



SINGAPORE TELECOMMUNICATIONS LIMITED

RESPONSE TO IDA'S 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

1. INTRODUCTION

- 1.1. Singapore Telecommunications Limited (**SingTel**) refers to the preliminary decision issued by the IDA on 26 August 2008 in respect of SingTel's request for exemption from its dominant licensee obligations in respect of the business and government customer segment and individual markets (**Preliminary Decision**).
- 1.2. SingTel welcomes the opportunity to make a submission on the Preliminary Decision but wishes to express its concern about the IDA's reasoning in the Preliminary Decision and the conclusions that it draws from such reasoning.
- 1.3. SingTel's specific comments on the Preliminary Decision are set out below.
- 1.4. In the interests of brevity, SingTel has focussed its comments on its key concerns with the IDA's Preliminary Decision and has not sought to respond to every issue that has been raised by the IDA in its Preliminary Decision. Nor has SingTel sought to repeat the statements and positions set out in its original exemption request.
- 1.5. The fact that SingTel has not responded to every issue raised by the IDA in its Preliminary Decision, or has not repeated a statement or position set out in its original exemption request, does not mean that SingTel agrees with the relevant aspect of the IDA's Preliminary Decision or concedes its position as set out in its original exemption request. Similarly, where SingTel suggests an approach that is not set out in its original exemption request, that approach should be taken to be in the alternative to that set out in SingTel's original request.
- 1.6. This submission is structured as follows:

Section 1 – Introduction



Section 2 – Executive Summary

Section 3 – General Comments

Section 4 – Business Local Telephony Market

Section 5 – Local Leased Circuit Market

Section 6 – Backhaul Market

Section 7 – Terrestrial IPLC Market

Section 8 – International Managed Data Services Market

Section 9 – Local Managed Data Services Market

Section 10 – Corporate and Government Segment

Section 11 – Conclusion.

2. EXECUTIVE SUMMARY

Key messages

- 2.1. Singapore has one of the most vibrant and vigorously competitive telecoms sectors in the world. This is particularly the case in the corporate and government segment, and the individual markets that are the subject of SingTel's exemption request.
- 2.2. SingTel is concerned that the IDA has failed to consider the extensive verifiable evidence that SingTel provided in its original exemption request – instead, the IDA has preferred to rely on largely subjective and untested evidence from SingTel's competitors and a very limited sample of end-users.
- 2.3. While other jurisdictions are withdrawing retail regulation and re-calibrating their regulatory regimes to focus on genuine “bottlenecks”, the IDA has continued with an outdated approach of “presumptive dominance”, resulting in over-regulation. '

- 2.4. SingTel considers that the IDA's Preliminary Decision suffers from the following deficiencies:
- a. failure to analyse markets using a forward looking approach;
 - b. over emphasis on the need for ubiquitous network coverage – a nationwide LLC network is not needed to service corporate and government customers, as it is possible for competing operators to service the overwhelming proportion of end-users through alternative network deployments within the CBD area and in business/industrial/technology parks in non-CBD areas – where there is a 'gap' in a competing operator's network footprint, it is open for that operator to acquire wholesale LLCs or TLLCs from SingTel;
 - c. too much emphasis on market share, while failing to take account of other factors, such as the evidence of extensive facilities based competition and continuing price reductions;
 - d. failure to analyse markets in a manner that recognises competitive variations based on geography, as per practice in other jurisdictions – SingTel considers that there is very strong evidence of extensive facilities based competition in the Singapore CBD and certain non-CBD areas, and that it would be prudent for the IDA to remove LLC regulation in geographic areas where there is alternative LLC infrastructure in place, or is in close proximity to an end-user premises;
 - e. continued insistence that it is possible for SingTel to leverage power from the LLC market into other competitive markets, even though:
 - i. this possibility is not recognised by other regulators, such as by the European Commission, in the circumstances suggested by the IDA;
 - ii. the second markets are vigorously competitive (and have been acknowledged as such by the IDA) and cannot be 'made' uncompetitive by SingTel;
 - iii. SingTel remains subject to extensive wholesale regulation in markets where it is alleged to be dominant;

iv. there is no evidence to suggest that SingTel has acted anti-competitively.

2.5. In short, SingTel is concerned that IDA's Preliminary Decision reflects an overwhelming bias towards maintaining regulation across entire markets, even though market conditions have changed and there is scope for reducing regulation either across the entire market or a more limited segment of that market.

BLTS Market

2.6. SingTel considers that the BLTS market should be exempt from Dominant Licensee regulation.

2.7. The IDA has placed too much emphasis on SingTel's market share in the BLTS market and has failed to take account of other factors that establish the existence of effective competition in the BLTS market.

2.8. These factors include the following:

- a. SingTel's business DEL tariffs are amongst the lowest in the world;
- b. there is network based competition for business telephony services throughout Singapore through the StarHub network;
- c. there is also the potential for vigorous facilities based competition for business telephony services from operators that do not have a ubiquitous fixed line network through the acquisition of unbundled local loops (**ULL**) from SingTel at IDA approved cost-based prices, terms and conditions;
- d. SingTel's fixed telephony services remain subject to competitive constraint for IP based services, which the IDA has recognised as a substitute service.

2.9. At the very least, SingTel requests that the IDA remove Dominant Licensee regulation in respect of certain services within the BLTS market, including the PhoneNet, I-PhoneNet and ISDN services, and only retain regulation of business DEL services in areas where StarHub is not able to offer a competing fixed line business telephony service to end-users.



LLC Market

2.10. SingTel strongly disagrees with the IDA's decision not to remove Dominant Licensee regulation in respect of the retail LLC Market.

2.11. SingTel submits that the IDA's market analysis is flawed on a variety of grounds and fails to take account of the extensive verifiable evidence that SingTel provided in its original exemption request.

2.12. In particular, SingTel considers that:

- a. the IDA has incorrectly stated that barriers to entry remain high – this is not the case, as evidenced by extensive alternative LLC infrastructure deployed by StarHub and Verizon in both CBD and non-CBD areas;
- b. the IDA has placed undue emphasis on market share data and has failed to recognise the extensive level of competing LLC infrastructure throughout Singapore, particularly the Singapore CBD and specific non-CBD areas, as evidenced in SingTel's original exemption request and updated in this submission;
- c. the IDA has incorrectly suggested that customers place significant importance on ubiquity in respect of LLCs – this is not correct – the fact that demand for LLCs is heavily concentrated in the CBD area and in business/industrial/technology parks in non-CBD areas means that it is possible for alternative providers to provide LLCs to the overwhelming proportion of end-users that acquire LLCs without the need to deploy a nationwide, ubiquitous network. No customer requires nationwide LLC coverage - it only requires network coverage between specific points where they have a presence;
- d. the IDA has incorrectly assumed that alternative LLC infrastructure does not exist unless a competing operator has 'wired' or connected its infrastructure directly to an end-user premises – this is not correct – overseas regulators have withdrawn leased line regulation in geographic areas where there are competing fibre deployments in close proximity to an end-user premise, from which point the competing operator can deploy its own 'fibre spur' to connect the end-user's premises to its LLC network;

- e. the IDA has failed to take account of significant discounts that have been made available to SingTel's wholesale LLC customers and significant reductions in the prices of both retail and wholesale LLCs in Singapore.

2.13. On this basis, SingTel submits that the IDA should exempt SingTel from Dominant Licensee regulation in respect of the LLC market.

Backhaul, Terrestrial IPLC and IMDS Markets - Cross market leveraging from the LLC Market

2.14. SingTel welcomes the IDA's decision to remove *ex ante* regulation in respect of the Backhaul market and the Terrestrial IPLC market and the IDA's comments about the state of competition in these markets. SingTel believes these markets have been competitive since 2005.

2.15. SingTel also welcomes the IDA's comments that competition in the IMDS market has increased even further in the three years since the IDA's ICS Decision.

2.16. However, SingTel does not support the continued imposition of *ex post* regulation in these three markets.

2.17. SingTel disagrees with the IDA's position that SingTel is able to leverage market power from the LLC market into the Backhaul, Terrestrial IPLC or IMDS markets.

