
Hutchison 3G Australia Pty Ltd

Submission to the Commission in response to the
Commission's *Draft Report* on reviewing the declaration of the
mobile terminating access service

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1. Introduction

Hutchison 3G Australia Pty Ltd (**Hutchison**) welcomes the opportunity to respond to the Australian Competition and Consumer Commission's (the **Commission's**) *Draft Report* on reviewing the declaration of the mobile terminating access service (**MTAS**) (the **Draft Report**) dated March 2009.

2. Executive Summary

Hutchison's position is:

1. The long term interests of end-users (the **LTIE**) will be promoted by declaration of the MTAS for a period of five years in respect of:
 - (a) mobile-to-mobile (**MTM**) calls;
 - (b) fixed-to-mobile (**FTM**) calls;
 - (c) short messaging services (**SMS**); and
 - (d) multimedia messaging services (**MMS**).
2. If the Commission does not declare SMS and MMS as part of the current inquiry, the Commission should conduct a separate inquiry into whether declaration of these services is in the LTIE.
3. Market failure in the fixed telephony market has meant that reductions in the MTAS rate have not been passed through to consumers of FTM services. Consequently there is a need for the Commission to ensure it has the flexibility to regulate the MTAS in respect of FTM calls differently to the MTAS in respect of MTM calls. The most appropriate course is for the Commission to declare the MTAS in respect of FTM and MTM calls separately.

3. MTAS service description

In the Draft Report the Commission identifies three main issues arising in respect of the MTAS service description:¹

1. whether MTM termination should be included in the service description and if so whether FTM and MTM termination should be separately described;
2. whether termination of SMS, MMS and other data services should be included in the service description; and
3. whether mobile network services deployed in aircraft operating within Australia should be included in the service description.

Each issue is dealt with in turn:

3.1 Separate description of FTM and MTM termination

(a) The Commission's view

The Commission states that it has formed the view that the current MTAS service description should not be altered to exclude MTM termination or separately describe FTM and MTM voice termination.²

The Commission provides three reasons for the service description to include both FTM and MTM termination:³

- (i) call traffic asymmetry;
- (ii) the fundamentally similar nature of calls originating on fixed lines and calls originating on mobiles; and
- (iii) the promotion of any-to-any connectivity.

(b) Hutchison's response

Hutchison's position is that the MTAS should be declared in respect of both FTM and MTM services.

However Hutchison remains of the view that two MTAS declarations, in respect of FTM and MTM calls respectively, would provide the ACCC with the necessary flexibility to determine different pricing principles in respect of each service.⁴

¹ See: Australian Competition and Consumer Commission 'An ACCC Draft Report on reviewing the declaration of the mobile terminating access service' March 2009 at 11

² See: Australian Competition and Consumer Commission 'An ACCC Draft Report on reviewing the declaration of the mobile terminating access service' March 2009 at 14

³ See: Australian Competition and Consumer Commission 'An ACCC Draft Report on reviewing the declaration of the mobile terminating access service' March 2009 at 11-12

⁴ Hutchison 3G Australia Pty Limited, *Submission in response to the Discussion Paper*, February 2009, p 14

Flexibility is needed to enable the Commission and the Government to appropriately respond to market failure in the fixed telephony market.

As the Commission is aware, unlike the retail mobile services market, the reduction in the MTAS rate has largely not been passed through to consumers of FTM calls.⁵ To address the failure in the market within which FTM services are supplied, the Commission may consider it necessary to adopt different pricing principles in relation to the MTAS. Separate declarations provide the Commission with the flexibility to adopt different pricing principles in so far as it concerns the market within which FTM services are supplied.

For example, an option would be for the Commission to set an MTAS rate in respect of FTM services acquired by non-integrated suppliers of FTM services which is lower than the MTAS rate in respect of FTM services acquired by integrated suppliers of FTM services. This could help redress the competitive imbalance in the market within which FTM services are provided.

