



SINGAPORE TELECOMMUNICATIONS LIMITED

RESPONSE TO IDA'S 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

1. EXECUTIVE SUMMARY

- 1.1. Singapore Telecommunications Limited (**SingTel**) refers to the revised preliminary decision issued by the IDA on 30 January 2009 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 (**Revised Preliminary Decision**).
- 1.2. In the interests of brevity, SingTel has focused this submission on correcting some of the fundamental errors inherent in the Revised Preliminary Decision. SingTel has not sought to respond to every issue that has been raised in the Revised Preliminary Decision. Nor has SingTel sought to repeat the statements and positions set out in its original exemption request.
- 1.3. The fact that SingTel has not responded to every issue raised in the Revised 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 Revised Preliminary Decision or concedes its position as set out in its original exemption request.
- 1.4. While SingTel supports the IDA's decision to remove *ex ante* regulation in relation to the backhaul, terrestrial IPLC and IMDS markets, SingTel remains disappointed by the IDA's decision to:
 - a. maintain *ex ante* regulation in the BLTS, LLC and LMDS markets, and across the corporate and government customer segment; and
 - b. maintain *ex post* regulation in respect of all markets the subject of SingTel's exemption request.

- 1.5. SingTel's concerns arise from the following aspects of the IDA's decision and decision making process:
- a. in the event that the IDA decides to maintain *ex ante* regulation of the LLC market (retail and wholesale), the IDA should remove *ex ante* regulation in respect of downstream markets where LLCs are used as an input, including the BLTS and LMDS markets, and the corporate and government customer segment. This approach is consistent with international practice and the principle of proportionate regulation;
 - b. the IDA's heavy focus on market share as part of its competition analysis is not consistent with international practice – indeed, the European Commission (EC) has specifically criticised regulators that have previously undertaken analysis that has placed too much emphasis on market share and which have failed to properly consider other factors;
 - c. the IDA has largely ignored the extensive verifiable and objective evidence submitted by SingTel that would clearly suggest that there is effective competition in various markets, including extensive evidence of price reductions, high levels of product innovation and tariff development. In SingTel's view, the IDA fails to undertake any real or meaningful consideration of these other factors once it has established that SingTel's market share exceeds 40%. Such an approach is flawed;
 - d. the IDA's estimates of StarHub's network footprint in the Singapore CBD is incorrect, understates the level of facilities-based competition and is also inconsistent with StarHub's own public statements about the extent of its network footprint; and
 - e. the IDA's decision on the corporate and government customer segment demonstrates a bias towards maintaining regulation. SingTel invites the IDA to pro-actively propose its own criteria for exempting the corporate and government customer segment if it disagrees with SingTel's proposed approach, rather than using largely unsubstantiated and surmountable arguments to simply outright reject SingTel's request.

2. SUBSTANTIVE COMMENTS

No need for continued *ex ante* regulation of downstream markets that use LLCs as an input

- 2.1. In its Revised Preliminary Decision, the IDA continues to maintain the view that:
- a. SingTel is not subject to effective competition in the LLC market and continues to possess significant market power in the retail LLC market;¹ and
 - b. SingTel retains the ability to leverage its alleged market power in the LLC market into other markets or other market segments.
- 2.2. While SingTel does not agree with the IDA's competition assessment of the LLC market, in the event that the IDA decides to maintain *ex ante* regulation of the LLC market (retail and wholesale), SingTel submits that the IDA must consequently lift *ex ante* regulation in respect of those downstream markets or segments where LLCs are used as an input.
- 2.3. This includes the LMDS and BLTS markets, and the corporate and government customer segment. The continued *ex ante* regulation of LLCs (retail and wholesale) removes the need for *ex ante* regulation in downstream markets or segments that use LLCs as an input, as *ex ante* regulation in the LLC market (retail and wholesale) is more than sufficient to address any alleged competition issues that may exist in these downstream markets/segments. It is standard regulatory practice to remove downstream regulation in these circumstances.
- 2.4. For example, the EC has stated that, in practice, it would be appropriate to target regulation at the relevant input market only (i.e. in this case, the LLC market):²

“However, in practice, if an undertaking has been designated as having SMP on an upstream wholesale or access market, NRAs will normally be in a position to prevent any likely spill-over or leverage effects downstream into the retail or services markets by imposing on that undertaking any of the obligations provided for in the access Directive which may be appropriate to avoid such effects”.

