

EXPLANATION OF IDA'S RECONSIDERATION DECISION:

RECONSIDERATION REQUEST FROM BT SINGAPORE PTE LTD ON IDA'S DECISION TO EXEMPT AT&T-SBC FROM LONG FORM CONSOLIDATION APPLICATION AND TO APPROVE THE PROPOSED CHANGE IN AT&T-SINGAPORE'S OWNERSHIP

1. Pursuant to Sub-section 11.9.2 of the Telecommunication Competition Code 2005 ("Code"), on 1 September 2005, BT Singapore Pte Ltd ("BT") filed a Reconsideration Request. In its Request, BT asked IDA to reconsider its 18 August 2005 decision ("Decision"), in which IDA approved the Consolidation Application filed by SBC Communications Inc ("SBC"), AT&T Corp ("AT&T") and AT&T Worldwide Telecommunications Services Singapore Pte Ltd ("AT&T-Singapore") (together, the "Applicants"), and exempted the Applicants from the requirement to file a Long Form Consolidation Application.¹

BT's RECONSIDERATION REQUEST

2. In its Reconsideration Request, BT challenges many factual statements and arguments made by AT&T and SBC in their Application. BT also reiterates many arguments that it made in its comments opposing the Application. IDA will only consider those arguments that directly address IDA's Decision. IDA will not address those arguments that challenge claims or information that were provided by the Applicants, but which IDA did not rely on in reaching its Decision. IDA also will not respond to arguments that BT previously made in its comments, and which IDA previously addressed in its Decision.
3. In its Reconsideration Request, BT makes the following key arguments as to why IDA should reconsider its Decision. Specifically, BT asserts that:
 - (a) IDA wrongly failed to consider "the likely effects of the merger outside Singapore". In particular, IDA should have considered the fact that the proposed merger will reduce competition in the US special access services market; increase concentration in the global Internet backbone market; and impede competition in the GTS market.
 - (b) IDA should have treated the AT&T-SBC merger as a Horizontal Consolidation, because both AT&T and SBC are Internet backbone providers.
 - (c) IDA relied on inaccurate information and ignored relevant facts. In particular, IDA wrongly disregarded: the high market share that the post-merger AT&T-SBC will have in the GTS and Internet backbone markets; the high proportion of the cost of providing GTS that is attributable to local connectivity costs; and the "inadequacies" of the US FCC's special access regulatory regime.

¹ Unless otherwise defined, all capitalised terms in this letter have the same meaning as ascribed to them in the Telecom Competition Code, IDA's Telecom Consolidation Guidelines and the Explanatory Memorandum of IDA's Decision.

- (d) IDA wrongly concluded that the possibility of *ex post* enforcement of the prohibitions on anti-competitive conduct contained in Sub-section 8.3 of the Code would be an effective deterrent to anti-competitive conduct by the Post-Consolidation Entity.
 - (e) IDA should have imposed Conditions, including Conditions designed to “remedy” the inability of Singapore-based Internet providers to peer with US-based Tier 1 Internet backbone providers.
 - (f) Given the “very substantive issues” presented by the proposed Consolidation, IDA wrongly exempted the Applicants from having to file a Long Form Consolidation Application.
 - (g) IDA should have considered the proposed AT&T-SBC merger in conjunction with the proposed MCI-Verizon merger.
4. IDA has carefully reviewed BT's arguments. For the reasons set forth below, IDA has concluded that they do not provide any basis for IDA to reverse or modify the Decision.

IDA's RESPONSE TO BT's ARGUMENTS

IDA appropriately focused on the effect of the proposed Consolidation on competition in the Singapore telecommunication markets

