

ENFORCEABLE UNDERTAKING BY OPTUS MOBILE PTY LIMITED

SECTION 572B TELECOMMUNICATIONS ACT 1997

This Enforceable Undertaking is given to the Australian Communications and Media Authority under section 572B of the *Telecommunications Act 1997* by **Optus Mobile Pty Limited**,
ABN 65 054 365 696, of 1 Lyonpark Road Macquarie Park NSW 2113

1. Definitions and Interpretations

1.1 Definitions

1.1.1 In this Undertaking:

ACMA means the Australian Communications and Media Authority.

Act means the *Telecommunications Act 1997 (Cth)*.

Determination means the *Telecommunications Service Provider (Mobile Premium Services) Determination 2010 (No.1)*.

mobile premium service or **MPS** has the same meaning as “premium SMS and MMS service” in the Determination.

MPS Complaint means a complaint raised by an Optus Customer on or after 1 July 2010 regarding the receipt, barring or billing of mobile premium services.

MPS Partner means an organisation that has a contractual relationship with Optus for the aggregation or supply of mobile premium services.

Optus means Optus Mobile Pty Limited ABN 65 054 365 696.

Optus Barring Register means the register maintained by Optus in accordance with clause 3.3.1.

Optus Customer means a person who has an agreement with Optus for the supply of a public mobile telecommunications service but excludes an Optus Reseller.

Optus Customer Care Facility means, in relation to an Optus Customer, the facility that corresponds to the business unit that provides services to that Customer, namely, the “Optus consumer unit”, the “Optus small and medium business unit” or the “Optus business unit”.

Optus MPS Barring System means the system that will enable Optus to bar mobile premium services in relation to a public mobile telecommunications service that is supplied by Optus to an Optus Customer.

Optus Reseller means a mobile carriage service provider to which the Determination applies and which is named in Annexure B to this Undertaking as amended from time to time in accordance with clause 3.4.3.

Regulations mean the *Telecommunications Regulations 2001*.

Requested Barring or Request Barring means a request made by an Optus Customer on or after 15 July 2010, by way of a telephone call to the Optus Customer Care Facility, that mobile premium services be barred in relation to the public mobile telecommunications service supplied by Optus to the Optus Customer.

Roll Out Date means 11 October 2010 or the date on which the Optus MPS Barring System commences operation, whichever occurs first.

Undertaking means this Enforceable Undertaking and includes any Annexure to this Enforceable Undertaking.

Wholesale MPS Barring System means the system that will enable the barring of mobile premium services in relation to a public mobile telecommunications service that is supplied by an Optus Reseller to a customer of the Optus Reseller.

1.2 Interpretation

1.2.1 Terms that are defined in the Act, the Regulations and the Determination have the same meaning in this Undertaking as they have in the Act, the Regulations and the Determination.

2. Background

2.1 The Object of the Determination

2.1.1 As stated in section 5 of the Determination, the object of the Determination is, among other things, to protect the interests of customers of mobile premium services by assisting them to control the use of, or expenditure for, public mobile telecommunications services by requiring mobile carriage service providers to:

- implement a service that enables the barring of all mobile premium services to a customer;
- bar all mobile premium services if requested by a customer;
- provide a convenient method for making such requests; and
- give customers certain information about the barring of all mobile premium services.

2.2 The ACMA's and Optus' Roles

2.2.1 In accordance with the Act, the Regulations and the Determination the ACMA is responsible for monitoring and enforcing compliance by mobile carriage service providers with the Determination.

2.2.2 Optus is a mobile carriage service provider to which the Determination applies.

2.2.3 The Determination commenced on 1 July 2010.

2.3 Optus Informed the ACMA

- 2.3.1 As a mobile carriage service provider to which the Determination applies, Optus is required by section 6 of the Determination to implement a service that enables the barring of all mobile premium services in relation to a public mobile telecommunications service supplied by Optus to an Optus Customer. Optus must also comply with the requirements in sections 7 and 8 of the Determination if an Optus Customer requests that Optus bar all mobile premium services in relation to the public mobile telecommunications service supplied by Optus to the Optus Customer.
- 2.3.2 Prior to and after 1 July 2010, Optus has provided information to the ACMA regarding its progress in implementing the processes and systems that will result in Optus being compliant with the Determination. When it became apparent that Optus' processes and systems would not be ready in time, Optus notified the ACMA that the Optus MPS Barring System would not be operational at the commencement of the Determination on 1 July 2010 and for some time afterward.
- 2.3.3 On 7 June 2010, Optus informed the ACMA that Optus would be compliant with the Determination by no later than 11 October 2010.

