



**EXPLANATORY MEMORANDUM ON THE DECISION OF THE INFO-COMMUNICATIONS DEVELOPMENT AUTHORITY OF SINGAPORE REGARDING:**

- (A) REQUEST BY MCI WORLDCOM ASIA PTE LTD, MCI INC AND VERIZON COMMUNICATIONS INC FOR EXEMPTION FROM THE REQUIREMENT TO FILE A LONG FORM CONSOLIDATION APPLICATION**
- (B) SHORT FORM CONSOLIDATION APPLICATION IN RELATION TO THE PROPOSED CHANGE IN OWNERSHIP IN MCI WORLDCOM ASIA PTE LTD**

**14 October 2005**

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**PART I: INTRODUCTION<sup>1</sup>**

- 1 On 14 February 2005, both MCI Inc ("MCI") and Verizon Communications Inc ("Verizon") announced that they had entered into an agreement under which Verizon is to acquire MCI. As part of the proposed transaction, Verizon would acquire an indirect 100 percent Ownership Interest in MCI's Singapore Affiliate, MCI Worldcom Asia Pte Ltd ("MCI-Singapore"), which holds a Facilities-based Operator's licence issued by IDA. Pursuant to Sub-section 10.4.3 and 10.5.1 of the Telecom Competition Code 2005 (the "Code"), Verizon and MCI-Singapore were required to file a Long Form Consolidation Application in order to obtain IDA's approval for the proposed change in ownership of MCI-Singapore (the "Consolidation").
- 2 On 16 August 2005, MCI, MCI-Singapore, and Verizon (collectively referred to as the "Applicants") submitted a request to IDA, pursuant to Sub-section 1.7(a) of the Code, to be exempted from filing a Long Form Consolidation Application ("Request"). The Applicants also submitted a Short Form Consolidation Application ("Application"). IDA issued a consultation paper on 17 August 2005 to solicit comments regarding the Request and the Application<sup>2</sup>. Two parties, BT Singapore Pte Ltd ("BT") and Singapore Telecommunications Ltd ("SingTel"), filed comments expressing concerns regarding the proposed Consolidation. IDA subsequently requested for additional information from the Applicants regarding the proposed Consolidation.

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<sup>1</sup> Unless otherwise defined, all capitalised terms used in this Explanatory Memorandum shall have the same meaning ascribed to them in the Telecom Competition Code 2005 or the Telecom Consolidation Guidelines.

<sup>2</sup> In IDA's 17 August 2005 consultation paper, it was stated that comments on the Request and the Application would be sought concurrently. This approach allows for a speedy, transparent and comprehensive assessment, thereby using all parties' resources efficiently and reducing uncertainty.

- 3 Verizon's proposed acquisition of MCI raises many of the same issues as SBC Communications Inc's ("SBC") proposed acquisition of AT&T Corp ("AT&T") in the United States ("US"), which resulted in a change in ownership in AT&T Worldwide Telecommunications Services Singapore Pte Ltd ("AT&T-Singapore"). In both cases, a US incumbent local telecommunication service provider – which has Significant Market Power in certain US "input" markets, but which participates in few, if any, Singapore telecommunication markets – seeks to acquire a major US long-distance/international service provider. In both cases, the acquired party has a wholly owned Affiliate that provides telecommunication services in Singapore. The two parties opposing both the acquisitions have also made similar arguments. Thus, while IDA has carefully reviewed the competitive issues presented by this proposed Consolidation, it has given due consideration to its prior decision to approve the change in AT&T-Singapore's ownership on 18 August 2005 ("AT&T-Singapore Decision").
- 4 This paper provides a single document ("Explanatory Memorandum") that describes: the Applicants' Request and Application; the comments received in response to IDA's consultation paper; the Applicant's reply to the comments; the legal standards, procedures and analytical framework that IDA used to assess the Applicants' Request and Application; IDA's assessment of the Request and Application; and IDA's decision.

## **PART II: EXECUTIVE SUMMARY**

- 5 IDA has concluded that the submission of a Long Form Consolidation Application is not necessary to assess the likely competitive effect of the proposed Consolidation. IDA therefore grants the Applicants' Request to file a Short Form Consolidation Application. Based on the evidence available, IDA has concluded that the proposed Consolidation is not likely to substantially lessen competition in any telecommunication market in Singapore. IDA therefore approves the Application without Conditions.
- 6 As discussed further below, MCI-Singapore provides eight distinct categories of telecommunication services in Singapore: Terrestrial International Private Leased Circuit ("Terrestrial IPLC"); International Managed Data Services ("IMDS"); International IP Transit; Commercial Retail International Telephone Services ("Commercial Retail ITS"); Wholesale ITS; Internet access and related services<sup>3</sup>; Backhaul; and local connectivity related services. Verizon currently does not provide any telecommunication service in Singapore, and has not indicated any intention to do so in the future. Thus, from the perspective of the Singapore telecommunication markets, the proposed MCI-Verizon merger constitutes a Non-Horizontal Consolidation. IDA has

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<sup>3</sup> Internet related services include hosting and co-location.

previously recognised that such Consolidations are often pro-competitive. However, because Verizon is dominant in the provision of “special access” services within the 29 jurisdictions in the US where it is the incumbent local telecommunication service provider, IDA has carefully considered whether the proposed Consolidation is likely to substantially lessen competition in any Singapore telecommunication market.

