**PowerTel submission to the Australian Competition & Consumer Commission re Hutchison's undertakings in relation to the Domestic Digital Mobile Terminating Access Service (November 2005)**

PowerTel would like to begin this submission by highlighting some positive aspects of the Hutchison undertakings:

- the PMTS Dual Rate and PMTS Single Rate undertakings, which relate to mobile to mobile (**MTM**) calls only:
  - effectively dispense with the glide path specified by the Australian Competition & Consumer Commission (**the Commission**) in the final decision of the Mobile Services Review (June 2004) (**MSR**). PowerTel is pleased that Hutchison has adopted this approach which is consistent with PowerTel's view that the glide path is both unnecessary and not in the long term interests of end-users (**LTIE**);
  - propose a rate of 12 cpm which at least falls within the range specified by the Commission in the MSR (even though PowerTel considers that is still unacceptably high, see detailed submissions below); and
- all the undertakings apply to the Hutchison 2G and 3G networks which is again consistent with the conclusion reached by the Commission in the MSR.

These aspects of the Hutchison undertakings are in refreshing contrast to the undertakings lodged by Vodafone and Optus which, in PowerTel's view, were both used to frustrate the Commission's final decision in the MSR.

## 12 cpm is not in the LTIE because it is too high

Hutchison proposes to implement immediately a price of 12 cpm for the MTAS for MTM calls.

PowerTel considers that while Hutchison's proposed rate of 12 cpm for MTM calls is within the range specified by the Commission in the MSR it is still too high. The more recent bottom up TSLRIC estimates developed in overseas jurisdictions have established costs at the lower end of the 5 cpm to 12 cpm range.

Consequently, PowerTel conservatively considers that the price for MTAS:

- should be set at 8 cpm which is the mid point of the price range (between 5 cpm to 12 cpm) specified by the Commission in its final decision in the MSR; and

- should be implemented as of 1 Jan 05 to 31 Dec 07, ie without a glide path.

**It is not in the LTIE for the MTAS price to differ depending on the origin of the call**

PowerTel is disappointed at the approach taken by Hutchison which has proposed undertaking prices that differ depending on where the call originates. The proposed rates are:

- 12 cpm for MTM calls (assuming a reciprocal arrangement); and
- 18 cpm for fixed to mobile (**FTM**) calls.

Hutchison appears to be driven to this approach through what PowerTel believes is a misguided fixation on a belief that to do otherwise would result in a ‘financial windfall’ to fixed line operators because they will benefit from increased margins without passing on costs to end users.

PowerTel rejects the notion of a ‘financial windfall’ and considers that in fact fixed line operators have for several years been paying MNOs way above costs. In addition, PowerTel considers that the FTM retail market is competitive, particularly in the business segment where PowerTel is often unable to compete with retail offers of less than 20 cpm for FTM calls.

PowerTel is struggles to compete in the retail FTM market because it is required to pay, until recently, 21 cpm for termination on a mobile network. PowerTel considers that if the price of MTAS was to fall to 8 cpm then it would be able to more effectively compete in the retail FTM market by passing on that cost saving at the wholesale level to retail end users.

PowerTel considers that the LTIE are best promoted by an MTAS price that is based on the total service long-run incremental cost (**TSLRIC**) of providing MTAS and the origin of the call has no impact whatsoever on the TSLRIC of terminating a call on a mobile network.

PowerTel considers that having a differential rate for termination on a mobile network based on where the call originated:

- means by definition that the cost of termination is not based on the TSLRIC of providing that termination and as a result that this is not in the LTIE;
- will exacerbate further the existing gap that already exists between the price of a MTM call compared with the price of a FTM call (which are often more expensive);
- will cause more people to make MTM calls instead of FTM calls when it may be more efficient for them to make a FTM call; and
- will result in greater investment in mobile networks at the expense of fixed networks than would have otherwise been the case.

PowerTel considers that while 12 cpm is within the range specified by the Commission in the MSR it is still too high. PowerTel conservatively considers that the price for MTAS:

- should be set at 8 cpm which is the mid point of the price range (between 5 cpm to 12 cpm) specified by the Commission in its final decision in the MSR; and

- should be implemented as of 1 Jan 05 to 31 Dec 07, ie without a glide path.

