



## **ORANGE FRANCE TELECOM GROUP**

### **Response to an IDA Public Consultation on Revised Preliminary Decision on the Request by Singapore Telecommunications Limited for exemption from Dominant Licensee obligations with respect to the Business and Government Customer Segment and Individual Markets (“Revised Preliminary Decision”)**

**27 February 2009**

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## Summary of Major Points

France Telecom Long Distance Singapore Pte Ltd (FTLDS) thanks IDA for the opportunity to comment on its Revised Preliminary Decision.

FTLDS' comments in this submission are specific to the Backhaul market.

While FTLDS agrees with the IDA preliminary decisions to deny SingTel's request for an *ex-post* exemption, we do not agree that SingTel should be granted *ex-ante* exemption. Nonetheless, in the event should IDA finally decide to grant SingTel *ex-ante* exemption, such grant must be subject to conditions as necessary safeguards to preserve competition in the Backhaul market.

## Statement of Interest

FTLDS operates a Backhaul network and provides Backhaul services in Singapore under a Facilities Based Operator (FBO) License. An IDA decision to lift dominant licensee regulations from SingTel has the potential to change the Backhaul playing field and to the extent these changes would affect FTLDS and the industry negatively, this consultation is of interest.

In responding to the First and Second IDA Public Consultations, FTLDS presented facts submitting that SingTel continues to have the ability to exercise significant market power in the Backhaul market and that IDA should deny SingTel's request for exemption from both the Section 4 *ex-ante* and Section 8 *ex-post* dominant licensee obligations under the Telecoms Competition Code<sup>1</sup>.

## Comments

FT agrees with the IDA preliminary decisions to deny SingTel exemption from the Section 8 *ex-post* competition prohibitions on the abuse of a dominant position.

### Summary of the facts

- IDA has concluded that SingTel has significant market power in the LLC market.<sup>2</sup>
- The IDA Reclassification and Exemption Guidelines<sup>3</sup> define "significant market power" to mean the ability to unilaterally restrict output, raise prices, reduce quality

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<sup>1</sup> Code of Practice for Competition in the Provision of Telecommunication Services 2005

<sup>2</sup> Revised Preliminary Decision, s102(a)

<sup>3</sup> Advisory Guidelines governing petitions for reclassification and requests for exemption under sub-sections 2.3 and 2.5 of the Code of Practice for Competition in the Provision of Telecommunication Services 2005

or otherwise act, to a significant extent, independently of competitive market forces.<sup>4</sup>

- IDA has rightly assessed that SingTel retains the ability to dictate the terms and conditions for wholesale LLCs – including denying volume discounts in any case in which a competing operator seeks to resell LLC – thereby impeding competition in the LLC market.<sup>5</sup>
- IDA does not agree with SingTel’s interpretation of *Tetra Pak (1996)*<sup>6</sup> and that SingTel is capable of leveraging market power in the LLC market to restrict competition<sup>7</sup> and that there plainly is an “*associative link*” between the LLC and Backhaul markets.<sup>8</sup>
- IDA has stated that competing operators continue to rely on SingTel LLCs to provide Backhaul services to its customers that are not co-located in a data centre, and by increasing the price of a LLC or reducing the quality, SingTel could impede the ability of a rival operator to offer a competitively priced Backhaul service.<sup>9</sup>
- IDA acknowledges that there are advantages that SingTel obtains from being able to self-provide the full link from the cable landing station to an FBO customer’s POP.<sup>10</sup>

#### Exemption subject to conditions

Although IDA has assessed the environment in the Backhaul market to be competitive<sup>11</sup>, IDA may nonetheless retain those provisions that remain necessary and grant a request subject to conditions such as the imposition of safeguards to preserve effective competition<sup>12</sup>.

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<sup>4</sup> *ibid*, s2.4(b)

<sup>5</sup> Revised Preliminary Decision, s102(b)

<sup>6</sup> *Tetra Pak International SA v Commission*, C-333/94P [1996] ECR I-5951, [1997] All ER (EC) 4, [1997] 4 CMLR 662, ECJ

<sup>7</sup> Revised Preliminary Decision, s102(c). The drafting in this paragraph is rather confusing and its meaning has since been clarified with the IDA.

