

**M1'S RESPONSE TO IDA'S CONSULTATION PAPER ON  
FIRST TRIENNIAL REVIEW OF THE CODE OF PRACTICE FOR  
COMPETITION IN THE PROVISION OF TELECOMMUNICATION SERVICES  
("CODE")**

**5 December, 2003**

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## **M1'S RESPONSE TO IDA'S CONSULTATION PAPER ON FIRST TRIENNIAL REVIEW OF THE CODE OF PRACTICE FOR COMPETITION IN THE PROVISION OF TELECOMMUNICATION SERVICES ("CODE")**

1. M1 welcomes IDA's review of the regulatory regime for competition in the telecommunications industry. The review is necessary in view of the market developments since Y2000.
2. M1 has been providing cellular mobile and paging services to the Singapore market since 1 April 1997 and in August 2000, we launched our international telephone services. In April 2001, M1 was also awarded a FBO Licence for the Provision of 3G Mobile Communication System and Services and a 3G Spectrum Right.
3. The implementation of the Code has helped to foster competition in Singapore and safeguard against unfair methods of competition. While the current code has achieved its key objectives, market dominance still exist in several sectors. M1 is pleased to note that IDA retained the *ex ante* regulations that are vital to sustain a competitive market and imposed other measures to address the remaining market dominance in the respective sectors. We support IDA's regulatory approach and overall framework proposed. However, we view that some adjustments may be necessary to tackle the changing nature of competition.

### **Incorporate the Phenomenon of Joint/Collective Dominance**

4. M1 commends IDA on broadening the definition of Market Dominance to be based on economic consequences and in line with international practices. However, we note that the definitions for Dominance or Significant Market Power (SMP) are still limited to single dominance.
5. With changing market boundaries and technological convergence, collective or joint dominance is likely to develop. Several regulatory authorities have acknowledged the importance of this development and amended their competition regime to capture this phenomenon. For example,

#### Oftel/European Commission<sup>1</sup>

*"An undertaking shall be deemed to have significant market power if, either individually or jointly with others, it enjoys a position equivalent to dominance, ... SMP may be held by only one company in the market (single dominance) or by more than one company (collective, or joint, dominance)."*

#### OFTA<sup>2</sup>

Dynamic changes such as technological convergence may result *"in the market power in a particular service (eg: pay TV) transmitted over a particular network may be horizontally leveraged into other retail markets (eg: local telephony or Internet service provision). TA will fully take into account these changes in the industry when assessing the effects on competition of mergers and acquisitions involving any licensed telecommunication carriers"*.

6. M1 urges IDA to adopt a progressive approach and capture the changing nature of competition by amending Sections 1.9 (p), 2.2.1 (a) and 2.6.2 accordingly.

### **Adopt "Cost-Plus" Pricing Approach for Mandatory Wholesale Services**

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<sup>1</sup> Oftel, *Oftel's market review guidelines: criteria for the assessment of significant market power*, 5 Aug 2002.

<sup>2</sup> OFTA, *Draft Merger Guidelines for Hong Kong Telecommunications Markets*, 4 Aug 2003.

7. In line with the Code's goal of promoting efficient market conduct, M1 urges IDA to adopt a "cost-plus" approach for Mandatory Wholesale Services. A "cost-plus" approach would examine necessary cost, instil the importance of cost discipline and cater for a reasonable rate of return for infrastructure investment. Furthermore, cost-oriented rates are in line with international practices<sup>3</sup>. On the contrary, "retail-minus" approach would neglect the important aspects of cost relevance and appropriate cost allocation in pricing. This would undermine the policy intent of mandating wholesale services and contradict IDA/Code's goal. IDA should also establish benchmark rates for Mandatory Wholesale Services to ensure that Singapore remains competitive with similarly situated countries.

#### **Re-designate Dark Fibre as Mandatory Wholesale Service**

8. To catalyse the development and deployment of 3G and innovative new applications/services in Singapore that is not possible with a limited bandwidth service, we propose that IDA re-designate dark fibre as a Mandatory Wholesale Service.
9. Operator use of dark fibre would encourage investment in expansive transmission equipment for carrying higher bandwidth. The re-designation of Dark Fibre as a Mandatory Wholesale Service will ensure the cost-effectiveness of such development. This will serve to introduce competition into the provision of higher bandwidth access, and in turn, facilitate the delivery of high-speed information age services to consumers.

#### **Prohibit Bundling or Tying Arrangements with Products/Services offered in a Monopolistic or less competitive market**

10. With increase bundling and tying arrangements observed in Singapore's telecommunications industry, there is a need to safeguard against such subtle and prolonged means of leveraging market power from one market to erode the competitiveness of another market. In this way, bundling can be used strategically to foreclose or reduce the ability of other competitors in a particular market to efficiently compete.
11. The changes in Section 4.2.1.3 (Duty to Provide Unbundled Telecommunication Services) is insufficient to cover all aspects of anti-competitive bundling, in particular, bundling/tying a product/service offered in a monopolistic or less competitive market with another product/service in a highly competitive market.
12. IDA can review international practices adopted by other legislations in handling competition issues. For example:

##### UK

The Competition Act 2000 prohibits bundling where a dominant operator bundles together physically services that could be supplied separately and competitively.

##### The World Bank Group<sup>4</sup>

*"An abusive form of tied sales is tying the product or service offered in a highly competitive market to another product in a monopolistic or less competitive market."*

*"This concern is particularly serious where the operator includes a service in the bundle, ..., of which it is the monopoly or dominant supplier."*

##### Hong Kong

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<sup>3</sup> Council Directive 92/44/EEC (5 June 1992) on the application of open network provision to leased lines, EC

<sup>4</sup> The World Bank Group, *Telecommunications Regulation Handbook – Competition Policy*, Nov 2000.

The practice of “tying” product/service is prohibited. Even where the tied or linked sales are not connected to an anti-competitive purpose or effect eg: for technological reasons, TA’s consent is required before the tying conduct is engaged in.

Australia<sup>5</sup>

“Examples of bundling that may have the effect of substantially lessening competition...include:

- Tying of a service (where the carrier ... has substantial market power...) with another service, or services, in a market where it lacks market power.
- The supply of a bundle of services where the individual service elements are clearly identifiable but any one of these elements cannot be separately purchased by a customer at a price equal to or lower than the price of that element in the bundled offering.”

13. We urge IDA to be more proactive and rigorous in its checks against such anti-competitive behaviour as compared to a reactive stance in handling complaints or feedback. The prolonged manifestations of such anti-competitive behaviour would erode competition.
14. In addition to the above, M1’s detailed comments on the proposed Code can be found in Annex 1.

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<sup>5</sup> ACCC, *Anti-competitive conduct in telecommunications markets – An information paper*, Aug 1999.