2.18. This is simply not possible because:

- a. SingTel is not dominant in the LLC market;
- b. even if it was assumed that SingTel was dominant in the LLC market:
 - i. it is not possible for an entity to leverage its market power from a dominant market into a competitive market, such as the Backhaul, Terrestrial IPLC and IMDS markets – the IDA's position in this regard is inconsistent with the position of the European Commission; and
 - ii. SingTel continues to remain subject to wholesale regulation in respect of LLCs, which removes any potential to engage in anti-competitive conduct;



iii. there is no evidence of SingTel engaging in anti-competitive conduct.

2.19. SingTel strongly suggests that the IDA reconsider this aspect of its Preliminary Decision and exempt SingTel from *ex post* regulation in respect of these competitive markets.

LMDS Market

2.20. SingTel strongly disagrees with the IDA's decision not to remove Dominant Licensee regulation in respect of the LMDS Market.

2.21. The IDA's analysis places undue emphasis on market share data and on the alleged ability of SingTel to leverage its power from the LLC market into the LMDS Market.

2.22. For some of the reasons given above, it is not possible for SingTel to leverage power from the LLC Market into the LMDS market, given that SingTel remains regulated at the wholesale level.

2.23. The IDA's analysis also fails to take account of the changing demand profile for LMDS and the fact that SingTel's prominence with respect to IP based services, such as MetroEthernet is less significant than that for other declining technologies, such as frame relay and local ATM.

Corporate and government segment

2.24. SingTel does not support the IDA's decision to deny SingTel an exemption in respect of the corporate and government segment.

2.25. The IDA's justifications for the denial of this aspect of SingTel's exemption request are unsupported by the evidence.

2.26. In particular:

- a. SingTel's alleged control of LLCs does not prevent the IDA from granting an exemption in respect of the corporate and government segment, as discussed in greater detail in section 5;



- b. The S\$250,000 annual spend threshold is reasonable and is unlikely to include medium size enterprises – SingTel has already provided evidence to suggest that less than 1% of SingTel’s corporate and government customers spend \$250,000 or more and are therefore likely to fall within the terms of this exemption request. However, in the event that the IDA considers this threshold to be too low. SingTel submits that this does not provide a valid or reasonable basis for the rejection of SingTel’s exemption request, but rather the IDA should consider an alternative proposal which provides for the pro-active removal of regulation in the corporate and government segment once the appropriate threshold is satisfied;
- c. the granting of an exemption in the corporate and government segment is unlikely to be administratively complex or cumbersome – there are various avenues available to the IDA as a means of ensuring that sufficient information is made available by relevant parties to enable the implementation of this request. This information could be made available to the IDA.

3. GENERAL COMMENTS

- 3.1. SingTel spent considerable time and effort in preparing its original exemption request, which included extensive verifiable evidence about the state of competition in each of the defined markets, as well as the corporate and government segment.
- 3.2. SingTel is concerned that this data has been largely ignored by the IDA in its Preliminary Decision.
- 3.3. Instead, the IDA has produced a Preliminary Decision that is not only very short on detail, but which also fails to adequately explain the basis for the IDA’s decision making and appears to rely on largely unsubstantiated statements from SingTel’s competitors about the state of competition in various markets and the corporate and government segment.
- 3.4. Notwithstanding the lack of any detail, it is clear that the IDA’s market analysis and methodology for assessing competition, particularly with respect to the LLC market, is overly simplified and reflects a bias towards maintaining regulation across entire markets, even though market conditions have changed and there is scope for reducing regulation either across the entire market or a more limited segment of that market through a more sophisticated and internationally accepted approach.

- 3.5. In particular, SingTel considers that the IDA's approach of "presumptive dominance" based on market share thresholds is overly simplistic and has resulted in insufficient consideration being given to other factors, such as price declines and facilities based competition.
- 3.6. The effect of the IDA's approach is a failure to accurately assess the state of competition, resulting in over-regulation.
- 3.7. Such an approach is 'out of touch' with developments in other countries, where regulators have sought to remove retail regulation and focus regulation on genuine 'bottlenecks' at the wholesale level. Despite extensive regulation of SingTel at the wholesale level, the IDA continues to retain unwarranted regulation at the retail level.
- 3.8. The verifiable evidence provided by SingTel in its original exemption request (and updated in this submission) clearly demonstrates that SingTel is not capable of acting independently of its competitors. The IDA has not been able to provide any substantive evidence in its Preliminary Decision to counter this fact.
- 3.9. SingTel is also concerned about the IDA's reliance on largely anecdotal and untested responses from what appears to be a very limited customer sample. It is inappropriate for the IDA to make a decision regarding an entire market on the basis of a limited customer survey.
- 3.10. The IDA has not published its market research, nor has it disclosed the methodology applied in undertaking such research. This is contrary to international best practice. Regulators, such as Ofcom, publish extensive market research of both the outcomes of customer surveys and the methodologies used in conducting their analysis.¹
- 3.11. The consequences of the IDA's flawed approach to market analysis and its failure to have sufficient regard to verifiable evidence are significant, resulting in significant over-regulation.
- 3.12. This is compounded by the fact that the IDA adopts a licensed entity approach to dominance, meaning that there is no proper evidentiary basis for the classification of a licensee as dominant, nor for the subsequent removal of Dominant Licensee regulation through the exemption process.

¹ See, Ofcom, *Business Connectivity Services Review: Market Research*, 17 January 2008.

4. BUSINESS LOCAL TELEPHONY SERVICE MARKET

SingTel faces significant competition from StarHub in respect of fixed telephony services

- 4.1. The IDA has erroneously stated that SingTel does not face effective competition in the BLTS market, citing SingTel's high market share.²
- 4.2. In SingTel's view, the IDA has incorrectly placed too much reliance on SingTel's market share in the BLTS market and has failed to take account of other relevant factors that suggest there is competition in the market.
- 4.3. The fact that SingTel may have a high market share does not necessarily mean that competition is deficient, or that it is inappropriate to remove Dominant Licensee regulation in respect of the BLTS market or parts thereof.
- 4.4. The verifiable evidence provided by SingTel in its original exemption request demonstrates that, despite SingTel's high market share, SingTel's business telephone fixed line services tariffs are amongst the lowest in the world.
- 4.5. However, there is also extensive evidence to suggest that SingTel is constrained through other means. In particular, SingTel faces facilities based competition for business telephony services throughout Singapore and in particular in the CBD and business/industry/technology parks from StarHub.
- 4.6. SingTel has provided extensive verifiable evidence showing that StarHub has a nationwide network. SingTel also provided evidence demonstrating that StarHub has 100% coverage of the CBD area and can offer voice and data services across the CBD, as well non-CBD locations.
- 4.7. Indeed, StarHub's FBO licence specifically requires StarHub to provide Basic Telephone Services to any requesting end-user where StarHub has rolled-out its network.
- 4.8. SingTel submits that the IDA should have regard to the availability of fixed telephony services on the StarHub network when it considers the competitive constraints imposed on SingTel in the BLTS market.

² IDA, Preliminary Decision, paragraph 40.

- 4.9. In the event that the IDA does not agree with SingTel's request to withdraw regulation throughout Singapore in respect of BLTS, SingTel submits that it is appropriate to withdraw regulation in respect of CBD areas and any other areas where StarHub is able to offer a competing fixed line business telephony service to end-users.

Competitors can acquire unbundled local loops from SingTel to provide business telephony services

- 4.10. In addition to the competitive constraint provided by StarHub's network, SingTel also faces a competitive constraint (in the form of potential competition) from other facilities based operators.
- 4.11. As the IDA is aware, facilities based operators can acquire ULL from SingTel at IDA approved cost-based prices, terms and conditions for the purposes of providing fixed telephony services to business and residential customers.
- 4.12. SingTel considers that the availability of wholesale products such as ULL from SingTel provides an alternative means of competing operators to provide business telephony services, without the need to deploy their own 'last mile' infrastructure. Indeed, operators that lease SingTel ULL can provide voice and xDSL based services in competition with SingTel.

