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# Hutchison 3G Australia

## Submission to the Commission regarding the draft MTAS Pricing Principles Determination

### 1. Introduction

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Hutchison 3G Australia Pty Ltd (*Hutchison*) welcomes the opportunity to respond to the Australian Competition and Consumer Commission's (the *Commission's*) *Draft MTAS Pricing Principles Determination and indicative prices for the period 1 January 2009 to 31 December 2011* dated November 2008 (the *Draft Pricing Determination*).

### 2. Executive Summary

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Hutchison:

1. **does not object to the Commission's proposed pricing principles** for the mobile terminating access service (*MTAS*); and
2. **does not object to the Commission's proposed indicative price for the MTAS** of 9 cents per minute (*cpm*) for the period 1 January 2009 to 31 December 2011.

### 3. Pricing principles for the MTAS

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The Commission proposes the following in respect of MTAS pricing:<sup>1</sup>

- the adoption of cost-based pricing principles informed by a total service long run incremental cost framework; and
- the consideration of other factors including international cost benchmarking, developments in other markets and data captured under the Regulatory Accounting Framework.

Hutchison does not object to the Commission's proposed pricing principles, which acknowledge that costs are seminal in determining access prices in order to avoid the inefficient use of infrastructure.

### 4. Indicative prices for the MTAS

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The Commission has proposed an indicative price for the MTAS of 9 cpm for the period from 1 January 2009 to 31 December 2011.<sup>2</sup>

Subject to the comments below, Hutchison does not object to the Commission's proposed indicative MTAS price of 9 cpm.

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<sup>1</sup> See: Australian Competition and Consumer Commission *'Draft MTAS Pricing Principles Determination and indicative prices for the period 1 January 2009 to 31 December 2011* November 2008 at 20

<sup>2</sup> See: Australian Competition and Consumer Commission *Draft MTAS Pricing Principles Determination and indicative prices for the period 1 January 2009 to 31 December 2011* November 2008 at 21

## 5. Fixed to mobile pass through

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The Commission acknowledges that the degree of pass through to fixed-to-mobile (*FTM*) prices remains lower than could be expected given the reductions in MTAS prices.<sup>3</sup>

Hutchison submits that, if *FTM* and mobile-to-mobile (*MTM*) services are considered together, the Commission must maintain an indicative price for the MTAS of 9 cpm since any further MTAS price reductions will not be passed through to consumers of *FTM* services and therefore will not be in the long term interests of end-users (*LTIE*).

Specifically Hutchison submits that:

1. any change in the Commission's indicative price for the MTAS must be in the *LTIE*;
2. reductions in the Commission's indicative price for the MTAS are only in the *LTIE* if the price reductions are passed through to end-users of *MTM* and *FTM* services;
3. unlike *MTM* services, reductions in the indicative price for the MTAS have largely not been passed through to consumers of *FTM* services; and
4. as a result the Commission should not reduce the indicative price for the MTAS from 9 cpm.

Each point is addressed in turn.

### 5.1 The legislative framework

Under Part *XIC* of the *Trade Practices Act 1974* (Cth) (the *Act*) the Commission is required to formulate pricing principles in respect of declared services, including the MTAS.<sup>4</sup> The objective of Part *XIC* is to promote the *LTIE*.

In determining whether a reduction in the Commission's indicative MTAS price promotes the *LTIE*, the Commission must have regard to the extent to which the MTAS price reduction is likely to result in the achievement of the objective of:

- promoting competition in markets for listed services;<sup>5</sup>
- achieving any-to-any connectivity;<sup>6</sup> and
- encouraging the economically efficient use of, and the economically efficient investment in, the infrastructure by which listed services are supplied.<sup>7</sup>

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<sup>3</sup> See: Australian Competition and Consumer Commission *Draft MTAS Pricing Principles Determination and Indicative prices for the period 1 January 2009 to 31 December 2011* November 2008 at 19

<sup>4</sup> *Trade Practices Act 1974* (Cth) s152AQA(1)

<sup>5</sup> *Trade Practices Act 1974* (Cth) s152AB(2)(c)

<sup>6</sup> *Trade Practices Act 1974* (Cth) s152AB(2)(d)

<sup>7</sup> *Trade Practices Act 1974* (Cth) s152AB(2)(e)(i). In determining the extent to which a particular thing is likely to result in the achievement of this objective, regard must be had to s152AB(6)

## 5.2 Pass through of MTAS price reductions

The pass through of MTAS price reductions to FTM prices will:

- decrease FTM prices and thereby promote competition between fixed to fixed, FTM and MTM services; and
- encourage the efficient use of, and efficient investment in, mobile networks by ensuring mobile network operators receive the benefit arising from supplying the MTAS at a lower price.

In a competitive FTM market any reduction in the MTAS price would be passed through to end-users in the form of lower FTM prices. The ultimate result of a reduction in the MTAS price would be twofold: a decrease in the price of FTM calls, and a consequential increase in the volume of FTM calls made by end-users. While the operators of mobile networks would receive a lower price for providing the MTAS, any reduction in their overall revenue would be at least partially offset by the increase in the volume of FTM calls.

