



COMMENTS TO IDA'S PUBLIC CONSULTATION OF PRELIMINARY DECISION ON SINGTEL'S REQUEST FOR EXEMPTION FROM DOMINANT LICENSEE OBLIGATIONS IN BUSINESS AND GOVERNMENT CUSTOMER SEGMENT AND INDIVIDUAL MARKETS

EXECUTIVE SUMMARY

BT welcomes IDA's Preliminary Decision which despite issues of transparency, as set out in this response, is we believe the right regulatory approach at this time based on our assessment of the market and in the interests of promoting competition to generate a vibrant, innovative and competitive information society for businesses and consumers in Singapore.

From competition regulation perspective, BT would emphasize that adequate *ex post* competition remedies must be in place before *ex ante* regulations are weakened or exempted. BT supports IDA's Preliminary Decision, in particular, the decisions to deny SingTel's Customer Segment Request for exemption in its entirety and to deny SingTel's Market-Based Request for exemption from *ex post* regulations under the Code of Practice for Competition in the Provision of Telecommunication Services 2005 (Code).

Nonetheless, from market competition perspective, BT would restate that in absence of an independent, detailed (both qualitative and quantitative) and transparent analysis of the relevant markets, it would be extremely difficult for BT as well as other stakeholders to provide detailed and well directed comments.

BT further contends that non-dominant players (especially operators with low market share) would not have realistic insights to perform independent market assessments.

Given the above, BT would maintain that:

1. No full deregulation from the Code should be granted to SingTel until the telecommunications sector is included in Singapore's national competition regime, the Competition Act 2004;
2. As a minimum, the protections from abuse of a dominant position under the Code should remain in place regardless of any concessions made to SingTel and competition law matters should be dealt with on a case by case basis, as and when they occur; and
3. Consideration should be given to conduct a transparent and IDA led independent market assessment on the relevant markets to assess market shares/competition. Such an independent market assessment would then be a valuable starting point for all future market competition reviews.



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INTRODUCTION

BT Singapore Pte Ltd (BT) thanks the Info-Communications Development Authority of Singapore (IDA) for the opportunity to comment on the Preliminary Decision on the Request by Singapore Telecommunications Limited (SingTel) for Exemption from Dominant Licensee Obligations with respect to the Business and Government Customer Segment and Individual Markets (Preliminary Decision).

BT's submission consists of two main parts, i.e. **Part One** consists of BT's general comments and **Part Two** provides BT's specific comments on the Preliminary Decision.

PART ONE: GENERAL COMMENTS

Competition Regulation Perspective

- 1.1 In light of the exclusion of the telecommunications sector from the provisions of the Competition Act 2004 (CA), BT is concerned if SingTel were to be exempted from the competition provisions of the Code of Practice for Competition in the Provision of Telecommunication Services 2005 (Code), in particular from the prohibitions against abuse of its dominant position in the Singapore market, particularly in terms of pricing abuses¹ such as predatory pricing, price squeezes and cross-subsidisation, and other abuses² such as discrimination and predatory network alteration. At the very least, the protections against abuse of a dominant position in the Code (*ex post* regulations) should remain until the telecommunications sector is included in the CA.
- 1.2 Hence BT would restate that adequate *ex post* competition remedies must be in place before *ex ante* regulations are weakened or exempted.
- 1.3 In this, BT supports IDA's Preliminary Decision to:
 - 1.3.1 deny SingTel's Customer Segment Request for exemption in its entirety (both *ex ante* and *ex post* regulations); and
 - 1.3.2 deny SingTel's Market-Based Request for exemption from *ex post* regulations under the Code.

¹ Without limitation, sub-sections 8.2.1.1 – 8.2.1.3 of the Code.

² Without limitation, sub-sections 8.2.2.1 – 8.2.2.2 of the Code.



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Market Competition Perspective

- 1.4 As per our submission on the First Consultation (SingTel's Exemption Request), it would be too early to deregulate without a neutral, transparent and detailed analysis conducted and led by IDA on the relevant markets in line with the Analytical Framework³ for Assessing Request for Exemption Applicable to Services, i.e. economic analysis, market definition, competitiveness assessment and other factors. Such analysis should be made available for industry comments. In absence of such detailed and transparent analysis, it would be extremely difficult for BT as well as other stakeholders to provide detailed and well directed comments.
- 1.5 As we have noted in our submission on the First Consultation that the vast bulk of data has been redacted and marked as confidential, BT considers that the dominant player in any market is in the best possible position as regards market knowledge and accurate market data and is likely to be the only operator to have a true perspective of market shares. As such, the dominant player should have an obligation to share such information with other operators if it wants to prove that it no longer is in a dominant position.

PART TWO: SPECIFIC COMMENTS

- 2.1 Further to our observations stated in sub-paragraphs 1.4 and 1.5 above, BT disagrees with IDA's statement in sub-paragraph 30(c) of the Preliminary Decision, that "...commenters are capable of providing their own independent assessment of the market...". An operator with a low market share may not be able to form a realistic view of the market as it is unlikely to have access to accurate market data and information necessary to calculate market shares.
- 2.2 With reference to IDA's statement in sub-paragraph 30(c) of the Preliminary Decision, that "...IDA is disappointed that only one commenter provided such market assessment", BT would contend that the reason why only one other operator provided information on market shares is because it is likely that the other players do not have adequate or sufficient information/data to conduct such an analysis.
- 2.3 Based on the relevant information/data made available by SingTel, other non-dominant players and end-users in the course of the First Consultation, the follow-up interviews and provision of information, IDA could perform a transparent and independent market assessment on the relevant markets for the purposes of assessing market shares/competition. This assessment could then be open to comment by all industry participants to ensure its accuracy.

³ As provided under sub-paragraph 2.4 of the Exemption Guidelines.



COMMENTS TO IDA'S PUBLIC CONSULTATION OF PRELIMINARY DECISION ON SINGTEL'S REQUEST FOR EXEMPTION FROM DOMINANT LICENSEE OBLIGATIONS IN BUSINESS AND GOVERNMENT CUSTOMER SEGMENT AND INDIVIDUAL MARKETS CONCLUSION

BT makes the following conclusion:-

- 3.1 Adequate *ex post* competition remedies must be in place before *ex ante* regulations are weakened or exempted; and
- 3.2 Non-dominant players (especially operators with low market share) would not have realistic insights to perform independent market assessments.

RECOMMENDATION

BT makes the following recommendation:-

4. No full deregulation from the Code should be granted to SingTel until the telecommunications sector is included in Singapore's national competition regime, the Competition Act 2004;
5. As a minimum, the protections from abuse of a dominant position under the Code should remain in place regardless of any concessions made to SingTel and competition law matters should be dealt with on a case by case basis, as and when they occur. This would be more in line with the world's best practice – competition authorities do not as a general rule grant exemptions to abuses of a dominant position to market sectors, but analyse them on a case by case basis; and
6. Consideration should be given to conduct a transparent and IDA led independent market assessment on the relevant markets to assess market shares/competition. Such an independent market assessment would then be a valuable starting point for all future market competition reviews.

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