

SINGAPORE TELECOMMUNICATIONS LIMITED

RESPONSE ON IDA FIRST TRIENNIAL REVIEW OF THE CODE OF PRACTICE FOR COMPETITION IN THE PROVISION OF TELECOMMUNICATIONS SERVICES

PART A: STATEMENT OF INTEREST AND STRUCTURE OF SUBMISSION

- 1.1 SingTel is licensed to provide telecommunications services in Singapore. It was corporatised on 1 April 1992. SingTel is committed to the provision of state-of-the-art telecommunications technologies and services in Singapore. SingTel has a comprehensive portfolio of services that includes voice and data services over fixed, wireless and Internet platforms. SingTel services both corporate and residential customers and is committed to bring the best of global communications to its customers in the Asia Pacific and beyond.
- 1.2 As a leading provider of telecommunications services and a leading proponent of innovation and competition, SingTel has a strong interest in effective pro-competition regulation of Singapore's telecommunications industry.
- 1.3 This submission is structured in the following Parts:
- Part B – a summary of SingTel's major points;
 - Part C – the rationale for regulation;
 - Part D – well-entrenched state of competition in Singapore;
 - Part E – SingTel's detailed comments on the draft Code of Practice for Competition in the Provision of Telecommunication Services (2004) (**draft Code 2004**).
- 1.4 In relation to the process of consultation under this First Triennial Review, SingTel submits that the IDA should circulate a further draft of the draft Code (2004) together with a general response to the issues raised as part of this round of consultations, and provide the opportunity for comments and consideration of this further draft of the Code (2004).

PART B: SUMMARY OF MAJOR POINTS

2. SINGTEL EXPECTATIONS FOR THE FIRST TRIENNIAL REVIEW AND REGULATORY ROLLBACK

2.1 SingTel is pleased to respond to the First Triennial Review of the Telecom Competition Code (**Code 2000**). SingTel welcomes the IDA's ongoing review of the state of competition in the telecommunications sector in Singapore and the consequent need for regulation to keep pace with the market. Competition is well entrenched in the Singapore telecommunications sector and there is considerable scope for regulatory roll-back.

2.2 However, SingTel wishes to express its deep disappointment at the methodology, evaluation and draft outcome of the First Triennial Review. In its present form, the draft Code (2004) proposes no or very little change to the regulatory environment. In our view, the draft Code (2004) could be described as simply a "reformatted status quo" – that is, it is essentially the same as the Code (2000) with some reformatting. Furthermore, the draft Code (2004) does not reflect any of the practical implementation issues which have arisen over the course of the last three (3) years and which are cause for concern.

2.3 The draft outcome of "reformatted status quo" does not reflect the state of competition and as such is inconsistent with the current competitive state of the Singapore market. Despite statements by the IDA that:

- *"The proposed revisions will result in less regulation in market segments that have competition";*
- *"In market segments where there is competition, IDA will scale back its regulatory role";* and
- *"The basic approach here is to rely on market forces and industry self-regulation, as these are more effective in sustaining competition in the long term",*

there is no or little evidence of the above in the draft Code (2004). The draft Code (2004) does not exempt any market segments despite the IDA's acknowledgment that competition has developed in market segments and despite the highly developed state of competition in Singapore.

2.4 SingTel strongly submits that the IDA should be basing its First Triennial Review on traditional, market-based principles and objective market analysis. Based on this

approach and on the state of competition in Singapore, SingTel submits that there should be substantive changes to the draft Code (2004).

2.5 SingTel wishes to make ten (10) substantive points in this summary, each of which should form the basis of amendments to the draft Code (2004) as set out in more detail in Part E.

(1) Refine dominance test

2.6 The application of the dominance test on a broad-based entity level is flawed, inconsistent with the principles in the draft Code (2004), and results in over-regulation of the Singapore telecommunications sector. SingTel submits that the IDA should adopt a more refined and defined approach to dominance and regulation. In particular, the IDA should change the dominance test so that it is based on a market-by-market analysis rather than the broad-brush entity based form of regulation in the draft Code (2004).

2.7 At present, the IDA takes a presumptive approach to the imposition of regulation and a passive approach to the removal of regulation. The onus and burden rests with Dominant Licensees to actively seek exemptions on a market-by-market basis. Essentially, a Dominant Licensee is presumed ‘guilty’ until they prove their ‘innocence’.

2.8 SingTel submits that the presumptive approach to the imposition of regulation and the passive approach to the removal of regulation is inappropriate in a highly competitive, dynamic market such as Singapore and is inconsistent with international best practice and the fundamental principles of the draft Code (2004). The IDA should take a market-by-market approach to the regulation and a proactive approach to the roll-back of regulation as competition develops. As highlighted in our comments below on assessing the state of competition, the IDA should proactively perform regular and timely reviews of the state of competition to ensure that as competition develops in market segments, regulation is correspondingly rolled-back and markets are allowed to operate without regulatory distortion.

2.9 In summary, after many years of progressive liberalisation commencing in the mid-1990s and after three (3) years of full liberalisation, the Singapore telecommunications sector is highly competitive in many market segments. The IDA has acknowledged that there is competition in market segments in Singapore. The broad-brush entity based approach to dominance and regulation in the draft Code (2004) over-extends regulation into market segments where there is strong competition. This has the effect of distorting and dampening competition, not enhancing it. Further, no other country bases its “dominance test” on an entity-basis. It is not best practice to do so and it is a virtually unrecognised

form of regulation. SingTel submits that this dominance test should be changed and replaced by a more refined and defined market-by-market approach.

(2) Assess competition in Singapore markets

2.10 Second, SingTel submits that the IDA should perform an assessment of the state of competition in the various market segments of the Singapore telecommunications sector. SingTel is disappointed that the IDA has issued the draft Code (2004) without any analysis of the state of competition in the Singapore telecommunications sector. SingTel's analysis is set out in Part D of this submission. In summary, consistent with the principles of the draft Code (2004), the IDA's recognition that there is competition in market segments and IDA's stated intent of scaling back its regulatory role where there is competition, SingTel believes that regulation should be rolled-back in the following market sectors:

- the business and government segment;
- the International Capacity Services (**ICS**) market;
- the International Telephone Services (**ITS**) market;
- the Local Data Service (**LDS**) market, which includes the Local Leased Circuit (**LLC**) segment; and
- new markets for telecommunications services.

(3) Roll-back tariffing regulation and tariff publication requirements

2.11 Third, the IDA should remove tariffing regulation and tariff publication requirements. Under the current requirements, all retail and wholesale services provided by a Dominant Licensee must be tariffed and the tariffs published even when those services are provided in market segments that are competitive. At most, tariff regulation and tariff publication requirements should be limited to those basic residential services that are considered essential services. The tariff regulation and tariff publication requirements actually operate to dampen competition by delaying or inhibiting new and innovative service investment and developments, and through price-shadowing and conservative price-decision making.

2.12 Tariff regulation of new or innovative services inhibits investment in new and innovative services due to the commercial uncertainty surrounding the effect of tariff regulation. In particular, tariff regulation of new and innovative services creates uncertainty with

respect to whether approval will be granted by the IDA, and if approved, the conditions attached thereto. In addition, tariff regulation of new and innovative services may discourage or inhibit alternative and competitive entry by other operators. When regulating new services through tariffing, the IDA is effectively seeking to second-guess the market. Regulator set outcomes will always be inferior to market based ones. Accordingly, tariff regulation should not be applied to new or innovative services.

2.13 The publication of tariffs, especially packages and customised telecommunications services for the business and government segment, limits rather than facilitates competition. It discourages innovation and encourages price shadowing. Rather than facilitate true competition with creative and innovative packaging and pricing, operators are incentivised to offer packages and prices based on the publicly available information of their competitors, leading to reduced tariff and product diversity and homogenous service offerings and conservative price decision making.

2.14 Business and government customers commonly require packaged or customised telecommunications services. Competition between operators for business and government customers is the most intense of all market segments in Singapore. Rivalry is high and operators constantly look for opportunities to win or win back business and government customers. In this highly competitive market segment, tariff regulation and tariff publication will reduce competition and innovation and encourage price shadowing and homogeneous service offerings to business and government customers. Accordingly, tariff regulation should not apply to the business and government market segment nor should a requirement to publish packaged or customised services.

2.15 Having regard to the competitive state of markets and the dampening effect of tariff regulation and tariff publication, SingTel submits that the IDA can take the following practical steps to eliminate unnecessary tariffing and publication requirements:

- the tariffing and publication requirements should not apply to competitive market segments in Singapore;
- the tariffing and publication requirements should be limited to those basic residential services which are considered essential services;
- the tariffing and publication requirements should only apply to standard tariffs and not extend to promotional tariffs and/or customised packages;
- the tariffing and publication requirements should not extend to the highly competitive business and government market segment;

- new, innovative services should not need to be tariffed nor should the tariffs be published as these requirements simply discourage the emergence of these new services because they are mandated and effectively disclosed to competitors through the tariffing process.

(4) Re-affirm commitment to facilities based competition and audit roll-out commitments

2.16 Fourth, the IDA should re-affirm its commitment to facilities-based competition in Singapore. The benefits of facilities-based competition are well recognised and are superior to services-based competitive outcomes. The time for encouraging services-based competition is over. This may have been an appropriate objective in the early days of competition to stimulate market entry but it is no longer the case. Market entry has occurred and, as the Minister of Information, Communications and the Arts has recognised, facilities-based competition needs to be stimulated. The IDA should not only reaffirm facilities-based competition in its policy objectives accordingly, it should take real and practical steps in this regard.

2.17 In practical terms, the IDA can re-affirm its commitment to facilities-based competition by adopting the recommendations contained in this submission and by including provisions in the draft Code (2004) that would ensure that roll-out commitments in licences are transparent and publicly reviewed so that FBO licences are issued only if a bona fide commitment to facilities-based competition is made and is able to be tested in an open and transparent manner.

(5) Remove wholesale services regulation

2.18 Fifth and commensurate with a re-affirmation of the commitment to facilities-based competition, SingTel submits that wholesale services regulation is unnecessary and that the three layers of regulation in this area as suggested by the IDA should be removed. Mandating the provision of wholesale services simply entrenches reliance on SingTel's network and encourages free-riding off existing infrastructure.

2.19 In practical terms, SingTel submits that:

- the requirement to allow resale of any SingTel retail service is unnecessary and inconsistent with facilities-based competition and should be removed or at the very least restricted;
- There can no justification for requiring resale where there is competition in the relevant market segment or it is prospectively competitive;

- there is no justification for FBOs/SBOs who have been granted a license by the IDA to provide their own equivalent telecommunications service in direct competition with SingTel to simply resell the SingTel retail services;
- the requirement to tariff voluntary wholesale services is entirely inconsistent with the principles of regulation. Rather than encouraging the development of voluntary wholesale services, the proposed regulation simply serves to discourage voluntary wholesale to the ultimate detriment of end users. IDA should not impose regulation on wholesale services that are voluntarily formulated and provided and are recognised as non-essential. The concept of ‘voluntarily regulated wholesale services’ should be removed as an internally inconsistent and unnecessary concept;
- the concept of mandatory wholesale services should also be removed. This concept is now outdated and unnecessary in the Singapore context. It is a concept that was originally introduced three (3) years ago as a short-term measure to ‘kick-start’ competition and market entry. It is no longer appropriate nor necessary to require the provision of mandatory wholesale services which would have an irreversibly and highly damaging effect on facilities-based competition. There is no justification for FBOs/SBOs granted a license by the IDA to invest in, and provide, their own equivalent telecommunications service in direct competition with SingTel to simply acquire a SingTel mandatory wholesale service.

(6) Roll-back and fix flaws in regulation of interconnection and access

- 2.20 Sixth, the IDA should remove regulation in relation to interconnection and access where there are alternatives available or those services are not used or no longer need to be regulated due to the emergence of competition.
- 2.21 The IDA should impose reciprocity with respect to IRS under the RIO to ensure a level playing field, that SingTel is treated fairly and equitably, and is able to acquire equivalent IRS from FBOs/SBOs on the same terms and conditions that SingTel is required to provide those same IRS to FBOs/SBOs under the RIO.
- 2.22 Further, there are existing flaws in the current interconnection regime which should be corrected. For example, under the current interconnection regime whilst SingTel must allow another FBO to directly and physically interconnect with the SingTel network, this is not reciprocal and another FBO can reject a request by SingTel to directly and physically interconnect with their network. In practical terms, given the regulatory requirement to provide any-to-any connectivity to end users, in such cases SingTel is then required to adopt less efficient and more expensive means of delivering and receiving traffic to/from that FBO’s network. This is not only inefficient and costly, it is clearly

inequitable and unfair and illustrates that SingTel does not have market power in relation to physical interconnection.

2.23 Also, the interconnect model for Internet dial up traffic should be reviewed as the current model is flawed and results in an unfair and inequitable outcome. The IDA has acknowledged that “*the network elements and associated costs required should be lower than those incurred to connect a usual telephone call*” and that “*the current model appears to allow the terminating fixed network operators to receive revenue in excess of the efficient cost of terminating traffic*”. Furthermore, the IDA has also acknowledged that a transit charge, “*could better reflect the actual cost incurred for terminating such calls*” and that a Transit Model provides “*minimal transition issues*”.

2.24 Accordingly, SingTel submits that improvements to the interconnection regime under the draft Code (2004) should be practically implemented by:

- removing regulation of those Interconnect Related Services (IRS) where alternatives exist, there is strong existing or prospective competition or where there is no or little demand for those IRS;
- requiring reciprocity with respect to IRS so that if an FBO/SBO acquires an IRS from SingTel under the RIO, SingTel should have a reciprocal right to acquire that IRS from the FBO/SBO under the same terms and conditions that SingTel is required to offer and provide those same IRS to the FBOs/SBOs under the RIO;
- setting sunset dates for the phase-out of regulation of IRS for all other services in order to stimulate facilities-based competition and to ensure that the need for regulation is rigorously assessed on a timely and ongoing basis;
- requiring reciprocity with respect to direct and physical interconnect. Each FBO (first FBO) to directly and physically interconnect with another FBO (second FBO) on request or, alternatively, if the first FBO refuses to directly and physically interconnect, to require the first FBO to pay for any additional cost incurred in delivering traffic to/from the first FBO such as any transit charge to the transit operator;
- amend the draft Code (2004) to account for the dial up arrangements for internet dial-up by adopting the Transit Model which reflects the actual cost incurred, involves very minimal transition issues and redresses the current inequity.

(7) Equivalent regulation in converging markets

2.25 Seventh, the IDA should more explicitly recognise the impact of convergence on competition in the telecommunications sector. It is clear that the means of delivering telecommunications is no longer confined to traditional telecommunications networks. Cable networks are capable of delivering telecommunications and, indeed, SCV/StarHub has been providing telephony over its cable network since 26 December 2002. Traditional telecommunications operators are therefore facing strong competition from entrenched players in other sectors.

2.26 Further, these players in other sectors often enter the telecommunications sector with an entrenched position in their 'home' markets (eg SCV's continued monopoly in the provision of subscription television services) and in markets which are more lightly regulated than telecommunications markets. This allows those players to leverage their entrenched or monopoly position in other markets in telecommunications markets. Accordingly, in addition to recognising the importance of convergence in the policy principles, the IDA can take the following practical steps in the draft Code (2004) to address these concerns:

- the IDA should ensure that telecommunications operators are regulated no more heavily than operators in other sectors. The IDA should ensure that the draft Code (2004) and the Media Market Conduct Code are consistent to the extent possible;
- the IDA should recognise that SCV/StarHub may leverage their position from the subscription television market into telecommunications markets and that SCV should be fully regulated as dominant without the current exemptions;
- amongst other things, the IDA should require SCV to provide a broadcast carriage service (including access to the set-top box) over the SCV network.

