

**Ordinary Access Undertaking to the Australian
Competition and Consumer Commission Under
Division 5 of Part XIC of The Trade Practices
Act 1975 (Cth)**

Optus Mobile Pty Limited

Optus Networks Pty Limited

Australian Competition and Consumer Commission

Ordinary Access Undertaking to the Australian Competition and Consumer Commission Under Division 5 of Part XIC of The Trade Practices Act 1975 (Cth)

DATED 16 February 2007

PARTIES **OPTUS MOBILE PTY LIMITED (ABN 054 365 696)** of 101 Miller Street, North Sydney NSW 2060

OPTUS NETWORKS PTY LIMITED (ABN 008 570 330) of 101 Miller Street, North Sydney NSW 2060 (together "Optus")

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION
being a body corporate established under section 6A of the Trade Practices Act (Cth) ("ACCC")

BACKGROUND

- A. Optus holds a carrier licence and is a carriage service provider under the Telecommunications Act 1997 (Cth).
- B. Optus gives this ordinary access undertaking pursuant to Division 5 of Part XIC of the Trade Practices Act 1974 (Cth) in relation to a subset of the Domestic Mobile Terminating Access Service which was declared by the ACCC under section 152AL of the TPA with effect from 1 July 2004.
- C. This Undertaking specifies certain terms and conditions on which Optus undertakes to comply with the Applicable Standard Access Obligations in respect of the Optus DGTA Service. Additional terms and conditions relating to the supply of and interconnection with, the Optus DGTA Service are to be negotiated and agreed between Optus and individual Access Seekers prior to the supply of the Optus DGTA Service.

1. DEFINITIONS AND INTERPRETATIONS

- 1.1 The following words have these meanings in this Undertaking unless the contrary intention appears:

Access Seeker means a carrier or carriage service provider seeking the supply of the Optus DGTA Service by Optus.

Applicable Standard Access Obligations means the standard access obligations set out in Schedule 3.

Business Day means a day on which banks are open for business excluding Saturdays, Sundays and public holidays in Sydney.

Declared Service has the same meaning given to that term in section 152AL of the TPA.

Optus DGTA Service means Optus' domestic GSM terminating access service described in Schedule 1.

TPA means the *Trade Practices Act 1974 (Cth)*.

Undertaking means this ordinary access undertaking given by Optus to the ACCC under Division 5 of Part XIC of the TPA.

- 1.2 In this Undertaking the following rules of interpretation apply unless the contrary intention appears.

- (a) Headings are for convenience only and do not affect the interpretation of this Undertaking.
- (b) The singular includes the plural and vice versa.
- (c) Where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- (d) A reference to:
 - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;
 - (ii) a thing (including but not limited to a chose in action or other right) includes a part of that thing;
 - (iii) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to this Undertaking;
 - (iv) this Undertaking includes all schedules and attachments to it;
 - (v) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity and is a reference to that law as amended, consolidated or replaced; and
 - (vi) a monetary amount is in Australian dollars.
- (e) An agreement on the part of two or more persons binds them jointly and severally.

2. **COMMENCEMENT AND DURATION**

- 2.1 This Undertaking takes legal effect on the later of 1 July 2007 and the date on which this Undertaking is accepted by the ACCC under Division 5 of Part XIC of the TPA and continues until the earlier to occur of:
 - (a) 31 December 2007; or
 - (b) termination, withdrawal or replacement of this Undertaking in accordance with the TPA.
- 2.2 For the avoidance of doubt, this Undertaking (including, without limitation, any prices in this Undertaking) has no effect in respect of the supply of the Optus DGTA Service by Optus to an Access Seeker under an agreement that is effective on the date on which the Undertaking is accepted by the ACCC and which incorporates an express price for the Optus DGTA Service, for as long as that agreement continues to be effective and applies an express price for the Optus DGTA Service.

3. **UNDERTAKING TERMS AND CONDITIONS**

- 3.1 Optus undertakes to the ACCC that during the period this Undertaking is in effect pursuant to clause 2.1, it will, in relation to the Applicable Standard Access Obligations, supply the Optus DGTA Service:
 - (a) specified in Schedule 1;
 - (b) at the prices specified in Schedule 2.

3.2 For clarification, this Undertaking:

- (a) does not specify all the terms and conditions on which Optus will comply with the Applicable Standard Access Obligations and additional terms and conditions must be negotiated and agreed between Optus and an Access Seeker or failing agreement, determined in accordance with section 152CP or 152CPA of the TPA; and
- (b) does not apply to the Optus DGTA Service to the extent that there are no standard access obligations applicable to Optus in respect of the Optus DGTA Service for reasons including:
 - (i) the granting of an exemption by the ACCC under section 152AT of the TPA in respect of the Optus DGTA Service; or
 - (ii) revocation of a declaration by the ACCC under section 152A0 of the TPA in respect of the Optus DGTA Service.

3.3 Except as provided for in section 152CQ(5) of the TPA, nothing in this clause 3 is to be taken as limiting Optus' or the Access Seeker's rights under Division 8 of Part XIC of the TPA.

4. **VARIATION OF DECLARATION**

If the ACCC varies a declaration in respect of the Optus DGTA Service, Optus may choose to vary, replace or withdraw this Undertaking pursuant to the TPA by providing notice in accordance with the TPA and with effect from the date given in the relevant notice.

5. **VARIATION, REPLACEMENT OR WITHDRAWAL OF UNDERTAKING**

5.1 Optus may at any time during the period of this Undertaking:

- (a) give the ACCC notice seeking approval of a variation or replacement of this Undertaking; or
- (b) by written notice to the ACCC withdraw this Undertaking.