- 7 In particular, IDA has fully assessed the likely impact of the proposed Consolidation on the five Singapore telecommunication markets in which the proposed Consolidation potentially raises more serious competitive concerns: the Terrestrial IPLC, IMDS, International IP Transit, Commercial Retail and Wholesale ITS markets. Based on its review, IDA has concluded that it is unlikely that the proposed Consolidation will substantially lessen competition in these five markets. IDA does not believe that it needs to conduct a substantial review of the likely impact of the proposed Consolidation on competition in the provision of the remaining three services: Internet access and its related services, Backhaul and local connectivity related services as MCI-Singapore is a very small market participant, and does not purchase Verizon’s special access services in order to provide these services.
- 8 As previously highlighted in the AT&T-Singapore Decision, although IDA recognises the dynamics of the payment arrangements in the global Internet backbone market, IDA remains concerned that Singapore-based Internet providers are required to purchase “full circuits” to the US and cannot enter into peering arrangements with Tier 1 Internet backbone providers such as AT&T and MCI. The US is a key Internet destination to which a relatively high portion of Singapore’s Internet traffic is sent. However, because Verizon is not a significant Internet backbone provider in the US, IDA concludes that the proposed Consolidation will not exacerbate the current situation.
- 9 Finally, IDA does not believe that, together with the AT&T-SBC merger, the proposed Consolidation of MCI and Verizon would raise significant competitive concerns in the telecommunication markets *in Singapore*. As both are Non-Horizontal Consolidations in Singapore and will not increase market concentration in any markets in Singapore, assessing the two transactions together would not alter this conclusion. AT&T-Singapore and MCI-Singapore will continue to be competitors in several Singapore telecommunications markets.

### **PART III: BACKGROUND OF THE APPLICANTS**

- 10 A brief description of the Applicants is as follows:

- (a) *MCI-Singapore*. MCI-Singapore is directly owned by MFS Globenet Inc. MCI-Singapore’s ultimate parent is MCI, which indirectly holds a

100 percent Ownership Interest in MCI-Singapore. The telecommunication services that MCI-Singapore provides in Singapore are:

- (i) Terrestrial IPLC services;
  - (ii) IMDS such as Asynchronous Transfer Mode ("ATM") services, Frame Relay services, IP-Virtual Private Network ("IP-VPN") services;
  - (iii) International IP Transit services;
  - (iv) Commercial Retail and Wholesale ITS;
  - (v) Internet access and related services; and
  - (vi) Backhaul and other local connectivity related services.
- (b) *MCI*. MCI is a publicly listed US-based company, which is incorporated under the laws of the State of Delaware.
- (i) MCI provides a full range of international telecommunication services with high capacity connections in more than 100 countries. MCI is a Tier 1 Internet backbone provider, which provides IP Transit services to providers that connect to its backbone network in the US.
  - (ii) MCI has a 100% indirect ownership interest in UUNet Singapore Pte Ltd ("UUNet Singapore"), which holds a Services-based Operator ("SBO") (Individual) Licence. Currently, UUNet Singapore does not provide any telecommunication services in Singapore.
- (c) *Verizon*. Verizon is a publicly listed US-based company, which is incorporated under the laws of the State of Delaware.
- (i) Verizon focuses on the provision of local, domestic and long-distance voice and data telecommunication services for consumers and businesses in part or all of 29 jurisdictions in the US where it is the incumbent local telecommunication service provider<sup>4</sup>. The US Federal Communications Commission

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<sup>4</sup> These jurisdictions are Arizona, California, Connecticut, Delaware, Florida, Idaho, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, Nevada, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Vermont, Virginia, Washington, West Virginia, and Wisconsin, Washington DC. In 12 of these States, and the District of Columbia, Verizon is the incumbent local exchange carrier ("ILEC") for all, or

("FCC") continues to classify Verizon as a dominant carrier in the provision of local exchange and exchange access services in those locations in which it is the incumbent telecommunication operator. This includes special access services, which consists of the provision of a dedicated local leased circuit ("LLC") that allows for the origination and termination of traffic at a Customer location.

- (ii) Verizon is a relatively small participant in the global Internet backbone market.
- (iii) Neither Verizon nor its affiliates hold any licence issued by IDA in Singapore.

- 11 Please refer to **Annex 1** for the existing shareholding structure of the Applicants, and to **Annex 2** for the proposed shareholding structure of the Post-Consolidation Entity.

#### **PART IV: THE APPLICANTS' REQUEST AND APPLICATION**

- 12 As discussed below, Sub-section 10.4 of the Code provides that "[e]very Licensee and Acquiring Party must seek IDA's approval in connection with any transaction that results in a Consolidation with [a] Licensee." In order to obtain IDA's approval, the Applicants generally must file a Long Form Consolidation Application. See Sub-section 10.5.1 of the Code.
- 13 As Verizon has a market share in excess of 25 percent in certain US telecommunication markets, the Applicants were required to file a Long Form Consolidation Application.
- 14 On 16 August 2005, pursuant to Sub-section 1.7(a) of the Code, the Applicants filed a Request for an Exemption from the requirement to file a Long Form Consolidation Application. The Applicants concurrently filed a Short Form Consolidation Application seeking IDA's approval for the proposed change in ownership of MCI-Singapore. The Applicants contended that granting an exemption is appropriate because submitting a Long Form Consolidation Application is not necessary to assess the likely competitive impact of the proposed Consolidation. See Paragraph 3.5 of IDA's Telecom Consolidation Guidelines ("Consolidation Guidelines") which describes the bases for seeking an exemption.
- 15 The Applicants claimed that the Post-Consolidation Entity will not be able to leverage Verizon's position as the dominant provider of special access

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substantially all, of the jurisdiction. In the remaining 16 States, Verizon is the ILEC for limited portions of the State that were served by GTE Communications, prior to its acquisition by Verizon.

services in the 29 jurisdictions in the US where it is the incumbent local telecommunication service provider to impede competition in any Singapore telecommunication market, and MCI-Singapore will not have any advantage or preference with regard to call termination in Verizon territories because all markets served by them in the US are competitive. In addition, the FCC prohibits Verizon from discriminating or charging supra-competitive rates for access termination and subjects Verizon to general non-discrimination and tariffing obligations. The Applicants also stated that MCI does not have more than 25% share for any telecommunication market in which it operates.

