REQUEST OF SINGAPORE TELECOMMUNICATIONS LIMITED FOR EXEMPTION FROM DOMINANT LICENSEE OBLIGATIONS WITH RESPECT TO THE RETAIL INTERNATIONAL TELEPHONE SERVICES MARKET PURSUANT TO SECTION 2.5.1 OF THE CODE OF PRACTICE FOR COMPETITION IN THE PROVISION OF TELECOMMUNICATIONS SERVICES 2005

1. INTRODUCTION

1.1 Singapore Telecommunications Limited (**SingTel**) hereby submits a request to 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* (**Code 2005**), for a full exemption from its Dominant Licensee obligations with respect to the retail international telephone services market (**Exemption Request**).

1.2 The retail international telephony services provided by SingTel which are subject to this Exemption Request include (but are not limited to) the following services:

(i) IDD 001, including voice and data;

(ii) STD 020;

(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;

(xvii) ISDN International Data Service; and

(xviii) such other services that SingTel may notify to the IDA from time to time as constituting a retail international telephone service and confirmed by the IDA as such

(together the **Retail ITS**).

Attached, in Non-Confidential Annex 1, is a description of each of the Retail ITS and examples of Retail ITS providers.

1.3 SingTel seeks a full exemption from the following sections and sub-sections of the Code 2005 in respect of the above-mentioned Retail ITS:

Table 1

Sub-section of Code	Description of Dominant Licensee obligation	Retail ITS
4.2	Duties of Dominant Licensees	IDD 001, including voice and data; STD 020; BudgetCall 013; v019; FaxPlus 012; FaxPlus Connect, International Calling Cards; World Conference; Corporate Switched Telecommunications Network (CSTN); Voice VPN; WorldCard™; Hello!™Card; Operator Assisted Services; Overseas Paid 800; Overseas Collect Call; International Toll Free Service; 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 telecommunications 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	

Sub-section of Code	Description of Dominant Licensee obligation	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	
Section of Code	**Description of Dominant Licensee obligation**	**Retail ITS**
8.2	Abuse of Dominant Position in the Singapore market	IDD 001, including voice and data; STD 020; BudgetCall 013; v019; FaxPlus 012; FaxPlus Connect, International Calling Cards; World Conference; Corporate Switched Telecommunications Network (CSTN); Voice VPN; WorldCard™; Hello!™Card; Operator Assisted Services; Overseas Paid 800; Overseas Collect Call; International Toll Free Service; ISDN International Data Service
8.2.1	Pricing Abuses	
8.2.1.1	Predatory Pricing	
8.2.1.2	Price Squeeze	
8.2.1.3	Cross-subsidisation	
8.2.2	Other Abuses	
8.2.2.1	Discrimination	
8.2.2.2	Predatory Network Alteration	

1.4 The provision of retail international telephony services in Singapore is characterised by high levels of competition and low barriers to entry. As such, the application of Dominant Licensee regulation to SingTel in respect of the Retail ITS is not necessary to protect end-users or promote competition between Licensees.

1.5 This Exemption Request is structured as follows:

Section 1 – Introduction;

Section 2 – Executive Summary;

Section 3 – Background;

Section 4 – Regulatory Framework for the IDA's review of Exemption Requests;

Section 5 – Market definition;

Section 6 – Analysis of the competitiveness of the Retail ITS Markets; and

Section 7 – Conclusion.

1.6 SingTel has provided verifiable data in support of this Exemption Request, including confidential information.

1.7 In preparing this Exemption Request, SingTel has had regard to the requirements set out in the IDA's *Reclassification and Exemption Guidelines* dated 30 September 2005 (**Exemption Guidelines**).

2. EXECUTIVE SUMMARY

2.1 SingTel's submission to the Exemption Request can be summarised as follows:

(a) SingTel submits that there is a single retail market for the provision of international telephony services between Singapore and locations outside Singapore (**Retail ITS Market**).

(b) SingTel considers that the Retail ITS Market is fully competitive. SingTel does not have Significant Market Power (**SMP**) in the Retail ITS Market. The IDA should therefore fully exempt SingTel from its Dominant Licensee obligations in respect of the Retail ITS it provides in this market.

(c) The application of Code provisions prohibiting SingTel from engaging in anti-competitive conduct, such as predatory pricing, price squeezes, discrimination and cross-subsidisation, is not necessary in fully competitive markets such as the Retail ITS Market. The fully competitive state of the Retail ITS Market negates the need for the continued application of Dominant Licensee regulation on SingTel.

(d) SingTel is subject to competitive forces in the Retail ITS Market from numerous sources, including providers of:

(i) fixed line IDD services;

(ii) mobile IDD services;

(iii) ISDN IDD services;

(iv) Voice over Internet Protocol (**VoIP**) services provided over IP based networks;

(v) international calling cards;

(vi) pre-paid calling cards;

(vii) private networks; and

(viii) other related services.

(e) International telephony services supplied by these providers all constitute reasonable substitutes for the Retail ITS provided by SingTel.

(f) The full competitiveness of the Retail ITS Market is evident from the following verifiable data:

(i) SingTel's share of outgoing retail international call minutes is less than the 40% threshold for presumption of SMP or dominance;

(ii) SingTel's operating revenue from international telephony services has progressively declined since full market liberalisation and currently represents only 14% of its total operating revenue – just 2 years prior to liberalisation in April 2000, SingTel's operating revenue from such international services exceeded 40%;

(iii) SingTel's average IDD call collection rate has progressively declined since full market liberalisation in April 2000;

(iv) SingTel is subject to competition from numerous rivals – there are currently hundreds of Licensees providing various types of international telephony services in competition against SingTel;

(v) there are very low barriers to entry in the Retail ITS Market and the telecommunications sector generally; and

(vi) the Retail ITS Market is characterised by high levels of tariff diversity, product innovation and differentiation – these are the hallmarks of a fully competitive market.

(g) SingTel will continue to be subject to stringent regulation in the event that the IDA exempts SingTel from its remaining Dominant Licensees obligations in respect of the Retail ITS Market, including:

(i) the prohibitions against anti-competitive conduct in the Code; and

(ii) the obligation to provide access and interconnection to other operators pursuant to the Code and the prices, terms and conditions set out in SingTel's Reference Interconnection Offer.

(h) The continued application of stringent regulation to SingTel will ensure that barriers to entry in the Retail ITS Market remain low and that SingTel remains subject to the threat of potential competition from new entrants.

3. BACKGROUND

3.1 On 12 November 2003, the IDA issued an Explanatory Memorandum (**Initial ITS Decision**) in response to SingTel's initial request for exemption from its Dominant Licensee obligations with respect to the International Telephone Services Market (**Initial Exemption Request**).

3.2 In its Initial ITS Decision, the IDA accepted that the Residential and Commercial Retail ITS markets (together, **Retail ITS Market**) were already substantially competitive and on this basis exempted SingTel from the tariff filing requirements under sub-section 3.3.4 of the *Code of Practice for Competition in the Provision of Telecommunication Services 2000* (**Code 2000**).[1] This exemption continues to have effect.[2]

3.3 The IDA's Initial ITS Decision did not, however, exempt SingTel from all Dominant Licensee obligations in respect of the Retail ITS Markets. The IDA

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1 IDA, *Explanatory Memorandum issued by the Info-communications Development Authority of Singapore: Request of Singapore Telecommunications Ltd for exemption from Dominant Licensee Obligations with respect to the International Telephone Services Market*, 12 November 2003, paragraph 3.

2 The *Telecommunications (Exemption from Dominant Licensee Provisions in Telecom Competition Code – International Telephone Services) Notification 2005* exempts SingTel from sub-sections 4.4.1(a)(i), 4.4.1(a)(ii), 4.4.1(b), 4.5 and 4.6 of the Code 2005.

justified its decision to retain Dominant Licensee regulation in respect of the Retail ITS Markets on the following basis:[3]

(a) SingTel retains significant market control for several "upstream" inputs that are essential to provide Retail ITS services such as direct access to end-users and access to cable landing stations;

(b) SingTel is able to provide end-users with a bundle of products, including Direct Exchanges Lines (**DELs**), leased lines, broadband access and international telephony services; and

(c) SingTel's market share in the Retail ITS Market remains in excess of 60%.

3.4 SingTel considers that the Retail ITS Market was effectively competitive at the time of the Initial ITS Decision and that this aspect of the IDA's decision was incorrect. As a consequence of the Initial ITS Decision, SingTel continues to be subject to sub-sections 4.2.1.1, 4.2.1.2, 4.2.1.3, 4.2.2.1, 4.2.2.2, 4.2.2.3, 8.2.1.1, 8.2.1.2, 8.2.1.3, 8.2.2.1 and 8.2.2.2 of the Code.