(8) Remove general competition provisions upon introduction of Competition Law

2.27 Eighth, the IDA should foreshadow the introduction of a general Competition Law by the Singapore Government in 2005. The telecommunications market is increasingly competitive and barriers to entry into the Singapore telecommunications industry are now non-existent or low. This is due to a number of factors including the effects of liberalisation in telecommunications and convergence. In particular, SingTel submits that the IDA should state in the draft Code (2004) that chapters 8, 9 and 10, which deal with matters traditionally covered by general competition laws, will be phased out in 2005 upon the introduction of a general Competition Law in Singapore.

(9) Improve consultation, enforcement and appeal processes

2.28 Ninth, the IDA should improve enforcement and appeal processes under the draft Code (2004). SingTel has become very concerned about four aspects of the consultation, enforcement and appeal process: (i) the lack of robust, objective analysis of markets, competition and conduct by the IDA in enforcement proceedings; (ii) the lack of consultation particularly in relation to potential outcomes the IDA is examining in public consultation documents; (iii) the delay and open timeframes in making decisions; and (iv) the lack of access to independent third party review of decisions.

2.29 SingTel submits that the following practical changes can be made to the draft Code (2004) to improve these consultation, enforcement and appeal process aspects:

- in relation to the conduct of enforcement actions, the IDA should establish a analytical basis for its analysis and ultimate outcomes consistent with the analytical basis required for assessing the state of competition in market segments;
- the public consultation process should provide for more opportunities for submissions and representations during the course of the decision making process. For example, prior to issuing a final decision in respect of a public consultation document a proposed decision document containing detailed rationale and analysis should be published and public submissions sought;
- limits on the timeframes for the decision making process should be established to reduce regulatory uncertainty and to ensure timely and efficient decision making;
- in addition to the current opportunities for review of decisions by the IDA and the Minister, an opportunity for review by an independent third party from decisions should be available.

(10) Recognise importance of equal treatment of Singapore operators in foreign markets

2.30 Tenth, SingTel submits that the IDA should ensure that Singapore based operators are afforded equal treatment in foreign markets comparable to that which foreign operators are granted in Singapore. Often when Singaporean operators seek to enter the home markets of foreign operators, Singaporean operators are not afforded equal treatment to those foreign operators when entering the Singapore market. SingTel submits that this issue can be practically addressed by the IDA in the draft Code (2004) through:

- enhancing the FBO/SBO distinction so that a foreign operator would only be granted a licence to access the Singapore market where equivalent access is afforded to Singapore operators in the foreign operators home market; and
- inserting a requirement for “national equivalence” in the SingTel RIO, so that a Licensee would be required to ensure that its parent company (or related corporation) in a foreign market would provide services to SingTel on comparable terms and conditions to the RIO.

PART C: THE RATIONALE FOR REGULATION

3. THE FUNDAMENTAL PREMISE OF REGULATION: THEORY VS REALITY

3.1 SingTel does not agree with IDA’s “theories” or “phases” of regulation as the guiding principle by which regulation in Singapore should be assessed. SingTel strongly submits that the fundamental premise of any form of regulation, at any stage is that market outcomes have primacy and regulation should reflect the state of competition.

3.2 The IDA recognises the concept of market forces and proportionality in the Code. Section 1.5.1 of the Code (2000) and the draft Code (2004) states:

“Markets forces are generally far more effective than regulation in promoting consumer welfare. Competitive markets are most likely to provide consumers with a wide choice of services at reasonable prices. Therefore, to the extent that markets or market segments are competitive, IDA will place primary reliance on private negotiations and industry self-regulation, subject to minimum requirements designed to protect consumers and prevent anti-competitive conduct...”

3.3 Similarly, section 1.5.5 of the Code (2000) states:

“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...”

3.4 OFTEL has described the following as the ‘golden rule’ of regulation:

"OfTel believes in competition where possible and regulation only where necessary. This is because competitive markets are most likely to promote innovation and increased productivity with resulting benefits in terms of lower prices and better quality and choice for consumers. In line with this, in the area of

economic regulation Oftel's starting point is that regulation should be limited to situations where competition is either not possible or is not working effectively or where costs and benefits accruing to third parties are not taken into account by market participants. In other words, in the language of economists, where there is a 'market failure'".¹

- 3.5 This market based approach is also consistent with statements made by the Government, including the following statement made by Prime Minister Goh in his National Day Rally Speech 2003 about the new 'mindset shift' necessary in Singapore:

"In the past, we operated largely on the principle that "everything is not allowed unless we say it is". Now, we will give greater room for experimentation. Increasingly, it will be "everything is allowed unless we say it is not" ... well, almost everything!"

- 3.6 This important statement of principle applies critically to areas of regulation. Regulation is not a goal unto itself - markets should not be regulated simply for the sake of regulation. Unless there is clear justification for regulation (i.e. identifiable market failure), regulatory intervention should not occur and the market should be "allowed" to determine outcomes. In this First Triennial Review there has been no or little 'mindset shift', the IDA and its advisers have not followed this approach. The draft Code (2004) still applies a broad-based 'blanket approach' to regulation rather than refined and targeted regulation directed at correcting identifiable market failure.
- 3.7 In formulating the draft Code (2004), the IDA appears to have focused on a "theory" of regulation based on "three phases of deregulation". SingTel does not agree with the theory of deregulation relied upon by the IDA and its advisers for several reasons.
- 3.8 First, SingTel does not believe it is appropriate or consistent with the principles of the Code (2000) or the draft Code (2004) to rely on a subjective and arbitrary analysis of deregulation. The theory of regulation relied upon, or formulated by, the IDA and its advisers is not a generally or well recognised theory or standard. It is a theory of regulation which, SingTel submits, justifies the 'reformatted status quo' outcome in this First Triennial Review rather than to assess the state of competition and the need (or otherwise) for regulation on objective, well understood and recognised grounds.

¹ OFTEL, *Access to Bandwidth: Bringing Higher Bandwidth Services to the Consumer, Consultation Document*, December 1998 at 4.2.

3.9 SingTel believes that it is more relevant and appropriate for the IDA to rely on well-established market principles instead of “theories” of regulation, which could be based on any number of phases. For example, SingTel could formulate its own “phases of deregulation” which would show that Singapore is in the very final stages of the deregulatory phase if we were to include other important and earlier phases including the splitting of the postal and telecommunications functions, the corporatisation of SingTel, the introduction of internet access service provider competition, the introduction of paging competition, the introduction of store-and-forward VAN competition, the introduction of audiotext competition, the introduction of mobile competition, the introduction of VSAT competition, the introduction of internet exchange competition, the transfer of responsibilities from TAS to IDA etc.

3.10 SingTel submits that the review of the Code (2000) should be based on objective and well-established market principles.

3.11 Secondly, in our view, the “theories” of regulation also confuse the scope of sector reform. Sector reform has been recognised as dealing with two distinct issues (a) market entry; and (b) market regulation. It would appear that presentations at the IDA Regulatory Workshop on 7 October 2003 confuse the two issues and interchangeably refer to both market entry aspects and market regulation aspects.

3.12 In relation to market entry in Singapore, as the IDA is aware there are no regulatory barriers to entry. Features of the regulatory framework include (without limitation):

- **No Foreign Ownership Restrictions**

In January 2000, direct and indirect foreign equity limits for all public telecommunications services licences were lifted.

- **Clear and Transparent Licensing Framework**

The IDA has established a clear and transparent framework releasing detailed licensing guidelines.

- **No Limits on the Number of Licensees**

There are no limits on the number of licensees that can be licensed.

3.13 If the IDA wishes to use its advisers’ terminology here, Singapore is in, or has passed, the final stage of reform of market entry because of the open environment in which investment in telecommunications occurs in Singapore.

- 3.14 In relation to market regulation, SingTel refers to the discussion above on the central principle of markets and regulation. As the IDA acknowledges, the market provides the best outcomes. Regulation is by far second best and there is considerable risk of market distortion where regulators attempt to “second guess” the market.
- 3.15 The IDA should examine the state of competition in Singapore and target regulation at those specific market segments where, based on objective market analysis, there is identifiable market failure. SingTel strongly submits that the form of market regulation, whether it be ex post or ex ante regulation, should not be determined by reference to subjective and arbitrary “theories” of regulation.
- 3.16 SingTel submits that rather than a broad-based ‘blanket approach’ to regulation based on “theories”, regulation should be wholly based on the state of competition in Singapore, with regulation targeting only those where there is identifiable market failure.

PART D: WELL-ENTRENCHED STATE OF COMPETITION IN SINGAPORE

4. IMPORTANCE OF A SINGAPORE MARKET ANALYSIS

- 4.1 SingTel believes that a proper assessment of the competitive state of the Singapore market should have been the centrepiece for the IDA’s First Triennial Review. It should have followed from this analysis that substantive regulatory roll-back was warranted.
- 4.2 Based on the fundamental premise acknowledged by the IDA and regulators worldwide that market based outcomes produce the most appropriate results, it is necessary (if not a requirement) for the IDA to objectively and rigorously examine the state of competition in market segments in Singapore to determine whether there is competition in the various market segments. In this Part, SingTel considers the Singapore market and some facts based on the state of competition in that market. Again, SingTel prefers a factual based enquiry founded on well-established principles instead of a “theoretical” approach to regulation as adopted by the IDA.
- 4.3 SingTel is disappointed that despite statements by IDA that there would be “*less regulation in market segments that have competition*” and that in market segments where there is competition “*IDA will scale back its regulatory role*”, there is no or little evidence of this in the draft Code (2004). The IDA has not performed any analysis, let alone any rigorous analysis, of the state of competition in any market segment in the Singapore market. After many years of progressive liberalisation and three (3) years of full liberalisation, SingTel finds this surprising and concerning.

4.4 Before turning to the state of competition in Singapore, SingTel wishes to point out the factors and features of the Singapore market which the IDA must and should consider when examining the state of competition in Singapore. As the IDA is aware, a “copy-paste” approach to regulation in Singapore based on the assumption that the Singapore market is the same as a European or US market is inappropriate. Precedents based on Europe and the US may be irrelevant and misleading when applied to the Singapore market and will produce distorted outcomes.

5. UNIQUE CHARACTERISTICS OF SINGAPORE TELECOMMUNICATIONS MARKET

5.1 Singapore has unique features which distinguish its telecommunications markets from other countries, particularly those such as Europe and the United States. These characteristics have shaped the rapid and highly developed state of competition in Singapore’s various telecommunications market segments.

5.2 There is no “one size fits all” standard for designing and implementing telecommunications regulation. The specific regulatory measures which have been applied in Europe, the United States or Australia, for example, cannot be simply transposed into the Singapore telecommunications environment.

5.3 It is universally acknowledged that the regulatory measures of any jurisdiction must be developed having regard to:

- the unique characteristics of the individual jurisdiction; and
- the state of competition in the various markets which comprise the telecommunications sector. That is, the market outcomes which have evolved since liberalisation and the trends in these outcomes.

5.4 Singapore has a number of unique and broad inter-related characteristics which distinguish its telecommunications markets from other countries:

- its compact geography;
- its high population density;
- its well defined CBD and business/industrial parks;
- its position as a regional hub in the Asia-Pacific region; and
- its high concentration of MNCs.

Singapore's compact geography

- 5.5 Singapore is essentially a large city. It is 640 square km, compared to the United Kingdom (244,820 sq km), the United States (9,629,091 sq km) and Australia (7,686,850 sq km). Unlike geographically large countries such as the United States and Australia with dispersed population centres, Singapore is small and densely populated on a relatively even basis.
- 5.6 In comparison to larger countries, Singapore's compact geography facilitates the comparative ease of network deployment. This means that Singapore does not face the same geographic universal service issues as larger countries. Further, it is a country more capable of supporting the roll-out of ubiquitous networks with the consequent lowering of barriers to entry and constraint upon existing network operators. Liberalisation has exposed all telecommunications markets in Singapore to competition, which is evidenced by a range of indicators including new entry, price declines, tariff diversity, service innovation and new service development.

High Population Density

- 5.7 Consistent with Singapore's compact geography, Singapore's has one of the highest population densities in the world.² This has a direct influence on the ability of telecommunications operators to enter, support, service and compete in the Singapore telecommunications sector. This contrasts to other countries with larger, dispersed populations than Singapore.

Well defined CBD and business/industrial parks

- 5.8 Singapore's CBD and business/industrial parks are well-defined and connected in a physical and communications sense. Singapore's relatively small size and well-defined CBD and business/industrial parks impacts on the speed, scope and ease of market entry.
- 5.9 For example, StarHub fully deployed its CBD network in two years and a nationwide mobile network by 1 April 2000. Similarly, MCI completed its network roll-out in the CBD and other key business/industrial parks within 12 months. This speed of deployment reflects the relatively low infrastructure costs involved in deploying a network in such a small geographic area.

² *Statistics Singapore*, population density for 2002 was 6,086 persons per square kilometre. Singapore's total land area is 685.4 square kilometres.

Singapore position as a regional hub

- 5.10 Singapore is centrally located in the Asia-Pacific rim. This means that it is ideally placed in a geographic sense to compete on a regional and global scale in telecommunications markets with centres such as Hong Kong, Taiwan and Tokyo.
- 5.11 Its geographic location at the centre of the region has helped Singapore realise its goal of being a key regional hub for services such as logistics, shipping, finance and banking, health care and many others. Singapore has also become an info-communications hub as evidenced by the large number of cable systems landing in Singapore and providing international connectivity to foreign destinations. Singapore is one of the most “connected” cities in the world, with direct Internet connectivity to over 20 countries.³

High Concentration of MNCs

- 5.12 Singapore’s position as a regional hub has meant that the scale and prevalence of Singapore’s corporate sector, particularly in the CBD and business/industrial parks, has also produced different categories of telecommunications consumers. The relative proportions of the residential/business/government segments are not the same in Singapore as in other liberalised countries. These specific customer features are relevant to determining the extent and scope of entry and also market definition. The overall government policy of encouraging overseas business investment in Singapore has resulted in a comparatively large number of multinational corporations choosing Singapore as their regional base. There are more than 6,000 multinational companies with regional headquarters or operations in Singapore.⁴ The presence of a large number of multinational companies drives not only local competition between operators for this corporate customer base but also has resulted in market entry by large regional and global operators that aggressively target and compete for these multinational customers offering a full range of telecommunications services including Local Data Services such as Local Leased Circuits, local ATM, local Frame Relay, local IP VPN and International Capacity Services such as International Private Leased Circuits, international ATM, international Frame Relay, international IP VPN, IP Transit, Satellite services etc.

Conclusion

- 5.13 Accordingly, regulatory measures designed for a large country cannot simply be applied to Singapore. Singapore’s geography is inconsistent with the precise regulatory imperatives of other jurisdictions in terms of the logistics of network deployment and

³ IDA, *A Global City at Asia's Crossroad*, 6 August 2003.

⁴ IDA, *A Pro-Business Environment*, 1 May 2003.

distance services. Singapore's compact geography means that unlike countries such as the United States, there is no market in Singapore for domestic or interstate long distance services. Many aspects of telecommunications regulation in the United States were driven in pursuit of competition in long distance services. Singapore's geographic features make many of these and other regulatory elements of overseas jurisdictions inapplicable. The Singapore environment is unique and regulatory measures should recognise this uniqueness.