Specifically, Hutchison submits that:

- while the termination of calls to mobiles which originate on fixed lines is fundamentally similar from a technical point of view to the termination of calls to mobiles which originate on mobiles, the reasons for declaring each service are fundamentally different. That is, the competition issues which the Commission seeks to address by declaring each service are different, which may therefore necessitate a different approach to matters such as pricing principles;
- separately declaring the MTAS in respect of FTM and MTM services provides the Commission with the flexibility to appropriately respond to the competition issues which arise in respect of each service; and
- call traffic asymmetry and the promotion of any-to-any connectivity are issues relevant to the question of whether declaration of a service is in the LTIE, but are not relevant to the question of how to appropriately define the service nor the question of whether FTM and MTM voice termination services should be separately declared.

Hutchison sets out its reasons below.

The supply of the MTAS in respect of FTM and MTM services in accordance with the Commission's declaration has fundamentally different competitive effects:⁶

- (i) Declaration of the MTAS in respect of MTM calls has increased competition in the retail mobile market for a range of reasons, including by having:

⁵ See: Australian Competition and Consumer Commission 'An ACCC Draft Report on reviewing the declaration of the mobile terminating access service' March 2009 at 24

⁶ See: Hutchison 3G Australia Pty Limited, *Submission in response to the Discussion Paper*, February 2009, p 13-14

- reduced the floor price which MNOs can viably charge, and price which MNOs actually charge, for MTM calls;
 - helped to expand the mobile market; and
 - reduced the on-net pricing advantage of the incumbent operators.
- (ii) Declaration of the MTAS in respect of FTM calls has not increased competition in the fixed telephony market, because:
- FTM calls are only one part of a bundle of services which comprise the market within which FTM calls are provided;
 - the market within which FTM calls are provided is not effectively competitive;⁷ and
 - Telstra has therefore been able to resist passing through MTAS rate reductions.

The Commission is clearly aware of the market failure in the market within which FTM services are provided. In the Draft Report the Commission acknowledges:

- 'the FTM services market is not effectively competitive';⁸
- it is concerned 'that substantial reductions in the MTAS rate since 2004 have failed to be passed through to end-users';⁹ and
- 'vertically integrated operators face the actual costs for FTM calls terminating on their own networks but are able to set above cost prices for rival fixed only operators'.¹⁰

Nonetheless in the Draft Report the Commission proposes that declaration of the MTAS in respect of FTM calls should continue because it removes a barrier to competition in the market within which FTM services are provided. The Commission states it has formed the view that declaration will eliminate the ability of vertically integrated carriers to raise the costs of their rivals and provide the opportunity for resellers of FTM services to provide FTM services at well below prevailing prices.¹¹

The difficulty with this is that it is the same response that has already failed to improve competition in the market within which FTM services are provided, while also adversely affecting competition in the retail mobile services market. Telstra's

⁷ See: Australian Competition and Consumer Commission 'An ACCC Draft Report on reviewing the declaration of the mobile terminating access service' March 2009 at 24

⁸ Australian Competition and Consumer Commission 'An ACCC Draft Report on reviewing the declaration of the mobile terminating access service' March 2009 at 24

⁹ Australian Competition and Consumer Commission 'An ACCC Draft Report on reviewing the declaration of the mobile terminating access service' March 2009 at 24

¹⁰ Australian Competition and Consumer Commission 'An ACCC Draft Report on reviewing the declaration of the mobile terminating access service' March 2009 at 27

¹¹ Australian Competition and Consumer Commission 'An ACCC Draft Report on reviewing the declaration of the mobile terminating access service' March 2009 at 27

failure to pass through MTAS rate reductions to consumers of FTM services has led to a transfer of revenue from other MNOs to Telstra, which necessarily affects the ability of those MNOs to compete with Telstra in the retail mobile market.

Hutchison notes the appropriate regulatory response to market failure in respect of FTM services is currently the subject of review. The recently released discussion paper *National Broadband Network: Regulatory Reform for 21st Century Broadband* states that possible options the Government is considering include capping the retail prices of FTM calls, and using retail price controls in conjunction with the wholesale access regime.¹²

Separate declarations of the MTAS in respect of MTM and FTM services would provide the Commission with the flexibility needed to set pricing principles which are appropriate to each service. For example, the pricing principles for the declaration of the MTAS in respect of FTM services could allow for differential MTAS pricing in respect of integrated and non-integrated operators.