**The undertakings should be rejected**

PowerTel considers that all six of the proposed Hutchison MTAS undertakings should be rejected because the charges specified in each of the undertakings are not reasonable on the basis that they are not in the LTIE.

**PowerTel responses to the Commission's specific questions**

<table>
<tr><td></td><td>The Undertakings</td><td></td></tr>
<tr><td>1.</td><td>The Commission seeks the views of interested parties as to the reasonableness of the proposed respective usage charges.<br><br>Parties should address the reasonableness of:<ul><li>12 cpm for MTM MTAS;</li><li>21 cpm for MTM MTAS; and</li><li>18 cpm for termination of all Non-PMTS originated calls.</li></ul></td><td>PowerTel considers that the proposed MTAS charges are not reasonable on the basis that they are detrimental to the LTIE.<br><br>PowerTel considers that the MTAS rate should be based on a forward looking TSLRIC estimate of an efficient operator providing the service because this will best promote the LTIE.<br><br>Hutchison's proposed prices are not consistent with this approach because:<ul><li>they differ depending on where the call originates (ie 18 cpm for FTM calls and 12 cpm for MTM calls) when the origin of the call has no impact whatsoever on the TSLRIC of terminating the call on a mobile network;</li><li>the 21 cpm 'fall back' rate is way in excess of the TSLRIC of termination; and</li><li>while the 12 cpm MTM rate is within the range of TSLRIC estimates but is at the very top end of the range and contrasts glaringly with more recent international TSLRIC estimates which sit at the lower end of the 5 cpm to 12 cpm range specified by the Commission in the MSR.</li></ul>PowerTel conservatively considers that the price for MTAS:<ul><li>should be set at 8 cpm which is the mid point of the price range (between 5 cpm to 12 cpm) specified by the Commission in its final decision in the MSR; and</li><li>should have been brought into effect from 1 Jan 05 (ie without a glide path).</li></ul></td></tr>
<tr><td>2.</td><td>The Commission invites interested parties to</td><td>PowerTel does not consider that the price terms and conditions of the Hutchison</td></tr>
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| | comment on the reasonableness of any of the non-price related terms and conditions associated with the Undertakings. | access undertakings are reasonable. Consequently, PowerTel has not reviewed in detail the non-price terms and conditions specified in the undertakings and has not formed a view on their reasonableness. |
| 3. | Specifically, the Commission is interested in parties' views of the reasonableness of the continued application of non-price terms and conditions in existing agreements until 31 December 2007, for PMTS calls, and up until 30 June 2006 for Non-PMTS calls. | See response above, however, PowerTel is curious as to the reason why Hutchison has chosen such a short period for the Non-PMTS undertaking which expires in 30 Jun 06. This is a very short period and it would appear unlikely that a decision would even be made to accept or reject the undertaking within this time frame. PowerTel considers that there is little value in an undertaking which has an application for such a short period as it certainly does not deliver on the promise of certainty which is what undertakings are meant to be all about. |
| | **The Undertakings: structure and interrelationship** | |
| 4. | The Commission seeks the views of interested parties as to whether the LTIE would be promoted if the proposed PMTS 'Dual Rate' Undertaking or PMTS 'Single Rate' Undertaking were accepted in combination with the Non-PMTS Undertaking rather without the Non-PMTS Undertaking. | PowerTel considers that the LTIE would not be promoted if the PMTS Dual Rate or PMTS Single Rate undertaking were accepted in combination with the Non-PMTS undertaking.<br><br>PowerTel considers that having a differential rate for termination on a mobile network based on whether the call originated on a mobile network or a fixed network:<br>• means that the cost of termination is not based on the TSLRIC of providing that termination and as a result that this is not in the LTIE;<br>• will exacerbate further the existing gap that already exists between the price of a MTM call compared with the price of a FTM call (which are often more expensive);<br>• will cause more people to make MTM calls instead of FTM calls when it may be more efficient for them to make a FTM call; and<br>• will result in greater investment in mobile networks at the expense of fixed networks above economically efficient levels. |