6. THE STATE OF COMPETITION IN SINGAPORE'S TELECOMMUNICATIONS MARKETS

6.1 Liberalisation has resulted in benefits such as the removal of existing or potential barriers to market entry. In terms of market outcomes, consumer prices for services have substantially decreased and non-price benefits are prevalent in new and innovative services, features and tariffs. These factors are evident in the following key market segments:

- the business and government segment;
- the International Telephone Services (ITS) market;
- the International Capacity Services (ICS) market; and
- the Local Data Service (LDS) market, including the Local Leased Circuit (LLC) segment.

6.2 There is also evidence that liberalisation in Singapore has had a more rapid and dramatic impact on competition compared to liberalisation in other countries. In the international services market, for example, there were 194 competing operators in Singapore⁵. Contrast this to Australia in 2001, which recorded a mere 75 competitors; or Sweden, which had only 120 competitors in 2001 for services in that market; and South Korea, which had only 60 competitors.⁶

6.3 Given the unique characteristics of Singapore detailed above, progressive liberalisation and three (3) years of full liberalisation, has resulted in a far greater degree of competitiveness in the Singapore market in far less time than these other jurisdictions.

⁵ presentation by Analysys to the IDA Code Review Process, *Trends in the Fixed and Mobile Industry* at slide 17.

⁶ See presentation by Analysys to the IDA Code Review Process, *Trends in the Fixed and Mobile Industry* at slide 17.

6.4 Market outcomes are one of the most insightful indicia of the state of competition. The following non-exhaustive evidence of state of competition market proves that liberalisation has facilitated highly competitive telecommunications markets in Singapore. The characteristics of Singapore's telecommunications environment, detailed above, are the starting point for assessing the state of competition. The next step is to determine the future course of regulation, to the extent necessary and desirable, to deliver on the fundamental premise of competition, being to maximise benefits to consumers.

Business and Government market segment

6.5 Competition between operators for business and government customers is the most intense of all services markets in Singapore. This has been facilitated by the characteristics of Singapore's telecommunications environment, detailed above.

6.6 The business and government customer segment is particularly characterised by a large number of multinational corporations. Business and government customers in Singapore enjoy countervailing market power. Liberalisation has resulted in a vast range of new and alternative telecommunications operators for all services. The evidence shows the propensity for new entrants to readily capture market share. In the three years since liberalisation, for example, Macquarie Corporate Telecommunications' (MCT) singular focus on the business and government services market has resulted in its capture of approximately 500 Singapore multinational corporate customers.⁷ In addition, this market share is high-value in revenue as well as numerical terms. It has been noted that:

*"After two years of operations in Singapore, Macquarie has about 500 corporate customers, or 10 per cent of the top 5,000 multinational corporations and government-linked companies."*⁸

6.7 The competitiveness of individual services within the business and government market segment has consistently been found by the IDA to be highly competitive. Competition in the business and government market segment is entrenched. The nature of this market segment, and the competitive outcomes since liberalisation, mean that all operators now and in the future are incapable of exercising market power without losing customer opportunities.

6.8 In terms of the sophistication of business and government market segment, these customers are extremely knowledgeable about telecommunications services. Large businesses manage all telecommunications services as an in-house account, or a regional

⁷ See www.mct.com.au: Press Release: *Macquarie Corporate defamation settlement from Phoenix Communications*, 14 August 2003

⁸ The Business Times online edition, *Macquarie and Phoenix to settle defamation suit*, 19 August 2003.

account in the case of multi-national corporations. The countervailing market power of the business and government market segment can be seen in the extent to which they are performance-focused and price-driven customers. Licensees must compete for their initial clientele and deliver continuous excellence in service to retain their accounts. Rivalry is high and operators constantly look for opportunities to win or win back business and government customers. This trend exists across the range of SMEs, to international giants and government departments.

- 6.9 The lucrative nature of the business and government market segment has led to a proliferation of operators competing for customer opportunities. Liberalisation has seen the business and government market segment targeted by competing operators for main two reasons: their overall telecommunications spend is higher and, given the nature of multi-national customers in Singapore, the capture of a corporate account means an opportunity for further regional telecommunications expenditure. Operator entry into the business and government market segment has therefore been extremely high. SingTel directly competes against a multitude of other FBOs including StarHub, MCI, Reach, AT&T, Sprint, Equant and Cable & Wireless etc. Some operators specifically target the business and government sector, such as MCT, which competes exclusively as an SBO serving these customers.
- 6.10 Business and government customers commonly require packaged or customised telecommunications services. These services are not equivalent to the service offerings available to residential customers. Business and government customers demand packages which are tailored to their individual needs and requirements. This includes flexible and innovative solutions which can develop in conjunction with their growth. Consequently, often a standard service offering is not appropriate for business and government customers. This is reflected in the way operators compete for business and government customers such as through a tender process, responses to requests for proposals or bids.
- 6.11 There is also intense competition to retain business and government customers. Price is the primary driver for business and government customers. Competition between operators is largely price-oriented, however maintaining the customer relationship requires personalised service and an ongoing commitment which is different to residential customer expectations. Price competition and product differentiation means that any single operator in the business and government market segment is always constrained by its competitors and customers. This means there is a marked lack of any customer inertia in the business and government market segment for telecommunications services. To the contrary, our experience has been that there is a propensity for business and government customers to acquire telecommunications service from multiple operators.

- 6.12 SingTel submits that there are no grounds for regulation in the business and government market segment.

International Telephone Services (ITS) market

- 6.13 As acknowledged by the IDA in granting SingTel certain exemptions from regulation in the ITS market, the ITS market in Singapore is vigorously competitive. It is characterised by a proliferation of operators, competing access techniques (such as PSTN, mobile access, calling cards, VoIP and call back) and a wide variety of substitutes (such as international private leased circuits). At the retail functional end of the market, consumers have a wide variety of choice in ITS services including StarHub, MCI and Macquarie. Singapore's IDD rates continue to fall as a result of competition between operators.

“Price competition is fierce, especially in the IDD (International Direct Dial) market. International calling charges have dropped significantly – by an average of 60%. In fact, international direct dial rates in Singapore are now amongst the lowest in the world.”⁹

- 6.14 The ITS market is characterised by competition at its wholesale functional level, where Singapore competes on a regional basis. Singapore competes as a hub (or “jump off” point) to international telephony destinations. International transit has become a global commodity, which is hubbed through Singapore as a major financial centre. Singapore therefore competes on a global scale with other regional hubs, such as Hong Kong and Tokyo, to become the leading hub.
- 6.15 The intense competition between regional hubs is evidenced by the fact that 85% of available regional bandwidth is controlled by six centres, including Singapore. Singapore is regarded as a major hub, demonstrated by the large number of cable systems landing in its territory. In addition, Singapore was nominated *Most Competitive Telecommunications Hub in the Region* in the 2001 Asia Pacific Telecoms Index.
- 6.16 There are low entry barriers for the ITS market including no limits on the number of ITS licensees and no foreign ownership restrictions. SingTel therefore submits that the remaining Dominant Licensee Obligations should be removed.

⁹ IDA Annual Report 2000/01.

International Capacity Services (ICS) market

6.17 The ICS market is characterised by vigorous competition. Evidence of this competition includes the substantial submarine cable capacity and connectivity landing in Singapore; the numerous alternative technologies available; tariff and product diversity; and the large number of global and regional operators in the ICS market. The availability of bandwidth and its benefits for consumers has been recognised at the highest levels:

“Over the past two years, telecommunications bandwidth has exploded by 400 times, rising to 20 terabits of high speed submarine cable bandwidth to more than 30 countries today. Liberalisation has also brought telecommunication costs down sharply for consumers and business.”¹⁰

6.18 At a glance, the ICS market comprises the following services, all of which are substitutes for each other:

- International Private Leased Circuits;
- International Frame Relay;
- International ATM;
- International IP VPN;
- Domestic Backhaul;
- Satellite TV Uplink/Downlink;
- VSAT (Very Small Aperture Terminal) Service;
- Digital Video Broadcast (DVB) IP;
- Leased Satellite Bandwidth; and
- IP transit service.

6.19 The unique characteristics of Singapore and the inherent features of the ICS market, coupled with Singapore’s regulatory framework, make the ICS market highly competitive. For example, International Private Leased Circuits (**IPLCs**) compete with IRU capacity. This means that the prices of IPLCs are constrained by the availability of IRU capacity. In addition, the backhaul component of the ICS market is highly competitive. There are also numerous substitutes for cable capacity, such as satellite capacity. IPLCs are substitutable for a range of other managed services. IPLCs are inputs for, and compete with, international frame relay, international IP VPN, and international ATM.

¹⁰ Mr David T E Lim, Acting Minister for Information, Communications & the Arts, keynote address to the World Congress on IT 2002, 1 March 2002.

6.20 Competition in ICS is prevalent on a pan-Asian scale. Regional centres are rivals to become the leading capacity hub in the region. Many regional and global operators have rights in submarine capable capacity and provide ICS in the region, including Reach, AsiaNetcom, Cable & Wireless, AT&T, Sprint, MCI, NTT, Deutsche Telekom T-Systems, Telia, Korea Telecom and many others. This reflects Singapore's status as a key hub and the explosive growth in international capacity which is driving ICS competition:

“In terms of international connectivity, Singapore has become one of the most connected cities in the world. Singapore has direct internet connections to over 30 countries...Singapore has an extensive submarine cable network comprising pan-Asian cables...Singapore's total cable capacity is over 21Tbps.”¹¹

6.21 Furthermore, SingTel competes on a regional basis when providing wholesale international capacity services because Singapore is competing as a hub. In addition, with respect to international capacity services such as International Frame Relay, International ATM, International IP VPN, Leased Satellite Bandwidth and IP transit services SingTel competes both regionally and globally. Global players include MCI, Sprint, AT&T, BT and Equant.

6.22 In terms of IP transit services, liberalisation commenced before 2000 and there are now some twenty (20) providers of internet exchange services¹² including UUNET, Cable & Wireless, Equant, Reach and i-STT.

6.23 Similarly, liberalisation of satellite services commenced well before 2000. There are many FBOs/SBOs offering international capacity for data, voice, IP, video, etc. via satellite including NewSkies, Echostar, Intelsat, Loral Skynet, NTL, ST Teleport, Ascent Media (formally Asia Broadcast Centre). In addition, broadcasting companies such as Mediacorp, ESPN Star and Walt Disney hold licenses enabling the receipt and distribution of their content using international satellite capacity.

6.24 Features such as the low barriers to entry and the continued growth of international rivalry means that competition in the ICS market is well-entrenched. SingTel therefore submits that there are no grounds for regulation in the ICS market.

¹¹ IDA, *4th Infocomm Technology Roadmap Report 2002*.
¹² www.ida.gov.sg

Local Data Service (LDS) market

6.25 The LDS market, including the local leased circuit (**LLC**) segment, is highly competitive. The LDS market already comprises of various services, all of which are substitutes for each other:

- DSL services;
- ISDN services;
- Wireless Local Loop (**WLL**);
- Internet Protocol Virtual Private Network (**IP VPN**) services
- Asynchronous Transfer Mode (**ATM**) services;
- Local Leased Circuit services;
- Frame Relay services;
- Wavelength Division Multiplexing (**WDM**) services;
- Cable modem services;
- Free Space Optics (FSO); and
- Microwave Links.

6.26 Consumers are offered an innovative and dynamic range of LDS transmission and access options at internationally competitive prices. Singapore's strong multinational corporate customer base and relative ease of network deployment has produced at least three alternative LLC networks in the CBD and other industrial, technological and business parks.

6.27 The IDA has acknowledged that LLC prices are internationally competitive and among the cheapest in the world. Since liberalisation, competition has delivered price reductions of at least 35%.¹³ Some LLC prices have been cited as being a staggering 250% cheaper in Singapore compared to the United States. Surveys have found that:

*"...in three specific LLC products, charges in Singapore were significantly cheaper than in the US and at least 20 per cent lower than in the next cheapest country."*¹⁴

6.28 This international competitiveness has led to benefits in downstream market segments. For example, SingTel introduced a zonal LLC scheme in 2001 which resulted in significant CBD tariff reductions of between 25% and 35%. These competitive prices have ultimately been driven by customer demand, particularly in light of the highly informed and price-sensitive nature of sophisticated large multinational corporations.

¹³ Mr Lam Chaun Leong, IDA Chairman, speech to E-Symposium, 4 September 2002.

¹⁴ *SingTel's circuit rates up to 250% cheaper, says IDA*, Straits Times, 16 May 2003.

The competitive drivers in this regard include the low regulatory barriers to entry, low switching costs and the availability of alternative technologies as substitutes. There are numerous LDS substitutes including xDSL, ISDN, ATM, frame relay and WDM services. Innovative wholesale LLC product offerings have included volume discounts and term discounts for higher end bandwidths.

- 6.29 These wholesale offerings have benefited end-users for ISP connections for applications such as e-commerce and Internet content hosting. Other wholesale products have continued to be developed to meet the demand for ongoing price and innovation. Facilities-based LDS competition is evidenced by strong competition, particularly corporate sales in Singapore's CBD and non-CBD business/industrial parks.
- 6.30 The rise of facilities-based competition correlates with Singapore's unique characteristics including compact geographic nature and large multinational corporate makeup. LDS network rollout reflects the ease of CBD fibre deployment. Competitors have been free to enter the LDS market and "cherry pick" the points at which they will compete and invest, hence the CBD and business/industrial parks have been predominantly chosen for the relative ease of network deployment and higher initial returns on investment. The outcome is that competitors and end users no longer rely SingTel's LLC network:
- (a) MCI began its metro fibre-optic network rollout in January 2001. By December 2001 MCI reported that it had wired all buildings in the CBD and had laid enough cable to criss-cross Singapore at its widest point a phenomenal 251 times;¹⁵
 - (b) by April 2000 StarHub had fully deployed its network in the CBD and by April 2002, StarHub was reported to have installed its broadband network in 600 CBD commercial buildings.¹⁶
- 6.31 All the evidence in the LDS market indicates a highly competitive environment with growing facilities-based investment, driven by customer demands for lower prices and innovative service offerings. SingTel submits that there are no grounds for regulation in the LDS market sector.
- 6.32 The current regulation of LDS, let alone the additional intervention and regulation contemplated by the IDA in its consultation on designating SingTel's LLC as a mandatory wholesale service, is unwarranted and unjustified. SingTel therefore submits that there are no grounds for regulation in the LDS market. Furthermore, additional regulation would be inconsistent with the promotion of facilities-based competition,

¹⁵ *WorldCom claims success in Singapore*, IT Asia One, www.asiaone.com.sg

¹⁶ Steve Irvine, *StarHub to mandate loan; Singapore's second biggest telco wants to raise up to S\$1.7 billion in a new syndicate loan*, FinanceAsia.com

would significantly and fundamentally undermine genuine competition, reducing incentives for new entrants to invest in LLC networks and risks devaluing the existing investments of operators in LLC infrastructure.

Code comment: SingTel submits that the following markets are highly competitive:

- the business and government segment;
- the International Capacity Services (ICS) market;
- the International Telephone Service (ITS) market; and
- the Local Data Service (LDS) market, including the Local Leased Circuit (LLC) segment.

SingTel submits that, at a minimum, SingTel should not be designated as non-dominant in these market segments.

PART E: DETAILED COMMENTS ON CODE REVIEW

7. DOMINANCE TEST

7.1 SingTel welcomes the IDA's review of the dominance test under the Code (2000). SingTel also welcomes the refinement of the dominance test in section 2.2.1 of the Code (2004), and specifically supports the removal of the reference to end user connections. The dominance test in Singapore should be based on fundamental market principles and not on subjective views of control of end users.