- 16 The Applicants discussed their participation in three relevant markets, as described in the following paragraphs, which they referred to as: Global Telecommunication Services ("GTS"); Internet Backbone; and International Voice Telephony.
- 17 *GTS.* The Applicants defined the GTS as customised telecommunication services provided to multinational corporations ("MNCs") with trans-continental service requirements. The Applicants claimed that every jurisdiction that has reviewed a transaction involving GTS has found the GTS market to be fully competitive. The Applicants further claimed that: the GTS market is extremely fragmented with many GTS providers throughout the world; and since every GTS package must be tailored to the specific geographic needs of each customer, GTS providers have to use a combination of owned and third-party network facilities and/or services to assemble each GTS package.
- 18 *Internet Backbone/IP Transit.* The Applicants defined Internet backbone services as the transporting and routing of packets between and among ISPs and regional backbone networks. The Applicants claimed that the post-merger MCI-Verizon would only be the fourth largest Internet backbone provider in North America – in the middle of a group of seven firms having comparable shares, with major competitors including AT&T, Sprint, Level 3, Qwest, SAVVIS, and AOL. The Applicants further claimed that the proposed MCI-Verizon merger would not significantly increase the post-merger MCI-Verizon market share as Verizon has only a small backbone business and would not "tip" the market, or allow the post-merger MCI-Verizon to engage successfully in other anti-competitive activities.
- 19 *International Voice Telephony.* The Applicants defined the International Voice Telephony market as termination of international voice calls in Verizon's territories. The Applicants contended that the FCC prohibits Verizon from discriminating or charging supra-competitive rates for terminating access services, and requires Verizon to interconnect with, and offer services to, other carriers, on reasonable request. The Applicants further noted that these call termination rates are regulated under a comprehensive price-cap regime,

under which Verizon is required to make regulatory filings with the FCC that demonstrate compliance with the regime.

## **PART V: COMMENTS RECEIVED ON IDA'S CONSULTATION PAPER AND THE APPLICANTS' REPLY**

### ***The Comments***

- 20 On 17 August 2005, IDA issued a consultation paper seeking comments on the Request and Application. Two parties – BT and SingTel (the “Commenters”) – filed comments. Both Commenters expressed concerns regarding the Request and Application. IDA’s consultation paper (along with the Request and Application) and the comments are posted on IDA’s website. The comments are summarised below.
- 21 *GTS*. The Commenters claimed that the MCI-Verizon merger would reduce competition in the US market for special access services, which can be used to terminate international traffic and that, following the merger, the combined MCI-Verizon could leverage its control over these services to impede competition in the GTS market. Specifically, the Commenters claimed that:
- (a) The cost of local access services amount to a significant part (40 to 70 percent) of the total cost of GTS.
  - (b) Singapore has a sizeable number of US MNCs. Singapore-based operators who want to provide GTS between Singapore and locations in the 29 jurisdictions in the US, where Verizon is the incumbent local telecommunication service provider, have no practical alternatives to using Verizon’s special access services.
  - (c) Following the Consolidation, MCI-Verizon will have the ability to engage in anti-competitive conduct, such as discriminatory pricing, price squeeze and refusals to supply. MNCs, in particular US companies, will turn to offerings of MCI-Singapore, which will not be subject to the same input costs as what MCI-Verizon imposes on other Singapore operators.
  - (d) Both the MCI-Verizon and AT&T-SBC mergers, when viewed together, would reduce competition in the US special access services market by eliminating MCI and AT&T as current and future competitors and customers in that market. Both mergers would raise barriers to entry by: (i) eliminating sufficient independent demand and supply for special access services so as to make competing entry uneconomic; and (ii) raising brand barriers to entry. The result would be even higher prices for special access services and a greater likelihood of discrimination in



the provisioning and maintenance of those facilities. Both mergers would also have a vertical anti-competitive effect as the now even more powerful upstream special access service providers acquire the dominant downstream enterprise customer providers. The result would be a substantially greater likelihood of price squeezes against competitive providers, reliant on the key special access services as inputs from the merged entities.

- (e) The FCC does not have an effective regulatory regime to deter anti-competitive conduct by Verizon.

22 *Internet Backbone/IP Transit.* The Commenters also asserted that the proposed Consolidation would impede competition in the global Internet backbone/IP Transit market. Specifically, the Commenters claimed that:

- (a) The current international Internet charging arrangement disfavours Singapore-based Internet access service providers ("IASP") and IP Transit providers. These providers typically must assume the cost of a full international leased circuit to the US. In addition, these providers must purchase IP Transit in the US from Tier 1 Internet backbone providers, such as AT&T and MCI, rather than enter into peering arrangements in which the parties exchange traffic at no charge.
- (b) The MCI-Verizon merger would exacerbate the exclusion of non-US based ISPs from the Tier 1 "super-club" structure, resulting in price increase of IP-based communication services to customers and businesses. The proposed Consolidation would reduce MCI's incentives to peer with other Internet backbone providers or to provide IP Transit on reasonable terms. This is undesirable given that the Next Generation Network ("NGN") would be IP-based and would have to rely on the Internet backbone for transport. With convergence, the transport of both voice and data traffic will be unified over this Internet backbone. If control to this Internet backbone is dominated by a group of Tier 1 "super-club" carriers in an oligopoly market structure, the cost of interconnecting to the Tier 1 Internet backbone would increase.
- (c) Together, the MCI-Verizon and AT&T-SBC mergers will result in a duopoly in the Internet backbone/IP Transit market. This will make it more difficult for Singapore IP Transit providers to enter into peering arrangements with the US Tier 1 providers (including MCI), while resulting in an increase in the price of IP Transit services.
- (d) The constraining effect of SBC and Verizon as actual or potential Internet backbone providers would be eliminated.

