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**RECENT INTERNATIONAL DEVELOPMENTS:
IS SINGAPORE READY FOR “PHASE THREE”
TELECOM REGULATION?**

**IDA REGULATORY WORKSHOP
7 October 2003**

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OVER-VIEW OF THE PRESENTATION

- **The Three Phases of Telecom Regulation**
- **The Telecommunication Competition Code**
- **Recent Developments in the EU and US**
- **Implications for Singapore**

THREE PHASES OF TELECOM REGULATION

- **Phase One: *Ex Ante* Regulation in a Monopoly Environment**
 - **Telecom market viewed as a “natural monopoly” with an important social and economic role**
 - **Role of regulation**
 - ◆ **Control prices**
 - ◆ **Prevent discrimination**
 - ◆ **Ensure availability of adequate service**

THREE PHASES OF TELECOM REGULATION

- **Phase Two: Regulating Towards Competition**
 - **Telecom market viewed as potentially competitive**
 - **Role of regulation**
 - ◆ **Eliminate regulatory barriers to new entry**
 - ◆ **Facilitate new entry by requiring incumbents to cooperate with new entrants**
 - ◆ **Continue to regulate incumbents, but relax regulation to the extent they are subject to effective competition**

THREE PHASES OF TELECOM REGULATION

- **Phase Three: Competition Law Approach**
 - **Significant portions of telecom market viewed as effectively competitive**
 - **Role of regulation**
 - ◆ **Impose targeted regulation only in specific markets that are found not to be competitive**
 - ◆ **Rely on after-the-fact enforcement of competition law rules to deter abuses, such as price fixing or predation**

TELECOM COMPETITION CODE

- **Singapore's Telecom Competition Code is Basically a "Phase Two" Approach**
 - **"IDA will take resolute measures to promote and maintain effective competition"**
 - **"To the extent that a given market is not yet effectively competitive, significant *ex ante* regulation is likely to be necessary"**
 - **"As competition develops, regulation becomes less necessary and, in many cases, can be counter-productive. Therefore, IDA will strive to eliminate or modify the provisions of this Code to reflect the development of competition."**

THE TELECOM COMPETITION CODE

- **However, the Code Establishes the Foundation for “Phase Three” Regulation as Effective Competition is Established**
 - **Reduction of Dominant Licensee regulation**
 - ◆ **Reclassification of Dominant Licensees**
 - ◆ **Exemption from Dominant Licensee regulation**
 - ◆ **Triennial RIO review**
 - **Establishment of a sector-specific competition law regime**

INTERNATIONAL DEVELOPMENTS

- **During the Last Year, the EU and the US Have Started to Move From “Phase Two” Regulation Towards Implementing “Phase Three” Regulatory Regimes**
 - **EU: New Telecom Framework**
 - **US: FCC UNE Triennial and TELRIC Reviews**

INTERNATIONAL DEVELOPMENTS

- **The EU New Telecommunications Framework**
 - **The former EU regime**
 - ◆ **EU adopted its previous regulatory framework in 1988, before full liberalisation**
 - ◆ **Market “areas” or “sectors” subject to *ex ante* regulation were established in a series of European Commission directives**
 - ◆ **Telecom operators with significant market power – defined as a market share of 25 percent or more – were subject to extensive regulation**

INTERNATIONAL DEVELOPMENTS

- **New EU regulatory framework (effective July 2003) adopts a “competition law approach” for regulation of all “electronic communications networks”**
 - **“Regulations should only be imposed on those . . . markets . . . in which the relevant national regulatory authority has determined that one or more operators has significant market power” (Guidelines ¶ 17)**
 - **“The purpose of imposing *ex ante* obligations on undertaking designated as having SMP is to ensure that [they] cannot use their market power either to restrict or distort competition . . . or to leverage such market power into adjacent markets” (Guidelines ¶ 16)**

INTERNATIONAL DEVELOPMENTS

- **Three-step process**
 - ◆ **Define relevant communications markets**
 - ◆ **Assess whether any firm has significant market power within the relevant market**
 - ◆ **Impose *ex ante* regulations**

INTERNATIONAL DEVELOPMENTS

➤ Step 1: Market definition

- ◆ “Markets will be defined . . . using the same methodologies as under competition law” (Guidelines ¶ 24)
- ◆ A relevant product market consists of all products (services) that are reasonable substitutes
 - Theory: Market consists of the largest group of products for which a “hypothetical monopolist” could profitably raise prices
 - Practice: Qualitative assessment of physical and technical characteristics, evidence of actual switching
 - 18 “pre-defined” relevant telecom service markets

INTERNATIONAL DEVELOPMENTS

- **Step 2: Significant market power**
 - ◆ **Ability to “behave to an appreciable extent independently of competitors, customers and ultimately consumers”**
 - ◆ **Firm presumed to have SMP if it has market share of 40 percent or more**
 - ◆ **Other relevant factors**
 - **Concentration**
 - **Barriers to entry/potential entrants**
 - **Countervailing “buyer-side” purchasing power**