3.5 The continued application of the Code 2005 provisions prohibiting various types of anti-competitive conduct, including predatory pricing, price squeezes, discrimination and cross-subsidisation is not necessary in a fully competitive market. Dominant Licensee regulation is not needed to prevent anti-competitive conduct in fully competitive markets such as the Retail ITS Market – competition is capable of preventing the occurrence of such conduct.

3.6 SingTel considers that competition in the Retail ITS Market has intensified further since the IDA's Initial ITS Decision. SingTel therefore believes it is timely and appropriate for the IDA to review whether Dominant Licensee regulation should continue to apply to SingTel with respect to the Retail ITS Market.

3.7 Intense competition has negated the need for Dominant Licensee regulation in respect of the Retail ITS Market. Dominant Licensee regulation should be removed in light of the strong evidence of competition in the Retail ITS Market.

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[3] IDA, *Explanatory Memorandum issued by the Info-communications Development Authority of Singapore: Request of Singapore Telecommunications Ltd for exemption from Dominant Licensee Obligations with respect to the International Telephone Services Market*, 12 November 2003, paragraphs 26 and 27.

3.8 In its Initial ITS Decision, the IDA fully exempted SingTel from its Dominant Licensee obligations in respect of the Wholesale ITS Market. For the avoidance of doubt, this Exemption Request does not relate to the Wholesale ITS Market or any of the services provided within that market.

4. REGULATORY FRAMEWORK FOR THE IDA'S REVIEW OF EXEMPTION REQUESTS

4.1 Sub-section 1.5 of the Code 2005 sets out the regulatory principles that will guide the IDA's implementation of the Code 2005. SingTel considers that the IDA should have appropriate regard to the following principles when it is considering this Exemption Request:

(a) reliance on market forces;

(b) promotion of effective and sustainable competition;

(c) proportionate regulation;

(d) technological neutrality;

(e) avoidance of unnecessary delay; and

(f) non-discrimination.

4.2 In particular, SingTel believes that the IDA should have regard to sub-section 1.5.1 of the Code 2005, which states:

> "*Market forces are generally far more effective than regulation in promoting consumer welfare. Competitive markets are most likely to provide consumers with a wide choice of services at reasonable prices*."

4.3 The continued application of Dominant Licensee regulation is not necessary where a market is subject to competitive forces. Regulation is only necessary where competition in the relevant market is deficient. SingTel considers that the Retail ITS Market is fully competitive and as such should no longer be subject to Dominant Licensee regulation.

4.4 Sub-section 1.5.8 of the Code 2005 sets out the principle of non-discrimination:

"IDA's decisions will be non-discriminatory. IDA will treat similarly situated Licensees on an equivalent basis".

4.5 SingTel considers that its position in the Retail ITS Market is analogous to other non-Dominant Licensees. SingTel does not have Significant Market Power in the Retail ITS Market – it cannot raise prices above competitive levels without losing market share to rivals. As such, SingTel's position is similar to other non-Dominant Licensees that participate in the Retail ITS Market.

4.6 The continued application of Dominant Licensee regulation to SingTel in respect of the Retail ITS Market is discriminatory. This is because SingTel is subject to a more onerous level of regulation compared to its rivals notwithstanding the fact that SingTel is subject to the same competitive constraints as its rivals.

4.7 Sub-section 1.5.7 of the Code 2005 sets out the principle of avoidance of unnecessary delay:

"Recognising the need for Licensees to respond rapidly to changing market forces, IDA will strive to make all decisions pursuant to this Code within the timeframes specified herein and, in any case, as quickly as reasonably possible".

4.8 SingTel has previously expressed its concern about the time taken by the IDA to consider requests for exemption.[4] The prolongation of Dominant Licensee regulation on SingTel in respect of otherwise competitive markets ultimately harms competition and consumers. Dominant Licensee regulation prevents SingTel from competing as vigorously as it otherwise would in the absence of Dominant Licensee regulation.

4.9 SingTel believes that the timeframes in sub-section 2.5.2 of the Code 2005 for decisions in respect of exemption requests are too long. SingTel considers that the IDA should be able to finalise its decision in respect of this Exemption Request in approximately 4 months (allowing for 4 weeks of public consultation prior to the preliminary and final decisions).

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[4] SingTel, *Response to Consultation Paper: 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 Telecommunications Services 2005*.

4.10 SingTel believes this timeframe is reasonable and achievable. Observance of such a timeframe by the IDA will minimise the period of time that SingTel is subject to Dominant Licensee regulation in respect of an otherwise competitive market.

5. MARKET DEFINITION

5.1 In this section, SingTel submits that:

(a) there is a single retail market for international telephony services between Singapore and locations outside Singapore (**Retail ITS Market**), comprising of fixed and mobile services, calling cards, VoIP and other similar services;

(b) its preferred definition of a single Retail ITS Market is consistent with the IDA's methodology for defining markets set out in the Exemption Guidelines;

(c) differences in the price, quality, functionality and technology used to provide international telephony services does not suggest that they fall within separate economic markets – all services within the Retail ITS Market are reasonable substitutes for each other;

(d) there is strong evidence that VoIP, mobile IDD, ISDN and other services such as calling cards and overseas call collect are reasonable substitutes for more traditional fixed line IDD services; and

(e) the introduction of VoIP services and the prominence of hubbing international call traffic mean that geographic markets for international telephony services can no longer be defined accurately on a route-by-route basis.

Retail ITS Market – a single market for Retail ITS Services

5.2 In its Initial ITS Decision, the IDA concluded that there were two Retail ITS markets, notably:[5]

(a) <u>the Residential Retail ITS Market</u>, comprising services that enable residential end - users to make and receive voice telephone calls between Singapore and locations outside Singapore; and

[5] IDA, paragraph 19.

(b) the Commercial Retail ITS Market, comprising services that enable business end-users to make and receive voice telephone calls between Singapore and locations outside Singapore.

5.3 The IDA has distinguished these markets on the basis that the end-user is either a business or residential subscriber. However, the services identified by the IDA in its Initial ITS Decision as falling within each of these markets were virtually identical.[6]

5.4 While SingTel appreciates that some of the Retail ITS are business orientated, SingTel considers that the level of similarity between the services that fall within each of the two markets is such that there is no substantive basis for having two separate economic markets. The competitive conditions (including the switching propensity of end-users) in both markets are likely to be similar.

5.5 As such, SingTel's preferred market definition is a single Retail ITS Market, comprising services that enable all end-users to make and receive voice telephone calls between Singapore and locations outside Singapore. This market definition is supported by the market analysis set out in this Exemption Request.

5.6 However, if the IDA is not inclined to accept the existence of a single Retail ITS Market, SingTel is prepared, for the purposes of this Exemption Request, to accept the existence of a Residential Retail ITS Market and Commercial Retail ITS Market. In Non-Confidential Annex 1, SingTel identifies the availability of the Retail ITS to the residential and to the commercial end-users.

5.7 However, SingTel's analysis of the competitive conditions in the Retail ITS Market should therefore be viewed as applying equally to Residential Retail ITS Market and Commercial Retail ITS Market, given the similarities in the services that comprise each of these markets.

SingTel's preferred market definition is supported by the IDA's Exemption Guidelines

5.8 As the IDA is aware, market definition is important because it:

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6 IDA, *Explanatory Memorandum issued by the Info-communications Development Authority of Singapore: Request of Singapore Telecommunications Ltd for exemption from Dominant Licensee Obligations with respect to the International Telephone Services Market*, 12 November 2003, paragraph 20.

(a) identifies the services that will act as a competitive constraint on the ability of a hypothetical monopolist to impose a small but significant non-transitory increase in price (**SSNIP**) in respect of a service without losing market share to its competitors; and

(b) provides the basis for examining the state of competition in the relevant market and determining whether the Dominant Licensee has Significant Market Power (**SMP**) in that market.

5.9 The fundamental importance of market definition in competition analysis means that any market definition must be founded on a strong evidentiary basis. SingTel believes that there is strong evidence to support its preferred market definition. SingTel's preferred definition of a single Retail ITS Market is also consistent with, and supported by, the methodology for defining markets set out in the IDA's Exemption Guidelines.