5. IDA recognises that a merger outside of Singapore that reduces competition in a foreign market may have an adverse effect on Customers within Singapore. IDA, however, does not have extra-territorial jurisdiction; it should not prevent a merger between two foreign companies based solely on the fact that reduced competition in a foreign market may indirectly affect Customers in Singapore. Rather, IDA may only deny a Consolidation Application where the evidence demonstrates that “the Consolidation is likely to *substantially restrict competition* in any telecommunication market *in Singapore* or harm the public interest.” See Sub-section 10.4.6 of the Code. Thus, in assessing a Non-Horizontal Consolidation, IDA will seek to determine whether the proposed Consolidation is likely to: (a) eliminate the possibility that one of the parties would enter the Singapore telecommunication market as a new competitor; (b) allow an entity that has Significant Market Power to foreclose other Licensees from accessing inputs that they require in order to provide a competitive telecommunication service to Customers in Singapore; or (c) allow an entity that has Significant Market Power to leverage that Significant Market Power in a manner that distorts competition in a Singapore telecommunication market. See Paragraph 2.2.2 of IDA Telecom Consolidation Guidelines.
6. IDA recognises that Consolidations that involve an Applicant that has Significant Market Power that is not subject to IDA regulation, such as a foreign telecommunication operator, can significantly restrict competition in the Singapore telecommunication market. See Telecom Consolidation Guidelines paragraph 7.1. Therefore, in reviewing a Consolidation Application, IDA will consider whether: (a) the proposed Consolidation will result in a Licensee becoming affiliated with an entity that has – or, as a result

of the proposed transaction, will obtain – Significant Market Power in a foreign market; and (b) whether the entity is likely to be able to use its Significant Market Power to foreclose or distort competition in any Singapore telecommunication market.

Impact on Competition in US Special Access Services Market

7. In the present case, IDA recognises that, following the merger in the US, the merged AT&T-SBC will have Significant Market Power in the provision of special access services in parts of the US. IDA carefully considered whether the merged AT&T-SBC would be able to use its Significant Market Power in the provision of special access services within its 13-State service region to foreclose or distort competition in several Singapore telecommunication markets – including the Terrestrial IPLC, IMDS, and International IP Transit markets. IDA has revisited the analyses set out in paragraphs 39, 40 (b) and (c), and 41 (b) and (d) of IDA's Decision and maintains that the analyses remain valid. BT has not provided any new or persuasive evidence to convince IDA that the proposed transaction will substantially reduce competition in any Singapore telecommunication market.
8. BT claims that IDA wrongly failed to consider the effect that the reduction in competition in the US special access services market will have on competition in the provision of IP telephony and Internet access services in Singapore. Specifically, BT asserts that IDA wrongly assumed that, because AT&T-Singapore currently does not purchase SBC's special access services in order to provide Internet access and IP telephony services, it will not do so following the consolidation. BT is not correct. In paragraphs 43 and 44 of IDA's Decision, IDA explained that Singapore-based IASPs (including AT&T-Singapore) *do not need to* purchase special access services from *any* US operator (including SBC) in order to provide Internet access and IP Telephony services to End Users in Singapore. This is a factual description of how Internet access and IP Telephony services are provided in Singapore. The proposed Consolidation will have no effect on this. Therefore, IDA was not required to consider the effect of the AT&T-SBC merger on competition in the US special access services market in order to determine whether the proposed Consolidation is likely to substantially restrict competition in the provision of IP telephony or Internet access services in Singapore.

Impact on Global Internet Backbone Market

9. BT also argues that IDA is required to consider the effect of the proposed AT&T-SBC merger on competition in the global Internet backbone market because of its impact on IP- and Internet-based services. In particular, BT contends that IDA's observation that SBC is not a significant Internet backbone provider in the US (paragraphs 8 and 46 of IDA's Decision) is incorrect. According to BT, SBC is "closely qualified" as a Tier 1 Internet backbone provider in the US. BT further argues that, if the AT&T-SBC and MCI-Verizon mergers are approved, the 2 post-merger companies will be able to use their unique position to form a Tier 1 "super club". This, BT predicts, could allow the 2 companies to increase the price of IP-based communication services provided to consumers and businesses, revoke existing peering

agreements with other Internet backbone providers and force other backbone providers to pay more for access.

10. IDA does not agree with BT's arguments. As an initial matter, SBC plainly is not a Tier 1 Internet backbone provider. SBC does not peer with most of the Tier 1 Internet backbone in the US, such as AT&T, MCI, Sprint, Qwest or Global Crossing. In any case, even if the AT&T-SBC merger did result in the creation of a Tier 1 "super-club", this will not alter competitive conditions in the Singapore IP Transit market and in the provision of Internet access and related services. Today, Singapore-based Internet providers are not able to peer with any Tier 1 Internet backbone providers in the US. The proposed Consolidation will not change this situation.