7.2 SingTel is also concerned to ensure that the dominant operator regulation is reasonable and proportionate. These principles of reasonableness and proportionate are reflected by the IDA in the Code (2004) and the explanatory materials presented at the IDA Consultation on 7 October 2003. However, the approach taken in the Code (2004) in applying the dominance on an entry level is flawed and overextends regulation such that SingTel will be regulated in a number of competitive market segments some of which were liberalised well before 2000.

7.3 SingTel believes that the application of the dominance test on an entity basis perpetuates a fundamental flaw in the Code (2000). While SingTel accepts that the broad-based 'blanket approach' to applying dominance on an entity basis may have been an expedient and convenient short-hand way of applying regulation in 2000, SingTel does not accept that after three (3) years this approach is appropriate for the Code (2004).

7.4 In this section, SingTel makes the following points:

- SingTel does not agree with the broad-based and ‘blanket’ entity based approach taken by the IDA to the issue of dominance;
- SingTel is dissatisfied with the application of the evidence (or more particularly the lack of evidence) to the SingTel dominant licensee classification;
- SingTel should not be classified as dominant on an entity basis in all market segments based on the lack of evidence supporting such a conclusion;
- At a minimum, SingTel should not be declared dominant in markets identified above as competitive;
- SingTel should not be deemed dominant in respect of new services because SingTel operates on a level playing field in this respect;
- SingTel does not agree with the IDA’s approach to exemptions, particularly when compared with the IDA’s approach to classification of SingTel as dominant on an entity basis absent any objective and detailed market analysis; and
- SingTel believes that exemptions granted to SCV in 2000 should be removed.

Entity approach to dominance classification

7.5 SingTel does not agree with the IDA’s application of dominance on an entity basis. An entity based approach is inconsistent with reasonable and proportionate regulation. SingTel strongly believes that dominance should be considered on a market-by-market basis. Furthermore, the IDA’s designation is inconsistent with the granting of exemptions i.e. the IDA designates at an entity level but exempts at a market level.

7.6 The impact of the IDA’s proposed approach to the application of the dominance test is that if SingTel is dominant in one market segment, then SingTel is deemed dominant in all market segments in which SingTel operates notwithstanding that the other market segments in which SingTel operates may be highly competitive. This issue is exacerbated by the fact that SingTel does actually operate in many highly competitive markets.

7.7 SingTel is concerned that the need for ex ante regulation is considered to be synonymous with the application of an entity based dominance test or that these issues have been confused.

- 7.8 In any assessment of the appropriate application of the dominance test, SingTel believes that any regulatory issue must first be considered in the context of the Singapore market. We have described above the telecommunications markets in which SingTel operates. Many of those telecommunications markets are highly competitive or prospectively competitive.
- 7.9 Given the competitive state of many telecommunications market segments in Singapore, SingTel strongly believes that an entity based approach, will result in over-reaching and disproportionate regulation. SingTel would be regulated in many telecommunications market segments which are highly competitive. Such an approach is inconsistent with best practice regulation and the IDA's own statements regarding reasonable and proportionate regulation. This difficulty is not overcome by the lengthy exemption process.
- 7.10 Over-reaching and disproportionate regulation is not just a risk for SingTel. It is a risk for consumers in Singapore. Over-reaching regulation discourages investment. In particular, in emerging markets, SingTel may be competing with existing operators and operators who are similarly undertaking new investment. SingTel is discouraged from making investment in new and emerging markets as it will be regulated if it makes any investment whereas existing operators or new operators in the same position as SingTel are not regulated.
- 7.11 Even when considered against international benchmarks, an entity based application of the dominance test is not used in any relevant country in the world. It is also important to note that an entity based approach irrespective of the "phase" of regulation (as described by the IDA advisers) the country may be considered to be in has not been used by a relevant benchmark country. So, for example, Europe has never applied its dominance test on an entity basis.

7.12 SingTel summarises the application of the dominance test in various jurisdictions in the following table:

| Jurisdiction | Market-by-market approach to dominance | Entity based approach to dominance |
|------------------------------|--|------------------------------------|
| Singapore | | ✓ |
| Australia ¹⁷ | ✓ | |
| United Kingdom ¹⁸ | ✓ | |
| EU ¹⁹ | ✓ | |
| Hong Kong ²⁰ | ✓ | |
| USA ²¹ | ✓ | |
| Malaysia ²² | ✓ | |

7.13 In relation to market definition itself, the European Commission has said that:

"Market definition is not a mechanical or abstract process but requires an analysis of any available evidence of past market behaviour and an overall understanding of the mechanics of a given sector. In particular, a dynamic rather than a static approach is required when carrying out a prospective, or forward looking, market analysis. In this respect, any experience gained by NRA's, NCAs

¹⁷ No tariff filing obligations under the *Telecommunications Act 1997*. Market power analysed for each entity in each market based on a range of qualitative indicators.

¹⁸ Overall analysis of economic characteristics of relevant market using qualitative and quantitative indicators, as set out in OFTEL's *Market review guidelines: criteria for the assessment of significant market power (2002)*.

¹⁹ *Directive on a Common Regulatory Framework for Electronic Communications Networks and Services* (December 2001) sets out qualitative methodology based on an assessment of economic strength which enables an operator to act independently of competitors.

²⁰ The Telecommunications Ordinance requires OFTA to take a qualitative approach to the analysis of dominance in any given market. Range of factors include the licensee's power to make pricing and other decisions, and any other factors stipulated in OFTA's guidelines.

²¹ Market by market analysis of dominance based on a range of qualitative indicators (with particular emphasis on power to control prices), rules as set out in FCC Telecommunications Regulations.

²² Qualitative market by market analysis of dominance used in regulating anti-competitive conduct of dominant licensees, criteria for dominance obligations as set out in the *Communications and Multimedia Act 1998*.

and the Commission through the application of competition rules to the telecommunications sector clearly will be of particular relevance in applying Article 15 of the framework Directive. Thus, any information gathered, any findings made and any studies or reports commissioned or relied upon by NRAs (or NCAs) in the exercise of their tasks, in relation to the conditions of competition in the telecommunications markets (provided of course that market conditions have since remained unchanged), should serve as a starting point for the purposes of applying Article 15 of the framework Directive and carrying out a prospective market analysis." ²³

- 7.14 In accordance with the statement made by the European Commission, SingTel believes that a careful and analytical approach must be taken to market definition and its application to dominance. SingTel submits that a best practice test based on a market-by-market analysis would be appropriate for Singapore, particularly given the highly competitive nature of many telecommunications markets in Singapore.

Code amendment suggested: SingTel submits that section 2.2.1 of the draft Code (2004) should be amended to provide for dominance classification in specific market segments only. The process for reclassification under section 2.3 could be retained, but would be only used to reclassify a Licensee in a market in which it was already classified as dominant. SingTel describes below the existing and new markets in which SingTel should not be considered to be dominant.

Application of evidence to SingTel dominance classification

- 7.15 SingTel notes that in 3.7 of the Consultation Document, the IDA refers to the evidence that is required to establish the proper classification of a Licensee. This explanation in the Consultation Document is reflected in section 2.3(a) of the draft Code (2004) which specifically refers to the “relevant evidence” required for the IDA to base its conclusion that a Licensee is dominant.
- 7.16 The Consultation Document contains no objective market analysis or evidence neither has SingTel seen any evidence published by the IDA in relation to its assessment of the proper classification of SingTel as a dominant Licensee, in direct contradiction to the statement in section 3.4 of the Consultation Document. SingTel has provided extensive information about the market segments where there is strong competition in Singapore.

²³ Commission guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communication networks and services (11.7.2002) at page 165/10

7.17 Accordingly, SingTel should not be designated as dominant under the Code (2004) based on the lack of evidence in support of that position. At a minimum, SingTel should not be considered dominant in those market segments identified above as competitive.

7.18 In addition, SingTel submits that a presumption of dominance by a Dominance Licensee in new markets is analytically flawed and unfair. SingTel competes vigorously to be the first to introduce new services and to compete with new entrants as they enter the market with their new services. SingTel is discouraged from developing and introducing new services within the SingTel entity because of the dominance classification. SingTel should not be 'deemed' dominant in relation to new services.

Code comment: SingTel submits that it should not be designated as dominant under section 2.2 of the Code (2004) or should be redesignated as non-dominant under section 2.3 of the Code (2004). At a minimum, SingTel should not be considered dominant in the following markets:

- the business and government segment;
- the International Capacity Services (ICS) market;
- the International Telephone Service (ITS) market; and
- the Local Data Service (LDS) market, including the Local Leased Circuit (LLC) segment.

It also follows from SingTel's view of the dominance classification that SingTel should not automatically be deemed dominant in relation to new markets and services. It is analytically flawed and unfair to deem SingTel to be dominant in new markets.

Exemption process

7.19 As the Code (2004) is currently drafted, SingTel is able to be reclassified only if the IDA concludes "based on relevant evidence, that the Licensee no longer satisfies the conditions for dominant classification specified in sub-section 2.2.1(a) and 2.2.1(b) of this Code."

7.20 SingTel firstly makes the point that the IDA requires evidence to be produced that SingTel is no longer dominant, notwithstanding that no evidence has been produced that SingTel is in fact dominant. SingTel reiterates that the application of the dominance test should be changed from application to an entity as a whole to application to an entity on a market-by-market basis. Irrespective of the application of the dominance criteria

however, a dominance classification should only be made after consideration of evidence, which is fundamentally lacking in this case.

- 7.21 Further, SingTel's experience with the exemption process is that it is lengthy and time-consuming. For example, SingTel first applied for an exemption for the International Telephone Service (ITS) market in January 2003 and it took considerable time to ensure that the application met the requirements of the IDA. The IDA published SingTel's application on 10 April 2003. Submissions closed on 8 May 2003. The IDA recently made a decision in relation to this exemption application on 12 November 2003. In the case of the ITS exemption request, the process took approximately eleven (11) months.
- 7.22 SingTel believes that the exemption process is overly cumbersome and places the sole burden on the requesting Dominant Licensee. SingTel supports the inclusion of a specific timeframe in the Code (2004) within which the IDA must determine an exemption application.
- 7.23 SingTel also submits that the IDA itself should proactively and regularly assess the state of competition and look to exempt market segments as competition develops.

Code amendment suggested: Under section 2.3(b)(i) of the Code, SingTel submits that the IDA should specify the circumstances in which it will proactively conduct a review on its own initiative. SingTel submits that the IDA should have a regularly scheduled report and review of competitiveness of markets in Singapore and, based on this report, it should specify when, under section 2.3(b)(i) it would be "appropriate" to conduct such an investigation.

Remove exemptions granted to SCV as dominant

- 7.24 Section 2.2.1(b) of the Code (2004) provides that a Licensee may be classified as dominant if it has the ability to exercise Significant Market Power in the provision of telecommunication services in Singapore. This includes a Licensee with significant market power in another market (eg the pay television market) with the ability to exercise that market power to significantly affect competition in the telecommunications market. While SCV is dominant for the purposes of the Code (2000), it is granted exemptions from a broad range of obligations under the Code (2000). SingTel submits that SCV/StarHub should be dominant without exemptions for the following reasons.
- 7.25 In its assessment of the merger between StarHub Pte Ltd and Singapore Cable Vision Ltd (now StarHub Cable Vision Ltd), the IDA acknowledged that SCV possessed market power in the subscription television services market stating that:

“IDA recognises that SCV has the ability to use its Market Power in the subscription nationwide television service market to impede competition within the telecommunications markets.”

7.26 SingTel believes that the exemptions granted to SCV regarding their dominance should be removed based on the following evidence:

- SCV is currently the monopoly supplier of nationwide subscription television services in Singapore;
- the Media Development Authority of Singapore received no Expressions of Interest in relation to the second subscription television licence in Singapore. In SingTel’s view, this is because of the entrenched position of SCV, access to content and the inability of a new entrant to compete in that market given the current regulatory conditions which apply;
- resale of subscription television services in any form is not available in Singapore;
- SCV/StarHub are in the unique position of being able to bundle fixed telephony, mobile telephony, subscription television services and broadband and internet based services;
- since December 2002, StarHub has been able to offer DELs to over 1 million homes in Singapore. SingTel’s concerns are therefore heightened that StarHub’s unique ability to bundle telephony and cable television services will enable it to exercise significant market power and affect competition in telecommunications markets; and
- SCV/StarHub’s unique ability to bundle gives rise to the very real risk of anti-competitive pricing, discrimination and cross-subsidisation.

7.27 Accordingly, SingTel submits that SCV should be designated as dominant under the Code (2004) without exemptions. As a Dominant Licensee, SCV should be subject to all of the provisions of the Code (2004) applicable to Dominant Licensees.

7.28 In SingTel’s view, SCV should be required to provide IRS over its network. SingTel also makes submissions in section 13 about a new requirement for the designation of a broadcasting carriage service.

Code comment: SingTel submits that the IDA should remove exemptions granted to SCV as dominant under section 2.3 of the draft Code (2004).

8. FACILITIES BASED COMPETITION AND SERVICES BASED COMPETITION IN SINGAPORE

8.1 In this section of the submission, SingTel wishes to emphasise the importance of promoting facilities-based competition. By the IDA's statements in section 1.5.3 of the draft Code (2004), SingTel is very concerned that the IDA appears to have reverted to a period of indefinite facilitation of services-based competition, limited only by the words "short-to-intermediate term". As the OECD has summarised in relation to the Canadian experience:

*"The government and CRTC have repeatedly placed emphasis on the fact that competition to be sustainable requires facility-based competition..."*²⁴

8.2 The OECD has also warned in relation to access regimes:

*"As with all remedies for co-ordinated interaction, application of the essential facilities doctrine presents some important difficulties. Care must be taken not to discourage necessary network investments including, where feasible, the development of facilities based competition. Moreover, access terms must be set so as to permit efficient competition without subsidising entry by inefficient providers."*²⁵

8.3 SingTel is concerned that despite IDA's re-affirmation of the promotion of facilities-based competition as a cornerstone of the regulation framework, the current regulatory framework is skewed towards services-based competition. SingTel is particularly concerned with the IDA's continued reference to the role of services-based competition "in the short-to-intermediate term". This short term recognition of services-based competition was recognised in the Code (2000) where the IDA expressly referred to the prices, terms and conditions specified in Appendix 2 as "intended to facilitate new entry, whilst providing incentives for new entrants to invest in infrastructure".

8.4 The Code (2000) contained a mandatory wholesale requirement in section 5.8.3 and designated certain Wholesale Services to be provided by Dominant Licensees in section 7 of Appendix 2 of the Code (2000). Specifically, the requirement to provide Wholesale Services in section 7 of Appendix 2 of the Code (2000) applied for 18 months in recognition of the short-term need to facilitate entry into the Singapore market.

²⁴ OECD Reviews of Regulatory Reform: Regulatory Reform in Canada, From Transition to New Regulation Challenges (Regulatory Reform In The Telecommunications Industry) 2002 at page 18

²⁵ Organisation for Economic Co-operation and Development Dist, Directorate for Financial, Fiscal and Enterprise Affairs, Committee On Competition Law And Policy, Oligopoly (DAFFE/CLP(99)25) 21-Oct-1999 at page 10

- 8.5 In particular, the mandating of wholesale LLCs would be unwarranted given the available wholesale offerings and the strong competitive state of downstream markets. The retention of a mandatory wholesale requirement simply encourages regulatory gaming and over-reliance on SingTel’s network.
- 8.6 SingTel believes that the “short-to-intermediate” period for facilitating services- based competition has ended and that the IDA should be focusing on encouraging facilities-based competition. Further, the IDA’s indefinite stance on services-based competition bears the very real risk that facilities-based competition will be further undermined.
- 8.7 The risk of over-reliance on services-based competition in Singapore is particularly acute given the small size of the market which may give the perception of a small addressable market by any investor. Investors may therefore choose to rely on a risk-averse services based strategy rather than a consumer-benefiting infrastructure based strategy.
- 8.8 SingTel submits that section 1.5.3 of the Code should be redrafted to reflect the pre-eminence of facilities-based competition. Services-based competition should only be encouraged to the extent that the provision of services will tangibly, based on evidence, lead to facilities-based competition. Services-based competition should never take precedence over the encouragement and promotion of facilities-based competition.