Substitutability of IP-based services

- 4.13. In addition, SingTel submits that the IDA has failed to take sufficient account of the fact that SingTel remains subject to competitive constraint from IP based services, which the IDA has recognised as a substitute service.
- 4.14. The IDA's assessment of competition in the BLTS market fails to take account of this key substitute, which a growing number of customers take up as a substitute for business telephony services from SingTel.
- 4.15. Market trends in Singapore suggest that end-users have increasingly adopted IP-based services as an alternative to Business DEL services. IP-based services now offer comparable high quality, functionality and reliability as many of the traditional BLTS services, such as SingTel's business DEL service.

- 4.16. There is also evidence that shows that there are alternative providers of substitutes for business telephony services. We enclose in **CONFIDENTIAL ANNEX 1** information listing the volume of SingTel's i-PhoneNet and PhoneNet lines that have been terminated by our business customers over the periods April 2005 to August 2008 during which over [CONFIDENTIAL] PhoneNet & i-PhoneNet lines were terminated, averaging at around [CONFIDENTIAL] per month for the same period; most of these customers who terminated their services would have acquired an alternative BLTS to serve their needs.
- 4.17. Competitors for example are able to offer competitive quotes for their ISDN service(s) as well as IP-based telephony service(s), which are shown in the **CONFIDENTIAL ANNEX 6** as provided to IDA in SingTel's exemption request. Evidence of price competition substitutes is also reflected in the number of tariffs SingTel has had to submit in order to revise the tariffs for SingTel's PhoneNet / i-PhoneNet, to run promotional offers and offer customised schemes to business customers. Between 2003 and 2008 (as at 19 September 2008), SingTel submitted more than 50 tariffs for PhoneNet and i-PhoneNet, covering new tariffs, revisions in tariffs, promotional offers and customised schemes. These are provided in **CONFIDENTIAL ANNEX 2**.
- 4.18. In fact, SingTel has had to make adjustments to respond to the increasing number of PhoneNet and I-PhoneNet account terminations by providing significant promotional discounts to its customers. SingTel's figures show a considerable jump in the quantum of promotional discounts from the years 2006 to 2007. For PhoneNet and I-PhoneNet services, SingTel provided promotional discounts of up to [CONFIDENTIAL] to customers in 2007 (see **CONFIDENTIAL ANNEX 3**).
- 4.19. This data shows that there are alternatives available to SingTel's Business DEL services and SingTel's IP-based services. This data also goes against the IDA's view that competition is not sufficient. It provides strong evidence that there is sufficient competition in the market, particularly in respect to IP-based services.

Cost of switching between operators is low

- 4.20. The IDA has stated in its Preliminary Decision that end-users are generally not willing to change providers for business DEL and ISDN services, given the high costs involved.³
- 4.21. While the IDA has stated that it conducted consultations with end-users, it is unclear from the Preliminary Decision whether the IDA has sought to test these assertions or quantify the cost of switching.
- 4.22. In SingTel's view, the cost of switching between providers for DEL and ISDN services is low. To the extent that there are costs of switching, these costs are likely to be absorbed by competing operators as a means of securing a customer contract, thereby mitigating any potential costs to the end-user to switch from SingTel.
- 4.23. Evidence also suggests that customers are not locked into lengthy contracts for business DEL services that they could not otherwise exit. While customers are able to enter into longer terms contracts for ISDN, the term of such customised contracts are generally limited to 3 years or less.
- 4.24. Given the fact that the IDA has not quantified the cost of migrating fixed telephony services from SingTel to a competing operator, SingTel considers that the IDA should withdraw its comments on the costs of switching providers.
- 4.25. In light of the above, SingTel submits that the BLTS is market is reasonably competitive and that SingTel should be exempt from its Dominant Licensee obligations in this market. However, if the IDA is not inclined to accept SingTel's request, SingTel submits in the alternative that it would be appropriate for the IDA to:
- a. exempt certain individual services that comprise the BLTS market, such as PhoneNet, I-PhoneNet and ISDN services; and
 - b. only retain Dominant Licensee regulation with respect to SingTel's business DEL service in areas where StarHub is not able to offer a competing fixed line business telephony service to end-users.

³ Ibid, paragraph 41.

5. LOCAL LEASED CIRCUIT MARKET

IDA's has overlooked extensive competitive deployments of alternative LLC infrastructure

- 5.1. In its Preliminary Decision, the IDA has treated the LLC Market as a single national market and has ignored the fact that there are already significant levels of facilities based competition throughout Singapore, particularly in the Singapore CBD.⁴
- 5.2. While the IDA has acknowledged the existence of competitive differences between CBD and non-CBD areas and has recognised the existence of multiple LLC providers in the Singapore CBD,⁵ the IDA has claimed that SingTel would have SMP regardless of how the geographic dimension of the LLC Market is defined.
- 5.3. In the IDA's opinion, this is because:⁶
 - a. SingTel's market share in the CBD remains high; and
 - b. many end-users in the CBD, for example, those located in shophouses and low-rise buildings, continue to rely on SingTel for LLC.
- 5.4. SingTel strongly disagrees with the IDA's analysis.
- 5.5. First, the fact that SingTel may have a high market share does not necessarily mean that competition is deficient, or that it is inappropriate to remove Dominant Licensee regulation in respect of the LLC Market. This is contrary to international practice with respect to leased line regulation, where regulators have commenced removing regulation on the basis that there is competing fibre based infrastructure, regardless of the market share held by the incumbent operator.
- 5.6. The IDA has failed to adopt such an approach, preferring to maintain regulation throughout Singapore notwithstanding the existence of two or three competing LLC networks within the CBD and non-CBD areas. In doing so, it appears that the IDA has completely ignored or disregarded the extensive verifiable evidence provided by SingTel in its original exemption request.

⁴ IDA, Preliminary Decision, paragraph 47.

⁵ Ibid, paragraph 24(b).

⁶ Ibid, paragraph 47.

- 5.7. The following verifiable evidence that has been tabled to IDA in SingTel's exemption request suggests the existence of an extensive StarHub LLC network footprint, including:
- a. a non-comprehensive and non-exhaustive list of MDF rooms in CBD/Non-CBD areas as updated in **CONFIDENTIAL ANNEX 4** where SingTel has sighted StarHub fibre deployment – as at September 2008, at least 1 competitor in the Singapore CBD has installed fibre in at least 90% of MDF rooms.
 - b. The information gathered clearly shows that StarHub has an extensive CBD and non-CBD local access network in all serving areas of Singapore. Between March 2007 and September 2008, SingTel's sightings of StarHub's presence in the CBD shows an increase of approximately [**CONFIDENTIAL: %**], with deployment to an additional [**CONFIDENTIAL**] MDF rooms in the CBD area. In specific areas in the non-CBD area, SingTel's sightings of StarHub's presence in the non-CBD shows a large increase over just a period of 1 ½ years, eg in Ang Mo Kio, Bukit Panjang, Geylang, Queenstown, Paya Lebar and Telok Blangah etc. For example, in Geylang, StarHub's deployment of equipment increased more than 30 times between March 2007 and September 2008 and in Telok Blangah, it increased three-fold during the same period.
 - c. a list of multiple locations in CBD and non-CBD areas where SCV has terminated SingTel fibre services and is now using fibre on StarHub's network;
 - d. a non-comprehensive and non-exhaustive list of fourteen (14) Data Centres where StarHub has rolled out network infrastructure – as identified by the IDA in paragraph 64 of its Preliminary Decision, this provides a large concentration of potential customers and the infrastructure can be used to serve multiple customers thereby reducing cost and fostering new entry.
- 5.8. SingTel also provided verifiable information in its original exemption request about the extent of Verizon's deployment of its own alternative fibre infrastructure.
- 5.9. There are numerous public statements about the extensive nature of StarHub's fibre deployments in Singapore. For example, in an article in the *Straits Times* on 12 November 1998, it was stated:

“Cabling for StarHub’s nationwide infrastructure network will begin in January, with the initial focus on the Central Business District and main suburban centers.

“We intend to cable up pretty much 100 per cent of the CBD by the time we start, and maybe about 65 per cent in other parts of the island,” said StarHub chairman (senior management team) Graham Moore.

