



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

- (A) REQUEST BY AT&T CORP, AT&T WORLDWIDE TELECOMMUNICATIONS SERVICES SINGAPORE PTE LTD AND SBC COMMUNICATIONS INC FOR EXEMPTION FROM THE REQUIREMENT TO FILE A LONG FORM CONSOLIDATION APPLICATION**
- (B) SHORT FORM CONSOLIDATION APPLICATION IN RELATION TO THE PROPOSED CHANGE IN OWNERSHIP IN AT&T WORLDWIDE TELECOMMUNICATIONS SERVICES SINGAPORE PTE LTD**

**18 AUGUST 2005**

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

- 1 On 31 January 2005, AT&T Corp ("AT&T") and SBC Communications Inc ("SBC") announced that they had entered into an agreement under which SBC will acquire AT&T. As part of the proposed transaction, SBC would acquire an indirect 100 percent Ownership Interest in AT&T's Singapore Affiliate, AT&T Worldwide Telecommunications Services Singapore Pte Ltd ("AT&T-Singapore"), which holds a Facilities-based Operator's licence issued by IDA. Pursuant to Sub-section 10.4.3 and 10.5.1 of the Telecom Competition Code 2005 (the "Code"), SBC and AT&T-Singapore were required to file a Long Form Consolidation Application in order to obtain IDA's approval for the proposed change in ownership of AT&T-Singapore.
- 2 On 10 June 2005, AT&T, AT&T-Singapore, and SBC (collectively referred to as the "Applicants") submitted a request to IDA, pursuant to Sub-section 1.7(a) of the Code, to be exempted from filing a Long Form Consolidation Application ("Request"). The Applicants also submitted a Short Form Consolidation Application ("Application"). IDA issued a consultation paper on 23 June 2005 to solicit comments regarding the Request and the Application<sup>2</sup>. Two parties, BT Singapore Pte Ltd ("BT") and Singapore Telecommunications Ltd ("SingTel"), filed comments expressing concerns regarding the proposed Consolidation. IDA

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

<sup>2</sup> In its 23 June 2005 consultation paper, IDA stated that it would seek comments on the Request and the Application concurrently. This approach allows for a speedy, transparent and comprehensive assessment, thereby using all parties' resources efficiently and reducing uncertainty.

subsequently requested for additional information from the Applicants regarding the proposed Consolidation.

- 3 This paper provides a single document ("Explanatory Memorandum") that describes: the Applicants' Request and Application; the comments received in response to IDA's consultation paper; the legal standards, procedures and analytical framework that IDA used to assess the Applicants' Request and Application; IDA's assessment of the Request and Application; and IDA's final decision.

## **PART II: EXECUTIVE SUMMARY**

- 4 IDA has concluded that the submission of a Long Form Consolidation Application is not necessary to assess the likely competitive effect of the proposed Consolidation. IDA therefore grants the Applicants' Request to file a Short Form Consolidation Application. Based on the evidence available, IDA has concluded that the proposed Consolidation is not likely to substantially lessen competition in any telecommunication market in Singapore. IDA therefore approves the Application in full.
- 5 As discussed further below, AT&T-Singapore provides five distinct categories of telecommunication services in Singapore: Terrestrial International Private Leased Circuit ("Terrestrial IPLC"); International Managed Data Services ("IMDS"); IP Transit; Internet access; and Internet Protocol Telephony ("IP Telephony"). SBC currently does not provide any telecommunication service in Singapore, and has not indicated any intention to do so in the future. Thus, from the perspective of the Singapore telecommunication market, the proposed transaction constitutes a Non-Horizontal Consolidation. IDA has previously recognised that such Consolidations are often pro-competitive. However, because SBC has Significant Market Power in the provision of "special access" services within its 13-state service region in the United States ("US"), and because SBC's special access services could be an input into a number of international telecommunication services provided by AT&T-Singapore and other Singapore-based operators, IDA has carefully considered whether the proposed Consolidation is likely to substantially lessen competition in any Singapore telecommunication market.
- 6 In particular, IDA has fully assessed the likely impact of the proposed Consolidation on the three Singapore telecommunication markets in which the proposed Consolidation potentially raises the most serious competitive concerns: the Terrestrial IPLC, IMDS and IP Transit markets. Based on its review, IDA has concluded that it is unlikely that the proposed Consolidation will substantially

lessen competition in these three markets. IDA does not believe that it needs to conduct a substantial review of the likely impact of the proposed Consolidation on competition in the provision of the remaining two services: Internet access and IP Telephony, as AT&T-Singapore is a very small market participant, and does not purchase SBC's special access services in order to provide these two services.

