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By Fax (65 6211 2116) and Email

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Attn: Ms. Aileen Chia
Director, (Competition and Market Access)
Infocomm Development Authority of Singapore
8 Temasek Boulevard
#14-00 Suntec Tower Three
Singapore 038955

Re: Request by Singapore Telecommunications Limited for Exemption from Dominant Licensee Obligations with Respect to the International Capacity Services Market

Dear Ms. Chia:

On behalf of AT&T Worldwide Telecommunications Services Singapore Private Limited and its parent corporation AT&T Corp. (collectively, "AT&T"), I am pleased to submit these comments on the Info-Communications Development Authority of Singapore's ("IDA") Consultation Paper "*Request by Singapore Telecommunications Limited for Exemption from Dominant Licensee Obligations with respect to the International Capacity Services Markets*," issued on March 4, 2004 (the "*Consultation Paper*").

The Singapore telecommunications market became fully liberalized in April 2000, resulting in over 600 licenses having been issued, to a combination of Facility-Based Operators ("FBO") and Services-Based Operators ("SBO"). AT&T applauds Singapore for taking this important move to promote telecommunications competition, and in turn, to advance the benefits such competition brings to consumers and the economy. This strategic effort by the Singapore Government has proved successful in attracting new entrants, and bringing with them substantial investments to Singapore. The confidence of many entrants to invest in Singapore has been based, in part, on the effort IDA has made to adopt regulations

and procedures based on generally accepted international best practice principles. To achieve the full goals of liberalization, the ongoing pursuit of pro-active regulation by IDA is vital, until there is a fully competitive environment for all players. AT&T appreciates the work of the IDA to create a vital telecommunications market, in which the ultimate goal will be for effective market forces to replace the need for regulation. Singapore has not yet reached that goal, as the developing competitive telecommunications market is not yet mature.

I. Background

On March 2, 2004, the IDA received a request from Singapore Telecommunications Limited (“SingTel”) for a grant of exemption under Section 2.6.1 of the Code of Practice for Competition in the Provision of Telecommunications Services (“the Code”) from the Dominant Licensee obligations with respect to the International Capacity Services (“ICS”) Market (the “Exemption Request”). Two days after receiving the Exemption Request, the IDA issued the *Consultation Paper* to provide an opportunity for public comment.

In the Exemption Request, SingTel identified, but did not limit to, the following ICS as those to which the Exemption Request relates¹:

- (i) *International Private Leased Circuits;*
- (ii) *International Frame Relay;*
- (iii) *International ATM;*
- (iv) *International IP VPN;*
- (v) *Domestic Backhaul;*
- (vi) *Satellite TV Uplink/Downlink;*
- (vii) *Very Small Aperture Terminal (VSAT) Service;*
- (viii) *Digital Video Broadcast (DVB) IP;*
- (ix) *Leased Satellite Bandwidth; and*
- (x) *IP Transit Service.*

SingTel then went on to request exemptions from the following Dominant Licensee obligation provisions, without limitation, of the Code²:

- (i) *Section 3.3.1 – Duty to Provide Service on Demand*
- (ii) *Section 3.3.2 – Duty to Provide Service at Just and Reasonable Prices, Terms and Conditions*
- (iii) *Section 3.3.3 – Duty to Provide Service on a Non-discriminatory Basis*
- (iv) *Section 3.3.4 – Duty to File and Provide Service Pursuant to Tariffs*
- (v) *Section 3.3.5 – Duty to Provide Unbundled Telecommunications Services*
- (vi) *Section 5.8.1 – Duty to Allow Resale of End User Telecommunications Services*
- (vii) *Section 5.8.2 – Duty to Allow Sales Agency*
- (viii) *Section 5.8.3 – Duty to Tariff and Make Wholesale Telecommunications Services Generally Available*
- (ix) *Section 7.2.1 – Pricing Abuses, including subsections 7.2.1.1 to 7.2.1.3*
- (x) *Section 7.2.2 – Other Abuses, including subsections 7.2.2.1 to 7.2.2.2*

¹Exemption Request at ¶1.2.

