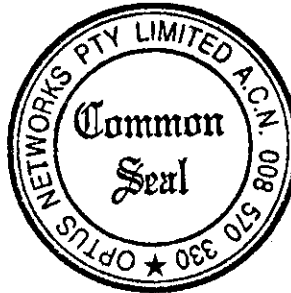
  


This 7<sup>th</sup> day of September 2000.

The Common seal of **OPTUS NETWORKS PTY LIMITED** (ACN 008 570 330)  
was hereunto affixed in the presence of:

Director:

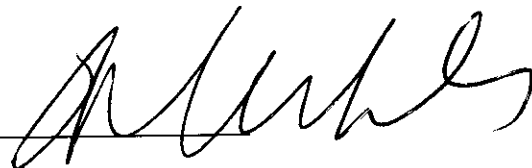
Director / Secretary:

This 7<sup>th</sup> day of September 2000.

ACCEPTANCE BY THE AUSTRALIAN COMPETITION AND CONSUMER  
COMMISSION PURSUANT TO SECTION 87B OF THE TRADE PRACTICES  
ACT, 1974:

Chairman:



This 30<sup>th</sup> day of September 2000.