Separate declarations would also allow the Government greater flexibility in forming its regulatory response to this market failure. For example, it would improve the Government's ability to regulate FTM prices through retail price controls which operate in conjunction with the wholesale access regime.

3.2 Termination of SMS, MMS and other data services

(a) The Commission's view

The Draft Report states the Commission has formed the view that the current MTAS service description should not be altered to include termination of SMS, MMS and other data services.¹³

The Commission's reason for not including these services in the MTAS service description is that they are still exhibiting significant growth and cannot be considered fully mature markets.¹⁴ The Commission notes that it '...favours a light-handed regulatory approach with respect to the regulation of immature services.'¹⁵

However in the Draft Report the Commission indicates that it will continue to monitor market developments and may, if necessary, conduct a separate inquiry into whether regulation of messaging and data services is in the LTIE.¹⁶

(b) Hutchison's response

¹² Department of Broadband, Communications and the Digital Economy *National Broadband Network: Regulatory Reform for 21st Century Broadband Discussion Paper* April 2009 at 40-41

¹³ See: Australian Competition and Consumer Commission 'An ACCC Draft Report on reviewing the declaration of the mobile terminating access service' March 2009 at 14

¹⁴ Australian Competition and Consumer Commission 'An ACCC Draft Report on reviewing the declaration of the mobile terminating access service' March 2009 at 13

¹⁵ Australian Competition and Consumer Commission 'An ACCC Draft Report on reviewing the declaration of the mobile terminating access service' March 2009 at 12

¹⁶ Australian Competition and Consumer Commission 'An ACCC Draft Report on reviewing the declaration of the mobile terminating access service' March 2009 at 13

Hutchison submits:

- declaration of SMS and MMS services satisfies the statutory criteria for declaration;
- telecommunications services have not, and should not, be denied declaration on the basis they are 'immature';
- SMS and MMS are nevertheless mature services; and
- the Commission should therefore either declare SMS and MMS services, or conduct a separate inquiry into whether regulation of messaging services is in the LTIE.

(i) SMS and MMS satisfy the statutory criteria for declaration

Hutchison submits that declaration of SMS and MMS is in the LTIE and satisfies the statutory criteria for declaration.¹⁷

At present the MTAS in respect of SMS and MMS is supplied at a commercially negotiated rate which Hutchison considers to be significantly above the cost of supplying the service. [*c-in-c*]. The traffic asymmetry which exists in relation to the MTAS for FTM and MTM calls also exists in respect of SMS and MMS.

Termination services for SMS and MMS are essential inputs which exhibit the same bottleneck characteristics that exist in respect of FTM and MTM call termination, and provide the same incentives for MNOs to artificially raise the termination price above the underlying cost of production.

Declaration of SMS and MMS would therefore:

- improve price competition in the retail mobile services market by reducing the floor price which MNOs can viably charge for off-net SMS and MMS;
- ensure any-to-any connectivity in respect of SMS and MMS services; and
- promote the economically efficient use of, and investment in, mobile network infrastructure by ensuring that SMS and MMS prices more closely reflect their efficient cost.

(ii) Declaration of mature services

Hutchison does not consider that the relative 'maturity' of a service is a factor which is relevant to the statutory criteria for declaration. The *Trade Practices Act 1974* (Cth) speaks of services and does not seek to further differentiate between mature and immature services.¹⁸ The concept of 'immature markets' is not used in economic theory as a factor for when intervention should be considered inappropriate. To the contrary, the trend in economic scholarship is that delaying intervention in emerging markets causes detriment and such delay is to be avoided.

¹⁷ See: *Trade Practices Act 1974* (Cth) s152AL(3)

¹⁸ See for example: *Trade Practices Act 1974* (Cth) ss 152AL(3) and 152AL(1)(a)

Furthermore, Hutchison notes that the relative maturity of a service has not in the past been a barrier to the declaration of telecommunications services. For example, when first declared by the Commission the unbundled local loop service (**ULLS**) and the line sharing service (**LSS**) were overwhelmingly less 'mature' services than either SMS or MMS .