5.10 In its Exemption Guidelines, the IDA has stated that in order to determine whether a Dominant Licensee has SMP in the market for a service, it will first determine the relevant service, geographic and functional markets in which the Licensee provides the service.[7]

5.11 The IDA's stated approach to market definition can be broadly divided into the following 3 steps:

(a) identify the relevant <u>service market</u> through either the SSNIP test or a consideration of whether other services can constitute reasonable substitutes;

(b) identify the relevant <u>geographic market</u>; and

(c) identify the <u>functional level</u> at which a service is provided.

5.12 SingTel has utilised the IDA's stated approach to market definition for the purposes of this Exemption Request. SingTel's analysis is set out below.

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[7] IDA, *Reclassification and Exemption Guidelines*, 30 September 2005, paragraph 2.4.1.

Differences in price, design, functionality and technology are not relevant to the definition of the service market

5.13 SingTel considers that all international telephony services provided through the following access techniques constitute reasonable substitutes to the Retail ITS Services and therefore fall within the Retail ITS Market:

(a) PSTN access;

(b) mobile access;

(c) ISDN access;

(d) calling cards;

(e) VoIP services;

(f) call back/call origination services; and

(g) any other means used to provide international telephony services

(together the **Substitute Services**).

5.14 A SSNIP in respect of any Retail ITS Service would result in an end-user switching to any of the other Substitute Services, thereby defeating any benefit to the hypothetical monopolist as a consequence of the SSNIP. As such, SingTel considers that all Substitute Services are reasonable substitutes for the Retail ITS Services and therefore should be considered to be in the same service market.

5.15 The fact that some differences exist between services does not mean that they are not reasonable substitutes or within the same service market. As the Office of Fair Trading in the United Kingdom has observed:

> *"Substitutes do not have to be identical products to be included in the same market…The products' prices do not have to be identical. For example, if two products perform the same purpose, but one is of a higher quality, they might be included in the same market. This depends on whether the price of one constrains the price of the other. Although one is of a lower quality, customers might still switch to this product if the price*

of the more expensive product rose and if they no longer felt that the higher quality justified the price differential".[8]

5.16 Therefore, differences in the price, functionality or technology used to provide international telephony services are only relevant to the extent that:

(a) it affects the ability of an end-user to switch to another service following a SSNIP by a hypothetical monopolist; or

(b) they cannot otherwise be considered to be reasonable substitutes.

5.17 Differences in the price and functionality of the Substitute Services would not affect the ability of end-users to switch to another Substitute Service.

5.18 Similarly, the fact that the Substitute Services use different access technologies does not mean that they belong in separate service markets. The technology used to provide a service is only relevant insofar as it affects the ability of the end-user to switch to another service. This is consistent with the principle of technological neutrality enshrined in the Code[9] and recognised by the IDA in the Exemption Guidelines:

> *"IDA will conclude that a service performs the same (or comparable) function as the Licensee's service, regardless of the technology used, if a Customer would view the service as a reasonable substitute for the Licensee's service…".*[10]

5.19 A technologically neutral approach to market definition is also consistent with international best practice. Oftel (now Ofcom) has recently stated:

> *Oftel's approach is based on a Competition Law based assessment of markets and an assessment of the extent to which switching among services by consumers constrains prices, irrespective of the infrastructure used by the providers of those services".*[11]

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8 Office of Fair Trading, *Market Definition Guideline*, March 1999, page 5.

9 *Code of Practice for Competition in the Provision of Telecommunication Services 2005* sub-section 1.5.5.

10 IDA, *Reclassification and Exemption Guidelines*, 30 September 2005, paragraph 2.4.1.

11 Oftel, *Wholesale International Services Markets: Identification and analysis of markets, determination of market power and setting of SMP conditions*, Explanatory Statement and Notification, 26 August 2003, pages 24.

5.20 SingTel does not consider that the technical means of delivering international telephony services has any impact on the willingness of an end-user to switch between services or can logically lead to a conclusion that such services are not in fact reasonable substitutes.

Evidence of substitutability in the defined service market

5.21 SingTel believes that there is strong evidence to suggest that the Substitute Services are a reasonable substitute for one another.

5.22 This is well demonstrated by the mix of revenue that SingTel derives from international telephony services. SingTel's revenues from international telephony services are not just derived from fixed line IDD services, but rather are spread more broadly across fixed IDD services, mobile IDD services, ISDN IDD services and payphones. This suggests that end-users use a variety of technologies to make and receive international calls and that these different technologies are reasonable substitutes for one another. SingTel provides additional information in Confidential Annex B.

5.23 There is also other evidence to suggest that all the Substitute Services are reasonable substitutes for each other.

(a) IP Telephony

5.24 IP telephony services are increasingly used for international telephony purposes. This was recognised by the industry from as early as 2002:

> "*Ms Renee Gamble, IDC Asia-Pacific's program manager for IP and broadband research, explained that VOIP is no longer considered as being of poor quality and is now more widely accepted as capable of providing high-standard, budget call services. IDC figures estimate that Asia-Pacific (excluding Japan) will register almost US $14.33 billion (S $25.05 billion) in VOIP services revenue in 2006, up from US $1.02 billion last year. This market is also forecast to grow at a compound annual growth rate of 70 per cent. Singapore accounted for 25 per cent of the region's VOIP revenues in 2001 and there has been a "massive*

growth" in uptake of VOIP services from residential users here, according to IDC.[12]*"*

"*There has also been a lot of migration to alternative services such as voice-over-Internet Protocol (VOIP) and mobile-based IDD calls, which are not included in overall IDD figures"*[13].

5.25 And further:

"Although mobile service providers are well on their way to cannibalize IDD market share from the traditional fixed line providers, they too may see their IDD revenue declining over the next few years as VOIP services gain foothold and further erode prices".[14]

5.26 Providers such as VOLE and Mediaring have been offering VoIP services in Singapore for some time and are further expanding their operations.[15] Software and web based companies, such as Skype, Google, MSN and Yahoo, also provide VoIP services to end-users in Singapore. Broadband providers like Pacific Internet are also offering VoIP services[16]. These types of VoIP services are an alternative means by which end-users can make and receive international calls[17].

5.27 Increasing rates of broadband penetration can in turn encourage additional market entry by VoIP providers.

5.28 With respect to increases in the rate of broadband penetration, SingTel notes that:

(a) the household broadband penetration in Singapore was 51.9% in December 2005;[18]

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12 "Soaring Net-based calls", Computer Times, 18 December 2002

13 Lain McNeill, International Data Corporation, "Calling the Shots", Computer Times, 18 December 2002

14 Quoting C Mortensen in IDC, *Fixed Versus Mobile IDD Services 2003-2008 Forecast and Analysis*, 14 January 2005. See www.marketresearch.com/product/display.asp?productid=1079525&xs=r

15 "VoIP phone services available in Singapore's Changi Airport", in *People's Daily Online*, 1 December 2005.

16 Pacific Internet, "Pacific Internet Signs Partnership Agreement with Skype", www.pacific.net.sg/business/pressroom/, 16 November 2005.

17 See "Hello VOIP, Goodbye IDD", "Talk can be cheap… and even Free!", "May the Voice be with you" and "Talk is cheap - over the Internet", Computer Times, 14 July 2004

18 IDA, *Statistics on Telecom Services for 2005 (Jul-Dec)*, 2005.

(b) the household broadband penetration rate in Singapore has more than doubled between January 2003 to December 2005[19];

(c) Singapore's broadband deployment growth rate between 2002 and 2003 itself was 156%[20];

(d) 17% of internet users in Singapore aged 15 years and above used internet telephony services in 2004;[21]

(e) the residential broadband penetration rate in Singapore is expected to rise to 75% by 2009;[22]

(f) broadband coverage is available to 99% of the Singapore population[23]; and

(g) Singapore has one of the highest broadband penetration rates in the world, as set out in Table 2 below.

Table 2 – Top 10 broadband countries by household penetration

Source: Point-Topic, *World Broadband Statistics: Q2 2005*, 20 September 2005, page 15.

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19 Broadband penetration rate was 21.1% in January 2003 and 51.9% in December 2005. Source: IDA Facts and Figures, 14 February 2006.

20 Speech by Mr Leong Keng Thai, Dy CE (IDA) and Director – General (Telecoms), "Broadband in Asia: Enabling a High-Speed Future", 5 April 2005.

