M1'S RESPONSE TO IDA'S CONSULTATION PAPER ON REVIEW OF INTERNATIONAL SETTLEMENT ARRANGEMENTS RELATING TO THE PROVISION OF INTERNATIONAL TELECOMMUNICATION SERVICES

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Introduction

1 The requirement for parallel accounting and proportionate return are regulatory measures designed to safeguard against anti-competitive practices in an environment where the transmission of international traffic was facilitated principally through bilateral exchange arrangements and where newly liberalised markets faced countries with monopoly incumbents.

2 The market for international traffic has changed dramatically in recent years. According to Telegeography 2002, as of mid-2001, 50 countries had authorised international telecommunication services competition, and the number of operators licensed to build facilities to offer international services had exceeded 4,000. With liberalisation, as well as new technology developments, there has been a significant shift away from reliance on the traditional international settlement regime as a means of delivering traffic. Carriers now make use of a combination of means, including International Simple Resale (ISR), wholesale, refile and voice over IP (VOIP) as well as bilateral exchange.

3 Given these changes, M1 welcomes IDA's review of its guidelines on international settlement arrangements.

Concerns Regarding Anti-Competitive Practices

4 The risks of one-way bypass and whipsawing have reduced as increasing number of countries introduce competition in their telecommunication sector. Furthermore, with Singapore's own market liberalisation, operators here have alternative means of delivering traffic, rather than relying solely on bilateral exchange relationships which might pose the associated risks of bypass and whipsawing depending on the level of competition on the other end.

5 Nonetheless, while the risks today are less, the possibility remains on routes to overseas destinations whose international telecommunications markets are not liberalised and whereby the only viable option for delivering traffic is to enter into bilateral settlement arrangements. In particular, smaller operators in Singapore who account for a relatively low volume of international traffic are in a weak bargaining position compared to the former monopoly incumbent and global operators which are now licensed to operate in Singapore. Such small operators might find themselves subject to disadvantageous settlement terms or at the extreme, kept out of certain routes completely, possibly because dominant operators on the far end choose to deal only with the larger operators in Singapore or because the large operators in Singapore have locked in the far-end operator to such large volume commitments that there is no incentive to engage with a smaller operator. With limited competition on such routes, the wholesale rates charged by the larger operators may also be excessively high, enabling

them to reap super-normal profits both in the wholesale market and the retail market, as retail prices are also kept high since smaller operators cannot compete effectively on these routes. Thus, the concern is not just with the lack of competition at the far-end destination, but also with the ability of operators in Singapore to leverage their market power.

6 A further concern relates to the possibility of arrangements between operators in Singapore and their affiliates in overseas destinations, particularly where such affiliates hold a dominant market position at the far end. This may lead to exclusive arrangements or preferential terms which render other Singapore operators unable to compete effectively on such routes.

Proposed Revisions to Existing Measures

7 Currently IDA categorises overseas destinations into Category I or Category II based on a specified definition of whether a country is competitive. For non-competitive destinations, IDA requires that arrangements for parallel accounting and proportionate return be put in place. All accounting rates and accounting arrangements, be it for competitive or non-competitive destinations, are required to be filed with IDA.

8 M1's view is that the categorisation of overseas destinations into Category I or Category II is useful and should continue, as different regulatory frameworks should apply depending on the level of competition. Under the current guidelines, a destination falls under Category I if it is fully liberalised with respect to the provision of international telecommunication facilities and services, and must satisfy four tests relating to freedom of entry and exit, absence of restrictions on foreign ownership, provision of ISR and alternative calling substitutes and presence of effective price competition. M1's view is that this definition is unduly stringent and proposes that IDA review the criteria in order to reflect the changes in the market. It is conceivable, for example, that a destination may have restrictions on foreign ownership and/or on licensing international telecommunications operators, but still be effectively competitive as there are multiple operators competing and/or there are alternative means of delivering traffic to the destination. Rather than focusing on the destination market, IDA should evaluate whether the route is competitive. IDA might also want to consider other factors, such as number of competitors, market share and stability of market share, pricing (including wholesale), cable capacity available, cable station access and backhaul.

9 For Category I routes (ie those deemed competitive based on criteria to be determined in IDA's review), an *ex-post* regulatory approach is recommended. The existence of competition on these routes should ensure that negotiations are commercially driven and the outcomes competitive. As such, it is proposed that IDA remove the requirement for operators to file accounting rates and accounting arrangements with Category I destinations in its international settlement guidelines. This will reduce the regulatory burden on operators and

allow full flexibility in commercial negotiations and to respond to dynamic changes in the industry.