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| | | Hutchison argues that an MTAS price of 12 cpm for FTM calls:<br>• is unlikely to achieve effective competition in the FTM market, without an effective pass-through mechanism to ensure any wholesale price reductions for the MTAS are passed-through to FTM retail customers; and<br>• will provide fixed-network operators with a financial ‘windfall’.<br><br>PowerTel considers that FTM pass through is not relevant to a consideration of pricing for MTAS.<br><br>PowerTel rejects the notion of a ‘financial windfall’ and considers that fixed line operators have for several years been paying MNOs way above costs. In addition, PowerTel considers that the FTM retail market is competitive, particularly in the business segment where PowerTel is often unable to compete with retail offers of less than 20 cpm for FTM calls.<br><br>PowerTel struggles to compete in the retail FTM market because it is required to pay, until recently, 21 cpm for termination on a mobile network.<br><br>PowerTel considers that if the price of MTAS was to fall to 8 cpm then it would be able to more effectively compete in the retail FTM market by passing on that cost saving at the wholesale level to retail end users.<br><br>PowerTel considers that having a differential rate for termination on a mobile network based on where the call originated:<br><br>• means by definition that the cost of termination is not based on the TSLRIC of providing that termination and as a result that this is not in the LTIE; |

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| | | • will exacerbate further the existing gap that already exists between the price of a MTM call compared with the price of a FTM call (which are often more expensive);<br><br>• will cause more people to make MTM calls instead of FTM calls when it may be more efficient for them to make a FTM call; and<br><br>• will result in greater investment in mobile networks at the expense of fixed networks than would have otherwise been the case. |
| 5. | The Commission seeks views on whether the LTIE would be best served if the Commission accepted the PMTS ‘Dual Rate’ Undertaking in combination with the Non-PMTS Undertaking. | See response above. |
| 6. | The Commission seeks views on whether the LTIE would be best served if the Commission accepted the PMTS ‘Single Rate’ Undertaking in combination with the Non-PMTS Undertaking. | See response above. |
| 7. | The Commission seeks views on whether the LTIE would be promoted by acceptance of each Undertaking in its own right. | PowerTel considers that none of the undertakings if accepted in their own right would be in the LTIE because:<br>• 18 cpm for FTM calls is way in excess of the TSLRIC of termination as determined by the Commission in the MSR;<br>• 21 cpm fall back rate is also way in excess of the TSLRIC of termination as determined by the Commission in the MSR; and<br>• while the 12 cpm MTM rate is within the range of TSLRIC estimates determined by the Commission in the MSR, it is at the very top end of the range when recent international bottom up TSLRIC estimates in overseas jurisdictions have been estimating costs at the lower end of the 5 cpm top 12 cpm range. |

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| | **The Undertakings: terms and conditions** | |
| | ***Price related terms and conditions*** | |
| 8. | The Commission seeks views regarding whether an immediate decline in the MTAS price to 12 cpm would be likely to generate significant and potentially harmful disruption to the operations of a number of telecommunications carriers (who may have business plans based on the Commission's adjustment path for a decline in the price of the MTAS. | Hutchison argues that:<br>• its proposed MTAS price of 12 cpm for MTM calls is not in line with the Commission's glide path for a reduction in the price of the MTAS but argues that the Commission's path is unnecessary;<br>• any detrimental impact on mobile network operators would be outweighed by the positive impact of a lower MTAS price on the LTIE;<br>• given the length of time since the *Mobile Services Review 2003*, mobile network operators have been aware of the need to lower their access charges for the MTAS and hence have had ample time to adjust their pricing and business strategies accordingly;<br>• Commission's regulation of access charges for the MTAS since 2001, and the reduction in access charges for MTAS-equivalent services in other jurisdictions, has provided mobile network operators in Australia with sufficient indication of the price trends that need to be adopted in this industry; and<br>• given the economic profits accruing to some mobile network operators, they are financially well placed to accommodate lower access charges for the MTAS.<br><br>PowerTel supports Hutchison's views on the basis that it effectively dispenses with the glide path specified by the Commission in MSR because it is consistent with PowerTel's view that the glide path is unnecessary. |
| 9. | The Commission seeks views regarding whether an immediate decline in the MTAS price to 12 cpm will be in the LTIE. | PowerTel considers that the glide path is unnecessary and that an immediate decline to the TSLRIC of providing MTAS is in the LTIE.  However, PowerTel considers that the price should immediately decline to 8 cpm (the mid point between 5 cpm |

