



**EXPLANATORY MEMORANDUM ON
THE DECISION OF THE INFO-COMMUNICATIONS DEVELOPMENT AUTHORITY
OF SINGAPORE ON THE REQUEST BY
SINGAPORE TELECOMMUNICATIONS LIMITED
FOR EXEMPTION FROM DOMINANT LICENSEE OBLIGATIONS
WITH RESPECT TO THE
RETAIL INTERNATIONAL TELEPHONE SERVICES MARKET**

5 JANUARY 2007

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PART I: INTRODUCTION

- 1 Singapore Telecommunications Limited ("**SingTel**") has requested that the Info-Communications Development Authority of Singapore ("**IDA**"), pursuant to Sub-section 2.5.1 of the Code of Practice for Competition in the Provision of Telecommunication Services 2005 (the "**Code**"), grant SingTel an exemption from the Dominant Licensee obligations contained in Sections 4 and 8 of the Code with respect to the Retail International Telephone Services ("**Retail ITS**") market (the "**Request**").
- 2 This paper ("**Explanatory Memorandum**") describes: (a) SingTel's Request, which was released by IDA for public consultation on 19 April 2006 ("**First Public Consultation**"); (b) the comments received in response to IDA's First Public Consultation and information requests that IDA made to various market participants; (c) IDA's Preliminary Decision on SingTel's Request, which IDA released for public consultation on 1 September 2006 ("**Second Public Consultation**"); (d) the comments received in response to IDA's Second Public Consultation; (e) the assessment framework that IDA uses to assess requests for exemption; (f) IDA's analysis of SingTel's Request; and (g) IDA's Final Decision.

PART II: EXECUTIVE SUMMARY

- 3 IDA has determined that the one comment filed in the Second Public Consultation does not provide any basis to alter IDA's Preliminary Decision. Therefore, IDA will adopt the tentative conclusions contained in the Preliminary Decision. As described further below, IDA will continue to define two distinct Retail ITS markets: the Residential Retail ITS market and the Commercial Retail ITS market. The relevant geographical market is the national market for both the Residential and Commercial Retail ITS markets, as there is no evidence to suggest that different competitive conditions exist in different geographical locations within Singapore. Based on the current evidence, it is not necessary to adopt a route-by-route approach to market definition.

- 4 Continued imposition of Dominant Licensee obligations is no longer necessary for services that SingTel provides in the Residential Retail ITS market. There is little evidence that SingTel has Significant Market Power ("**SMP**"), or the ability to impede competition, in the Residential Retail ITS market. IDA, therefore, will fully exempt SingTel from its Dominant Licensee obligations contained in Sections 4 and 8 of the Code for services that it offers in the Residential Retail ITS market.
- 5 While competition has further developed and increased in the Commercial Retail ITS market since November 2003 (when IDA relieved SingTel of tariff filing requirements for its Retail ITS), SingTel may retain some ability to act anti-competitively in the Commercial Retail ITS market. Therefore, while the imposition of *ex ante* Dominant Licensee obligations is no longer necessary for services that SingTel provides in the Commercial Retail ITS market, retention of rules allowing IDA to take *ex post* enforcement action in the event that SingTel acts anti-competitively remains appropriate. Accordingly, IDA will grant SingTel's Request to be exempted from the application of the *ex ante* Dominant Licensee obligations contained in Section 4 of the Code, but will reject SingTel's Request to be exempted from *ex post* Dominant Licensee obligations contained in Section 8 of the Code with respect to services that SingTel provides in the Commercial Retail ITS market. IDA will consider conducting a review of this decision in two years.

PART III: BACKGROUND

- 6 In 2003, SingTel submitted a request for exemption from Dominant Licensee obligations for its provision of Wholesale and Retail ITS ("**SingTel's 2003 Request**"). IDA issued its decision on SingTel's 2003 Request on 12 November 2003 ("**IDA's 2003 ITS Decision**").
- 7 At that time, IDA determined that there were two Retail ITS markets – a Residential Retail ITS market and a Commercial Retail ITS market. IDA also determined that the Residential and Commercial Retail ITS markets were substantially competitive. IDA therefore concluded that the continued application of tariff filing requirements was no longer necessary to protect End Users or to promote and preserve effective competition amongst Licensees in the Residential and Commercial Retail ITS markets. IDA therefore exempted SingTel from tariff filing requirements for services it provides in the two Retail ITS markets.
- 8 However, IDA determined that competition in the Residential and Commercial Retail ITS markets had not developed to the extent that SingTel's behaviour was fully constrained by market forces. In particular, IDA found that SingTel had the ability to leverage its market power in the provision of other retail services, and its control of "upstream" inputs essential for providing Retail ITS, to compete unfairly in the Residential and Commercial Retail ITS markets. Therefore, IDA continued to require SingTel to comply with all other Dominant Licensee obligations for services it provided in the two Retail ITS markets. At

the same time, IDA determined that the Wholesale ITS market was fully competitive and, therefore, lifted SingTel's Dominant Licensee obligations for services it provided in the Wholesale ITS market.¹

PART IV: SINGTEL'S REQUEST

9 On 28 March 2006, IDA received SingTel's Request pursuant to Sub-section 2.5.1 of the Code.² SingTel requested an exemption from the following Dominant Licensee obligations for the Retail ITS it offers as listed in **Table 1**, based on its claim that the Retail ITS market is fully competitive.

Table 1

Sub-section of the Code	Description of Dominant Licensee Obligations	Retail ITS
4.2	Duties of Dominant Licensees	(i) IDD001 (including voice and data); (ii) STD020; (iii) BudgetCall 013; (iv) v019; (v) FaxPlus 012; (vi) FaxPlus Connect; (vii) International Calling Cards; (viii) World Conference; (ix) Corporate Switched Telecommunications Network (" CSTN "); (x) Voice VPN; (xi) WorldCard™; (xii) Hello!™Card; (xiii) Operator Assisted Services; (xiv) Overseas Paid 800; (xv) Overseas Collect Call; (xvi) International Toll Free Service; and (xvii) ISDN International Data Service.
4.2.1	Duties Applicable to the Provision of All Telecommunication Services	
4.2.1.1	Duty to Provide Service at Just and Reasonable Prices, Terms and Conditions	
4.2.1.2	Duty to Provide Service on a Non-discriminatory Basis	
4.2.1.3	Duty to Provide Unbundled Telecommunication Services	
4.2.2	Specific Duties Applicable to the Provision of End User Telecommunication Services	
4.2.2.1	Duty to Provide Service on Reasonable Request	
4.2.2.2	Duty to Allow Resale of End User Telecommunication Services	
4.2.2.3	Duty to Allow Sales Agency	
8.2	Abuse of Dominant Position in the Singapore Market	
8.2.1	Pricing Abuses	
8.2.1.1	Predatory Pricing	

¹ IDA's 2003 ITS Decision can be found on IDA's website (www.ida.gov.sg) under "Policies and Regulation - Consultation Papers and Decisions".

² A copy of SingTel's Request, together with IDA's First Public Consultation, is available on IDA's website (www.ida.gov.sg) under "Policies and Regulation - Consultation Papers and Decisions".

Sub-section of the Code	Description of Dominant Licensee Obligations	Retail ITS
8.2.1.2	Price Squeezes	
8.2.1.3	Cross-subsidisation	
8.2.2	Other Abuses	
8.2.2.1	Discrimination	
8.2.2.2	Predatory Network Alteration	

- 10 In addition, SingTel requested an exemption from tariff filing requirements listed in **Table 2** for its ISDN International Data Service.³

Table 2

Sub-section of the Code	Description of Dominant Licensee Obligations	Retail ITS
4.4	Tariffing	ISDN International Data Service.
4.4.1	Services for Which A Dominant Licensee Must File Tariffs	
4.4.2	Tariff Filing and Review	
4.4.2.1	Information to be Included	
4.4.3	IDA Tariff Review Process	
4.4.3.1	Review Criteria	
4.4.3.2	Review Procedures	
4.5	Duty to Publish Tariffs	
4.6	Duty to Provide Service Consistent With Effective Tariffs	
4.7	Review of Effective Tariffs	

- 11 In SingTel's Request, it contended that a single retail market exists for the provision of Retail ITS. In support of this assertion, SingTel stated that while some Retail ITS could be business oriented, all its Retail ITS are available to both Residential and Commercial End Users. SingTel further contended that all Retail ITS provided through the following access techniques constitute reasonable substitutes to its Retail ITS and, therefore, fall within the same

³ SingTel's ISDN International Data Service was not included in SingTel's 2003 Request.

