

**SINGAPORE TELECOMMUNICATIONS LTD RESPONSE TO IDA  
CONSULTATION PAPER**

- A: REQUEST BY AT&T WORLDWIDE TELECOMMUNICATIONS SERVICES SINGAPORE PTE LTD, AT&T CORP AND SBC COMMUNICATIONS INC FOR EXEMPTION FROM LONG FORM CONSOLIDATION APPLICATION IN RELATION TO THE PROPOSED ACQUISITION OF AT&T CORP BY SBC COMMUNICATIONS INC**
- B: THE PROPOSED CHANGE IN OWNERSHIP IN AT&T WORLDWIDE TELECOMMUNICATIONS SERVICES SINGAPORE PTE LTD ARISING FROM THE ABOVE CONSOLIDATION**

**7 JULY 2005**

**1. STATEMENT OF INTEREST AND STRUCTURE OF SUBMISSION**

- 1.1 Singapore Telecommunications Limited (**SingTel**) is licensed to provide telecommunications services in Singapore. SingTel is committed to the provision of state-of-the-art telecommunications technologies and services in Singapore. SingTel has a comprehensive portfolio of services that includes voice and data services over fixed, wireless and Internet platforms. SingTel services both corporate and residential customers and is committed to bringing the best of global communications to its customers in the Asia Pacific and beyond.
- 1.2 SingTel hereby responds to the Info-communications Development Authority of Singapore's (**IDA**) request for public comments (**Public Consultation Paper**) in relation to:
- (a) the request by AT&T Worldwide Telecommunications Services Singapore Pte Ltd (**AT&T Singapore**), AT&T Corp (**AT&T**) and SBC Communications (**SBC**) for an exemption from filing the Long Form Consolidation Application in relation to the proposed acquisition of AT&T by SBC (**Proposed Consolidation**); and
  - (b) the proposed change in ownership in AT&T Singapore arising from the Proposed Consolidation as submitted via a Short Form Consolidation Application.
- 1.3 Like all Singapore telecommunications operators, particularly those who provide international capacity services to global corporate customers and services in the markets in the Internet segment, SingTel has a strong interest in the Proposed

Consolidation. SingTel competes against AT&T Singapore in providing various international capacity services (**ICS**) such as International Private Leased Circuits, international managed data services including International Frame Relay, International ATM and International IP VPN and in the provision of Internet access services. SingTel also acquires inputs from AT&T and SBC in the United States for use in the provision of its international services to the United States. Additionally, SingTel needs to obtain the necessary IP transit services from relevant US Tier 1 IASPs like AT&T in order to deliver internet traffic to the United States.

1.4 SingTel welcomes the IDA's request for public comments. SingTel has concerns in relation to the possible impact of the Proposed Consolidation on competition in several telecommunications markets in Singapore and the United States. The ability of the merged entity to leverage its market power in Singapore markets, resulting in a substantial lessening of competition in Singapore, will be inevitable if the Proposed Consolidation proceeds.

1.5 This submission is structured as follows:

- (a) Section 2 - Summary of major points;
- (b) Section 3 – The consolidation regime in Singapore;
- (c) Section 4 – General comments;
- (d) Section 5 – Competition concerns arising from the Proposed Consolidation; and
- (e) Section 6 – Conclusions.

## 2. SUMMARY OF MAJOR POINTS

2.1 The major points SingTel makes in this submission are as follows:

- SingTel regards the merger of AT&T and SBC (the **merged entity**) as a cause for significant competitive concern. A long form consolidation application and a comprehensive assessment of the competitive effect on Singapore telecommunications markets are warranted. The request for an exemption from Long Form Consolidation Application should therefore be refused.

- Notwithstanding the above, SingTel provides its comments based on the information available from the Short Form Application submitted and SingTel's views of the market.
- There are two "service segments" that give rise to significant competition concerns. Each of these service segments may comprise several markets. Regardless of how AT&T has defined these markets in its Short Form Consolidation Application, the fact remains: the Proposed Consolidation will enable the merged entity to leverage its market power in each of these service segments into Singapore markets, thus substantially lessening competition.
- The Short Form Consolidation Application makes numerous assertions in relation to the activities and market power of AT&T, SBC and the merged entity. The Application also omits several key aspects of the activities of each of AT&T and SBC and the ability of the merged entity to exercise its market power in each of the service segments analysed in this submission. SingTel considers that the IDA must be fully informed of the facts of those activities, the inevitability of the market power of the merged entity and the implications for several key telecommunications markets in Singapore.
- The first "service segment" is competition for multinational corporations (MNCs). The Proposed Consolidation will detrimentally affect competition for these customers for the following reasons:
  - at the Singapore end, SingTel is required to offer local leased circuits (LLCs) as a mandated wholesale service at regulated rates. The result is that there are no barriers to entry in the Singapore market at the local end;
  - however, SingTel and other Singapore operators face significant entry barriers in the United States component necessary to compete for MNCs. These barriers will be exacerbated by the Proposed Consolidation;
  - SBC controls the local loop in the 13 States of the United States where many of the main MNCs are located, whilst AT&T controls the international transmission and long distance transmission across the United States;
  - Singapore carriers require international transmission, long distance transmission and local loop as an "input" into the ICS they provide to customers;