In an uncompetitive FTM market a reduction in the MTAS price is not passed through to end-users. As a result there is neither a reduction in the price of FTM calls, nor an increase in the volume of FTM calls. While the operators of mobile networks receive a lower price for providing the MTAS, the reduction in their total revenue is not offset by a commensurate increase in the volume of FTM calls. The result is that end-users do not receive lower FTM prices, mobile network operators do not receive additional revenue from increased use of their networks, and there is a bare transfer of revenue from the mobile network operator to the FTM service provider.

Therefore MTAS price reductions are not in the LTIE without pass through to end-users of FTM services. Without pass through the MTAS price reduction does not promote competition between fixed to fixed, FTM and MTM services because there is no decrease in FTM prices. It also does not promote the economically efficient use of, or investment in, mobile networks because the mobile network operator does not receive the benefit arising from its increased efficiencies which have allowed the MTAS price to fall. Instead the benefit accrues to the FTM service provider.

## 5.3 The pass through of MTAS price reductions to consumers of fixed-to-mobile services

MTAS price reductions have not been passed through to consumers of fixed-to-mobile services. Specifically, the statistics provided by the Commission in Figure 3 of the Draft Pricing Determination show that since 2004:<sup>8</sup>

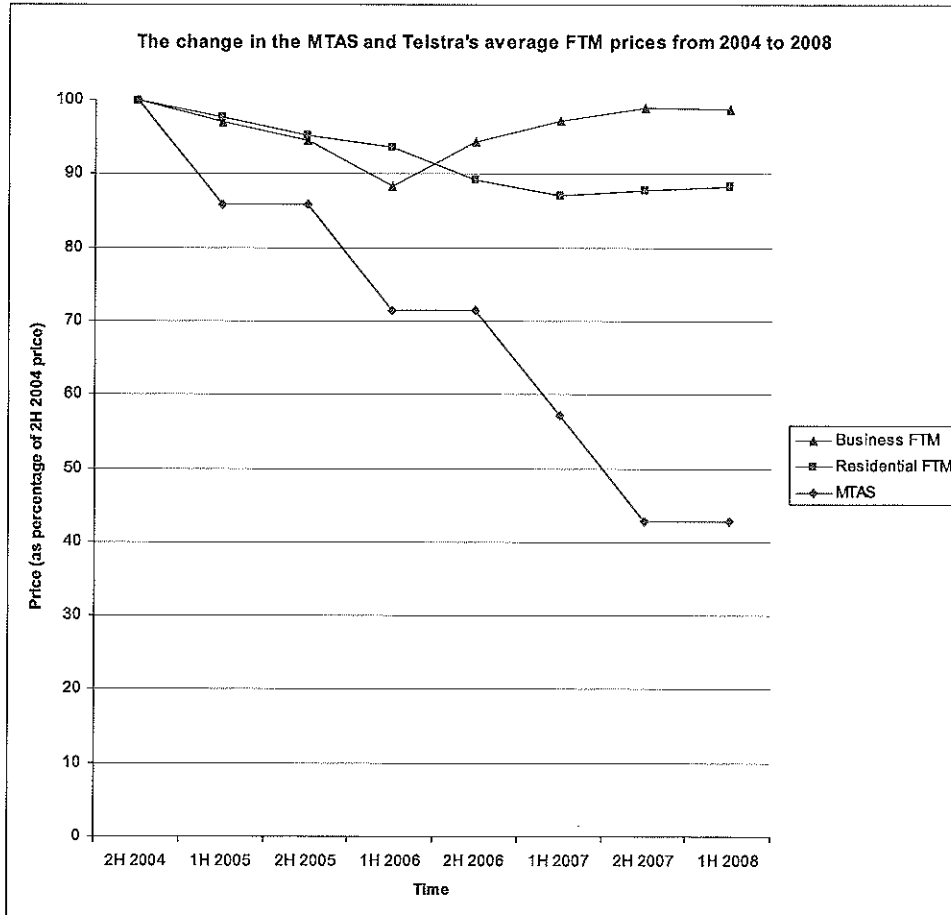
- The MTAS indicative price has decreased by **12 cpm** from 21 cpm to 9 cpm (57%);
- Telstra's average residential FTM price has decreased by **5.08c pm** from 43.52 cpm to 38.44 cpm (12%); and

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<sup>8</sup> See: Australian Competition and Consumer Commission 'Draft MTAS Pricing Principles Determination and indicative prices for the period 1 January 2009 to 31 December 2011' November 2008 at 19

- Telstra's average business FTM price has decreased by **0.42 cpm** from 33.83 cpm to 33.41 cpm (1%).