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| | | and 12 cpm) instead of 12 cpm. |
| 10. | The Commission seeks views from interested parties as to whether they consider the proposed reciprocal price of 12 cpm in the PMTS Undertakings to be a fair and reasonable cost of providing the MTAS and whether accepting this pricing structure would be the rational choice of an efficient operator. | PowerTel considers that the proposed rate of 12 cpm for MTM calls is within the range specified by the Commission in the MSR but that it is still too high. The more recent bottom up TSLRIC estimates developed in overseas jurisdictions have established costs at the lower end of the 5 cpm to 12 cpm range.<br><br>PowerTel conservatively considers that the price for MTAS:<br>• should be set at 8 cpm which is the mid point of the price range (between 5 cpm to 12 cpm) specified by the Commission in its final decision in the MSR; and<br>• should be implemented as of 1 Jan 05, ie without a glide path. |
| 11. | The Commission seeks views about whether the 21cpm 'fallback' price is beneficial for access seekers in terms of providing pricing certainty. | Hutchison's proposed fall back price of 21 cpm is way in excess of the TSLRIC of termination and so could not be characterised as being beneficial to access seekers or the LTIE. |
| | ***PMTS Undertakings*** | |
| 12. | The Commission seeks the views of interested parties as to whether Hutchison's use of a reciprocal pricing structure is appropriate in the PMTS Undertakings? | Hutchison justifies its proposal for reciprocal pricing in its undertakings on the basis that:<br>• it is inherent to the TSLRIC approach in determining an 'efficient operator' industry-wide network access charge;<br>• a reciprocal pricing approach is in line with the Commission's views on efficient forward looking costs as the basis for access charges for the MTAS, and avoids the subsidies that flow from efficient network operators to inefficient ones; and<br>• reciprocal pricing positively impacts on consumer welfare.<br><br>PowerTel considers that the rate for MTAS should be based on the TSLRIC of a forward looking and efficient operator providing the MTAS service. Consequently, |

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| | | there should be only one industry wide rate.<br><br>If there were to be different rates for each MNO then by definition some of the MNOs would not be charging at the TSLRIC rate.<br><br>Consequently, PowerTel supports a reciprocal pricing structure and believes that there should be a single industry wide MTAS rate.<br><br>Note, PowerTel considers that this industry wide TSLRIC rate should not be limited in its application to MNOs. The same rate should also be applicable to calls terminating on a mobile network that originate on a fixed network as well. |
| 13. | The Commission seeks the views of interested parties as to whether reciprocal pricing enhances consumer welfare. | PowerTel considers that reciprocal pricing does enhance consumer welfare for the same reasons specified above but with the same caveat that the price should not be limited in its application to MNOs and should also be applicable to calls terminating on a mobile network that originate on a fixed network as well. |
| 14. | The Commission seeks views from interested parties whether they believe that the reciprocal pricing structures in the PMTS Undertakings are consistent with the standard access obligations in relation to the provision of the MTAS. | PowerTel considers that reciprocal pricing is consistent with the standard access obligations for the same reasons specified above but with the same caveat that the price should not be limited in its application to MNOs and should also be applicable to calls terminating on a mobile network that originate on a fixed network as well. |
| | ***Non-PMTS Undertakings*** | |
| 15. | The Commission seeks the views of interested parties as to the reasonableness of Hutchison's proposed price of 18 cpm for the Non-PMTS | PowerTel considers that Hutchison's proposed price of 18 cpm for the FTM calls is not reasonable because it is way above the range specified by the Commission in the MSR and is therefore not in the LTIE. |