- consequently, there are several key markets which will all be adversely affected by the Proposed Consolidation. These are the markets for ICS, long distance transmission across the United States, and local connectivity in the 13 States of the United States where SBC controls the local loop.
- SingTel submits that the ability of the merged entity to leverage its market power will impact on the 10 markets identified by the IDA which comprise the ICS market.<sup>1</sup> In particular, the Terrestrial IPLC market and International Managed Data Services market are of particular concern in terms of the provision of international transmission, long distance transmission and the local loop affected by the Proposed Consolidation. The IDA should therefore examine the impact of the Proposed Consolidation on the 10 separate markets, but focus on the ability of Singapore telecommunications providers to compete for customers who require IPLCs and International Managed Data Services.
- The impact of control of international transmission, long distance transmission and the local loop in the United States is fundamental to the competition concerns arising from the Proposed Consolidation. The Proposed Consolidation will exacerbate the potential for anti-competitive conduct arising from the market power of the merged entity. As other competing carriers have asserted in representations to the IDA in other proceedings, the local loop price consists of between 40 to 60 per cent of the price of international services such as IPLCs. In this light, SingTel submits that the ability for anti-competitive conduct is high including discriminatory pricing, price squeeze behaviour and refusals to supply. The leveraging of this market power in long distance transmission and the local loop will be immediately and acutely felt in Singapore's telecommunications markets.
- The second "service segment" in which the Proposed Consolidation gives rise to significant competition concerns is the Internet segment. The Proposed Consolidation will detrimentally affect competition in this segment for the following reasons:
  - international and/or non-US based ISPs are typically required to acquire the full international leased circuit to the United States and bear the cost of this entire connection. This behaviour typifies incentives of the merged entity, with its substantial market power, to leverage that market power to the detriment of Singapore operators; and

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<sup>1</sup> IDA, *Explanatory Memorandum to the decision of the IDA on the Request by Singapore Telecommunications Limited for Exemption from Dominant Licensee Obligations with Respect to the "International Capacity Services Market"*, 12 April 2005 at para 47.

- the international and/or non-US based ISPs are still required to pay the relevant IP transit rates to the US Tier 1 IASPs for Internet traffic delivered to US POPs;
- SingTel submits that in light of the evidence before it, the IDA should address these significant competition concerns as follows:
  - (i) require a Long Form Consolidation Application to be filed, to enable the evidence submitted by AT&T to be fully scrutinised by the IDA and the Singapore telecommunications sector; and
  - (ii) find the merged entity dominant in Singapore, thus requiring AT&T Singapore and any of its related corporations to file tariffs for their services on an unbundled basis, and to ensure that they meet the Dominant Licensee obligations with respect to pricing conduct in the Code; and
  - (iii) require AT&T Singapore and any of its related corporations to declare its international transmission, long distance transmission and local loop “input” prices; and
  - (iv) impose a condition on the acquisition of AT&T Singapore that they must offer long distance transmission and local loops in the United States at a regulated rate, the benchmark being the discounted prices that SingTel is required to offer under its mandatory wholesale LLC tariffs; and
  - (v) find SingTel non-dominant on the Singapore-US route.

### **3. THE CONSOLIDATION REGIME IN SINGAPORE**

#### **The Code requires the applicants to submit a Long Form Consolidation Application**

- 3.1 The provisions of the Code set out the test to be applied by the IDA in evaluating the Proposed Consolidation and the circumstances in which an applicant must submit a Long Form Consolidation Application.
- 3.2 Sub-section 10.5.2.1 provides that the applicant may submit a Short Form Consolidation Application if none of the Applicants in respect of a Non-Horizontal Consolidation have a market share of more than 25 percent in any

telecommunications market, whether in Singapore or elsewhere, in which it participates.

- 3.3 The issue of whether an applicant may submit a Short Form Consolidation Application therefore depends on its market share in telecommunications markets in Singapore and in other jurisdictions.
- 3.4 By its own admission, the applicant has indicated that SBC has a market share in excess of 25% in telecommunications markets outside Singapore.<sup>2</sup> The applicant must therefore submit a Long Form Consolidation Application to the IDA.
- 3.5 There is no basis for the applicant's suggestion that its ability to submit a Short Form Consolidation Application depends on whether the Proposed Consolidation will have an anti-competitive effect, or whether the merged entity will be able to leverage its market power into a Singapore telecommunications market. The test whether the applicant may submit a Short Form Consolidation Application does not depend on the competitive impact of the Proposed Consolidation. That is not the relevant criteria for determining whether a Short Form Consolidation Application can be lodged – the test is whether the applicant has a market share of more than 25% in any telecommunications market in Singapore or abroad.
- 3.6 The applicant clearly does not satisfy the criteria for submitting a Short Form Consolidation Application. As such, it should be required to submit a Long Form Consolidation Application. On this basis, SingTel considers that the IDA should reject the request by the applicants to be exempt from its obligation to submit a Long Form Consolidation Application in accordance with the provisions of the Code.