¹ IDA, Revised Preliminary Decision, paragraph 91.

² European Commission, *Commission guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services*, 2002/C165/03, 11 July 2002, paragraph 84.

- 2.5. In the event that the IDA decides to maintain *ex ante* regulation of the LLC market (retail and wholesale), it should then remove *ex ante* regulation of the downstream LMDS and BLTS markets, as well as *ex ante* regulation of the downstream corporate and government customer segment. The continued imposition of *ex ante* regulation in these downstream markets would be disproportionate and unnecessary.
- 2.6. It cannot be said that there has been insufficient time for parties to acquire LLCs and to enter the downstream markets in a meaningful way. *Ex ante* regulation of LLCs (retail and wholesale) has now been present for many years and ample time has been given to competitors to compete.
- 2.7. Indeed, SingTel has customised LLC schemes for competitors, (e.g. AT&T, Verizon, Reach, C&W, Equant, M1 etc.) for the purpose of them building-up their own network and offering competing services in downstream markets, including in the LMDS and BLTS markets and the corporate and government customer segment. SingTel has previously provided the IDA with a confidential list of all the customised LLC schemes it has offered to competitors as at September 2008 which comprises specific customisation based on volume, contract terms, packaging of services, depending on the requirements set by the competitor.

Over-reliance on presumptive market share thresholds

- 2.8. The Revised Preliminary Decision continues to place too much emphasis on market share, while not taking sufficient and appropriate account of other factors, such as evidence of facilities-based competition and continuing downward price movements.
- 2.9. SingTel disagrees with the IDA's statements about its stated approach to market share and its assertion that it will only decide against granting an exemption in markets where SingTel's market share exceeds 40% because "*other evidence failed to overcome the presumption that SingTel is not subject to effective competition in that market*".
- 2.10. As part of its exemption request, SingTel submitted extensive verifiable and objective evidence that clearly suggests that there is effective competition in various markets considered by the IDA, notwithstanding SingTel's market share in the relevant market.
- 2.11. This evidence has largely been ignored by the IDA, not because it is insufficient, but rather because the IDA does not undertake any real or meaningful consideration of these other factors once it is established that SingTel's market share exceeds 40%.

- 2.12. This is evident in the IDA's reasoning in the Revised Preliminary Decision.
- 2.13. While SingTel appreciates that a presumptive approach to market share is contained in the IDA's Exemption Guidelines, the fact that the IDA adopts a presumptive approach to dominance based on market share highlights the very strong need for the IDA to have sufficient regard to other factors in determining whether SingTel remains dominant in a market.
- 2.14. The fact that SingTel may have a market share in excess of 40% must be considered together with other factors that may negate the presumption of dominance associated with such a market share.

Consistency of the IDA's approach to dominance with international practice

- 2.15. Contrary to the IDA's statement that its approach to dominance is consistent with the EC practice³, SingTel submits that the IDA has failed to properly take account of all the factors that must be considered before imposing *ex ante* regulation.
- 2.16. SingTel does not consider that the IDA's approach to dominance aligns with practice in EC countries. While the IDA is correct in stating that the EC places emphasis on market share in determining dominance, it also provides that market share is only one of the many factors⁴ that must be taken into account by the NRAs when considering the issue of dominance for *ex ante* regulation purposes.
- 2.17. The EC has stated that⁵:

“It is important to stress that the existence of a dominant position cannot be established on the sole basis of large market shares ... Therefore, [National Regulatory Authority] NRAs should undertake a thorough and overall analysis of the economic characteristics of the relevant market before coming to a conclusion as to the existence of significant market power (our emphasis).”