In relation to its declaration of the ULLS the Commission noted that the high bandwidth carriage services market was 'expected to experience significant growth in the foreseeable future...' ¹⁹ In relation to the LSS the Commission issued a draft determination to declare the service in April 2002 and a final determination declaring the service in August 2002 even though an LSS service was only first supplied in Australia in July 2002. ²⁰

(iii) SMS and MMS are mature services

As part of the Mobile Services Review, the Commission concluded in June 2004 that it would not include SMS in the MTAS service description on the basis it was unclear whether the service was fully mature:

These services were first introduced in 1997 but did not become popular until 2000. Since then, the total number of SMS messages, the number of short messages per annum and the ARPU per month for this service for each carrier have all increased significantly.

The Commission considers it is unclear whether SMS is fully mature at this point in time. This is based on the continued growth being seen in this market. The Commission also notes the absence of any pattern of complaints to it regarding interconnection with mobile networks in order to provide termination of SMS services, to date. ²¹

Almost five years later, Hutchison submits that the SMS market is 'mature' and does not warrant a light-handed regulatory approach. Similarly the MMS market is maturing and should also be subject to declaration.

SMS services now represent a significant proportion of the Australian retail mobile services market. For example, MNO data for the most recently reported financial year for shows that SMS represented:

- 11.6% (\$740.5 million) of Telstra's mobile revenue; ²² and
- 20.2% (\$269 million) of Optus' mobile revenue. ²³

¹⁹ Australian Competition and Consumer Commission 'Declaration of local telecommunications services A report on the declaration of an unconditioned local loop service, local PSTN originating and terminating services, and a local carriage service under Part XIC of the Trade Practices Act 1974' July 1999 p93

²⁰ See: Australian Competition and Consumer Commission 'Line Sharing Service Final Decision on whether or not a Line Sharing Service should be declared under Part XIC of the Trade Practices Act 1974' August 2002 at ii-iii

²¹ ACCC, *2004 MTAS Final Report*, p24

²² Telstra *Annual Report 2008* at 15-16 (available at: http://www.telstra.com.au/abouttelstra/investor/docs/tls633_2008annualreport.pdf)

(iv) The Commission should declare SMS and MMS

The Commission should therefore either include the termination of SMS and MMS services in the MTAS service description or declare a separate service which covers SMS and MMS services.

If the Commission does not declare these services as part of the current inquiry, the Commission should conduct a separate inquiry into whether declaration of these services is in the LTIE.

(v) Data services

Hutchison reiterates its view that there is no need to declare other data services where there is no data termination between carrier networks.²⁴

3.3 Mobile network services deployed in aircraft

(a) The Commission's view

The Commission states that it has formed the view that the current MTAS service description should not be altered to include mobile network services deployed in aircraft operating within Australia.²⁵

(b) Hutchison's response

Hutchison does not oppose the Commission's view that the MTAS service description should not include mobile network services deployed in aircraft operating within Australia (as those services are defined in the Draft Paper²⁶).

4. Competition in telecommunications markets

4.1 Defining the relevant markets

In the Draft Report the Commission identifies three markets as relevant to its assessment of whether declaration of the MTAS is likely to promote competition.²⁷

- the mobile call termination market;
- the market for retail mobile services; and
- the market within which FTM services are provided.

²³ Singtel *Management discussion and analysis of financial condition, results of operations and cash flows for the third quarter and nine months ended 31 December 2008* at 42 (available at: <http://www.optus.com.au/dafiles/OCA/AboutOptus/MediaCentre/SharedStaticFiles/SharedDocuments/3rdqtr0809-mda.pdf>)

²⁴ Hutchison 3G Australia Pty Limited, *Submission in response to the Discussion Paper*, February 2009, p 15

²⁵ See: Australian Competition and Consumer Commission 'An ACCC Draft Report on reviewing the declaration of the mobile terminating access service' March 2009 at 14

²⁶ See: Australian Competition and Consumer Commission 'An ACCC Draft Report on reviewing the declaration of the mobile terminating access service' March 2009 at 13-14

Hutchison considers these are the three markets most relevant to the Commission's assessment of whether to declare the MTAS.