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<td>Undertaking.</td>
<td>Hutchison argues that:<br>• the lack of competition in the FTM market is likely to preclude lower MTAS access charges being passed-through to FTM customers;<br>• without pass through, any reductions in access charges for the MTAS may reduce price competition in the mobile services market; and<br>• its proposed Non-PMTS price of 18 cpm for the MTAS is therefore appropriate in view of the existing pricing structure of the FTM market.<br><br>However, PowerTel considers that:<br>• Hutchison's proposed price of 18 cpm for the FTM calls is not based on TSLRIC and is therefore not in the LTIE;<br>• the issue of pass through is not relevant to a determination of TSLRIC; and<br>• Hutchison's proposed price of 18 cpm is way in excess of the TSLRIC of termination specified by the Commission in its final decision in the MSR.<br><br>PowerTel rejects the notion of a 'financial windfall' and considers that in fact fixed line operators have for several years been paying MNOs way above costs. In addition, PowerTel considers that the FTM retail market is competitive, particularly in the business segment where PowerTel is often unable to compete with retail offers of less than 20 cpm for FTM calls.<br><br>PowerTel struggles to compete in the retail FTM market because it is required to pay, until recently, 21 cpm for termination on a mobile network. PowerTel considers that if the price of MTAS was to fall to 8 cpm then it would be able to more effectively compete in the retail FTM market by passing on that cost saving at the wholesale level to retail end users.</td>
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| 16. | The Commission seeks views on the appropriateness of the differential pricing structures proposed by Hutchison in its PMTS and Non-PMTS Undertakings. | PowerTel considers that the rate for MTAS should be based on a forward looking TSLRIC estimate of an efficient operator providing the MTAS service. Consequently, by definition there should be only one industry wide rate. |
| 17. | The Commission seeks parties' views on the extent to which (if at all) Hutchison's arguments with respect to the lack of pass-through in the FTM market are equally applicable in relation to traffic that originates on overseas networks. | PowerTel does not consider the Hutchison's views on lack of pass through in the FTM are relevant in either the domestic or international market. |
| | **Hutchison's views on why the Undertakings satisfy the statutory criteria** | |
| 18. | The Commission seeks the views of interested parties on the reasonableness of the proposed duration of:<br>• the PMTS Undertakings;<br>• the Non-PMTS Undertakings. | Hutchison's argues that its undertakings meet the 3 year statutory requirement.<br><br>PowerTel has no issue with the duration of Hutch's access undertakings, however, PowerTel is curious as to the reason why Hutchison has chosen such a short period for the Non-PMTS undertaking which expires in 30 Jun 06.<br><br>This is a very short period and it would appear unlikely that a decision would even be made to accept or reject the undertaking within this time frame.<br><br>PowerTel considers that there is little value in an undertaking which has an application for such a short period as it certainly does not deliver on the promise of certainty which is what undertakings are meant to be all about. |
| | ***Whether the terms and conditions promote the long-term interests of end-users*** | |
| 19. | The Commission seeks the views of interested parties as to the appropriate 'without scenarios' to use in applying the 'future with and without test'. | Hutchison submits that:<br>• the 'future with and without test' requires a comparison of a future situation with the proposed exemption orders being made as opposed to one without them being made |

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| | | • if the Commission:<br>  o accepts the undertakings (the future with), then they will govern the pricing arrangements for the MTAS between Hutchison and other carriers; or<br>  o rejects the undertakings (the future without), then pricing arrangements for the MTAS will be based on the Commission's Pricing Principles Determination for the MTAS, commercial negotiations or, in the event of access disputes, arbitrations; and<br>• a future with the undertakings is more likely to promote the LTIE, in that the pricing structure proposed in the PMTS and Non-PMTS undertakings will lead to the adoption of a lower access charge for the MTAS and thus greater benefits for end-users than the Commission's adjustment path for the price of the MTAS.<br><br>PowerTel acknowledges that acceptance of Hutchison's PMTS undertakings may lead to a lower price for MTAS for MTM calls than that set out by the Commission in its final decision on the MSR and therefore potentially greater benefits with lower prices for retail MTM calls.<br><br>However, because Hutchison's Non-PMTS undertakings actually specify a price in excess of the MTAS rates specified by the Commission in the MSR, PowerTel considers that this will be detrimental to ends users because it will lead to higher retail prices for FTM calls. |
| | ***Promoting competition*** | |
| 20. | The Commission seeks views on whether Hutchison's market definitions are appropriate, and on the level of competition in the relevant markets. | Hutchison argues:<br>• that in assessing whether the LTIE criteria are met by its undertakings, the Commission should consider two separate markets:<br>  o the national market for mobile services; and |