³ European Commission guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services (2002/C 165/03).

⁴ Other factors include the overall size of the undertaking, whether control of infrastructure not easily duplicated, technological advantages or superiority, absence of countervailing buying power, easy or privileged access to capital markets/financial resources, product/services diversification (e.g. bundled products or services), economies of scale and scope, vertical integration, a highly developed distribution and sales network and absence of potential competition. Ibid, at article 78.

⁵ Ibid.

- 2.18. Indeed, the EC has specifically criticised and vetoed decisions by the Finnish competition regulator, Ficora, on the basis that it had found that an operator had SMP primarily due to its high market share (more than 60%)⁶. The EC stated that market share alone does not necessarily justify a finding of dominance and that Ficora had failed to consider other market developments that would have rebutted the presumption of dominance in that instance.⁷
- 2.19. Although the IDA has claimed that it has considered all other relevant factors in addition to market share as part of its assessment of dominance, SingTel does not consider that the IDA takes sufficient and appropriate account of these factors once it has established that the presumptive market share threshold for dominance has been met.
- 2.20. In its Revised Preliminary Decision, the IDA has simply alleged that it has considered all other relevant factors to determine whether an exemption should be granted without providing any meaningful explanation or evidence to demonstrate *what factors* it has considered or *the weight it has given to each of those factors*.
- 2.21. In the absence of any clear indication by the IDA as to *what factors* it has considered and *how it has weighted each of those factors* in its overall assessment of dominance, SingTel submits that the IDA appears to have failed to sufficiently consider any other factors once it has determined that the presumptive market share threshold has been met.

Use of market share data from third party sources

- 2.22. In its Revised Preliminary Decision, the IDA has criticised SingTel for its use of third party data “*without independently verifying its accuracy or even assessing the methodology used to derive the estimate*”.
- 2.23. First, SingTel has provided the IDA with the clarifications that were requested in relation to the composition of market share data.
- 2.24. The purpose of obtaining data from independent third parties is to ensure that data submitted to the IDA is developed independently and free of conflicts of interest. For SingTel to verify the accuracy, question the veracity and assess the methodology of

⁶ EC decision FI/2004/0082, *Access and Call Origination on Public Mobile Telephone Networks in Finland*, 5 October 2004, available at http://circa.europa.eu/Public/irc/info/ecctf/library?!=commissionsdecisions/commission_decisions_1/greffie_203411_en/EN_1.0_&a=d

⁷ Ibid.



independent third parties would in fact interfere with the objective of ensuring independence.

2.25. We therefore disagree with the IDA's statements in this regard.

StarHub's LLC deployment in the Singapore CBD

2.26. In its Revised Preliminary Decision, the IDA has disputed verifiable evidence provided by SingTel that StarHub has installed its own fibre in at least 90% of all MDF rooms in the CBD.

2.27. In particular, the IDA has claimed that StarHub has installed its own fibre in 60% of MDF rooms in the CBD. It remains unclear how the IDA has reached such a conclusion.

2.28. Further, the IDA has claimed that *"the number of buildings in the CBD is roughly double the number of MDF rooms"* and that, based on this estimate, *"StarHub only has a presence in about 30 percent of buildings in the CBD"*.⁸

2.29. The IDA has incorrectly assumed that because the number of buildings is roughly double the amount of MDF rooms, that StarHub's network footprint is only half of the IDA estimate. This is unsubstantiated and incorrect.

2.30. SingTel has sighted StarHub fibre in [CONFIDENTIAL] MDF rooms out of a total of [CONFIDENTIAL] MDF rooms in CBD exchange areas (as at September 2008). Furthermore, SingTel had in 2007 provided the IDA a list of buildings and addresses where StarHub had deployed fibre. Since each building has to be served by an MDF room (and that MDF room may also serve another building), it means that StarHub is capable of actually serving roughly twice the amount of buildings through its fibre presence in [CONFIDENTIAL] MDF rooms (i.e. [CONFIDENTIAL] MDF rooms x 2 buildings).

