
HUTCHISON TELECOMMUNICATIONS (AUSTRALIA) LIMITED

ACN 003 677 277

**ACCESS UNDERTAKING TO THE
AUSTRALIAN COMPETITION & CONSUMER COMMISSION
UNDER DIVISION 5 OF PART XIC OF
THE TRADE PRACTICES ACT 1974 (CTH)**

PMTS CALLS 'DUAL RATE'

Dated 7 October 2005

**ACCESS UNDERTAKING TO
THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION
UNDER DIVISION 5 OF PART XIC OF THE TRADE PRACTICES ACT 1974 (CTH)**

BY

HUTCHISON TELECOMMUNICATIONS (AUSTRALIA) LIMITED

1. PMTS Calls Dual Rate Undertaking

- 1.1 Hutchison Telecommunications (Australia) Limited (**HTAL**) gives this Undertaking to the Australian Competition & Consumer Commission (the **Commission**) pursuant to s152BS(1) of the *Trade Practices Act 1974* (Cth) (the **Act**) in relation to the mobile terminating access service.
- 1.2 For the avoidance of doubt, this Undertaking only applies to the carriage of PMTS Calls terminating on HTAL's Mobile Network.

2. Background

- 2.1 HTAL holds a carrier licence under the *Telecommunications Act 1997* (Cth) and supplies listed carriage services within the meaning of s16 of the *Telecommunications Act 1997* (Cth) using a W-CDMA Mobile Network.
- 2.2 One of the listed carriage services HTAL supplies is an access service for the carriage of PMTS Calls from a Point of Interconnection, or potential Point of Interconnection, terminating on HTAL's Mobile Network.
- 2.3 This Undertaking sets out the terms and conditions on which HTAL agrees to supply the HTAL Mobile to Mobile Terminating Access Service as defined in clause 1.1 of Attachment A.
- 2.4 This Undertaking does not apply to, and does not affect, the terms and conditions on which HTAL or Hutchison 3G Australia Pty Limited (**H3GA**) supplies any other service including, without limitation:
- (a) SMS, MMS, video, content and data services; and
 - (b) the H3GA W-CDMA terminating voice access service.

3. Definitions and Interpretation

- 3.1 The following terms have the following meanings:
- (a) **Access Seeker** means an Australian mobile carriage service provider seeking access to the HTAL Mobile to Mobile Terminating Access Service for the purpose of terminating a PMTS Call on the HTAL Mobile Network.

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- (b) **Conversation Minute** means the derived period of time (expressed in minutes and calculated and chargeable in multiples of one second) from the receipt of an answer signal until receipt of a 'clear forward' or 'forced release signal' in each case by HTAL at the Point of Interconnection.
 - (c) **GST** has the meaning provided in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
 - (d) **HTAL Mobile to Mobile Terminating Access Service** has the meaning given by clause 1.1 of Attachment A.
 - (e) **Mobile Service Number** means a number that has been allocated under the *Telecommunications Numbering Plan 1997* to a mobile carriage service provider for the provision of a PMTS.
 - (f) **Mobile Network** means the network operated by a mobile carriage service provider for the purposes of providing a PMTS.
 - (g) **PMTS** means a public mobile telecommunications service as defined by section 32 of the *Telecommunications Act 1997* (Cth).
 - (h) **PMTS Call** means a voice call originating from a Mobile Service Number on a Mobile Network in Australia and terminating on a Mobile Service Number on a Mobile Network in Australia.
 - (i) **Point of Interconnection** means:
 - (i) a physical point of demarcation between the networks nominated and agreed by HTAL and the Access Seeker; and
 - (ii) which is associated (but not necessarily co-located) with one or more gateway exchanges nominated by HTAL.
 - (j) **Related Body Corporate** has the same meaning given to that term in section 4A of the Act.

3.2 In this Undertaking, unless the contrary intention appears:

- (a) a reference to an agreement includes any variation to that agreement;
- (b) a reference to an Attachment is a reference to an attachment to this Undertaking and a reference to this Undertaking includes its Attachments;
- (c) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactment or replacements of any of them;
- (d) all monetary amounts are expressed in Australian dollars; and
- (e) an expression which is given a particular meaning in the Act or the *Telecommunications Act 1997* (Cth) and which is not otherwise defined in this Undertaking has that meaning in this Undertaking.

4. Commencement and Expiry

- 4.1 This Undertaking overrides any commercial agreement for the supply of the HTAL Mobile to Mobile Terminating Access Service between HTAL and any other party.
- 4.2 This Undertaking comes into effect immediately after the Commission provides HTAL with written notice of its acceptance under s152CBC(3) of the Act and continues until the earlier to occur of:
- (a) 31 December 2007; or
 - (b) a decision by the Commission to revoke the declaration of the mobile terminating access service; or
 - (c) withdrawal of this Undertaking under s152CA.
- 4.3 Nothing in this Undertaking should be taken as in any way affecting HTAL's rights under Division 5 of Part XIC including HTAL's right to vary or withdraw this Undertaking.