- (e) MCI underestimated its current and projected market shares based on backward-looking data that are not representative of the evolving Internet backbone market structure. MCI's and AT&T's combined market share will be over 50% of the global Internet backbone market this year. Moreover, MCI's own data placed MCI as the number 1 Internet broadband provider from 2000 to date, followed by AT&T. This market position will be materially enhanced with the explosive growth in traffic brought to the backbones by new DSL traffic from the incumbent providers, Verizon and SBC.
- 23 *Proposed Measures.* The Commenters proposed that IDA either reject the Application or, at a minimum, impose conditions on the Post-Consolidation Entity. The proposed conditions include:
- (a) reclassifying MCI-Singapore as a Dominant Licensee;
  - (b) requiring MCI-Singapore to disclose the prices of the "inputs" – such as international transmission, long distance transmission and special access services – that it uses to offer services;
  - (c) requiring MCI and Verizon to offer long distance and local loops in the US at regulated rates that are comparable to the rates at which SingTel is required to offer LLCs in Singapore<sup>5</sup>; and
  - (d) preserving the status quo of the Internet backbone agreements.

### ***The Applicants' Reply***

- 24 In order to ensure a balanced and objective assessment, IDA invited the Applicants to comment on the key issues raised in the Commenters' submissions. The reply (excluding certain confidential information) is posted on the IDA website.
- 25 *GTS.* The Applicants stated that, contrary to the Commenters' claims, the proposed Consolidation will not impede competition in the GTS market. Specifically, the Applicants contended that:
- (a) GTS bids encompass a wide-range of services across numerous countries and any given bid will likely require the Applicants to require access services from other vertically integrated providers like BT and

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<sup>5</sup> SingTel also requested to be reclassified as "non-dominant on the Singapore-US route." As stated in IDA's AT&T-Singapore Decision, IDA declines to consider SingTel's request in the current proceeding. Under IDA's "entity-based" approach, SingTel is classified as dominant in the provision of all services that it offers pursuant to its licence. Sub-section 2.5 of the Code establishes the procedures that a Dominant Licensee must follow if it seeks to be exempted from the application of Dominant Licensee regulation to any service that it provides.

SingTel. Special access services in Verizon's territory are not critical to the overall GTS market and their cost is a small portion of the average GTS bid.

- (b) There are numerous competitors providing special access services in Verizon's territories.
- (c) Verizon has no incentive to alter its business model to favour MCI because the GTS business will represent only a small portion of the activities of the company as a whole.
- (d) Verizon's provision of special access services is subject to effective regulation by the FCC, which prohibits Verizon from engaging in price discrimination between GTS providers and non-GTS providers when provisioning special access services.
- (e) The merged entity will have neither the incentive nor the ability to conspire with a merged AT&T-SBC to harm competition in Singapore.

26 *Internet backbone.* The Applicants also stated that, contrary to the Commenters' claims, the proposed Consolidation will not impede competition in the Internet backbone market. Specifically, the Applicants asserted that:

- (a) The proposed merger will have little impact on the state of the market because Verizon is not a significant backbone provider in the US. MCI is still the fourth largest Internet backbone provider before and after the merger. In terms of market share, MCI is smaller than AT&T and Verizon is smaller than SBC;
- (b) Traffic share data developed by another analyst, RHK, was found by the European Commission, US Department of Justice, and FCC to be more reliable than revenue data in their evaluation of the MCI/Worldcom and MCI WorldCom/Sprint transactions<sup>6</sup>;
- (c) The combined impact of both the AT&T-SBC and MCI-Verizon mergers will be minimal. The two firms' post-merger combined market share will not be over 50%, and they will not have any incentive to engage in global de-peering incentives<sup>7</sup>. In addition, customers could defeat a de-peering strategy because of the ease of switching Internet backbone providers.

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<sup>6</sup> RHK's analysis identified MCI as the fourth largest Internet backbone provider based on Internet traffic.

<sup>7</sup> The Applicants highlighted that the UK Office of Fair Trading did not believe that the coordination theory was credible as it was unclear from available evidence that the post-merger two-firm combined share exceeds the 50% level.

- 27 IDA thanks all parties for their active participation throughout this proceeding. The information and comments that were provided significantly assisted IDA in assessing the Applicants' Request and Application.

## **PART VI: IDA'S ANALYTICAL FRAMEWORK**

### ***Requirements under the Code and the Consolidation Guidelines***

- 28 Pursuant to Section 32A(1) of the Telecommunications Act (the "Act"), IDA has designated all Facilities-based Operators as Designated Telecommunication Licensees ("DTLs")<sup>8</sup>. DTLs and parties acquiring Ownership Interests in DTLs ("Acquiring Parties") are required to comply with various provisions relating to changes in ownership and Consolidations. Specifically, pursuant to Sub-section 10.4 of the Code, every DTL and Acquiring Party must seek IDA's approval in connection with any transaction that results in a Consolidation with a DTL. Under Sub-section 10.1.2(d) of the Code, a Consolidation is a merger, asset acquisition or other transaction that results in previously separate economic entities becoming a single economic entity. This includes transactions in which an Acquiring Party obtains Effective Control of a DTL.
- 29 Under Sub-section 10.5.1 of the Code, the DTL and Acquiring Party must submit a Long Form Consolidation Application unless Sub-section 10.5.2 applies. However, pursuant to Sub-section 10.5.2.1 of the Code, the DTL and Acquiring Party may submit a Short Form Consolidation Application if:
- (a) the proposed Consolidation is a Horizontal Consolidation<sup>9</sup> that would not result in the Post-Consolidation Entity having more than a 15 percent share in the telecommunication market in Singapore; or
  - (b) the proposed Consolidation is a Non-Horizontal Consolidation<sup>10</sup> in which none of the Applicants has more than a 25 percent share of any telecommunication market, whether in Singapore or elsewhere, in which it participates.
- 30 The Code, however, provides that an Applicant may request IDA to exempt it from any of the application processes and information requirement stipulated

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<sup>8</sup> Telecommunications (Designated Telecommunication Licensees – Facilities-Based Operators) Notification 2005, S 86/2005.

<sup>9</sup> Under Sub-section 10.5.2.1(b)(i) of the Code, a "Horizontal Consolidation" is defined as "a Consolidation involving 2 or more entities that are current competing providers of the same telecommunication services or telecommunication services that are reasonable substitutes".