2.31. SingTel's evidence is also supported by StarHub's own public statements about the extent of its network coverage in the Singapore CBD. For example:

- a. an article in the Straits Times on 12 November 1998:

⁸ IDA, Revised Preliminary Decision,

“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.

- b. an article in the Telecommunications Authority of Singapore “VISTAS”, Issue 1, 1999:

“Cable-laying started in December and is taking place in phases. By April 2000, StarHub’s network will cover 100 per cent of the business area and 64 per cent of residential homes in Singapore, while by April 2001, 90 per cent of residential homes will be served by a StarHub fixed line. The entire network will be completed by April 2002.” (Emphasis ours)

- c. an article in the Telecommunications Authority of Singapore “VISTAS”, Issue 2, 1999:

“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.

- 2.32. At the time of awarding the PBTS license to StarHub in 1998, Mr Mah Bow Tan, the Minister for Communications at that time, stated that StarHub was selected:⁹

“.....primarily because of its aggressive rollout plans for an extensive optical fibre network to homes, offices and other buildings by year 2000. StarHub has committed to invest more than \$2 billion in its fixed line network and has also offered a comprehensive range of services at competitive prices and at higher quality of service standards.”

- 2.33. More specifically, with respect to StarHub’s network rollout commitments, it was reported at the time that:¹⁰

⁹ Speech by Mr Mah Bow Tan, 5 May 1998.

“StarHub will complete its fibre network to the central region (Singapore) by year 2000. This will be followed by the eastern region by year 2001 and the northern region by 2002. StarHub has also committed itself to key milestones in the deployment of the underground duct and fibre cables, the equipment installation and testing.”

2.34. These statements (and the extent of StarHub’s deployment) were reaffirmed in StarHub’s prospectus in 2004 stated:

“we operate three networks...a high capacity fibre optic network which directly connects over 800 commercial buildings with wide coverage across the Singapore central business district”

2.35. There is no reason for the IDA to doubt the accuracy of these public statements.

2.36. Accordingly, SingTel’s statement that StarHub has installed its own fibre in at least 90% of MDF rooms in the Singapore CBD is accurate.

2.37. Further, the fact is that in the CBD there is a total of [CONFIDENTIAL] MDF rooms in commercial buildings. These are the commercial buildings that typically require business and government telecommunications services, such as LLCs. As the table below shows, StarHub fibre is located in [CONFIDENTIAL] MDF rooms in these commercial buildings (i.e. 90%).

CBD Area	Commercial Building MDF	StarHub Fibre	%
Central	CONFIDENTIAL	CONFIDENTIAL	86%
City	CONFIDENTIAL	CONFIDENTIAL	100%
East Central	CONFIDENTIAL	CONFIDENTIAL	93%
Orchard	CONFIDENTIAL	CONFIDENTIAL	74%
Total	CONFIDENTIAL	CONFIDENTIAL	90%

¹⁰ “StarHub Pledges S\$150m in performance bonds to TAS”, in *Business Times Singapore*, 16 October 1998.

2.38. In light of the public statements and the evidence, the IDA cannot reasonably claim that after 9 years, StarHub still does not have full coverage of the CBD. If the IDA maintains this view despite the above public statements and evidence, SingTel would invite the IDA to accompany SingTel to the MDF rooms in the CBD and sight the presence of the StarHub network. Further, any such verification should not be used to impair or delay the removal of *ex ante* regulation in other markets such as backhaul, terrestrial IPLC and IMDS.

Price reductions and tariffing

2.39. SingTel is also disappointed that the IDA has largely ignored the existence of other factors such as falling price levels and a multitude of tariffs as evidence of the existence of a competitive market (or a market that is increasing in competitiveness).