Retail ITS market: (a) PSTN access; (b) mobile access; (c) ISDN access; (d) calling cards; (e) Voice over Internet Protocol (“**VoIP**”) services; (f) call-back/call origination services; and (g) any other means used to provide ITS. SingTel also stated that the geographical market in which it provides Retail ITS is between Singapore and locations outside Singapore. SingTel further contended that a route-by-route approach to market definition is inappropriate, given the ability to complete calls either by “hubbing” through third countries or by using VoIP services.

- 12 In addition, SingTel asserted that the Retail ITS market is fully competitive and that it does not have SMP in the Retail ITS market. SingTel further asserted that the Retail ITS market is characterised by extensive competition from numerous Facilities-Based Operators (“**FBOs**”) and Services-Based Operators (“**SBOs**”), low economic and regulatory barriers to entry, high levels of international traffic growth, and high levels of tariff diversity and product innovation. SingTel stated that its share of outgoing Retail ITS call minutes has fallen below the 40 percent threshold at which IDA presumes a Licensee has SMP, and that it is unable to leverage any market power it may have from its control of essential facilities into the Retail ITS market. Furthermore, SingTel claimed that there is evidence of actual market competition as shown by SingTel's declining ITS operating revenues and falling average ITS call collection rates.

PART V: FIRST PUBLIC CONSULTATION ON SINGTEL'S REQUEST

- 13 Two parties - BT Global Services (“**BT**”) and StarHub Ltd (“**StarHub**”) - filed comments in response to IDA's First Public Consultation.⁴ Both BT and StarHub (the “**Commenters**”) opposed SingTel's Request. The Commenters contended that two concerns raised in IDA's 2003 ITS Decision – that SingTel retained significant market control over several “upstream” inputs that are essential to provide Retail ITS, and that SingTel had the ability to provide End Users with a bundle of products including Direct Exchange Line (“**DEL**”), leased lines, broadband access and ITS – remain valid today. Both Commenters disagreed with SingTel's claim that all Retail ITS provided through various access techniques constitute reasonable substitutes to SingTel's Retail ITS. The Commenters also questioned SingTel's claims that its market share in the Retail ITS market had fallen below 40 percent.
- 14 During the proceeding, IDA also requested information from the industry, which IDA considered in its assessment of SingTel's Request.

⁴ The comments are posted on IDA's website (www.ida.gov.sg) under “Policies and Regulation - Consultation Papers and Decisions”.

PART VI: IDA'S PRELIMINARY DECISION AND SECOND PUBLIC CONSULTATION

- 15 On 1 September 2006, IDA released its Preliminary Decision regarding SingTel's Request, and initiated the Second Public Consultation. In the Preliminary Decision, IDA indicated that it would adopt the following decisions, which are summarised in **Table 3**, with respect to SingTel's Request.

Table 3

Code Provisions	Residential Retail ITS Market	Commercial Retail ITS Market
<u>Ex Ante</u>		
4.2.1 - Duty to provide service at just and reasonable prices, terms and conditions; Duty to provide service on a non-discriminatory basis; and Duty to provide unbundled telecommunication services.	Grant	Grant
4.2.2 - Duty to Provide Service on Reasonable Request; Duty to Allow Resale of End User Telecommunication Services; and Duty to Allow Sales Agency.	Grant	Grant
<u>Ex Post</u>		
8.2.1 – Prohibition against pricing abuses including predatory pricing, price squeezes and cross-subsidisation.	Grant	Deny
8.2.2 - Prohibition against taking any other action that abuses its dominant position including discrimination and predatory network alteration.	Grant	Deny

- 16 IDA also concluded in its Preliminary Decision that it would grant SingTel an exemption from tariff filing requirements for its ISDN International Data Service, as summarised in **Table 4**.⁵

Table 4

Code Provisions	SingTel's ISDN International Data Service (under Commercial Retail ITS Market)
4.4 – Tariffing including services for which a Dominant Licensee must file tariffs; tariff filing and review; and IDA tariff review process.	Grant
4.5 - Duty to publish tariffs	Grant
4.6 - Duty to provide service consistent with effective tariffs	Grant
4.7 - Review of effective tariffs	Grant

⁵ For the avoidance of doubt, the exemptions granted to SingTel for its provision of services in the Commercial Retail ITS market in Table 3 will similarly apply to SingTel's ISDN International Data Service.

- 17 SingTel was the only party who responded to the Second Public Consultation. SingTel's comments can be found on IDA's website (www.ida.gov.sg) under "Policies and Regulation – Consultation Papers and Decisions".
- 18 SingTel supported IDA's Preliminary Decision to fully exempt SingTel from the Dominant Licensee obligations contained in Sections 4 and 8 of the Code with respect to services that SingTel offers in the Residential Retail ITS market. SingTel also supported IDA's Preliminary Decision to exempt SingTel from application of *ex ante* Dominant Licensee obligations contained in Section 4 of the Code with respect to services that SingTel offers in the Commercial Retail ITS market. SingTel has, however, raised two objections to IDA's Preliminary Decision.
- 19 First, SingTel disagreed with IDA's decision to exclude Internet Telephony services from the same market as Retail ITS. SingTel asserted that such services should be included in the same market as Retail ITS because: (a) Internet Telephony services act as a competitive constraint on SingTel's ability to successfully implement a small but significant non-transitory increase in prices of Retail ITS; (b) distinguishing between Internet Telephony services and other forms of Retail ITS is inappropriate given the principle of technological neutrality; and (c) such an approach will be consistent with international practice.
- 20 Second, SingTel objected to IDA's decision to retain the *ex post* Dominant Licensee obligations contained in Sub-section 8.2 of the Code with respect to services that SingTel provides in the Commercial Retail ITS market. SingTel asserted that it does not have SMP in the Commercial Retail ITS market, and therefore is unable to act independently of competitive forces in this market by unilaterally restricting output, raising prices or reducing quality. SingTel contended that IDA might have placed undue emphasis on market share in its analysis of the Commercial Retail ITS market at the expense of other factors. SingTel claimed that its market share in the Commercial Retail ITS market is inconsequential when viewed in light of other competitive constraints imposed on SingTel in the market.

PART VII: IDA'S ASSESSMENT FRAMEWORK

- 21 Under the Code, a Licensee that is classified as a Dominant Licensee must comply with certain provisions applicable to Dominant Licensees when it provides any telecommunication service pursuant to that licence. The Code recognises, however, that over time a Dominant Licensee's services may become subject to competition in certain markets in which it participates, and some regulations imposed on its services in those markets may no longer be necessary to prevent the Dominant Licensee from acting anti-competitively.
- 22 Sub-section 2.5.1 of the Code therefore provides for a process by which a Dominant Licensee may request for exemption from complying with some or

all of the Dominant Licensee obligations⁶ for specific services or facilities. On 30 September 2005, IDA issued advisory guidelines governing requests for exemptions under Sub-section 2.5 of the Code⁷ (the "**Exemption Guidelines**"), which set out the procedures and standards that IDA will generally apply when implementing Sub-section 2.5 of the Code. The guidelines also describe the procedures that Licensees and other parties should follow in order to comply with the requirements contained in the Code.

