

**Hutchison Telecommunications (Australia) Limited**

and

**Hutchison 3G Australia Pty Limited**

**Submission to the Australian Competition &  
Consumer Commission**

**Mobile Services Review 2003**

## **1. Introduction**

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Hutchison Telecommunications (Australia) Limited (**HTAL**) and Hutchison 3G Australia Pty Limited (**H3GA**) (together **Hutchison**), welcome the opportunity to respond to the Commission's discussion paper: *Mobile Services Review 2003*.

HTAL has operated a 2G CDMA network in Australia for the past three years. H3GA is a new entrant in the Australian mobile services market, having launched a WCDMA network in Sydney and Melbourne on 15 April 2003. It expects to launch its WCDMA network in Brisbane, Adelaide and Perth in July 2003.

For the reasons developed in this submission, each of the mobile and fixed-to-mobile markets is at a crucial point in its development. Hutchison considers this inquiry to be a very important step in assisting the Commission to assess the appropriate regulatory responses to market conditions, particularly in relation to the market failure in the fixed-to-mobile market.

## GSM and CDMA Mobile Terminating Access Services

### Summary of Hutchison's position

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In regulating the CDMA and GSM mobile terminating access services (**MTAS**) the Commission had 2 principal objectives:<sup>1</sup>

1. To lower access prices for the MTAS and thereby create the pre-conditions for fixed-line providers to reduce retail prices for fixed-to-mobile calls; and
2. To prevent an integrated carrier<sup>2</sup> from engaging in discriminatory pricing in connection with the supply of fixed-to-mobile calls, for example, by supplying fixed-to-mobile calls at a price below that carrier's internal access price.<sup>3</sup>

Declaration of the MTAS has not achieved the above objectives.<sup>4</sup> While access prices have fallen, they are still significantly above costs and retail prices for fixed-to-mobile calls have increased.<sup>5</sup>

This is attributable in part, to:

- the retail benchmarking pricing principle adopted by the Commission in relation to the MTAS;
- insufficient competition in the market for the provision of fixed-to-mobile calls; and
- lack of regulatory incentive to pass through to fixed-to-mobile retail prices, decreases in access prices.

In Hutchison's view, the long term interests of end-users (**LTIE**) would be best served by:

- maintaining the declaration of the MTAS in the short to medium term; and
- modifying the pricing principle to ensure a substantial reduction in the MTAS charge while requiring the reduction of fixed-to-mobile prices, to reflect the lower MTAS charges.

The least satisfactory course would be to effect a reduction in the MTAS charge without **ensuring** a commensurate reduction in fixed-to-mobile charges. Merely reducing MTAS charges would result in a massive windfall for Telstra, leading to greater market distortions and no tangible consumer benefit.

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<sup>1</sup> Australian Competition & Consumer Commission, *Pricing Methodology for the GSM Termination Service*, July 2001.

<sup>2</sup> In this submission, the expression 'integrated carrier' refers to a carrier who owns fixed line and mobile telecommunications infrastructure.

<sup>3</sup> An integrated firm may not explicitly identify an internal access price but will base its internal decisions on the true underlying cost of the relevant service. In this submission, the expression 'internal access price' refers to the underlying costs on which an integrated carrier will base its decisions.

<sup>4</sup> Australian Telecommunications Users Group, *Opinion*, 4 June 2003.

<sup>5</sup> In this submission, a number of references are made to increased fixed-to-mobile retail prices. While some segments of the market such as the corporate segments may have experienced lower fixed-to-mobile calls, charges for residential and SME customers have increased: see analysis in confidential attachment A.

Therefore, in Hutchison's view, if the Commission is not minded to seek a result that guarantees lower fixed-to-mobile calls, the current MTAS declaration, and termination prices similar to current termination prices should remain.

## Long term interests of end-users

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Fundamental to any discussion of the appropriateness of declaration is an assessment of the LTIE.<sup>6</sup> Hutchison broadly agrees with the Commission's discussion of the LTIE in this context<sup>7</sup> but considers that one aspect of the Commission's approach is not supported by the legislation.

### Determining whether the LTIE test is satisfied

In determining whether a particular thing promotes the LTIE, the Commission is required to have regard to the following objectives:<sup>8</sup>

- promoting competition in markets for listed services;
- achieving any-to-any connectivity in relation to carriage services that involve communication between end-users; and
- encouraging the economically efficient use of, and the economically efficient investment in, the infrastructure by which listed services are supplied.

The Commission has previously considered the LTIE test in the context of varying the GSM access declarations.<sup>9</sup> Hutchison agrees with the following three propositions that arise from that consideration:

1. It is appropriate to examine the impact of the declaration on each relevant market and compare the likely state of competition with or without declaration.<sup>10</sup>
2. It is not enough to consider the impact declaration has on the competitive process in a market. The extent to which declaration promotes competition should be examined from the end-users' perspective, that is, the likely results from increased competition in terms of price, quality and service diversity.
3. The term 'end-users' encompasses business and residential consumers as a group, although in some cases, the impact on particular sub-groups of end-users may be considered separately.<sup>11</sup>

Hutchison disagrees however with the Commission when it states that:

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<sup>6</sup> *Trade Practices Act 1974*, section 152AB.

<sup>7</sup> Australian Competition & Consumer Commission, *Mobile Services Review 2003*, April 2003 at pages 39-48.

<sup>8</sup> *Trade Practices Act 1974*, section 152AB(2)(c)-(e).

<sup>9</sup> Australian Competition & Consumer Commission, *Variation to make the GSM Service Declarations Technology - Neutral*, March 2002 at page 27.

<sup>10</sup> The Commission adopts a with or without test notwithstanding that in certain of its publications it uses the expression before or after publication: Australian Competition & Consumer Commission, *Variation to make the GSM Service Declaration Technology-Neutral*, March 2002.

<sup>11</sup> Australian Competition & Consumer Commission, *Variation to make the GSM Service Declarations Technology - Neutral*, March 2002 at page 23.

... declaration might put in place necessary preconditions for improved competition and efficient use of and investment in infrastructure [and] putting into place those preconditions can itself be in the LTIE.<sup>12</sup>

The Commission has discussed this approach in considering whether 'pass through' of lower MTAS charges, in the form of lower fixed to mobile prices, is in the LTIE. The words "*the extent to which the thing is likely to result in the achievement of the ... objectives*"<sup>13</sup> require the Commission to:

- 'quantify' the benefit to end-users; and
- consider whether there is a real chance or possibility of declaration achieving each of the objectives set out in section 152AB(2) of the TPA.<sup>14</sup>

Therefore:

- it is not necessary for the Commission to be certain that the thing will result in any one of the objectives referred to in section 152AB(2) of the TPA in order to satisfy the LTIE test. However, it is not sufficient for the thing to merely put in place the necessary preconditions for improved competition and efficient use of and investment in infrastructure in order to satisfy the LTIE test.
- the Commission must be satisfied that one or more of the statutory objectives is likely to be promoted by declaration or a revision to the declaration such as a new pricing principle.

**1. *In order to achieve the objective of promoting the LTIE, should the domestic GSM and CDMA terminating access service declaration continue unchanged, be varied or be revoked? Please explain your answer with reference to the objective of promoting the LTIE.***

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- 1.1 Hutchison refers to the more detailed analysis of the objectives of the LTIE in its responses to questions 6, 9 and 10 below.
- 1.2 Without the assurance of pass through, the current declaration and pricing of MTAS should remain.
- 1.3 In summary, in Hutchison's view, continued declaration of the MTAS remains in the LTIE. However, its value is limited from the end-users' perspective unless:
- it is associated with a pricing principle that reduces significantly the access price for the MTAS; **and**
  - it is coupled with 'pass-through' in terms of lower retail prices for fixed-to-mobile calls.

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<sup>12</sup> Australian Competition & Consumer Commission, *Variation to make the GSM Service Declarations Technology - Neutral*, March 2002 at page 43.

<sup>13</sup> *Trade Practices Act 1974*, section 152AB(2)(b).

<sup>14</sup> In the context of section 45 of the *Trade Practices Act 1974*, the term 'likely' has been interpreted to mean 'a real chance or possibility, rather than more likely than not'. See for example *Tillmanns Butcheries Pty Ltd v Australasian Meat Industry Employees' Union* (1979) 42 FLR 331; *News Ltd v Australian Rugby Football League Ltd* (1996) 64 FCR 410; and *Seven Network Limited & Anor v News Limited & Ors* [2003] FCA 388.

1.4 Reduction in MTAS charges on its own may create the necessary preconditions for lower fixed-to-mobile prices by reducing fixed line providers' costs. However, given the lack of competition in the fixed-to-mobile market, Hutchison considers it very unlikely that lower MTAS charges will be reflected in lower fixed-to-mobile prices in the absence of regulation of those retail prices. Therefore, without pass through, competition in the fixed-to-mobile market from the end-users' perspective will not be promoted. Further, without pass through the significant reductions in access prices will adversely affect price competition in the mobile services market. With pass through, the lower fixed-to-mobile call prices will lead to increased fixed-to-mobile call traffic enhancing competition in both the mobile services and fixed-to-mobile markets.

The matrix below diagrammatically represents Hutchison's view as to the ability of each declaration scenario to promote the LTIE by reference to the statutory criteria in section 152AB(2) of the TPA.