5.2 Nothing in this clause 5 is to be taken as limiting Optus' rights in relation to this Undertaking under Division 5 of Part XIC of the TPA.

6. **NOTICES**

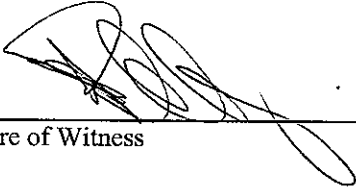
Any communication in respect of this Undertaking should be made in writing to:

Attention: Director, Corporate and Regulatory Affairs

Address: 101 Miller Street, North Sydney NSW 2060

Facsimile: 02 9342 9155

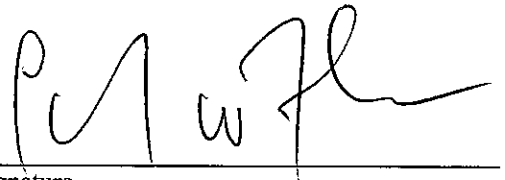
Signed by **Paul Fletcher** as authorized signatory for **Optus Mobile Pty Limited** in the presence of:



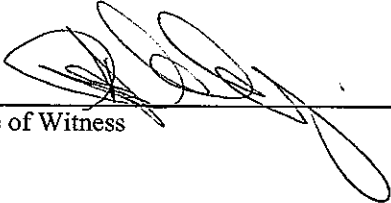
Signature of Witness

JASON PETER OCKERBY

Name of Witness in full


Signature

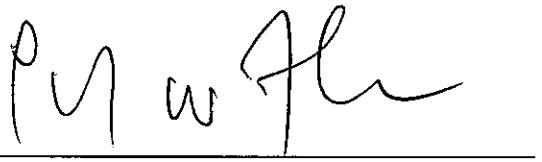
Signed by **Paul Fletcher** as authorized signatory for **Optus Networks Pty Limited Pty Limited** in the presence of:



Signature of Witness

JASON PETER OCKERBY

Name of Witness in full


Signature

Schedule 1

Service Description - Optus Domestic GSM Terminating Access Service

1. DOMESTIC GSM TERMINATING ACCESS SERVICE

The Optus DGTA Service is an access service for the carriage of voice calls from a Point of Interconnection, or potential Point of Interconnection, to a B-Party directly connected to the Optus GSM Network.

2. DEFINITIONS

Where words or phrases used in this Schedule 1 are defined in the TPA or the *Telecommunications Act 1997* or the *Telecommunications Numbering Plan 1997*, they have the meaning given in the relevant Act or instrument.

Other definitions:

B-Party is the end-user to whom a telephone call is made.

GSM means the Global System for Mobiles (formerly Groupe Speciale Mobile) as defined by ETSI and the GSM Memorandum of Understanding (or any successors) and as applied in Australia.

GSM Memorandum of Understanding means the agreement between certain GSM network operators and regulatory authorities from various countries entitled GSM Memorandum of Understanding dated 7 September 1987 as varied by the Addendum dated 24 September 1991 and as varied or replaced from time to time.

Optus GSM Network is the telecommunications network that conforms to GSM standards which is owned and operated by Optus.

Point of Interconnection is a location which:

- (a) is a physical point of demarcation between the Access Seeker's Network and the Optus GSM Network; and
- (b) is associated with (but not necessarily co-located with) one or more gateway exchanges of the Access Seeker's Network and Optus GSM Network.

Schedule 2

Price for Optus DGTA Service

1. DEFINITIONS

Unless the context indicates otherwise, capitalised terms used in this Schedule 2 that are not otherwise defined in the main body or other Schedules of the Undertaking have the meaning given below:

Billing Period means a calendar month.

CPM means cents per minute of the Optus DGTA Service measured in one minute increments or parts thereof.

GST has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

2. PRICING

2.1 The fees payable by the Access Seeker for the Optus DGTA Service supplied by Optus in a particular Billing Period is determined by reference to:

- (a) the per minute charge for the Optus DGTA Service applying to that Billing Period; and
- (b) the total number of minutes of the Optus DGTA Service supplied by Optus to the Access Seeker in that Billing Period.

in accordance with the following formula:

Fees= RI xM

where:

'RI' is the rate set out in clause 2.2 applying to the Billing Period in which the Optus DGTA Service was supplied.

'M' is the number of minutes of the Optus DGTA Service supplied by Optus to the Access Seeker in the particular Billing Period.

2.2 The variable rate applying to the Billing Periods for the period commencing on the date this Undertaking comes into effect and continuing until 31 December 2007 (or the termination, withdrawal or replacement of the Undertaking in accordance with the TPA) is 12 CPM (exclusive of GST).

2.3 Additional terms and conditions must be negotiated and agreed between Optus and an Access Seeker, as contemplated by clause 3.2, in relation to the payment of any applicable GST by the Access Seeker in respect of the supply of the DGTA Service.

Schedule 3

Applicable Standard Access Obligations

3.1. In this Schedule 3 the following words which are not otherwise defined in the Undertaking have these meanings unless the context otherwise requires:

Carriage Service has the meaning set out in the Telecommunications Act 1997.

3.2. Optus will:

- (a) supply the Optus DGTA Service to the Access Seeker in order that the Access Seeker can provide Carriage Services; and
- (b) take all reasonable steps to ensure that the technical and operational quality of the Optus DGTA Service or that part of the Optus DGTA Service, is equivalent to that which Optus provides to itself; and
- (c) take all reasonable steps to ensure that the Access Seeker receives, in relation to the Optus DGTA Service or that part of the Optus DGTA Service, fault detection, handling and rectification of a technical and operational quality and timing that is equivalent to that which Optus provides to itself.