- 7 IDA declines to consider the effect of the proposed Consolidation on the US wireless roaming and wholesale international call termination markets, especially in the absence of evidence that AT&T or SBC could leverage their position in these markets to impede competition in any Singapore telecommunication market. There is also no reason to believe that the proposed Consolidation would have any adverse impact on Singapore operators that seek to purchase these services in the US. IDA also declines to consider the effect of the proposed Consolidation on the Singapore software applications market.
- 8 Finally, although IDA recognises the dynamics of the payment arrangements in the global Internet backbone market, IDA remains concerned that Singapore-based Internet providers are required to purchase "full circuits" to the US and cannot enter into peering arrangements with Tier 1 Internet backbone providers such as AT&T. The US is a key Internet destination to which a relatively high portion of Singapore's Internet traffic is sent. However, because SBC is not a significant Internet backbone provider in the US, IDA concludes that the proposed Consolidation will not exacerbate the current situation.

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

- 9 A brief description of the Applicants is as follows:
  - (a) *AT&T-Singapore*. AT&T-Singapore is directly owned by AT&T Global Network Enterprises LLC and AT&T Global Network Holdings LLC, each holding a 50 percent Ownership Interest. AT&T-Singapore's ultimate parent is AT&T, which indirectly holds a 100 percent Ownership Interest in AT&T-Singapore. The telecommunication services that AT&T-Singapore provides in Singapore are:
    - (i) International Private Leased Circuit services;
    - (ii) Managed Data Network Services such as Asynchronous Transfer Mode ("ATM") services, Frame Relay services, IP-Virtual Private Network ("IP-VPN") services;

- (iii) IP Transit services;
  - (iv) Internet access and related services; and
  - (v) IP Telephony services.
- (b) **AT&T.** AT&T is a publicly listed US-based company, which is incorporated under the laws of the State of New York. AT&T provides a full range of international telecommunication services over a network that spans more than 50 countries. AT&T is a Tier 1 Internet backbone provider, which provides IP Transit service to providers that connect to its backbone network in the US. AT&T also has bilateral correspondent relationships with Singapore-based international operators such as MobileOne, SingTel and StarHub for the delivery of bilateral voice and data services between Singapore and the US.
- (c) **SBC.** SBC is a publicly listed US-based company, which is incorporated under the laws of the State of Delaware.
  - (i) SBC focuses on the provision of local and long-distance voice and data telecommunication services for consumers and businesses within a 13-state region in the western and mid-western portions of the US. The US Federal Communications Commission ("FCC") continues to classify SBC as a dominant carrier in the provision of interstate and international access services (*i.e.*, the origination and termination of interstate and international telecommunication traffic over local facilities). This includes special access services, which consists of the provision of a dedicated local leased circuit ("LLC") that allows for the origination and termination of traffic at a Customer location.
  - (ii) SBC is a relatively small participant in the global Internet backbone market.
  - (iii) SBC does not hold any licence issued by IDA in Singapore. However, SBC has a fully-owned subsidiary in Singapore, Sterling Commerce (Singapore) Pte Ltd ("Sterling Commerce"), which holds a Services-based Operator ("SBO") (Class) Licence for the provision of Store & Retrieve Value-Added Network ("VAN") Services. Currently, Sterling Commerce is not offering any telecommunication service under the SBO (Class) Licence. Sterling Commerce's primary activity is in providing enterprise application software services in Singapore. These software

services support business functions such as supply chain management, business integration and consulting services. These software services do not constitute telecommunication services and, therefore, are not subject to regulation by IDA.

- (iv) SBC also has a 60 percent ownership interest in Cingular Wireless ("Cingular"), one of the leading providers of wireless telecommunication services in the US. Cingular has arrangements with Singapore mobile operators to enable their customers to roam on Cingular's mobile networks when in the US.

- 10 Please refer to **Annexes 1** and **2** for the existing shareholding structure of the Applicants; and **Annex 3** for the proposed shareholding structure of the Post-Consolidation Entity.

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

- 11 As discussed below, Sub-section 10.4 of the Code provides that "[e]very Licensee and Acquiring Party must seek IDA's approval in connection with any transaction that results in a Consolidation with [a] Licensee." In order to obtain IDA's approval, the Applicants generally must file a Long Form Consolidation Application. See Sub-section 10.5.1 of the Code.
- 12 In their submission, the Applicants acknowledged that the proposed transaction would constitute a Consolidation, as defined in Sub-section 10.1.2(d) of the Code, because it would result in SBC obtaining an indirect 100 percent ownership interest in AT&T-Singapore. Since SBC has a market share in excess of 25 percent in certain US telecommunication markets, the Applicants were required to file a Long Form Consolidation Application.
- 13 On 10 June 2005, pursuant to Sub-section 1.7(a) of the Code, the Applicants filed a Request for an Exemption from the requirement to file a Long Form Consolidation Application. The Applicants concurrently filed a Short Form Consolidation Application seeking IDA's approval for the proposed change in ownership of AT&T-Singapore. The Applicants contended that granting an exemption is appropriate because submitting a Long Form Consolidation Application is not necessary to assess the likely competitive impact of the proposed Consolidation and would be unreasonably burdensome to the Applicants. See Paragraph 3.5 of IDA's Telecom Consolidation Guidelines ("Consolidation Guidelines") which describes the bases for seeking an exemption.