Code amendment suggested: SingTel submits that section 1.5.3 of the Code (2004) should be replaced with the following:

“IDA believes that effective and sustainable competition will be best achieved through facilities based competition. However, where there are technological, market or other impediments and there is clear, tangible evidence that facilities based competition will not emerge or be encouraged, the IDA may permit services based competition over the short term.”

9. LICENCE COMMITMENTS

- 9.1 Section 2 of the draft Code (2004) is currently silent in relation to commitments made by Licensees regarding infrastructure build.
- 9.2 In Geneva in October 2003, the Minister for Information, Communications and the Arts, Singapore, Dr Lee Boon Yang noted that infrastructure roll-out in Singapore had been slow. Nevertheless:

“New licensees have established forward capital expenditure commitments of 2 billion US dollars, with the creation of 2,500 additional jobs, by 2005.”²⁶

9.3 If Singapore is to fulfil the aim of facilities based competition with all of the benefits that go with it, SingTel believes that roll-out commitments should be enforced and should be transparent. Without enforcement or transparency, licensees are able to make roll-out commitments to obtain a licence and privileges under that licence but then free-ride off existing networks without ever delivering the promised benefits to Singapore consumers.

9.4 Transparency and a public periodic review of roll-out commitments is undertaken in Hong Kong. For example, in 1999 the Executive Council in Hong Kong examined roll-out proposals and commitment from the FTNS licensees in Hong Kong regarding compliance in relation to the further moratorium granted in relation to the issue of FTNS Licensees²⁷.

9.5 Also in Hong Kong, the Spectrum consultancy has noted as follows:

“To conclude, Hong Kong consumers have derived substantial benefits from the introduction of strong and effective competition in all the telecommunications sectors in Hong Kong. These benefits have been primarily derived because operators (both incumbent and new entrants) have invested substantial amounts in the industry after liberalisation.”²⁸

9.6 Investment commitments are very important to the competitiveness of the Singapore market. Enforcement and transparency are important to ensure that legitimate promises are made about investment by new entrants. Regular audits are also a means of ensuring compliance.

Code amendment suggestion: SingTel submits that the IDA should include a new section 2.7 in the draft Code (2004) which deals with:

- annual reporting by FBOs to the IDA of their compliance with roll-out commitments;
- the power of the IDA to audit such compliance, with compulsory audits at least every 2 years; and

²⁶ Speech to ITU Telecom World 2003, “Is Market Liberalisation Working”, 13 October 2003, Geneva

²⁷ Legislative Council Brief, 1998 Review of Fixed Telecommunications – Progress report on the moratorium on the issue of further local fixed telecommunication network services licences

²⁸ Spectrum, The competitiveness of Hong Kong’s telecommunications industry, available at www.ofta.gov.hk

- publication of licensee reporting and auditing findings by the IDA in relation to roll-out commitments.

10. IMPACT OF CONVERGENCE AND THE MDA CODE

10.1 SingTel provides services which are at the cutting edge of convergent technologies. Through our broadband and video-on-demand services, we provide content services to many Singaporeans.

10.2 In order for broadband to continue to flourish and for Singapore to achieve its objectives to be a leader in the provision of broadband services, the regulatory regime should be sufficiently flexible but targeted to ensure fair and equal access by all platforms, not only traditional broadcasting platforms, to key content.

10.3 A key element in determining a sustainable regulatory framework is to recognise the challenges posed by convergence to traditional understandings of competition. It is not possible to assume that the anti-competitive risks in a pre-convergent environment will be identical to those in a converging one. It is necessary to identify where the need for regulatory intervention will lie and to what degree it is required.

10.4 The impact of convergence on the perception of consumers is clear:

“From the providers’ perspective...convergence is already bringing significant opportunities to gain economies of scope and scale across different areas of the business (eg production and distribution...

*“From the consumers’ perspective, the picture is far less clear...how they [the converging technologies] develop depends on the behaviour of individuals and communications reacting to new technology and services. The behaviour and expectations of consumers will not change overnight”.*²⁹

Alignment with MDA Mass Media Services Market Code of Practice (MDA Code)

10.5 As stated in our submission to the MDA in relation to the MDA Media Code of Practice, in light of the convergent nature of telecommunications and broadcasting, SingTel believes that telecommunications and broadcasting regulation must be aligned in order to prevent potential overlap, inconsistency and “forum shopping”. As we have submitted to

²⁹ Department of Trade and Industry, *Regulating Communications: Approaching Convergence in the Information Age*, October 1998, p 3.

the MDA, SingTel does not believe there is any significant reason for the Code (2004) to be materially different from equivalent provisions in the MDA Code.

10.6 To establish a level playing field in a converged environment, it is essential that the MDA Code and the draft Code (2004) are consistent. In particular, we note with considerable concern that there are substantial differences between the two Codes. By way of example, the MDA Code does not impose on Regulated Persons obligations which are equivalent to those imposed on telecommunications licensees under the draft Code (2004) such as:

- obligation to disclose prices, terms and conditions;
- billing periods;
- prices, terms and conditions on which service will be provided;
- procedures to contest charges;
- licensee review;
- conciliation; and
- restriction on service suspension or termination.

10.7 Furthermore, with respect to Dominant Licensees providing Pay TV services, the MDA Code does not impose obligations equivalent to those imposed on Dominant Licensees under the Code (2004) such as:

- obligation to provide services at just and reasonable prices, terms and conditions;
- tariffing requirements and review criteria for tariffing; and

10.8 The substantial discrepancies identified above between the two Codes create an unlevel playing field which will favour one form of technology (ie cable services) over traditional telecommunications networks. This will then enable owners of cable networks to be less restricted than telecommunications providers in their dealings with customers according to the less stringent regulation to which they are subject. When both cable operators and telecommunications operators are providing similar services to each other, this clearly places cable operators in a more advantageous position than telecommunications operators.

10.9 SingTel strongly submits that the draft Code (2004) and the MDA Code should be consistent otherwise operators such as SingTel will not be able to compete on a level playing field with SCV/StarHub.

10.10 Discrepancies between the telecommunications and broadcasting regulatory regimes will ultimately lead to a loss of consumer welfare because consumers will not benefit from convergence that operators such as SingTel can offer. Consumers are currently not able to access a wide range of content and interactivity available over the SingTel network because of the existing limitations on licensing of content services.

10.11 As has already been seen in the Singapore market, the availability of new licences, however, will only be meaningful if SingTel and others are able to compete on an equal footing across the traditional areas of telecommunications and broadcasting. The failed second subscription television licence allocation process has already illustrated the problem with differential regulation.

10.12 SingTel strongly submits that the Code (2004) and the MDA Code should be consistent.

Code amendment suggestion: SingTel submits that the abovementioned specific aspects of the draft Code (2004) should be consistent with the MDA Code.

11. TARIFFING

11.1 Sections 3 and 4 of the draft Code (2004) set out, amongst other things, tariffing requirements (including the need to publish tariffs) imposed on Licensees, including specific obligations on Dominant Licensees which require tariffs to be approved with the IDA.

11.2 SingTel believes that it is important that tariffing is considered in a very balanced way. While SingTel acknowledges the role of tariffing as a regulatory device necessary where markets are not able to deliver competitive outcomes, SingTel emphasises that over-tariffing (ie requiring the approval and publication of all tariffs) can have a very dampening effect on competition. Over-tariffing leads to conservative pricing decisions and price following rather than price leadership by new entrants. Consumers do not benefit from an approach where conservatism and price following is the norm. Consumers will be damaged by paying too much for their telecommunications services as a result.

11.3 Tariff regulation of new and innovative services also inhibits investment in new and innovative services due to the commercial uncertainty surrounding the outcome of tariff regulation, in particular, whether approval will be granted by the IDA, and if approved, the conditions attached thereto. When regulating new services through tariffing, the IDA is effectively seeking to second-guess the market. Regulator set outcomes will always be inferior to market based ones.

11.4 OFTEL extensively considered the implications of requiring BT to give notice of tariff changes. OFTEL highlighted its concerns with the dampening effects of tariff filing on competition in the longer term as follows:

“There are 3 main aspects to this concern; (i) in a market consisting of a limited number of influential players (commonly known as an oligopolistic market), visibility of tariffs published by each player may lead to tacit collusion to keep prices high, (ii) in a market dominated by one player, if the dominant player is obliged to publish its prices, smaller players may follow those prices rather than compete more boldly and (iii) the loss of first mover advantage, which is particularly apparent where a dominant player must provide advance notification of tariff changes, may remove the dominant player’s incentive to compete on price; making it more profitable to maintain prices at a relatively high level in return for a modest loss of market share. In none of these cases will customers enjoy the benefits of vigorous competition...”³⁰

- 11.5 Over-tariffing is particularly damaging in areas of competition for the reasons described above. As currently drafted, section 4.4.1 of this draft Code (2004) requires Dominant Licensees to file a tariff and obtain IDA’s written approval to any End User Telecommunications Service³¹. As “dominance” is designated on an entity basis under the draft Code (2004) and this entity may be providing many End User Telecommunications Services into a competitive market, the Code (2004) adopts an over-tariffed approach.
- 11.6 SingTel has identified several competitive market segments in which SingTel operates and is currently designated as dominant. As a result, SingTel is required to seek the IDA’s approval to all tariffs when competing in these market segments. SingTel disagrees with this tariffing approach in competitive markets. This includes tariffing of special promotions and customised packages, which is particularly onerous and significantly reduces SingTel’s incentive to introduce such promotions and customised packages.
- 11.7 There are also other market segments, in particular the business and government market segments, in which SingTel is required to tariff where customers have strong countervailing power and are able to negotiate (indeed, demand) deals from telecommunications providers outside the scope of standard tariffed offerings.
- 11.8 As stated above, the IDA should remove tariffing regulation and tariff publication requirements where there is competition in a market segment. Under the current tariffing regulation requirement, all retail and wholesale services provided by a Dominant Licensee must be tariffed even when those services are provided in market segments that are competitive. Further all tariffs are to be published. This tariffing requirement actually

³⁰ OFTEL, *BT’s regulatory obligations to provide advance notification of price changes and to maintain a published price list*, 28 June 2001 at paras 3.9, 3.10.

³¹ SingTel comments in section 12 regarding tariffing of wholesale services

operates to dampen competition through price-shadowing and conservative price-decision making.

Code amendment suggestion: SingTel submits that section 3.2.2 and section 4.4.1 should be amended such that:

- the tariffing and publication requirements should not apply to competitive market segments in Singapore;
- the tariffing and publication requirements should be limited to those basic residential services which are considered essential services;
- the tariffing and publication requirements should only apply to standard tariffs and not extend to promotional tariffs and/or customised packages;
- the tariffing and publication requirements should not extend to the highly competitive business and government market segment;
- new, innovative services should not need to be tariffed nor should the tariffs be published as these requirements simply discourage the emergence of these new services because they are mandated and effectively disclosed to competitors through the tariffing process.

12. WHOLESALE

Approach to wholesale

12.1 The Code (2004) refers to three layers of wholesale supply:

- resale of retail services (sections 4.2.2.2 and 4.4.1(b));
- voluntarily tariffed wholesale services (sections 4.3 and 4.4.1(c)); and
- mandatory wholesale services (section 6.3.3(b)).

12.2 SingTel does not agree with the need for these levels of regulation in the wholesale market. SingTel submits that all wholesale service regulation should be removed or significantly refined.

Resale of retail services

- 12.3 SingTel believes that the requirement to allow resale of any retail service under section 4.2.2.2 is unnecessary and inconsistent with facilities-based competition and any reasonable assessment of the state of competition in Singapore.
- 12.4 SingTel strongly believes that resale of retail services should be removed. There can be no justification for requiring resale where there is competition in the relevant market segment or it is prospectively competitive. Furthermore, there are no grounds to allow an FBO/SBO licensee that has been issued with a licence by the IDA to provide its own competitive telecommunications service in competition with SingTel to be able to simply resell the SingTel retail service. For example, StarHub has been granted an FBO licence and SingTel believes that there is no justification for StarHub merely reselling SingTel's retail services. This strategy provides no benefits to consumers and is simply a free-riding off the SingTel network.
- 12.5 SingTel therefore submits that the requirement to allow resale of retail services should be removed. At the very least, resale should not be required where there is competition in the relevant market segment or it is prospectively competitive. Furthermore, FBOs/SBOs granted licenses to provide equivalent services in competition with SingTel should not be allowed to resell the relevant SingTel retail services.
- 12.6 Section 4.2.2.2 should therefore be removed or narrowed in scope.

Voluntary wholesale services market

- 12.7 SingTel also does not believe that there is any need for voluntary wholesale services to be regulated. The impact of section 4.4.1(c) is that if a Dominant Licensee wishes to offer voluntary wholesale services to another person, then the Dominant Licensee must lodge a tariff with the IDA. This tariffing requirement severely undermines the incentive to offer voluntary wholesale services.
- 12.8 SingTel submits that the concept of voluntary wholesale services is fundamentally flawed. Clearly, the 'voluntary' nature of the offering of wholesale services means that those services are not 'essential' to competition or sufficiently 'essential' to be mandated. There is no reason to regulate non-essential services and SingTel strongly submits the removal of regulation (including tariffing) of voluntary wholesale services.
- 12.9 The disincentive to offer voluntary wholesale services is due to the application of the Dominant Licensee provisions in the Code (2004). As we have stated above, the Code (2004) assigns Dominant Licensee obligations on an entity rather than on a market-by-

market based approach. There is also likely to be a regulatory lag in the provision of exemptions under the Code. In particular, under the ITS exemption proceedings, as stated above, SingTel's wholesale market share had fallen to 30% and SingTel was still subject to Dominant Licensee regulation until recently.

12.10 This means that Dominant Licensees may be operating in highly competitive markets but still be subject to ex ante regulation in those markets. In particular, under the Code (2004), SingTel may be operating in highly competitive wholesale markets but still be required to tariff all wholesale services it chooses to offer in the market. This will provide SingTel's competitors with a significant competitive advantage because the requirement to tariff wholesale services means that:

- SingTel will be 'flagging' the scope of its ability to compete through the tariff and SingTel's competitors will be able to just compete enough to beat SingTel's price and consequently gain significant market share through modestly competitive behaviour; and
- SingTel will be unable to flexibly negotiate wholesale arrangements with other operators because of the constraint placed on SingTel by an existing tariff or the need to change the tariff to complete the negotiations.

Mandatory wholesale services requirement

12.11 Also, as discussed above, SingTel does not believe that there is any reason to re-introduce any new mandatory Wholesale Services under the Code (2004). The Code (2000) contained a mandatory wholesale requirement in section 5.8.3 and designated certain Wholesale Services to be provided by Dominant Licensees in section 7 of Appendix 2 of the Code (2000) for 18 months. SingTel submits that it would be regressive and inconsistent with the objective of facilities based competition for the IDA to contemplate a new set of mandated wholesale services. The time for mandated wholesale services to 'kick start' competition is now over and facilities based competition should be IDA's focus.