21 IDA, *Annual Survey on Infocomm Usage in Households and by Individuals for 2004*, 23 March 2005.

22 Point-Topic, *Singapore Broadband Overview*, 30 August 2005. See, http://www.point-topic.com/content/operatorSource/profiles/Singapore/Singapore.htm&comp_id=775&g=1

23 Ibid.

5.29 The new licensing framework for IP Telephony adopted by the IDA in June 2005 has created regulatory certainty for VoIP providers and is therefore likely to facilitate additional market entry. As at 14 February 2006, there were at least 15 holders of IP Telephony licences in Singapore.[24]

5.30 In June 2005, the IDA itself acknowledged the increasing prevalence of IP telephony services:

> *"In the bid for lower costs, consumers are increasingly using the Internet and other Internet Protocol (IP)-based networks to make local and international voice calls, together with, <u>or as alternatives to traditional fixed-line telephony</u>" (our emphasis).*[25]

5.31 The above makes it clear that VoIP services represent a reasonable demand side substitute to more traditional international telephony services. As such, they should be included in the definition of the Retail ITS Market.

(b) Mobile telephony

5.32 There is also strong evidence of substitutability between fixed and mobile services in the provision of international telephony services. This is demonstrated by the rate of mobile phone penetration.

5.33 Mobile penetration rates in Singapore have far exceeded those for fixed lines. In April 2000, the mobile phone population penetration rate in Singapore was 53.9% whilst that for fixed was 58.6%. By December 2005, the mobile phone penetration rate in Singapore was more than double that of fixed lines, at 97.8% compared to 42.5%.[26] This suggests that mobile telephony has become more popular than fixed line telephony.

5.34 There is also specific evidence to suggest that a significant percentage of consumers use mobile telephony services to make and receive international calls and therefore consider mobile telephony to be a reasonable substitute for fixed line telephony. SingTel provides additional information in Confidential Annex B.

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24 IDA, *Telecoms Licensing System: Licence Search*, 14 February 2006. See, www.tls.ida.gov.sg

25 IDA, *Media Release: IDA Launches New Policy Framework for Internet Protocol (IP) Telephony*, 14 June 2005.

26 IDA, Statistics on Telecom Services for 2005 (Jul-Dec), 2005.

5.35 Similar views have also been expressed by representatives of StarHub and M1. From as early as 2002, representatives of StarHub and M1 expressed the view that end-users were making extensive use of mobile phones to make international calls:

> *"Furthermore, with high market penetration and convenience of wireless connectivity, IDD calls made from mobile phones have picked up, said Mr Teo Swee Kiat, spokesman for M1.*
>
> *Ms Patricia Sharma-Inglin, StarHub's general manager for international telephony, revealed that the ratio of customers calling IDD from fixed versus mobile lines is close to 50:50".*[27]

5.36 The extensive use of mobile phones to make international calls has been recognised by mobile operators and reflected in their product plans. StarHub, for example, targets its PowerPlay, PowerTalk and PowerCall plans at high IDD users.[28] It also offers free mobile IDD 018 calls to Brunei, Canada, China, Hong Kong, Laos, Macau, Malaysia, Puerto Rico, Russia, South Korea, Taiwan, Thailand and the United States.[29]

5.37 In Singapore, mobile tariffs are also increasingly more varied in nature, with mobile price plans being structured similarly to the fixed line plans. For example, some plans include free incoming calls while other price plans offer a variety of features, such as free bundled call minutes and other value added services. This has resulted in end-users having a wide variety of choices when taking up a mobile service.

5.38 The substitutability of mobile IDD services for fixed line IDD services is also confirmed by international data. TeleGeography has stated that mobile subscribers generated 20% of the world's international traffic and received 30% of international calls in 2003.[30] TeleGeography has also estimated that mobile terminated international voice traffic will exceed 70 million minutes and account for 25% of global calls in 2005.[31]

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27 Eileen Yu, "Calling the Shots", Computer Times, 18 December 2002.

28 StarHub, *StarHub Ltd Annual Report 2004,* page 37.

29 See, www.starhub.com

30 TeleGeography, *TeleGeography 2005 Executive Summary*, 2005. See, http://www.telegeography.com/ee/free_resources/tg2005_exec_sum.php

31 TeleGeography, *TeleGeography Wholesale Market Predictions for 2005: Press Release*, 2005.

(c) ISDN International Service

5.39 SingTel considers that its International ISDN service also falls within the Retail ITS Market. End-users can use the ISDN International Service to make international calls to various global destinations via SingTel's ISDN network.

5.40 ISDN is simply an access technology, in the same way that PSTN and mobile is an access technology. As such, this service is clearly a substitute for fixed line and mobile IDD services, VoIP services provided over broadband connections and other international telephony services.

(d) Calling cards, overseas call collect, operator assisted service and other services

5.41 In its Initial ITS Decision, the IDA concluded that prepaid calling cards, international calling cards, BudgetCall 013, v019, Overseas Call Collect and Operator Assisted Services all fall within a service market for international telephony services.[32] The IDA has reached the same view with respect to business orientated services such as the International Toll Free Service, Overseas Paid 800, FaxPlus 012, FaxPlus Connect, WorldConference, Voice Virtual Private Network and Corporate Switched Telecommunications Network services.

5.42 SingTel agrees with this aspect of the IDA's Initial ITS Decision and believes it should be re-confirmed by the IDA in its decision in response to this Exemption Request.

Geographic Market

5.43 SingTel believes that the relevant geographic market is between Singapore and locations outside Singapore.

5.44 In terms of the geographic scope of the Retail ITS market, the definition of a single and distinct ITS product market is well-established. In Australia, the regulator (then AUSTEL) defined that the same relevant market as "the international market", being:

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[32] IDA, *Explanatory Memorandum issued by the Info-communications Development Authority of Singapore: Request of Singapore Telecommunications Ltd for exemption from Dominant Licensee Obligations with respect to the International Telephone Services Market*, 12 November 2003, paragraph 20.

"…a market in Australia for the supply of international telecommunication services for communications from Australia to places outside Australia."[33]

5.45 SingTel has previously submitted that a route-by-route geographic distinction has operated in some jurisdictions as an unnecessarily complex exercise of regulatory oversight.

5.46 This is supported by the IDA's Initial ITS Decision, in which it stated that it was not necessary to assess the competitiveness of the ITS market on a route-by-route basis.[34] In doing so, the IDA adopted the same geographic market definition proposed by SingTel in this Exemption Request, that is, a geographic market between Singapore and locations outside Singapore.

5.47 A route-by-route approach to market definition is no longer appropriate. The introduction of VoIP services has challenged the validity of route-by-route approaches to market definition. This is because in many cases the price of VoIP calls does not vary depending on the destination of a call. As has been observed in *The Economist*:

> *"while traditional telephony takes account of geography, distance, and time, says Michael Powell, America's telecoms regulator, 'VOIP shatters all three'. In most cases it makes no difference to a VOIP caller where he is, how far away from the person he is calling, or how long they talk".*[35]

5.48 Further, the prominence of hubbing international traffic through third countries undermines the accuracy of any route specific market definition. In particular, SingTel notes that:

(a) International capacity has grown exponentially over recent years, particularly in the Asia-Pacific region. International bandwidth prices have also declined considerably over this time. TeleGeography has estimated that sufficient unlit

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33 AUSTEL, *Review of Telstra's Dominance in the International Telecommunications Services Market* (August 1995), quoted in *Telstra Corporation Limited v Australian Telecommunications Authority and Optus Networks Pty Limited*, G731 of 1995.

34 IDA, *Explanatory Memorandum issued by the Info-communications Development Authority of Singapore: Request of Singapore Telecommunications Ltd for exemption from Dominant Licensee Obligations with respect to the International Telephone Services Market*, 12 November 2003, paragraph 22.

35 Quoting Michael Powell, FCC Chairman, 'The phone call is dead; long live the phone call', in *The Economist*, 2 December 2004.

capacity exists on most routes to last into the next decade, particularly in Asia (see Non-Confidential Annexes 2 and 3).[36]

(b) International traffic is frequently routed or 'hubbed' through major financial centres such as Singapore, Hong Kong and Tokyo. It is not simply routed directly to the country of the call recipient. Providers of international telephony services may therefore send traffic out of Singapore to a 'hub' country and then have it terminated from that hub. International Simple Resale is based on such a model.

(c) The existence of regional hubs means that operators in any country in the Asia Pacific region are able to provide international telephony services to foreign destinations as a substitute for other operators in the same region. For example, an operator in Singapore can buy capacity from a carrier in Hong Kong. From Hong Kong, the operator can directly or indirectly access a wide range of systems to every country in the world. Therefore, Singapore is competing with Hong Kong and other regional centres for traffic destined to the countries of the world. Singapore is not simply competing with Hong Kong on a route-by-route basis for direct Singapore-Hong Kong traffic.