<b>Legislative objectives</b>	<b>Declaration with current pricing principles</b>	<b>Declaration with significant reduction in access price with no pass through</b>	<b>Declaration with significant reduction in access price and pass through</b>
Any-to-any connectivity	✓	✓	✓
Competition in the mobile market	✓	✗	✓
Competition in the fixed-to-mobile market	✗	✗	✓
Efficient use of infrastructure	<b>neutral</b>	✗	✓
Efficient investment in infrastructure	<b>neutral</b>	<b>neutral</b>	<b>neutral</b>

**2. If the service description were varied, should it include termination of calls on 3G networks?**

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**Hutchison's view**

2.1 Hutchison considers that the declaration of MTAS should be technology-neutral and therefore the service description should be varied to include termination of voice calls on networks using new technologies including WCDMA, CDMA 1XRTT, CDMA2000, GPRS and EDGE. This would result in consistency and if declaration were revoked in the future, it should be revoked for all technologies.

**Hutchison's reasons**

- 2.2 H3GA launched its WCDMA network on 15 April 2003. Termination of voice calls on networks using 3G technologies is not currently covered by the MTAS declaration.
- 2.3 H3GA has entered into commercial arrangements with each of Optus and Vodafone for the acquisition by them of the MTAS. H3GA describes at item 5 in confidential attachment A its experience regarding interconnection with Telstra. Fixed-to-mobile calls from other fixed line operators currently terminate on H3GA's network via transiting arrangements.
- 2.4 Hutchison considers that the case for regulating a service of terminating voice calls on a network using 3G technology is the same as that for regulating the MTAS. Mobile carriers and fixed line providers will seek access to a service to terminate voice calls to a 3G subscriber as they would for a 2G subscriber.
- 2.5 Hutchison considers that this variation to the declaration is in the LTIE, primarily because it will promote any-to-any connectivity. H3GA is a recent entrant in the mobile services market. Declaration does not enable a carrier to require another carrier to acquire a MTAS. Therefore, if another carrier declined or threatened to decline to acquire the MTAS for termination on H3GA's network, H3GA could not notify the Commission of an access dispute under Part XIC of the TPA. However, the other carrier, if concerned about the terms and conditions of interconnection proposed by H3GA, could notify the Commission of an access dispute. Therefore, as declaration provides the other carrier with an avenue for redress where they have a legitimate commercial concern, it operates to prevent carriers from declining or threatening to decline to acquire MTAS for other than legitimate commercial reasons.<sup>15</sup>
- 2.6 Hutchison does not consider that regulation of MTAS will adversely affect investment decisions. Similarly, declaration of a service for terminating voice calls on a new technology network will not affect carriers' decisions to invest in infrastructure.<sup>16</sup> A decision to invest, whether for 2G or 3G networks, should and would be based upon the likely take-up of mobile services and not regulation of the MTAS. This is because termination prices and retail prices for mobile services are closely linked. Any relevant fixed costs will generally be common costs of terminating and originating services and can therefore be recovered through retail mobile services. In fact, failing to vary the declaration of the MTAS to include 3G or other new technologies may serve to distort investment decisions.

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<sup>15</sup> *Trade Practices Act 1974*, Part XIC, Division 8.

<sup>16</sup> Depending on the pricing principle adopted see table at paragraph 1.4 above.

- 2.7 The Director General of Telecommunications (**DGT**) in the UK recently decided not to regulate the termination of voice calls on 3G networks. The reasons were:<sup>17</sup>
- 3G services were not yet available;
  - it was uncertain what services would be developed; and
  - Oftel did not seek to regulate new services or technologies in advance of their launch.<sup>18</sup>
- 2.8 Hutchison submits that market conditions in Australia are different from those in the UK at that time. First, in the UK it is a carrier licence condition for each of O<sub>2</sub> and Vodafone that they enter into a roaming agreement with the 3G operators. Second, the DGT has greater power than the Australian Commission to impose access-related conditions on carriers,<sup>19</sup> so it was not necessary to regulate termination to networks using 3G technologies through access regulation. Third, 3G mobile services are now available in Australia.

**3. *In which market/s is the mobile termination service supplied? Does a "single operator" market definition apply to this service? What are the relevant downstream markets?***

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**Hutchison's view**

- 3.1 Hutchison considers that the relevant downstream markets are the mobile services and the fixed-to-mobile markets: see response to question 6.
- 3.2 Hutchison notes that while the Competition Commission (UK) has concluded that the provision of mobile terminating access services by each mobile carrier, constitutes a separate market,<sup>20</sup> the Commission has not previously adopted that position.<sup>21</sup>
- 3.3 Hutchison does not believe that the existence or otherwise of a "single operator" market is relevant to the Commission's consideration of whether to maintain, or vary the declaration.

**Hutchison's reasons**

- 3.4 The questions for the Commission to consider in determining whether to maintain the declaration of the MTAS are:
1. Will an unregulated access charge be above efficient levels?

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<sup>17</sup> Office of Telecommunications, *Review of Charge Controls on Calls to Mobiles*, 26 September 2001 at 6.29.

<sup>18</sup> It is noted that the Competition Commission (UK) did not consider the issue in detail, because it was precluded by its terms of reference from doing so: Competition Commission (UK), *Vodafone, O<sub>2</sub>, Orange and T-Mobile: Reports on references under section 13 of the Telecommunications Act 1984 on the charges made by Vodafone, O<sub>2</sub>, Orange and T-Mobile for terminating calls from fixed and mobile networks*, December 2002.

<sup>19</sup> Office of Telecommunications, *National Roaming Condition*, 15 May 2003 at page 3.

<sup>20</sup> Competition Commission (UK), *Vodafone, O<sub>2</sub>, Orange and T-Mobile: Reports on references under section 13 of the Telecommunications Act 1984 on the charges made by Vodafone, O<sub>2</sub>, Orange and T-Mobile for terminating calls from fixed and mobile networks*, December 2002 at page 45.

<sup>21</sup> Australian Competition & Consumer Commission, *Mobile Services Review*, April 2003 at page 31.



2. What effect will access charges approximating efficient levels have on the objectives of any-to-any connectivity; competition; and the efficient use of and investment in infrastructure?
- 3.5 Hutchison considers that whether there is a "single operator" market is not directly relevant to the Commission's assessment of whether an unregulated access price for the MTAS will be above efficient levels. Some of the relevant factors are the availability of substitutes and the use of countervailing power. In relation to the availability of substitutes, it is clear that there are some possible demand side substitutes including sending SMS messages; making shorter calls or simply not acquiring fixed-to-mobile calls. Acquirers of the MTAS have a level of countervailing power in that they may refuse to terminate a call on a mobile network. Alternatively, they may increase the retail price of fixed-to-mobile or mobile-to-mobile calls terminating on that network.
- 3.6 The Commission has previously concluded that an unregulated access price for the MTAS will be above efficient levels notwithstanding the existence of some demand side substitutes.<sup>22</sup> Hutchison agrees. There is limited transparency of the access prices charged by each carrier and further, a carrier does not directly suffer the demand-reducing effects of an increase in access prices.<sup>23</sup>
- 3.7 Carriers use their MTAS revenue to compete in the increasingly competitive mobile services market by for example, lowering subscription prices or offering handset subsidies. This is an additional reason why in an unregulated environment, access prices will remain above efficient levels.
- 3.8 Even if the MTAS is supplied in a broader market this should not affect the Commission's assessment as there has been clear market failure in the provision of MTAS. The fact that mobile carriers are not making excess profits overall is not relevant to the issue of promoting competition in the fixed-to-mobile market and therefore does not affect the above analysis or conclusion.

**4. *To what extent, if any, should the Commission be concerned about differential pricing between mobile-to-mobile "on-net" and "off-net" calls?***

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**Hutchison's view**

- 4.1 In Hutchison's view, at this stage there does not appear to be any major issues relating to differential pricing between mobile-to-mobile "on-net" and "off-net" calls. Hutchison submits however, that the Commission should be very concerned about retail prices for

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<sup>22</sup> Australian Competition & Consumer Commission, *Variation to make the GSM service declarations technology-neutral*, March 2002 at page 34. We note that the Competition Commission (UK) reached a similar conclusion, see Competition Commission (UK), *Vodafone, O<sub>2</sub>, Orange and T-Mobile: Reports on references under section 13 of the Telecommunications Act 1984 on the charges made by Vodafone, O<sub>2</sub>, Orange and T-Mobile for terminating calls from fixed and mobile networks*, December 2002 at page 35.

<sup>23</sup> In this regard, Hutchison agrees with the views expressed by J Gans and S King as to why access prices for the MTAS will remain above efficient levels in an unregulated environment: J Gans, *An Evaluation of Regulatory Pricing Options for Mobile Termination Services*, 9 December 1999; J Gans and S King *Termination Charges for Mobile Phone Networks Competitive Analysis and Regulatory Options*, 22 December 1999.

fixed-to-mobile calls and the differential pricing between fixed-to-mobile "on-net" and "off-net" calls.

#### **Hutchison's reasons**

- 4.2 In the absence of declaration there remains the potential for integrated carriers to engage in anti-competitive pricing in the fixed-to-mobile market by, for example, setting their retail prices for fixed-to-mobile calls below the MTAS charge. This may prevent the entry of efficient competitors into the fixed-to-mobile market. Anti-competitive pricing may be ameliorated if MTAS charges are set at an amount equal to the true underlying cost of the relevant service. Therefore, in considering the declaration of the MTAS, the focus should, in Hutchison's view, be on retail prices for fixed-to-mobile calls and the differential between fixed-to-mobile "on-net" and "off-net" calls.
- 4.3 Items 1 to 3 in confidential attachment A contains graphs that track Telstra's retail prices for fixed-to-mobile calls for corporate, SME and residential customers as against MTAS charges. Those graphs also compare Telstra's off-net prices for fixed-to-mobile calls with its on-net prices. At the end of those graphs, Hutchison sets out its specific conclusions regarding pricing trends in each of the corporate, SME and residential sectors (see item 4 in confidential attachment A).
- 4.4 In relation to Telstra's pricing, Hutchison submits:
- Telstra appears to be adopting a strategy of differentiating between "off-net" and "on-net" pricing to ensure customers acquire a bundle of services comprising fixed line and mobile services.
  - The high retail fixed-to-mobile prices for residential and SME subscribers are being used to cross-subsidise corporate rates significantly.
- 4.5 For completeness, Hutchison notes that the DGT in the UK has recently commenced an inquiry into the potential for mobile operators to distort competition in the delivery of:
- non-PSTN to mobile calls for retail business customers; and
  - fixed-to-mobile calls for retail business customers,
- by pricing the delivery of such calls to mobiles lower than the wholesale price that fixed operators are charged for MTAS.
- 4.6 The DGT has publicly stated that there are reasonable grounds to suspect that the prices charged by the mobile operators may represent price discrimination between the wholesale termination rate charged to other operators and the implicit termination rate charged to their own downstream operations and/or a margin squeeze with the effect of excluding competitors from the retail market(s) for calls to retail business customers.