<sup>10</sup> Under Sub-section 10.5.2.1(b)(ii) of the Code, a "Non-Horizontal Consolidation" is defined as "a Consolidation that involves 2 or more entities that are not current competitors".

under the Code and the Consolidation Guidelines. Sub-section 1.7(a) of the Code states that “[w]here good cause is shown, IDA may grant exemptions from specific provisions of this Code . . . IDA will seek public comment prior to granting any exemption”. Paragraph 3.5 of the Consolidation Guidelines explains that IDA will grant the exemption if “the Applicant makes a specific and compelling submission that: (a) compliance with the specific requirement or requirements is not possible; (b) would be unreasonably burdensome; or (c) is not necessary to ensure that a Consolidation would not substantially lessen competition in the Singapore telecommunication market.”

### **IDA's Assessment Framework**

- 31 Paragraph 2.3.1 of the Consolidation Guidelines makes clear that IDA will only prevent the consummation of a proposed Consolidation if:
- (a) the transaction would be likely to substantially lessen competition in any Singapore telecommunication market; and
  - (b) the anti-competitive harm cannot be adequately remedied through the imposition of narrowly tailored structural or behavioural conditions.
- 32 IDA recognises that Horizontal Consolidations raise the most serious competitive concerns. By definition, Horizontal Consolidations result in the elimination of direct competitors. This may result in the creation of a market participant with Significant Market Power. Such Consolidations may also result in a concentrated market in which the remaining participants are more easily able to undertake anti-competitive concerted actions, such as price fixing.
- 33 By contrast, Non-Horizontal Consolidations generally do not raise significant competitive concerns. Indeed, they may often facilitate competition by creating a more efficient market participant. However, Non-Horizontal Consolidations can raise competitive concerns where they eliminate the possibility that a party that currently does not participate in a specific telecommunication market will enter the market. Non-Horizontal Consolidations also raise competitive concerns when they involve two firms in a “vertical relationship” (i.e., an “upstream” supplier of an essential input and a “downstream” service provider) and the “upstream” supplier has Significant Market Power in the market for the input. In such cases, a Consolidation may substantially lessen competition in a Singapore telecommunication market by enabling the input provider to limit the ability of downstream competitors to access the input or provide the input to the downstream competitor on discriminatory terms. The problem may be especially acute if the input provider is a foreign operator that is not subject to IDA’s jurisdiction and is not subject to effective regulation in its home market.

## **PART VII: IDA'S ASSESSMENT**

### ***Scope of IDA's Review***

- 34 IDA's authority to review the proposed Consolidation is based on its right to approve changes in the ownership of the operators that it has licensed. IDA's concern when reviewing a proposed Consolidation is whether the proposed change in Ownership Interest in a Licensee is likely to substantially lessen competition in any telecommunication market in Singapore or harm the public interest. IDA recognises that actions outside of Singapore can have an effect on the Singapore telecommunication market. IDA, however, does not have the ability to exercise extra-territorial jurisdiction and should not prevent a merger between two foreign companies based solely on the competitive effects of the merger in the foreign markets and the indirect effect it has on Customers in Singapore. Rather, IDA will focus on whether a proposed Consolidation is likely to enable one of IDA's Licensees to substantially lessen competition in any Singapore telecommunication market. This means that when reviewing Consolidations that involve an Applicant that has Significant Market Power that is not subject to IDA regulation, such as a foreign telecommunication operator, IDA will consider whether: (a) the proposed Consolidation will result in a Licensee becoming affiliated with an entity that has – or, as a result of the proposed transaction, will obtain – Significant Market Power in the foreign market; and (b) whether the entity is likely to be able to use its Significant Market Power to foreclose or distort competition in any Singapore telecommunication market.
- 35 From the perspective of the Singapore telecommunication market, the proposed Consolidation is Non-Horizontal. The Applicants have indicated that Verizon does not participate in and, absent the Consolidation, will not enter any Singapore telecommunication market. Thus, in considering the Application, the relevant issue for IDA is whether the proposed Consolidation is likely to enable MCI-Singapore to use its affiliation with Verizon to substantially lessen competition in any Singapore telecommunication market. In particular, IDA must determine whether, following the proposed Consolidation, MCI-Singapore will obtain an anti-competitive advantage because:
- (a) other Singapore operators will be foreclosed from accessing inputs controlled by the combined MCI-Verizon that are necessary to provide a competing telecommunication service in Singapore; or
  - (b) the combined MCI-Verizon will be able to use its Significant Market Power in certain US markets to favour MCI-Singapore, thereby distorting competition in the Singapore telecommunication market.

***The Singapore Telecommunication Markets in Which the Proposed Consolidation Raises Potentially Significant Competitive Concerns***

- 36 Both the Applicants and Commenters have focused on the likely effects of the MCI-Verizon merger on competition in several global and US markets. Similar to IDA's review of the AT&T-SBC's consolidation application, IDA's focus is on the likely competitive effect of the proposed transaction on telecommunication markets in Singapore.
- 37 In conducting its assessment, IDA determined that the effect of the proposed Consolidation on the following five Singapore telecommunication markets warranted more serious consideration:
- (a) Terrestrial IPLC;
  - (b) IMDS;
  - (c) International IP Transit;
  - (d) Commercial Retail ITS; and
  - (e) Wholesale ITS.

***The Terrestrial IPLC Market***

- 38 MCI-Singapore participates in the Terrestrial IPLC market. In the "ICS Exemption Decision"<sup>11</sup>, IDA determined that the Terrestrial IPLC market consists of services, provided over submarine cables, which offer customers the exclusive use of a point-to-point, dedicated transparent transmission path for voice, data or video between a location in Singapore and a location outside of Singapore.
- 39 In order to provide Terrestrial IPLC services to customers in Singapore, Singapore-based operators must acquire the necessary access/termination facilities at the foreign end. Although the US liberalised its local telecommunication market in 1996, the FCC continues to classify Verizon as a dominant carrier in the provision of interstate/international access services in the 29 jurisdictions in the US where it is the incumbent local telecommunication service provider. In theory, the proposed Consolidation might impede competition on the Singapore-US route in at least three different ways.