(d) Competition in the regional hub in the Asia Pacific is also evidenced by the fact that 85% of available regional bandwidth is controlled by six centres as illustrated in Table 3 below.[37] The Retail ITS Market is therefore characterised by fierce competition, particularly within the immediate Singapore region:

Table 3 – Demand for international bandwidth in Asia

36 TeleGeography, *Submarine Bandwidth 2004*. See www.telegeography.com

37 Fleming, J, *Asia's Backbones*, p 35.

5.49 SingTel therefore submits that a broad geographic market of international telephony services between Singapore and locations outside Singapore is the better definition. The impact of hubbing and the nature of VoIP services are such that the route-by-route approach to market definition is inappropriate. The Retail ITS Market should therefore comprise of calls to and from Singapore, irrespective of whether they are routed directly or through resale arrangements.

Functional Market

5.50 The Retail ITS Market exists at the retail level. It does not encompass services from other functional levels, such as the wholesale level. As such, it is purely a market for the supply of retail international telephony services. This is evidenced by the fact that Retail ITS Services are purchased by end-users, rather than operators.

5.51 This view was accepted by the IDA in its Initial ITS Decision, in which it declared the existence of a separate retail and wholesale markets. Even if the IDA rejects SingTel's preferred definition of a single Retail ITS Market and determines that there exists two distinct markets, namely a Commercial Retail ITS Market and a Residential Retail ITS Market, SingTel considers that it is beyond dispute that such markets exist at a retail level.

6. ANALYSIS OF THE COMPETITIVENESS THE RETAIL ITS MARKET

6.1 In this section, SingTel submits that:

(a) the Retail ITS Market is fully competitive;

(b) it is subject to extensive competition from numerous Facilities-Based Operators (**FBOs**) and Services-Based Operators (**SBOs**);

(c) SingTel's share of outgoing retail international call minutes is less than the 40% threshold for presumption of SMP or dominance. SingTel provides additional information in Confidential Annex A.

(d) there are low economic and regulatory barriers to entry in the Retail ITS Market and the Singapore telecommunications sector generally;

(e) it is unable to leverage any theoretical market power it may have from its control of essential facilities into the Retail ITS Market – any such power is negated through access regulation at a wholesale level;

(f) existing bundling practices are inherently pro-competitive; and

(g) there is strong evidence of actual market competition, including:

(i) declining operating revenues from international telephony services;

(ii) falling average IDD call collection rates from international telephony services;

(iii) high levels of international traffic growth; and

(iv) high levels of tariff diversity and product innovation.

IDA's stated approach to competitiveness assessments

6.2 Sub-section 2.6.2 of the Code states that a Dominant Licensee seeking an exemption from its Dominant Licensee obligations under the Code in connection with a specific service, should submit verifiable data regarding its ability to exercise SMP. Sub-section 2.6.2 also sets out the type of data that should be provided by the Dominant Licensee when it submits a request for exemption under sub-section 2.5.1 of the Code.

6.3 The IDA's Exemption Guidelines offer further guidance as to the type of data that the IDA will consider when it determines whether a defined market is competitive. In its Exemption Guidelines, the IDA has stated that it will undertake the following steps in order to assess the competitiveness of a defined market:[38]

(a) firstly, determine the market participants and their market shares;

(b) secondly, consider factors that would affect the ability of a Dominant Licensee to act anti-competitively, including:

(i) market concentration levels;

[38] IDA, *Reclassification and Exemption Guidelines*, 30 September 2005, paragraph 2.4.2.

(ii) the existence of barriers to entry;

(iii) whether there are any close substitutes based on price, quality or functionality; and

(iv) the ability of a Licensee to leverage market power that it possesses in a vertically integrated market; and

(c) thirdly, consider evidence of actual market performance, including actual market competition and any prior anti-competitive conduct by the Dominant Licensee.

6.4 SingTel has previously expressed its concerns about the IDA's stated approach to assessing the competitiveness of defined markets. Notwithstanding these concerns, however, SingTel has, to the extent possible, conducted its competitiveness assessment and submitted verifiable data in accordance with the above mentioned steps.

6.5 Further, in its Initial ITS Decision, the IDA justified its decision to not exempt SingTel from all its Dominant Licensee obligations in respect of the Retail ITS Markets on the following basis:[39]

(a) SingTel retains significant market control for several "upstream" inputs that are essential to provide Retail ITS such as direct access to end-users and access to cable landing stations;

(b) SingTel is able to provide end-users with a bundle of products, including DELs, leased lines, broadband access and international telephony services; and

(c) SingTel's market share in the Retail ITS Market remains in excess of 60%.

6.6 SingTel has specifically sought to respond to these issues in this section.

The Retail ITS Market is fully competitive

6.7 SingTel believes that the Retail ITS Market is fully competitive. Competition has intensified further since the IDA's Initial IDA Decision.

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[39] IDA, *Explanatory Memorandum issued by the Info-communications Development Authority of Singapore: Request of Singapore Telecommunications Ltd for exemption from Dominant Licensee Obligations with respect to the International Telephone Services Market*, 12 November 2003, paragraphs 26 and 27.

6.8 The continued application of Dominant Licensee regulation on SingTel in respect of the Retail ITS Market is no longer justified or warranted. Accordingly, the IDA should exempt SingTel from its Dominant Licensee obligations in relation to the Retail ITS Market.

6.9 The competitive nature of the Retail ITS Market is set out in greater detail below.

Part A. Market participants and market shares

6.10 SingTel competes against a multitude of operators in the provision of Retail ITS. The vast number of competitors in the Retail ITS Market stems from the fact that international telephony services can be offered using a variety of different access techniques.

6.11 SingTel is subject to extensive competition from other FBOs such as StarHub, M1 and MCI, which also provide international telephony services to end-users. SingTel, StarHub and M1 have established their own international gateway facilities and relationships with foreign operators to terminate international traffic. FBOs also offer wholesale services to other Licensees.

6.12 SingTel also competes with a multitude of SBOs providing international telephony services. As at 15 February 2006, there were approximately:[40]

(a) 103 holders of International Simple Resale licences;

(b) 42 holders of Call-Back/Call Origination Service licences;

(c) 182 holders of Internet-Based Voice and Data Service licences;

(d) 19 holders of International Calling Card (ICC) Service licences;

(e) 15 holders of IP Telephony licences, and

(f) hundreds of resellers of international telephony services.

6.13 SingTel lists, to the best of our knowledge, the providers who offer Retail ITS in Non-Confidential Annex 4.

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[40] IDA, *Telecoms Licensing System: Licence Search*, 15 February 2006. See, www.tls.ida.gov.sg

6.14 As the above verifiable data make clear, there are numerous operators that compete against SingTel in the provision of international telephony services. SingTel is therefore subject to competition from a wide variety of sources.

6.15 In its Initial ITS Decision, the IDA justified the continued application of Dominant Licensee in respect of the Retail ITS Market on the basis that SingTel's market share at the time exceeded 60 percent.[41] The IDA also claimed that the existence of market shares in excess of 40 percent created a presumption of market power and the need for continued regulation.[42] The IDA has reiterated this position in its Exemption Guidelines.[43]

6.16 It is clear that market entry by these operators has eroded SingTel's market share in the Retail ITS Market. The inability of SingTel to prevent the erosion of its market share shows that it lacks SMP in the Retail ITS Market and that this market is competitive.

6.17 SingTel's share of outgoing retail international call minutes is less than the 40% threshold for presumption of SMP or dominance. SingTel provides additional information in Confidential Annex A.

6.18 The growth of international call traffic has been nothing short of dramatic. This dramatic growth has resulted in the dilution of SingTel's share of the Retail ITS Market. For example:

(a) In April 2000, the industry generated 167.7 million international telephone call minutes, comprising both retail and transit minutes.[44] By November 2003, just before the IDA issued its Initial ITS Decision, this had grown to 269.24 million minutes. This is an increase of approximately 60 percent over the period;[45]

(b) Similarly, the volume of retail and transit minutes grew by another approximately 38 percent between December 2003 and December 2005;

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41 IDA, *Explanatory Memorandum issued by the Info-communications Development Authority of Singapore: Request of Singapore Telecommunications Ltd for exemption from Dominant Licensee Obligations with respect to the International Telephone Services Market*, 12 November 2003, paragraph 27.