### **Standard for the approval of Proposed Consolidation**

- 3.7 Sub-section 10.4.6 of the Code states that the IDA will not approve a Consolidation Application if it determines that the consolidation is likely to:
- substantially lessen competition in any telecommunications market in Singapore; or
  - harm the public interest.
- 3.8 Neither the Code nor the IDA's Telecom Consolidation Guidelines define the phrase "substantially lessen competition" or "public interest".

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<sup>2</sup> AT&T, Exemption Request by AT&T Singapore, AT&T and SBC, 10 June 2005, paragraph 2 and 6.

- 3.9 The phrase “substantially lessen competition” is generally understood to refer to a meaningful or real decline in the field of rivalry between firms in the defined market.
- 3.10 The issue of whether there is a substantial lessening of competition is ascertained by the IDA examining the future state of competition in the defined market both with and without the Proposed Consolidation. This is known as the “with and without test”. SingTel expects the IDA to apply the “with and without test” in considering whether the Proposed Consolidation is likely to substantially lessen competition in a telecommunications markets in Singapore.
- 3.11 Although the term “public interest” is not defined in the Code, it is generally understood to mean the economic interests of consumers in having competition in the defined market.
- 3.12 SingTel notes that the interests of Licensees may not always correspond with the “public interest”. However, to the extent that the interests of Licensees coincide with the public interest, it is appropriate for the IDA to take account of the interests of Licensees in considering whether the Proposed Consolidation is in the public interest.
- 3.13 Where possible, SingTel’s arguments in this submission have been drafted with reference to the two standards that the IDA will apply in evaluating the Proposed Consolidation.

#### **4. GENERAL COMMENTS**

##### **The Proposed Consolidation has different implications for the United States compared to Singapore**

- 4.1 The Proposed Consolidation is currently undergoing the relevant merger approval processes in the United States at the State regulator level, the Department of Justice and the FCC. It is also on the record that international reviews and clearances have been completed in countries such as Australia, Norway, Pakistan, Russia and South Africa. SBC has asserted that with two-thirds of the State clearance processes and most international reviews now having been finalised, that:

*“...post-merger, the companies [the Proposed Consolidation entity] will use their complimentary strengths to deliver advanced services to residential, small and medium business, and to enterprise customers on a new scale”.<sup>3</sup>*

- 4.2 The “complimentary strengths” referred to above will manifest themselves in a leveraging of market power by the merged entity to the detriment of Singapore operators. Importantly, SingTel submits that the implications of the Proposed Consolidation in the United States are fundamentally different to those which will affect Singapore. The Proposed Consolidation will result in an unprecedented capacity by a single operator to leverage its market power in the international services such as International Private Leased Circuits, international managed data services including International Frame Relay, International ATM and International IP VPN and in the provision of Internet access services. The international implications of the Proposed Consolidation which need to be examined by the IDA are far removed from those being examined by regulators in the United States. For Singapore, there is a significant threat that the Proposed Consolidation will result in an unchecked leveraging of market power by the merged entity in the form of discriminatory pricing, price squeezes and refusal to supply, to the detriment of Singapore operators.
- 4.3 The IDA should therefore exercise considerable caution in its examination of the Proposed Consolidation and have regard to the precise issues of concern to the Singapore telecommunications markets. The IDA will note that the leveraging of market power by the merged entity in Singapore markets does not feature in any of the submissions received, or in any of the United States regulators’ deliberations. The IDA is empowered under the Code, the Telecommunications Act and the Consolidation Guidelines to act in the interests of fulfilling Singapore’s national objectives in telecommunications. Accordingly, it is fit and proper for the IDA to scrutinise the Proposed Consolidation as it will impact on competition in Singapore and the ability of Singapore to compete as a leading ICT hub.
- 4.4 The debate before the State regulators in the United States has centred on the following issues:
- the history of the break-up of the “Baby Bells”;
  - the disputed effectiveness and proposed redrafting of the *Telecommunications Act 1996*, and its alleged failure to in some sectors to deliver competitive outcomes;

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<sup>3</sup> Media Release *SBC and AT&T making significant progress in Merger Approval Process*, 27 June 2005.



- the implications for domestic prices in the US; and
  - the historical separation of local and long distance services.
- 4.5 These issues are of negligible concern to Singapore. Rather, the real implications for Singapore and the test to be applied by the IDA under sub-section 10.4.6 of the Code is whether the Proposed Consolidation will substantially lessen competition in a Singapore market or be contrary to the public interest. On this basis, SingTel therefore urges the IDA to focus its deliberations in the Proposed Consolidation on:
- (a) the service segments which will be impacted;
  - (b) the incentive and likelihood of the merged entity leveraging its market power to substantially lessen competition in Singapore's telecommunications markets; and
  - (c) the fact that the Proposed Consolidation may result in behaviour which will directly undermine Singapore as a competitive ICT hub.