INTERNATIONAL DEVELOPMENTS

- **Step 3: Imposition of regulatory measures**
 - ◆ **Obligation may be imposed *only* on operators with significant market power**
 - ◆ **Specified “menu” of regulatory obligations (RIO publication, price control, non-discrimination, accounting separation)**
 - ◆ **Obligations imposed must be “appropriate” and “proportionate”**

INTERNATIONAL DEVELOPMENTS

- **The FCC's *UNE Triennial Review Order***
 - **US telecom liberalisation began in the late 1970s**
 - **1996 Telecom Act adopted a “Phase Two” approach; incumbent local telcos (“ILECs”) required to cooperate with new entrants (“CLECs”)**
 - ◆ **Duty to interconnect and exchange traffic**
 - ◆ **Duty to lease unbundled network elements (“UNEs”) at cost-based prices**
 - ◆ **Duty to sell retail services at wholesale rates**

INTERNATIONAL DEVELOPMENTS

➤ *FCC Local Competition Order (1996)*

- ◆ ILECs required to “unbundle” network elements to the extent “technically feasible”
- ◆ UNE prices to be set based on forward-looking long-run incremental cost of hypothetically efficient network (“TELRIC”)
- ◆ Rules designed to “jump start” local competition by reducing the cost of new entry
 - UNE Platform
 - DSL line sharing

INTERNATIONAL DEVELOPMENTS

- ***UNE Triennial Review Order (August 2003): Significant change in U.S. regulatory regime***
 - ◆ **FCC looked to competition law principles – including the very restrictive “essential facilities doctrine” – to determine when an incumbent should be required to share its facilities with its rivals**
 - ◆ **FCC now believes that “excessive” unbundling at TELRIC-based prices eliminates both ILEC and CLEC economic incentives to deploy new facilities, especially broadband**
 - ◆ **Going forward, unbundling will only be required when requiring CLECs to replicate ILEC facilities would make new entry “uneconomic”**

INTERNATIONAL DEVELOPMENTS

- **The FCC also launched a review of the methodology used to set UNE prices**
 - ◆ **Pricing rules “should not create incentives for carriers to avoid investment in facilities.” (TELRIC Notice ¶ 3)**
 - ◆ **Pricing should be based more on the “real-world attributes . . . of an incumbent’s network,” rather than the prices of a hypothetically efficient network (TELRIC Notice ¶ 52)**
 - ◆ **FCC is likely to modify the TELRIC methodology; this could significantly increase UNE costs**

IMPLICATIONS FOR SINGAPORE

- **Given Recent Actions in the EU and US, Should Singapore Adopt a “Phase Three” Approach?**
- **A “Phase Three” Approach has Potential Benefits**
 - **“Cutting edge” approach; reflects convergence**
 - **Theoretically sound; links regulation to market conditions**
 - **Allows for application of established body of competition law to determine need for, and extent of, regulatory intervention**

IMPLICATIONS FOR SINGAPORE

- **However, Several Factors Suggest That it May be Too Soon for Singapore to Adopt a “Phase Three” Approach**
 - **Level of competition**
 - ◆ **A “Phase Three” approach starts with the assumption that markets are competitive, and requires the regulator to justify intervention**
 - ◆ **The US and the EU liberalised their telecom markets long before Singapore; significant competition has taken root**
 - ◆ **Three years after liberalisation, it may be too soon to assume that most Singapore telecom markets are competitive**

IMPLICATIONS FOR SINGAPORE

➤ Level of expertise

- ◆ Implementation of a “Phase Three” regime requires significant economic expertise
- ◆ The EU and the US have highly developed national competition law regimes, and significant economic expertise
- ◆ Singapore does not yet have national competition law and, therefore, significantly less experience with applied economic analysis

IMPLICATIONS FOR SINGAPORE

➤ Implementation issues

- ◆ The “Phase Three” approach has not yet been implemented in either the EU or the US
- ◆ Initial indications are that implementation will be time-consuming and difficult – 10 of the 15 EU Member States failed to meet the implementation deadline
- ◆ Singapore might benefit by learning from the experience in other jurisdictions

IMPLICATIONS FOR SINGAPORE

➤ Market impact

- ◆ Pre-mature elimination of these rules could reduce competition; many U.S. CLECs believe that elimination of FCC “line sharing” and “UNE Platform” rules will force them from the market
- ◆ Singapore’s small size creates particular challenges for new entrants

IMPLICATIONS FOR SINGAPORE

➤ Policy implications

- ◆ A “Phase Three” approach assumes preventing anti-competitive conduct is the only justification for telecommunications regulation
- ◆ Singapore may want to adopt regulation to achieve other policy goals