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<sup>11</sup> Explanatory Memorandum to the Decision of the Info-communications Development Authority of Singapore on the Request by Singapore Telecommunications Ltd for Exemption from Dominant Licensee Obligations with Respect to the "International Capacity Services" Market, issued on 12 April 2005.

- (a) First, the merged MCI-Verizon might refuse to provide special access services to MCI-Singapore's competitors, thereby foreclosing them from providing Terrestrial IPLC service between Singapore and end user location in the 29 jurisdictions in the US where Verizon is the incumbent local telecommunication service provider.
  - (b) Second, MCI-Singapore might obtain special access services in the 29 jurisdictions in the US where Verizon is the incumbent local telecommunication service provider on prices, terms or conditions that are more favourable than those that Verizon provides to other competing Singapore operators that seek to provide Terrestrial IPLCs on the Singapore-US route, thereby distorting the Singapore Terrestrial IPLC market.
  - (c) Third, even absent discrimination, MCI-Singapore might pay Verizon above-cost prices for special access services in the 29 jurisdictions in the US where it is the incumbent local telecommunication service provider, thereby subjecting non-affiliated Singapore operators that must use these services to provide Terrestrial IPLC services to a price squeeze. This would also distort the Singapore Terrestrial IPLC market.
- 40 Given the importance of the Singapore-US route, IDA has seriously considered these concerns. However, based on the evidence available, IDA has concluded that there is little risk that the proposed Consolidation would enable MCI-Singapore to use Verizon's dominant position in the US to substantially lessen competition in the Singapore Terrestrial IPLC market.
- (a) First, vertical integration is common in the telecommunication industry. Today, a number of Singapore-based operators have foreign Affiliates that have Significant Market Power in their domestic markets, which have been fully liberalised. These operators include British Telecom, France Telecom, NTT and Telecom Italia. So far, IDA has not detected evidence of anti-competitive conduct on these routes where the foreign end is fully liberalised, and has not previously imposed any special conditions on these operators.
  - (b) Second, MCI-Singapore, with an estimated market share of less than 5 percent, is not a significant participant in the Singapore Terrestrial IPLC market. This market continues to be dominated by SingTel. Even on the Singapore-US route, MCI-Singapore's share appears to be less than 10 percent. As further elaborated below, there is little reason to believe that the proposed Consolidation is likely to enable MCI-Singapore to use its affiliation with Verizon to acquire Significant Market Power in the Singapore Terrestrial IPLC market. Unilateral



conduct by entities that lack Significant Market Power rarely raises competitive concerns.

- (c) Third, the US has fully liberalised the special access services market. Although Verizon continues to have Significant Market Power in this market, it is subject to regulation by the FCC. These regulations require Verizon to provide competing operators with access to special access services. Verizon must do so on just, reasonable and non-discriminatory prices, terms and conditions. The Commenters contended that the FCC's regulations, which have been significantly relaxed in recent years, are not adequate to deter Verizon from acting anti-competitively. However, IDA is aware that the FCC is currently reviewing its special access regulations in light of changing market conditions. In addition, IDA notes that both the FCC and the US Department of Justice may impose conditions on the MCI-Verizon merger as part of their review of the proposed transaction, which would further deter the combined MCI-Verizon from discriminating in favour of Affiliates such as MCI-Singapore. At this point, IDA does not know what actions, if any, the Department of Justice and the FCC will take. However, IDA expects that – consistent with its obligations under the Singapore-US Free Trade Agreement – the US Government will take all necessary actions to promote competition in this market.
- (d) Finally, even if the merged MCI-Verizon were to attempt to foreclose competing Singapore providers of Terrestrial IPLCs from providing service on the Singapore-US route, or to leverage its market position in the US special access services market to impede competition in the Singapore Terrestrial IPLC market, IDA has adopted strong regulations to deter such conduct.
  - (i) Pursuant to Sub-section 8.3 of the Code, a Licensee that is affiliated with an entity that has Significant Market Power is prohibited from using the market position of its Affiliate in a manner that enables it, or is likely to enable it, to unreasonably restrict competition in any telecommunication market in Singapore. In particular, the Code prohibits a Licensee from benefiting from a price squeeze, cross subsidisation, discrimination or refusal to deal by an Affiliate that possesses Significant Market Power. These prohibitions apply to Licensees with Affiliates outside of Singapore. Following the Consolidation, these provisions will prohibit MCI-Singapore from receiving any “anti-competitive preference” from Verizon.
  - (ii) Licensees that breach these provisions are subject to IDA's enforcement actions including financial penalties, suspension and cancellation of their licences. If a Licensee or an End User

believes that MCI-Singapore has contravened these provisions in the Code, it will be able to file a Request for Enforcement. IDA also has authority to initiate an enforcement proceeding, if necessary.

### *The IMDS Market*

41 The Commenters claimed that the MCI-Verizon merger would reduce competition in the US market for special access services and the combined MCI-Verizon could leverage its control over these services to impede competition in the GTS market. IDA reiterates that the market subject to IDA's jurisdiction is the sale of IMDS to customers in Singapore ("A-end" sales), a market in which MCI-Singapore also participates. IDA does not regulate sales made to MNCs overseas, for which Singapore is a "spoke" in their regional or global network ("B-end" sales). In the ICS Exemption Decision, IDA concluded that this market consists of packet-based services – such as ATM, Frame Relay, and IP-VPN – that provide managed connectivity among multiple customer sites, at least one of which is located outside of Singapore. As with IPLC services, in order to provide IMDS to customers in Singapore, a Singapore-based operator must acquire the necessary access/termination facilities at the foreign end. IDA recognises that local connectivity is an important input and typically constitutes a high portion of the total IMDS cost. However, based on the evidence available, IDA has concluded that there is little risk that, following the Consolidation, MCI-Singapore would be able to use Verizon's dominant position in the provision of special access services within the 29 jurisdictions in the US where it is the incumbent local telecommunication service provider to substantially lessen competition in the Singapore IMDS market.