StarHub intended to build as much of its network and operations from scratch, leasing “very little” from rival telecommunications operator Singapore Telecom.

“We intend to be a self-sufficient entity doing as much as possible within the group. We will lease or take very, very little from the competition”.

5.10. Similarly, in an article in the TAS “VISTAS”, Issue 2, 1999, it was stated:

“Phase 1 in the roll-out of our core and access networks covers the central and western part of Singapore, and we will complete wiring up all the Central Business District (CBD) and 64 per cent of the residential areas by March 2000.

In the second phase, we will cover 90 per cent by 31 March 2001, and the rest by 31 March 2002. It is unlikely that we will be able to accelerate and rollout any faster than we are doing now.”

“We’re using Singapore Power’s existing ducting system. There’s no way we can rollout as fast as we are doing without utilising their ducting system.”

“About 70 per cent of our network will be using the existing ducting systems. We will also use power substations wherever possible to minimize the number of road manholes that need to be opened”.

5.11. There is no reason to doubt StarHub’s statements, indeed they are supported by SingTel’s sighting of StarHub fibre in MDF rooms in the CBD and Non-CBD. SingTel has provided a number of public statements evidence about the extent of StarHub’s deployment in **NON-CONFIDENTIAL ANNEX 1**.

5.12. The IDA has failed to recognise the extensive deployment of alternative network infrastructure in its Preliminary Decision. This lack of recognition appears to stem from

the IDA's view that a competing operator must have deployed its own infrastructure all the way to an end-user premise to be considered as capable of offering a competing service.

5.13. For example, the IDA has stated:⁷

“The only area in Singapore that is served by multiple LLC providers is the Central Business District (“CBD”). Even within the CBD, End Users observed that many buildings are served only by SingTel”

5.14. The IDA's methodology for measuring the existence of competing LLC deployments is flawed. The test of how many providers are capable of serving a building is not whether fibre is deployed all the way to the relevant building – the correct test is whether a competing LLC provider has alternative infrastructure in close proximity to the end-user location, which would permit the competing operator to extend its own fibre to connect an end-user's premises to its LLC network, or where this not possible, to acquire a wholesale LLC for the purposes of filling the 'gap' its network footprint.

5.15. This approach has been adopted by overseas regulators (subject to certain qualifications to take account of local factors) and has resulted in the withdrawal of regulation in geographic areas where there are competing fibre deployments in place.

5.16. For example, regulators in jurisdictions, such as Australia and the United Kingdom, no longer just define the geographic dimension of leased line markets on a national basis, but rather seek to:

- a. disaggregate their analysis into distinct geographic regions as means of identifying variations in competitive conditions;⁸ and
- b. withdraw regulation in respect of those geographic areas or routes where there is competing fibre based investment from other operators in close proximity to end-users, regardless of the market share that may be held by the incumbent operator.

5.17. The ACCC has stated:⁹

⁷ Ibid, paragraph 24(b).

⁸ See generally, Ofcom, *Disaggregated Markets: Leased Lines*, Discussion Document, 28 March 2006.

“The uneven roll-out of competing infrastructure, and the uneven development of full-facilities and quasi-infrastructure competition in parts of Australia, raises the possibility that the competitive dynamics differ in discrete geographic regions. In other words, it raises the possibility that Telstra faces different competitive constraints depending on the type, intensity and magnitude of infrastructure competition in certain areas.

...

The uneven development of different forms of infrastructure-based competition potentially has important implications for the appropriate geographic scope of markets, and therefore, for the assessment of competition in the relevant market(s). If competitive dynamics are substantially different in different geographic areas the case for maintaining a ‘national’ market scope for relevant markets is open to question.

A delineation of the geographic scope of relevant markets to more accurately reflect differing competitive dynamics is likely to assist the Commission to target declarations at geographic areas where competition is unlikely, and to remove the scope of declaration from areas where it is not required to promote the LTIE”.

- 5.18. In Australia, the ACCC has removed regulation in respect of leased lines based on the existence of competing infrastructure within close proximity to the relevant city centre (from which a competing operator could deploy its own infrastructure to serve the end-user, or acquire regulated tail circuits from Telstra to connect the end-user premises):¹⁰

⁹ Australian Competition and Consumer Commission, *Fixed Services Review: A second position paper*, Public Version, April 2007, pages 34-35.

¹⁰ ACCC, *Transmission Capacity Service: Review of the declaration for the domestic transmission capacity service*, Final Report, April 2004, page 27. See also, ACCC, *Draft Decision: Telstra’s Domestic Transmission Capacity Service Exemption Application*, Public Version, September 2008.

“The Commission has therefore applied the criterion that where there are at least three optical fibre providers, including...a potential provider (where its network is within 1km or less from the GPO of a regional centre for a given...route, this serves as evidence of sufficient competition/contestability to warrant removal of that route from declaration”.

- 5.19. Despite the clear and obvious existence of competitive differences between different geographic areas and the economic viability of a competing operator rolling out a ‘fibre spur’ to connect the end-user to its alternative network infrastructure, the IDA has not sought to remove regulation in competitive geographic areas, suggesting that it is necessary for competing operators to actually rollout infrastructure all the way to the end-user premises for the IDA to consider that there is network competition.
- 5.20. This is inconsistent with overseas approaches for the withdrawal of regulation, which provide for the removal of regulation where competing providers are located within close distance to the centre of the relevant geographic area, notwithstanding the fact the competing provider may not have deployed its infrastructure into the end-users premises.
- 5.21. This stems from the fact that:
- a. competing operators do not typically connect end-user premises until they receive a request for service and that it is reasonably straightforward and cost effective for competing operators to run a ‘fibre spur’ from their point of presence to an end-user’s premise (these costs are discussed in sections 5.35 to 5.38); or
 - b. competing operators can access wholesale leased line products to connect the end-user premises.
- 5.22. This fact has not been recognised by the IDA in its Preliminary Decision. This is evident in the IDA’s statements suggesting that SingTel is the only operator that is capable of serving various premises, such as shophouses and low-rise buildings, on the basis that it is the only operator that has connected its infrastructure to the end-user’s premises.
- 5.23. Apart from the fact that end-users in low-rise buildings and shophouses do not typically require LLCs, such an interpretation fails to take account of the existence of at least two

or three competing fibre based networks that cover a significant proportion of Singapore, particularly the Singapore CBD.

5.24. SingTel considers that it would be appropriate for the IDA to adopt a similar approach to that adopted by overseas regulators for the removal of LLC regulation, subject to some modifications to take account of Singapore's small geography, high population density and concentration of corporate and government businesses in CBD areas and specific non-CBD areas.

5.25. In particular, SingTel proposes that the IDA remove Dominant Licensee regulation in respect of those geographic areas where there are either two or three competing LLC networks (including SingTel's LLC network) within close proximity to an end-user premise. From this point, competing operators could deploy a 'fibre spur' or acquire wholesale LLCs (or TLLCs) to connect the end-user.

5.26. Indeed, SingTel's competitors are capable of serving the entire Singapore CBD by deploying their infrastructure in four (4) exchange areas and either:

- a. deploying a 'fibre spur' to connect end-users to their LLC infrastructure; or
- b. deploying fibre to SingTel four (4) exchanges for the purposes of accessing TLLCs to serve the end-user.

5.27. There is also extensive evidence to suggest that SingTel's competitors have extensive LLC network infrastructure in non-CBD areas, suggesting that such deployments are economically viable. The extent of competing network infrastructure is evident from declines in the level of LLCs that SingTel provides on a wholesale basis, as SingTel's competitors migrate their LLC customers onto their own alternative LLC infrastructure or competing wholesale LLC providers (see **CONFIDENTIAL ANNEX 5**). Indeed, the number of DigiPlus circuits (as shown in **CONFIDENTIAL ANNEX 6**) subscribed with SingTel have continued to decline steadily since September 2007 with a significant reduction of [**CONFIDENTIAL: %**] between September 2007 and August 2008. Specifically, circuits in the CBD have declined a further [**CONFIDENTIAL: %**] while circuits in the Non-CBD have declined a further [**CONFIDENTIAL: %**] during this period.