- 14 The Applicants stated that they participate in four relevant markets, which they referred to as: Global Telecommunication Services (“GTS”); Wholesale International Communication Services (“Wholesale ICS”); Enterprise Application Software Services; and Roaming Services. The Applicants further stated that they have a market share of less than 25 percent in each of these markets. The Applicants claimed that the Post-Consolidation Entity will not be able to leverage SBC’s position as the dominant provider of access services in its 13-state service region to impede competition in any Singapore telecommunication market.
- 15 *GTS.* The Applicants defined the GTS market to consist of the provision of packages of international telecommunication services – such as data connectivity services, IP-enabled managed network services, and network security services – to multinational corporations (“MNCs”). The Applicants claimed that the combined AT&T-SBC would not be able to leverage SBC’s position as the dominant provider of access services in its 13-state service region to strengthen AT&T-Singapore’s position in the GTS market because: the global GTS market is highly competitive; AT&T has only a small share of the global GTS market; the cost of obtaining access in SBC’s 13-state service region in the US constitutes a small fraction of the overall costs of providing GTS; SBC is subject to competition in the local access market within its 13-state service region; and SBC is subject to regulation by the US FCC, which precludes it from engaging in anti-competitive conduct.
- 16 *Wholesale ICS.* The Applicants defined Wholesale ICS as “wholesale bilateral services provided by AT&T in the US to carriers on a global basis, including to bilateral correspondents in Singapore such as SingTel, StarHub and MobileOne.” The Applicants further noted that AT&T-Singapore does not provide bilateral correspondence between Singapore and the US. According to the Applicants, the market is highly competitive at both the US and the Singapore ends. Singapore operators that seek to terminate traffic in the US can: enter into correspondent relationships with major providers such as MCI and Sprint; hub through third countries; obtain termination capacity on the spot market through clearing houses such as Arbinet, Band X or Omniface; or deploy facilities in the US and self-terminate international traffic. The Applicants further contended that the Post-Consolidation Entity will not be able to leverage SBC’s position as the dominant provider of access services in its 13-state service region to benefit AT&T because AT&T offers a “nationwide averaged rate” for the termination of international traffic anywhere in the US, rather than a region-specific international termination rate for calls that terminate in SBC’s 13-state service region.
- 17 *Software Applications.* The Applicants further stated that SBC provides enterprise application software services in Singapore through its subsidiary, Sterling Commerce. The Applicants noted that there is no overlap between this

service and any service provided by AT&T or AT&T-Singapore and, therefore, that this aspect of the proposed Consolidation will have no effect on the Singapore telecommunication market.

- 18 *Wireless Roaming Services.* Finally, the Applicants stated that SBC, through its 60 percent ownership in Cingular, has “arrangements with Singapore mobile phone operators which allow these companies to roam on Cingular mobile phone networks when in the US.” The Applicants added that AT&T does not provide roaming services. Therefore, this aspect of the proposed Consolidation will have no effect on the Singapore telecommunication market.

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

### ***The Comments***

- 19 On 23 June 2005, IDA issued a consultation paper, which sought comments on the Request and Application. Two parties – BT and SingTel (the “Commenters”) – filed comments<sup>3</sup>. Both Commenters expressed concerns regarding the Request and Application. IDA’s consultation paper (along with the Request and Application) and the comments are posted on IDA’s website. The comments are summarised below.
- 20 *GTS.* The Commenters claimed that the AT&T-SBC merger would reduce competition in the US market for special access services, which can be used to terminate international traffic and that, following the merger, the combined AT&T-SBC could leverage its control over these services to impede competition in the GTS market. Specifically, the Commenters claimed that:
- (a) The cost of special access services amount to a significant part of the total cost of GTS;
  - (b) SBC is the dominant provider of special access services in its 13-state service region, which includes major commercial centres such as Los Angeles, Chicago and Houston. Singapore-based operators who want to provide GTS between Singapore and locations in SBC’s 13-state service region have no practical alternatives to using SBC’s special access services;

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<sup>3</sup> One party filed a separate set of comments with a request for confidentiality. IDA rejected the request on the grounds that it did not meet the standards specified in Sub-section 11.7 of the Code. The party subsequently withdrew these comments.