**5. To what extent are consumers ignorant of the network a party they choose to call is directly connected to?**

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5.1 Hutchison considers that customers are generally ignorant of the mobile network they choose to call.<sup>24</sup> This has been exacerbated by mobile number portability.

**6. How would continuing the existing mobile termination declaration, varying the declaration or revoking the declaration affect competition in the market in which the service is supplied and in the relevant downstream markets?**

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6.1 Hutchison agrees with the Commission's previous assessment that the downstream markets affected by the MTAS are the mobile services market and the fixed-to-mobile market.<sup>25</sup> The mobile services market is a market for the provision at retail of mobile telecommunication services including access, originating and terminating services and voice and data services. The fixed-to-mobile market is a market for the provision at retail of fixed-to-mobile calls.

**The mobile services market**

6.2 The effect of declaration on competition in the mobile services market depends on the pricing principle adopted:<sup>26</sup>

- declaration and current MTAS charges promote competition in the mobile services market because carriers use the revenue to subsidise handsets, among other things. While this has distortionary effects on the fixed-to-mobile market, it does enhance competition in the mobile services market.
- declaration, with a revised pricing principle that reduces substantially MTAS charges, while ensuring that there is pass through of these reductions to fixed-to-mobile prices, also promotes competition in the mobile services market. This is because inevitably traffic volumes for fixed-to-mobile calls will increase.
- declaration, with a revised pricing principle as indicated above with no regulated pass through, would dampen competition in the mobile services market as the mobile carriers lose a substantial revenue stream without any compensating increased fixed-to-mobile traffic.

6.3 The more important market to consider is the fixed-to-mobile market.

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<sup>24</sup> J Gans and S King *Termination Charges for Mobile Phone Networks – Competitive Analysis and Regulatory Options*, 22 December 1999 at page 18; J Gans, *An Evaluation of Regulatory Pricing Options for Mobile Termination Services*, 9 December 1999.

<sup>25</sup> Australian Competition & Consumer Commission, *Mobile Services Review*, April 2003 at page 42.

<sup>26</sup> See table at paragraph 1.4 above.

### The fixed-to-mobile market

- 6.4 In Hutchison's view, for declaration to promote competition in the fixed-to-mobile market, it must result in both lower MTAS charges and commensurately lower fixed-to-mobile prices.
- 6.5 The Commission expects lower MTAS charges to be passed through to end-users in the form of lower retail prices for fixed-to-mobile calls.<sup>27</sup> Hutchison submits that this is unlikely to occur as there is insufficient competition in the fixed-to-mobile market.<sup>28</sup> Any partial pass through would be limited to the corporate segment: see items 1 to 3 in confidential attachment A.
- 6.6 That the fixed-to-mobile market is uncompetitive is not a controversial proposition. The increase in fixed to mobile pricing<sup>29</sup> illustrates this, as do the following facts:
- Telstra has over 80% market share in the provision of basic access and local calls.<sup>30</sup>
  - Telstra also has approximately 80-95% market share in the fixed-to-mobile market and is therefore the largest acquirer of MTAS.<sup>31</sup> Telstra continues to have significant market share even though fixed-to-mobile calls have been included in the pre-selection basket since December 1998.
  - Telstra has approximately 48% of all mobile telecommunications subscribers.<sup>32</sup>
- 6.7 Hutchison sets out its assumption regarding the trend in MTAS charges in item 6 in confidential attachment A.
- 6.8 Set out in the table at item 7 in confidential attachment A are the retail prices for fixed-to-mobile calls for each of Telstra, Optus, AAPT and Primus.
- 6.9 Hutchison's conclusions regarding the trends in fixed-to-mobile pricing are set out at item 8 in confidential attachment A.
- 6.10 The failure of lower MTAS prices to be reflected in fixed-to-mobile call prices, is also recorded by the Commission's:
- Telecommunications Reports for 2000-01,<sup>33</sup> and

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<sup>27</sup> Australian Competition & Consumer Commission, *Draft Report – Pricing Methodology for the GSM termination service*, December 2000 at page 6.

<sup>28</sup> Productivity Commission, *Telecommunications Competition Regulation*, 21 September 2001 at page 133; Professor Allan Fels, *Regulatory competition in converging markets; telecommunications and broadcasting*, 30 April 2003 at page 4; Professor Allan Fels, *Competition in Telecommunications*, 6 March 2003 at page 40.

<sup>29</sup> Macquarie Research Equities, *Mobile termination rates – the regulator's dilemma*, 7 April 2003 at page 5; see also confidential attachment A.

<sup>30</sup> Telstra, *Annual Review 2002*, 28 August 2002 at page 10.

<sup>31</sup> Productivity Commission, *Telecommunications Competition Regulation*, 21 September 2001 at page 133.

<sup>32</sup> Productivity Commission, *Telecommunications Competition Regulation*, 21 September 2001 at page 133.

<sup>33</sup> There the Commission comments that, for the industry as a whole, the price of calls consumed by residential consumers decreased by 1% during the period 1999-00 and 2000-01. This compared to a reduction of 9.6% for calls consumed by business customers. See Australian Competition & Consumer Commission, *ACCC Telecommunications reports 2000-01*, 4 March 2002 at page 113.

- previous analysis on retail price controls where it indicated that there is an "excessive gap between retail price and full cost inclusive of the termination charge".<sup>34</sup>
- 6.11 Operation of the existing retail price controls under Part 9 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999 (T(CP&SS) Act)* is not likely to effect a reduction in the retail prices for fixed-to-mobile calls. Fixed-to-mobile calls are one of a number of services included in the relevant basket, which also includes long distance and international call services. Accordingly, Telstra retains significant discretion to determine the services and the customers for which there will be price reductions: see also response to question 8. Hutchison considers that Telstra has little, if any, incentive to pass through any reduction in MTAS charges.
- 6.12 Therefore maintaining declaration of the MTAS and reducing access prices significantly, will not result in lower fixed-to-mobile call prices. Hutchison believes pass through of the reduction must be ensured, and that reducing access prices without this will strengthen Telstra's already significant market power.
- 7. *To what extent have past decreases in the price of mobile termination services been passed through to end-users in the form of lower fixed-to-mobile prices? To the extent they have not, what impact does this have for declaration of mobile termination services? Would regulation still be in the LTIE if there was no guarantee of "pass through"?***
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7.1 See response to question 6 above and the table at paragraph 1.4 of this submission.

**8. *How could concerns regarding the level of fixed-to-mobile pass through be addressed through other regulatory means?***

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**Hutchison's view**

8.1 Hutchison considers that the principal regulatory means by which the level of fixed-to-mobile pass through can be addressed is the retail price control regime in the T(CP&SS) Act.

**Retail price controls**

8.2 Part 9 of the T(CP&SS) Act enables the Minister to implement retail price controls. In 1998, the Department of Communications, Information Technology and the Arts (**DCITA**) suggested three objectives associated with price control arrangements:<sup>35</sup>

- Technical efficiency: in the absence of significant competition, to maintain pressure on Telstra to improve its productivity.

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<sup>34</sup> Australian Competition & Consumer Commission, *Review of Price Control Arrangements*, February 2001 at page 24.

<sup>35</sup> Australian Competition & Consumer Commission, *Review of Price Control Arrangements*, February 2001 at page 4.

- Allocative efficiency: to prevent monopoly pricing behaviour by Telstra, and to ensure that Telstra passes on to consumers the benefits of its productivity improvements.
- Equity: to ensure that the benefits of competition and productivity improvements in Telstra's network are reasonably spread among different groups of consumers, residential and business, metropolitan and rural, and to attempt to ensure that no consumers are made worse off by rebalancing of Telstra's charges.

8.3 In February 2001, the Commission issued its final report regarding what it considered to be appropriate price controls. The Commission concluded that

...competition does not appear to be effective in fixed-to-mobile services ... These observations, combined with the association of fixed-to-mobile calls with the PSTN, causes the Commission to believe there is a strong case for keeping fixed-to-mobile calls in the basket of services subject to price control.<sup>36</sup>

Fixed-to-mobile calls were included in the basket of services as the Commission concluded that where common costs exist, efficiency is best served by applying a price cap to as broad a basket of services sharing those costs as possible.<sup>37</sup>

- 8.4 Hutchison considers that the fixed-to-mobile market has not increased in competitiveness since the Commission previously assessed competition in that market.<sup>38</sup> Therefore, there is a need for regulation of retail prices for fixed-to-mobile calls to continue. Significantly, lower access prices without amendment to the current price control arrangements substantially increase Telstra's margin in the provision of fixed-to-mobile calls.
- 8.5 Hutchison considers that retail price control for fixed-to-mobile calls meets the objectives set out above and refers to the report of S King and J Gans provided with this submission.