**IDA should guard against a leveraging of market power in Singapore's telecommunications markets**

- 4.6 The IDA should be concerned about the implications for Singapore in two segments:
- (a) the ICS segment; and
  - (b) the Internet segment.
- 4.7 The Proposed Consolidation will result in a substantial lessening competition in Singapore markets and is contrary to the public interest. It will prevent Singapore from competing effectively as a regional ICT hub.
- 4.8 The Proposed Consolidation means that SingTel and other Singapore counterparts operating in the same markets as SingTel will effectively be inhibited from providing competitive regional services. The economic interests of consumers will be damaged as a consequence. This is a very real threat, and one that is also felt by international players such as BT Global. It is most notable that BT has made a very strong submission to the FCC in opposition to the Proposed Consolidation. BT is global company with revenues of over USD \$15 billion and employing over 30,000 people. Given the scale of its operations, BT's considerable concern is shown by its view that the proposed merger threatens its actual market for global telecommunications

services and it is an indication of the immediate and real competitive concerns about the Proposed Consolidation.

- 4.9 The Proposed Consolidation will create barriers to entry both now and in the future for Singapore telecommunications operators. The leveraging of the market power that will be created by the merged entity will be felt by every competing Singapore operator seeking to do business in or to the United States. The impacts will be directly felt in Singapore because of the very nature of MNCs: they are multi-national companies who demand competitively priced and global connectivity. The Proposed Consolidation will result in a situation where efficient Singapore operators will not be able to attract and retain the business of MNCs, even in cases where regional offices of those MNCs are located in Singapore. MNCs, particularly US companies, will instead turn to offerings of the merged entity, which will not be subject to the same input costs imposed on Singapore operators by the merged entity.
- 4.10 The Proposed Consolidation will therefore result in an adverse outcome for the viability of Singapore's telecommunications markets. Singapore represents itself to the world's businesses as a global ICT hub. If the IDA allows the Proposed Consolidation to proceed, it will effectively undermine the very purpose of the consolidation review process in Singapore.

**The current status of telecommunications mergers in the United States cannot be examined in isolation**

- 4.11 SingTel objects to the Proposed Consolidation and the fact that it is occurring at the same time as the MCI/Verizon merger. This effectively creates a double barrier to competition and a further leveraging of market power for anti-competitive effect in Singapore. When this pair of mergers is considered together, the contraction in Tier 1 IASP status reveals a significant contraction of players in the Internet access provider market; as well as a significant risk in local and international and long distance competition as inputs to international connectivity in the ICS markets.
- 4.12 The proposed merger of MCI/Verizon will result, if allowed, almost exactly the same outcome as the Proposed Consolidation. This is also an example of a local operator acquiring a long distance operator. Previously, where there were only five "Baby Bells", there are now two Baby Bells acquiring long distance service providers. These mergers will result in market concentration at a level never before seen in the United States and have detrimental effect on Singapore.

4.13 The provision of ICS requires “inputs” that are supplied by telecommunication operators in individual countries. The proposed merger of AT&T and SBC, combined with the proposed merger of MCI and Verizon will be compounded to result in a substantial lessening of competition in the input levels for the market. This will arise as a direct result of the market concentration of players that will arise from the merger. It is therefore imperative that the implications be seen in the context of a pair of mergers.

4.14 Whilst it is not possible in the United States due to procedural fairness to consider both mergers simultaneously, the IDA is not restricted from viewing the implications of the Proposed Consolidation and other like mergers in the United States simultaneously. Indeed, SingTel submits that it is imperative that the overall implications of the Proposed Consolidation can only be understood in this context.

## **5. COMPETITION ISSUES ARISING FROM THE PROPOSED CONSOLIDATION**

### **The incentives for anti-competitive conduct by the merged entity**

#### **Key points:**

- The merged entity will have an unprecedented degree of market power in the ICS market, in competition for MNCs, and in competition for Internet backbone services. This means that Singapore operators will be open to competitive detriment.
- The 10 ICS markets identified by the IDA should be closely examined in the Proposed Consolidation, particularly in terms of the requirement for Terrestrial IPLC, International Managed Data Services and the ability of Singapore operators to compete for customers who require ICS.
- The opportunity for the IDA to scrutinise the structure of the market and the resulting conduct which will give rise to the incentives for anti-competitive behaviour by the merged entity now rests with its consideration of the Application.

### **The merged entity will leverage its market power to the detriment of Singapore operators**

5.1 Reputable commentators have concluded that the merged entity will have the incentive and ability to engage in anti-competitive conduct. For Singapore

telecommunications operators, it will mean a leveraging of market power in the United States with adverse consequences for Singapore.

- 5.2 Simon Wilkie, a former Chief Economist at the FCC, has highlighted that the combined effect of the Proposed Consolidation and the MCI/Verizon merger will remove AT&T and MCI as competitors to SBC and Verizon. Wilkie has particularly noted the effect of this on competition in the provision of telecommunications services to MNCs. The result would be an effective foreclosure of the wholesale market for network facilities provided by the four merging entities to competing providers:

*“In the wholesale market, the two largest competitors with the Bell monopoly are AT&T and MCI. By taking those out of the marketplace, you’ll have a dramatic increase in the wholesale prices that have to be paid for the competitors to reach the customers”.*<sup>4</sup>

- 5.3 Wilkie also notes that besides MCI and AT&T, there are no other competing carriers in the United States in the same position to provide low-cost services to business customers. For Singapore, this problem is acute considering the necessity of Singapore operators to compete on a global scale, including with United States operators.