12.12 In addition, if mandatory wholesale services are provided, SingTel fails to see why a FBO/SBO licensee that has been issued with a licence by the IDA to provide its own competitive telecommunications service in competition with SingTel should then be able to simply acquire the equivalent SingTel mandatory wholesale service. For example, StarHub has been granted an FBO licence and SingTel believes that there is no justification for StarHub merely acquiring SingTel's mandatory wholesale services. This strategy provides no benefits to consumers and is simply a free-riding off the SingTel network. SingTel therefore submits that FBOs/SBOs granted licenses to provide

equivalent services in competition with SingTel should not be allowed to acquire the relevant SingTel mandatory services.

Conclusion

12.13 Overall, SingTel believes that the IDA should adopt a more flexible, market based approach to regulation in the area of wholesale recognising the highly competitive state of the wholesale marketplace in Singapore and the large number of FBOs and SBOs in Singapore. SingTel submits that the IDA should adopt the following approach to wholesale in Singapore:

- SingTel should not be required to allow resale of any retail service;
- At a minimum, SingTel should not be required to allow resale of its retail services in those market segments where there is competition or no potential competition;
- FBOs/SBOs granted licenses to provide equivalent retail services in competition with SingTel should not be allowed to resell the SingTel retail service;
- SingTel should not be required to tariff voluntary wholesale services because the concept is fundamentally flawed and because of the highly competitive state of that market;
- SingTel submits that there is no place for mandated wholesale services. The IDA's focus should now be on facilities based competition instead of short-term measures which artificially attempt to stimulate competition. These short term measures actually do great damage to competition in the long term by destabilising facilities based competition. There is no justification for FBOs/SBOs granted a license by the IDA to provide their own equivalent telecommunications service in direct competition with SingTel to simply acquire a SingTel mandatory wholesale service.

Code amendment suggestion: SingTel submits that:

- sections 4.2.2.2 and 4.4.1(b) should be removed or restricted so that:
 - FBOs/SBOs granted licences to provide equivalent services in competition with SingTel are not entitled to acquire retail services from SingTel for resale under these sections; and
 - only apply in those markets in which there is a Dominant Licensee.

- sections 4.3 and 4.4.1(c) in relation to voluntarily tariffed wholesale services should be removed altogether from the draft Code (2004); and
- section 6.3.3(b) and associated references to mandatory wholesale services should be removed altogether from the draft Code (2004).

Wholesale pricing methodology

- 12.14 SingTel has submitted above that voluntary wholesale services should not be subject to regulation and that the mandated wholesale services concept should not be revived by the IDA. If the IDA retains these forms of regulation in the wholesale sector, however, SingTel submits that the IDA should not specify a price methodology and should consider price and pricing methodologies for wholesale services on a case-by-case basis.
- 12.15 In particular, SingTel does not agree that the “retail minus” pricing methodology should be specified by the IDA as applicable to voluntary and mandated wholesale services. Firstly, it is inconsistent with the recognition that voluntary wholesale services and mandatory wholesale services fundamentally differ in that the IDA recognises that voluntary wholesale services are non-essential and are competitively provided. It is therefore inappropriate to regulate voluntary wholesale services in the same way as mandatory wholesale services.
- 12.16 Secondly, because the same pricing methodology is used for both voluntary and mandatory wholesale services, there is no incentive for a Dominant Licensee to voluntarily offer wholesale services at all. Consumers will suffer because of the delay in offering wholesale services as a result.
- 12.17 Thirdly, the ‘retail minus avoidable cost’ is an inappropriate pricing methodology to apply across many wholesale services. There are many wholesale services offered in the market for which there is no ‘retail equivalent’ service in respect of which the ‘retail’ price could be calculated. For example, SingTel would query how the IDA would apply the ‘retail minus’ methodology to backhaul services or international capacity connection services when there is no retail equivalent service.
- 12.18 SingTel is concerned that “retail minus” is inconsistent with the promotion of facilities-based competition – it only stimulates simple services-based competition at the soft retail layer (eg customer care, marketing, billing etc.) and allows new entrants to continue to simply free-ride off SingTel’s infrastructure. Given the small size and other unique characteristics of the Singapore market, as described above, SingTel does not believe that

it is appropriate for the IDA to be stimulating pure ‘soft’ retail-layer competition and allowing free-riding off SingTel’s infrastructure.

- 12.19 A ‘retail-minus’ approach also does not reflect the manner in which pricing for retail and wholesale services are currently structured. In particular, “retail minus” is generally a one-size fits all pricing methodology. Regulators around the world have experienced difficulties in determining what “retail” means (ie determining the starting price from which the retail costs are to be deducted) and have adopted vastly inconsistent views on the matter. For example, the ACCC in Australia uses the unbundled standard price as the starting point for resale prices, whereas the FCC in the United States use an average retail price but excludes promotional prices of less than 90 days duration.
- 12.20 Further, the one-size fits all approach of the “retail minus” pricing methodology means it is not possible to structure wholesale pricing into volume bands or other innovative approaches. A “retail minus” methodology will not lead to greater competition but will lead to a rigid pricing methodology which is difficult to apply and provides consumers with less flexibility.
- 12.21 Finally, if despite the above arguments, the IDA proceeds with wholesale regulation and a ‘retail minus’ methodology, then SingTel submits that existing wholesale services should be ‘grandfathered’ and not subject to this form of regulation. Existing wholesale services of SingTel would almost certainly be withdrawn should they be subject to regulation in the form proposed by the draft Code (2004). SingTel submits that it would be unfair and highly prejudicial for the IDA to interfere with existing tariffs and wholesale arrangements with existing customers. SingTel submits that existing tariffs and wholesale arrangements with existing customers should be excluded from the operation of the Code (2004) affecting wholesale.

Code amendment suggested: SingTel submits that if the concepts of voluntary and mandatory wholesale arrangements are retained, the specified pricing methodology as “retail minus” in sections 4.3(a) and 6.3.5(b) respectively should be removed from the draft Code (2004).

13. INTERCONNECT RELATED SERVICES (IRS)

- 13.1 Section 6.3.3 and Appendix 2 of the draft Code (2004) contains an extensive list of IRS required to be provided by a Dominant Licensee. We note that the IDA commenced the RIO review prior to the commencement of the First Triennial Review and we would refer the IDA to our submission in relation to the RIO review. In this section, SingTel submits that:

- a range of IRS should be removed from designation because there exist available alternatives and/or these IRS are provided competitively by a number of competitors or the IRS have never been used by Requesting Licensees;
- the draft Code (2004) should include a reciprocal right of a Dominant Licensee to obtain IRS under the same terms and conditions that SingTel is required to offer those same IRS under the RIO. The draft Code (2004) and the RIO should be amended accordingly;
- the IDA should set expiry dates for all remaining IRS, at such time the IDA should review the applicability of the IRS and, unless there is strong reason to continue the designation, allow the designation to expire.

13.2 SingTel also submits that the following flaws in the interconnection regime should be corrected as follows:

- SingTel should be permitted to directly and physically interconnect with any FBO;
- any FBO that refuses to directly and physically interconnect to SingTel should be required to pay for any additional cost incurred by SingTel in delivering traffic to/from that FBO such as any transit charges payable to a transit operator; and
- A transit model for internet dial-up traffic should be adopted as it reflects the actual cost incurred, involves very minimal transition issues and redresses the current inequity.

13.3 Finally, SingTel also believes that a new IRS should be included in the Code (2004), being a broadcasting carriage service. This service should be designated in preparation for competition in the pay television sector and to potentially alleviate anti-competitive bundling of telecommunications and subscription television services.

Removal of IRS designation

13.4 In SingTel's submission to the IDA in the IDA's Review of SingTel's Reference Interconnection Offer (RIO), SingTel made submissions about a number of IRS that were competitively supplied or which have never been used. Accordingly, there are a number of services which SingTel submits should be removed from designation by the IDA as IRS.

13.5 As discussed in our earlier submission, the procedure for regulatory review is summarised at clause 1.5.5.1 of the Code (2000) which states that as part of the Code's triennial review process:

“IDA will eliminate or modify provisions that it determines, based on experience and the growth and development of competition, are no longer necessary.”

13.6 SingTel summarises the arguments made by us in response to the IDA’s recent RIO review paper as follows:

| IRS | Reason |
|---|---|
| Build of local loop/sub loop (Schedule 3A) | Remove from designation. Never used and competitive offerings available from other FBOs |
| Line sharing (Schedule 3B) | Remove from designation. Only ordered when used for testing purposes. Never used for commercial purposes. Phased out in other jurisdictions (eg US) |
| Sale of internal wiring (Schedule 3C) | Remove from designation. Never used |
| Licensing of lead-in duct (Schedule 5A) | Remove from designation. Never used and competitive offerings available from other FBOs and building developers |
| Licensing of tower space and co-location space at tower sites (Schedule 5B) | Remove from designation. Never used and alternatives available and being utilised by Requesting Licensees |
| Co-location at satellite earth stations (Schedule 8C) | Remove from designation. Never used and alternatives available |

13.7 SingTel also submits that the following IRS are currently not offered under the RIO and should also be removed from the draft Code (2004):

- Cable chambers are irrelevant to be required for sharing as there is no UNE or services to be accessed at SingTel’s cable chambers. Currently access into the SingTel exchanges is already included in the Schedule for obtaining Co-location space under the RIO. In addition, IDA may wish to note that cable chambers at the building MDF, where applicable, are not controlled by SingTel. As such, IDA should not mandate Cable chamber as an IRS for sharing.

- IDA may wish to note that space within cable risers at the building is not controlled by SingTel. Access to the space within cable risers is covered in the COPIF. As such, IDA should not mandate Space within cable risers as an IRS for sharing.
- IDA should not broadly designate all in-building cabling as Critical Support Infrastructure (**CSI**). Only if there are legitimate restrictions to building in-building cabling, then the Licensee seeking access can request IDA to designate the particular in-building cabling as CSI. The negative effect of designating broadly all in-building cabling as CSI to be shared at cost is that it removes the incentive for Licensees to invest in broadband enabled cabling (Cat 5 cabling) in building. This counters the IDA objectives of providing economic incentives for facilities building.
- IDA should not mandate masts, poles, as an IRS for sharing. These facilities are not bottlenecks and there is neither public interest nor justification for mandating sharing.
- Roadside cabinet, exchange buildings housing tandem and international switches and facilities are not offered under the RIO and it has never been requested for the past 3 years. It should be removed from the draft Code (2004).
- Building MDF falls under the COPIF and therefore should be removed.
- There are ample high rise buildings in Singapore and therefore, roof space at SingTel's exchanges are not essential facilities that are necessary for the provision of telecommunication services - it should be removed.

13.8 SingTel further explains its reasons for removal of designation of the above services in our submission to the IDA in relation to the RIO review.

Code amendment suggestion: The IRS as specified above should be removed from the draft Code (2004) for the above reasons.

IRS reciprocity

13.9 In addition to requiring a Dominant Licensee to offer and provide Interconnection Related Services and Mandated Wholesale Services to all Requesting Licensees pursuant to the code in the form of a Reference Interconnection Offer (“RIO”), SingTel submits that the Code must recognize the reciprocal rights of a Dominant Licensee to request Interconnection Related Services and Mandated Wholesale Services (if any) with any Licensee. The Licensee when requested must offer and provide Interconnection Related

Services and Mandated Wholesale Services (if any) to a Dominant Licensee under the same requirements in this section.

- 13.10 Reciprocity is a fundamental requirement for interconnection and must apply absolutely between SingTel and other Licensees. SingTel should be permitted to physically interconnect with any operator. Alternatively, if the FBO refuses to directly physically interconnect, the FBO should be required to pay for any additional cost incurred in delivering traffic to/from that FBO such as any transit charge payable to the transit operator.

Code amendment suggestion: A duty to offer reciprocity should be included as a minimum interconnection duty in section 5.4 of the draft Code (2004).

Timetable for elimination or review of IRS

- 13.11 In addition to the immediate removal of designation of the IRS described above, SingTel submits that the IDA should specify a timeframe for the phase out or further review of all existing IRS. Similar ‘sunset’ timeframes have recently been introduced in Australia for the following reasons:

“The purpose of the proposed amendments is to ensure that there is no redundant persistence of access regimes and reflects the possibility that the underlying motives for declaring a particular service may vanish over time with technological change, the declaration of substitute services or maturing competition in facilities.”³²

- 13.12 The ACCC in Australia has also said:

“A foundation principle of competition policy is the need to continually reconsider the case for regulation. This is particularly important in a dynamic environment such as telecommunications. It ensures that the regulation continues to achieve its goals and does not lock the industry into particular technologies or modes of operation that may result in higher costs to market participants and detriment to end-users.”

- 13.13 SingTel submits that expiry times should be set for all of the IRS (other than those nominated above for immediate withdrawal). SingTel believes it would be relevant to extend, for basic access services such as O/T/T, a longer timeframe, but all other services

³² Explanatory Memorandum, Telecommunications Competition Bill 2002, House of Representatives at page 45

should be reviewed over the next 12 months to 2 years having regard to likely competition in the provision of the service over that period.

13.14 SingTel nominates the following expiry dates for IRS (other than those nominated above for immediate withdrawal):

| IRS | Expiry Date |
|--|---|
| Origination, Transit, Termination | 29 September 2006 (ie the next triennial review date) |
| Physical interconnection | 29 September 2006 (ie the next triennial review date) |
| Access to UNE (ie local loop, etc) | 29 September 2004 |
| Emergency services | 29 September 2006 (ie the next triennial review date) |
| Connection services | 29 September 2004 |
| Number portability | 29 September 2006 (ie the next triennial review date) |
| Co-location at submarine cable landing station | 29 September 2004 |
| Co-location at POIs | 29 September 2006 (ie the next triennial review date) |
| Co-location at POA | 29 September 2004 |

13.15 SingTel submits that on the expiry date, the IRS could either be deleted or reviewed, depending on the state of competition, the use of services etc.

Code amendment suggestion: SingTel submits that specific expiry/review times should be included in relation to the abovementioned IRS in Appendix 2 of the draft Code (2004).

Flaws in interconnection requests

- 13.16 SingTel submits that the duty to interconnect in section 5.2 of the draft Code (2004) – that is to allow direct or indirect interconnection at the Requesting Licensee’s option - is fundamentally flawed. As stated above, under the current interconnection regime, whilst SingTel must allow another FBO to directly and physically interconnect with the SingTel network, this is not reciprocal. Another FBO can opt to either directly or indirectly interconnect with SingTel.
- 13.17 The present interconnection arrangements with StarHub, for example, require SingTel to interconnect indirectly with StarHub Mobile through StarHub. That is, StarHub is the party which represents StarHub Mobile in relation to network interconnection.
- 13.18 SingTel is then required to compensate StarHub for transiting the StarHub fixed network for traffic destined for StarHub Mobile. As a result of this compensation, StarHub and StarHub Mobile have no incentive to adopt an efficient network interconnection configuration and are encouraged to retain the current network interconnection configuration because they have the opportunity to receive compensation from SingTel for calls made by end users connected to the SingTel network.
- 13.19 SingTel submits that it should have the right to directly interconnect, in this case, with StarHub Mobile.
- 13.20 Similarly in relation to SBOs, SingTel does not agree with section 2.4 of Appendix 2 of the draft Code (2004) which specifies that a “Services based licensee may obtain interconnection ... either [from] the Dominant Licensee or any other Facilities-based licensees.” Co-location at SingTel’s exchanges is provided at cost to a Requesting Licensee seeking interconnection with SingTel and the provision of IRS. Co-location and direct and physical interconnect is not for the purpose of offering competitive services. Furthermore, interconnection is between two (2) parties and therefore the provisioning of the links should be done by one of the parties.