- 23 In considering SingTel's Request, IDA has applied the analytical framework as set out in the Exemption Guidelines. The analytical framework seeks to apply economic analysis to determine whether, as a result of changing market conditions, continued application of the Dominant Licensee obligations to a Dominant Licensee's services is necessary. Consistent with the analytical framework set out in the Exemption Guidelines, IDA has determined the relevant service and geographical markets in which SingTel provides Retail ITS and has conducted a competitiveness assessment including: (a) determination of market participants and their market shares; (b) consideration of factors that would affect SingTel's ability to act anti-competitively; and (c) consideration of evidence of actual market performance.

PART VIII: IDA'S ASSESSMENT

Market Definition

Relevant Service Market

- 24 The evidence collected during the First Public Consultation did not support SingTel's contention in its Request that all Retail ITS for which it sought an exemption should fall within a single Retail ITS market. While IDA acknowledged in its Preliminary Decision that some Retail ITS may be available to both Residential and Commercial End Users, as pointed out by the Commenters in the First Public Consultation, certain Retail ITS that are specifically for use by Commercial End Users are unlikely to be used by Residential End Users. This is because Commercial End Users are likely to have different needs than Residential End Users. Such needs include higher usage volume, greater service reliability and greater variety of services. Similarly, Residential End Users would not be likely to consider, for example, using SingTel's World Conference service, as it does not meet the needs of a typical Residential End User. This difference in the two groups of End Users

⁶ Under Sub-section 2.5.1 of the Code, the Dominant Licensee must, among others, submit an application to IDA that identifies the specific provisions of the Code from which it seeks exemption and demonstrates that continued application of the provisions to a specific facility and/or service is not necessary to protect End Users or promote and preserve effective competition amongst Licensees.

⁷ The Advisory Guidelines Governing Petitions for Reclassification and Requests for Exemption under Sub-Sections 2.3 and 2.5 of the Code of Practice for Competition in the Provision of Telecommunication Services 2005 can be found on IDA's website (www.ida.gov.sg) under "Policies & Regulation – Codes of Practice and Guidelines".

is recognised by operators, who use different sales and marketing approaches for each group of End Users.

- 25 The information gathered during the Second Public Consultation does not provide a basis for IDA to alter the market definition arrived at in its Preliminary Decision. IDA, therefore, maintains its decision to define two service markets corresponding to the Retail and Commercial End Users, which are: (a) the Residential Retail ITS market; and (b) the Commercial Retail ITS market. The Residential Retail ITS market consists of services that enable Residential End Users in Singapore to make and receive telephone calls between Singapore and locations outside of Singapore; while the Commercial Retail ITS market consists of services that enable Commercial End Users in Singapore to make and receive telephone calls between Singapore and locations outside of Singapore.⁸
- 26 IDA also maintains its decision that the specific Retail ITS for which SingTel sought an exemption fall within two separate Retail ITS markets as shown in **Table 5**.

Table 5

Residential Retail ITS Market	Commercial Retail ITS Market
IDD001	IDD001
STD020	STD020
BudgetCall 013	BudgetCall 013
v019	v019
FaxPlus 012 ⁹	FaxPlus 012 ⁹
FaxPlus Connect ⁹	FaxPlus Connect ⁹
International Calling Cards	International Calling Cards
WorldCard ^{TM10}	WorldCard ^{TM10}
Hello! TM Card ¹⁰	Hello! TM Card ¹⁰
Operator Assisted Services	Operator Assisted Services
Overseas Paid 800 ¹¹	Overseas Paid 800

⁸ In IDA's 2003 ITS Decision, IDA defined the market for both the Residential and Commercial Retail ITS markets to include "voice" in the description of telephone calls made and received by Singapore End Users between Singapore and locations outside of Singapore, even though the list of Retail ITS provided by SingTel included fax services such as SingTel's FaxPlus 012 service. On reflection, IDA believes it is more appropriate to define Retail ITS as "telephone calls made and received between Singapore and locations outside of Singapore". While dedicated fax services provided by SingTel and other Licensees may provide a different functionality than voice services, these services are in the Retail ITS markets because the same services can be provided using the same narrowband facilities. For instance, while IDD is typically used for voice calls, the service can also be used to send an international fax.

⁹ In IDA's 2003 ITS Decision, FaxPlus 012 was identified under the Commercial Retail ITS market only. Based on evidence collected during the First Public Consultation and SingTel's confirmation, IDA has concluded that SingTel's FaxPlus (comprising of FaxPlus 012 and FaxPlus Connect) can be included in both the Residential Retail ITS market and the Commercial Retail ITS market because this service is used by both Residential and Commercial End Users.

¹⁰ WorldCardTM and Hello!TMCard are prepaid international calling cards offered by SingTel. In IDA's 2003 ITS Decision, "Prepaid Calling Cards" were included in both the Residential Retail ITS market and the Commercial Retail ITS market.

¹¹ In IDA's 2003 ITS Decision, Overseas Paid 800 was identified under the Commercial Retail ITS market only. Based on evidence collected during the First Public Consultation, IDA has

Residential Retail ITS Market	Commercial Retail ITS Market
Overseas Collect Call	Overseas Collect Call
Prepaid Callback Service ¹²	Prepaid Callback Service ¹²
	World Conference ¹³
	Corporate Switched Telecommunications Network
	Voice VPN
	International Toll Free Service ¹³
	ISDN International Data Service ^{13 14}
	WorldConference Multi-Media Conference Service ¹⁵

- 27 In the First Public Consultation, the two Commenters suggested that mobile-accessed Retail ITS should not be considered in the same market as fixed-accessed Retail ITS. In support of this position, the Commenters argued that the cost to make an international call varied based on the access mode, and that End Users tended to use the Retail ITS of their access line providers. However, based on information submitted by the industry, IDA determined not to segment the Retail ITS market according to access platforms. IDA noted that its "pre-registration" approach allows End Users to make Retail ITS calls on a call-by-call basis regardless of access platforms. Although access service providers may offer promotions or discounts on their Retail ITS to their End Users, evidence showed that End Users often obtain Retail ITS from different providers than their access provider. Furthermore, Retail ITS are billed separately from the access services. Given that End Users view

concluded that SingTel's Overseas Paid 800 can be included in both the Residential Retail ITS market and the Commercial Retail ITS market because the service is used by Residential and Commercial End Users.

- ¹² On 28 March 2006, SingTel sought IDA's confirmation that its Prepaid Callback Service is within the Retail ITS market and that IDA's 2003 ITS Decision would apply to this service. IDA confirmed that SingTel's new Prepaid Callback service is a Retail ITS available to all retail customers. Please refer to the Gazette published on IDA's website on 26 April 2006 [Ref: Telecommunications (Exemption from Dominant Licensee Provisions in Telecom Competition Code 2005 – Prepaid Callback Service) Notification 2006].
- ¹³ In its Request, SingTel claimed that WorldConference, International Toll Free Service and ISDN International Data Service should be included in both the Residential Retail ITS market and the Commercial Retail ITS market. Based on evidence collected during the First Public Consultation, IDA has concluded that it is more appropriate to identify these Retail ITS under the Commercial Retail ITS market only because these services typically are used only by Commercial End Users.
- ¹⁴ ISDN International Data Service was not included in SingTel's 2003 Request. Based on the evidence reviewed and market definitions as determined in this Explanatory Memorandum, ISDN International Data Service is solely within the Commercial Retail ITS market, given that ISDN services are predominantly subscribed by Commercial End Users.
- ¹⁵ On 10 July 2006, SingTel sought IDA's confirmation that its WorldConference Multi-Media Conference Service is within the Retail ITS market and that IDA's 2003 ITS Decision would apply to this service. IDA confirmed that SingTel's new WorldConference Multi-Media Conference Service is a Retail ITS available to all retail customers. Please refer to the Gazette published on IDA's website on 18 August 2006 [Ref: Telecommunications (Exemption from Dominant Licensee Provisions In Telecom Competition Code 2005 – International Telephone Services) Notification 2006].

mobile-accessed and fixed-accessed Retail ITS as reasonable substitutes, IDA did not consider it necessary to further segment the Retail ITS markets according to access platforms. IDA will maintain its position in the absence of any new evidence gathered from the Second Public Consultation.