- (c) The proposed Consolidation would reduce competition in the US special access services market by eliminating AT&T as a current and future competitor in that market. The proposed Consolidation would also remove the competitive constraint imposed by AT&T, which currently is SBC's largest special access services customer. At the same time, the proposed merger of two other US operators, MCI Inc ("MCI") and Verizon Communications Inc ("Verizon") (which is occurring at the same time as the proposed merger of AT&T and SBC) will further reduce competition in the US special access services market;
  - (d) The Post-Consolidation Entity could leverage its control of local loop in SBC's 13-state service region to impede competition in the global GTS market. For example, SBC could: refuse to provide special access services to competing GTS providers; provide special access services on discriminatory prices; provide downstream competitors with inferior quality special access services; and price special access services at a level that would subject competing GTS providers who use this input to a price squeeze; and
  - (e) The US FCC does not have an effective regulatory regime to deter anti-competitive conduct by SBC.
- 21 *Internet backbone/IP Transit Services.* The Commenters also asserted that the proposed Consolidation would impede competition in the global Internet backbone/IP Transit market. Specifically, the Commenters claimed that:
- (a) The current international Internet charging arrangement disfavours Singapore-based Internet access service providers ("IASP") and IP Transit providers. These providers typically must assume the cost of a full international leased circuit to the US. In addition, these providers must purchase IP Transit in the US from Tier 1 Internet backbone providers, such as AT&T and MCI, rather than entering into peering arrangements in which the parties exchange traffic at no charge;
  - (b) The proposed Consolidation would reduce AT&T's incentives to peer with other Internet backbone providers or to provide IP Transit on reasonable terms;
  - (c) Following the Consolidation, SBC would have the ability and incentive to discriminate in favour of affiliated Internet backbone/IP Transit providers in the provision of special access services, thereby providing its Affiliates with a significant competitive advantage.

- (d) The proposed merger of MCI and Verizon will result in a “virtual duopoly” in the Internet backbone/IP Transit market. This will make it more difficult for Singapore IP Transit providers to enter into peering arrangements with the US Tier 1 providers (including AT&T), while resulting in an increase in the price of IP Transit services.

22 *Proposed Measures.* The Commenters proposed that IDA either reject the Application or, at a minimum, impose conditions on the Post-Consolidation Entity. The proposed conditions include:

- (a) reclassifying AT&T-Singapore as a Dominant Licensee;
- (b) requiring AT&T-Singapore to disclose the prices of the “inputs” – such as special access services – that it uses to offer services; and
- (c) requiring AT&T and SBC to offer long distance and local loops in the US at regulated rates that are comparable to the rates at which SingTel is required to offer LLCs in Singapore<sup>4</sup>.

#### *The Applicants' Reply*

23 In the interest of achieving a balanced and objective assessment, IDA invited the Applicants to comment on the key issues raised in the Commenters' submissions. The reply (excluding certain confidential information) is posted on IDA's website.

24 *GTS.* The Applicants stated that, contrary to the Commenters' claims, the proposed Consolidation will not impede competition in the GTS market. Specifically, the Applicants contended that:

- (a) the GTS market is highly competitive, and includes numerous vertically integrated participants, including BT and SingTel;
- (b) the cost of special access services within SBC's 13-state service region typically is a small portion of the total cost of GTS;

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<sup>4</sup> SingTel also requested to be reclassified as “non-dominant on the Singapore-US route.” IDA declines to consider SingTel's request in the current proceeding. Under IDA's “entity-based” approach, SingTel is classified as dominant in the provision of all services that it offers pursuant to its licence. Sub-section 2.5 of the Code establishes the procedures that a Dominant Licensee must follow if it seeks to be exempted from the application of Dominant Licensee regulation to any service that it provides.

- (c) SBC is subject to competition in the special access services market within its 13-state service region; and
  - (d) SBC's provision of special access services is subject to effective regulation by the FCC.
- 25 *Internet backbone/IP Transit.* The Applicants also stated that, contrary to the Commenters' claims, the proposed Consolidation will not impede competition in the Internet backbone/IP Transit market. Specifically, the Applicants asserted that:
- (a) the AT&T-SBC merger will not result in a reduction in the number of Tier 1 Internet backbone providers because SBC is not a Tier 1 Internet backbone provider;
  - (b) because the AT&T-SBC merger will not significantly decrease competition in the Internet backbone market, it will have no effect on the price of IP Transit service;
  - (c) the combination of the AT&T-SBC merger and the MCI-Verizon merger will not create an Internet backbone duopoly because, after the two mergers, the companies together will carry only about 28 percent of North American Internet traffic; and
  - (d) the existing international charging arrangements for Internet traffic, under which non-US carriers typically pay both for the full international circuit and IP Transit, reflect the traffic imbalance between the US and the rest of the world; the AT&T-SBC merger will have no impact on this situation.
- 26 IDA thanks all parties for their active participation throughout this proceeding. The information and comments that were provided significantly assisted IDA in assessing the Applicants' Request and Application.