Code amendment suggestion: SingTel submits that section 5.2 of the draft Code (2004) should be redrafted such that an FBO/SBO should be required to interconnect directly with a Dominant Licensee at the Dominant Licensee’s request. If the request is refused, the FBO/SBO should be required to permit the Dominant Licensee to interconnect with that FBO/SBO’s network or service without incurring costs of a third party (such as transit fees).

SingTel also submits that section 2.4 of Appendix 2 should be limited to interconnection with the Dominant Licensee and not with ‘any other Facilities Based Licensees’.

Internet dial-up

- 13.21 SingTel submits that the interconnect model for Internet dial up traffic should be reviewed as the current model is flawed and results in an unfair and inequitable outcome. The IDA has acknowledged that “*the network elements and associated costs required should be lower than those incurred to connect a usual telephone call*” and that “*the current model appears to allow the terminating fixed network operators to receive revenue in excess of the efficient cost of terminating traffic*”.
- 13.22 Furthermore, the IDA has also acknowledged that a transit charge, “*could better reflect the actual cost incurred for terminating such calls*” and that a transit model provides “*minimal transition issues*”.
- 13.23 SingTel can see no reason for the retention of the current termination model for internet dial-up traffic. This model has also been discredited in countries such as Australia. SingTel submits that the IDA should adopt a transit model for internet dial-up traffic.

Code amendment suggestion: SingTel submits that the IDA should specify the transit model for internet dial-up traffic in section 3.1 of Appendix 2 of the draft Code (2004).

Designation of broadcasting carriage services

- 13.24 As discussed above, SingTel believes that the exemption granted to SCV for dominance should be removed.
- 13.25 As the IDA is also aware, the MDA was unable to attract any bidders for the second subscription television licence in Singapore. At the time, SingTel declined the opportunity indicating the following:

“SingTel’s review of the business case considered many factors. These included the size of the Singapore market, the well-entrenched position of the dominant incumbent, the availability and access to media content and the infrastructure and equipment costs.

These initiatives could include resale of Pay TV services, a more flexible licensing framework for paid scheduled programming, and prohibitions on exclusive arrangements between Pay TV licensees and content providers.”³³

³³ SingTel News Release, “SingTel’s decision on second pay TV licence”, 24 September 2003

13.26 Consistent with the IDA's view of SCV being in a position to influence the telecommunications market, SingTel believes that the IDA should identify those areas where this influence can be / is able to be exercised in an anti-competitive manner. Removing the exemption granted to SCV as dominant will provide some constraint against anti-competitive conduct.

13.27 SingTel submits that the IDA should also identify those IRS which will deal with SCV's recognised dominance and ability to influence telecommunications markets. More specifically, SingTel submits that the IDA should designate a new IRS being a broadcasting carriage service. This broadcasting carriage service would have the following elements:

- transmission of video and associated signals from a broadcast operations centre to a set-top box;
- access to conditional access equipment to enable restriction of access to paid-up subscribers;
- inclusion of content on a tier (basic or premium) at the Requesting Licensee's option;
- access to a subscriber payment system to enable billing; and
- access to electronic program guides.

13.28 Access to this cable and associated infrastructure will facilitate competition in an area monopolised by SCV. Furthermore, it is important to note that this broadcasting carriage service is within the scope of the IDA's power to designate as an IRS because it is a carriage service not a content service. It will enable the provision of content-based services but is not a content service itself.

Code amendment suggestion: SingTel submits that the broadcasting carriage service (including access to set-top box) should be included in the list of IRS in Appendix 2 of the draft Code (2004).

14. REFERENCE INTERCONNECTION OFFER (RIO)

14.1 SingTel has commented extensively on the SingTel Reference Interconnection Offer in its response to the IDA's paper. SingTel refers the IDA to that submission about the RIO and SingTel submits that the RIO provisions in the Code (2004) should be consistent with this submission.

- 14.2 SingTel also submits that the IDA should phase-out regulatory supervision of the RIO by no later than the next Triennial Review. SingTel understands the benefits of publication of interconnection agreements, and the international WTO requirements to do so. However, SingTel does not believe that ongoing regulatory supervision of the RIO is necessary. As competition develops and as FBOs and SBOs require more flexible forms of interconnection, SingTel believes that the regulatory supervision for the RIO places a constraint on these things.
- 14.3 Accordingly, SingTel submits that the IDA should specifically foreshadow that whilst RIOs must be published, there will be no regulatory approval process beyond no later than 29 September 2006 except if a bona fide complaint is received in which case the IDA may intervene to mandate specific requirements.

Code amendment suggestion: SingTel repeats its comments in our previous submission in the RIO review. SingTel also submits that the IDA should include a provision in section 6.3 for the sunset of the regulatory requirements in that section concerning a Dominant Licensee's RIO, including in particular the IDA's powers of review under section 6.3.7. As stated above, SingTel submits that this regulatory approval process should be replaced with the ability of the IDA to impose certain requirements only upon the notification and adjudication of a dispute under section 6.4 of the draft Code (2004).

15. UNFAIR METHODS OF COMPETITION, AGREEMENTS WHICH RESTRICT COMPETITION AND MERGERS

- 15.1 SingTel submits that Chapters 8, 9 and 10 of the Code (2004) should be more critically analysed by the IDA having regard to the Singapore Government's intention of introducing a Competition Law in Singapore in 2005. SingTel also wishes to express its dismay at the length of time it has taken to complete the revision of the merger section of the Code and associated guidelines. Finally, SingTel is also concerned about the IDA's lack of analytical approach in enforcement proceeding under Chapters 8 and 9, as set out in later in this submission.

Competition law in 2005

- 15.2 In the context of the Code (2004), SingTel believes that there is no need for Chapters 8, 9 and 10 of the Code (2004) after the introduction of the Competition Law by the Singapore Government in 2005. SingTel submits that the IDA should provide for the expiry of Chapters 8, 9 and 10 once the Competition Law is introduced.

15.3 Alternatively and at a minimum, SingTel submits that the IDA should include a section in the Code (2004) which specifically provides for a review of the Code (2004) following the introduction of a Competition Law by the Singapore Government.

Code amendment suggestion: SingTel submits that the IDA should specifically foreshadow that Chapters 8, 9 and 10 will be removed upon the introduction of a general competition law in Singapore.

Finalisation of merger provisions and guidelines

15.4 SingTel is dismayed at the length of time it has taken to finalise the merger sections of the Code and associated guidelines. As the IDA is aware, the guidelines and associated rules have been outstanding since October 2001. Since that time, the IDA has conducted two consultations. More than 2 years later, the merger sections of the Code and associated guidelines are still not complete.

15.5 Since 2001 and in the absence of finalised guidelines or amended rules, SCV and StarHub have merged. This has occurred in the absence of the guidelines or amended rules.

Code amendment suggestion: SingTel urges the IDA to finalise the merger provisions and ensure they are consistently applied across all merger transactions.

16. ENFORCEMENT ACTION, APPEALS AND CONSULTATION

16.1 SingTel is disappointed with the retention of the status quo in relation to the appeal process in the Code (2004). For the reasons set out in this section, SingTel submits that:

- the IDA should undertake a more rigorous market analysis to its enforcement actions;
- there should be greater consultation with stakeholders in relation to decisions and papers released by the IDA;
- there should be more specific guidance on timeframes in relation to consultation, review and appeal processes under the Code;
- there should be a more effective, independent review and appeal mechanism.

IDA's approach to enforcement and decision making

- 16.2 SingTel submits that the draft Code (2004) should contain the analytical basis on which the IDA will undertake enforcement actions and decision making generally. SingTel supports the inclusion of more detailed requirements on complainants in section 11.4.1.1 of the draft Code (2004). However, the draft Code (2004) is silent about the IDA's own analytical approach, notwithstanding the procedures included in section 11.4.1.2 of the draft Code (2004).
- 16.3 SingTel believes that the IDA has not taken a sufficiently rigorous approach to market analysis in enforcement actions. For example, the IDA's approach to market definition has been very limited and the IDA has assumed in several cases that the service being provided is the whole market without sufficient analysis of substitutes.
- 16.4 SingTel submits that the draft Code (2004) should be more rigorous in requiring an analytical approach to complaints presented to, and action taken by, the IDA. For example, section 11.4.1.2 contains the requirements of a submission to be provided by a complainant to the IDA. However, most of that information is factual based. Factual information is clearly essential, but so is some analysis of that information. Without this analysis, complainants are likely to complain about competitive action which damages the complainant rather than anti-competitive conduct. Clearly competitive conduct should be encouraged by the IDA and not complained about as anti-competitive.
- 16.5 SingTel believes that the draft Code (2004) would benefit from a more analytical approach to complaints and reviews by the IDA as follows:
- Market analysis and evidence must be presented in support of any enforcement action proceeding;
 - Market analysis must be objective and rigorous, equivalent to the assessment of the state of competition including market definition, the state of competition etc.
 - Prior to accepting/undertaking enforcement action, an opportunity should be granted to the party alleged to have contravened the Code to make representations as to why enforcement action should not be initiated;
 - Prior to initiating enforcement action the IDA must conduct its own detailed market analysis;

- When notifying a party of its intention to commence enforcement action, the IDA must provide its own detailed market analysis in addition to the submission provided by a requesting party;
- Prior to issuing the decision, IDA should notify the parties of its proposed decision, including market analysis and provide an opportunity for comment.

Code amendment suggestion: SingTel submits that the abovementioned suggestions to reinforce the required analytical approach to enforcement action should be included in sections 11.4.1.2 (regarding complaints) and 11.4.1.4 concerning the IDA's dealing with that complaint, together with associated sections.

Greater consultation on policy decisions

- 16.6 SingTel is also concerned with the limited amount of consultation in relation to policy decisions made by the IDA which generally affect the way in which the regulatory system operates in Singapore.
- 16.7 Typically, the public consultation process on policy issues in Singapore involves only one round of consultation and then some time later a final decision is simply publicly announced. At that stage the only avenues available to operators are to either request that the IDA review its own decision or appeal the decision to the Minister.
- 16.8 SingTel's concerns are reflected in, for example, the decision making process in relation to the interconnect model for internet dial-up traffic. On 4 February 2002, the IDA issued a Consultation Paper in relation to the interconnect model for internet dial-up traffic acknowledging the flaws in the current model and proposing three (3) alternative models to re-dress the flaw. The Consultation Paper itself did not contain any substantive discussion by the IDA of the issues involved and was very general. Submissions closed on 30 April 2002 and the IDA decision was issued on 14 February 2003, ie some twelve (12) months after initiating public consultation. Furthermore, when it came to making a decision, there was no draft decision issued and no opportunity for any parties to comment on the draft decision.
- 16.9 SingTel is concerned with the lack of guidance provided by the IDA in relation to its thinking, as well as the lack of reasoning provided by the IDA in draft or final decisions and the lack of opportunity to provide further comments on a proposed or draft decision prior to it being made. We would note that jurisdictions such as the EU, UK, US, Australia etc. engage in more substantive public consultation and provide more than one opportunity for comments before a final decision is rendered.

Code amendment suggestion: SingTel submits that the IDA should amend the draft Code (2004) by providing for a draft decision to be issued prior to a final decision under sections 11.4.1.10 and 11.4.2.4. SingTel also encourages the IDA to set out greater detail in its consultation papers and, to the extent possible, outline this in the draft Code (2004).

Timeliness of consultations

- 16.10 SingTel is concerned with the timeliness of the IDA and appeal decision making process. In relation to the internet dial-up decision, the IDA consultation was issued on 4 February 2002, submissions closed on 30 April 2002 and the IDA decision was only issued on 14 February 2003.
- 16.11 SingTel strongly believes that, at a minimum, indicative timeframes for the making of decisions by the IDA should be included in the draft Code (2004). Alternatively, a better option would be to provide certainty to stakeholders and fix timeframes for the making of such decisions.
- 16.12 While the IDA is subject to some timeframes under the draft Code (2004), there is no over-arching timeframe by which the IDA is to carry out consultations on non-enforcement or non-exemption issues. SingTel suggests that a timeframe for the IDA consultations should be included in section 11 in a manner consistent with, for example, section 11.4.1.10.

Code amendment suggestion: SingTel submits that section 11 should contain a catch-all provision about the timeframe for any non-enforcement or non-exemption type consultations. SingTel supports a 60 day timeframe for completion of the IDA's decision making process following the completion of public consultations.

Review and appeal process

- 16.13 SingTel is also concerned about the lack of effectiveness of the review and appeal process provided under the Code (2000) and essentially repeated in the draft Code (2004). While the IDA review process has been amplified in section 11.9 of the draft Code (2004), it is still effectively the same process as existed under the existing Code (2000).

- 16.14 SingTel does not believe that either of the IDA's options in relation to reviews deals substantively with the deficiencies in the appeal/review process. In particular, SingTel sees very little merit in reviews by the IDA of its own decisions.
- 16.15 The only other avenue available is to appeal to the Minister. However, the Minister deals with policy issues and in many cases, appeals may deal with issues of detail which the Minister may not wish to judge. Independent third party expertise would improve confidence in decision making and appeals under the Code.
- 16.16 SingTel submits that an independent third party review of decisions would be appropriate. If there are issues of policy that the Minister wishes to have considered, then the Minister may provide the independent third party with this policy guidance.
- 16.17 The independent third party reviewing the decision could be subject to the same rules as the IDA in relation to timeframes for decisions and publication of reasons.

Code amendment suggestion: SingTel submits that section 11.9.4 should be amended to provide for appeals to an independent appeal panel. This section may make allowance for policy guidance from the Minister.

17. EQUIVALENCE OF TREATMENT IN HOME MARKETS BY FOREIGN OPERATORS

- 17.1 The draft Code (2004) is silent about the mutual commitments of foreign based operators in their home jurisdiction. SingTel submits that the IDA should ensure that Singapore based operators are afforded equal treatment in foreign markets comparable to that which foreign operators are granted in Singapore.
- 17.2 Often when Singaporean operators seek to enter the home markets of foreign operators, Singaporean operators are not afforded equal treatment as compared to those foreign operators when entering the Singapore market. This creates an unlevel playing field as foreign operators may freely enter the open and fully liberalised Singapore telecommunications sector and benefit from the pro-competition regulatory environment which exists in Singapore. However, when Singapore operators faced with intense competition in Singapore telecommunications sector look to grow and expand regionally and globally and enter the home market of foreign operators they are not afforded equal treatment.

17.3 There may be a number of ways to redress this issue, for example:

- (a) enhancing the FBO/SBO distinction so that a foreign operator would only be granted a licence to access the Singapore market where equivalent access is afforded to Singapore operators in the foreign operator's home market; and
- (b) as suggested in our RIO submission, by inserting a requirement for "national equivalence" in the RIO. If a foreign licensee obtains services under the RIO, that Licensee should be required to provide services to SingTel on comparable terms and conditions, having regard to conditions in the Requesting Licensee's home country. Those terms and conditions could relevantly include a requirement for cost-based pricing. This would provide an equivalent basis for SingTel to acquire services in a foreign jurisdiction.

Code amendment suggested: SingTel submits that the application of the Code to FBOs and SBOs in section 2.1.1 could be amended to enhance the FBO/SBO distinction as suggested above. In relation to the RIO, SingTel submits that a national equivalence requirement should be incorporated into section 6.3.4.2(h) regarding restrictions on access to IRS under the RIO of a Dominant Licensee.