Impact on GTS Market

11. Finally, to BT's arguments made on the effect of the AT&T-SBC merger on competition in the GTS market, IDA has previously explained that the relevant market, for purposes of this review, is the Singapore IMDS market. IDA has concluded that there is little risk that the post-merger AT&T-SBC will be able to leverage its Significant Market Power in the provision of special access services within its 13-State service region to substantially restrict competition in the IMDS market in Singapore. See paragraph 40(b) of IDA's Decision. Moreover, given AT&T-Singapore's small participation in the Singapore IMDS market, IDA does not believe that there is any basis for concern that the proposed Consolidation will allow it to benefit from its affiliation with the merged AT&T-SBC to distort competition in any Singapore telecommunication market. In any case, Sub-section 8.3 of the Code provides an effective 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 (see paragraph 40(c) of IDA's Decision).

IDA properly treated the proposed Consolidation as a Non-Horizontal Consolidation

12. BT asserts that IDA should have treated the proposed transaction as a Horizontal Consolidation. IDA does not agree. IDA recognises that AT&T and SBC currently compete in certain markets outside Singapore, including the special access services and Internet backbone markets. However, as explained above, in considering a Consolidation Application, IDA focuses on the Singapore telecommunication market. There is no doubt that, from the perspective of the Singapore telecommunication market, the proposed Consolidation is purely a Non-Horizontal one. SBC does not hold any telecommunication licence issued by IDA in Singapore. While SBC's Affiliate, Sterling Commerce, holds an SBO (Class) Licence for the provision of Store & Retrieve VAN services, it currently does not offer such services in Singapore.

IDA has made no material factual error that requires reconsideration

13. BT's objections to IDA's factual conclusions are either irrelevant or unsupported.

14. **AT&T-SBC share of the GTS and Internet backbone markets.** As IDA has explained, the relevant markets, for purposes of its review, are the Singapore Terrestrial IPLC, IMDS and International IP Transit markets – not the GTS and Internet backbone markets. IDA has correctly assessed AT&T-Singapore's participation and market share in these relevant markets.
15. **High proportion of local connectivity costs in providing GTS.** Contrary to BT's assertion, IDA did not wrongfully fail to consider the fact that local connectivity services constitute a high proportion of the cost of providing GTS. As IDA has explained, the relevant markets, for purposes of its review, are the Singapore Terrestrial IPLC, IMDS and International IP Transit markets. IDA recognises that local connectivity is an important input and typically constitutes a high portion of the total IMDS cost. However, in its Decision, IDA explained that IMDS customers purchase IMDS on a "network basis", in order to communicate among locations in multiple countries, 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. See paragraph 40(b) of IDA's Decision. Thus, notwithstanding the economic importance of states like California within SBC's 13-state service region, even if the merged AT&T-SBC attempted to discriminate in favour of AT&T-Singapore in the sale of special access services, it is unlikely to provide AT&T-Singapore with an anti-competitive advantage in the offering of IMDS to Singapore End-Users.
16. **"Inadequacies" of the US FCC's special access regulatory regime.** IDA does not agree with BT's claim that it improperly failed to consider the alleged "inadequacies" of the FCC's special access regulatory regime. In making its decision, IDA expressly noted that the Commenters "express[ed] 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". However, IDA also noted that the FCC is currently reviewing these regulations, and that both the FCC and the US Department of Justice, as part of their review of the proposed transaction, may impose conditions on the merger that could reduce the ability of the post-merger AT&T-SBC to act anti-competitively. Finally, IDA expressed its expectation that the US Government will fulfil its obligations, pursuant to the Singapore-US Free Trade Agreement, to prevent anti-competitive conduct in the special access services market. See Paragraph 39(c) of IDA's Decision.

IDA reasonably concluded that the possibility of ex post enforcement of the prohibition on anti-competitive conduct in Sub-section 8.3 of the Code would effectively deter anti-competitive conduct

17. Contrary to BT's assertion, the prohibitions on anti-competitive conduct contained in Sub-section 8.3 of the Code provide an effective deterrent to anti-competitive conduct by a Licensee. IDA has enforcement and investigative powers under the Code. Private parties – including BT – that believe that a Licensee has contravened the prohibitions contained in Sub-section 8.3 can file a Request for Enforcement. IDA can also initiate an enforcement proceeding on its own initiative. In the event that IDA determines that a Licensee has contravened the Code, it will take the necessary enforcement actions against the Licensee.