**9. *How would continuing the existing mobile termination declaration, varying the declaration or revoking the declaration affect the achievement of the objective of any-to-any connectivity?***

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9.1 Hutchison considers that declaration is necessary to promote the objective of any-to-any connectivity because.<sup>39</sup>

- Termination charges directly impact upon a carrier's costs. Therefore, refusing to acquire a terminating service from a competitor or insisting upon high termination charges may be an effective strategy to deter entry or prevent effective competition, particularly when there are unequal traffic flows between the carriers.

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<sup>36</sup> Australian Competition & Consumer Commission, *Review of Price Control Arrangements*, February 2001 at page 24.

<sup>37</sup> Australian Competition & Consumer Commission, *Review of Price Control Arrangements*, February 2001 at page 26.

<sup>38</sup> Productivity Commission, *Telecommunications Competition Regulation*, 21 September 2001 at page 133; Professor Allan Fels, *Regulatory competition in converging markets; telecommunications and broadcasting*, 30 April 2003 at page 4; Professor Allan Fels, *Competition in Telecommunications*, 6 March 2003 at page 40.

<sup>39</sup> See response to question 2.

- Hutchison sets out in item 9 in confidential attachment A, its experiences negotiating interconnection arrangements for voice, SMS and MMS.

**10. How would continuing the existing mobile termination declaration, varying the declaration or revoking the declaration impact on the efficient use of and efficient investment in infrastructure?**

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10.1 See response to question 1 above.

10.2 In determining whether declaration will promote the efficient use of infrastructure:

- an important consideration is whether the MTAS charge and prices for fixed-to-mobile calls reflect costs. As the Commission acknowledges,

to the extent [declaration] leads to lower unit costs for suppliers in downstream markets, declaration can help ensure the final price paid by end-users for final services reflects underlying costs which in turn result in more efficient consumption of final services. This would then be expected to lead to more efficient use of all infrastructure used to provide final services to end-users.<sup>40</sup>

- the Commission is required to have regard to both the infrastructure used to provide mobile services as well as other listed services.<sup>41</sup>

10.3 Therefore, lower MTAS charges without regulating pass through, will simply increase further the gap between the cost of supplying fixed-to-mobile calls and their retail price. As mentioned above, where access and retail prices do not reflect costs, inefficient use of infrastructure results.

**11. What are the costs of providing mobile termination services?**

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11.1 Hutchison is unable to respond to this question unless the Commission specifies the costs referred to. Suffice it to say that the costs are significantly less than the access prices charged by carriers.

**12. How significant do network effects continue to be when determining an appropriate price for mobile termination?**

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12.1 Hutchison considers network effects to be largely irrelevant for mature mobile networks. Given the current level of penetration in Australia, the mobile services market is relatively mature.<sup>42</sup> Hutchison refers to the report of S King and J Gans provided with this submission.

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<sup>40</sup> Australian Competition & Consumer Commission, *Mobile Services Review 2003*, April 2003 at page 44.

<sup>41</sup> *Trade Practices Act 1974*, section 152AB(2)(e).

<sup>42</sup> ABN-AMRO report, *Australian Mobile Review: Diverging Strategies on Data*, 6 August 2002.



**13. What are the costs of compliance of the mobile termination service?**

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- 13.1 In Hutchison's view, the cost of complying with the declaration of MTAS depends upon the applicable pricing principles.
- 13.2 The retail benchmarking approach does not result in significant costs in that Hutchison (like all other mobile carriers) regularly collects the data necessary for the application of the pricing principles.<sup>43</sup>
- 13.3 In contrast, there are significant compliance costs associated with the application of a cost-based approach that requires network specific information and an allocation of common costs such as the TSLRIC approach that has been adopted in Australia for a variety of fixed line services such as PSTN originating and terminating access.<sup>44</sup>

**14. Have retail charges for mobile services increased, as indicated by the data collected under the Commission's monitoring program? Is the retail benchmarking pricing methodology still an appropriate pricing principle for use with this service?**

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**Hutchison's view**

- 14.1 Hutchison believes that retail charges for mobile services have to some extent increased by reason of the retail benchmarking pricing principles adopted by the Commission.<sup>45</sup> It is difficult however, to be precise due to the variety of call plans available. Other examples of reduced competition are Vodafone's removal of handset subsidies, and Telstra's reduction in the level of its handset subsidies.
- 14.2 Hutchison does not consider the retail benchmarking approach to be an appropriate pricing principle primarily because linking access prices to changes at the retail level, creates a disincentive for mobile carriers to engage in price competition.

**Hutchison's reasons**

- 14.3 Hutchison understands that the Commission's initial decision to adopt a retail benchmarking approach was made on the premise that the mobile services market was competitive and price competition would drive down MTAS prices.<sup>46</sup>
- 14.4 Hutchison considers that, to some extent, price competition in the mobile services market has decreased in response to lower revenue from MTAS. Nevertheless, in considering whether to engage in price competition, mobile carriers will take into account the reduction in revenue arising from both lower retail prices and lower mobile terminating access services.

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<sup>43</sup> Australian Competition & Consumer Commission, *Pricing Methodology for the GSM and CDMA Termination Services*, September 2002 at pages 18-31; Australian Competition & Consumer Commission, *Pricing Methodology for the GSM Termination Service*, July 2001 at page 75.

<sup>44</sup> Australian Competition & Consumer Commission, *Pricing Methodology for the GSM Termination Service*, July 2001 at page 78.

<sup>45</sup> See confidential attachment A.

<sup>46</sup> Australian Competition & Consumer Commission, *Pricing Methodology for the GSM Termination Service*, July 2001 at page 62.



14.5 Hutchison agrees with the conclusions of the Competition Commission (UK) regarding the Commission's retail benchmarking approach which concluded that it would be inappropriate for call termination charges to be tied to (retail) competitive services because of the risk of distorting a more competitive market.<sup>47</sup>

**15. *If the Commission were to determine that continued declaration of a mobile termination service were in the LTIE, which pricing principle would be the most appropriate for determining a price for this service? Why?***

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**Hutchison's view**

- 15.1 The objective in reviewing regulation of the MTAS as Hutchison has outlined is to address the distortions in prices that end-users face, particularly the significant distortions that have developed in the fixed-to-mobile market. Hutchison is doubtful whether the application of any of the principal pricing methodologies can adequately address these distortions. See item 10 in confidential attachment A.
- 15.2 As previously mentioned, Hutchison believes any pricing principle should result in a significant and expeditious reduction in MTAS charges. While Hutchison is not prepared to recommend at this stage the adoption of a particular pricing principle, Hutchison sets out its views in relation to each (below and in response to question 16) but is happy to reconsider pricing principles in more detail once the Commission has an opportunity to identify more clearly the market failure it seeks to address.

**Marginal Cost**

- 15.3 Hutchison notes the recommendation of a marginal cost approach advocated by J Gans in his report to the Commission on pricing options for MTAS.<sup>48</sup> Hutchison also notes that a certain TSLRIC approach may approximate marginal cost: see the report by J Gans and S King provided with the submission (at page 40). Hutchison considers these may be viable approaches to effect a substantial reduction in MTAS charges and thereby promote the LTIE.
- 15.4 The Commission has previously adopted the position that a marginal cost approach does not enable a carrier to recover its fixed and common costs<sup>49</sup> and that such a pricing principle would have a detrimental effect on the efficient investment in infrastructure by which the declared services are supplied and would not therefore be in the LTIE. Hutchison notes the contrary arguments. MTAS is one of many services supplied by mobile carriers over the same infrastructure. Further, the purpose of investing in a mobile telecommunications network is to conduct a mobile telephony business. The focus

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<sup>47</sup> Competition Commission (UK), *Vodafone, O<sub>2</sub>, Orange and T-Mobile: Reports on references under section 13 of the Telecommunications Act 1984 on the charges made by Vodafone, O<sub>2</sub>, Orange and T-Mobile for terminating calls from fixed and mobile networks*, December 2002 at pages 111-113; also see the Director General of Telecommunications (UK) views as described at page 112 of the Competition Commission (UK) report.

<sup>48</sup> J Gans, *An Evaluation of regulatory pricing options for mobile termination services*, 9 December 1999 at page 18.

<sup>49</sup> Australian Competition & Consumer Commission, *Pricing Methodology for the GSM Termination Service*, July 2001 at page 63.

therefore should be on the profitability or otherwise of the mobile business, not the amount charged for interconnection. Interconnection is ultimately a cost of providing a service (ie. the service of receiving calls) to the subscriber. The cost should be recovered in the usual way as are other costs.

## **TSLRIC**

15.5 The Commission has previously rejected the use of TSLRIC or TSLRIC+ type regulation for MTAS charging<sup>50</sup> because:

- (a) There is a risk that if the regulated access price is cost-based, it may reduce the market size and force carriers out of the market (for example, if the cost-based price did not allow for an efficient allocation of common costs or allow for network externalities).<sup>51</sup>
- (b) There is a need to consider how to model different mobile networks and what is 'best-in-use' technology.<sup>52</sup>
- (c) Applying a TSLRIC price would require a lengthy process before a final access price could be determined. There may, however, during that period be market changes affecting the extent of control-over-access or structural solutions addressing the customer ignorance problem.<sup>53</sup>

15.6 Hutchison agrees with the Commission regarding the many problems associated with TSLRIC+ type charging for MTAS. In particular, it is Hutchison's view that any TSLRIC+ type pricing for MTAS that involves an attempt to allocate common costs, will not likely result in economically efficient MTAS charges and will not be in the LTIE.