- (a) In the ICS Exemption Decision, IDA concluded that the IMDS market is competitive. MCI-Singapore is one of several participants in this market with an estimated market share of less than 5 percent.
- (b) MCI-Singapore will not be able to use Verizon's dominant position in the provision of special access services in the 29 jurisdictions in the US where it is the incumbent local telecommunication service provider to significantly restrict competition in the Singapore IMDS market. As IDA explained in the ICS Exemption Decision, customers in Singapore purchase IMDS on a "network basis". That is, IMDS customers purchase a service that provides both network management and connectivity between Singapore and multiple customer sites outside of Singapore. Typically, for IMDS sales made to End Users in Singapore, Singapore-US connectivity is only *a portion* of the service offering – and only *a portion* of these connections are to locations within the 29 jurisdictions in the US where Verizon is the incumbent local telecommunication service provider. Thus, if the merged MCI-Verizon

attempts to discriminate in favour of MCI-Singapore in the sale of special access services for the Singapore-US portion of the network, this would be unlikely to provide it with a significant competitive advantage in the offering of IMDS to Singapore End Users that would result in significant lessening of competition in the Singapore IMDS market.

- (c) In any case, as noted above, Sub-section 8.3 of the Code provides a remedy in the event that following the Consolidation, MCI-Singapore seeks to benefit from any anti-competitive conduct by the combined MCI-Verizon.

Therefore, IDA believes that there is little risk that the proposed Consolidation will result in significant lessening of competition in the IMDS market.

#### *The International IP Transit Market*

42 MCI-Singapore provides International IP Transit services in Singapore. In the ICS Exemption Decision, IDA concluded that this market consists of the provision of a service, for compensation, in which one operator terminates international Internet traffic on its network or transits the Internet traffic for termination on a third operator's network. Based on the evidence available, IDA has concluded that there is little risk that, following the Consolidation, MCI-Singapore would be able to substantially lessen competition in this market.

- (a) First, in the ICS Exemption Decision, IDA concluded that the Singapore International IP Transit market is an effectively competitive market, with numerous participants. MCI-Singapore's share of this market is below 5 percent.
- (b) Second, as IDA recognised in the ICS Exemption Decision, International IP Transit consists of the delivery of Internet traffic from Singapore to a network location at the foreign end. It does not include the provision of local connectivity to end user premises. Thus, MCI-Singapore will derive no benefit from Verizon's dominant position in the special access services market within the 29 jurisdictions in the US where it is the incumbent local telecommunication service provider.
- (c) Third, Verizon currently does not provide International IP Transit to any Singapore operator. Therefore, the proposed Consolidation will not eliminate any existing competition in the Singapore International IP Transit market.
- (d) Fourth, as further explained in paragraph 50 below, because Verizon is not a significant Internet Backbone provider in the US, the proposed

Consolidation will not exacerbate the current situation of Singapore-based Internet providers having to purchase “full circuits” to the US and cannot enter into peering arrangements with Tier 1 Internet backbone providers in the US. Even if the combined MCI-Verizon were to eliminate any peering agreement that Verizon currently has with any Singapore Internet provider, Singapore operators could discuss peering arrangements with other non-Tier 1 backbone providers in the US market.

- (e) In any case, as noted above, Sub-section 8.3 of the Code provides a remedy in the event that following the Consolidation, MCI-Singapore seeks to benefit from any anti-competitive conduct by MCI-Verizon.

Therefore, there is little reason to believe that, if the proposed Consolidation occurs, MCI-Singapore will be able to use its affiliation with Verizon to gain significant competitive advantage in the Singapore International IP Transit market.

#### *The Commercial Retail and Wholesale ITS Markets.*

- 43 MCI-Singapore currently provides Commercial Retail ITS to a small number of corporate customers in Singapore (less than 5% market share). However, it is one of the key players in the provision of Wholesale ITS market, alongside with players such as StarHub, M1, REACH and SingTel. In the “ITS Exemption Decision”<sup>12</sup>, IDA determined that the Commercial Retail ITS market is substantially competitive while the Wholesale ITS market is effectively competitive. IDA recognises, however, that foreign-end termination service is an important input into this service. IDA notes that although MCI is a major provider of international termination services in the US, this US market is very competitive with many players such as AT&T-SBC and Sprint competing in the market. Verizon, by contrast, is a relatively new entrant into this market, and currently terminates only a small amount of Singapore-originated ITS traffic. Thus, the elimination of competition between MCI and Verizon in this US market will not adversely affect competition in the Singapore ITS markets. If the merged MCI-Verizon seeks to discriminate in the provision of call termination services to non-Affiliated Singapore ITS providers, those operators will be able to obtain call termination services from other US providers.
- 44 Therefore, IDA believes that there is little risk that the proposed Consolidation will result in significant lessening of competition in the two ITS markets.

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<sup>12</sup> Explanatory Memorandum to the Decision of the Info-communications Development Authority of Singapore on the Request by Singapore Telecommunications Ltd for Exemption from Dominant Licensee Obligations with Respect to the “International Telephone Services” Market, issued on 12 November 2003.