- 28 One Commenter argued in the First Public Consultation that ISDN IDD service should not be considered a substitute for fixed-accessed and mobile-accessed Retail ITS. In the Preliminary decision, IDA noted that, under its market definition in paragraph 25, Retail ITS offered through ISDN is only one of several Retail ITS offered in the Commercial Retail ITS market. As explained above, IDA does not consider it necessary to segment the Retail ITS markets according to access platforms, as Retail ITS offered over other access platforms constrain the prices of ISDN-accessed Retail ITS. Hence, IDA finds no basis for treating SingTel's ISDN International Data Service as being in a separate market. IDA will maintain its position in the absence of any new evidence gathered from the Second Public Consultation.

Internet Telephony Services

- 29 In its Preliminary Decision, IDA concluded that Internet Telephony services (or VoIP services) is not in the same market as Retail ITS. Internet Telephony services generally allow End Users to make and receive calls in any domestic and overseas location where broadband Internet access is available.¹⁶ Based on the evidence, IDA concluded that, while Internet Telephony services may provide a viable alternative for certain End Users, such services are still nascent and the take-up in Singapore remains insignificant compared to Retail ITS. More importantly, there is little evidence that the ability of End Users to use Internet Telephony services to make international calls has constrained the prices of Retail ITS.
- 30 During the Second Public Consultation, SingTel raised its objections to the exclusion of Internet Telephony services from the Retail ITS market as described in paragraph 19.
- 31 SingTel has not demonstrated that the availability of Internet Telephony services has actually constrained the prices of Retail ITS. For instance, while SingTel commented that corporations are installing IP-PBX systems today, SingTel has not provided any evidence of the amount of Internet Telephony traffic generated by these IP-PBX systems. Neither has SingTel provided evidence that Commercial End Users have migrated, or would likely migrate, from Retail ITS services to Internet Telephony services in response to a price increase of Retail ITS. Generally, for a Commercial End User who has not deployed a global private network, upgrading from a Retail ITS to an IP-based solution which allows it to deploy an IP-based international private network capable of carrying voice traffic is a costly and time-consuming process. IDA believes that there are few Commercial End Users who are likely to undertake

¹⁶ Internet Telephony services and VoIP services are different from "IP-in-the-middle" services such as SingTel's v019 service that enable customers to originate calls on the PSTN, but may use IP as the transmission protocol in the core of the network.

such a process in response to an increase in Retail ITS prices. With respect to the take-up of Internet Telephony services in the Residential Retail ITS market, IDA notes that around 40 percent of Singapore households today do not have a broadband Internet connection and, therefore, are unable to make use of Internet Telephony services. Even for those who can, there is no evidence to suggest their willingness to switch, or that they have actually switched, to Internet Telephony services. Given the above, IDA does not believe that Internet Telephony services today act as a competitive constraint on SingTel's ability to successfully implement a small but significant non-transitory increase in prices of Retail ITS.

- 32 IDA also does not believe that its Preliminary Decision to exclude Internet Telephony services from the market for Retail ITS undermines the principle of technological neutrality. As the Code makes clear, technological neutrality does not require that all telecommunication services be treated identically. Rather, IDA has stated that, "*...Regulatory requirements will be based on sound economic principles and, to the extent feasible, will be technology-neutral. As the phenomenon of convergence is in its early stages, with different platforms subject to differing degrees of competition, the objective application of these principles may result initially in the imposition of different regulatory obligations on service providers that use different platforms.*"¹⁷ In the present case, applying sound economic analysis, IDA has concluded that Internet Telephony services do not constrain the price of Retail ITS today. The principle of technological neutrality does not require that IDA ignore this evidence and presume that Retail ITS and Internet Telephony services are, in fact, reasonable substitutes.
- 33 IDA has also considered SingTel's assertion that inclusion of Internet Telephony services in the same market for Retail ITS would be consistent with international practice. SingTel has cited the example of the European Commission ("**EC**") in support of its assertion. However, an international consensus has yet to emerge concerning neither the inclusion of Internet Telephony services in the same market as Retail ITS, nor the identification of which types of Internet Telephony services to include. While the EC has "welcomed" the decision of several European National Regulatory Authorities ("**NRAs**") to include Internet Telephony services within the same market as PSTN-accessed services, the EC has not *required* NRAs to do so. In fact, the majority of European NRAs have not done so.
- 34 In its Preliminary Decision, IDA noted that the usage of Retail ITS had not decreased in spite of the availability of Internet Telephony services, as evidenced by the increasing number of total Retail ITS outgoing minutes. IDA believes this provides further evidence that the two services are not substitutes. In its comments filed during the Second Public Consultation, SingTel argues that Internet Telephony services and Retail ITS could increase together even if the two services are substitutes. IDA recognises that, in theory, Internet Telephony and Retail ITS usage could both increase, even if they are substitutes. IDA, however, believes that the more reasonable

¹⁷ Sub-section 1.5.5 of the Code.

explanation for the growth in Internet Telephony traffic is that – rather than being a substitute for Retail ITS – Internet Telephony usage represents lower-priced “new minutes” which would not have been generated by higher-priced Retail ITS. Generally, Internet Telephony users have a broadband Internet connection, are familiar with the technology and are willing to accept potentially lower quality international telephony calls (compared to those made via Retail ITS). By contrast, many users are unlikely to switch to Internet Telephony services even if the price of Retail ITS goes up. Rather, if the price of Retail ITS increases, they are likely to pay the higher price or make fewer calls using Retail ITS. Thus, even if traffic generated by Retail ITS and Internet Telephony services both increase, this does not prove that End Users view Internet Telephony services as reasonable substitutes for Retail ITS.

- 35 To summarise, IDA recognises that Internet Telephony services are being used by certain End Users to make international telephony calls. However, there is no evidence at this point to indicate that Internet Telephony services act as a competitive constraint on Retail ITS. Internet Telephony services are still nascent, and serve only a niche market in Singapore. IDA therefore concludes that Internet Telephony services should not be included in the same market as Retail ITS.

Relevant Geographical Market

- 36 The evidence collected does not indicate any difference in competitive conditions involving the provision of Retail ITS in different locations within Singapore. IDA therefore concludes that the relevant geographical market for both the Residential Retail ITS market and Commercial Retail ITS market is the **national market**.
- 37 IDA has considered the suggestion by one Commenter in the First Public Consultation that IDA should distinguish between Retail ITS that: (a) “offer international call origination only within Singapore to destinations outside Singapore”; and (b) Retail ITS that also “allow customers to make international calls from any country outside Singapore”. IDA concludes that it is not necessary to define the market for Retail ITS based on geographical location from which a service allows users to originate calls. Retail ITS such as calling card services, that allow Residential and Commercial End Users to originate calls from both Singapore and overseas constrain prices of Retail ITS, such as IDD services, that only allow users to originate calls from Singapore. Indeed, some End Users purchase calling card services only for use in Singapore.
- 38 IDA has also considered whether it should treat each Retail ITS route as a separate market, and assess the competitiveness of each route. IDA has concluded that it is not necessary to do so. Licensees do not offer Retail ITS on a route-by-route basis. Instead, Licensees generally provide Retail ITS to many or all overseas destinations. There are no competitive bottlenecks preventing Licensees from providing Retail ITS on any route. Rather,

Licensees use various means of sending Retail ITS traffic to a particular overseas destination, such as transit, International Simple Resale (“**ISR**”), or purchase Wholesale ITS minutes if they do not have the capacity on a particular route. Because competitive conditions are comparable across routes, there is no need for IDA to separately assess the competitiveness of each route.

- 39 To summarise, IDA maintains its decision that there are only **two service markets**, which are: (a) the **Residential Retail ITS market**; and (b) the **Commercial Retail ITS market**, and that the relevant **geographical market** for each market is **national**.