### **Forms of anti-competitive behaviour**

- 5.4 The likely outcome of the Proposed Consolidation will be to the substantive detriment of international and /or non-US based operators, including those in Singapore, arising from conduct that will be both enabled and incentivised due to the lucrative nature of the MNCs at stake. As has been noted in relation to both the Proposed Consolidation and the MCI/Verizon merger:

*“...the new companies would dwarf their nearest competitors and control 79% of the business/government segment - one of the most lucrative in our industry. The reality is that this scale, pricing power and overall market clout make it extremely unlikely that any other player can grow market share. Odds are these behemoths would not compete head-to-head in most local markets but would instead flex their muscles to squeeze out smaller competitors...”*<sup>5</sup>

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<sup>4</sup> Simon Wilkie, quoted in CIO-Asia.com, *Telecom mergers will raise costs to businesses*, June 2005.

<sup>5</sup> Wall Street Journal, *Don’t create a duopoly*, 28 February 2005.

- 5.5 The market power of the merged entity will provide the incentive and scope to engage in the following forms of anti-competitive behaviour, to the detriment of Singapore operators:

***No checks on SBC's misuse of market power***

- 5.6 As highlighted by BT, AT&T has been the only real check on SBC's monopoly over special access and wholesale wireline services.<sup>6</sup> AT&T is the largest purchaser of special access services from SBC, and stands as its most significant potential competitor due to its bypass threat. The ability to impose some checks on SBC's special access pricing will be eliminated by the Proposed Consolidation. In turn, Singapore operators will lose any opportunity to leverage competitive prices based on AT&T's terms of acquisition of special access services from SBC.

***Price squeezes and discrimination***

- 5.7 The result of AT&T's current control of international and long distance transmission and SBC's local wholesale monopoly will mean lead to price squeezes and discrimination against Singapore operators. This has also been noted by BT in its submission, considering that the merged entity will be the only company able to provide end-to-end facilities-based services to MNCs in the 13 States of the SBC region.<sup>7</sup> The high value of these MNCs cannot be underestimated, for they comprise over 42 per cent of the United States' gross national product. Wilkie has again commented that if AT&T and MCI are removed as competitors under the proposed mergers that SBC and Verizon will control 9 out of 10 commercial buildings in their respective territories alone – which translates to controlling interests of a combined 95 per cent market share.
- 5.8 The ability of SBC to individually engage in discriminatory behaviour affecting long distance transmission, local loop and Internet price and non-price terms will translate into an incentive to engage in such behaviour. This is exacerbated by the removal of any checks on such behaviour that may have existed as a result of AT&T's existence as a potential and credible competitor to SBC.

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<sup>6</sup> Reply Comments of BT Americas Inc and BT Infonet USA to the FCC, 10 May 2005 at page 9.

<sup>7</sup> Reply Comments of BT Americas Inc and BT Infonet USA to the FCC, 10 May 2005 at page 16.

### *Quality of service*

5.9 Non-price quality of service issues will be substantially affected, to the detriment of Singapore operators. Discriminatory behaviour may arise in the form of SBC offering itself a higher level of service quality. The timing of provisioning will most adversely affect Singapore operators, since the nature of MNCs means that operators such as SingTel will lack the visibility to monitor or detect declines in service on a multi-national scale.

### *Price squeezes*

5.10 In addition to the above conduct, the ability of SBC and AT&T to increase the “input” costs of all Singapore operators’ will be acutely felt. This is likely to be compounded by the removal of any incentive by the merged entity to offer excess capacity on a wholesale discounted basis to Singapore operators.

### **Competition for MNCs**

#### **Key points:**

- Competition in the provision of telecommunications services MNCs will be severely undermined by the Proposed Consolidation. The leveraging of the merged entity’s market power in Singapore will be to the irreversible detriment of Singapore’s competing operators.
- There are operators, like SingTel, who do not have to access to long distance transmission and LLCs (or Special Access Lines) in the United States at reasonable rates, as an input into the international services it provides. This means they currently cannot compete on equal terms with United States counterparts.
- The merged entity will control the international portion, long distance transmission and local loop in United States, particularly in respect of those States where MNCs are based.
- There is no equivalence between the obligations on SingTel to provide LLCs as a mandated wholesale service under the Code and those placed on the current entities in the Proposed Consolidation. The prices for equivalent services in the United States remain high. This means that the merged entity will have the enhanced ability to leverage its market power in the MNC segment to the detriment of competition in Singapore.

- The merged entity will enhance the risk of bundling Special Access Lines being bundled with other international services, which will exacerbate the ability for the leverage of market power to the detriment of competition.