15.7 The Commission may adopt one of three approaches in determining a TSLRIC price:

- Determining the TSLRIC for each mobile network. This may be a time-consuming and resource-intensive exercise for the mobile carriers and for the Commission.
- Determining the TSLRIC for one carrier only. If a primary objective of regulating the MTAS is to eliminate the potential for anti-competitive conduct in connection with the pricing of fixed-to-mobile calls, then it makes sense to focus on Telstra's costs. As Telstra is an integrated mobile carrier, Telstra has the incentive and scope to charge access prices significantly above its internal access price. In those circumstances, applying a TSLRIC based on Telstra's costs will remove the scope for Telstra to engage in such discriminatory pricing. It sets an access price which will enable access seekers to compete on their merits with Telstra. The

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<sup>50</sup> Australian Competition & Consumer Commission, *Pricing Methodology for the GSM Termination Services*, July 2001.

<sup>51</sup> Australian Competition & Consumer Commission, *Pricing Methodology for the GSM Termination Services*, July 2001 at pages 56-57, 74.

<sup>52</sup> Australian Competition & Consumer Commission, *Pricing Methodology for the GSM Termination Services*, July 2001 at page 73.

<sup>53</sup> Australian Competition & Consumer Commission, *Pricing Methodology for the GSM Termination Services*, July 2001 at page 73.

Commission has previously determined a TSLRIC for Telstra for fixed-to-mobile calls using data provided by Telstra.<sup>54</sup>

- Prepare a bottom-up TSLRIC model based on the costs of building and operating a reasonably efficient 2G or 2.5G network.

15.8 A number of issues need to be considered in this context:

- There may be a need to determine the TSLRIC for a GSM and a CDMA network. There are also questions associated with the application of those prices to 3G technologies and these difficulties are not necessarily resolved if the Commission prepared a bottom-up TSLRIC model based on the costs of building and operating a reasonably efficient 2G or 2.5G network.<sup>55</sup>
- There will inevitably be disagreement associated with the application of the TSLRIC model and to apply Telstra's TSLRIC across the industry, would result in uncertainty for all mobile carriers regarding the MTAS charge. Mobile carriers other than Telstra simply have no information regarding Telstra's costs and cannot therefore estimate the MTAS charge.
- There would be a need to ensure that any analysis undertaken of Telstra's TSLRIC was transparent. Hutchison expects Telstra would oppose this course.

#### **Retail minus pricing principles**

15.9 Hutchison considers that a retail minus avoidable costs (**RMAC**) approach suffers from the following problems:

- A RMAC pricing principle takes as its starting point the retail prices (or the average retail prices) of the access provider. One of the reasons why the Commission adopted retail mobile revenue as a proxy for retail prices was because of the practical difficulties associated with determining 'retail prices',<sup>56</sup> as each mobile carrier offers a wide range of plans. The same practical difficulties apply in relation to a RMAC approach given, among other things the wide range of plans offered.
- Given that the MTAS is a service for the carriage of calls from a point of interconnection to the receiving subscriber, it appears artificial to arrive at an access price for that service using the retail price for an end-to-end mobile service coupled with the retail costs of providing that end-to-end service.

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<sup>54</sup> Australian Competition & Consumer Commission, *Review of Price Control Arrangements*, February 2001 at page 43.

<sup>55</sup> See for example the approach adopted in PSTN TSLRIC calculation: National Economic Research Associates, *Estimating the long run incremental cost of PSTN access*, January 1999 at pages 2-3; c.f. Competition Commission (UK), *Vodafone, O<sub>2</sub>, Orange and T-Mobile: Reports on references under section 13 of the Telecommunications Act 1984 on the charges made by Vodafone, O<sub>2</sub>, Orange and T-Mobile for terminating calls from fixed and mobile networks*, December 2002 at page 63.

<sup>56</sup> Australian Competition & Consumer Commission, *Pricing Methodology for the GSM and CDMA Termination Services*, September 2002 at pages 22-25.

- A RMAC approach carries the risk of distorting competition in the mobile services market,<sup>57</sup> as it disadvantages the access provider with the lowest retail prices. It may be possible to ameliorate this by adopting an industry-average retail price or alternatively, fixing the retail price as at the date the RMAC pricing principle is adopted. However, these alternative approaches create their own problems. There are practical difficulties in determining an industry average retail price.<sup>58</sup> It would also mean that the terminating access price would be fixed (with the only subsequent changes tied to changes in avoidable retail costs).

**16. *If the Commission were to move to some form of cost-based pricing principle such as TSLRIC, should it construct a cost model to estimate costs, or benchmark against overseas measures of cost? Further, what, if any, mark-ups should be adopted to a pure TSLRIC measure if TSLRIC were to be used as the appropriate pricing principle for a mobile termination service?***

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**Hutchison's view**

- 16.1 If TSLRIC pricing principles are adopted, there will inevitably be delay in determining appropriate access prices based on those pricing principles. This will create uncertainty for mobile and fixed line operators, adversely affect investment decisions and end-users will not receive any benefit in terms of lower retail prices for fixed-to-mobile calls.
- 16.2 Hutchison submits that if the Commission adopts TSLRIC pricing, in the interim, the Commission should benchmark access prices against:
- any previous analysis conducted by the Commission regarding the TSLRIC of MTAS. The Commission conducted an analysis of the TSLRIC of supplying a fixed-to-mobile call in the context of its review in 2001 of retail price controls.<sup>59</sup> This analysis should form the basis of an interim determination until such time as Telstra's TSLRIC is determined; and/or

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<sup>57</sup> Competition Commission (UK), *Vodafone, O<sub>2</sub>, Orange and T-Mobile: Reports on references under section 13 of the Telecommunications Act 1984 on the charges made by Vodafone, O<sub>2</sub>, Orange and T-Mobile for terminating calls from fixed and mobile networks*, December 2002 at page 112.

<sup>58</sup> For example, how would this be determined in a bilateral arbitration?

<sup>59</sup> Australian Competition & Consumer Commission, *Review of Price Control Arrangements*, February 2001 at page 43.

- overseas measures of cost. As the Commission is aware, the Competition Commission, as part of its recent review into mobile terminating access services, considered and varied the LRIC model adopted by the DGT. The LRIC model was based on a bottom-up approach, that is, estimating the cost of building what the DGT considered to be a 'reasonably efficient' 2G mobile network.<sup>60</sup>

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<sup>60</sup> Competition Commission (UK), *Vodafone, O<sub>2</sub>, Orange and T-Mobile: Reports on references under section 13 of the Telecommunications Act 1984 on the charges made by Vodafone, O<sub>2</sub>, Orange and T-Mobile for terminating calls from fixed and mobile networks*, December 2002 at pages 63-81.

## Domestic Intercarrier Roaming Service

### Hutchison's position

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1. Hutchison considers that:
  - (a) The declaration of a domestic intercarrier roaming service for CDMA networks is not in the LTIE of mobile services. However, the Commission should monitor market developments.
  - (b) The declaration of a domestic intercarrier roaming service for GSM networks is not in the LTIE of mobile services.
  - (c) It is too early to form a view as to whether the declaration of a domestic intercarrier roaming service for 3G technologies is in the LTIE of mobile services. The Commission should also monitor market developments in relation to these technologies.

### Background

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2. The following background is the context in which Hutchison considers the issue of regulating domestic intercarrier roaming.
3. An operator of a CDMA network can only roam onto another CDMA network. Currently, the only CDMA mobile carrier with national coverage is Telstra.
4. Hutchison sets out at item 1 in confidential attachment B details of its experience negotiating certain of its domestic roaming arrangements and the terms of those arrangements.
5. The matrix below sets out the networks on which each technology may roam. Although more advanced technologies (eg CDMA2000 or WCDMA) may roam onto less advanced networks, the advanced network services such as video calls may not be available while roaming on those networks.

	CDMA	CDMA 1xRTT/ CDMA 2000	GSM	GPRS/EDGE	WCDMA
CDMA	✓	✓			
CDMA 1xRTT/ CDMA 2000	✓	✓			
GSM			✓	✓	
GPRS/EDGE			✓	✓	
WCDMA			✓	✓	✓

### Long term interests of end-users: GSM and CDMA

6. The declaration of a domestic intercarrier roaming service is not necessary to promote any-to-any connectivity.
7. The declaration of a domestic intercarrier roaming service is not necessary to promote competition in the mobile services market because:
  - (a) a domestic intercarrier roaming service for GSM networks is currently provided on commercially reasonable terms such that acquirers of that service may compete in the mobile service market based on the incumbent carriers retail prices.
  - (b) while there are areas of potential concern regarding the terms on which a domestic intercarrier roaming service for CDMA networks is supplied, HTAL currently considers that commercial negotiations have offered the opportunity for efficient commercially negotiated outcomes. For the reasons set out in item 1 in confidential attachment B, in Hutchison's view, the Commission should continue to monitor developments in this area rather than declare the service under Part XIC of the TPA.
  - (c) Hutchison does not consider that declaration of a domestic intercarrier roaming service, when needed, will harm the efficient use of and investment in infrastructure. However, as it is likely that commercial negotiations will achieve commercially satisfactory outcomes, this objective is not relevant at this stage.

### Long term interests of end-users: 3G

8. Each of Telstra, Optus, Vodafone, 3G Investments (Qualcomm) and CKW Wireless has acquired spectrum for the provision of 3G services in all capital cities. H3GA has acquired spectrum for the provision of 3G services in the capital cities of Sydney, Melbourne,

Brisbane, Adelaide and Perth. The only carriers with spectrum licences in areas outside the capital cities are Telstra, Optus and Vodafone.<sup>61</sup>

9. It is clear that the Commission does not need to consider declaring a domestic intercarrier roaming service for 3G networks in capital cities. As five carriers currently have spectrum in those areas, there is no 'bottleneck' which the Commission needs to address.
10. In relation to declaring a domestic intercarrier roaming service outside the capital cities, Hutchison considers it premature to declare a service which would enable a 3G mobile carrier to roam onto another 3G network in those areas. It is likely that other 3G networks will be deployed over the next few years.<sup>62</sup> Hutchison believes the Commission should set a timetable for review when these networks have been deployed.

