

Comments

On

IDA Consultation Paper

**Proposed Amendments to SingTel's Reference Interconnection Offer
to Offer Connection Services at Submarine Cable Landing Stations**

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COMMENTS ON SINGTEL'S PROPOSED AMENDMENTS TO THE REFERENCE INTERCONNECTION OFFER (RIO) TO OFFER CONNECTION SERVICES AT SUBMARINE CABLE LANDING STATIONS

Pacific Internet Limited is a Facilities-Based Operator Licensee. We set out below our views and comments regarding the proposed amendments to the RIO to offer Connection Services at submarine cable landing stations submitted by Singapore Telecommunications Ltd ("SingTel") to the Infocomm Development Authority of Singapore ("IDA").

General Comments

We are of the view that the turnaround time SingTel provides for itself for processing the numerous sub-requests for the Connection Services is generally too long. Several clauses are also unduly restrictive/onerous on the Requesting Licensee. In addition, the drafting of a number of clauses is ambiguous.

Specific Comments On Proposed Schedule 4B

Clause 2

The proposed Schedule 4B covers the 4 available cable systems. However, how will new cable systems be incorporated? It would be useful to include a mechanism through which new cable systems could be incorporated without the need for a formal amendment to the RIO each time a new system is available.

Clause 3.1

The criteria which SingTel uses to provide the Connection Service to itself should be made known to enhance transparency.

Clause 3.4(a)

See comment for Clause 2.

Clause 4.2(b)

Schedule 4B does not specify how long SingTel will take to provide the initial capacity requested if it is able to provide the quantity of capacity requested but not by the date specified in the ICO. SingTel should specify the soonest alternative provisioning date (given on a good faith basis) and be held to such date. A clause should be inserted in Schedule 4B to this effect.

Clause 4.4

The period of 30 Business Days provided for SingTel to provision the initial capacity is too long. 30 Calendar Days would be a more appropriate timeframe.

Clause 4.5

The wordings “SingTel shall complete the procurement no later than the time at which it would reasonably complete such procurement for itself” are vague. The timeframe for SingTel to complete the provisioning of the initial capacity order if procurement is necessary should depend on objective (and transparent) criteria.

Clause 5.1

The required period of advance submission of the LAR Form for link activation of no less than 15 Business Days prior to the Link Activation Date is too long. We are of the view that 10 Business Days would be more appropriate.

Clause 5.4

We propose that Clause 5.4 be replaced by the following:

“If the Requesting Licensee does not activate a minimum of eighty (80) per cent of the links specified in the relevant ICO (**Minimum ICO Link Activation Amount**) within six (6) months of the ICO Date (**Minimum ICO Period**), the Requesting Licensee will nonetheless be liable for the full amount of charges applicable to the Minimum ICO Link Activation Amount commencing from the expiry of the Minimum ICO Period until such time as the Minimum ICO Link Activation Amount is activated.”

This is to clarify that the failure by a Requesting Licensee to activate the Minimum ICO Link Activation Amount would not amount to a technical breach of Schedule 4B entitling SingTel to terminate the Connection Service under Clause 16.2 (which the original language allowed). Since the Requesting Licensee would be liable for the full amount of Charges applicable to the Minimum ICO Link Activation Amount in such instances, the failure to activate the Minimum ICO Link Activation Amount should not lead to termination.

Clause 6.2

Is there a technical reason why the Capacity Activation Date must be at least 5 Business Days after the Link Activation Date? We are of the view that the Capacity Activation Date should be allowed to coincide with the Link Activation Date if there is no technical reason that it should be later.

Clause 6.4

We propose that Clause 6.4 be replaced by the following:

“If the Requesting Licensee does not activate a minimum of eighty (80) per cent of the capacity specified in the relevant ICO (**Minimum ICO Capacity Activation Amount**) within the Minimum ICO Period, the Requesting Licensee will nonetheless be liable for the full amount of Charges applicable to the Minimum ICO Capacity Activation Amount commencing from the expiry of the Minimum ICO Period until such time as the Minimum ICO Capacity Activation Amount is activated.”

The reasons for such amendment are similar to those stated for Clause 5.4.

Clause 7.2

Is there any reason why ACOs must be submitted 4 months prior to the commencement of the ACO Period? We are of the view that this requirement should be removed. In this context, we note that there is no requirement for ICOs to be provided to SingTel 4 months prior to the commencement of the ICO Period.

Clause 7.3

The requirement that an ACO Period must not overlap with any other ICO Period or ACO Period is unduly restrictive and should be removed. In any case, if SingTel is unable to accommodate the ACO by the date requested, Clause 7.4 and Clause 7.6 allow SingTel to provision the ACO at a later date.

Clause 7.4(b)

See comments for Clause 4.2(b).

Clause 7.7

See comments for Clause 4.5.

Clause 8.1

See comments for Clause 5.1.

Clause 8.4

We propose that Clause 8.4 be replaced by the following:

“If the Requesting Licensee does not activate a minimum of eighty (80) per cent of the links specified in the relevant ACO (**Minimum ACO Link Activation Amount**) within six months of the ACO Date (**Minimum ACO Period**), the Requesting Licensee will nonetheless be liable for the full amount of Charges applicable to the Minimum ACO Link Activation Amount commencing from the expiry of the Minimum ACO Period until such time as the Minimum ACO Link Activation Amount is activated.”

The reasons for such amendment are similar to those stated for Clause 5.4.

Clause 9.2

See comments for Clause 6.2.