### **The Proposed Consolidation will result in monopoly behaviour by the merged entity**

5.11 The current market power of SBC cannot be under-estimated: there is virtually no competition for Special Access Services in most coverage areas of SBC. The merged entity will result in the following consolidation of market power:

- Local connectivity – as an essential element of ICS, local connectivity accounts for between 40 to 60 per cent of the cost of international connectivity.
- The dependency of international and/ non US- based operators competitive local connectivity is absolute for the provision of end-to-end services. As it stands, it is competitively problematic that in order to provide customers with a total service package that includes local connectivity elements in the United States, ICS providers (such as SingTel) must obtain local connectivity in the United States on cost-based, non-discriminatory terms. The ability to obtain such competitive connectivity if the Proposed Consolidation proceeds will be highly unlikely, given the strong potential for the merged entity to leverage its market power against the interests of Singapore.
- Access to customers – the need for local connectivity on reasonable terms in the areas serviced by SBC is compounded by the fact that most MNCs are located in SBC’s ILEC region. Consequently, there is no alternative for ICS providers such as SingTel to bargain for competitively priced services. These are critical, “Silicone Valley” placed businesses: the type of MNC clientele that can directly impact on the economic viability of individual operators who service such MNCs, as well as the overall status of an ICT-dependent economy like Singapore.
- Lack of alternatives – there are virtually no alternatives to market concentration of the merged entity. As such, the ability and incentives to leverage its market power to the detriment of ICS in Singapore will be unchecked.
- Monopoly conduct – The Proposed Consolidation would virtually eliminate SBC as a credible entrant into the ICS market. This is in addition to SBC’s

near-monopoly control over Special Access Services as an essential upstream input for SingTel and other Singaporean telecommunications operators. The ability and incentive to leverage market power in the form of discriminatory behaviour will be inevitable.

- 5.12 The implications of the harm to the ICS market have similarly been highlighted by players like BT Americas Inc and BT Infonet USA in its submission to the FCC in the matter of the Proposed Consolidation.
- 5.13 The market power of the merged entity will effectively give it control of a vast segment of the entire transmission network into the United States. This can be assumed in light of AT&T's current backhaul links and cable interests landing in Singapore, which SingTel understands to be as follows:
- 5.14 As previously highlighted by SingTel during the ICS exemption proceedings before the IDA, AT&T has significant ownership of in the Trans-US cables, combined with its comprehensive domestic infrastructure in the United States. It is also significant that MCI enjoys ownership interests on a similar scale. This means that the following issues will be compounded by the fact that the AT&T/SBC and MCI/Verizon mergers are occurring at the same time:
- (a) the size of AT&T's home market allows it to derive economies of scale and out-price any Singapore operator, due to the low cost structures and pricing of their half-end of their international capacity;
  - (b) the resulting ability to provide ICS at rates that cannot be matched by Singapore operators in the Singapore-US routes; and
  - (c) the cost-savings derived from their US home markets are many times greater than the cost savings obtained from the comparatively small Singapore market.
- 5.15 The result is that Singapore operators are already in a far less competitive position than AT&T when competing for the provision of ICS to customers on a global basis.
- 5.16 The result for Singapore will be a leveraging of the above market power of the merged entity into the Singapore market. This is not limited to the detriment of individual operators, in terms of forcing them to submit to the terms and conditions on which the merged entity offers. Rather, it will be to the overall detriment of Singapore's status and ambitions as a global ICT hub. The higher costs that Singaporean operators will face in the ICS market as a result of the Proposed



Consolidation will directly impact on Singapore's international competitiveness, both regionally and globally.

### **Lack of equivalence in local connectivity pricing will remain entrenched**

5.17 SingTel is concerned about the lack of equivalence in the prices, terms and conditions for access to LLCs in Singapore and the United States.

5.18 SingTel is required to provide LLCs to Requesting Licensees as a Mandated Wholesale Service (MWS). SingTel provides Requesting Licensees with a 30% and 50% discount off current retail prices for FLLCs and TLLCs respectively. AT&T has previously supported the designation of SingTel's LLCs as a MWS:

*“Singapore's specific commitments under the recently signed US-Singapore Free Trade Agreement...will obligate Singapore to ensure that major suppliers make available 'local circuit services' on terms and conditions under pricing structures, and at rates, that are reasonable, non-discriminatory (including with respect to timeliness) and transparent.”<sup>8</sup>*

5.19 Singapore operators do not currently have access to Special Access Lines in the United States on equivalent or similar terms as those offered by SingTel to operators in Singapore. Local connectivity is an essential component in the provision of ICS – Singapore operators must contract with third party operators (such as SBC) for the supply of local connectivity where it lacks a local network presence.

5.20 Singapore operators must obtain access to Special Access Lines in the United States on reasonable prices, terms and conditions in order to compete effectively in the provision of services in the ICS markets.

5.21 The cost of Special Access Lines is a significant component of the total cost of providing a ICS service to the United States. AT&T itself has acknowledged that this is the case. It has stated:

*“In many instances, the special access circuits required to connect the end user to the IXC network represents the majority of the total cost of the circuit. That is, more than 50% of the total cost of a frame relay drop or private line circuit is represented by the cost of the last mile that the IXCs must pay to the*

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<sup>8</sup> AT&T Asia/Pacific Group Limited, *Designation of Singapore Telecommunications Ltd's Local Leased Circuits as Mandatory Wholesale Service*, 30 June 2003, page 3.