5.28. Therefore, in the event that the IDA does not accept SingTel's original exemption request for the removal of regulation in respect of all LLCs supplied by SingTel throughout Singapore, SingTel submits that the IDA should remove regulation in respect of those geographic areas in Singapore where there are at least two LLC network footprints within close proximity of end-users.

The IDA's comments about high barriers to entry and the need for ubiquity are misplaced

5.29. In its Preliminary Decision, the IDA has claimed that the cost of deploying a ubiquitous 'last mile' network to end-users remains high and that the Singapore Government's decision to subsidise construction of the Next Gen NBN suggests that the costs may be so great that Government subsidies are needed for a ubiquitous local network deployment.¹¹

5.30. SingTel rejects this view.

5.31. Such a statement strongly suggests that the IDA has misunderstood the nature of demand for LLCs in Singapore and the locations where such demand arises. Indeed, it would appear that the IDA has completely ignored the significant amount of verifiable evidence provided by SingTel in its original exemption request in respect of the economic viability of deploying alternative infrastructure in Singapore.

5.32. In its original exemption request, SingTel provided evidence demonstrating that Singapore:

- a. has a small and compact geography relative to other countries;
- b. has a very high population density;
- c. has a well defined CBD area and business/industry/technology parks; and
- d. has a high concentration of multi-national corporations and regional businesses.

¹¹ IDA, Preliminary Decision, paragraph 55.

- 5.33. Given these factors, it is incorrect for the IDA to suggest that there are high barriers to entry, or that it is necessary for a competing operator to have a ubiquitous network to be able to compete with SingTel.
- 5.34. Such comments demonstrate that the IDA has misunderstood the nature of demand for LLCs in Singapore and the fact that demand for LLCs is heavily concentrated in the CBD area and in business/industrial/technology parks in non-CBD areas, where it is cost effective to deploy alternative infrastructure. It is in these areas where demand exists, which exactly corresponds to the areas where barriers to construction are lowest and rollout has and is occurring. No customer requires nationwide LLC coverage – it only requires LLCs between specific points.
- 5.35. Indeed, there is strong economic evidence to suggest that it, in fact, is economically viable for competing operators to deploy their own fibre infrastructure in Singapore.
- 5.36. The economic viability of deploying fibre has also been recognised by international agencies. The World Bank and ITU note that the cost of fibre deployment has dramatically decreased over the 5 years to 2006. They note in respect of optical fibre costs that:¹²
- “Deployment costs including components, civil works and installation have in Europe decreased from 1250-1500€ per connection in 2001 to 600-800€ in 2006. The most expensive component is labor costs related to laying down fibers. This component will be far cheaper in countries with low unit costs for labor”.*
- 5.37. This analysis is supported by other commentators, who note that in respect of the economic characteristics of various infrastructures, fibre rates the most attractive in terms of economies of density and scope.¹³
- 5.38. In addition, SingTel’s figures demonstrate that since 2002, SingTel has lost a total number of [CONFIDENTIAL] bids from government agencies in non-CBD areas. Not only does this figure show the existence of competing LLC network infrastructure in non-CBD areas, it suggests that alternative LLC providers are capable of servicing

¹² ICT Regulation Toolkit, http://www.ictregulationtoolkit.org/en/Section.1787.html#_ftnref1.

¹³ Morten Falch, *New Technologies and their Impacts on Market and Regulation*, Center for Information and Communication Technologies, CICT CICT Working Paper, No. 111, 2006.

government customers in non-CBD areas and that a ubiquitous, nationwide LLC network is not required in order to compete against SingTel in this segment.

5.39. In any case, in the event that a competing operator did not wish to deploy its own ‘fibre spurs’ to connect an end-user premises, it would be open to that operator to fill the ‘gaps’ in its network footprint by acquiring wholesale LLCs from SingTel or TLLCs.

The NGNBN is a justification for the removal of regulation, not its continuation

5.40. Further, contrary to the IDA’s claims¹⁴, SingTel submits that the government funded NGNBN does not suggest that the costs of rolling out competing infrastructure are prohibitive, but provides a strong basis for removing regulation. SingTel disagrees. The construction of the NGNBN will result in the creation of an additional fibre network in Singapore and will further strengthen facilities based competition.

5.41. The inevitable increase in competition flowing from the NGNBN justifies the removal of regulation, given the need to conduct market analysis on a forward-looking basis. As the European Commission has recently stated:¹⁵

“As the market analyses carried out by NRAs have to be forward-looking, markets are defined prospectively. Their definitions take account of expected or foreseeable technological or economic developments over a reasonable horizon linked to the timing of the next market review”.

5.42. There is no evidence to suggest that the IDA has conducted its analysis on a forward-looking basis, or that it has taken account of the fact that the NGNBN is likely to further increase competition in the provision of competing services.

SingTel’s pricing practices for LLCS are pro-competitive

5.43. The IDA has claimed that SingTel’s own pricing structure has deterred growth of retail LLC competition:

¹⁴ Ida, Preliminary Decision, paragraph 55.

¹⁵ European Commission, Explanatory Note Accompanying document to the Commission Recommendation on Relevant Product and Service Markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services, Second edition, C(2007) 5406, page 6.



“SingTel sets the price of both retail and wholesale LLCs based on volume purchased. Consequently, SingTel may provide End Users that purchase large quantities of LLCs with larger discounts than those SingTel provides to a competing operator that purchases smaller volumes of LLCs. Where this occurs, the competing operator is unable to use SingTel’s wholesale product to offer a competitively priced retail LLC service”.

- 5.44. SingTel strongly disagrees with both of these statements and does not consider that they can be supported on any objective basis.
- 5.45. First, there is extensive evidence to suggest that competing operators receive extensive discounts on wholesale LLCs from SingTel, including discounts of up to [CONFIDENTIAL: %]. SingTel has set out in **CONFIDENTIAL ANNEX 7** extensive evidence of the percentage discounts that are currently made available to at least 8 competing operators in respect of wholesale LLCs and in respect of retail LLCs..
- 5.46. In light of these significant discounts, it cannot be reasonably claimed that the level of discounts available to competing operators is deficient, or results in those operators being unable to compete vigorously with SingTel.
- 5.47. Secondly, the IDA’s analysis is overly simplistic and overlooks the fact that decisions by a competing operator to “build or buy” will always seek to minimise the overall costs of providing the LLC service to the end-user. Therefore, even though self-supply by a competing operator may result in a reduction in the volume discount that would otherwise be available from SingTel for wholesale LLCs, SingTel assumes that the competing operator has built its own network and self-supplied LLCs to take advantage of even greater cost savings than that associated with acquiring the LLCs from SingTel. Therefore, under this scenario, it would still be the case that the cost reductions associated with self-supplying LLCs would be greater than any cost reductions that would accrue if the competing operator acquired all the LLCs from SingTel.
- 5.48. Accordingly, it is incorrect for the IDA to claim that SingTel’s pricing has deterred retail LLC competition. To the contrary, wholesale price discounting by SingTel suggests the existence of robust competition, as SingTel has had to lower its wholesale prices as a means of competing with ‘build’ decisions by alternative operators. This has the effect of encouraging competition downstream (i.e. retail competition), rather than deterring it.

5.49. In addition, the IDA has claimed in its Preliminary Decision that operators and end-users consider that SingTel's LLC prices are high by international standards and that the cost of an LLC in Singapore constitutes a higher portion of the cost of the IPLC than the cost of LLC in other jurisdictions.¹⁶

5.50. SingTel submits that the view that the cost of LLCs in Singapore is higher as a proportion of the cost of an IPLC than the cost of an LLC in the B-end country is untested and cannot constitute verifiable evidence for the purpose of the Telecom Competition Code.

5.51. It is unclear whether such an allegation takes account of the actual price for LLCs paid by end-users (i.e. after wholesale discounts are applied). It is also the case that cost of obtaining LLCs in many B-end jurisdictions is significantly higher than in Singapore – therefore, the fact that the price of LLCs in certain B-end jurisdictions may be slightly lower than Singapore does not suggest that a competition problem exists or that it is necessary for SingTel to remain subject to Dominant Licensee regulation in the LLC Market. If the IDA's reasoning was accepted, SingTel would remain subject to Dominant Licensee regulation until it was the case that LLC prices in Singapore were lower or closely comparable to LLC prices in all B-end countries – this is a highly illogical proposition and line of reasoning.