2.4 Acknowledgement of Concerns

- 2.4.1 Optus acknowledges that the ACMA has a number of enforcement options in regard to the non-compliance, including commencing an action in the Federal Court of Australia for the recovery of a pecuniary penalty.
- 2.4.2 In response to the ACMA's concerns in relation to Optus' non-compliance with the relevant provisions of the Determination, Optus provides this Undertaking to the ACMA.

3. Undertakings

3.1 Optus' Undertakings

- 3.1.1 Under section 572B of the Act, Optus gives the undertakings set out in clauses 3.2, 3.3, 3.4, 3.5, 3.6, 6.1 and 6.3 to the ACMA.

3.2 Provision of an Operational Optus MPS Barring System

- 3.2.1 Optus will have the Optus MPS Barring System operational no later than 11 October 2010.
- 3.2.2 On the date the Optus MPS Barring System becomes operational Optus will bar all mobile premium services in relation to each public mobile telecommunications service the details of which are included in the Optus Barring Register.

3.3 Optus' Interim Mitigation and Interim Compliance Undertakings

- 3.3.1 Optus will maintain a register that includes details of the public mobile telecommunications service of each Optus Customer who, on or after 15 July 2010, has Requested Barring.
- 3.3.2 If an Optus Customer Requests Barring, Optus will include details of the Customer's public mobile telecommunications service and the date of the request in the Optus Barring Register as soon as practicable after the request.

3.3.3 If an Optus Customer Requests Barring, Optus will:

- (a) inform the Optus Customer about how to avoid receiving mobile premium services and how to unsubscribe from mobile premium services; and
- (b) if requested by the Optus Customer, inform the relevant MPS Partner(s) on the Customer's behalf that the Customer wishes to opt-out of or terminate a mobile premium service that is being provided to that Customer.

3.3.4 Optus will:

- (a) as soon as practicable, identify all Optus Customers who used mobile premium services between 7 March 2010 and 31 July 2010;
- (b) on or before 30 August 2010, inform each Optus Customer identified in accordance with paragraph 3.3.4(a), by SMS, that the Customer may Request Barring; and
- (c) ensure that the SMS sent in accordance with paragraph 3.3.4(b) includes clear details on how to contact Optus to Request Barring or includes the words *"From 11 Oct Optus will have a free PremiumSMS barring service. You can register now by calling Customer Care. For more details visit optus.com.au/psms".*

3.3.5 On or before the 30th day of each calendar month, Optus will:

- (a) identify all Optus Customers who used mobile premium services in the preceding calendar month;
- (b) inform each Optus Customer identified in accordance with paragraph 3.3.5(a), by SMS, that the Customer may Request Barring; and
- (c) ensure that the SMS sent in accordance with paragraph 3.3.5(b) includes clear details on how to contact Optus to Request Barring or includes the words *"From 11 Oct Optus will have a free PremiumSMS barring service. You can register now by calling Customer Care. For more details visit optus.com.au/psms".*

3.3.6 Optus will amend its website so that information explaining how to Request Barring is clear and prominent, and will ensure that on or before 20 August 2010 this information is on the Optus website (www.optus.com.au) and accessible from the following web pages:

- i. by typing www.optus.com.au/psms; and
- ii. by typing www.optus.com.au and navigating to the "mobile" tab and then clicking on the "Premium SMS Information" link.

3.3.7 Optus will for its consumer unit and small to medium business unit, establish and operate a specialised and dedicated team of personnel, with a mandate to manage and authority to resolve:

- (a) all MPS Complaints which are unable to be resolved by appropriate customer facing staff; and
- (b) all MPS Complaints referred to Optus by the Telecommunications Industry Ombudsman.