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<sup>61</sup> Australian Competition & Consumer Commission, *Mobile Services Review 2003*, April 2003 at page 11.

<sup>62</sup> For example Optus and Vodafone have foreshadowed the launch of 3G networks in Australia: *Communications Day*, 26 May 2003 at page 1.



## 3G Mobile Services

### Summary of Hutchison's position

- To the extent that it is technology neutral, H3GA adopts the Commission's definition of 3G services<sup>63</sup> as it focuses on 3G services as the provision of a carriage service.<sup>64</sup> However, as other technologies such as 2.5G offer many services similar to 3G, any definition must include any technology which provides these services.
- Broadly, 2.5G/3G technology enables different services to be supplied using the same mobile network infrastructure. The provision of such services is possible by reason of the greater data flow between end users and the network. These services can be categorised as interconnection services and consumer services.
- Interconnection services require interconnection agreements with mobile and fixed line networks. Examples include making voice or video calls or sending SMS or MMS messages. In contrast, consumer services involve no interconnection. Examples include information services, video clips and games.
- Hutchison believes the Commission should:
  - regulate interconnection services to promote the objectives of any-to-any connectivity and competition in relevant downstream markets; but
  - not regulate consumer services as there is no connectivity involved and no evidence of market failure.
- The Commission is probably unable to regulate access to content by carriers under Part XIC of the TPA. However, Hutchison identifies access to content as an area in which lack of competition may have a significant detrimental effect on the take up of 3G services. Hutchison believes the Commission should monitor this area closely.

### Nature of H3GA's service

H3GA launched its 3G service on 15 April 2003. The 3G service is branded '3' and:

- operates on a WCDMA network which has been deployed in Sydney and Melbourne. Facilities are currently being rolled out in Perth, Brisbane and Adelaide and it is expected that the '3' service will be offered in those cities from July 2003.
- operates at speeds of up to 2Mbps.
- offers the following features to subscribers:
  - voice calls;
  - SMS and MMS;

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<sup>63</sup> The proposed definition does not distinguish between 3G services provided by means of a WCDMA, CDMA2000 or CDMA 1xRTT network.

<sup>64</sup> The objectives of Part XIC are achieved through the declaration of listed carriage services, or services which facilitate the supply of listed carriage services: *Trade Practices Act 1974*, section 152AL.

- videoTalk (real time video calls between '3' subscribers);
- email (subscribers are able to send a receive emails via their 3 phone);
- information services (subscribers can download items such as text news stories, video clips (including sports news, general news, stock market reports and light entertainment), maps, and weather reports);
- games; and
- modem data services.

## **1. What is the appropriate service definition for 3G mobile services?**

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### **Hutchison's view**

- 1.1 To the extent that it is technology neutral, H3GA adopts the Commission's definition of 3G services<sup>65</sup> as it focuses on 3G services as the provision of a carriage service. However, as other technologies such as 2.5G offer many services similar to 3G, any definition must include any technology which provides these services. The definition proposed by the Commission

[3G is] a set of broadband network technologies that allow significantly greater data flow between end-user devices.<sup>66</sup>

must be qualified to acknowledge that the greater data flow is in fact between an end-user device and the mobile network, rather than between end-user devices.

Each aspect of the interconnectivity services offered on 2.5G/3G networks, such as SMS, MMS and video calls, will require a separate interconnection service definition which falls within this overall guideline. This is to deal with the technical aspects of interconnection.

### **Hutchison's reasons**

- 1.2 A useful definition of 3G mobile services:
- focuses on the distinction between 2.5G/3G and 2G technologies, being relevantly, the speed of data transfer; and
  - makes clear that 3G services are carriage services.

The Commission's definition does each of these things.

### *Speed of data transfer*

- 1.3 This table summarises the theoretical speed of data transfer for each technology.

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<sup>65</sup> The proposed definition does not distinguish between 3G services provided by means of a WCDMA, CDMA2000 or CDMA 1xRTT network.

<sup>66</sup> Australian Competition & Consumer Commission, *Mobile Services Review 2003*, April 2003 at page 82.

<b>Technology</b>	<b>Theoretical maximum speed</b>
GSM	14.4 Kbps
CDMA	14.4 Kbps
GPRS	115 Kbps
CDMA 1xRTT	144 Kbps
WCDMA	2 Mbps

Source: ABN Amro, *Australian mobile review: diverging strategies on data*, 6 August 2003

- 1.4 The Commission's proposed definition obviates the need to delineate between mobile networks using different technologies,<sup>67</sup> thereby avoiding the current debate as to which technologies are 3G technologies and which are 2.5G technologies.<sup>68</sup>

*Carriage services*

- 1.5 The Commission's definition makes clear that 3G services are merely carriage services. Hutchison considers this to be appropriate as the Commission can only declare listed carriage services or services that facilitate the supply of listed carriage services.<sup>69</sup>
- 1.6 The Commission notes that 3G mobile services may be described by reference to applications used in connection with 3G networks.<sup>70</sup> Hutchison disagrees. Content services such as video clips and applications which are likely to be supplied to subscribers using 3G networks, simply reflect the greater data flow offered by 3G networks between the network and end-user devices. That is, they are the downstream services and not inputs into those services. Part XIC of the TPA has not been used to regulate downstream services with the exception of the local carriage service, which is regulated to address very specific market failure.<sup>71</sup>
- 1.7 Further, the consumer services offered by the different mobile technologies such as GSM, CDMA, GPRS and CDMA 1xRTT are similar to the services offered by H3GA. VideoTalk is the only feature presently unique to H3GA services.
- 1.8 Hutchison is sensitive to the concerns raised by the Commission by analogy with the Pay TV industry, that carriers have the potential to exercise market power in relation to content. Although regulation of inputs to content services may be required, it is inappropriate to broaden the definition of 3G services to address this potential bottleneck. This is because the definition would seek to encompass both carriage services and content

<sup>67</sup> ABN-AMRO report, *Australian Mobile Review: Diverging Strategies on Data*, 6 August 2002.

<sup>68</sup> Until recently, the International Telecommunications Union (*ITU*) had recognised 5 technologies as 3G technologies. Relevantly, they included WCDMA and CDMA2000, the 2 dominant choices for 3G networks. Until recently CDMA 1xRTT (which is a reconfiguration of an existing CDMA network) was not considered to be a 3G technology. The ITU now recognises CDMA 1xRTT as a 3G technology.

<sup>69</sup> *Trade Practices Act 1974*, section 152AL(1).

<sup>70</sup> Australian Competition & Consumer Commission, *Mobile Services Review 2003*, April 2003 at page 82.

<sup>71</sup> Australian Competition & Consumer Commission, *Declaration of local telecommunications services*, August 1999 at pages 102-103.

services and become unworkable. Further, any definition of a service should be defined by reference to the market failure sought to be addressed. Defining a service broadly would not focus attention on that market failure.

**2. *Are there likely to be any bottlenecks for 3G services?***

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- 2.1 In Hutchison's view, bottlenecks may arise in respect of content services<sup>72</sup> and interconnection services. This is because there is potential for carriers to tie up premium content, which is key to driving demand for 3G services. Interconnection services are another potential bottleneck as it is fundamental that subscribers of a new 3G entrant are able to communicate with subscribers of other mobile networks and fixed-line networks (for voice and video calls as well as SMS and MMS services).
- 2.2 There are no bottlenecks associated with the provision of consumer services using 3G mobile technologies. This is primarily because there are sufficient providers licensed to use spectrum for the provision of 3G services.<sup>73</sup> This position contrasts with fixed line networks where they are substantial bottlenecks.

**3. *If the Commission were to consider declaring 3G mobile services, should the Commission declare a separate 3G service or vary the existing service description for other mobile services to include 3G mobile services?***

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- 3.1 Hutchison believes that the existing service description for mobile services should be varied to deal with 3G technology and, in particular, the bottleneck for interconnection services. This is consistent with the Commission's desire to ensure that declarations are technology-neutral, thereby not adversely affecting investment decisions.
- 3.2 Hutchison believes market failure may occur in relation to access to desirable content for 3G services. However, content services cannot be declared under Part XIC of the TPA,<sup>74</sup> and accordingly a separate 3G declaration would not successfully remedy such market failure.

**4. *Would declaration of a 3G mobile service (or a variation of the existing mobile service descriptions to include 3G services) be in the LTIE?***

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**Hutchison's view**

- 4.1 In Hutchison's view, it is unnecessary to consider declaration of a 3G mobile service for consumer services. There is no evidence to suggest that it would promote the LTIE and there are no interconnectivity issues.
- 4.2 Hutchison considers that declaration of interconnection services are in the LTIE.

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<sup>72</sup> See response to question 8 below.

<sup>73</sup> In 2000, the Australian Communications Authority auctioned spectrum in the 2GHz and 800 MHz bands for use in connection with 3G mobile networks. Six CSPs purchased various spectrum allocations.

<sup>74</sup> *Trade Practices Act 1974*, section 152AL.