Assessing Competitiveness of the Residential and Commercial Retail ITS Markets

- 40 Where the evidence shows that market conditions are similar, IDA will present its assessment of the Residential and Commercial Retail ITS markets together. Where the evidence indicates differences in market conditions, IDA will present its assessment of both markets separately.

Market Shares

- 41 In deciding the relevant unit of measurement for Retail ITS market share, IDA has considered using Retail ITS outgoing minutes and Retail ITS revenue. IDA has determined that the best measure of market share for the Residential and Commercial Retail ITS markets continues to be **Retail ITS outgoing minutes**. Given the differences in unit pricing of Retail ITS offered by providers, Retail ITS revenue would not be an appropriate measure of Retail ITS market share. For example, the market share of a provider who offers Retail ITS with low unit pricing may be understated if Retail ITS revenue were used as the unit of measurement for Retail ITS market share, even though the number of Retail ITS outgoing minutes generated by the operator is high.
- 42 One Commenter claimed during the First Public Consultation that IDA's decision to grant confidential treatment to SingTel regarding its market share data prevented other parties from conducting a “true market analysis”. IDA does not believe this concern is well-founded. Under the Code¹⁸, a party submitting information to IDA may request confidential treatment. The Code sets out the standards governing the grant of confidential treatment. In granting SingTel the confidential treatment, IDA had applied the relevant standards. IDA believes that the data publicly disclosed by SingTel was sufficient for interested parties to conduct their analyses and submit their comments. In addition, IDA disclosed appropriate market data in its Preliminary Decision, thereby providing an opportunity for further public comment.

¹⁸ Sub-section 11.7 of the Code.

- 43 To facilitate IDA in its assessment, IDA sought to obtain data on Residential and Commercial Retail ITS minutes offered by industry participants, during the First Public Consultation. The operators that responded to IDA's information request have an aggregate market share of more than 80 percent of the combined Retail ITS markets, which is sufficient for IDA to proceed to evaluate and assess SingTel's Request. In generating market share data for the Residential and Commercial Retail ITS markets, IDA initially encountered difficulties in separating mobile-accessed Retail ITS minutes provided by the industry into Residential and Commercial minutes. The operators indicated to IDA that they were generally unable to separate their mobile-accessed Retail ITS minutes into Residential and Commercial Retail ITS minutes. Nevertheless, IDA has applied reasonable assumptions to allocate the mobile-accessed Retail ITS minutes to the Residential and Commercial Retail ITS markets, and conducted sensitivity tests in arriving at our assessment of SingTel's estimated market shares in each of the Retail ITS markets.¹⁹
- 44 Based on the data on retail outgoing minutes provided by the industry, and IDA's application of the sensitivity tests, IDA estimates that SingTel's share in the Residential Retail ITS market is now less than 40 percent, and that SingTel's share in the Commercial Retail ITS market is approximately 60 percent.
- 45 IDA will generally make an initial presumption that a Dominant Licensee that has a market share in excess of 40 percent has SMP. However, while a higher market share often indicates SMP, IDA has not adopted an absolute market share percentage above which it will conclusively presume that a Dominant Licensee has SMP. Rather, regardless of the Licensee's market share, this presumption may be overcome by evidence that demonstrates that the Licensee, in fact, is subject to effective competition. Therefore, based on SingTel's estimated market shares in the Residential and Commercial Retail ITS markets, IDA made an initial presumption that SingTel does not have SMP in the Residential Retail ITS market, but has SMP in the Commercial Retail ITS market, and undertook an assessment of actual competitive conditions in each market.

Ability to Act Anti-Competitively

- 46 In this section, IDA will consider the factors that affect SingTel's ability to act anti-competitively in the Residential and Commercial Retail ITS markets.

Market Concentration

- 47 In general, the more concentrated a market is, the more likely that SingTel can act anti-competitively. IDA recognises that there are many participants in

¹⁹ IDA adopted the following assumptions for apportioning the mobile-accessed Retail ITS outgoing minutes into Residential Retail ITS minutes and Commercial Retail ITS minutes, and compared the market share results for sensitivity, with the first number being the Residential minutes and the second being the Commercial minutes: (a) 50:50; (b) 75:25; (c) 80:20; and (d) 20:80.

the Retail ITS markets. Today, there are close to 300 FBOs and SBOs licensed by IDA to offer Retail and/or Wholesale ITS. In its 2003 ITS Decision, IDA concluded that SingTel's share of the combined Retail ITS markets was over 60 percent. As discussed below, three years after IDA's 2003 ITS Decision, SingTel has lost market share in both the Residential and Commercial Retail ITS markets, while the market shares of SingTel's competitors have grown.

- 48 IDA notes that the Residential Retail ITS market is now less concentrated, with several strong participants including M1, Phoenix Communications ("Phoenix"), ST SunPage and StarHub. Since IDA's 2003 ITS Decision, the FBOs and SBOs competing with SingTel in the Residential Retail ITS market have gained a larger portion of the market. Collectively, their market share has increased from approximately 30 percent in 2003 to more than 60 percent today.
- 49 IDA recognises that the Commercial Retail ITS market is more concentrated than the Residential Retail ITS market. SingTel's market share of the Commercial Retail ITS market remains relatively high, with SingTel retaining an estimated 60 percent of the Commercial Retail ITS market today. Notwithstanding, IDA recognises that since IDA's 2003 ITS Decision there has been increasing competition in the Commercial Retail ITS market. SingTel's market share has decreased by approximately 10 percent since 2003, and its competitors are gaining ground. StarHub and M1 have, for example, become significant market participants during the three years since IDA's 2003 ITS Decision.

Entry Barriers

- 50 The greater the entry barriers to a market, the greater the likelihood that SingTel can act anti-competitively. IDA has considered the impediments to other Licensees entering, or expanding their participation in the Residential and Commercial Retail ITS markets, including technical, access, financial, commercial and regulatory barriers. Based on the available evidence and assessment, IDA has concluded that entry barriers in the Retail ITS Markets are generally very low.

(a) Technical Barriers

There are no technical barriers in the Residential and Commercial Retail ITS markets. New entrants and existing operators are not required to use technology that is costly or difficult to develop or obtain from third parties. There are various ways in which operators can provide Retail ITS such as via (i) simple reselling of other operators' Retail ITS; (ii) buying Wholesale ITS minutes; or (iii) leasing raw international capacity. None of these present any significant technical barriers.

(b) Access Barriers

In assessing the existence of access barriers, IDA has considered the extent to which existing regulation ensures that new entrants have access to infrastructure that is required to provide a competitive Retail ITS on just, reasonable and non-discriminatory prices, terms and conditions. In IDA's 2003 ITS Decision, IDA concluded that SingTel retained significant market control for several "upstream" inputs essential for providing Retail ITS, such as direct access to End Users and access to Cable Landing Stations ("**CLS**"). However, the evidence gathered in this proceeding showed that direct access to End Users does not seem to provide SingTel with a significant competitive advantage in the Retail ITS markets today. Even though SingTel retains significant market share in the residential fixed-line market, SingTel's estimated market share in the Residential Retail ITS market has fallen to less than 40 percent today. Given the competitive Wholesale ITS market, IDA notes that SBOs such as Phoenix and Macquarie Telecommunications ("**Macquarie**") have successfully entered the Residential and Commercial Retail ITS markets respectively without any significant investments in access infrastructure.

Furthermore, "downstream" competitors that want to deploy their own access infrastructure have regulated and non-discriminatory access to the "upstream" inputs controlled by SingTel at IDA determined and approved cost-based prices, terms and conditions (under SingTel's Reference Interconnection Offer, "**RIO**"), such as co-location, connection services and access to international capacity at any of SingTel's CLS. Indeed, in the three years since IDA's 2003 ITS Decision, IDA has significantly improved the RIO terms under which SingTel is required to offer such access to competing Licensees. These include requiring SingTel to modify its RIO to: (i) allow greater access to submarine cable capacity at SingTel's CLS; (ii) reduce timeframes for ordering, provisioning and fault restoration of Interconnection Related Services ("**IRS**"); (iii) reduce activation time for connection to a cable system from 20 business days to 10 business days; and (iv) introduce Service Level Guarantees for most IRS. IDA therefore determines that access barriers in the Residential and Commercial Retail ITS markets are very low.