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

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

- 27 Pursuant to Section 32A(1) of the Telecommunications Act (the "Act"), IDA has designated all Facilities-based Operators as Designated Telecommunication

Licensees (“DTLs”)<sup>5</sup>. DTLs and parties acquiring Ownership Interests in DTLs (“Acquiring Parties”) are required to comply with various provisions relating to changes in ownership and Consolidations. Specifically, pursuant to Sub-section 10.4 of the Code, every DTL and Acquiring Party must seek IDA’s approval in connection with any transaction that results in a Consolidation with the DTL. Under Sub-section 10.1.2(d) of the Code, a Consolidation is a merger, asset acquisition or other transaction that results in previously separate economic entities becoming a single economic entity and this may occur where an Acquiring Party obtains Effective Control over a DTL. Sub-section 10.1.2(f) of the Code further provides, *inter alia*, IDA will presume that an Acquiring Party has the ability to exercise Effective Control over a DTL if the Acquiring Party holds an Ownership Interest of at least 30 percent in the DTL.

28 Under Sub-section 10.5.1 of the Code, the DTL and Acquiring Party must submit a Long Form Consolidation Application unless Sub-section 10.5.2 applies. However, pursuant to Sub-section 10.5.2.1 of the Code, the DTL and Acquiring Party may submit a Short Form Consolidation Application if:

- (a) the proposed Consolidation is a Horizontal Consolidation<sup>6</sup> that would not result in the Post-Consolidation Entity having more than a 15 percent share in the telecommunication market in Singapore; or
- (b) the proposed Consolidation is a Non-horizontal Consolidation<sup>7</sup> in which none of the Applicants has more than a 25 percent share of any telecommunication market, whether in Singapore or elsewhere, in which it participates.

29 The Code, however, provides that an Applicant may request IDA to exempt it from any of the application processes and information requirement stipulated under the Code and the Consolidation Guidelines. Sub-section 1.7(a) of the Code states that “[w]here good cause is shown, IDA may grant exemptions from specific provisions of this Code . . . IDA will seek public comment prior to granting any exemption”. Paragraph 3.5 of the Consolidation Guidelines explains that IDA will grant the exemption if “the Applicant makes a specific and compelling submission that: (a) compliance with the specific requirement or requirements is

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<sup>5</sup> Telecommunications (Designated Telecommunication Licensees – Facilities-Based Operators) Notification 2005, S 86/2005.

<sup>6</sup> Under Sub-section 10.5.2.1(b)(i) of the Code, a “Horizontal Consolidation” is defined as “a Consolidation involving 2 or more entities that are current competing providers of the same telecommunication services or telecommunication services that are reasonable substitutes”.

<sup>7</sup> Under Sub-section 10.5.2.1(b)(ii) of the Code, a “Non-horizontal Consolidation” is defined as “a Consolidation that involves 2 or more entities that are not current competitors”.

*not possible; (b) would be unreasonably burdensome; or (c) is not necessary to ensure that a Consolidation would not substantially lessen competition in the Singapore telecommunication market.”*

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

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

## PART VII: IDA'S ASSESSMENT

### *Scope of IDA's Review*

- 33 IDA's authority to review the proposed Consolidation is based on its right to approve changes in the ownership of the operators that it has licensed. IDA's concern when reviewing a proposed Consolidation is whether the proposed change in Ownership Interest in a Licensee is likely to substantially lessen competition in any telecommunication market *in Singapore* or harm the public interest. IDA recognises that actions outside of Singapore can have an effect on the Singapore telecommunication market. For example, if the two leading foreign manufacturers of telecommunication equipment were to merge, thereby reducing competition in the global telecommunication equipment market, this could result in Singapore operators having to pay higher prices for telecommunication equipment. These costs would ultimately be passed on to customers in Singapore. While IDA does not have the ability to exercise extra-territorial jurisdiction over transactions that may have an indirect impact on the Singapore telecommunication market, IDA will focus on whether a proposed Consolidation is likely to enable one of IDA's Licensees to substantially restrict competition in any *Singapore* telecommunication market.
- 34 From the perspective of the Singapore telecommunication market, the proposed Consolidation is Non-horizontal. The Applicants have indicated that, absent the Consolidation, SBC will not enter any Singapore telecommunication market and Sterling Commerce does not have plans to expand into other Singapore telecommunication markets beyond its SBO (Class) Licence for the provision of Store & Retrieve VAN services. Thus, in considering the Application, the relevant issue for IDA is whether the proposed Consolidation is likely to enable AT&T-Singapore to use its affiliation with SBC to substantially lessen competition in any Singapore telecommunication market. In particular, IDA must determine whether, following the proposed Consolidation, AT&T-Singapore will obtain an anti-competitive advantage because:
- (a) other Singapore operators will be foreclosed from accessing inputs controlled by the combined AT&T-SBC that are necessary to provide a competing telecommunication service in Singapore; or
  - (b) the combined AT&T-SBC will be able to use its Significant Market Power in certain US markets to favour AT&T-Singapore, thereby distorting competition in the Singapore telecommunication market.