42 Ibid, paragraph 27.

43 IDA, *Reclassification and Exemption Guidelines*, 30 September 2005, paragraph 2.4.2(iv).

44 IDA, *Statistics for 2000*. Includes transit minutes.

45 IDA, *Statistics for Telecommunications Services 2003*.

(c) Over the 5 ½ year period from April 2000 to-date, the total volume of industry minutes has grown approximately 130 percent; and

(d) pure retail international call minutes grew from 86.57 million in April 2000 to 247.91 million minutes in December 2005, more than a two-fold increase.

6.19 Correspondingly, SingTel's share of international call traffic would reflect its lack of SMP in the Retail ITS Market – SingTel is clearly not able to raise the prices of Retail ITS above competitive levels without losing market share to rivals. As such, SingTel believes that the IDA should approve this Exemption Request.

Part B. Competitive constraints

6.20 SingTel is subject to intense competition in the Retail ITS Market from existing rivals. It is also subject to the threat of competition from new entrants. Such a threat arises because barriers to entry in the Retail ITS Market are very low. Nor is there any risk of SingTel leveraging market power from another market into the Retail ITS Market.

6.21 These competitive constraints on SingTel are considered in greater detail below.

Low Barriers to Entry

6.22 The Retail ITS Market and the Singapore telecommunication sector generally contain low barriers to entry. The existence of low barriers to entry is clearly evident by the large number of FBOs and SBOs that have already entered the Retail ITS Market.

6.23 The existence of low barriers to entry ensures that SingTel is not just subject to competition from existing rivals, but also to the threat of potential competition from new entrants.

6.24 Low barriers to entry and intense competition have removed any previous incumbency advantages held by SingTel. The high degree of consumer choice in respect of international telephony services has been facilitated by low barriers to entry.

6.25 The regulatory framework for telecommunications ensures that potential rivals face very low barriers to entry. Features of the regulatory framework include:

No Foreign Ownership Restrictions

(a) In January 2000, direct and indirect foreign equity limits for all public telecommunications services licences were lifted. In March 2003, the IDA removed the local incorporation qualifying criteria for all SBO licences and certain categories of FBO licence applications for foreign companies registered under the Singapore Companies Act (Cap 50), in order to lower the market entry barrier for foreign businesses as well as to encourage competition in Singapore.

Clear and Transparent Licensing Framework

(b) The IDA has established a clear and transparent framework, releasing detailed licensing guidelines. The IDA has stated that all applications will be treated on the basis of objective, non-discriminatory and transparent selection criteria and procedures.

Open Access Policy ensures any-to-any Connectivity

(c) All FBOs must provide interconnection, interoperability and access to all Licensees to ensure any-to-any connectivity in a multi-operator environment. This allows end-users to access international telephony services seamlessly regardless of which system they are connected to. As the IDA has stated:

> "*IDA's open access policy objective has been to ensure that there is full interconnection and access arrangements to enable seamless and transparent access by users of any telecommunication services. Therefore, regardless of the telecommunication network that the user is directly connected to, users should be able to make and receive calls to other users and to choose, access and use the services of other telecommunication service providers.*"[46]

Facilities-based Operators / Services-based Operators

(d) The IDA has adopted a flexible licensing approach which allows potential providers of international telephony services to offer such services as either FBOs or SBOs. SBOs who offer international telephony services can even do so under

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[46] IDA, *Information Paper: IDA's Open Access Policy as it Relates to International Telephone Services*, 12 May 2000.

a class licence, which allows for simplified registration for licensing purposes through the gazettal of applicable terms and conditions.

No Limits on the Number of Licensees

(e) The IDA has adopted a free market entry and exit approach and does not pre-determine the number of licences to be awarded. Therefore, there are no limits on the number of Licensees that can provide international telephony services.

Technology Neutral Approach

(f) The IDA has adopted a technology neutral approach towards the licensing of FBOs to ensure that licensees will continue to strive to innovate and respond competitively to meet the needs of users. The configuration of the system deployed and the technology platform (wired or wireless) adopted will be left to the choice of the licensee, subject to spectrum and other physical constraints.

No Technical Obstacles

(g) There are no technical obstacles to the competitive deployment of services. Licensees can offer international telephony services using IDD, calling cards, ISR, VoIP and by rolling out their international gateways.

Licence Fees

(h) The IDA has set licence fees at affordable levels, particularly for SBOs, who pay licence fees of between $0 to $5,000 per annum.

No Barriers to Switching

(i) The process of Call-by-Call Selection in Singapore allows an end-user to select its provider of international telephony services on a call-by-call basis. Such a framework ensures that there is no barrier to switching between service providers for end-users.

No Ability to Leverage SMP from Other Markets into the Retail ITS Market

6.26 In its Initial ITS Decision, the IDA justified the continued application of Dominant Licensee regulation in respect of the Retail ITS Market on the basis that SingTel retained "significant market control for several "upstream" inputs that are

essential to provide Retail ITS services such as direct access to end-users and access to cable landing stations".[47]

6.27 SingTel does not agree with this submission. SingTel does not have SMP at a wholesale level which it can leverage into the Retail ITS Market. Any market power that SingTel may theoretically have at a wholesale level is negated through access regulation and the availability of alternative supply arrangements from other providers such as StarHub.

6.28 Such regulation should be taken into account by the IDA in its consideration of this Exemption Request. As the Office of Fair Trading in the United Kingdom has observed:

> *"In some sectors the economic behaviour of undertakings (such as the prices they set or the level of services they provide) is regulated by…an industry sector regulator, and an assessment of market power may need to take that into account. Although an undertaking might not face effective competition from existing competitors, potential competitors or the nature of buyers in the market, it may still be constrained from profitability sustaining prices above competitive levels by an industry sector regulator".*[48]

6.29 The provision of interconnection related services by SingTel is subject to extensive regulation by the IDA. These regulatory arrangements ensure that Licensees are able to obtain interconnection services at IDA determined and approved prices, terms and conditions. Such regulation removes the ability for SingTel to leverage its market power (if any) at a wholesale level into the Retail ITS Market or any other downstream market. As the Malaysian Communications and Multimedia Commission has observed:

> *"Access regulation is…intended to target regulation of upstream markets in order to promote competition in downstream markets, while minimising distortions to efficient infrastructure investment in the long term… By regulating at the "upstream" or access level, regulation in downstream" markets becomes less relevant. By being provided with access on non-*

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47 IDA, *Explanatory Memorandum issued by the Info-communications Development Authority of Singapore: Request of Singapore Telecommunications Ltd for exemption from Dominant Licensee Obligations with respect to the International Telephone Services Market*, 12 November 2003, paragraph 26.

48 Office of Fair Trading, *Assessment of Market Power*, Competition Law Guideline, December 2004, paragraph 6.7.

discriminatory terms and conditions, all competitors will be competing on a level playing field in markets which use the access services as an essential input".[49]

6.30 Sub-section 5.4 of the Code 2005 sets out the minimum duties for interconnection agreements applying to FBOs and SBOs, including:

(a) the duty to interconnect to other licensees;

(b) the duty to establish compensation arrangements for the origination, transit and termination of telecommunications traffic;

(c) the duty to provide non-discriminatory interconnection quality;

(d) the duty to prevent technical harm to the network; and

(e) the duty to provide billing information.

6.31 These interconnection obligations ensure that SingTel's control of the local loop does not prevent other Licensees from offering international telephony services. SingTel will continue to remain subject to these obligations notwithstanding the removal of Dominant Licensee regulation in respect of the Retail ITS Market.

6.32 In addition, SingTel has further interconnection obligations under section 6 of the Code 2005, including:

(a) the duty to provide Interconnection Related Services (**IRS**) and Mandated Wholesale Services (**MWS**) to Requesting Licensees in accordance with the prices, terms and conditions set out in a Reference Interconnection Offer (**RIO**);

(b) the duty to provide IRS at cost based prices and MWS at prices determined by the IDA;

(c) the duty to provide physical interconnection at any technically feasible point;

(d) the duty to provide unbundled network elements and essential support facilities; and

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[49] Malaysian Communications and Multimedia Commission, *Public Inquiry Paper: Review and Expansion of Access List Determination*, 8 February 2005, page 38.

(e) the duty to provide co-location services.

6.33 The RIO is approved by the IDA and provides the main basis for interconnection between SingTel and other Licensees. Most relevantly, SingTel is required to provide the following services under the RIO, which are used to convey international calls:

(a) unbundled access to local loops and sub loops under Schedule 3A;

(b) line sharing under Schedule 3B;

(c) access to submarine cables systems under Schedule 4B; and

(d) co-location at submarine cable landing stations under Schedule 8D.