One Commenter argued in the First Public Consultation that the ability of SingTel's DEL customers to be "automatically pre-registered" for SingTel's Retail ITS creates a significant entry barrier because it gives SingTel the ability to leverage its position in the market for the provision of DEL services to obtain a competitive advantage in the Residential and Commercial Retail ITS markets. IDA does not find this argument persuasive. End Users are not "automatically pre-registered" for SingTel's Retail ITS; they must sign up for SingTel's Retail ITS even if they are SingTel's DEL customers.²⁰

²⁰ IDA notes that End Users are "automatically pre-registered" for SingTel's Retail ITS when subscribing to SingTel Mobile's subscription plans. IDA notes that this "automatic pre-registration" is generally being practised by other mobile operators as well. In addition, IDA notes that the mobile market is competitive and SingTel Mobile has no market advantage to leverage in any case.

Furthermore, as mentioned in paragraph 27, IDA's open access policy allows an End User to register with multiple Retail ITS providers to use any Retail ITS on a call-by-call basis. Indeed, the evidence demonstrates that many SingTel DEL customers have done so, and frequently use SingTel's DEL service to access Retail ITS provided by other Licensees. The significant drop in SingTel's market share, especially in the Residential Retail ITS, further demonstrates that there are no significant access barriers, and that SingTel's cannot leverage its position as the dominant provider of DEL services to distort competition in the Retail ITS markets.

(c) Financial Barriers

In determining the extent to which financial barriers exist, IDA will consider the costs that a new entrant must incur, as well as the extent to which such costs constitute sunk costs. IDA recognises that a new entrant will inevitably incur costs in order to enter a market. However, the evidence does not suggest that such costs are so significant that they would impede a new entrant from entering, or an existing Licensee from expanding their participation in, the Residential and Commercial Retail ITS markets. Indeed, since 2000, many operators (both FBOs and SBOs) have successfully entered the Residential and Commercial Retail ITS markets, and have continued to provide and expand their Retail ITS offerings. Moreover, as mentioned in paragraph 38, operators have several means to provide Retail ITS, depending on their preferred level of financial commitments. For example, operators who prefer a lower financial commitment can choose to resell Wholesale ITS minutes instead of buying or building international capacity.

(d) Commercial Barriers

IDA recognises that some commercial barriers may exist in both the Residential and Commercial Retail ITS markets. New entrants to the markets and existing Licensees are likely to incur costs to acquire and retain Residential and Commercial End Users. Such costs may include advertising costs in order to build brand recognition and convince End Users to register and use their Retail ITS, and retention costs to maintain End Users' "brand loyalty". Notwithstanding the existence of commercial barriers, the evidence does not suggest these commercial barriers to be insurmountable. FBOs such as M1 and StarHub have successfully leveraged on their advertising for mobile and other services to build brand recognition in the Retail ITS markets, while SBOs such as Phoenix, ST SunPage, Zone1511 and Macquarie have also successfully entered the Retail ITS markets.

(e) Regulatory Barriers

There are no regulatory barriers in the Residential and Commercial Retail ITS markets. IDA does not impose any limitation on the number of licences, the types of technology to be used, or the entities eligible to provide Retail ITS. Interested parties can apply for an FBO, SBO(Individual) or SBO(Class)

licence to provide Retail ITS, and can choose which Retail ITS market to serve.

Close Substitutes

51 Where there are few close substitutes, SingTel is more likely to be able to act anti-competitively. In the present case, there are many close substitutes for SingTel's Retail ITS. Besides SingTel, Residential and Commercial End Users in Singapore today have access to a large range of Retail ITS offered by competing providers including Macquarie, M1, Phoenix, ST SunPage, StarHub and Zone1511. While there may be differences in terms of price, quality and functionality, evidence indicates that End Users do consider the Retail ITS provided by these competitors to be close substitutes for SingTel's Retail ITS in the Residential and Commercial Retail ITS markets. Internet Telephony services may also become a viable alternative to mainstream Retail ITS in the future.

Vertical Integration

52 IDA also examined SingTel's ability to leverage its control of essential "upstream" inputs to compete unfairly in the Residential and Commercial Retail ITS markets. In IDA's 2003 ITS decision, IDA concluded that SingTel retained significant market control for several "upstream" inputs essential for providing Retail ITS, such as access to CLS.

53 As explained in paragraph 50(b), IDA believes that SingTel's ability to leverage its control of "upstream" inputs, such as access to CLS, is significantly lower than at the time of IDA's 2003 ITS Decision. The actions taken by IDA since 2003 have facilitated access to the "upstream" inputs controlled by SingTel. As a result, SingTel's ability to leverage its control of "upstream" inputs to distort competition in the Residential and Commercial Retail ITS markets has been significantly reduced.

54 The Commenters in the First Public Consultation also claimed that SingTel retains the potential to leverage its SMP in other retail markets by bundling its Retail ITS with its DEL service. SingTel may offer End Users the option of purchasing a package that contains multiple telecommunication and non-telecommunication services or equipment.²¹ However, the Code requires SingTel, as a Dominant Licensee, to provide telecommunication services on an unbundled basis. Specifically, SingTel must not require an End User that wants to purchase a specific telecommunication service, to also purchase any other telecommunication service. Given this constraint, SingTel's ability to leverage its SMP in the DEL market to compete in the Retail ITS markets appears to be minimal, as evidenced by its declining market shares in the Retail ITS markets since IDA's 2003 ITS Decision, particularly in the Residential Retail ITS market.

²¹ Sub-section 4.2.1.3 of the Code.

Supply Substitutability

55 The greater the existence of supply substitutes, the lesser the likelihood that SingTel can act anti-competitively. This is because, if a Dominant Licensee acts anti-competitively, other providers could rapidly divert resources to provide a competing service. In conducting its assessment, IDA has considered the ability of Licensees that currently provide other telecommunication services to shift resources, relatively quickly and cost-effectively, in order to provide a service that is a substitute for SingTel's Retail ITS. IDA has identified at least two strong sources of suppliers that are able to constrain SingTel's ability to act anti-competitively. The first group are suppliers of international capacity services, such as suppliers of submarine cable capacity, wholesale transit minutes and ISR, who do not currently compete in the Retail ITS markets, but who could easily enter the market. The second group are suppliers of Wholesale ITS who do not compete, or are competing in a limited capacity, in Retail ITS markets, but who could easily expand their market position. Examples of these suppliers include large international carriers in Singapore such as Asia Netcom, Telekom Malaysia, T-Systems, Telecom Italia Sparkle and Verizon Communications. The existence of these potential market entrants acts as a significant constraint on SingTel's ability to act anti-competitively in the Retail ITS markets.

Countervailing Buying Power

56 The higher the countervailing buying power of End Users, the less the likelihood that SingTel can act anti-competitively. The large number of multinational corporations and local enterprises in Singapore is likely to exert countervailing buying power in the Commercial Retail ITS market. Companies with significant Retail ITS call volumes are generally able to select from among competing bidders. In some cases, these companies also contract simultaneously with both SingTel and another Retail ITS operator, exerting further competitive pressure on SingTel.

Ability to Switch Services

57 The easier it is for End User to switch service providers, the less likely it is that SingTel can act anti-competitively. As explained earlier, due to the call-by-call Retail ITS selection system, End Users have the ability to choose among multiple Retail ITS providers for each international call. Effectively, this allows SingTel's Residential and Commercial End Users to easily switch Retail ITS providers for any given call, thereby imposing a significant constraint on SingTel's ability to increase Retail ITS prices.