3.3.8 Optus will ensure that Optus Customers serviced by the Optus business unit will have all MPS Complaints managed by a dedicated Product Manager who has the mandate to manage, and authority to resolve, MPS Complaints.

3.3.9 Optus will provide written instructions to its customer facing staff that are likely to handle enquires in regard to mobile premium services of the existence of the Optus Barring Register, how Optus Customers may Request Barring and at what point the enquiry may be an MPS Complaint that should be escalated to the personnel described in clause 3.3.7 or to the Product Manager described in clause 3.3.8.

3.4 Optus' Reporting Obligations

3.4.1 On the 30th day of each calendar month, until one month after the date on which the Optus MPS Barring System is operational, Optus will provide to the ACMA a monthly report setting out:

- (a) Optus' progress in regard to delivering the Optus MPS Barring System, by reference to the milestones described in Annexure C to this Undertaking, the actual state of completion of each milestone at the date of the report and the expected date of delivery of the Optus MPS Barring System;
- (b) the number of Optus Customers on the Optus Barring Register;
- (c) examples of written instructions provided to Optus personnel in accordance with clause 3.3.9, including when the communication was sent;
- (d) the text of SMSs sent in accordance with clauses 3.3.4 and 3.3.5, the number of SMSs sent and the date on which they were sent; and
- (e) examples of the written information provided in accordance with clause 3.5.1, the number of Optus Resellers the information was provided to and the dates on which it was sent.

3.4.2 The final report provided in accordance with 3.4.1 above will be verified as true and correct by the Optus Chief Executive Officer (or his delegate).

3.4.3 On the 30th day of each calendar month, Optus will inform the ACMA of any changes to the list of Optus Resellers set out in Annexure B to this Undertaking.

3.5 Optus' Undertaking regarding Optus Resellers

3.5.1 In regard to Optus Resellers, Optus will:

- (a) implement an operational Wholesale MPS Barring System on or before 11 October 2010;
- (b) ensure that the Wholesale MPS Barring System will include a bulk uploading facility that will allow the Optus Reseller to send to Optus a list of their customers that have requested barring, including the ability for the Optus Reseller customers to be barred from receiving mobile premium services from the date the Wholesale MPS Barring System is operational if the Optus Reseller provides this information to Optus within

a reasonable time prior to the date on which the Wholesale MPS Barring System is operational;

- (c) provide information (by way of written bulletins, face-to-face briefings and orally as appropriate) with respect to matters including:
 - (i) technical information regarding the Wholesale MPS Barring System and how Optus Resellers may interact with it;
 - (ii) the status of the delivery of the Wholesale MPS Barring System;
 - (iii) the measures Optus is taking to comply with the Determination and this Undertaking as it relates to the Optus Resellers; and
 - (iv) measures Optus and the Optus Resellers can take to mitigate detriment to customers;
- (d) from 16 August, operate a dedicated single point of contact between Optus Resellers and Optus with responsibility for responding to all Optus Reseller enquiries about mobile premium services;
- (e) from 16 August, operate a dedicated single point of contact between Optus Resellers and Optus with responsibility for responding to all complaints by Optus Resellers about mobile premium services; and
- (f) as soon as practicable, send a letter to each Optus Reseller in a form agreed between Optus and the ACMA, outlining:
 - (i) Optus' non-compliance with the relevant provisions of the Determination;
 - (ii) the consequences for Optus Resellers;
 - (iii) actions that Optus Resellers can take to limit detriment to Optus Resellers' customers; and
 - (iv) the information outlined at 3.5.1(c).

3.6 Public Notification

3.6.1 Optus must issue a public statement in a form agreed between Optus and the ACMA, made concurrently with any ACMA media release about the Undertaking and made available by Optus via the usual channels Optus uses for such statements, which contains acknowledgement of:

- (a) the requirements of the Determination applicable to Optus with regards to delivering a MPS barring capability and the commencement of the Determination on 1 July 2010;
- (b) the late delivery of the Optus MPS Barring System and Optus' regret arising from this;
- (d) Optus' actions to advise the ACMA of the compliance concern;

- (e) Optus' provision to the ACMA of an Enforceable Undertaking as part of a remedial compliance plan in relation to its non-compliance with the relevant provisions of the Determination;
- (f) the nature of Optus' commitments to its customers included in the Undertaking (including Optus Resellers);
- (g) the nature of the Optus MPS Barring System being delivered to achieve compliance; and
- (h) the committed timing of provision of the Optus MPS Barring System on or before 11 October 2010.