6.34 Since the IDA's Initial ITS Decision, the IDA has required SingTel to modify its RIO in a manner that further favours Requesting Licensees. In September 2004, the IDA decided to allow greater access to submarine cable capacity at SingTel's submarine cable landing stations. In doing so, it recognised that this would further enhance competition in the provision of international telephony services:

> *"We want to support Singapore's telecoms market growth and increase our international competitiveness as a telecoms hub. IDA's decision will encourage greater participation in Singapore's telecoms market, and will increase connectivity and competition in international services. It will also lead to greater choice and more competitive prices for end-users".*[50]

6.35 On 16 November 2005, the IDA approved further changes to the RIO, including:

(a) a significant reduction in the timeframes for ordering, provisioning and fault restoration of IRS;

(b) a reduction in the time taken to activate a connection to a cable system from 20 Business Days to 10 Business Days; and

(c) the introduction of comprehensive Service Level Guarantees for most IRS.

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[50] Leong Keng Thai, IDA Deputy Chief Executive Officer and Director-General (Telecoms), "IDA Increases Competition in International Telecoms Services ", 10 September 2004.

6.36 The IDA has explained the significance of these amendments as follows:

> *"IDA has determined revisions to service provisioning timeframes, streamlined processes and reduced the costs of obtaining services from SingTel under the RIO. These revisions to the RIO will lead to reduction in various costs for telecoms players and help expedite their market entry.*
>
> *…*
>
> *IDA Deputy Chief Executive and Director-General (Telecoms), Mr Leong Keng Thai said, "The RIO continually aims to facilitate quick conclusion of interconnection agreements between SingTel and other telecoms operators. This means faster time to market for competing operators with their telecoms products and services".*[51]

6.37 The IDA's access regulation of IRS and MWS under the RIO has removed any SMP that SingTel may otherwise have at the wholesale level. Requesting Licensees have regulated access to inputs used to provide international telephony services at prices, terms and conditions approved by the IDA. SingTel has no ability to leverage any power into the Retail ITS Market. Such access regulation ensures that Licensees can effectively compete against SingTel in providing international telephony services to end-users.

6.38 As a result, under the IDA's Interconnection and Access Framework, FBOs are able to obtain access to co-location space in submarine cable landing stations and obtain connection services as IRS under the RIO. FBOs are able to acquire IRU capacity on submarine cable systems and roll out their international private leased circuit services that enable the provision and /or offer of Retail ITS.

6.39 In any case, SingTel notes that providers of international telephony services are able to enter into alternative supply arrangements with third parties. As noted in Table 4 below, there are more than two alternative cable systems that can be used to access submarine cable capacity at the same destination as SingTel's C2C, i2i and TIS cable systems:

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[51] IDA, *Press Release: IDA approves revisions to SingTel's Reference Interconnection Offer (RIO)*, 24 October 2005.

Table 4 – Summary of Singapore Cable Systems

SingTel Cable System	Alternative Cable System
C2C	APCN2, SMW3, APCN, ANC
i2i	SMW3, Tata Indicom, SMW4
TIS	SMW3, APCN, SMW4

6.40 For example, four (4) FBOs who are licensed to offer international services, including international private leased circuits and retail international telephone services, have co-located at SingTel's submarine cable landing stations. These FBOs have acquired IRU capacity on various cable systems and obtained connection to their IRU capacity. In addition, they may also access the submarine cable capacity of a Third Party in the Submarine Cable Systems landed in those submarine cable landing stations in which they are co-located.

6.41 ***[CONFIDENTIAL]***

6.42 To illustrate further, StarHub's product fact sheet indicates that they have connectivity to more than 240 overseas destinations.[52] Through these cable systems, operators are able to access large quantities of international capacity from alternative suppliers.

No Leveraging of SMP from Other Markets through Bundling Practices

6.43 In its Initial ITS Decision, the IDA indicated that SingTel had SMP arising from its ability to bundle products to end-users, including DELs, leased lines, broadband and international telephony services.[53]

6.44 SingTel does not agree with this submission. As the IDA is aware, bundling practices will only be anti-competitive when an operator uses bundling to deny an

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52 StarHub, 2005, http://www.starhub.com/business/productsandservices/iddservices/idd_internationalcalling.pdf

53 IDA, *Explanatory Memorandum issued by the Info-communications Development Authority of Singapore: Request of Singapore Telecommunications Ltd for exemption from Dominant Licensee Obligations with respect to the International Telephone Services Market*, 12 November 2003, paragraph 26.

end-user the ability to purchase a service individually or the pricing is predatory or results in a vertical price squeeze.[54]

6.45 Such anti-competitive outcomes will not occur if the IDA removes Dominant Licensee regulation in respect of the Retail ITS Market. In particular, SingTel notes that:

(a) SingTel will continue to offer international telephony services individually;

(b) end-users will continue to be able to select their provider of an international telephony service on a call-by-call basis – end-users will therefore be able to switch providers at their option – end-user tying is not possible in this situation;

(c) end-users will continue to be able to purchase international telephony services from a multitude of sources, including from SingTel's rivals; and

(d) other services available as part of a bundle are supplied in competitive markets – it is not possible to leverage market power between competitive markets. For example:

    (i) mobile services offered by SingTel's subsidiary, SingTel Mobile, are subject to extensive competition from StarHub and M1;

    (ii) broadband services offered by SingTel's subsidiary, SingNet, are subject to extensive competition in the provision of broadband services from operators such as StarHub, Pacific Internet and Qala, as well as prospective WBA providers; and

    (iii) SingTel's DEL service is subject to competition from StarHub's Digital Voice service.

6.46 The competitive nature of the telecommunications sector in Singapore is such that SingTel would be unable to force end-users to purchase international telephony services as a part of a wider purchase without losing that end-user to a rival.

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54 Australian Competition and Consumer Commission, *Bundling in Telecommunications Market: An ACCC Information Paper*, August 2003, page 5.

Part C. Evidence of Actual Market Performance

6.47 In addition to the verifiable data provided in Parts A and B above, SingTel notes that there is strong evidence of market performance to support SingTel's submission that the Retail ITS Market is fully competitive.

Substantial Declines in Revenue and Call Collection Rates

6.48 Since the full liberalisation of the Singapore telecommunications market, SingTel's operating revenues from international telephony services have dropped dramatically. This suggests that SingTel is subject to intense competition from its numerous rivals and that the Retail ITS Market is fully competitive.

6.49 For example:

(a) SingTel's operating revenues from international telephony services for the 2000/2001 financial year, just 1 year into full liberalisation, had declined 26.8% due to competitive pressures on international calling rates;[55]

(b) in the 5 years since full liberalisation, SingTel's operating revenues from international telephony services had declined by approximately 45 percent with a compounded annual decline rate of 14%;[56]

(c) 2 years prior to full liberalisation, SingTel's operating revenue from international telephone services constituted 41% of its total operating revenue,[57] while in the September 2005 quarter that figure had dropped to only 14%[58]. The latter saw a decline of 7% over the same period from the previous year.[59]

6.50 SingTel's average IDD call collection rate has also fallen dramatically since the introduction of competition. SingTel's average IDD call collection rate is set out in Non-Confidential Annex 5.

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55 SingTel, *Annual Report*, 2000/2001, page 2.
56 SingTel Financial Results, FYs 00/01 to 04/05.
57 SingTel, *Annual Report*, FY 97/98.
58 SingTel, *Management Discussion and Analysis of Unaudited Financial Condition, Results of Operations and Cash Flows for the First Quarter ended 30 June* 2005, 2005, page 16.
59 Ibid.

6.51 These developments have occurred notwithstanding the significant rise of international call traffic over recent years. The fact that these declines continue to occur in light of increasing demand for international telephony services clearly suggests that SingTel lacks SMP in the Retail ITS Market.

Intense Price Competition

6.52 Price competition and price reductions provide an accurate indicator of the state of competition in the Retail ITS Market. Price competition provides end-users with the most immediate and tangible benefit associated with competition, that is, lower prices.

6.53 Evidence of price competition provides actual evidence of "the market at work". It therefore provides a practical or "real world" indicator of the state of competition in the relevant market. Price competition is therefore one of the most accurate ways to establish whether a Dominant Licensee has SMP in a market.

6.54 Evidence of price reductions demonstrate a lack of SMP in the relevant market, as it would not be possible for a hypothetical monopolist to impose a SSNIP with respect to a service in a market that is the subject of price reductions without an end-user switching to a substitute product or service.

