

**M1'S RESPONSE TO IDA' CONSULTATION PAPER
ON THE PROPOSED ADVISORY GUIDELINES GOVERNING
(I) PETITIONS FOR RECLASSIFICATION AND REQUESTS FOR
EXEMPTION AND
(II) ABUSE OF DOMINANT POSITION, UNFAIR METHODS OF
COMPETITION AND AGREEMENTS INVOLVING LICENSEES THAT
UNREASONABLY RESTRICT COMPETITION
UNDER THE CODE OF PRACTICE FOR COMPETITION IN THE PROVISION
OF TELECOMMUNICATION SERVICES 2005**

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Comments on the Proposed Advisory Guidelines Governing “Abuse of Dominant Position, Unfair Methods of Competition and Agreements Involving Licensees that Unreasonably Restrict Competition”

1. M1 has been providing cellular mobile services to the Singapore market since 1 April 1997 and in August 2000, we launched our international telephone services. In April 2001, we obtained the FBO Licence for the Provision of 3G Mobile Communication System and Services and the 3G Spectrum Right. M1 took the lead in introducing 3rd Generation (3G) technology and launching our 3G services in February 2005.
2. Since 2000, Singapore has been moving towards liberalisation and deregulation in the telecommunications industry in line with worldwide trends. However, M1 views that the regulator still has a vital role to ensure a level playing field in the market, both for new entrants competing against established players and for single-product operators competing against integrated service providers. In this regard, our focal concern is the general criteria proposed for IDA’s assessment and determination of anti-competitive activities. There is a need to ensure that they adequately address the potential longer- term effects and strategic implications of such activities, particularly, bundling arrangements which will have a direct impact on market competition.

Anti-competitive Implications of Bundling Arrangements

3. Bundling refers to the situation where combinations of goods and/or services are offered at a discounted rate as compared to acquiring given amounts of the goods or services separately. While we recognise that bundling are likely to provide consumer benefits, IDA should be mindful of the high risk that bundling could be used to unreasonably restrict competition in the market, particularly if one of the bundled product is from a monopolistic market. In such instances, bundling can potentially be used to strategically and subtly foreclose or reduce the ability of other competitors to efficiently compete, hence, distorting or eroding competition in a competitive market after a prolonged period.

Problems associated with current Ex-Post Regulatory Approach

4. It is neither realistic nor practical to suggest that licensees approach the monopoly provider to request for joint promotion opportunities, similar to those being offered to the licensee affiliated with the monopoly provider. Such actions would only encourage the linking of the competitive market with the monopoly market, which will strengthen and facilitate the extension of market power from the monopolistic market into the competitive market. Moreover, the non-affiliated licensee would always be a ‘late follower’ of any joint promotions involving the monopolistic party and its affiliates/subsidiaries. In a highly competitive market, timing has a significant impact on the effectiveness of promotions. Hence, any bundling arrangements between a monopoly provider and its affiliates cannot be non-discriminatory under an ex-post regime. An ex-post regulatory approach also means that the detrimental

results of anti-competitive behaviour must be allowed to take effect before IDA can investigate and take action. This is neither an effective approach nor the outcome desirable for the industry as a whole.

Issues not sufficiently addressed by guidelines

Leveraging of market power from one market to another within the same corporate group

5. Although IDA made provisions to safeguard against licensees affiliated with any party with market power from leveraging on such an advantage to restrict competition in the telecoms market by engaging in price squeezes, cross-subsidisation and unreasonable discrimination, bundling can still be used strategically to diminish competition or significantly reduce/limit the ability of competitors in a particular market to efficiently compete in the long run. Very often, short term bundling promotions become de facto long-term exclusive arrangements. Such subtle yet potent erosion of market competition will be detrimental to the overall market.

Collective dominance of corporate group through frequent bundling

6. Unrestricted bundling of services within the same corporate group promotes leveraging of market power from one market to another. Although they may be separate entities in legal form, yet they would have subtly established and strengthened the corporate group's overall market presence as a single corporate brand. The resulting collective dominance will limit and stifle the ability of competitors to compete in the market.

Bundling of services in new and developing markets

7. M1 would urge IDA to consider not just the current but also future implications of bundling of telecommunications with non-telecommunication services, particularly for new and developing services, such as wireless broadband and 3G services. Unmonitored bundling of services will increase entry barrier and stifle competition in new and developing markets before it can even fully developed.

Review of International Practices

8. Some legislations had put in place proactive and rigorous measures to safeguard against the subtle and prolonged erosion of market competitiveness across boundaries. We highlight some information here for reference.
 - UK/Europe
Under the Competition Act 1998, the dominant operator is prohibited from bundling together physically services/products that could be supplied separately. Such practices have the effect of foreclosing the market to other suppliers of competitive services/products, even where the dominant operator also offered to supply the different elements of the bundle separately¹. By such bundling

¹ OfTel, *The Application of the Competition Act in the Telecommunications Sector*, Jan 2000.

arrangements, the dominant operator can exclude rivals and lever its dominance across market boundaries^{2,3}.

- Australia⁴

ACCC recognized that bundling may have adverse effects on competition when the carrier or carriage service provide supplying the bundle has substantial power over one of the products included in the bundle. As such, there is a prohibition on the supply of a bundle of services where the individual service elements are clearly identifiable but any one of these elements cannot be separately purchased by a customer at a price equal to or lower than the price of that element in the bundled offering.

Furthermore, in view of growing industry concerns about current and future implications of bundling for telecommunications services, particularly for new and developing services (e.g. wireless broadband and 3G), ACCC has directed Telstra (dominant player) to record information and provide ACCC with quarterly reports in relation to its 'bundled' service products⁵.

9. To prevent long-term anti-competitive implications of bundling, M1 views that it is crucial for IDA to collect and analyse information such as the discounts given on a bundle of services, the number of customers receiving bundled services and whether customers currently receiving a bundle of services previously received individual services from providers within the same corporate group/other providers, in order to monitor closely the impact of bundling on competition. Such close monitoring is necessary to sustain competition across the telecom markets and for early intervention of any anti-competitiveness behaviour. IDA should also conduct regular surveys to assess the impact of bundling products from a monopoly provider on the purchasing behaviour of consumers.

10. In conclusion, M1 reiterate that bundling is a potentially significant competitive tool, and the long term strategic impact of bundling by a monopoly provider or dominant provider within the same corporate group can never be over-emphasized. Ongoing bundling of services, be it over a number of short or extended promotions, should be subjected to close scrutiny in order to avoid any possible adverse non-reversible impact on the telecommunications market. Hence, the review criteria in the proposed guidelines must be broad enough to capture all possible unfair methods of competition, especially the leveraging of market power from a monopoly or dominant market to a competitive market. Proactive monitoring with robust enforcement is the appropriate balanced approach towards achieving consumer benefits with bundling arrangements and maintaining competition in the market.

² Oftel, Oftel's market review guidelines: criteria for the assessment of significant market power, Aug 2002.

³ ERG, ERG Working paper on the SMP concept for the new regulatory framework, May 2003.

⁴ ACCC, *Anti-competitive conduct in telecommunications markets – An information paper*, Aug 1999.

⁵ ACCC, *ACCC issues record keeping rule to Telstra for bundling*, 21 Mar 2003.