² Exemption Request at ¶1.3.

SingTel claimed the following justification for exemption from these Dominant Licensee obligations³:

- (i) *that the continued application of the Dominant Licensee obligations are not necessary to protect end users; and*
- (ii) *that continued application is not necessary to preserve effective competition amongst License.*

AT&T emphasizes the need for IDA to handle SingTel's Exemption Request with extreme caution and diligence, given the harmful impact that premature relief to SingTel would have on competition. Exemptions that would allow the range of behavior requested by SingTel – such as exemption from the duty to provide service on demand, or exemption from the duty to provide service on a non-discriminatory basis -- can only be appropriate if the relevant market is proven to be fully competitive and mature.

IDA must reject SingTel's request for failing to provide a minimum set of verifiable data to support its request.⁴

II. SingTel Fails to Provide the Minimum Amount of Verifiable Data to Support its Request

SingTel has the burden to prove that the Dominant Licensee obligations are no longer necessary. Such proof must be in the form of specific and verifiable data that supports the request, and that in turn could be analyzed by both the IDA and the industry impacted by the request. Because SingTel fails to provide the data required by the Code to support its broad and audacious request for relief, IDA must reject the Exemption Request.

The Exemption Request was filed pursuant to Section 2.6.1 of the Code, which places the burden of proving the merit of the request squarely on the Dominant Licensee. Specifically, SingTel “must demonstrate that continued application of the provision to a specific facility and/or service is not necessary to protect end users or promote and preserve effective competition amongst Licensees. The Dominant Licensee “*must provide verifiable data to support its request.*” (emphasis added). IDA clarifies in Subsection 2.5.2.2 of the Code that a minimum set of verifiable data should include: a precise definition of the relevant market, the Licensee's market share, the level of concentration in the market, and an analysis of both supply side and demand side constraints on the relevant market.

Stunningly, SingTel's request contains none of the fundamental requirements at a level that withstands even initial scrutiny. SingTel's definition of the ICS relevant market is based on product market groupings that provide no empirical evidence of substitutability between the wide set of identified products. A mere example of SingTel's logical absurdity and lack of evidence is its suggestion that “domestic backhaul” is a substitute for products such as International Private Leased Circuits, particularly given that domestic backhaul is a network component of an IPLC. An equally profound example of the inadequacy of the Exemption

³ Exemption Request at ¶1.4.

⁴ Indeed, IDA should have required SingTel to resubmit a minimally qualified application before initiating this consultation proceeding.

Request is SingTel's dismissive assertion, again without supporting analysis, that it should be non-dominant for ICS at the retail and wholesale level.⁵ Although SingTel recognizes that the product market may be further split into separate functional market of retail and wholesale, there is no further substantive analysis of SingTel's dominance in these separate functional markets. All SingTel does is to acknowledge the concept of functional markets and list the possible retail and wholesale operators. Neither retail ICS nor wholesale ICS services are fully analyzed or categorized into their respective markets by SingTel.

In a manner similar to its inadequate product market definition, its geographic market definition vacillates between a claim that the "ICS" market is either "regional" or "global" – again without empirical proof to suggest why either is more justified than a national or route-by-route definition. Through these alternative postulations of what the geographical market might be, SingTel did not make an attempt to define that market with verifiable facts.

Finally, either because SingTel never precisely establishes the basis for the products or geography it proposes to place within the ICS relevant market, or perhaps because its share would still be very high even using the broadest market definition assumptions, SingTel fails to quantify its market share and instead relies on qualitative assertions that the market is "vigorously competitive." Even though regulatory and anti-trust authorities recognize that market share is not the sole indicator of dominance, it remains the most important presumptive screening factor and should be considered in conjunction with other relevant factors. However, SingTel does not provide any threshold market share data or analysis in the Exemption Request to support its case for exemptions to be granted by IDA. Without this threshold data of market share separately in the wholesale and retail markets, or other empirical measurements of market concentration, IDA cannot have a sufficient record upon which to consider – let alone to grant -- the potentially harmful Exemption Request.