2.40. For example, the IDA has claimed that low tariffs for business DEL *are a result of IDA's price regulation, not due to the existence of effective competition, and plainly do not refute the inference of market power*".¹¹ The IDA has also made similar comments on LLC prices.¹²

2.41. SingTel disagrees with such statements.

2.42. SingTel is responsible for setting tariffs, which are designed having regard to a multitude of factors, including customer demand and the competitive dynamics of the markets in which telecommunications services are offered. The IDA's role is to review and approve SingTel's tariffs – it is not responsible for the design of tariffs, nor for the pricing that underpins each of SingTel's service offerings.

2.43. Accordingly, it is incorrect for the IDA to state that low prices are simply a product of the IDA's price regulation.

2.44. The extensive nature of price competition in relation to the BLTS (which includes the PhoneNet and i-PhoneNet services), and similarly, in the LLC and LMDS markets respectively, is well demonstrated through the following evidence of price reductions (which were previously provided to the IDA and which seem to have been ignored or largely downplayed):

¹¹ IDA, Revised Preliminary Decision, paragraph 60.

¹² IDA, Revised Preliminary Decision, paragraph 86(a).



- a. PhoneNet and i-PhoneNet – up to 50%
- b. retail LLCs – discounts of up to 75%
- c. LMDS – discounts of up to 60%

2.45. Similarly, SingTel has provided the IDA with extensive evidence of the number of tariffs filed, including:

- a. between 2003 and 2008, SingTel submitted more than 50 tariffs for PhoneNet and i-PhoneNet services, covering new and amended tariffs, promotional offers and customised schemes (as at 19 September 2008);
- b. confidential data of the new and amended tariffs, promotional offers and customised schemes submitted by SingTel in relation to LLCs and LMDS.

Lack of a pro-active approach to deregulation

2.46. The IDA has rejected SingTel's exemption request for all retail services provided to corporate and government customer segment with an annual spend of at least S\$250,000, on the largely unsupported basis that:

- a. many corporate and business customers have no alternative but to purchase LLCs from SingTel, especially in non-CBD areas; and
- b. the S\$250,000 spend threshold is too low because it may include medium-sized enterprises who do not possess countervailing power.

2.47. SingTel is disappointed by the IDA's failure to consider deregulation in a pro-active manner. The IDA's approach reflects a bias towards maintaining regulation rather than seeking to ensure that regulation remains proportionate.

2.48. SingTel has previously explained to the IDA that:

- a. less than 1% of its corporate and government customers have a spend of \$250,000 or more on telecommunications services – these entities are amongst the largest companies and government bodies in Singapore and will clearly be in a position to exercise countervailing power, even if they are not necessarily MNCs – it is



incorrect for the IDA to allege that this threshold would include businesses that lack countervailing power;

- b. the spend on LLCs by corporate and government customers is modest as a proportion of total spend and averages approximately *only a quarter* of their total telecommunications spend – the IDA cannot reasonably claim that SingTel’s conduct in relation to the supply of LLCs to these customers would not be constrained by the fact that these customers are purchasing these services as part of a much larger bundle.
- c. Further, as SingTel has noted above, in the event that the IDA decides to maintain *ex ante* regulation of the LLC market (retail and wholesale), there is significant scope for the removal of regulation in respect of the corporate and government customer segment, as the maintenance of LLC regulation in respect of this segment would address the IDA’s stated concerns.

2.49. Finally, SingTel submits that the IDA should not dismiss this aspect of SingTel’s exemption request without providing its own proposal as to how this otherwise competitive segment of the market could be exempted from unnecessary *ex ante* regulation.

3. CONCLUSION

3.1. SingTel submits that the IDA should review its Revised Preliminary Decision having regard to the points raised in this submission and SingTel’s previous submissions and the data provided. SingTel recommends that the IDA modify the Revised Preliminary Decision when making its final decision to take into account each of SingTel’s points.