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

- 35 Both the Applicants and Commenters have focused on the likely effects of the AT&T-SBC merger on competition in several global and US markets. As IDA's focus is on the likely competitive effect of the proposed transaction on telecommunication markets *in Singapore*, IDA will not consider the effects of the proposed AT&T-SBC merger on telecommunication markets in the US or beyond Singapore. Rather, IDA will assess the likely impact of the proposed Consolidation on the relevant Singapore telecommunication markets.
- 36 In conducting its assessment, IDA determined that the effect of the proposed Consolidation on the following three Singapore telecommunication markets warranted serious consideration:
- (a) Terrestrial IPLC;
  - (b) IMDS; and
  - (c) IP Transit.

***The Terrestrial IPLC Market***

- 37 AT&T-Singapore participates in the Terrestrial IPLC market. In an earlier decision concerning International Capacity Services (the "ICS Exemption Decision")<sup>8</sup>, IDA determined that the Terrestrial IPLC market consists of services, provided over submarine cables, which offer customers the exclusive use of a point-to-point, dedicated transparent transmission path for voice, data or video between a location in Singapore and a location outside of Singapore.
- 38 In order to provide Terrestrial IPLC services to customers in Singapore, Singapore-based operators must acquire the necessary access/termination facilities at the foreign end. Although the US liberalised its local telecommunication market in 1996, the FCC continues to classify SBC as a dominant carrier in the provision of interstate/international access services in its 13-state service region. In theory, the proposed Consolidation might enable AT&T-Singapore to impede competition on the Singapore-US route in at least three different ways.

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<sup>8</sup> Explanatory Memorandum to the Decision of the Info-communications Development Authority of Singapore on the Request by Singapore Telecommunications Ltd for Exemption from Dominant Licensee Obligations with Respect to the "International Capacity Services" Market, issued on 12 April 2005.

- (a) First, SBC might refuse to provide special access services to AT&T-Singapore's competitors, thereby foreclosing them from providing Terrestrial IPLC service between Singapore and end user location in SBC's 13-state service region.
  - (b) Second, AT&T-Singapore might obtain special access services in SBC's 13-state service region on prices, terms or conditions that are more favourable than those that SBC provides to other competing Singapore operators that seek to provide Terrestrial IPLCs on the Singapore-US route, thereby distorting the Singapore Terrestrial IPLC market.
  - (c) Third, even absent discrimination, AT&T-Singapore might pay SBC above-cost prices for special access services in its 13-state service region, thereby subjecting non-affiliated Singapore operators that must use these services to provide Terrestrial IPLC services to a price squeeze. This also would distort the Singapore Terrestrial IPLC market.
- 39 Given the importance of the Singapore-US route, IDA has seriously considered these concerns. However, based on the evidence available, IDA has concluded that there is little risk that the proposed Consolidation would enable AT&T-Singapore to use SBC's dominant position in the provision of special access services within its 13-state service region to substantially lessen competition in the Singapore Terrestrial IPLC market.
- (a) First, vertical integration is common in the telecommunication industry. Today, a number of Singapore-based operators have foreign Affiliates that have Significant Market Power in their domestic markets, which have been fully liberalised. These operators include British Telecom, France Telecom, NTT and Telecom Italia. So far, IDA has not detected evidence of anti-competitive conduct on these routes, and has not previously imposed any special conditions on these operators.
  - (b) Second, AT&T-Singapore, with an estimated market share of less than 5 percent, is not a significant participant in the Singapore Terrestrial IPLC market. This market continues to be dominated by SingTel. Even on the Singapore-US route, AT&T-Singapore's share appears to be less than 10 percent. As further elaborated below, there is little reason to believe that the proposed Consolidation is likely to enable AT&T-Singapore to use its affiliation with SBC to acquire Significant Market Power in the Singapore Terrestrial IPLC market. Unilateral conduct by entities that lack Significant Market Power rarely raises competitive concerns.



- (c) Third, the US has fully liberalised the special access services market. Although SBC continues to have Significant Market Power in this market, it is subject to regulation by the FCC. These regulations require SBC to provide competing operators with access to special access services. SBC must do so on just, reasonable and non-discriminatory prices, terms and conditions. In IDA's consultation process, IDA has received comments expressing concern about the effectiveness of the FCC's regulations, which have been significantly relaxed in recent years, and their adequacy to deter SBC from acting anti-competitively. IDA also notes comments that SBC's special access prices appear high, especially when compared to those in other industrialised countries. However, IDA is aware that the FCC is currently reviewing its special access regulations in light of changing market conditions. In addition, as part of their review of the proposed transaction, the FCC and the US Department of Justice may consider imposing conditions that would further deter the combined AT&T-SBC from discriminating in favour of Affiliates such as AT&T Singapore. At this point, IDA does not know what actions, if any, the Department of Justice and the FCC will take. However, IDA expects that – consistent with its obligations under the Singapore-US Free Trade Agreement – the US Government will take all necessary actions to promote competition in this market.
- (d) Finally, even if the combined AT&T-SBC were to attempt to foreclose competing Singapore providers of Terrestrial IPLCs from providing service on the Singapore-US route, or to leverage its market position in the US special access services market to impede competition in the Singapore Terrestrial IPLC market, IDA has adopted strong regulations to deter such conduct.
  - (i) Pursuant to Sub-section 8.3 of the Code, a Licensee that is affiliated with an entity that has Significant Market Power is prohibited from using the market position of its Affiliate in a manner that enables it, or is likely to enable it, to unreasonably restrict competition in any telecommunication market in Singapore. In particular, the Code prohibits a Licensee from benefiting from a price squeeze, cross subsidisation, discrimination or refusal to deal by an Affiliate that possesses Significant Market Power. These prohibitions apply to Licensees with Affiliates outside of Singapore. Following the Consolidation, these provisions will prohibit AT&T-Singapore from receiving any “anti-competitive preference” from SBC.