*ILECs. . . . The price of these corporate data services is falling at a faster rate than the price of special access, suggesting that, over time, access is becoming a larger portion of the overall spend and that the Bells' cost advantage versus the IXC's will continue to increase".<sup>9</sup>*

- 5.22 The prices for Special Access Lines in the United States remain high relative to the prices for LLCs in comparable jurisdictions such as the United Kingdom.<sup>10</sup> Further, there is virtually no competition for the supply of Special Access Lines within SBC's network boundaries and SBC continues to make a supra-competitive return on its special access services.<sup>11</sup> It therefore clear that SBC has a significant degree of market power in the provision of Special Access Lines.
- 5.23 The lack of competition in the supply of Special Access Lines by SBC means that the merged entity will be able to leverage its market power in respect of the supply of Special Access Lines into the MNC segment where AT&T competes with Singapore operators in the supply of ICS. This may result in a detriment to competition in Singapore markets that depend on access to Special Access Lines for the provision of ICS.
- 5.24 On this basis, the IDA should carefully examine the extent to which the merged entity will be able to leverage its market power in the provision of Special Access Lines into the MNC segment to the detriment of competition in Singapore markets.

### **The Proposed Consolidation is against Singapore's interests as a global ICT hub**

- 5.25 The consideration of the Proposed Merger in the United States has focused on the potential benefits that the merged entity can offer US consumers. These considerations are contrary to the public interest in Singapore. By exercising its powers under the Code and the Consolidation Guidelines, the IDA has the opportunity to address the adverse implications of the Proposed Consolidation on Singapore's national interests. A thorough regulatory examination by the IDA is therefore critical in respect of the ability of the merged entity to leverage its market power in

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<sup>9</sup> Quoted in BT Americas Inc. and BT Infonet USA, Reply of Comments of BT America Inc. and BT Infonet USA in the matter of SBC Communications Inc. and AT&T Corp. – Applications for Approval of Transfer of Control, WC Docket No. 05-65, 10 May 2005, page 8. Original source, UBS Investment Research, "Q-Series™: Paying to Play?" (April 2, 2004) ("UBS Access Report"), page 22, cited in Unbundled Access to Network Elements, WC Docket No. 04-313, AT&T Reply Comments, Reply Declaration of Lee L. Selwyn on behalf of AT&T Corp. (filed Oct. 19, 2004) ("AT&T Triennial Remand – Selwyn Reply Declaration"), page 40.

<sup>10</sup> Ibid, page 9.

<sup>11</sup> Ibid, page 9.

Singapore, to the detriment of Singapore Licensees and the objective of establishing and maintaining Singapore as a competitive, global ICT hub.

- 5.26 In the regulatory review processes that have been undertaken in the United States, it is evident that AT&T and SBC have vigorously pressed the argument of how the Proposed Consolidation will benefit US consumers and industry. This directly correlates with the adverse implications of the Proposed Consolidation in the Singaporean market. A clear example of the regulatory considerations being pursued in the United States is the shift away from scepticism of large telecommunications mergers. As one Congressman before the House Judiciary Committee on recent developments in telecommunications has noted, long distance has essentially been eliminated as a viable market in the United States. Instead, it is considered that the focus should now shift towards enabling US entities to compete with foreign competitors – regardless of the opportunities by a merged entity to leverage its market power to the detriment of competition in foreign markets:

*“...I believe we need to focus on the fact that these mergers [AT&T/SBC and MCI/Verizon] may enable the combined companies to compete more effectively, not only against the cable, wireless and satellite industries, **but against formidable foreign competitors with massive economies of scale...**”<sup>12</sup> (emphasis added)*

- 5.27 The regulators in the United States, and in all other countries affected by the Proposed Consolidation, are not concerned with the substantial lessening of competition that will arise from the merged entity leveraging its market power in Singapore. The implications for Singapore are immaterial to those deliberations. Indeed, the submission made by BT to the FCC highlighting the competitive harm that would arise from the merged entity’s market power in the ICS market and Internet backbone services has been close to ridiculed by United States operators such as VoxSurf. According to BT, its submission was made out of the concerns of its multi-national business customers and the higher prices, lower quality and reduced innovation that would arise from a consolidation of control of the Internet backbone:

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<sup>12</sup> Press Release, Congressman John Conyers, Jr, Ranking Member, US House Judiciary Committee, *Conyers Asserts Role for Antitrust in Telecommunications*, 21 April 2005.

*“ ‘All we are doing is presenting the concerns of our [multi-national] business customers to the FCC’, said a BT spokesperson. ‘We just want to make sure that the appropriate checks and balances are in place’ ”.*<sup>13</sup>

## **Competition for Internet Backbone Services**

### **Singapore is already disadvantaged in the Internet services segment**

- 5.28 Previously, non-US network providers had been required to meet the costs of international internet carriage both to and from the United States, regardless of from where the connection was generated. The significance of these Internet charging arrangements cannot be underestimated, as in 2000 they were estimated to comprise 95% of global telecommunications traffic. The result was that non-US Internet users – including Singapore consumers - paid more for Internet access than they would have under a more competitive regime.
- 5.29 To some extent, the APEC principals on international charging arrangements for internet services meant that the issue would potentially have become less relevant for SingTel. However, the competitive effects of the charging arrangements threatened to be totally undermined by the Proposed Consolidation and the MCI/Verizon merger.