4.2 The state of competition in the relevant markets

(a) The mobile terminating access service market

The Commission has determined that the wholesale MTAS market is not competitive.²⁸ This is primarily on the basis that the monopoly features in the provision of the MTAS over a particular operator's network remain, and that alternative platforms (such as mobile VoIP, dual mode handsets and WiMax) are not effective substitutes for the MTAS.²⁹

Hutchison does not object to these propositions .

(b) The retail mobile services market

In the Draft Report the Commission makes several observations about the retail mobile services market.³⁰

Hutchison considers that the competitiveness of the retail mobile services market is improving, although Telstra and Optus remain dominant.

(c) The fixed to mobile services market

The Commission maintains its previously expressed view that the FTM services market is not effectively competitive.³¹

Hutchison agrees that the FTM services market is not effectively competitive, and considers this is evidenced by the lack of pass through of MTAS price reductions to the retail price of FTM services.

Hutchison also agrees with the Commission's view that MTM, VoIP, SMS and email messaging are not fully effective substitutes for FTM calls.³²

4.3 The extent to which competition would be promoted by declaration

(a) The mobile terminating access service market

Hutchison agrees with the Commission's preliminary view that the continued declaration of the MTAS will, when coupled with an appropriate pricing principle,

²⁷ See: Australian Competition and Consumer Commission 'An ACCC Draft Report on reviewing the declaration of the mobile terminating access service' March 2009 at 18-19

²⁸ Australian Competition and Consumer Commission 'An ACCC Draft Report on reviewing the declaration of the mobile terminating access service' March 2009 at 21

²⁹ Australian Competition and Consumer Commission 'An ACCC Draft Report on reviewing the declaration of the mobile terminating access service' March 2009 at 21

³⁰ Australian Competition and Consumer Commission 'An ACCC Draft Report on reviewing the declaration of the mobile terminating access service' March 2009 at 22-23

³¹ Australian Competition and Consumer Commission 'An ACCC Draft Report on reviewing the declaration of the mobile terminating access service' March 2009 at 24

³² Australian Competition and Consumer Commission 'An ACCC Draft Report on reviewing the declaration of the mobile terminating access service' March 2009 at 20

generate a closer association of prices with the underlying cost of the MTAS than would exist in the absence of declaration.³³

Hutchison accepts this is unlikely to generate a greater level of competition in the markets within which the MTAS is provided.³⁴

(b) The retail mobile services market

In the Draft Report the Commission appears to be of the view that continued declaration of the MTAS will promote competition in the retail mobile services market.³⁵

The Commission stated that:³⁶

- it believes the continued declaration of the MTAS has been a major contributor to the increased competitiveness of the retail mobile services market since 2004;
- withdrawing regulation risks eroding the significant gains in competitiveness achieved through declaration; and
- continued declaration of the MTAS would not disproportionately affect MNOs.

Hutchison recognises that, due to call asymmetries, in the absence of regulation there may exist an incentive for MNOs to charge MTAS rates which are above cost.³⁷ The absence of regulation may also give incumbent MNOs an on-net pricing advantage. Hutchison therefore considers that declaration of the MTAS in respect of MTM services has and will continue to promote competition in the retail mobile services market. In addition, for the reasons set out above, Hutchison considers that competition in the retail mobile services market would be further improved if SMS and MMS are declared.³⁸

However, Hutchison reiterates that declaration of the MTAS in respect of FTM services has led to a significant transfer of revenue to Telstra from the other Australian MNOs. This is because the reductions in the MTAS rate in respect of FTM calls has not been accompanied by a commensurate reduction in the retail price Telstra charges for supplying FTM services. This has affected competition in the

³³ Australian Competition and Consumer Commission 'An ACCC Draft Report on reviewing the declaration of the mobile terminating access service' March 2009 at 26