- (ii) Licensees that breach these provisions are subject to IDA's enforcement actions including financial penalties, suspension and cancellation of their licences. If any Licensee or End User believes that AT&T-Singapore has contravened these provisions in the Code, they will be able to file a Request for Enforcement. IDA also has authority to initiate an enforcement proceeding, if necessary.

### *The IMDS Market*

40 AT&T-Singapore also participates in the IMDS market. The market subject to IDA's jurisdiction is the sale of IMDS to customers in Singapore ("A-end" sales) and not sales to multi-national corporations ("MNCs") overseas, for which Singapore is a "spoke" in their regional or global network ("B-end" sales). In the ICS Exemption Decision, IDA concluded that this market consists of packet-based services – such as ATM, Frame Relay, and IP-VPN – that provide managed connectivity among multiple customer sites, at least one of which is located outside of Singapore. As with IPLC services, in order to provide IMDS to customers in Singapore, a Singapore-based operator must acquire the necessary access/termination facilities at the foreign end. However, based on the evidence available, IDA has concluded that there is little risk that, following the Consolidation, AT&T-Singapore would be able to use SBC's dominant position in the provision of special access services within its 13-state service region to substantially lessen competition in the Singapore IMDS market.

- (a) In the ICS Exemption Decision, IDA concluded that the IMDS market is competitive. AT&T-Singapore is one of several participants in this market with an estimated market share of less than 15 percent.
- (b) AT&T-Singapore will not be able to use SBC's dominant position in the provision of special access services in its 13-state service region to significantly restrict competition in the Singapore IMDS market. As IDA explained in the ICS Exemption Decision, customers in Singapore purchase IMDS on a "network basis". That is, IMDS customers purchase a service that provides both network management and connectivity between Singapore and multiple customer sites outside of Singapore. Typically, for IMDS sales made to End Users in Singapore, Singapore-US connectivity is only a portion of the service offering – and only a portion of these connections are to locations within SBC's 13-state service region. Thus, if the combined AT&T-SBC attempts to discriminate in favour of AT&T-Singapore in the sale of special access services for the Singapore-US portion of the network, this would be unlikely to provide it with a significant competitive advantage in the offering of IMDS to Singapore End

Users that would result in significant lessening of competition in the Singapore IMDS market.

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

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

#### *The International IP Transit Market*

41 AT&T-Singapore provides IP Transit services in Singapore. In the ICS Exemption Decision, IDA concluded that this market consists of the provision of a service, for compensation, in which one operator terminates international Internet traffic on its network or transits the Internet traffic for termination on a third operator's network. Based on the evidence available, IDA has concluded that there is little risk that, following the Consolidation, AT&T-Singapore would be able to substantially lessen competition in this market.

- (a) First, in the ICS Exemption Decision, IDA concluded that the Singapore International IP Transit market is an "effectively competitive" market, with numerous participants. AT&T-Singapore's share of this market is below 5 percent.
- (b) Second, as IDA recognised in the ICS Exemption Decision, International IP Transit consists of the delivery of Internet traffic from Singapore to a network location at the foreign end. It does not necessarily include the provision of local connectivity to end user premises. Thus, AT&T-Singapore is not likely to benefit from SBC's dominant position in the special access services market within its 13-state service region to foreclose or distort competition in the Singapore IP Transit market.
- (c) Third, as further explained in paragraph 46 below, because SBC is not a significant Internet backbone provider in the US, IDA does not believe that the proposed Consolidation will exacerbate the current situation of Singapore-based Internet providers having to purchase "full circuits" to the US and cannot enter into peering arrangements with Tier 1 Internet backbone providers in the US. Even if the combined AT&T-SBC were to eliminate any peering agreement that SBC currently has with any Singapore Internet provider, Singapore operators could discuss peering arrangements with other non-Tier 1 backbone providers in the US market.