6.55 Whilst it is difficult to quantify in absolute terms the average price reduction since April 2000, the IDA itself has made several public statements highlighting the extent of price reductions for international telephony services.

6.56 In 2002, Mr Lam Chuan Leong, Chairman of the IDA Board stated:

> *"Prices of services have dropped significantly as in the case of IDD rates (by up to 80%)".*[60]

6.57 In its Market Snapshot in February 2004, the IDA stated:

> *"As of Dec 2003, the market has witnessed…an increase in total international call usage by at least 56%. IDD rates and voice-over IP rates have dropped by up to 60% and 80%, respectively, producing minimum cost savings of S$78.9 million a month. There is diversity in*

[60] Speech by Mr Lam Chuan Leong, Chairman, IDA Board, E-Symposium, 4 March 2002.

available services provided by 32 facilities-based operators and over 600 services-based operators .[61]

Tariff Diversity and Product Innovation

6.58 The Retail ITS Market is characterised by a high degree of demand side substitution, resulting in product innovation and diverse and competitive tariffs. The proliferation of different tariffs and products for international calls provides further evidence that the Retail ITS Market is fully competitive.

6.59 The existence of a wide variety of tariffs and products in the Retail ITS Market suggests that competitive forces have forced operators to target the specific needs of end-users by making their offerings as favourable and relevant as possible to end-users. It is also clear that competition has resulted in operators seeking to differentiate their services from those of their rivals through innovative marketing and targeting of specific types of end-users.

6.60 Product innovation is well demonstrated by the multitude of different international telephony services that are available to end-users, including prepaid calling cards, international calling cards, call back services, mobile services and VoIP services.

6.61 End-users also enjoy non-price benefits, such as differing level of service quality, call duration monitoring and various payment options. This has been driven by the need for operators to differentiate their service offerings in order to generate sales.

6.62 Examples of tariff diversity, product innovation and differentiation include:

(a) <u>different charging regimes</u> - tariffs may be levied on per second basis, in 30 second blocks or on a per minute basis and may have one rate for the first *x* minutes and another rate for subsequent minutes;

(b) <u>different quality levels</u> – international telephony services may be subject to differentiation and different tariffs depending on call quality;

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61 IDA, *Singapore Telecoms Market Snapshot*, 3 February 2004. See, www.ida.gov.sg

(c) tailored products – various providers of international telephony services have tailored their products to suit specific customer segments or niches:

(i) Globe Telecom Pte Ltd offers popular IDD products to the local residential and foreign worker segments. Globe Telecom Pte Ltd clearly seeks to serve the Chinese speaking population with promotional and sales literature in Mandarin, apart from English.

(ii) PLDT (SG) Pte Ltd offers several products to serve the foreign worker segments, eg "Let's Talk India" card, "Smart ICC" and the "Red Ten Dollars" card which target foreigners who wish to call India or Bangladesh whilst the "Filipinas" card, "USAP Tayo" are targeted at foreigners in Singapore who call the Philippines.

(iii) Other examples include the "Diamond Card", IDT Suriya, My World International Calling cards and M1's 1818 International Calling card which offers cheap rates to India, China, Thailand etc.

(d) innovative promotion – providers are extensively using innovative promotional offers to generate sales of international telephony services:

(i) SingTel

A. SingTel offers premium ITS using the 3 digit 001 access code, a Budget Retail ITS using the 3 digit 013 access code and a VoIP based international telephony service using the 3 digit 019 access code.

B. Each of SingTel's Retail ITS products listed above comes with differential Retail ITS pricing.

C. SingTel regularly offers various promotions for its ITS, for example, promotions offering low rates to Philippines, China and India from our prepaid international calling cards and/or our phone cards, discounts off v019 service, savings using BudgetCall service as well as promotions regarding the STD 020 service.[62]

[62] SingTel website, http://www.singtel.com

D. SingTel's promotional offers include opportunities to earn freebies or attractive deals with its promotions of low Retail ITS rates.[63]

E. SingTel Mobile has offered its prepaid end-users, on a promotional basis, free v019 calls to 13 destinations[64] and free v019 calls to Philippines on its Kebayan cards, which is co-branded with Globe Telecom of Philippines.

(ii) StarHub

A. StarHub similarly offers Retail ITS using the 3 digit access codes 008 and 018.[65]

B. Since 2002, StarHub has offered StarHub Mobile end-users free 018 calls to Malaysia. Further, it has added at least 12 other destinations to this offer, namely, China, Hong Kong, United States, Taiwan, Thailand, South Korea, Brunei, Canada, Russia, Macau, Laos and Puerto Rico[66].

C. StarHub also offers various tariff options and different schemes for its Retail ITS[67].

D. StarHub offers promotional bundles that are exclusive to its cable TV, MaxOnline and Digital Voice end-users, allowing them to enjoy low IDD rates.[68]

E. StarHub also offers amounts of free IDD talktime for new StarHub IDD sign-ups or existing StarHub end-users.[69]

F. StarHub also offers opportunities to earn freebies or attractive deals with its promotions of low IDD rates.[70]

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63 See "Be indulging yourself for less when you call overseas", "Be an Instant Winner!", "Be Chatty on SingTel Payphones", SingTel website, www.singtel.com, 2005

64 See "More free calls for SingTel Mobile prepaid customers", 1 July 2005, www.singtel.com

65 StarHub website, http://www.starhub.com.sg

66 See "Free IDD 018 to 13 destinations - Brunei, Canada, China, Hong Kong, Laos, Macau, Malaysia, Puerto Rico, Russia, South Korea, Taiwan, Thailand and USA", http://www.starhub.com/mobile/promotionsandevents/free_idd018.html

67 StarHub website, http://www.starhub.com.sg

68 See "IDD 018 Rates Promotion"

69 See"$20 Free IDD Talktime!", "Exclusively for StaraHub's Digital Voice customers : Enjoy up to 200 minutes of Free IDD 018 Talktime when you make overseas calls to China, Hongkong and USA"

(iii) M1[71]

A. Like SingTel, M1 offers its premium ITS using the 3 digit 002 access code and value call ITS using the 3 digit 021 access code.

B. M1 claims to offer international connection of the highest quality, with rates that are the most competitive in town.

C. M1's promotional offers include free IDD 021 on the M1 Card to countries including China, Hong Kong, Malaysia, Thailand, USA, South Korea, Brunei and Taiwan.

(iv) Phoenix Communications[72]

A. Phoenix Communications claims to offer low and affordable IDD rates to various destinations. It also offers Phoenix Prepaid IDD with no subscription or registration fees.

(v) SunPage[73]

A. SunPage claims to offer flexible service plans and IDD services, including a calling card service.

B. SunPage states that its service offers high voice quality and comparable savings compared to other Retail ITS providers' services.

(vi) Zone1511[74]

A. Zone1511 has offered seasonal promotions with freebies in return for IDD usage, eg free 450 minutes talk-time for signing up with Zone1511, win mobile phones with Zone1511 etc.

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70 "With StarHub IDD, you may be on your way to a Dream Holiday!", "Free IDD018 to Thailand and Taiwan too".

71 M1 website, http://www.m1.com.sg

72 Phoenix Communications website, http://www.phoenixcomms.com/

73 SunPage website, http://www.sunpage.com.sg

74 See Zone1511 website, http://www.zone1511.com.sg/PROD/SilverStream/Pages/index.html

6.63 The Retail ITS Market exhibits the typical characteristics of a highly competitive market where operators are forced to differentiate their service offerings and offer innovative products in order to generate sales. The extent of product innovation and differentiation provides further proof that the Retail ITS Market is fully competitive.

No Prior Anti-Competitive Conduct in the Retail ITS Market

6.64 SingTel has not engaged in any anti-competitive conduct in respect of the Retail ITS Market. Nor is there any risk that SingTel will engage in such conduct if the IDA accepts this Exemption Request.

7. CONCLUSION

7.1 The IDA should grant a full exemption to SingTel pursuant to sub-section 2.5.1 of the Code 2005 from its Dominant Licensee obligations with respect to the Retail ITS Market.

7.2 The Retail ITS Market is fully competitive. SingTel will also remain subject to regulatory oversight following the removal of Dominant Licensee regulation in respect of the Retail ITS Market, including provisions in respect of anti-competitive conduct and access and interconnection under the Code 2005.

7.3 On this basis, SingTel submits that the IDA should fully exempt SingTel from its Dominant Licensee obligations in respect of the Retail ITS Market.