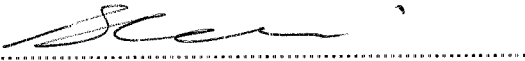
5. Terms and Conditions

- 5.1 HTAL undertakes to the Commission that while this Undertaking is in effect, it will provide Access Seekers with the HTAL Mobile to Mobile Terminating Access Service:
- (a) on the terms and conditions specified in Attachment A; and
 - (b) on such other terms (the **Non-price Terms**) as determined in accordance with clause 5.2 or 5.4.
- 5.2 Where an Access Seeker has an agreement with HTAL for the supply of the mobile terminating access service or any other service such as SMS or MMS that is in force on the date on which this Undertaking commences (an **Existing Agreement**), the supply of the HTAL Mobile to Mobile Terminating Access Service will be governed by all the Non-price Terms in the Existing Agreement.
- 5.3 For the avoidance of doubt, if an Existing Agreement governs the supply of the HTAL Mobile to Mobile Terminating Access Service by reason of clause 5.2, the terms of this Undertaking prevail to the extent of any inconsistency.
- 5.4 Where an Access Seeker does not have an Existing Agreement, the Non-price Terms contained in Attachment B will govern the supply of the HTAL Mobile to Mobile Terminating Access Service.

SIGNED BY LOUISE SEXTON
AS AUTHORISED SIGNATORY
FOR HUTCHISON TELECOMMUNICATIONS
(AUSTRALIA) LIMITED

ABN 003 677 277

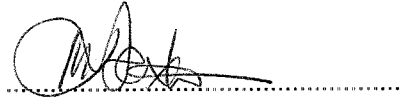
IN THE PRESENCE OF:



.....

Signature of Witness

BRIAN CURRIE



.....

Signature

ATTACHMENT A

USAGE CHARGE FOR HTAL MOBILE TO MOBILE TERMINATING ACCESS SERVICE

1. SERVICE DESCRIPTION

- 1.1 The HTAL Mobile to Mobile Terminating Access Service is an access service for the carriage of PMTS Calls from a Point of Interconnection, or potential Point of Interconnection, terminating on HTAL's Mobile Network.

2. CHARGES FOR THE MOBILE TERMINATING ACCESS SERVICE

- 2.1 Subject to clauses 2.2 to 2.7, HTAL will charge an Access Seeker a usage charge for the HTAL Mobile to Mobile Terminating Access Service as set out in Table 1.

Table 1

	Base Price Rate, being cents per Conversation Minute, for the period commencing on the date this Undertaking comes into effect and continuing until 31 December 2007 (unless this Undertaking expires earlier in accordance with clause 4.2 above)
Rate 1 Usage Charge	21 cents plus GST
Rate 2 Usage Charge	12 cents plus GST

- 2.2 HTAL will supply the HTAL Mobile to Mobile Terminating Access Service at the Rate 1 Usage Charge to Access Seekers that are not eligible for the Rate 2 Usage Charge.
- 2.3 HTAL will supply the HTAL Mobile to Mobile Terminating Access Service at the Rate 2 Usage Charge to an Access Seeker on the condition that:
- (a) the Access Seeker agrees to charge HTAL, or is required to charge HTAL, an amount equal to the Rate 2 Usage Charge for the mobile terminating access service acquired by HTAL from that Access Seeker for the purpose of terminating, on that Access Seeker's Mobile Network, a PMTS Call originating on HTAL's Mobile Network; and
 - (b) the Access Seeker only acquires the HTAL Mobile to Mobile Terminating Access Service for the purpose of terminating, on HTAL's Mobile Network, a PMTS Call originating in Australia from that Access Seeker's Mobile Network or the Mobile Network of a Related Body Corporate of the Access Seeker.
- 2.4 The Access Seeker acknowledges that:
- (a) HTAL may cease to charge the Rate 2 Usage Charge and apply the Rate 1 Usage Charge in the event that HTAL reasonably believes that the Access Seeker is not

complying, or is unlikely to comply, with the conditions that apply to the Rate 2 Usage Charge; and

(b) in the event of a dispute between the parties as to whether the Access Seeker has complied, or will comply, with the applicable conditions, the dispute will be resolved in accordance with the dispute resolution procedure in the Existing Agreement or Non-price Terms applicable pursuant to clause 5 of this Undertaking.

- 2.5 If an Access Seeker paying the Rate 2 Usage Charge does not comply with all applicable conditions, the Access Seeker must, within 21 days following the applicable calendar month to which this Undertaking relates, remit to HTAL the difference between the amount paid by the Access Seeker during that month and the usage rate which the Access Seeker should have paid during that month.
- 2.6 The Access Seeker agrees to provide HTAL, upon request, with all reasonable assistance, including all relevant documents or information, to enable HTAL to determine whether the Access Seeker is complying with any conditions that apply to the usage rate paid or payable by that Access Seeker.
- 2.7 The usage charges set out in Table 1 of clause 2 are exclusive of any applicable GST.