5.52. Finally, the IDA has claimed:

“SingTel's transacted prices (i.e. the actual prices charged to End Users) do not appear to have fallen significantly, based on interviews with End Users. While competitors' prices have fallen in some cases, the prices of their LLCs do not pose a competitive constraint on SingTel's pricing”.

5.53. SingTel strongly disagrees with this statement, as it does not consider evidence that SingTel has provided to date, as well as more recent data provided as part of this submission. There is extensive evidence to suggest that SingTel's prices have fallen extensively over recent years. These are set out in detail in **CONFIDENTIAL ANNEX 8**.

¹⁶ IDA< Preliminary Decision, paragraph 58.

Exchange closures

5.54. In its Preliminary Decision, the IDA has apparently accepted the argument put forward by other operators during the consultation process that the pending closure of SingTel exchanges has resulted in these operators shelving plans to rollout infrastructure to SingTel exchanges for the purposes of accessing TLLCs.¹⁷

5.55. SingTel strongly objects to such an interpretation and submits that these arguments should be dismissed by the IDA in any final decision.

5.56. The IDA has previously rejected criticism of the arrangement governing the closure of SingTel exchanges, stating (at the time when the notification period was 6 months, not the current period of 18 months):

“This notification period is no different from many benchmark jurisdictions” practice, including the US”.

5.57. As the IDA is aware, SingTel is now required to provide 18 months advance notice of the closure of an exchange. SingTel submits that this will provide competing operators with sufficient notice for network planning purposes and is unlikely to negatively affect any rollout plans that may be contemplated by competing operators.

5.58. It would also appear that the IDA has accepted the argument made by APCC during the consultation process that the lack of LLC access at the tandem exchange level is a barrier to entry.¹⁸

5.59. SingTel strongly objects to this suggestion. Singapore is a city-state, with a very high population density and well-defined areas within the CBD and non-CBD where corporate and government customers require LLCs. There is no basis for suggesting that the lack of access to tandem exchange level interconnection for LLCs creates a barrier to entry in such an environment. Singapore is readily distinguishable from larger countries that mandate access at the tandem exchanges for LLCs.

¹⁷ IDA, Preliminary Decision, paragraph 56.

¹⁸ Ibid, paragraph 24(c).

5.60. This issue has already been rejected by the IDA, including most recently in correspondence with the Office of the United States Trade Representative in January 2008:

“For trunk portions of the LLCs, IDA finds no compelling reason to require LLCs to be offered at the tandem level. IDA also notes that tandem access would be of relevance in instances where the large geographic size of a market, such as the US, could impede, delay, or make impractical for competing operators in deploying their own trunk facilities. This concern cannot be said for a city-state like Singapore given its high density of buildings and small geographic size.”

5.61. On this basis, SingTel rejects the suggestion that the lack of access to LLCs at the tandem exchange level provides a barrier to entry. SingTel strongly objects to this suggestion. Singapore is a city-state, with a very high population density and well-defined areas within the CBD and non-CBD where corporate and government customers require LLCs. There is no basis for suggesting that the lack of access to tandem exchange level interconnection for LLCs creates a barrier to entry in such an environment. Singapore is readily distinguishable from larger countries that mandate access at the tandem exchanges for LLCs. It is also contrary to IDA’s own conclusions and statements.

5.62. Notwithstanding the various excuses that have been advanced by some operators for their failure to climb the ‘ladder of investment’, the fact remains that SingTel’s competitors are capable of serving the entire Singapore CBD by deploying their infrastructure in four (4) exchange areas and either:

- a. deploying a ‘fibre spur’ to connect end-users to their LLC infrastructure; or
- b. deploying fibre to SingTel four (4) exchanges for the purposes of accessing TLLCs to serve the end-user.

5.63. Given, there is no basis for suggesting that such deployments have been stifled because of pending SingTel exchange closures or the lack of access to LLCs at the tandem exchange level.

6. BACKHAUL MARKET

- 6.1. SingTel strongly supports the IDA's decision to remove *ex ante* regulation in respect of the Backhaul Market in recognition of the fact that this market is "*now competitive*".¹⁹
- 6.2. SingTel agrees with the IDA's conclusions and notes that :
 - a. SingTel's market share for backhaul has fallen below 40%;
 - b. SingTel faces considerable competition from a multitude of operators, including FT, Pacnet Cable Pte Ltd, Pacnet Global Pte Ltd, Reach and StarHub;
 - c. the provision of wholesale access under the SingTel RIO to SingTel's cable landing stations has resulted in multiple parties providing and offering competing backhaul services, resulting in greater downstream competition in the Backhaul Market; and
 - d. competition in the Backhaul Market has also increased through the use of data centres, which provide for the bypass of SingTel's backhaul infrastructure.

No potential to leverage market power from the LLC Market

- 6.3. SingTel is disappointed by the IDA's decision to retain *ex post* regulation in respect of the Backhaul Market, which has been justified on the basis of SingTel's control of LLCs.²⁰
- 6.4. SingTel strongly disagrees with the IDA's position that SingTel is dominant in the LLC market and is capable of leveraging any power from that market into the Backhaul market.
- 6.5. The IDA has failed to provide any reasons or evidence to support its view. It has made this claim without providing any explanation as to how such anti-competitive leveraging may occur, particularly in light of the competitive state of the Backhaul market.

¹⁹ Ibid, paragraph 62.

²⁰ Ibid, paragraph 66.

- 6.6. It is simply not possible for SingTel to leverage any power from the LLC Market into a competitive market. SingTel's view is supported by established principles of competition law in relation to the issue of cross-market leveraging.
- 6.7. When these established principles of competition law are applied to the Backhaul market (and the Terrestrial IPLC and IMDS markets), it is clear that the IDA's position on cross-market leveraging cannot be reasonably supported.
- 6.8. For example, the European Court of Justice has found that a leveraging abuse in a non-dominant market could only potentially occur in "*special circumstances*", being circumstances where the dominant firm also enjoys a "*leading position*" in the second market²¹, such that it would have a position "*comparable to that of holding a dominant position on the markets in question as a whole*" (i.e. in both markets).²²
- 6.9. To these ends, there have been very few cases of anti-competitive leveraging decided at the EC level²³, both of which concerned entities with a virtual monopoly in the dominant market and a very high market share in the second market (i.e. well above the EC's market share thresholds for the presumption of dominance).²⁴
- 6.10. This is clearly not the case in the Backhaul market, where SingTel has less than 40% market share and therefore would not be capable of leveraging any alleged market power from the LLC market into an otherwise competitive market.
- 6.11. Further, in order there to be an abuse of dominance through cross-market leveraging, it has been established in European competition law that it is necessary for there to be "*associative links*" between the dominant and non-dominant market.²⁵
- 6.12. While the IDA has claimed that SingTel's competitors may need to acquire LLCs to provide backhaul services to end-users that are not located in data centres²⁶, the IDA

²¹ *Tetra Pak International SA v Commission* [1996] ECR I-5951 (Tetra Pak II), at paragraph 27.

²² Ibid, paragraphs 28-31.

²³ Robert O'Donoghue and A Jorge Padilla, *The Law and Economics of Article 82 EC*, Hart Publishing, 2006, pages 212-213.

²⁴ *Tetra Pak International SA v Commission* [1996] ECR I-5951 (Tetra Pak II). See, Microsoft case, where Microsoft had over 95% of the PC operating system market and 50-60 share of the work group service market.

²⁵ *Tetra Pak International SA v Commission* [1996] ECR I-5951 (Tetra Pak II), at paragraphs 28-30.