³⁴ Australian Competition and Consumer Commission 'An ACCC Draft Report on reviewing the declaration of the mobile terminating access service' March 2009 at 26

³⁵ Australian Competition and Consumer Commission 'An ACCC Draft Report on reviewing the declaration of the mobile terminating access service' March 2009 at 26

³⁶ Australian Competition and Consumer Commission 'An ACCC Draft Report on reviewing the declaration of the mobile terminating access service' March 2009 at 26

³⁷ Although Hutchison also notes that integrated MNOs may have an incentive to reduce MTAS rates below cost, depending on their net volume of off-net FTM and MTM calls and the extent to which MTAS rate reductions are passed through to consumers

³⁸ See section [X] above

retail mobile services market by strengthening the financial position of Telstra, the company with the largest market share, and weakening the financial position of its competitors.

(c) The market within which FTM services are provided

The Commission notes that the pass through of reductions in the MTAS rate to FTM prices has been lower than expected.³⁹

Nevertheless the Commission has formed the preliminary view that the continued declaration of the MTAS will improve competition in the market within which FTM services are provided, on the basis that:⁴⁰

- the absence of pass through is not in itself a reason against continued declaration;
- declaration, *combined with an appropriate pricing principle*, will eliminate the ability of vertically integrated carriers to raise the costs of their rivals and provide the opportunity for resellers of FTM services to provide FTM services at well below prevailing prices (emphasis added); and
- actual improvements in competition may emerge in a range of other ways.

Hutchison considers that declaration of the MTAS in respect of FTM services is likely to promote competition in the market within which FTM services are provided.

However Hutchison reiterates that the extent to which competition is likely to be promoted is limited by the fact the market within which FTM calls are provided remains uncompetitive.

5. Any-to-any connectivity

5.1 The Commission's preliminary view

The Commission expresses the preliminary view that the achievement of the object of any-to-any connectivity is promoted by declaration.⁴¹

The Commission expresses this view on the basis that the continued declaration of the MTAS prevents any possibility of a carrier being refused access to mobile termination services.⁴²

³⁹ Australian Competition and Consumer Commission 'An ACCC Draft Report on reviewing the declaration of the mobile terminating access service' March 2009 at 27

⁴⁰ Australian Competition and Consumer Commission 'An ACCC Draft Report on reviewing the declaration of the mobile terminating access service' March 2009 at 27

⁴¹ Australian Competition and Consumer Commission 'An ACCC Draft Report on reviewing the declaration of the mobile terminating access service' March 2009 at 30

⁴² Australian Competition and Consumer Commission 'An ACCC Draft Report on reviewing the declaration of the mobile terminating access service' March 2009 at 30

5.2 Hutchison's view

Hutchison agrees with the Commission that the continued declaration of the MTAS promotes any-to-any connectivity by preventing the possibility of a carrier being refused access to mobile termination services.

Hutchison reiterates its view that:⁴³

- any-to-any connectivity is fundamental to effective competition in the mobile services market; and
- declaration is necessary to ensure any-to-any connectivity is achieved.

Optus and Vodafone have each, to some extent, sought to argue that the countervailing bargaining power which exists between the MNOs limits the extent to which declaration is necessary to ensure any-to-any connectivity. However Hutchison submits that it does not possess bargaining power which is equal or similar to the vertically integrated MNOs such as Telstra and Optus, and it consequently considers the statutory requirement for any-to-any connectivity is essential.

6. Economically efficient use of infrastructure

6.1 The Commission's preliminary view

In the Draft Report the Commission agrees with the submissions from Hutchison, Telstra and AAPT, which suggest that MTAS prices which are closely associated to their costs *and which are passed on to end-users* encourage the efficient use of telecommunications infrastructure (emphasis added).⁴⁴

The Commission consequently expresses the preliminary view that regulation of the MTAS has encouraged economically efficient use of the infrastructure used to provide telecommunication services since 2004 by bringing MTAS prices down closer towards their costs.⁴⁵

6.2 Hutchison's view

Hutchison considers that declaration of the MTAS in respect of MTM services has encouraged the economically efficient use of mobile infrastructure. Declaration has ensured that the MTAS rate in respect of MTM services more closely reflects the cost of supplying that service, and strong competition in the retail mobile market has seen the reductions in the MTAS rate passed through to consumers in the form of lower retail prices. In turn this has promoted the efficient use of mobile infrastructure.