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<ul><li>o the national market for retail FTM services;</li></ul>
<ul>
<li>that the mobile services market lacks effective competition and that the FTM market is even less competitive;</li>
<li>in the absence of an effective pass-through mechanism, a 12 cpm access charge for the MTAS, would provide a ‘windfall’ for fixed-line operators.</li>
<li>on the contrary, the 12 cpm price offered to mobile network operators will provide them with a competitive advantage in relation to the fixed-line operators and have a positive effect on competition in the mobile services market.</li>
</ul>
PowerTel rejects the notion of a ‘financial windfall’ and considers that in fact fixed line operators have for several years been paying MNOs way above costs. In addition, PowerTel considers that the FTM retail market is competitive, particularly in the business segment where PowerTel is often unable to compete with retail offers of less than 20 cpm for FTM calls.
PowerTel is struggles to compete in the retail FTM market because it is required to pay, until recently, 21 cpm for termination on a mobile network. PowerTel considers that if the price of MTAS was to fall to 8 cpm then it would be able to more effectively compete in the retail FTM market by passing on that cost saving at the wholesale level to retail end users.
PowerTel considers that the LTIE are best promoted by an MTAS price that is based on the total service long-run incremental cost (TSLRIC) of providing MTAS and the origin of the call has no impact whatsoever on the TSLRIC of terminating a call on a mobile network.
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<td>21.</td>
<td>The Commission seeks views on whether the Undertakings will promote competition in the</td>
<td>PowerTel consider that the PMTS undertakings may well promote competition in the market for mobile services but will stifle competition in the market for FTM</td>
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| | markets for the relevant services. | services.<br><br>However, PowerTel conservatively considers that the price for MTAS:<br><br>• should be set at 8 cpm which is the mid point of the price range (between 5 cpm to 12 cpm) specified by the Commission in its final decision in the MSR, irrespective of whether the call originates on a mobile or fixed network; and<br><br>• should be implemented as of 1 Jan 05, ie without a glide path,<br><br>as this will best promote the LTIE. |
| 22. | The Commission seeks views on whether competition in the relevant markets will be best improved, with or without the Undertakings. | See above. |
| 23. | The Commission seeks views on whether the reciprocal 12 cpm offered to mobile network operators, will place competitive pressures on fixed network operators. If so, will this promote the LTIE? | PowerTel considers that having a differential rate for termination on a mobile network based on where the call originated:<br>• means by definition that the cost of termination is not based on the TSLRIC of providing that termination and as a result that this is not in the LTIE.<br>• will exacerbate further the existing gap that already exists between the price of a MTM call compared with the price of a FTM call (which are often more expensive);<br>• will cause more people to make MTM calls instead of FTM calls when it may be more efficient for them to make a FTM call; and |
| | ***Encouraging the economically efficient use of, and the economically efficient investment in, the infrastructure by which listed services are*** | |