### **Hutchison's reasons**

- 4.3 Hutchison has dealt with the regulation of the MTAS to 3G networks previously in this submission.
- 4.4 3G network operators face significant competitive pressures for most of the services they offer and therefore market failure is unlikely: see paragraph 5.1 below. Further, there are five other carriers with spectrum by which 3G mobile services could be provided. Accordingly, there is no need to declare 3G services for consumer services.
- 4.5 The declaration of interconnection services is in the LTIE because there is scope for H3GA's competitors to frustrate negotiations for interconnection or alternatively, only offer to provide interconnection on commercially unreasonable terms. Such a strategy may be used as a means of delaying the take up of 3G services or alternatively preventing new entrants competing effectively. For example, there are already indications of difficulties in the industry regarding MMS interconnection. Declaration of interconnection services is therefore necessary to promote any-to-any connectivity and competition in the downstream mobile services market.
- Live video calls are a significant example. These calls are currently a point of distinction between WCDMA network and CDMA 1xRTT or GPRS networks. H3GA will, however, ultimately need to enter into interconnection arrangements for video calls with other 3G operators and fixed line network operators. While it is in H3GA's commercial interest to ensure interconnection with carriers and CSPs for the purpose of video calls, it is not necessarily in the other carrier's commercial interest to facilitate consumer take up of this service.
- 4.6 Hutchison addresses the elements of the LTIE test in its responses to questions 5, 6 and 7 below.

### **5. *Would declaration of a 3G service be likely to promote competition in the market for 3G and/or related services?***

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- 5.1 The relevant downstream market is the mobile services market. There is no separate market for 3G and/or related services. From the consumers' perspective, 3G services provide similar functionality to GSM and CDMA technologies. Therefore, H3GA's services are substitutable for, or otherwise competitive with, the 3G services offered by the other mobile carriers, as evidenced by:
- H3GA's retail pricing which is comparable to or less than that charged by competing carriers; and
  - Telstra's CDMA network which has been upgraded to a 3G network using 1xRTT technology.<sup>75</sup>

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<sup>75</sup> Until recently, the International Telecommunications Union (*ITU*) had recognised 5 technologies as 3G technologies. Relevantly, they included WCDMA and CDMA2000, the 2 dominant choices for 3G networks. Until recently CDMA 1xRTT (which is a reconfiguration of an existing CDMA network) was not considered to be a 3G technology. The ITU now recognises CDMA 1xRTT as a 3G technology.

- 5.2 Declaring a 3G consumer service is unlikely to have any effect on competition in the mobile services market as there are already significant competitive constraints on 3G networks including:
- direct competition from 2G and 2.5G networks. Mobile penetration having reached over 65%, is slowing and providers of 3G services must seek to win customers from 2G and 2.5G networks.<sup>76</sup>
  - the threat of new 3G networks;<sup>77</sup> and
  - the threat of regulation.
- 5.3 Declaring interconnection services will promote competition in the mobile services market because it will ensure that:
- interconnection agreements are entered into in a timely manner;
  - there is certainty for new entrants in terms of obtaining interconnection on commercially reasonable terms; and
  - commercially reasonable interconnection agreements enable new entrants to engage in price competition in the mobile services market.

**6. *Would declaration of a 3G mobile service be likely to promote any-to-any connectivity in relation to carriage services that involve communication between end-users of 3G mobile services in terms of making or receiving calls?***

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**Hutchison's view**

- 6.1 Declaration of 3G consumer services is irrelevant to the promotion of any-to-any connectivity.
- 6.2 Declaration of interconnection services will promote any-to-any connectivity.

**Hutchison's reasons**

- 6.3 H3GA has entered into interconnection arrangements with Optus and Vodafone for the purpose of voice calls and SMS. Hutchison describes at item 1 in confidential attachment C, H3GA's experience regarding interconnection with Telstra. Hutchison also there describes its view of SMS and MMS interconnection.
- 6.4 There is scope for interconnection to be used as a means by which the take-up of 3G services is frustrated. Taking video calls as an example:
- Currently, video calls are only available between Hutchison subscribers. This is because other service providers are not yet able, technically, to offer video calls, although they have the spectrum to do so.

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<sup>76</sup> ABN-AMRO report, *Australian Mobile Review: Diverging Strategies on Data*, 6 August 2002. The mobile services market is becoming increasingly competitive as there are 5 existing mobile networks, a number of virtual mobile networks and resellers.

<sup>77</sup> Vodafone has indicated it intends to offer a 3G service by 2005, and Optus is expecting to begin trialling a 3G network in areas of Sydney by July 2003: *Communications Day*, 26 May 2003 at page 1.

- Hutchison is keen to stimulate demand for video calls as it is likely to drive demand generally for 3G services. Video calls will become more appealing as the number of subscribers able to make and receive video calls grows. Once video calls become available on other networks, Hutchison would seek to interconnect video calling services with other mobile carriers.
- The incumbent carriers may refuse to interconnect with H3GA for video calls as a tool for preventing the take up of services from H3GA.

**7. *Would declaration of a 3G mobile service be likely to promote the economically efficient use of, and investment in, the infrastructure by which 3G mobile services are supplied?***

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- 7.1 In Hutchison's view declaration of 3G mobile services is unlikely to impact on the economically efficient use of, and investment in, the infrastructure by which 3G mobile services are supplied.
- 7.2 Declaration of interconnection services will not adversely affect the economically efficient use of and investment in infrastructure. For the reasons set out in response to the Commission's inquiry into MTAS, declaration of services that are relevant to interconnection, cannot adversely affect the efficient use of and investment in infrastructure. In fact, not declaring interconnection services will create such distortions as it deters deployment of 3G infrastructure.

**8. *Are there particular risks for the development and uptake of 3G services arising from vertical integration in the provision of network services, 3G applications, and content services? How might these risks be addressed?***

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**Hutchison's view**

- 8.1 The Commission refers to vertical integration in the provision of network services, 3G applications and content services.

As described above, H3GA provides '3' subscribers with content, application and network services using the same network infrastructure. The provision of network services, 3G applications and content services does not create vertical integration. It is simply the full use of the capabilities offered by one network technology.<sup>78</sup> Professor Fels has pointed to the following as indicia of vertical integration in telecommunication markets:

- control of fixed telephony networks;
- control of mobile telephony networks;
- provision of wholesale data and internet services;
- provision of retail internet services; and

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<sup>78</sup> Hutchison believes the same distinction arises in relation to GSM and CDMA networks. For example, it would be incorrect to say a mobile network which offers SMS information services is vertically integrated.

- interests in Pay TV networks.<sup>79</sup>

H3GA subscribers can use 3G mobile services to access the internet, or use 3G applications to access email. However, H3GA maintains control over other content available on its network such as information services and games. H3GA does not believe this indicates H3GA is vertically integrated, rather, H3GA's network technology allows it to provide these services on the one network.

8.2 Hutchison agrees with Professor Fels' comments on vertical integration and notes the serious risk to the development of 3G services which arises when a vertically integrated provider such as Telstra possesses the following characteristics:

- long term and exclusive arrangements with content suppliers;
- universal base station and network coverage;
- an extensive existing customer base which can be used to leverage into the provision of 3G services;
- market power in the provision of other telephony services; and
- extensive customer information and knowledge.<sup>80</sup>

8.3 The risks posed to the development of 3G services by vertically integrated carriers may arise from anti-competitive conduct such as bundling across telecommunications markets,<sup>81</sup> hindering access to content or hoarding of content.

8.4 Hutchison expects that graphics and content rich applications will drive consumer take-up of 3G services. Accordingly, access to premium content is essential to the successful introduction of 3G services. Hutchison considers below issues associated with access to content.

#### **Access to content**

8.5 H3GA provides subscribers access to information services including sports results, news articles, maps and directories, entertainment, stock market reports and entertainment. Information is provided in video and text format. Hutchison believes that the most significant information services to create demand for 3G services and access to 3G networks are, sports, news and directory services.

8.6 Hutchison sets out at item 2 in confidential attachment C its experience in obtaining certain rights to premium content.

#### **How might the risks be addressed**

8.7 Hutchison does not as a matter of principle, believe that content used in connection with 3G services should be regulated. However, certain premium content is so essential to the provision of compelling information services, that access to this content may become a

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<sup>79</sup> Professor Allan Fels, *Competition in Telecommunications*, 6 March 2003.

<sup>80</sup> Professor Allan Fels, *Competition in Telecommunications*, 6 March 2003.

<sup>81</sup> In respect of issues relating to bundling, Hutchison refers the Commission to its submission to the Commission's draft information paper: *Bundling in telecommunications markets*, January 2003.



bottleneck in the provision of 3G mobile services. Hutchison describes at item 3 in confidential attachment C, the content it considers to be premium content.

- 8.8 The Productivity Commission considered access to content in the context of Pay TV concluding that:<sup>82</sup>
- there are incentives for Pay TV companies to use control of content to foreclose competition in the pay TV market;
  - there are incentives for telecommunications companies to use control of Pay TV content (through vertical integration or ownership links) to foreclose competition in telecommunications markets;
  - there is limited competition in both the Pay TV and telecommunications markets such that a strategy of withholding content could be successful; and
  - exclusive contracts and ownership links between Telstra, Foxtel and some key program suppliers provide the means by which key content can be withheld.
  - The Productivity Commission identified these factors as 'necessary pre-requisites' to behaving in an anti-competitive manner. The Productivity Commission also considered regulatory responses to dealing with access to Pay TV content before concluding that due to the rapidly changing nature of the industry and associated risks, the best strategy was to adopt a monitoring role. Hutchison believes the same approach should be adopted in relation to 3G mobile services.
- 8.9 Hutchison therefore believes the Commission should monitor this conduct given its capacity to inhibit competition in the mobile services market.<sup>83</sup> As noted previously, Part XIC of the TPA does not apply to content services.<sup>84</sup>

## **9. *Should the Commission engage in regulatory forbearance until such time as the 3G services industry is more mature?***

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- 9.1 Hutchison believes that regulatory forbearance in relation to 3G networks is not necessary as consumer services should not be declared and interconnection services should be declared immediately. However, given the potential for market failure in relation to access to content and bundling issues, the Commission should closely monitor developments<sup>85</sup> to ensure anti-competitive behaviour does not occur.