However, Telstra's dominance of the fixed telephony market has restricted the extent to which declaration of the MTAS in respect of FTM services has encouraged the efficient use

⁴³ Hutchison 3G Australia Pty Limited, *Submission in response to the Discussion Paper*, February 2009, p 20

⁴⁴ Australian Competition and Consumer Commission 'An ACCC Draft Report on reviewing the declaration of the mobile terminating access service' March 2009 at 31

⁴⁵ Australian Competition and Consumer Commission 'An ACCC Draft Report on reviewing the declaration of the mobile terminating access service' March 2009 at 31

of mobile infrastructure. Telstra has ensured that reductions in the Commission's indicative price for the MTAS rate have not been passed through to consumers in the form of lower FTM prices. As a consequence the wholesale rate at which MNOs supply the MTAS in respect of FTM services is significantly less than the retail price of these services. As a result mobile infrastructure is under-utilised by acquirers of FTM services.

Evidently the lack of competition in the market within which FTM services are supplied has led to artificially high retail prices for FTM services and in turn reduced consumer demand for FTM services. The resulting under-utilisation of FTM services creates inefficiencies in the operation of mobile infrastructure to the detriment of both MNOs and consumers.

7. Economically efficient investment in infrastructure

7.1 The Commission's preliminary view

In the Draft Report the Commission agrees with the view of submitters that MTAS prices which reflect efficient costs encourage efficient investment.⁴⁶

The Commission states that it is of the preliminary view that regulation of the MTAS has led to a closer association of its price and cost, and that continued declaration of the MTAS is therefore likely to be necessary in order to provide incentives for providers of services to innovate and invest efficiently.⁴⁷

The Commission notes that the debate surrounding the setting of the MTAS price is one which is more relevant to the recently conducted public inquiry on MTAS pricing principles and indicative prices.⁴⁸

7.2 Hutchison's view

Hutchison reiterates that it has always sought to ensure its investment in mobile telephony infrastructure is efficient, such as through its pursuit of infrastructure sharing arrangements.⁴⁹

Hutchison considers that for declaration to continue to encourage economically efficient investment in infrastructure, it is important that both MTAS prices *and* downstream retail prices reflect the cost of supplying those services.

While Hutchison expects that declaration of the MTAS in respect of FTM and MTM calls will encourage economically efficient investment in infrastructure, the extent to which this occurs will primarily depend on how effectively reductions in the wholesale MTAS rate are passed through to consumers of downstream retail services. In particular, Hutchison notes that it is not economically efficient to reduce the MTAS rate in respect of FTM services unless it leads

⁴⁶ Australian Competition and Consumer Commission 'An ACCC Draft Report on reviewing the declaration of the mobile terminating access service' March 2009 at 35

⁴⁷ Australian Competition and Consumer Commission 'An ACCC Draft Report on reviewing the declaration of the mobile terminating access service' March 2009 at 36

⁴⁸ Australian Competition and Consumer Commission 'An ACCC Draft Report on reviewing the declaration of the mobile terminating access service' March 2009 at 35-36

⁴⁹ Hutchison 3G Australia Pty Limited, *Submission in response to the Discussion Paper*, February 2009, p 22

to a commensurate increase in retail demand for FTM services. The increase in demand for FTM services will only occur if Telstra passes through MTAS rate reductions to consumers of FTM services.

Efficient infrastructure investment relies on the effective operation of price signals. If reductions in the MTAS rate in respect of FTM services are not accompanied by commensurate reductions in retail FTM prices, there will be limited price-signalling to consumers. As a result, there will be limited increase in demand for FTM services, leading to under-utilisation of FTM services and less efficient investment in mobile telephony infrastructure.