²⁶ IDA, Preliminary Decision, paragraph 66.

has acknowledged in its Preliminary Decision that, in reality, competing operators place very little reliance on SingTel's LLCs:²⁷

"...the interviews provided evidence that operators today frequently purchase Backhaul from carriers other than SingTel and terminate the Backhaul in carrier-neutral data centres such as Equinix, thereby eliminating the need to use SingTel's LLCs"

6.13. This strongly suggests that the required "associative links" between the LLC market and backhaul are not present and that it would not be possible for SingTel to leverage any alleged market power in the LLC market into the backhaul market, as a significant proportion of licensees do not, in fact, acquire SingTel LLCs as an input into backhaul services.

6.14. Finally, even if the IDA does not accept the view that it is not possible leverage market power into a competitive market, the IDA's analysis also ignores the fact that SingTel remains subject to extensive wholesale regulation. The existence of this wholesale regulation eliminates the ability for SingTel to exercise any market power that it may otherwise have in the absence of regulation.

6.15. Such a fact has been ignored by the IDA in its Preliminary Decision, even though it has been acknowledged by overseas regulators. For example, the Office of Fair Trading in the United Kingdom has observed:²⁸

"In some sectors the economic behaviour of undertakings (such as the prices they set or the level of services they provide) is regulated by ... an industry sector regulator, and an assessment of market power may need to take that into account. Although an undertaking might not face effective competition from existing competitors, potential competitors or the nature of buyers in the market, it may still be constrained from profitability sustaining prices above competitive levels by an industry sector regulator".

6.16. Similarly, OPTA, the Dutch Regulator has recently exempted KPN from retail leased line regulations on the basis that wholesale supply obligations are sufficient to deal with any competition issues that may arise. OPTA has stated:²⁹

²⁷ Ibid, paragraph 24(c).

²⁸ Office of Fair Trading, Assessment of Market Power, Competition Law Guideline, December 2004, paragraph 6.7.

²⁹ OPTA, *Management summary of the preliminary draft decision on leased lines*, 17 July 2008, paragraph 17.

“With regard to retail market for high capacity leased lines, the Commission is of the opinion that the wholesale remedies are adequate for the purposes of achieving the state objectives. Consequently, the Commission does not see any grounds for imposing remedies on the retail market.”

6.17. Given the above, the IDA cannot reasonably claim that there is “*any reasonable possibility*” that SingTel “*retains, or has any reasonable possibility of regaining, Significant Market Power in a market...*”³⁰

6.18. Therefore, SingTel strongly submits that the IDA should also exempt SingTel from *ex post* regulation in respect of the backhaul market. As demonstrated above:

- a. SingTel is not dominant in the LLC market;
- b. even if it was assumed that SingTel was dominant in the LLC market:
 - i. it is not possible for an entity to leverage its market power from a dominant market into a competitive market, as is the case with the Backhaul, the Terrestrial IPLC and IMDS markets;
 - ii. there is no “*associative link*” between the LLC market and the Backhaul market, given the fact that competing operators do not usually purchase SingTel LLCs for backhaul purposes;
 - iii. SingTel continues to remain subject to wholesale regulation in respect of LLCS, which removes any potential to engage in anti-competitive conduct.; and
 - iv. there is no evidence of SingTel engaging in anti-competitive conduct.

6.19. Evidence of price competition is also reflected in the number of tariffs SingTel has had to submit for our Backhaul service, in particular, the number of customised schemes as well as the decline in SingTel’s Backhaul prices. Between 2003 and 2008 (as at 19 September 2008), we lodged 73 tariff filings with the IDA in relation to our Domestic Backhaul service with the IDA, either reducing our charges or introducing new schemes to maintain our competitiveness. Further, the evidence shows that we have been prepared to voluntarily develop and commercially negotiate customised Domestic

³⁰ IDA, *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 telecommunications 2005*, 20 September 2005, section 2.6.

Backhaul services with competing FBOs, filing at least 61 customised Domestic Backhaul offers with the IDA over the same period. This information is summarised in **CONFIDENTIAL ANNEX 9**.

6.20. In light of the above, SingTel strongly suggests that the IDA reconsider this aspect of its Preliminary Decision and exempt SingTel from *ex post* regulation in respect of the Backhaul market.

7. TERRESTRIAL IPLC MARKET

7.1. SingTel strongly supports the IDA's decision to remove *ex ante* regulation in respect of the Terrestrial IPLC market in recognition that "*competition has continued to develop in the Terrestrial IPLC Market*".³¹

7.2. SingTel agrees with the IDA's conclusions and notes that:

- a. SingTel's market share IPLCs has fallen significantly over the last two years and will continue to fall further;
- b. SingTel faces considerable competition from a multitude of operators, including global operators with greater international reach relative to SingTel; and
- c. there have been significant price reductions for IPLCs.

7.3. However, SingTel strongly disagrees with the IDA's decision to retain *ex post* regulation in the Terrestrial IPLC market on the basis that "*SingTel retains the ability to leverage its dominance in the LLC market to adversely affect competition in the market Terrestrial IPLCs*".³²

7.4. As noted in sections 6.3 to 6.19 in relation to the Backhaul market:

- a. SingTel is not dominant in the LLC market;
- b. even if it was assumed that SingTel was dominant in the LLC market:

³¹ IDA, Preliminary Decision, paragraph 68.

³² Ibid, paragraph 70.

- i. it is not possible for an entity to leverage its market power from a dominant market into a competitive market, as is the case with the Terrestrial IPLC market; and
- ii. SingTel continues to remain subject to wholesale regulation in respect of LLCs, which removes any potential to engage in anti-competitive conduct;
- iii. there is no evidence of SingTel engaging in anti-competitive conduct.

7.5. In light of the above, SingTel strongly suggests that the IDA reconsider this aspect of its Preliminary Decision and exempt SingTel from *ex post* regulation in respect of the Terrestrial IPLC market.

8. INTERNATIONAL MANAGED DATA SERVICES MARKET

8.1. SingTel welcomes the IDA's recognition that "*during the last three years*" competition "*has grown even stronger in the IMDS market*".³³

8.2. SingTel agrees with the IDA's observations that:

- a. SingTel's market share continues to decline;
- b. three operators have larger market shares than SingTel; and
- c. end-users are migrating towards IP-VPN and Ethernet services, in which SingTel has a very low market share.

8.3. Despite the overwhelming evidence to suggest that the IMDS market is vigorously competitive, the IDA has sought to maintain *ex post* regulation on the following basis:

"The continued growth of competition...does not change the fundamental reality: SingTel continues to have significant market power in the LLC market and retains the potential to leverage that dominance to adversely affect competition in the IMDS market. This fact precludes granting SingTel an exemption from ex post regulation in the IMDS market".

³³

IDA, Preliminary Decision, paragraph 76.

- 8.4. SingTel submits that such a conclusion can only be described as bizarre. In its Preliminary Decision, the IDA has effectively acknowledged that the IMDS market is vigorously competitive and that SingTel possesses a very low market share, yet the IDA is unwilling to remove *ex post* regulation on the basis of an unproven assertion about SingTel's ability to leverage an alleged power from the LLC market into the competitive IMDS market.
- 8.5. In doing so, the IDA has claimed that it will not exempt SingTel from *ex post* obligations where there is "*any reasonable possibility*" that the "*Dominant Licensee retains, or has any reasonable of regaining, Significant Market Power in a market...*".³⁴
- 8.6. In SingTel's view, the IDA has failed to properly apply its own principles, as there is no "*reasonable possibility*" that SingTel could regain SMP in the IMDS market, given its very low market share.
- 8.7. Indeed, as SingTel has noted in sections 6.3 to 6.19 above:
- a. SingTel is not dominant in the LLC market;
 - b. even if it was assumed that SingTel was dominant in the LLC market:
 - i. it is not possible for an entity to leverage its market power from a dominant market into a competitive market, as is the case with the IMDS market; and
 - ii. SingTel continues to remain subject to wholesale regulation in respect of LLCs, which removes any potential to engage in anti-competitive conduct;
 - iii. there is no evidence of SingTel engaging in anti-competitive conduct.
- 8.8. There is substantial evidence that clearly shows that there has been a continuous downward trend in retail LMDS prices which is expected to continue.
- 8.9. In light of the above, SingTel strongly suggests that the IDA reconsider this aspect of its Preliminary Decision and exempt SingTel from *ex post* regulation in respect of the IMDS market.