What SingTel submitted for review is not verifiable data, and it is not minimally sufficient to consider or justify a bold request to broadly deregulate SingTel at the wholesale and retail levels. The effects of an unsubstantiated exemption from Dominant Licensee obligations for SingTel would have fundamental and far-reaching impact on competition in the Retail ICS and Wholesale ICS markets, beginning with relief of the duty to provide service on demand.

III. SingTel's Selective Citation of Non-Dominance Decisions in other Jurisdictions Only Further Demonstrates the Lack of Merit of the Exemption Request

In the absence of verifiable facts, SingTel relies in large measure on quotations from the dominance review decisions from other jurisdictions, conveniently disregarding that those reviews were based on the specific facts of entirely unrelated countries and the competitiveness of different market participants in those unrelated countries.⁶ Although

⁵ SingTel's "proof" of effective competition at the wholesale functional level for ICS is that "competing ICS operators provide services such as IRU, IRS, backhaul etc." Exemption Request at ¶4.20. This is barely a description of wholesale competition, and far from verifiable data proving the presence of effective competition for wholesale services.

⁶ SingTel draws references to examples of non-dominance decisions in other jurisdictions as grounds for the exemptions, but often fails to point out, inadvertently or deliberately, that these decisions were made under quite

SingTel's cherry-picked reliance on the results of foreign decisions do not improve the merit of its request, it does provide an opportunity to discuss the components of a rigorous competition review of a non-dominance reclassification request.

SingTel most frequently refers to the Office of the Telecommunications Authority ("OFTA") in Hong Kong. OFTA's dominance review framework as set out in its "*Guidelines to Assist the Interpretation and Application of the Competition Provisions of the FTNS Licence*" ("the Competition Guidelines"), issued in 1995, provides a complete set of review criteria in Hong Kong, and that should be equally applicable in Singapore. This is partly because the Competition Guidelines incorporate the well-established regulatory principles applied in the US, the EU and Australia, and partly due to the similarities in the market environments of Singapore and Hong Kong. The primary elements of the OFTA dominance review framework are:

- Definition of relevant market, followed by consideration of the matters below.
- Degree of market concentration and market shares of licensees.
- The power to implement decisions.
- The height of entry barriers.
- Product differentiation.
- The nature of corporate relationships.

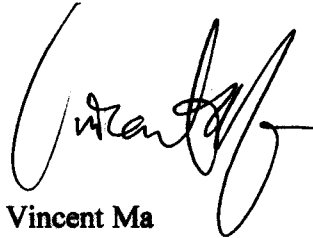
Applying the first two elements of OFTA's dominance review framework to the Exemption Request, as discussed above, it is clear that SingTel has not adequately or correctly defined the relevant markets within which to undertake a review of the exemptions sought. More significantly, notwithstanding SingTel's burden of proof, SingTel fails to provide in the Exemption Request any forms of measurement of market concentration and the respective market shares of licensees.

To decide in a manner consistent with international generally accepted competition law, recognized regulatory opinion and economic standards which formed the basis of IDA's Code, the IDA should reject the Exemption Request on its face, and instruct SingTel to re-apply when it can provide a minimal threshold of verifiable facts to support its request. To decide otherwise would undermine confidence in IDA's respected role as a guard against anti-competitive practices. It would also raise significant concerns with Singapore's compliance with its trade agreement commitments to the extent IDA relieved SingTel, a major supplier of essential facilities, from critical *ex ante* regulatory controls.

different circumstances. For example, it was not until the market share of Reach Networks Hong Kong Limited had dropped below 25% that OFTA decided to lift all of the dominance obligations from its external bandwidth services.

For the foregoing reasons, the IDA should deny the Exemption Request.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Vincent Ma", written in a cursive style.

Vincent Ma