<sup>8</sup> *ibid*, s102(c)(i)

<sup>9</sup> *ibid*, s102(c)(i)

<sup>10</sup> *ibid*, s101(a)

<sup>11</sup> *ibid*, s103

<sup>12</sup> IDA Reclassification and Exemption Guidelines, s2.4.2(b)(i)(2), s4.5

Based on the facts outlined above, FTLDS submits that SingTel should not be granted a block exemption from the Section 4 *ex-ante* dominant licensee regulations. Accordingly, we respectfully urge the IDA to consider subjecting such grant to conditions as necessary safeguards to preserve competition in the Backhaul market.

Specifically and at the least, tariff transparency must continue to be imposed on SingTel for its Backhaul services –

- In having established SingTel's dominance in the LLC market and that SingTel LLCs are an input product to providing a Backhaul service, transparency of SingTel's Backhaul tariff is a critical safeguard against pricing abuses. In fact, the IDA Telecom Competition Guidelines<sup>13</sup> has stated that such an upstream (LLC) – downstream (Backhaul) relationship would indeed place SingTel in a position to unreasonably restrict competition though pricing abuses such as price squeezes<sup>14</sup>.
- Notwithstanding IDA's finding that SingTel does not *currently* have a "*leading position*" in the Backhaul market<sup>15</sup>, market shares are only a starting point and it is not the sole determinant of market power. It may well be that SingTel is a close second in terms of market share and consideration of other factors such as access barriers<sup>16</sup> would contribute to SingTel's market power and increase SingTel's ability to act anti-competitively in the Backhaul market. SingTel's continued dominance in the LLC market means that SingTel has the ability to leverage significant market power in the upstream LLC market to behave anti-competitively in a downstream Backhaul market. Furthermore, SingTel's ability to dictate the prices, terms and conditions for wholesale LLCs and that wholesale LLCs are not subject to cost-based regulation<sup>17</sup> further strengthen SingTel's market power in the Backhaul market. Retaining *ex-ante* tariff regulation would, at least, serve as a safeguard and deterrent.
- Coupled with the practical impossibilities of obtaining commercially sensitive tariff information, lifting *ex-ante* tariff regulation for backhaul services would only give SingTel a *carte blanche* to act at will and there will be no remote possibility for aggrieved parties to gather the evidence for taking enforcement action under the Section 8 *ex-post* competition provisions.

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<sup>13</sup> Advisory Guidelines governing abuse of dominant position, unfair methods of competition and agreements involving licensees that unreasonably restrict competition under Sections 8 and 9 of the Code of Practice for Competition in the Provision of Telecommunication Services 2005

<sup>14</sup> *ibid*, s3.2.1.2

<sup>15</sup> Revised Preliminary Decision, s102(c)(ii)

<sup>16</sup> IDA Reclassification and Exemption Guidelines, s2.4.2(b)(i)(2)

<sup>17</sup> Telecoms Competition Code, s4.3, 4.4.3.1(c)

Network investments are capital intensive and there are many factors to consider in the build vs. lease decision. There may not be a feasible business case for competitive Backhaul providers to roll out to all other data centers. It is even more untenable for a competitive Backhaul provider to consider extending the network to reach all data centers so as to 'avoid' the cost of a SingTel LLC in the provisioning of a Backhaul service. Certainly, such a proposition would not address the fundamental problem here – which is the ability for SingTel to leverage its dominant position in the upstream LLC market to restrict competition in the downstream Backhaul market.

## **Conclusion**

As such, FTLDS would submit that –

- SingTel should not be granted a blanket exemption from the Section 4 *ex-ante* dominant licensee regulations for the Backhaul market.
- IDA should subject its grant to conditions as necessary safeguards to preserve competition in the backhaul market.
- As a minimum, the Section 4.4 tariff duties should be retained and this must be a condition of IDA's grant. Given SingTel's dominance in the wholesale LLC market, tariff transparency on its downstream Backhaul services is a necessary safeguard against the potential for SingTel to engage in pricing abuses and the ensuing threat that future competition in the Backhaul market is foreclosed.

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