The above statistics are depicted graphically below:

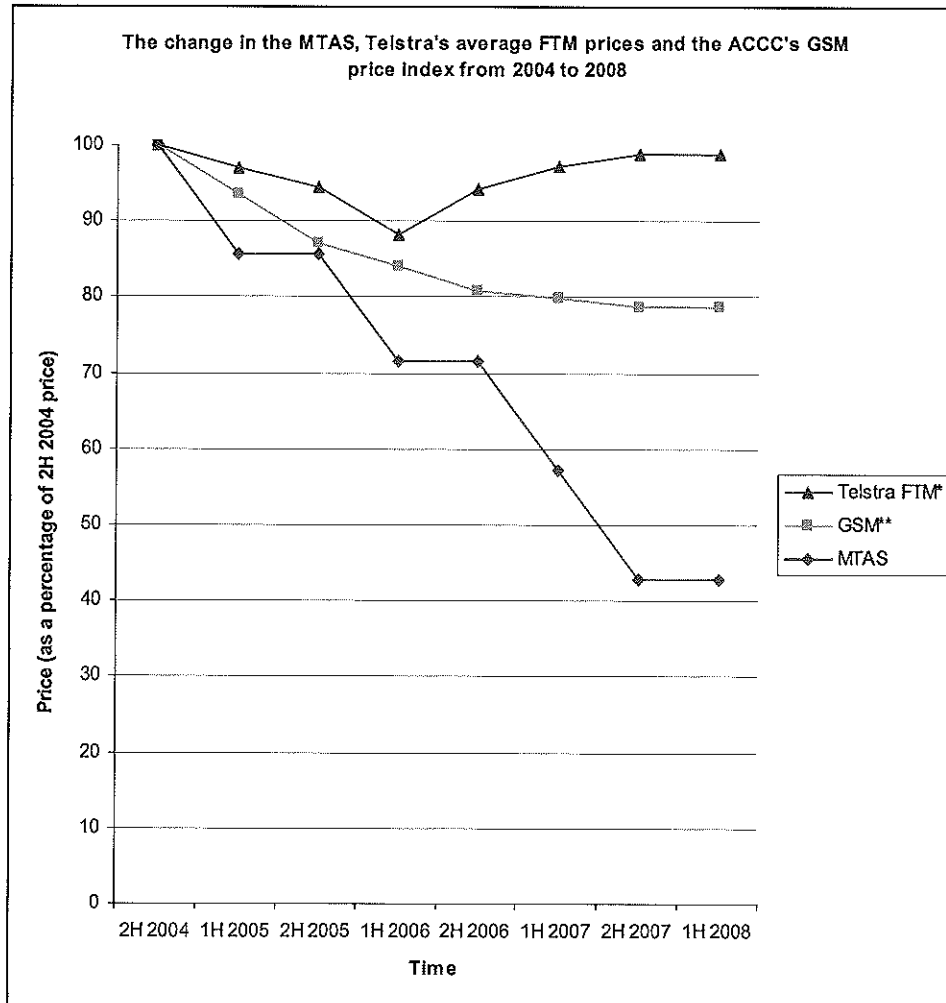


Of even greater concern is Telstra's retail pricing for FTM services in the past year. During this time Telstra's FTM pricing has increased while the MTAS price has continued to decrease. Specifically, from the first half of 2007 to the first half of 2008:

- The MTAS indicative price has **decreased** by **3 cpm** from 12 cpm to 9 cpm (-25%);
- Telstra's average residential FTM price has **increased** by **0.55 cpm** from 37.89 cpm to 38.44 cpm (+1%); and
- Telstra's average business FTM price has **increased** by **0.54 cpm** from 32.87 cpm to 33.41 cpm (+2%).

#### 5.4 The pass through of MTAS price reductions to consumers of mobile-to-mobile services

Reductions in the MTAS price have been passed through to users of MTM services to a far greater extent than for users of FTM services. This can be seen in the Commission's most recently published index of GSM pricing, which is depicted graphically below:



\*Telstra's FTM prices are an average of its published residential and business FTM prices

\*\*GSM prices are a smoothed average of the Commission's mobile services index<sup>9</sup>

The greater pass through of MTAS price reductions to GSM services, compared to Telstra's FTM services, is a consequence of the higher level of competition in the market for the supply of mobile services.

The FTM retail market is, and appears likely to remain, uncompetitive due to:

- Telstra's continued dominance at the infrastructure level, whereby other suppliers of FTM calls are dependent upon their principal competitor for access to essential inputs;

<sup>9</sup> See: Australian Competition and Consumer Commission *Changes in the prices paid for telecommunications services in Australia 2006–2007* at 106 (available at: <http://www.accc.gov.au/content/index.phtml/itemId/832202/fromItemId/3737>)

- Telstra's dominant share of all retail telecommunications markets; and
- Telstra's significant degree of vertical and horizontal integration.

## **5.5 Conclusion**

Taking into account both the MTM and FTM markets, it is clear the Commission should not reduce the indicative price for the MTAS from 9 cpm for any price reduction would not be passed through to users of FTM services and consequently would not be in the LTIE.