IDA was not required to impose Conditions

18. IDA does not agree with BT's assertion that it was required to impose Conditions. Where a proposed Consolidation may restrict competition in a Singapore telecommunication market, IDA will consider whether to impose Conditions "designed to reduce any anti-competitive harm or effect" that might otherwise result from the proposed Consolidation. See Paragraph 8.3 of IDA's Telecom Consolidation Guidelines. In the present case, however, IDA concluded that the proposed Consolidation is not likely to have an anti-competitive effect on any Singapore telecommunication market. Therefore, there is no justification for IDA to impose Conditions.
19. In particular, there is no justification for imposing Conditions that would enable Singapore-based Internet providers to peer with Tier 1 Internet backbone providers in the US. In considering a Consolidation Application, IDA focuses on the "Consolidation-specific" effects of the proposed transaction. As explained in paragraph 10 above, at the present time, Singapore-based Internet providers are not able to peer with Tier 1 Internet Backbone Providers in the US. The proposed Consolidation will not exacerbate this problem. Therefore, there is no basis for IDA to use the Consolidation review process to try to remedy this situation.

IDA correctly concluded that requiring the Applicants to file a Long Form Consolidation Application was not necessary to ensure that the proposed Consolidation would not substantially lessen competition in the Singapore telecommunication market

20. In the Decision, IDA concluded that it was appropriate to grant the Applicants' request to exempt them from filing a Long Form Consolidation Application. IDA's determination is fully consistent with the procedures specified in its Telecom Consolidation Guidelines, which states that IDA will grant an exemption if it determines that filing the Long Form Consolidation Application "is not necessary to ensure that a Consolidation would not substantially lessen competition in the Singapore telecommunication market." See Paragraph 3.5 of IDA's Telecom Consolidation Guidelines.
21. If IDA had denied the Applicants' request for the exemption, the Applicants would have been required to submit a substantial amount of additional information, including: the Consolidation Agreement; any Ancillary Agreements; a current annual report or financial statement for each Applicant; business plans for each Applicant for the current and immediately previous year; all reports prepared for shareholders, directors, or executive officers of each Applicant for the purposes of assessing the proposed Consolidation; and a chart indicating each of the Applicant's Affiliates and the relevant ownership interests, including any special or preferential rights. Requiring the Applicants to submit these additional information – and IDA to review it – would be a burdensome and time-consuming process. BT has provided no evidence that suggests that undertaking such a review is necessary to enable IDA to assess the likely competitive effect of the proposed Consolidation on the Singapore telecommunication market or would likely alter IDA's Decision. Therefore, requiring the parties to provide this information would be unreasonable.

IDA's properly considered the AT&T-SBC and MCI-Verizon Consolidations in separate proceedings

22. BT contends that IDA must consider the AT&T-SBC and MCI-Verizon Consolidations together because the two transactions will significantly increase concentration in the Internet backbone market, thereby facilitating anti-competitive concerted action by the two entities. IDA previously considered, and rejected, this argument.
23. IDA recognises that, by increasing market concentration, Horizontal Consolidations can facilitate anti-competitive concerted action. As noted above, however, IDA's focus is on the effect of the proposed Consolidations on the Singapore telecommunication market. From the perspective of the Singapore telecommunication market, these two proposed transactions are Non-Horizontal Consolidations. AT&T's and MCI's Singapore Affiliates are relatively minor participants in the Singapore Terrestrial IPLC, IMDS and International IP Transit markets. SBC and Verizon do not participate in these markets. Thus, these two transactions will not increase market concentration in any of these markets in Singapore. Therefore, even if IDA were to consider the two proposed Consolidations together, there is no basis for IDA to conclude that they will foster collusion between AT&T's and MCI's Affiliates in any Singapore telecommunication market.
24. In any case, IDA has adopted strong regulations to deter collusive behaviours amongst Licensees, particularly competing Licensees, that unreasonably restricts or are likely to unreasonably restrict competition in any telecommunication market in Singapore. See Section 9 of the Code.

IDA's RECONSIDERATION DECISION

25. IDA therefore maintains its Decision issued on 18 August 2005.