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<sup>82</sup> Productivity Commission, *Telecommunications Competition Regulation*, 21 September 2001 at page 538.

<sup>83</sup> Concerns in relation to content have already been raised by FOXTEL in section 87B undertaking to the ACCC at pages 15 to 16.

<sup>84</sup> Hutchison notes the considerable regulation in the Pay TV content. In particular, the existence of the Foxtel 87B undertakings (provided in relation to the Optus/Foxtel content sharing arrangement, although Hutchison notes that the Commission may have difficulty obtaining similar undertakings in relation to 3G services) and anti-siphoning rules.

<sup>85</sup> Hutchison notes the Commission has already commenced monitoring telecommunications markets in relation to bundling: Australian Competition & Consumer Commission, *Bundled Service Record Keeping and Reporting Rules*, 18 March 2003.

**10. *What is the most appropriate commercial interconnection model for governing the exchange of traffic generated by 3G mobile services?***

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10.1 See response to questions regarding declaration of 3G services.

**11. *What pricing principles would be appropriate for a declared 3G service, if one were declared?***

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11.1 In Hutchison's view, the pricing principle that should apply to a 3G voice call should be the same as that adopted for 2G/2.5G: see response to questions 15 and 16 above. Different pricing principles will be appropriate for SMS, MMS and video calls, as there is not the same asymmetries of pricing that exist between fixed and mobile voice interconnection.

## International roaming

### **1. What is the structure of international roaming charges in Australia?**

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- 1.1 In this submission, Hutchison adopts the Commission's definition of inbound roaming and outbound roaming.
- Outbound roaming refers to Australian network subscribers travelling outside of Australia and accessing overseas networks with whom the relevant Australian network has a roaming agreement.
  - Inbound roaming refers to the services supplied by Australian networks to overseas network operators to allow their subscribers to access networks in Australia.
- 1.2 HTAL does not supply inbound roaming services to international networks or outbound roaming services to HTAL's subscribers in respect of its CDMA (2G) network.
- 1.3 Generally international roaming agreements are reciprocal in that under a single agreement, a network operator will both acquire outbound roaming services and supply inbound roaming services.
- 1.4 H3GA operates a WCDMA (3G) network. H3GA does supply outbound roaming services to subscribers through overseas carriers GSM networks. H3GA has therefore entered into arrangements with international carriers under which those carriers may acquire inbound roaming services from H3GA. However, due to technology limitations there are not reciprocal inbound arrangements. Currently H3GA is establishing inbound and outbound arrangements with overseas 3G network operators. These are not yet available.
- 1.5 Under H3GA's outbound roaming arrangements, charges are structured as follows:
- for an H3GA subscriber **making** a call while overseas, the charge to that subscriber comprises the inter-operator tariff (**IOT**) charged by an international carrier to H3GA and a mark-up on the IOT; and
  - for an H3GA subscriber **receiving** a call while overseas, the charge comprises the IDD rate for the call and a mark-up.<sup>86</sup>
- 1.6 Under H3GA's inbound roaming arrangements, Hutchison charges international carriers the IOT. When Hutchison commences providing an inbound services, Hutchison will determine its own IOT which it will charge the network carrier acquiring the inbound roaming service.

### **2. Is there competition at the wholesale level for international roaming services for inbound roaming services?**

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- 2.1 H3GA determines the IOT which will apply to international carriers seeking to acquire inbound roaming services from it. H3GA sets its IOT by reference to its retail rates. As the

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<sup>86</sup> It is noted however, that under some arrangements, the IOT may also be charged to an H3GA subscriber receiving a call while travelling overseas. This is included in the IDD rate.

mobile services market is becoming increasingly competitive, H3GA would expect its inbound roaming rate to reflect any increase in competition in the mobile services market.

2.2 H3GA makes the following more general comments regarding competition for inbound roaming services:

- as there are 3 GSM networks operating in Australia, it is likely that there is some degree of competition for the provision of inbound roaming services; and
- there is likely to be less competition for inbound roaming for CDMA users as there is only 1 CDMA network in Australia which offers inbound roaming services.

**3. *Is there competition at the wholesale level for Australian carriers negotiating international roaming arrangements with overseas carriers for outbound roaming services?***

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3.1 There is little competition at the wholesale level for Australian carriers negotiating international roaming arrangements for outbound roaming. In Hutchison's experience, overseas networks set a schedule of charges payable for access to that network. There is little, if any, opportunity to negotiate a different price from that set out in the scheduled price list.

3.2 See item 1 in confidential attachment D.

**4. *What is the size of the mark-up over and above the IOT rate typically paid by Australian mobile operators when purchasing outbound roaming services for their directly-connected end-users in Australia?***

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4.1 Each international network from which H3GA acquires outbound roaming service publishes a schedule of IOTs for services it offers. H3GA acquires outbound roaming services at these rates.

**5. *What is the size of the mark-up charged by Australian carriers over and above the IOT rate in negotiating with overseas carriers whose end-users purchase inbound roaming in Australia?***

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5.1 See item 2 in confidential attachment D.

**6. *What is the size of the retail mark-up charged by Australian carriers over and above the overseas carriers' relevant charges for Australian end-users roaming on to overseas carriers networks when abroad?***

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6.1 See item 3 in confidential attachment D.

**7. *Is this mark-up cost orientated? If so, why?***

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- 7.1 H3GA incurs some costs in relation to international roaming which are off-set by the mark-up charged to consumers. However, the mark-up also reflects that outbound roaming is a premium service provided by H3GA.

**8. *To what extent are Australian consumers aware of the structure of international roaming charges?***

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- 8.1 Hutchison does not specify to consumers the manner in which overseas roaming charges are calculated. Consumers are given rates for receiving calls and making calls in each country in which they choose to acquire roaming services. Consumers are also given rates for sending SMS in those countries. Accordingly, consumers may not be aware of how rates are calculated.
- 8.2 Hutchison notes that consumers are unlikely to be aware of the manner in which many telecommunications charges are calculated. For example, Hutchison refers to the fixed to mobile service. Calls for fixed to mobile calls are a combination of fixed line originating access costs and the terminating access charge. However, consumers are unlikely to be aware of the components of the overall charge for a fixed to mobile call.

**9. *To what extent do Australian consumers purchase international roaming services when travelling abroad? Does the content and distribution of international roaming 'fact sheets' assist end-users to make informed choices when using these services, and assist in promoting competition in these markets?***

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- 9.1 H3GA's experience in outbound roaming is limited to the extent to which its subscribers have acquired the service. As H3GA only commenced offering services in April 2003, its experience in relation to outbound roaming services is limited accordingly.
- 9.2 International roaming services are available to H3GA customers. H3GA's website provides full details of charges to receive and make calls for customers who acquire international roaming services. It is likely that a fact sheet would contain less information than is currently available on the H3GA website.

**10. *What is the size of revenues of Australian carriers from providing outbound roaming services and inbound roaming services?***

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- 10.1 As H3GA has only launched its network and commenced providing services in Sydney and Melbourne since April 2003, its revenue from providing outbound roaming is insignificant. As described above, H3GA does not yet supply an inbound roaming service at this point in time.
- 10.2 H3GA expects that it will understand the impact of roaming on its revenues after the H3GA service is more established.

## **11. *Is regulation of international roaming services needed in Australia?***

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### **Outbound roaming**

- 11.1 In Hutchison's view, there is no justification for regulating the prices of these services:
- A variety of substitutes exist for subscribers who wish to acquire outbound roaming services. These substitutes constrain the price for outbound roaming. Substitutes available when travelling overseas include:
    - using calling cards from fixed lines or public phones;
    - purchasing a SIM only plan from a foreign telco to use in conjunction with the existing handset;
    - using data services such as SMS rather than voice services;
    - hiring a phone from a phone hire company; and
    - other forms of electronic communication such as a web email.
  - There are competitive constraints on what the mobile carriers can charge for outbound roaming. For example, there are subscribers who use international roaming services frequently (eg business customers) and therefore purchase mobile services on the basis of outbound roaming charges. There is competition among the mobile carriers for their custom.
  - Outbound roaming services should be viewed differently from core telecommunications services used to provide basic telecommunications services such as basic access services or local carriage services. Outbound roaming services are 'premium services' in that subscribers only generally acquire such services infrequently and do so, in order to enjoy the convenience of using their mobile number while travelling overseas. Further, not all mobile carriers offer this facility to their subscribers, including HTAL.
  - See also item 4 in confidential attachment D.

### **Inbound roaming**

- 11.2 H3GA does not consider that the inbound roaming wholesale rates of Australian mobile carriers need to be regulated. The IOT rates set by Australian carriers, are to a large extent, set by reference to their retail rates, which in turn are set by competitive forces in the mobile services market.
- 11.3 Charging retail rates is justified by the fact that international subscribers are, while roaming in Australia, subscribers of the Australian carrier. The Australian carriers continue to incur costs associated with retail services such as billing and the offering of call centre facilities.
- 11.4 The IOT rates for each Australian mobile carrier are equivalent to the 'market' rate that is, the rates charged internationally. It would adversely affect the Australian carriers' revenue if they were required to charge international carriers (reduced) regulated rates while facing higher charges when using networks overseas. This revenue shortfall would have to be recovered by the amounts charged to subscribers for outbound roaming. Hutchison does

not understand how the Commission could regulate the IOT rates for international charges. There has been no suggestion that their conduct may contravene the TPA.

**12. *If so, what form should it take?***

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- 12.1 As discussed above, regulation of scheduled rates charged by overseas networks is required in order to significantly decrease outbound roaming charges. Presumably, the Commission would need to work in close cooperation with overseas regulators to achieve uniform regulation on a global basis.