### **Other Telecommunication Services Provided by Applicants in Singapore**

- 45 MCI-Singapore provides three additional services: Internet access and related services, Backhaul and local connectivity related services. The proposed Consolidation does not raise significant competitive concerns in any of these markets.
- 46 *Internet Access and Related Services.* MCI-Singapore provides Internet access and related services (via various access means such as dial-up and high speed Internet connectivity to corporate end users). IDA has not previously determined the relevant product market or markets in which Licensees provide Internet access and related services. IDA does not believe that it is necessary to do so at this time. Market definition is a tool that IDA uses to assist it in assessing the likely competitive consequences of a proposed Consolidation. Even if IDA determined that MCI-Singapore's Internet access services fall within the narrowest possible product markets, IDA would still find that the proposed Consolidation does not create any anti-competitive risk in regard to these services, given MCI-Singapore's market data provided to IDA.
- 47 MCI-Singapore is subject to competition from numerous operators offering Internet access and related services to corporate customers in Singapore. Other major participants include Equant, Pacific Internet, SingNet and StarHub. Verizon, however, does not participate in this market and, absent the proposed Consolidation, would not be likely to enter. Singapore-based Internet access service providers do not need to purchase special access services from US operators in order to provide Internet access services in Singapore. Therefore, notwithstanding Verizon's dominant position in the provision of special access services in parts of the US, the proposed Consolidation is not likely to substantially lessen competition among Singapore-based Internet access providers. In addition, as further explained in paragraph 50 below, because Verizon is not a significant Internet backbone provider, the proposed Consolidation will not enhance MCI's ability to use its position as an Internet backbone provider to favour MCI-Singapore's Internet access services.
- 48 *Backhaul.* In the ICS Exemption Decision, IDA determined that SingTel continues to be dominant in the Singapore Backhaul market, with a market share of around 50 percent<sup>13</sup>. The other main participants in this market include Reach and StarHub. MCI-Singapore is a small participant in this

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<sup>13</sup> Explanatory Memorandum to the Decision of the Info-communications Development Authority of Singapore on the Request by Singapore Telecommunications Ltd for Exemption from Dominant Licensee Obligations with Respect to the "International Capacity Services" Market, issued on 12 April 2005.

market. Because Verizon does not participate in this market, and because its special access service is not an input into the provision of Backhaul services in Singapore, the proposed Consolidation cannot lessen competition among Singapore-based Backhaul providers.

- 49 *Local Connectivity Related Services.* MCI-Singapore currently provides local connectivity related services (such as LLC services and network co-location services to businesses) to a small number of customers in Singapore. For the LLC markets, IDA, in the LLC Decision<sup>14</sup>, has determined that the markets are not competitive with SingTel retaining clear dominance. The proposed Consolidation does not create any anti-competitive risk in this market. Verizon neither participates nor provides any service that is an input into the LLC markets. As for the other local connectivity related services, IDA has not previously defined the relevant product market or markets. Again, there is no need to do so at the present time. Even if IDA determined that MCI-Singapore's local connectivity services fall within the narrowest possible product markets, IDA would still find that the proposed Consolidation does not create any anti-competitive risk in regard to these services. Verizon neither participates in this market, nor provides any service that is an input into local connectivity.

***Effect of the Consolidation on Other Markets That May Affect the Singapore Telecommunication Markets***

- 50 *Global Internet Backbone.* Although IDA recognises the dynamics of the payment arrangements in the global Internet backbone market, IDA remains concerned that Singapore-based Internet providers are required to purchase "full circuits" to the US to obtain Internet connectivity and cannot enter into peering arrangements with Tier 1 Internet backbone providers in the US. The US is a key Internet destination to which a relatively high portion of Singapore's Internet traffic is sent. However, in conducting a Consolidation review, IDA will consider only anti-competitive effects that are likely to occur as a direct result of the proposed Consolidation. When looking at the "Consolidation-specific" effects of the proposed transaction, IDA does not believe that the proposed Consolidation, or the speculative formation of a Tier 1 "super-club" between AT&T and MCI, post merger, will exacerbate this situation. Because Verizon is not a significant Internet backbone provider in the US, the transaction is not likely to have any impact on MCI's insistence that Singapore-based Internet providers purchase full circuits to the US.

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<sup>14</sup> Explanatory Memorandum to the Decision of the Info-communications Development Authority of Singapore on the Designation of Singapore Telecommunications Limited's Local Leased Circuits as a Mandated Wholesale Service, issued on 16 December 2003.

### ***Impact of the AT&T-SBC and MCI-Verizon Mergers***

- 51 IDA notes the concerns about the potential duopoly effect the AT&T-SBC and MCI-Verizon mergers may create in the telecommunication market in the US. IDA has concluded that, viewed separately, the AT&T-SBC and MCI-Verizon mergers are not likely to substantially restrict competition in any Singapore telecommunication market. Viewing the two transactions together would not alter this conclusion. Because SBC and Verizon do not currently participate in the Singapore telecommunication market, the two proposed mergers do not raise any horizontal concerns in Singapore and will not increase market concentration in any markets in Singapore. AT&T-Singapore and MCI-Singapore will continue to be competitors in several Singapore telecommunications markets.
- 52 In any case, Section 9 of the Code has prescribed strict prohibitions against collusive behaviours amongst Licensees, particularly competing Licensees, which unreasonably restrict or are likely to unreasonably restrict competition in any telecommunication market in Singapore.

### **Conclusion**

- 53 Based on the evidence and assessment above, IDA concludes that the proposed Consolidation is not likely to substantially lessen competition in any Singapore telecommunication market. As Sub-section 8.3 of the Code adopts strong safeguards against a Licensee accepting an “anti-competitive preference” from an Affiliate with Significant Market Power and Section 9 of the Code has prescribed strict prohibitions against any collusive behaviours amongst Licensees, there is no need to impose any further conditions on the Applicants in relation to the Consolidation or otherwise in relation to MCI-Singapore's future provision of services in Singapore. IDA expects that the Post-Consolidation Entity will comply fully with these provisions, but is prepared to take strong enforcement action in the event of any contravention.
- 54 IDA further concludes that submission of the Long Form Consolidation Application is not necessary because it is unlikely to lead to the submission of evidence that would cause IDA to modify its conclusions.

**PART VIII: IDA'S DECISION**

55 Based on the above findings, IDA has arrived at the following decision:

- (a) Pursuant to Sub-section 1.7(a), IDA grants the Applicants' Request to be exempted from filing a Long Form Consolidation Application and accepts the submission of the Applicants' Short Form Consolidation Application for the proposed ownership change in MCI-Singapore.
- (b) Pursuant to Sub-section 10.7.1 of the Code, IDA approves the Application without Conditions.