10 For all other routes, which would be classified as Category II (ie non-competitive) routes, the increasing prevalence of alternative methods for delivering international traffic beyond the traditional settlement regime has rendered parallel accounting and proportionate return less relevant as safeguards against anti-competitive practices. This is not to say that the risks of one-way bypass and whipsawing have been completely eradicated. On routes where they remain legitimate concerns, the effectiveness of such regulatory measures depends on the regulator's willingness and ability to monitor and enforce these measures. Key to this will be timely filing of accounting rates and accounting arrangements by operators and publishing of relevant information by IDA. However, it is one thing to ensure that documented arrangements reflect these measures but quite another thing to enforce their implementation. In particular, while compliance with proportionate return may be revealed through reported and published traffic statistics, the existing guidelines are unclear as to over what period this will be enforced and what action will be undertaken to ensure enforcement of proportionate return (eg would the operator benefitting from an excessive proportion of incoming traffic be subject to a suspension order on accepting further incoming traffic, or a financial penalty equivalent to the accounting charges for its disproportionate traffic received?).

11 Furthermore, the imposition of parallel accounting and proportionate return requirements may have the perverse effect of impeding the development of competition on these routes by constraining operators from entering into bilateral arrangements due to the unwillingness of operators at the other end to agree to such measures. This is particularly true for small operators with relatively low outbound traffic and therefore, a weak bargaining position. In view of such difficulties, M1 proposes that IDA take a different approach in its regulatory framework to safeguard against potential anti-competitive practices for Category II routes, rather than impose parallel accounting and proportionate return.

12 Currently, Singapore Telecommunications Ltd (SingTel) continues to dominate the market, accounting for 87% of outgoing traffic minutes from Singapore, based on IDA's published total industry traffic minutes[1]. Given its market power, SingTel's settlement arrangements should serve as a benchmark reference for the rest of the industry. To remove the information asymmetry between the former incumbent and newer entrants which have less market power, it is proposed that SingTel be required to file its accounting rates (and any changes to the rates), for Category II routes with IDA and that IDA publish these rates.

[1] Source: SingTel's Management's Discussion and Analysis of Financial Conditions and Results of Operations for Nine Months ended 31 Dec 2001

13 To safeguard against preferential arrangements between licensees in Singapore and their overseas affiliates which may unreasonably restrict competition on a particular route, it is proposed that any agreement for the transmission of international traffic between a licensee in Singapore and its overseas affiliate in a Category II destination should be filed with IDA for review as to the likelihood of competitive harm. Although such risks are greater if the overseas affiliate is dominant in its market, rather than IDA having to make an assessment as to the overseas affiliate's market position, it is less complex to require the filing of agreements with overseas affiliates, regardless of the latter's market position but to limit this to Category II destinations where the risk of anti-competitive practices is greater.

14 Notwithstanding that a less stringent regulatory framework is proposed, it should be recognised that one-way bypass and whipsawing, as well as other anti-competitive practices, remain legitimate concerns and IDA should be in the position to take action in response to such occurrences. Thus, for both Category I and II routes, IDA should reserve the right to impose competitive safeguards, including parallel accounting and proportionate return if appropriate, in the event of anti-competitive abuses.

15 In terms of reporting traffic statistics, both outbound and incoming minutes, on a quarterly basis for the top 25 routes, M1's view is that this should continue. M1 also supports the quarterly publication of aggregate figures of all operators on a route-by-route basis for both outbound and incoming minutes. This will give operators a clearer picture of their respective market position on specific routes and thereby provide greater transparency without compromising commercial sensitivities.

Conclusion

16 The international telecommunications market has changed dramatically in recent years. The increase in competition and the availability of alternative means of delivering traffic mean that the risk of one-way bypass and whipsawing has diminished. Nonetheless this does not mean that concerns over possible anti-competitive abuses have been completely eradicated. There remain routes where competition is limited and small operators with relatively low market share continue to have a weak bargaining position compared to the former incumbent monopoly which has significant market power. As such, M1's view is that IDA's guidelines on international settlement arrangements should be revised take into account the changes in the market, allow operators greater flexibility in commercial negotiations and at the same time provide sufficient safeguard against potential anti-competitive abuse. In summary, M1 proposes that the existing regulatory framework should be revised as follows:

(a) Criteria for classifying overseas destinations in Category I or II according to level of competition should be reviewed to take into account additional factors and to allow for a broader definition of what is considered competitive;

(b) Requirement to file accounting rates and accounting arrangements for Category I destinations should be removed.

(c) Requirement for parallel accounting and proportionate return for Category II destinations should be removed. No filing of accounting rates and accounting arrangements for this category should be required, except that SingTel should be required to file its accounting rates with IDA for publishing and agreements between any operator with overseas affiliates in Category II destinations should be subject to IDA review for potential anti-competitive practices.

(d) IDA's right to impose competitive safeguards, including parallel accounting and proportionate return if appropriate, in the event of anti-competitive abuses should be retained.

(e) Requirement for all operators to report traffic statistics, both outbound and incoming minutes, on a quarterly basis for the top 25 routes to IDA should continue and IDA should proceed to publish the aggregate figures of all operators on a route-by-route basis for both outbound and incoming minutes on a quarterly basis.