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| | ***supplied*** | |
| 24. | The Commission seeks views on whether current and potential market participants will be provided with correct signals regarding investing in network infrastructure in the future, with or without the Undertakings? | PowerTel considers that having a differential rate for termination on a mobile network based on where the call originated will result in greater investment in mobile networks at the expense of fixed networks than would have otherwise been the case. |
| 25. | The Commission seeks views on whether the Undertakings will promote dynamic, allocative and productive efficiency, as argued by Hutchison? | In respect of dynamic efficiency, Hutchison argues that its 3G network has a lower cost structure than its 2G network and argues that, by accepting its Undertakings, the Commission will implicitly be committing to further utilisation of lower-cost 3G networks for termination services, as an industry benchmark. Hutchison argues this will compel other industry participants to upgrade their network technologies, since it will not be commercially viable to offer termination services over their higher cost GSM networks.<br><br>PowerTel considers that the differential rate proposed by Hutchison for MTM and FTM calls will not promote dynamic efficiency and in fact will lead to greater investment in mobile networks at the expense of fixed networks.<br><br>In respect of allocative efficiency, Hutchison argues that its Undertakings allow for a 'closer association of the price of the MTAS and the underlying cost of providing the MTAS.'<br><br>PowerTel rejects this argument because:<br>• it considers 12 cpm is still too high; and<br>• the differential rate for FTM and MTM calls is not the result of a consideration of the underlying costs.<br><br>In respect of productive efficiency, Hutchison argues that the PMTS reciprocal access charge of 12 cpm, reflects the cost structure of an efficient, forward looking |

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| | | operator. Further, the Non-PMTS access charge will allow for a closer association of price and cost whilst precluding any ‘windfall’ gains accruing to fixed line operators.<br><br>PowerTel rejects the argument that 12 cpm reflects the cost structure of an efficient, forward looking operator and conservatively considers that 8 cpm is better reflects the TSLRIC of providing MTAS and rejects 18 cpm for FTM for the same reasons. |
| 26. | To the extent that the amendments to section 152AB change the way the Commission should assess whether an undertaking promotes the economically efficient use of, and the economically efficient investment in telecommunications infrastructure, the Commission seeks further submissions from interested parties. | PowerTel considers there should be no change to the way the Commission has considered these issues in the past. |
| 27. | The Commission seeks the views of interested parties, as to whether a future with, as opposed to without, the Undertakings is more likely to promote the LTIE. | For the reasons detailed above, PowerTel considers that the future without the undertakings is more likely to promote the LTIE. |
| | ***Legitimate business interests of the supplier*** | |
| 28. | The Commission invites interested parties to comment on the reasonableness of the Undertakings in relation to the business interests of the supplier. | Hutchison submits that its legitimate business interests are congruous with the statutory factors of promoting further competition and allowing for the economically efficient use of and investment in infrastructure. |
| | ***Interests of the persons who have rights to use the declared service*** | |
| 29. | The Commission invites interested parties to | Hutchison submits that: |

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| | comment on the reasonableness of the Undertakings in relation to the interests of persons who have rights to use the declared service. | • the interests of access seekers utilising the terms of the PMTS Undertakings, will be served through the advantages conferred by price certainty and reciprocal pricing arrangements.<br>• the Non-PMTS Undertakings, maintain 'an appropriate balance between the interests of fixed line/integrated operators and mobile only operators'.<br>• its proposed reduction in the MTAS price for fixed-to-mobile calls will preclude fixed-line operators from benefiting from a 'windfall' and maintain a closer association of price and cost.<br><br>PowerTel rejects:<br>• the notion that the Non-PMTS undertakings maintain an 'appropriate balance' between the interests of fixed line operators and MNOs and PowerTel questions the relevance of such a consideration in the first place; and<br>• the assertion of a financial windfall for the reasons stated above. |
| | ***The direct costs of providing access to the declared service*** | |
| 30. | The Commission seeks the views of interested parties as to whether the 12 cpm is a reasonable reflection of the direct costs of providing access to the MTAS. | Hutchison submits that the access charge of 12 cpm proposed in its PMTS Undertakings are reasonable and a reflection of its direct costs, in view of the fact that the Commission has already endorsed this as a target price in its Pricing Principles Determination.<br><br>PowerTel considers that while Hutchison's proposed rate of 12 cpm for MTM calls is within the range specified by the Commission in the MSR it is still too high. The more recent bottom up TSLRIC estimates developed in overseas jurisdictions have established costs at the lower end of the 5 cpm to 12 cpm range.<br><br>Consequently, PowerTel conservatively considers that the price for MTAS: |

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| | | • should be set at 8 cpm which is the mid point of the price range (between 5 cpm to 12 cpm) specified by the Commission in its final decision in the MSR; and<br>• should be implemented as of 1 Jan, ie without a glide path. |