

14 May 2007

Ms Gwenda Gleeson
Communications Group
Australian Competition and Consumer Commission
GPO Box 3648
SYDNEY NSW 2001

By e-mail: gwenda.gleeson@acc.gov.au

Dear Ms Gleeson

DGTA Service Undertaking

This letter relates to Optus' access undertaking for its domestic GSM terminating access (DGTA) service, in particular the following matters:

- applicability of the outputs of the WIK-Consult Mobile Network and Cost Model (the WIK model) in assessing Optus' DGTA service undertaking;
- competition in the fixed line market; and
- relevant supporting documents for the Commission's consideration.

The WIK model

I observe that a number of submissions received by the Commission on Optus' access undertaking have made reference to the outputs of the WIK model. For example, Telstra has stated that it considers the WIK model to be a "source of information that indicates that 12 cpm is likely to significantly overstate Optus' costs of supplying the MTAS" (at page 15 of its submission). Hutchison has made a similar assertion. AAPT has called on the Commission to adopt the MTAS pricing determined by the WIK model (at page 4 of its submission). These references are not surprising, since the Commission has stated in its March 2007 Discussion Paper on Optus' undertaking (page 7) that it would use the WIK model to inform indicative prices for the MTAS from 1 July 2007 to 30 June 2009, which suggests that the Commission intends to use the WIK Mobile Network and Cost Model in its assessment of Optus' undertaking. This raises a number of concerns.

First, Optus considers that there is sufficient information to determine that the WIK model cannot be relied upon to produce a reasonable estimate of the costs of mobile termination without substantial modification to its methodology and parameters. Optus set out its preliminary concerns in its submission to the Commission on the WIK model (see Attachment 27) as did other parties including Vodafone (see Attachment 33) and Telstra (see Attachment 30). Consequently little weight should be placed on the outputs of the WIK model in assessing Optus' DGTA service undertaking.

Optus would also note in passing Telstra's stratagem of on one hand criticising the WIK model's methodology and parameters, while on the other hand relying on its results to criticise Optus' undertaking. Telstra's assertion that the WIK model's outputs are "of key relevance" with regard to Optus' undertaking (page 21) seems difficult to reconcile with its concession that it "has a number of serious concerns in relation to the WIK Model" and its statement that it "does not endorse" the model (page 22).

Second, the potential use of the WIK model raises issues of procedural fairness. As you are aware, Optus does not have access to the WIK model. While it had the opportunity to examine the WIK model from 16 February 2007 to 16 March 2007, Optus considers that the duration of this access period was insufficient given the many complex issues such a model raises. Further, the extent of access was insufficient since only a limited selection of model inputs were able to be viewed and adjusted, and many aspects of the model including the underlying algorithms remained inaccessible.

Consequently, Optus considers that for the Commission to rely on the outputs of the WIK model in its assessment of Optus' undertaking without allowing Optus further access to the model would be inconsistent with procedural fairness and with Optus' legitimate business interests. Optus requests that the Commission provide access to the model as soon as it is finalised and in a form that will allow Optus and other interested parties to amend all of its parameters to allow those to be tested in the context of determining the reasonableness of Optus' undertaking.

Competition in the fixed line market

I note that Telstra has taken issue with Optus' contention that competition in the fixed line market is affected by Telstra's control of the local loop. Telstra maintains instead that the fixed line market is "subject to strong competitive forces which are only increasing..." and appears to suggest that such forces have increased since the Commission released its MTAS Final Decision in 2004." (page 32). I would observe that Optus is not alone in its scepticism about increasing competition in the fixed line market.

For example, in its April 2007 Fixed Services Review position paper the Commission noted Telstra's 74% market share in FTM and the highly concentrated nature of the fixed line market (see Attachment 13). Further, in its submission to the Commission on the WIK model (Attachment 33), Vodafone considered whether there was support for the proposition that lowering the mobile termination rate has had any measurable effect on the level of competition in the fixed-line market but found no evidence of an increase in competition in the relevant period. It came to this conclusion by analysing a number of indicia of competition including the price of fixed-line services, Telstra's market share

and measures of non-price competition. Telstra's submission omits any proper analysis of these matters.