58 The practice of entering into contracts for the provision of Retail ITS is fairly common in the Commercial Retail ITS market because of cost savings to Commercial End Users. Commercial End Users are not required to enter into such contracts to make international calls. Once the parties enter into such contracts, however, their ability to switch – at least for the duration of the

contract – is constrained.²² Nonetheless, Commercial End Users retain the ability to easily switch Retail ITS operators at the end of the contract period, which can often be as short as one year.

Market Performance

59 Finally, IDA considered evidence of actual market performance.

Prior Anti-Competitive Conduct

60 As an initial matter, IDA notes that there is no evidence of prior anti-competitive conduct by SingTel in the Retail ITS markets, either prior to and since IDA's 2003 ITS Decision.

Actual Successful New Entry

61 Since the full liberalisation of the Singapore telecommunication market in April 2000, numerous operators have successfully entered the Residential and Commercial Retail ITS markets. As mentioned in paragraph 47, IDA has licensed close to 300 FBOs and SBOs to offer Retail and/or Wholesale ITS. In fact, in the first six months of 2006, IDA licensed nearly 50 SBOs for the provision of Retail and/or Wholesale ITS. IDA anticipates that, as a result of continued new entry, competition in the Retail ITS markets is likely to be even more vigorous in the future.

Changes in Market Share

62 As mentioned earlier, SingTel's market shares of the Residential and Commercial Retail ITS markets have decreased since IDA's 2003 ITS Decision. In particular, while the industry's total Retail ITS minutes have grown, SingTel's share of the combined Residential and Commercial Retail ITS outgoing minutes has decreased from more than 60 percent in 2003 to less than 40 percent today. In the Residential Retail ITS market, SingTel's market share has dropped by about 30 percent to less than 40 percent. Although the decline has been smaller in the Commercial Retail ITS market (where SingTel's market share has dropped by about 10 percent to its current estimated market share of about 60 percent), IDA still believes it provides relevant evidence of increased competition.

Customer Switching

63 It is not possible to gather evidence of customer "switching" from SingTel's Retail ITS to competing providers. This is because, as a result of the "call-by-call" system in Singapore, End Users do not need to "terminate" their registration with one Retail ITS provider before using another. However, the significant drop in SingTel's market share of the Residential Retail ITS market clearly provides an indication that Residential End Users who have pre-

²² This is quite unlike the Residential Retail ITS market where Residential End Users do not commit to term contracts with the Retail ITS operators.

registered with SingTel are making a significant amount of their international calls through other Residential Retail ITS Licensees. There is also evidence that Commercial End Users are signing term contracts (as described in paragraph 58) for Commercial Retail ITS provided by other Licensees.

Price Changes

64 SingTel's average ITS call collection rate²³ has fallen from S\$0.54 per minute in 2003 to S\$0.42 per minute in 2005. Coupled with SingTel's declining Retail ITS revenue and profits, IDA notes that actual prices have decreased over the years. IDA further notes that the Residential and Commercial Retail ITS markets are marked by regular promotions and discounts off published rates. In fact, Licensees usually conduct marketing campaigns or promotions targeted at either the Residential or the Commercial End Users. The discount quantum also varies under each promotion, and possibly for different Commercial End Users depending on the tender.

New Service Introduction

65 Since market liberalisation in 2000, SingTel has introduced several new Retail ITS to meet the different needs of both Residential and Commercial End Users. For instance, SingTel has introduced various differentiated Retail ITS such as its v019 service, to complement its other Retail ITS such as IDD001 and STD020 services. Moreover, some operators have recently launched Internet Telephony services which may become a viable alternative to mainstream Retail ITS in the future and are expected to enhance competition in the Retail ITS markets going forward.

Non-Price Competition

66 SingTel is subject to significant non-price competition in the Residential and Commercial Retail ITS markets, as evidenced by a wide range of Retail ITS offered by Licensees to meet different user needs. The introduction of various Retail ITS provides an indication of Retail ITS operators competing on non-price factors, such as service quality, preferred modes of payment, and marketing and promotional strategies.

Retention of Ex Post Dominant Licensee Regulation in the Commercial Retail ITS Market

67 During the Second Public Consultation, SingTel objected to IDA's decision to retain ex-post Dominant Licensee obligations contained in Sub-section 8.2 of the Code on services provided by SingTel in the Commercial Retail ITS market. SingTel asserted that it does not have SMP in the Commercial Retail ITS market, and is therefore unable to act independently of competitive forces in this market by unilaterally restricting output, raising prices or reducing quality. SingTel contended that IDA placed undue emphasis on market share in its analysis of the Commercial Retail ITS market at the expense of other

²³ See Non-Confidential Annex 5 of SingTel's Request.

factors. Finally, SingTel claimed that its market share in the Commercial Retail ITS market is inconsequential when viewed in light of other competitive constraints imposed on SingTel in the market.

- 68 IDA's view is that SingTel has not provided any new basis that would justify altering IDA's Preliminary Decision to retain *ex post* Dominant Licensee obligations in the Retail ITS Market. IDA's Exemption Guidelines make clear that IDA will give "special scrutiny" to any request for an exemption from the prohibition against abuse of dominant position contained in Section 8 of the Code. IDA has made clear that, "...[T]o the extent that a Dominant Licensee retains, or has any reasonable possibility of regaining, Significant Market Power in a market, or using its dominant position in another market to adversely affect competition in a relevant market, IDA generally will conclude that retaining those prohibitions is necessary to deter anti-competitive conduct and, where necessary, to take appropriate enforcement action."²⁴
- 69 As SingTel has correctly pointed out during the Second Public Consultation, market share is one of the several factors that IDA considers in any assessment of market competitiveness. In performing its economic analysis, IDA gives each of the factors due consideration. However, IDA disagrees with SingTel's comment that its 60 percent market share of the Commercial Retail ITS market is "irrelevant" and "inconsequential" when the state of the market is viewed in its entirety.
- 70 In its Preliminary Decision, IDA carefully considered all of the relevant market factors. Based on the evidence of the competitiveness of the market, IDA decided to exempt SingTel from the *ex ante* Dominant Licensee obligations contained in Section 4 of the Code. In its competitiveness assessment, IDA also considered SingTel's efforts to demonstrate to IDA that it has no market power based on evidence of customer loss in the Commercial Retail ITS market. However, the fact that some Commercial End Users have left SingTel does not demonstrate that SingTel has *no* market power. SingTel's market share of approximately 60 percent in the Commercial Retail ITS market provides an objectively reasonable basis for concern that SingTel may retain some residual market power. IDA therefore concluded that it is prudent to retain *ex post* Dominant Licensee obligations contained in Sub-section 8.2 of the Code on services provided by SingTel in the Commercial Retail ITS market. SingTel has provided no basis for IDA to alter its Final Decision.

Summary of Competitiveness Assessment

- 71 Based on the assessment, IDA determines that SingTel is subject to increased competitive constraints in both the Residential and Commercial Retail ITS markets since IDA's 2003 ITS Decision. In addition, SingTel's combined market share for the Residential and Commercial ITS markets has fallen below 40 percent since IDA's 2003 ITS Decision. However, IDA also determines that **SingTel is subject to more significant competitive constraints in the Residential Retail ITS market than in the Commercial**

²⁴ Sub-section 2.6 of the Exemption Guidelines.

Retail ITS market. This is evidenced by SingTel's smaller decline in market share of the Commercial Retail ITS market since IDA's 2003 ITS Decision.

Other Comments

- 72 One Commenter in the First Public Consultation alleged that IDA's regulatory regime – particularly its enforcement powers – is inadequate. The Commenter also submitted that IDA's competition regime should be made subordinate to Singapore's Competition Act 2004. The purpose of the First Public Consultation was to allow the industry and the public an opportunity to provide comments on SingTel's Request. The proceeding was not the appropriate forum to discuss the legislative and regulatory regimes. In any case, during the Code review in 2005, IDA considered and rejected identical arguments. As IDA explained at that time, IDA has wide-ranging powers under the Telecommunications Act (Cap 323), the Code and the licences issued to operators, to investigate and address any anti-competitive conduct. Over time, IDA intends to more closely align the competition regime for the telecommunications sector with Singapore's Competition Act. IDA will consult the industry on the alignment approach at the appropriate juncture.