### **Merger will increase concentration levels in the market for IASP services**

- 5.30 The market for IASP services is already far more concentrated in the United States than anywhere else in the world. This situation will become virtually duopolised by the Proposed Consolidation and the MCI/Verizon merger. Several commentators in the United States have already raised significant concerns about the virtual duopoly in the market for IASP services.<sup>14</sup> Both the Department of Justice in the United States

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<sup>13</sup> Telecommunications Online, *BT denies it wants to ‘block’ US market consolidation: VoxSurf points accusing finger at UK incumbent*, 25 May 2005.

<sup>14</sup> Comments of ACN Communications Services Inc, ATX Communications Inc, Bullseye Telecom Inc, Cavalier Telephone Mid-Atlantic LLC, Cimco Communications Inc, CTC Communications Corp, Gillette Global Network In, Granite Telecommunications LLC, Lightship Communications LLC, Lightyear Network Solutions LLC, Pac-West Telecomm Inc, RCN Telecom Services Inc, USLEC Corp and US Telepacific Corp in the matter of SBC Communications Inc. and AT&T Corp. – Applications for Consent to Transfer Control , WC Docket No. 05-65, 10 May 2005, page 8.

and the European Commission has rejected previous merger attempts that would increase market concentration levels for IASP services.<sup>15</sup>

- 5.31 The virtual duopoly will also have significant implications for Singapore operators. For SingTel, the Proposed Consolidation and the MCI/Verizon merger will increase SingTel's cost base and the threat of further anti-competitive conduct in the form of price squeezes, refusals to supply and discriminatory pricing. While the decreasing price of international connectivity over the past five years is inherently pro-competitive, international connectivity is only one component or input that is required for the provision of internet services. As such, the anti-competitive effect in the market for IASP services of the Proposed Consolidation and MCI/Verizon merger will undermine the pro-competitive benefits associated with decreases in the price of international connectivity.
- 5.32 The result is that the potential for Singapore to develop as an ICT hub is directly threatened by the Proposed Consolidation. This is yet another example of leveraging market power in the Singapore market by the merged entity, through the creation of a market structure in respect of IASP services with virtually no feasible competition. The Proposed Consolidation is contrary to the public interest on this basis – the economic interests of consumers in Singapore will be undermined if Singapore is restricted from developing as an ICT hub.

## 6. CONCLUSIONS

- 6.1 Several commentators have noted that it would not be unreasonable to impose conditions on the Proposed Consolidation. Singapore considers that it is entirely compatible with the concerns in the United States for the IDA to exercise the powers available to it to regulate the merged entity, if the Proposed Consolidation proceeds.
- 6.2 For example, submissions have called on the Department of Justice or FCC to impose conditions to lessen the impact of the market power that will arise from a combination of the Proposed Consolidation and the MCI/Verizon merger. Examples provided have been divestiture requirements to sell off network components to competitors. Members of the Senate Judiciary Committee in the United States have indicated they

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<sup>15</sup> *Department of Justice v WorldCom Inc. and Sprint Corporation* (see <http://www.justice.gov/atr/cases/f5000/5051.pdf>); *United States of America v WorldCom Inc and Intermedia Communications Inc* (see <http://www.justice.gov/atr/cases/f7000/7042.pdf>); European Commission, *Commission Decision of 28 June 2000 declaring a concentration incompatible with the Common market and the EEA Agreement*, Case No COMP/M.1741-MCI WorldCom/Sprint, 28 June 2000.

will recommend “specific pro-competitive merger conditions”. In particular, some representatives are most concerned with the impact of the mergers on GNCs:

*“Perhaps the most obvious area of concern is the so-called ‘enterprise market’ – the sector of the market comprised of large businesses with sophisticated telecommunications needs. In this market sector, all four of the merging parties currently compete and so competition there will be affected by these deals”.*<sup>16</sup>

- 6.3 Similarly, the Consumers Union of America has proposed that SBC and Verizon should be required to offer services on a standalone basis on regulated prices.
- 6.4 SingTel submits that the interests of Singapore operators and consumers will be best served by rejecting the Proposed Consolidation. SingTel also considers that the IDA should require the applicants to submit a Long Form Consolidation Application to enable the evidence submitted by AT&T to be fully scrutinised by the IDA and the Singapore telecommunications sector.
- 6.5 In addition to SingTel’s comments above, SingTel submits that if the IDA is to allow the Proposed Consolidation to proceed, the following conditions must be imposed:
- (i) find the merged entity dominant in Singapore, thus requiring AT&T Singapore and any of its related corporations to file tariffs for their services on an unbundled basis, and to ensure that they meet the Dominant Licensee obligations with respect to pricing conduct in the Code; and
  - (ii) require AT&T Singapore and any of its related corporations to declare its international transmission, long distance transmission and local loop “input” prices; and
  - (iii) impose a condition on the acquisition of AT&T Singapore that they must offer long distance transmission and local loops in the United States at a regulated rate, the benchmark being the discounted prices that SingTel is required to offer under its LLC tariffs; and
  - (iv) find SingTel non-dominant on the Singapore-US route.

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<sup>16</sup> Mergers and Acquisitions Law Report, *Senators seek to impose conditions on SBC/AT&T, Verizon/MCI mergers*, 21 March 2005.