18. OTHER COMMENTS ON SPECIFIC SECTIONS OF THE CODE

18.1 In addition to SingTel's general comments on the draft Code (2004) as outlined above, SingTel provides detailed comments on specific sections of the draft Code (2004) in this section.

Section 3.2.6.3 Joint Marketing (Duty To Prevent Unauthorised Use of EUSI)

18.2 SingTel submits that the requirement that a Dominant Licensee that allows any Affiliate to include promotional or other material in any mass mailing must make this opportunity available to competing Licensees on non-discriminatory prices, terms and conditions be deleted.

18.3 Currently, allowing affiliates to place promotional or material in mass mailing is nothing more than an activity relating to jointly advertising or jointly informing of services that are available from a group of related companies (eg newsletters etc). We submit that competing licensees have alternatives available to distribute promotional materials and there are a large number of marketing agencies offering alternative direct marketing opportunities. Allowing affiliates to place promotional or material in mass mailing has no

demonstrable effect on competition and the IDA should not require that these arrangements be made available to others.

18.4 In fact, it is nonsensical to propose that SingTel offer non-affiliated licensees such arrangements. Clearly, licensees have many and varied means of reaching end users both directly and indirectly and through numerous mediums.

Section 3.3.2 Prices, Terms and Conditions on Which Service Will be Provided

18.5 SingTel does not see the need for specifying the prices, terms and conditions in End-User Agreements nor do we see the need for the End-User Agreements to refer to applicable tariffs for the following reasons:

- end-users will make themselves aware of the applicable tariffs, including terms and conditions, before signing a contract. The requirement to specify such information in End-User Agreements is therefore irrelevant since it is not conceivable that end-users do not make themselves aware of the applicable tariffs, including terms and conditions, before contracting for a service;
- It is unreasonable that an end-user would not be bound by any other prices, terms and conditions as tariffs may change for legitimate reasons such as changes approved by the IDA under tariff regulation;

18.6 SingTel submits that there are already procedures and alternatives available whereby end-users are provided notice of changes to tariffs and these should suffice as notification to end-users where the tariffs change.

18.7 We note that in other jurisdictions such as Australia, terms and conditions may change and, upon being changed with the regulator, then apply to all end users automatically.

Section 3.2.4 Restrictions on Service Suspension or Termination

18.8 SingTel believes that the obligations in sections 3.2.4 are overly prescriptive and limit the circumstances under which a licensee can terminate or suspend services even where there are reasonable conditions meriting suspension or termination.

18.9 Further, the requirement to seek approval to carry out suspension or termination of services under any other conditions would impede the efficiency of a licensee's business operations.

18.10 SingTel submits that at most, the requirements for service suspension and/or termination should remain as they are currently drafted in the Code 2000.

Section 3.3.7 Use of End User Service Information

18.11 SingTel submits that the requirement to specify in the End-User Agreements the means by which an end user can grant consent, the additional purposes for which, if granted consent, the Licensee may use the EUSI; and the means by which an End User can subsequently withdraw consent are cumbersome and unnecessary.

18.12 Licensees would find it burdensome to specify all the means to grant and withdraw consent and all additional purposes that EUSI will be put through. We note that these are operational procedures and such information is already provided to end-users by licensees when asked. Further, operational procedures will generally change over time and should not require amendments and revisions to the End-User Agreements. We recommend that the Licensees need not specify such information in their End-User Agreements.

Sections 4.2, 4.3& 4.4 – Duties of Dominant Licensees, Voluntary Wholesale and Tariffing

18.13 We refer the IDA to our comments in sections 7, 11 and 12.

18.14 We submit that the obligations should take into account the competitiveness of the market. As we have mentioned in our submission, the individual service markets within the business/government market sectors have consistently been found by the IDA to be highly competitive, specifically, the ITS, ICS and LDS markets. Competition in the business/customer market sector is substantially entrenched. The nature of these market segments and sectors, and the competitive outcomes since liberalisation, means that all operators now and in the future are incapable of exercising market power without losing customer opportunities. In terms of the sophistication of business/government sectors, these customers are extremely knowledgeable about telecommunications services. Hence, we argue that these obligations should not apply to competitive markets and to the business/government market sectors.

18.15 In addition, we also submit that licensees do not need the protection granted under these sections. As licensed operators providing telecommunications services in the market, licensees have an intimate knowledge of telecommunications. Many of the licensees operate in overseas markets and are leading telecommunications providers in their home markets, regionally and in some cases globally. Licensees are extremely knowledgeable about telecommunications services and their requirements, have a significant telecommunications spend and have substantial bargaining power. Licensees are

sufficiently well informed to make decisions whether to take up our services or not. Hence, the wholesale obligations are not necessary and should be deleted.

Section 4.4.3.1 (c) Review Criteria for Wholesale Tariffs

18.16 We refer to our comments in Section 12.

Sections 4.4.3.2 (c) and (d) Review Procedures

18.17 SingTel submits that there is no reason to require an audit. We note that in market competition, pricing decisions are based on market forces and audits are irrelevant in assessing the responsiveness of a price to market forces.

18.18 Further, we submit that there is no reason to seek public comments on a Dominant Licensee's proposed tariff:

- Seeking public comments will encourage shadow pricing and conservative price-decision making from the market – market players will generally seek to price their services at slightly lower than that proposed by the Dominant Licensee, instead of focusing of innovative and creative pricing packages as a way to respond to the market.
- This also has the effect of limiting competition rather than facilitating it. The act of seeking public comments means that market forces are not allowed to nor will they be able to function properly. In a truly competitive environment, the tariffs should be left to prevail and market forces will show whether it is sufficient for the market or whether it is not competitive.
- Lastly, the act of seeking public comments will encourage arbitrage from end-users too.

Section 4.5 Duty to Publish Effective Tariffs

18.19 We refer the IDA to our comments in section 11.

Section 5.4 (b) Minimum Interconnection Duties

18.20 The draft Code (2004) proposes that where one of the Licensees is a Dominant Licensee, the Licensees must make the required changes, unless both Licensees agree to withdraw the Interconnection Agreement. SingTel submits that this is unreasonable and the IDA should simply reject the Interconnection Agreement providing its detailed reasons for the rejection and allow the parties to withdraw the Interconnection Agreement and continue to commercially negotiate.

Section 5.4.6 (a)(i) Duty to Obtain IDA Approval for Suspension or Termination

18.21 The term “repeated” should be removed. Failure to pay is a material breach which warrants suspension or termination. This will create additional cost manpower and resources to monitor, track and demand payment. IDA should not encourage non-payment when due nor deliberate late payment. Furthermore, the meaning of “repeated” failure is vague and subjective is not clear.

18.22 In addition, the inclusion of “repeated” will inevitably increase the credit risk for those Licensees who provide IRS. It is unconscionable for the IDA to require licensees to bear this additional credit risk.

Section 5.6.1.1 (a)(ii) Modification by Mutual Agreement

18.23 We submit that where Licensees (including Dominant Licensee) commercially negotiate a modification to the Interconnection Agreement and the IDA rejects the modification, IDA must give the Licensees (including the Dominant Licensee) an opportunity to withdraw the modification and commercially negotiate if they so wish.

Section 5.6.2 Unilateral Suspension or Termination of Interconnection Agreements

18.24 Licensees providing the IRS (Supplier) should only be required to continue providing the IRS if the other party (Acquirer) pays the IRS charges in advance during such the time in which the Supplier applies for IDA permission to suspend or terminates due to a breach of the Interconnection Agreement. This is to safeguard the legitimate commercial interest of the Supplier and reduce the credit risk.

Section 5.7.6 Duty to Reject Discriminatory Preferences Regarding Space and Support at End User Premises

18.25 For the avoidance of doubt, it should be clarified that where an FBO places equipment in common space, it is the incoming FBO who is solely responsible for obtaining any permission or consent from the owner where necessary for the shared use of space. It is not practical nor reasonable to impose the obligation on the first party.

Section 6.3.3.3 (b) (i) Essential Support Facilities

18.26 We note that lead-in manholes should not be considered Essential Support Facilities (“ESF”). Any party could construct its own manholes. Neither are lead-in manholes facilities necessary for the provision of telecommunication services.

Section 7.5.1 Designation of Specific Infrastructure as CSI

18.27 SingTel submits that facilities that are designated CSI must be those that:

- are necessary for provision of telecommunications;
- an efficient new entrant would not be able to replicate the facility within the foreseeable future or obtain it from a third party through commercial transaction, or at cost that allow market entry;
- restriction of sharing would substantially restrict competition.

18.28 In particular, SingTel submits that lead in ducts should not be CSI anymore. We note that other operators, for example, StarHub and MCI have their own lead-in ducts. Hence, lead-in ducts do not meet the last two (2) tests listed above and it is not necessary for them to be designated as CSI.

18.29 In regard to the definition of Leaky Feeder cable in 7.5.1(a) of the Code 2004, SingTel proposes that a more suitable term should be "Radio Distribution System for Mobile Coverage in train or road tunnels" as this more appropriately reflects the types of facilities involved.

Section 11.4.1.1 (a)(iv) - Submission of Written Request for Enforcement Action & 11.4.1.2 (c)(i) - decline of request for enforcement due to no description of injury suffered or likely injury

18.30 SingTel supports these sections but we submit that the section should be expanded to require demonstration of direct injury suffered. It is fair and reasonable that where a licensee wishes to raise a Request for Enforcement, it should demonstrate and show proof of the direct injury it has suffered and hence, show cause for why a Request for Enforcement is warranted.

Section 11.4.1.2 (c)(iv) - decline of request for enforcement if exercise of IDA enforcement discretion inappropriate

18.31 SingTel submits that this section provides the IDA with too much discretion. For example, the IDA has not provided any analysis or illustration of what it means by "inappropriate" exercise of enforcement discretion.

18.32 The ambiguity and the discretion accorded to the IDA in this section create uncertainty for licensees. We submit that this discretion should be removed.

Section 11.4.1.3 - Deferment of consideration for request for enforcement by IDA (reasons not given)

18.33 Again, the discretion of the IDA to defer a consideration for request for enforcement without specifying any reasons creates uncertainty for licensees.

18.34 We submit that where the IDA chooses to defer its consideration for request for enforcement, it should provide the reasons, rationale and basis for that decision and allow the Party Requesting Enforcement to provide its response in return.

Sections 11.4.1.5 & 11.4.1.6 - Opportunity to Respond & Opportunity for Further Reply

18.35 The IDA should ensure that when parties are given an opportunity to reply, the reply should not contain new issues.

Section 11.4.1.8 - Request for Further Information

18.36 SingTel submits that requests for additional information should be limited to that information that is necessary to assist IDA with evaluation of the dispute or the enforcement.

Section 11.4.1.9(b) - Withdrawal of Request for Enforcement

18.37 SingTel submits that withdrawal of a request would mean that injury was not suffered. Under such circumstances, the IDA should not continue to take any enforcement action. Specifically, where the request is withdrawn before the IDA has proceeded with any action, the IDA should not be able to choose to take action on its own.

18.38 The primary objective is for the parties to amicably resolve the matter without the need for enforcement action. Indeed, a key component part of a private enforcement request is the provision of evidence that the parties have attempted to resolve the matter in good faith. Accordingly, primacy should be given to commercial resolution between the parties.

18.39 SingTel submits that IDA should cease and withdraw enforcement action if the parties have reached commercial resolution. To do otherwise would undermine commercial resolution and incentives for commercial resolution.

18.40 We also submit that in the event that a Party Requesting Enforcement withdraws the enforcement, the IDA should not be able to use the submissions to make its own conclusions or raise its own actions.

Section 11.4.1.10 - issuance of IDA decision

18.41 SingTel submits that where the IDA chooses to extend the time for issuing its decision beyond the 60 day period, it should specify the timeframe by which it will issue its decision. This provides certainty to licensees.

Section 11.6 - Request for Information

18.42 SingTel does not agree with the requirement that any other party specified in the Code should be required to provide information or documents or participate in interviews, physical inspections etc. An enforcement action should be restricted to the Party Requesting Enforcement and the Responding Licensee. Other parties should not be involved in such a process.

Section 11.8 Consultation with Other Interested Parties

18.43 SingTel does not agree with consulting with other parties in relation to an enforcement proceeding. An enforcement proceeding is no more than a proceeding to evaluate a matter that is still being investigated. Publishing it or consulting with other parties exposes the parties involved to possible disclosure of confidential matters.

18.44 We submit that enforcement matters are to be decided by the IDA in accordance with the procedures and according to the requirements in the Code.

Section 11.9.2 - Issues That May be Raised for Reconsideration

18.45 The Code 2004 proposes that during a reconsideration request, parties are not to present new facts/arguments for the first time where the party had not done so before the IDA direction if they could have presented the fact, or raised the argument before IDA rendered its decision or issued its direction; and cannot demonstrate that it had good cause for failing to do so.

18.46 Whilst we agree with the general approach that a party should demonstrate good cause for presenting new information and/or facts, we argue that a reconsideration by the IDA should predominantly be a complete review of all facts and information. Hence, where there is any additional information, which, for any specific reasons, were not highlighted before, we submit that every opportunity should be provided for a party to present such information such that the IDA could carry out a complete review in order to make the correct decision.

18.47 That is, a review should be a complete merits based review including relevant additional information.

Proportionality – Previous section 10.2.3 of the Current Code (2000)

18.48 SingTel is concerned that existing section 10.2.3 of the Code (2000) has been removed. SingTel strongly submits that it should be re-inserted.

Section 12.4 Specific Transitional Rules

18.49 The Code 2000 gave licensees 180 days to comply with the Code in relation to making changes to contracts. SingTel submits that the same amount of time should be given in relation to all activities that have to be carried out to ensure compliance

Appendix 2, section 3.3

18.50 In regard to the definition of O/T/T in section 3.3 of appendix 2 to the draft Code (2004), SingTel submits that an Integrated IGS (with Local Switch functionality) should be included in the list as most FBOs have deployed Integrated IGS to reflect the actual cost incurred by the FBO.

Appendix 2, clause 6.2.2

18.51 SingTel submits that IDA should recognise the importance of encouraging investment in cable systems in Singapore to increase international connectivity and capacity in and out of Singapore. SingTel submits that clause 6.2.2 as currently drafted is a fundamental departure from this policy goal and will reduce incentives for investment in new cable systems. Allowing FBO to access a third party's cable capacity allows operators to 'free-ride' on the cable system investments without making any investment contribution of their own to Singapore's telecommunications infrastructure. Clause 6.2.2 should be clarified to only provide access to capacity that the FBO owned.

19. CODE (2004) REVIEW CONSULTATION PROCESS

19.1 The IDA has not outlined the process it proposes to follow after this consultation on the draft Code (2004). In line with our submissions above, SingTel believes that stakeholders should be given a further opportunity to review the draft Code (2004) after the IDA has considered the submissions received.

19.2 SingTel therefore suggests that the process should be as follows:

- the IDA should provide a further draft of the Code (2004) together with the IDA's brief responses to the main issues and concerns raised by persons who provide submissions in the current round of consultations;
- stakeholders should be given a further opportunity to respond to the draft Code (2004); and
- the IDA should publish the Code (2004) together with a brief responses to the second round of consultations.

19.3 SingTel believes that adherence to this process will provide a more robust and a better - understood regulatory framework under the Code (2004).

PART F: CONCLUSION

19.4 SingTel welcomes this review but believes there need to be fundamental changes to the draft Code (2004) to ensure that it reflects the current highly competitive state of the Singapore market. SingTel welcomes a further draft of the Code (2004) for comment.