



UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION GIVEN UNDER SECTION 87B

BY

OPTUS MOBILE PTY LTD (ACN 054 365 696)

PERSON GIVING UNDERTAKING

- 1) This undertaking is given to the Australian Competition and Consumer Commission ('the Commission') by Optus Mobile Pty Ltd of 101 Miller Street, North Sydney, in the State of New South Wales under section 87B of the *Trade Practices Act 1974* ('the Act').

BACKGROUND

- 2) Optus Mobile Pty Ltd ('Optus') is incorporated in New South Wales and carries on a business throughout Australia.
- 3) On 9 October 1999 and 14 October 1999, Optus caused to be placed a full page advertisement on page 25 and page 17 respectively of the *Cairns Post* ("the Advertisements"). The *Cairns Post* is a newspaper circulating within the Cairns region of North Queensland. A copy of those Advertisements is attached at **annexure A** and **annexure B**.
- 4) The Advertisements promoted the closure of the Analogue Mobile Phone System ("AMPS") in conjunction with an Optus Mobile Digital promotion. The Advertisements contained the following representation:

"You have 3 bills left before your analogue dies. In January 2000 the analogue network will shut down (some rural exceptions may apply). If you are still using an analogue phone you will need to go digital."

("the Representation")

- 5) On 20 October 1999 the Commission wrote to Optus alerting it to the Commission's position that the representations contained within the Advertisements had the potential to mislead consumers contrary the fair trading provisions of the Trade Practices Act. In particular, the Commission informed Optus of its views that the Representation amounted to a representation that the AMPS would shut down in the Cairns region in January 2000 whereas the Commission understood that the AMPS would not shut down in the Cairns region until after January 2000.
- 6) After being informed by the Commission of the possible contravention the fair trading provisions of the Trade Practices Act in respect of the Representation, Optus has undertaken that any future advertisements which refer to the AMPS shutdown will be tailored to address the timeframe for the shutdown of the AMPS in that region. Optus has also undertaken to amend any existing Trade Practices Compliance Program ("the

Program”) to incorporate this consideration of regional circumstances in future advertisements.

ADMISSIONS

- 7) After the Commission initially raised concerns with Optus, Optus advised the Commission that:
- i) Optus were aware that the AMPS does not shut down in the Cairns region in January 2000; and
 - ii) Optus acknowledged that the statement “You have 3 bills left before your analogue dies” may have led some consumers in the Cairns region to assume that the AMPS would shut down in that region in January 2000;

COMMENCEMENT OF UNDERTAKING

- 8) This undertaking comes into effect when:
- (i) the undertaking is executed by Optus; and
 - (ii) the Commission accepts the undertaking so executed.

UNDERTAKINGS

- 9) Optus gives the following undertakings to the Commission for the purposes of section 87B of the *Trade Practices Act 1974*:-

Conduct Undertakings

- i) Optus will ensure that neither it nor any of its servants or agents cause to be published or broadcast any representation which states or implies that the AMPS will shutdown in any region in Australia at a time specified by Optus in any newspaper or other media unless they have reasonable grounds for making the representations.
- ii) Optus will ensure that it and any of its servants or agents will not make any representation or publish any advertisement in a particular region which contains statements that do not apply to that region where the representation is made or the advertisement is published.

Trade Practices Compliance Program

- iii) Within two months from the commencement of this undertaking Optus will amend the existing trade practices compliance program that Optus has implemented to include provision that Optus and any of its servants will take steps and measures to ensure that Optus does not publish any advertisement in a particular region which contains statements that do not apply to the region where the advertisement is published.

- iv) Optus will provide a copy of the provision inserted into the Program to the Commission within two weeks of its implementation.
- v) This undertaking will be operative for a period of two (2) years commencing from the date the undertaking is executed by both parties.

ACKNOWLEDGMENTS

- 10) Optus acknowledges the Commission will make this undertaking available for public inspection.
- 11) Optus further acknowledges that the Commission will, from time to time, publicly refer to this undertaking.
- 12) Optus acknowledges and accepts that this undertaking in no way derogates the rights and remedies available to any person arising from the conduct of Optus.

Signed on behalf of OPTUS MOBILE PTY LTD by

CHRIS RICHARDS _____ 02/03/00

Print Name (Director/Secretary)

Signature

Date

PAUL O'BRIEN

[Signature]



02/03/00

Print Name (Director/Secretary)

Signature

Date

Print Name (Director/Secretary)

Signature

Date

Company Seal

Date

ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION PURSUANT TO SECTION 87B OF THE TRADE PRACTICES ACT 1974.