4. Commencement and Duration of the Undertaking

4.1. Date of Commencement

- 4.1.1 This Undertaking comes into effect upon the ACMA accepting and duly executing a copy of the Undertaking that has been executed by Optus.

4.2 Duration

- 4.2.1 This Undertaking expires on the date that Optus fulfils all undertakings set out in the Undertaking.
- 4.2.2 In particular, clauses 3.3, 3.4, 3.5 and 6.1 of this Undertaking will continue to apply until the Optus MPS Barring System and the Wholesale MPS Barring System commence operation.

5. Acknowledgements

- 5.1 Optus acknowledges that the ACMA may:
 - (a) in accordance with the terms of the Undertaking, issue a media release on execution of this Undertaking;
 - (b) in accordance with the terms of the Undertaking, publish this Undertaking or make this Undertaking available for public inspection; and
 - (c) in accordance with the terms of the Undertaking, refer to this Undertaking publicly from time to time.
- 5.2 Optus acknowledges that acceptance of this Undertaking does not affect the rights and remedies that another party may have in regard to the conduct of Optus referred to in the Undertaking or in regard to Optus' future conduct related to the Undertaking.

6. Confidential Annexure A

- 6.1 Optus will implement the measures described in Confidential Annexure A to this Undertaking.
- 6.2 The ACMA agrees not to publish Confidential Annexure A until the Roll Out Date.

6.3 On or before 30 August 2010, Optus will inform the Telecommunications Industry Ombudsman of this Undertaking, including in relation to the contents of Confidential Annexure A.

Executed by Optus Mobile Pty Limited (ABN 65 054 365 696) in accordance with subsection 127(1) of the *Corporations Act 2001 (Cth)*.

Signed:

(Director)

Signed:

(Director/Company Secretary)

Name: Murray King

Name: Paul O'Brien

Date of Signing: 16/08/10

Date of Signing: 16/08/10

The Undertaking offered by Optus Mobile Pty Limited is accepted by the Australian Communications and Media Authority pursuant to section 572B of the *Telecommunications Act 1997* on 17th August 2010.

The common seal of the Australian Communications and Media Authority was affixed to this Undertaking in the presence of:

Chris Chapman

Name of Member



Chris Chapman

Signature of Member

Nerida O'Loughlin

Name of General Manager

Nerida O'Loughlin

Signature of General Manager

Annexure B: Optus Resellers

AAPT Mobile
ACN
Activ8Me
Adam Internet
Austar
Bell Networks
Cellhire
Commander
Dodo
Exetel
Flexirent
iiNET
Internode
iSeek
ispONE
M2 Telecommunications
M8
Macquarie
Newtel
Pacnet
People Telecom
Primus Telecom
SavvyMax
Soul/TPG/B Digital Prepaid
Southern Cross Telco
Spin Internet
Startel
Telarus
Telco in a Box (TIAB)
Westnet

Annexure C:

Key milestones to delivery of the Optus MPS Barring System

Milestone	Description	Forecast Completion Date
Network platform load testing	In a test environment, performing testing under load of the signals functionality (e.g. alarms) of the network platform that will enable barring	25 August 2010
End-to-end integration testing	In a test environment, conducting initial end-to-end integration testing of the network platform; IT/networks systems; and equipment that will enable barring	7 September 2010
Performance testing	In a test environment, conducting performance testing of the network platform under a full load	15 September 2010
Business readiness testing	In a production environment, conducting testing of the network platform and IT/network systems as related to business processes (e.g. customer care; revenue settlement; billing; MPS Partner provisioning)	27 September 2010
MPS Partner migration	Migration of all MPS Partners (including MPS traffic) to the new network platform that will enable barring	11 October 2010
MPS Barring System delivery	MPS Barring System is live for use by Optus Customers and Optus Resellers	11 October 2010