Conclusion to IDA's Assessment

Residential Retail ITS Market

- 73 Based on the above findings, IDA recognises that competition has increased significantly in the Residential Retail ITS market since IDA's 2003 ITS Decision. The evidence suggests that the market is now effectively competitive with falling market concentration, low entry barriers, a large number of service providers and a diverse range of close substitutes available. SingTel does not have SMP in the Residential Retail ITS market, with a market share of less than 40 percent. **IDA determines that the continued application of Dominant Licensee obligations contained in Sections 4 and 8 of the Code, on services provided by SingTel in the Residential Retail ITS market is no longer necessary.**

Commercial Retail ITS Market

- 74 Based on the above findings, IDA finds that, while competition in the Commercial Retail ITS market has increased since IDA's 2003 ITS Decision, and that the market is characterised by low entry barriers, diverse range of close substitutes and high countervailing buying power. IDA also notes that, three years after IDA's 2003 ITS Decision where IDA exempted SingTel from the most significant *ex ante* Dominant Licensee obligation – tariff filing requirements – there is no evidence that SingTel has engaged in anti-competitive conduct in the Commercial Retail ITS market. However, IDA also recognises that SingTel continues to have a relatively high market share and may be able to use any residual market power that it may have to act anti-competitively. Taken together, these developments provide a reasonable basis for IDA to conclude that **the continued application of *ex ante***

Dominant Licensee obligations contained in Section 4 of the Code, on services provided by SingTel in the Commercial Retail ITS market is no longer necessary to protect End Users or to promote and preserve effective competition amongst Licensees. However, IDA has further determined that it would be prudent to continue retaining the prohibitions on abuse of dominant position contained in Sub-section 8.2 of the Code, on services provided by SingTel in the Commercial Retail ITS market.

- 75 IDA, therefore, will maintain its decision to **retain the prohibitions on abuse of dominant position contained in Section 8 of the Code, on services provided by SingTel in the Commercial Retail ITS market.** IDA, however, will consider conducting a review of the need for the continued imposition of the prohibitions on abuse of dominant position contained in Section 8 of the Code on the services that SingTel provides in the Commercial Retail ITS market two years after the effective date of this decision; and based on competitive conditions at that time, will determine whether a grant of an exemption is appropriate.
- 76 Finally, given that SingTel's ISDN International Data Service falls within the Commercial Retail ITS market, the exemption from **the tariff filing requirements granted to SingTel in IDA's 2003 ITS Decision will similarly apply to SingTel's ISDN International Data Service.**

PART IX: IDA'S FINAL DECISION

- 77 Based on the findings explained above, IDA arrived at the following Final Decision.
- 78 IDA will grant SingTel's Request from the application of Sub-sections 4.2.1, 4.2.1.1, 4.2.1.2, 4.2.1.3, 4.2.2, 4.2.2.1, 4.2.2.2 and 4.2.2.3 of the Code, to its provision of services in the Residential Retail ITS market and the Commercial Retail ITS market.
- 79 IDA will grant SingTel's Request from the application of Sub-sections 8.2, 8.2.1, 8.2.1.1, 8.2.1.2, 8.2.1.3, 8.2.2, 8.2.2.1 and 8.2.2.2 of the Code, to its provision of services in the Residential Retail ITS market.
- 80 IDA will deny SingTel's Request from the application of Sub-sections 8.2, 8.2.1, 8.2.1.1, 8.2.1.2, 8.2.1.3, 8.2.2, 8.2.2.1 and 8.2.2.2 of the Code, to its provision of services in the Commercial Retail ITS market. IDA will consider conducting a review of the level of competition in the Commercial Retail ITS market two years after the effective date of its Final Decision.
- 81 Taken together, IDA's Final Decision in paragraphs 78 to 80 is summarised in **Table 6.**

Table 6

Code Provisions	Residential Retail ITS Market	Commercial Retail ITS Market
<i>Ex Ante</i>		
4.2.1, 4.2.1.1, 4.2.1.2, 4.2.1.3 – Duties applicable to the provision of all telecommunication services; Duty to provide service at just and reasonable prices, terms and conditions; Duty to provide service on a non-discriminatory basis; and Duty to provide unbundled telecommunication services.	Grant	Grant
4.2.2, 4.2.2.1, 4.2.2.2, 4.2.2.3 – Specific duties applicable to the provision of End User telecommunication services; Duty to provide service on reasonable request; Duty to allow resale of End User telecommunication services; and Duty to allow sales agency.	Grant	Grant
<i>Ex Post</i>		
8.2, 8.2.1, 8.2.1.1, 8.2.1.2, 8.2.1.3 – Abuse of dominant position in the Singapore market; Pricing abuses; Predatory pricing; Price squeezes; and Cross-subsidisation.	Grant	Deny
8.2.2, 8.2.2.1, 8.2.2.2 – Other abuses; Discrimination; and Predatory network alteration.	Grant	Deny

- 82 IDA will also grant SingTel an exemption from the application of Sub-sections 4.4.1 (a) (i) and (ii) and (b), 4.5 and 4.6 of the Code²⁵, with respect to the tariff filing requirements for its ISDN International Data Service, as summarised in **Table 7**. For the avoidance of doubt, the exemptions granted to SingTel for its provision of services in the Commercial Retail ITS market in Table 6 will similarly apply to SingTel's ISDN International Data Service.

Table 7

Code Provisions	SingTel's ISDN International Data Service (under Commercial Retail ITS Market)
4.4.1(a) (i) and (ii) and (b) – Services for which a Dominant Licensee must file tariffs.	Grant
4.5 - Duty to publish tariffs	Grant
4.6 - Duty to provide service consistent with effective tariffs	Grant

²⁵ In IDA's Preliminary Decision, IDA stated that it would grant SingTel's Request from the application of Sub-sections 4.4, 4.4.1, 4.4.2, 4.4.2.1, 4.4.3, 4.4.3.1, 4.4.3.2, 4.5, 4.6 and 4.7 of the Code. IDA would like to clarify that with the exemption from Sub-sections 4.4.1 (a) (i) and (ii) and (b), 4.5 and 4.6 of the Code, Sub-sections 4.4.2, 4.4.2.1, 4.4.3.1 and 4.4.3.2, which set out IDA's procedures for reviewing tariffs filed under Sub-section 4.4.1, would consequently not apply to SingTel with respect to its ISDN International Data Service.

Implementation Procedures of IDA's Final Decision

- 83 IDA will adopt the following procedures regarding the implementation of its Final Decision.
- (a) The Final Decision will become effective upon publication in the Gazette. IDA intends to publish the Gazette within 14 days from the date of its Final Decision.
 - (b) The Final Decision will remain in effect permanently, unless IDA determines that re-imposition of any requirements is necessary to protect End Users or preserve and protect competition amongst Licensees.
 - (c) The Final Decision will apply to any new product offering that SingTel may, in future, offer that is in the same Residential Retail ITS market and/or Commercial Retail ITS market as a Retail ITS for which IDA has granted an exemption. However, SingTel must obtain prior confirmation from IDA that the new product offering is within the same Residential Retail ITS market and/or Commercial Retail ITS market for which IDA has granted an exemption. To do so, SingTel must submit a detailed description of the product offerings – including pricing, functionality and expected customer base. IDA will find that a new product offering is in the same Residential Retail ITS market and/or Commercial Retail ITS market as one of SingTel's existing Retail ITS if the evidence demonstrates that the new product offering is a reasonable substitute for the existing Retail ITS.
 - (d) In the event IDA imposes any additional provisions applicable to Dominant Licensees, IDA will determine, at that time, whether SingTel should be exempted from the application of that provision to Retail ITS in the Residential Retail ITS market and Commercial Retail ITS market in which IDA has granted SingTel an exemption.