[Signature]

(Professor Allan Fels)

Chairperson

This 15/03/ day of 2000 1999 AK

Annexure A

Optus Advertisement - 9 October 1999

The Cairns Post, Saturday, October 9, 1999 - Page 25

YOU HAVE 3 BILLS LEFT BEFORE YOUR ANALOGUE DIES

In January 2000 the analogue network will shut down (some rural exceptions may apply). If you're still using an analogue phone you will need to go digital.

Just pick up the phone and we'll deliver your new Optus Mobile Digital direct to your door, free. Plus we'll give you \$200 in extra free calls over 2 months! and a whole lot more.

YOUR PHONE

For just \$1* you get the Philips Savvy digital mobile.

- Very small - pocketsize
- 2-4 hours talktime, or 130-150 hours standby (network dependent)
- Animated Clock, Calculator, Stopwatch & Biorhythm Calendar
- Last number redial

YOURS FROM OPTUS

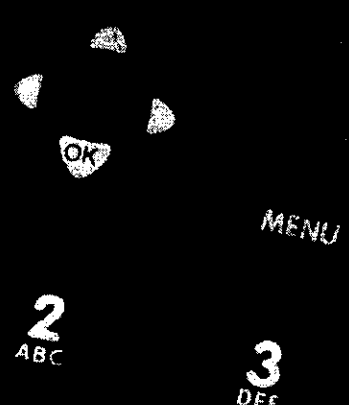
- Optus Everyday 15 plan, \$15 monthly access fee with up to \$15 worth of free calls every month*
 - Optus 'yes' Time
 - Optus 'yes' Weekend
- Total minimum cost over 24 months is \$361 (\$426 if not upgrading from Analogue).

YOURS FREE

- \$200 worth of extra calls over 2 months!
- Connection (worth \$65) if upgrading from Analogue
- Personal Handsfree (worth \$69)
- In-Car Charger (worth \$39)
- Leather Case (worth \$49)



*\$200 free calls will only apply against airtime usage and will be allocated across your first 2 bills up to \$200 per bill. Unused free calls expire each month and cannot be redeemed for cash. Available on selected fixed term contracts only and excludes pay as you go. Free calls excludes calls on 1900 pre-recorded calls and international roaming. Offer ends 31/10/99 unless withdrawn earlier. If you do not contact your retailer within 14 days of the last minimum connection for 24 months, \$200 extra is payable. Prices quoted do not include GST. Prices for supplies more than 100,000 will be adjusted for GST. Offer is subject to Optus Credit assessment and while stocks last. Limit of 1 phone per customer. Only available for new digital connections.



MONEY BACK GUARANTEE
 If you change your mind, simply return your phone unused with all accessories and in its original condition within 7 days for a full refund, no questions asked.



Annexure B

Optus Advertisement - 14 October 1999

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The Cairns Post, Thursday, October 14, 1999 - Page 17

YOU HAVE 3 BILLS LEFT BEFORE YOUR ANALOGUE DIES

In January 2000 the analogue network will shut down (some rural exceptions may apply). If you're still using an analogue phone you will need to go digital.

Just pick up the phone and we'll deliver your new Optus Mobile Digital direct to your door, free. Plus we'll give you \$200 in extra free calls over 2 months, and a whole lot more.

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In-Car Charger (worth \$39)

Leather Case (worth \$49)



*\$200 free calls will only cover highest 30 mins usage and will be allocated across your 15 min 3 min up to \$150 per bill. Standard free calls expire each month and cannot be redeemed for cash. Available to selected land line numbers and includes 100% 4200 free calls included call to 1900. International calls and long distance roaming. Offer ends 31/10/99. Some restrictions apply. If you do not answer your handset within 15 secs or do not receive a connection for 24 months, \$200 will be forfeited. Price includes GST. Prices for supplies may vary. If you are not registered for GST, GST is added to the price. Optus reserves the right to change prices without notice. Offer is subject to Optus Credit assessment and while stocks last. Offer is 1 phone per customer. Only available to new digital connected.

MONEY BACK GUARANTEE
If you change your mind, simply return your phone unused with all accessories and in its original condition within 7 days for a full refund, no questions asked.

1800 501 062

'yes'
OPTUS
direct