Clause 9.4

We propose that Clause 9.4 be replaced by the following:

“If the Requesting Licensee does not activate a minimum of eighty (80) per cent of the capacity specified in the relevant ACO (**Minimum ACO Capacity Activation Amount**) within the Minimum ACO Period, the Requesting Licensee will nonetheless be liable for the full amount of Charges applicable to the Minimum ACO Capacity Activation Amount commencing from the expiry of the Minimum ACO Period until such time as the Minimum ACO Capacity Activation Amount is activated.”

The reasons for such amendment are similar to those stated for Clause 5.4.

Clause 10.1(b)(iii)

We believe that this sub-Clause should read “the request for link deactivation is *less* than fifteen (15) Business Days prior to the LDD;” rather than “*more* than fifteen (15) Business Days” as stated. Otherwise Requesting Licensees would have to submit their requests *exactly* 15 Business Days prior to the LDD.

Clause 10.1(d)

We are unclear as to what the words “(or part thereof)” relate to as they do not appear to relate to “the date of such deactivation”. We request that this be clarified and drafted more clearly.

Clause 10.1(e)

There should be a process to allow the capacity and link to be deactivated at the same time so that there will not be a problem of active capacity existing within the link as described in this clause.

Clause 10.2(a)

Is there a technical reason why the CDD must be at least 5 Business Days after the LDD? We are of the view that the CDD should be allowed to coincide with the LDD if there is no technical reason that it should be later. This is also consistent with our comments on Clause 10.1(e).

Clause 10.2(b)(iii)

See comments on Clause 10.1(b)(iii).

Clause 10.2(d)

See comments on Clause 10.1(d).

Clause 13.2

We propose that the following self-explanatory paragraph be added to Clause 13.2:

“SingTel shall afford the Requesting Licensee all assistance and access to all of the Co-Location Spaces and Submarine Cable Landing Stations which the Requesting Licensee shall reasonably require in respect of the installation, use or operation of the Connection Service.”

Clause 13.3

Clause 13.3 appears to overlap with Clause 13.1. We suggest that any extraneous provisions be deleted.

Clause 14.1

We propose that Clause 14.1 be replaced by the following:

“The Connection Service shall commence on the date SingTel notifies the Requesting Licensee of its acceptance of the Request for Connection Service for initial capacity in accordance with clause 4 and continue until the expiry or termination of (a) the Connection Service or (b) the licence for Co-Location Space in respect of the Co-Location Equipment at the relevant Submarine Cable Landing Station in accordance with Schedule 8D of the RIO Agreement, whichever is earlier.”

This amendment is to make clear that the Connection Service should terminate upon the earlier of the expiry or termination of the Connection Service or the licence for the Co-Location Space and not merely be pegged against the term of the licence.

Clause 15.1

We suggest that the references to “capacity” and “licence” in the second line be removed as they do not appear to us to be able to cause harm to telecommunications networks, systems or services.

Clause 16.2

The requirement for the breach to be remedied within a period of 5 Business Days is impractical. We would suggest a more reasonable period of 20 Business Days for breaches to be remedied.

Clause 16.3

The timeframe of 10 Business Days given for the Requesting Licensee to discontinue the use of the Connection Service and disconnect equipment is too short. 20 Business Days would be more reasonable.

Clause 16.4

We propose that Clause 16.4 be replaced by the following:

“If the Requesting Licensee fails to disconnect its equipment from the Cable System in accordance with clause 16.3, SingTel shall remove the Requesting Licensee’s equipment. The Requesting Licensee shall pay to SingTel all reasonable costs associated with the work undertaken by SingTel including the disposal of the Requesting Licensee’s equipment in a manner which does not diminish its value. The Requesting Licensee shall have no claim against SingTel for such removal and disposal, provided that SingTel shall pay all proceeds arising from such disposal (if any) to the Requesting Licensee after applying the same to pay for SingTel’s reasonable costs.”

These amendments oblige SingTel to dispose of the Requesting Licensee’s equipment in a manner which does not diminish its value. In addition, any proceeds arising from such disposal should be repaid to the Requesting Licensee, after SingTel’s reasonable costs are deducted from such sum.

Clause 16.5

We propose that Clause 16.5 be replaced by the following:

“If SingTel terminates the Connection Service, capacity or link prior to the minimum periods specified in this Schedule due to a breach of this Schedule by the Requesting Licensee, the Requesting Licensee shall be liable for the full amount of Charges which would have been payable for that Connection Service, capacity or link during the period commencing from the date of termination to the end of the relevant minimum terms specified in clauses 5.5, 6.5, 8.5 or 9.5, as applicable.”

These amendments clarify that such charges are only payable if termination by SingTel was as a result of a breach by the Requesting Licensee. Also, we believe that the cross-references should be to clauses 5.5, 6.5, 8.5 and 9.5 instead as these are the provisions which relate to the minimum terms applicable to the Connection Service, capacity and links. Our suggested amendments reflect this accordingly.

Specific Comments on Proposed Amendments to Schedule 9

General

We note that the proposed charges have not been included. The reasonableness of clauses like 4.3, 5.3, 6.3, 7.5, 9.3 and 10.1(c) of Schedule 4B would depend greatly on the quantum of the processing charge referred to in those provisions. We are of the view that such charges should only reflect the actual costs incurred by SingTel in processing requests from Requesting Licensees and not include any additional penal or profit elements.

Clause 4.4

With regard to the Annual Charge for Group A Cable Systems and Annual Charge for Group B Cable Systems, the charges should be pro-rated in the event of termination of the Connection Service before an anniversary of its commencement.