³⁴ IDA, *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 telecommunications 2005*, 20 September 2005, section 2.6.

9. LOCAL MANAGED DATA SERVICES MARKET

- 9.1. SingTel strongly disagrees with the IDA's decision not to remove Dominant Licensee regulation in respect of the LMDS Market.
- 9.2. The IDA's analysis places undue emphasis on market share data and on the alleged ability of SingTel to leverage its power from the LLC market into the LMDS Market.
- 9.3. As SingTel has mentioned above, the fact that SingTel may have a high market share does not necessarily suggest that it does not face competitive constraint in the defined market. This is certainly not the case in the LMDS market, where SingTel competes vigorously with StarHub and Pacnet Internet (S) Ltd.
- 9.4. Similarly, it is not possible for SingTel to leverage power from the LLC Market into the LMDS market. As noted above, SingTel remains regulated at a wholesale level and competing operators are free to utilise their own LLC infrastructure or acquire wholesale LLCs or TLLCs from SingTel in the event that they wish to fill the 'gaps' in their network footprint.
- 9.5. The IDA's analysis also fails to take account of the changing demand profile for LMDS and the fact that SingTel's prominence with respect to IP based services, such as MetroEthernet, is less significant than that for other declining technologies, such as frame relay and local ATM.
- 9.6. Price competition is also reflected in the number of tariffs SingTel has had to submit (as set out in **CONFIDENTIAL ANNEX 10**) in order to revise the tariffs for our LMDS, to run promotional offers and offer customised schemes to business customers. Between 2003 and 2008 (as at 19 September 2008), SingTel filed 100 new schemes, 23 tariff revisions, 45 promotional offers and 43 customised schemes for LMDS.
- 9.7. When the LMDS market is analysed on a forward looking basis, SingTel submits that there is sufficient scope to conclude that the level of competitive constraint imposed on SingTel is likely to increase further and that the IDA would be justified to remove Dominant Licensee regulation in respect of this market.



10. CORPORATE AND GOVERNMENT SEGMENT

SingTel's LLC subject to competition from competing LLC network infrastructures

- 10.1. The IDA has rejected SingTel's exemption request for all retail services provided to corporate and government segment with an annual spend of at least S\$250,000.³⁵
- 10.2. The IDA has cited a variety of reasons for the denial of SingTel's request.
- 10.3. First, the IDA has asserted many corporate and business customers have no alternative but to purchase LLCs from SingTel, especially in non-CBD areas.
- 10.4. As noted in section 5 above, the IDA's conclusions with respect to the state of competition in the LLC Market are unsupported and deeply flawed. In particular:
- a. SingTel faces extensive competition from alternative LLC providers, such as StarHub and Verizon, in both CBD and non-CBD areas;
 - b. the existence of multiple LLC network footprints *within close proximity* of end-user premises provide a strong basis for the removal of Dominant Licensee regulation in respect of those geographic areas in Singapore; and
 - c. SingTel's competitors are capable of serving the entire Singapore CBD and areas in the Non-CBD by deploying further infrastructure.
- 10.5. In any case, SingTel notes that the spend on LLCs by corporate and government customers is modest as a proportion of total spend. The IDA has failed to provide sufficient details about the customers it has interviewed and the methodologies it has used in conducting its market analysis. However, based on the expenditure profile of the corporate and government customers identified by SingTel to the IDA, it is clear that, on average, its end-users spend *only a quarter of their total telecommunications spend* on LLCs. Accordingly, SingTel submits that its corporate and government customers do not rely as heavily on SingTel LLCs as suggested by the IDA in its Preliminary Decision.

The threshold for annual telecommunication spend not too low

³⁵ IDA, Preliminary Decision, paragraph 86-88.

- 10.6. The IDA has concluded that the S\$250,000 spend threshold is too low because it may include medium-sized enterprises who lack the expertise and buying power of larger MNCs to check anti-competitive conduct.
- 10.7. SingTel disagrees with the IDA's assessment, as well as assessments by BT in respect of the amount of customers that they would service with accounts in excess of S\$250,000.³⁶
- 10.8. The IDA has failed to provide any evidence to suggest that medium sized enterprises fall within the class of customers who spend in the vicinity of S\$250,000 on telecommunications services. This suggests that the IDA has largely disregarded the evidence provided by SingTel in its original exemption request.
- 10.9. SingTel provided evidence that showed less than 1% of its corporate and government customers have a total annual spend of S\$250,000 on telecommunications services. Therefore, there is only a very small number of customers that would fall within the scope of SingTel's request for exemption of the corporate and government segment.
- 10.10. SingTel submits that if the IDA is concerned about the threshold being too low, it would be possible for SingTel and the IDA to resolve any issues in respect of an appropriate monetary threshold. SingTel is prepared to consider any reasonable proposal from the IDA, but notes that it would be inappropriate for the IDA to simply dismiss SingTel's exemption request on the basis that it disagreed with SingTel's proposed threshold.

Administrative issues can easily be overcome

- 10.11. Further, the IDA has asserted that it has concerns about the administrative challenges that would arise if regulation was removed based on the total amount of expenditure by the customer.
- 10.12. The IDA has presumed that the amount of total spend would be based on the customer's spend on telecommunications service across Singapore and not just from SingTel.

³⁶ British Telecom, *BT's comments to IDA's public consultation on SingTel's request for exemption from Dominant Licensee obligations in business and government customer segment and individual markets*, 18 January 2008, paragraph 1.8.2.



- 10.13. The IDA has made this presumption without any further consultation with SingTel about the possible means of implementation. SingTel submits that it would be possible for SingTel and the IDA to resolve any administration issues that the IDA may consider to exist.
- 10.14. SingTel submits that it is prepared to limit the class of customers to customers spending a total amount on services purchased from *SingTel only*. This is verifiable. SingTel submits that this would resolve any concerns the IDA may have in respect of possible administrative hurdles.
- 10.15. The IDA has also alleged that customers are reluctant to offer information about their total spend on telecommunications services and have no incentives to disclose such amounts correctly.
- 10.16. There are various avenues available to the IDA as a means of ensuring that sufficient information is made available by relevant parties to enable the implementation of this request. This information could be made available to the IDA, or the relevant industry participants subject to appropriate confidentiality arrangements. Other regulators, such as the ACCC, already have processes in place to deal with such scenarios.
- 10.17. The IDA has failed to provide any evidence to support its arguments. In fact, SingTel submits that there are strong incentives for customers to disclose their total spend. SingTel's experience with customers has shown that where large spending customers are able to get a better deal or obtain discounts because of their "large spend" that they are more than willing to disclose the amount.
- 10.18. The IDA's reasoning that a customer's total spend would fluctuate significantly year-to-year is unsupported. In SingTel's experience, customers who spend large amounts on telecommunications do not fluctuate significantly in their requirements and their total spend is likely to remain broadly consistent year-to-year, if not increase.
- 10.19. Indeed, SingTel has already offered to provide the IDA with a six-monthly update including a list of business or government customers that it considers as falling within the customer class to which the exemption applies.
- 10.20. SingTel submits that this would alleviate any concerns the IDA may have in respect of fluctuating telecommunications spend by end-users.



10.21. The IDA has asserted that policing this regime would entail significant resources. In doing so, the IDA has ignored the fact that where it is possible and no longer necessary it should remove regulation. SingTel submits that in fact the cost of policing are much lower than the short-term cost of regulation and long-term detriment to overall competition in the telecommunications sector.

11. CONCLUSION

11.1. SingTel has set out its various concerns with the IDA's Preliminary Decision in this submission.

11.2. SingTel considers that there is significant scope for the IDA to revise its Preliminary Decision when it issues a final decision.

11.3. SingTel strongly submits that any final decision that is made by the IDA should result in the following:

- a. the removal of all Dominant Licensee regulation in respect of:
 - i. the BLTS market
 - ii. the LLC market
 - iii. the LMDS market; and
 - iv. the corporate and government segment
- b. the removal of all *ex post* regulation in respect of:
 - i. the Backhaul market;
 - ii. the Terrestrial IPLC market; and
 - iii. the IMDS market.