Relevant materials

In support of the contentions in relation to reasonableness of terms and conditions of its undertaking, Optus relies on the full text of the following documents:¹

1	Application by Optus Mobile Pty Limited & Optus Networks Pty Limited [2006] ACompT 8
2	Foxtel Management Pty Ltd v Australian Competition & Consumer Commission [2000] FCA 589
3	Re: Dr Ken Michael AM; ex parte EPIC Energy (WA) Nominees Pty Ltd & Anor [2002] WASCA 231 (23 August 2002)
4	Rural Press Ltd v Australian Competition & Consumer Commission [2002] FCAFC 213.
5	Seven Cable Television Pty Ltd v Telstra Corp Ltd [2000] FCA 350
6	Sydney International Airport [2000] ACompT 1 (1 March 2003)
7	ACCC, A final report on the assessment of Telstra's undertaking for the Line Sharing Service, August 2004
8	ACCC, Access Undertakings: a Draft Guide to Access Undertakings under Part IIIA of the Trade Practices Act
9	ACCC, Assessment of Telstra's Undertaking for Domestic PSTN Originating and Terminating Access - Final Decision, June 1999
10	ACCC, Changes in prices paid for telecommunications services in Australia, 2004-05, Report to the Minister for Communications, Information Technology and the Arts April 2006
11	ACCC, Competition Notice 12 April 2006
12	ACCC, Final Determination for model price terms and conditions for PSTN, ULLS and LCS services, October 2003
13	ACCC, Fixed Services Review Position Paper 2, April 2007

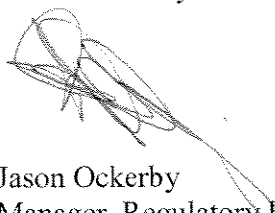
¹ To assist the Commission we have attached to this letter soft copies of all the documents listed, with the exception of items 8, 9 and 26, which we have not been able to locate. Nevertheless, Optus also relies on the full text of items 8, 9 and 26.

14	ACCC, Local Services Review, Final decision, July 2006
15	ACCC, Merger Guidelines, June 1999
16	ACCC Mobile Terminating Access Service Final Decision on whether or not the Commission should extend, vary or revoke its existing declaration of the mobile terminating access service, June 2004
17	ACCC, Proposed variation to make the GSM service declarations technology-neutral, September 2001 at page 18, considering Re Review of Declaration of Freight Handling Services at Sydney Airport (2000), ATPR 40-775 at page 107.
18	ACCC, Telstra/Optus interim determinations –mobile terminating access service (MTAS), December 2006
19	ACCC, Telstra’s Undertaking for the Line Sharing Service; Discussion Paper, December 2003
21	Hutchison Annual report 2003
22	Hutchison Annual report 2005
23	Hutchison full year results 2005
24	Hutchison half year report 2003
25	National Competition Council, Reasons for its decision on the declaration of rail freight services on the line between Brisbane and Cairns, provided by Queensland Rail, May 1997
26	National Competition Policy, Report by the Independent Committee of Inquiry, August 1993 at page 253.
27	Optus, 2007, Submission to the ACCC on the WIK Mobile Network and Cost model
28	Ordinary Access Undertaking to ACCC under Division 5 Part XIC TPA, Optus Mobile Pty Limited, Optus Networks Pty Ltd (“Optus Undertaking”), 16 February 2007
29	Singapore Telecommunications Limited and Subsidiary Companies, Management Discussion and Analysis of Unaudited Financial Condition, Results of Operations and Cash Flows for the Third Quarter and Nine Months Ended 31 December 2006
30	Telstra, 2007, Submission to the ACCC on the WIK Mobile Network and Cost model

31	Telstra Corporation Limited and Controlled Entities, Results and Operations Review, Half-year ended 31 December 2006
32	Telstra Corporation Limited and Controlled Entities, Full Year Results and Operations Review – June 2006
33	Vodafone, 2007, Submission to the ACCC on the WIK Mobile Network and Cost model
34	Vodafone Group Plc Annual Report for the year ended 31 March 2006
35	Vodafone Group Plc Annual Report for the year ended 31 March 2005
36	<i>Ward & Woroch</i> , Usage substitution between mobile telephone and fixed line in the US, May 2004
37	Optus letter to the ACCC: Optus 2007 MTAS Undertaking: Request for Access to WIK Model, 5 April 2007

If you wish to discuss any matters covered in this letter please contact me on 02 9342 7036.

Yours sincerely



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