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

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

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

- 42 AT&T-Singapore provides two additional services: Internet access and IP Telephony. IDA has not previously determined the relevant markets in which these services are provided. IDA does not believe that it is necessary to do so at this time. Market definition is a tool that IDA uses to assist it in assessing the likely competitive consequences of a proposed Consolidation. Even if IDA determined that AT&T-Singapore's Internet access and IP Telephony services fall within the narrowest possible service markets, IDA would still find that the proposed Consolidation does not create any anti-competitive risk in regard to these services.
- 43 *Internet Access.* AT&T-Singapore provides Internet access and related services (via various access means such as dial-up, remote access and LLCs to MNCs in Singapore who need Internet connectivity to their global offices. AT&T-Singapore is a very small provider of Internet access services, and it is subject to competition from numerous operators offering Internet access services to corporate customers in Singapore. Other major participants include Equant, MCI/UUnet, Pacific Internet, SingNet and StarHub. Singapore-based IASPs do not need to purchase special access services from US operators in order to provide Internet access services in Singapore. Therefore, notwithstanding SBC's dominant position in the special access services market, the proposed Consolidation is not likely to substantially lessen competition among Singapore-based Internet access providers. In addition, as further explained in paragraph 46 below, because SBC is not a significant Internet backbone provider, the proposed Consolidation will not enhance AT&T's ability to use its position as an Internet backbone provider to favour AT&T-Singapore's Internet access services.
- 44 *IP Telephony.* AT&T-Singapore recently introduced an IP Telephony service, which allows corporate customers in Singapore to make international calls. AT&T-Singapore currently provides this service to a very small number of corporate customers in Singapore. Singapore-based providers of IP Telephony services do not need to purchase special access services from US-based

operator in order to provide the service in Singapore. Therefore, notwithstanding SBC's dominant position in the special access services market, the proposed Consolidation is not likely to substantially lessen competition among Singapore-based IP Telephony providers.

***Effect of the Consolidation on Other Markets Affecting the Singapore Telecommunication Markets***

45 *Wireless Roaming and Wholesale International Call Termination.* IDA will not consider the effect of the proposed AT&T-SBC merger in the provision of international call termination and roaming services in the US, especially in the absence of any basis to conclude that the combined AT&T-SBC could leverage its position in these markets to impede competition in the Singapore telecommunication market. There is no reason to believe that the proposed Consolidation would have any adverse impact on Singapore operators that seek to purchase these services in the US.

(a) *Wireless Roaming.* SBC, through its wireless joint venture Cingular, has arrangements with Singapore mobile operators to enable their End Users to roam on Cingular's mobile networks when the End Users are in the US. Since AT&T-Singapore does not provide any mobile services in Singapore, the combined AT&T-SBC will have no incentive to alter these arrangements.

(b) *Wholesale International Call Termination.* AT&T has bilateral correspondent relationships with Singapore operators, under which AT&T terminates telecommunication traffic for Singapore operators in the US. Since AT&T-Singapore does not purchase bilateral correspondence service, and because the US wholesale international call termination market is open and competitive, the combined AT&T-SBC will have no incentive to alter these arrangements.

46 *Global Internet Backbone.* Although IDA recognises the dynamics of the payment arrangements in the global Internet backbone market, IDA remains concerned that Singapore-based Internet providers are required to purchase "full circuits" to the US to obtain Internet connectivity and cannot enter into peering arrangements with Tier 1 Internet backbone providers in the US. The US is a key Internet destination to which a relatively high portion of Singapore's Internet traffic is sent. However, IDA does not believe that the proposed Consolidation will exacerbate this situation. Since SBC is not a significant Internet backbone provider in the US, the transaction will have little impact on AT&T's insistence that Singapore-based Internet providers purchase full circuits to the US. In addition, even if the combined AT&T-SBC were to eliminate any peering

agreement that SBC currently has with any Singapore Internet provider, numerous other non-Tier 1 backbone providers remain in the US market. Singapore operators could discuss peering arrangements with one of these operators.

- 47 *Singapore Software Application Services.* SBC is a small participant in the Singapore software application services market through its ownership of Sterling Commerce. IDA does not license or regulate entities that participate in this market. IDA therefore declines to consider the effect of the proposed Consolidation on this market.

### ***Impact of the Proposed Verizon-MCI Merger***

- 48 IDA recognises that Verizon has proposed to acquire MCI in the US. As MCI has a Singapore Affiliate, MCI WorldCom Asia Pte Ltd ("MCI Singapore"), the parties have submitted their application to IDA for the proposed change in MCI Singapore's ownership arising from the proposed acquisition of MCI by Verizon. IDA has issued a consultation paper on 17 August 2005 to seek comments regarding the above application and will consider the impact of the proposed Verizon-MCI merger on the Singapore telecommunication market during the review of that application.

### **Conclusion**

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

**PART VIII: IDA'S DECISION**

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

- (a) Pursuant to Sub-section 1.7(a), IDA hereby grants the Applicants' Request to be exempted from filing a Long Form Consolidation Application and accepts the submission of the Applicants' Short Form Consolidation Application for the proposed ownership change in AT&T Singapore.
- (b) Pursuant to Sub-section 10.7.1 of the Code, IDA hereby approves in full the Application.