



**RESPONSE TO THE IDA'S PUBLIC CONSULTATION ON REQUEST BY  
SINGAPORE TELECOMMUNICATIONS LIMITED FOR EXEMPTION  
FROM DOMINANT LICENSEE OBLIGATIONS WITH RESPECT TO THE  
INTERNATIONAL CAPACITY SERVICES MARKET PURSUANT TO  
SUBSECTION 2.6.1 OF THE CODE OF PRACTICE FOR COMPETITION  
IN THE PROVISION OF TELECOMMUNICATION SERVICES**

**ISSUED ON 4 MARCH 2004**

**Submission Date: 15 April 2004**



## **BT RESPONSE TO IDA PUBLIC CONSULTATION ON SINGTEL'S REQUEST FOR EXEMPTION FROM DOMINANT LICENSEE OBLIGATIONS IN INTERNATIONAL CAPACITY SERVICES**

### ***EXECUTIVE SUMMARY***

In seeking exemption, SingTel is required to prove that the dominant licensee provisions are no longer necessary to protect end users or preserve effective competition. BT would submit that SingTel's submission fails to achieve this. Specifically, SingTel has failed to provide an accurate economic market definition and has failed to provide adequate analysis and data to prove that the market (or markets) is competitive.

If SingTel wishes to pursue the claim for exemption, it should be required to present a properly argued and verifiable submission. The shortcomings of SingTel's submission and the areas which should be addressed include (but are not limited to) the following: -

- Market definition
  - further analysis is needed to establish true economic and commercial substitutes between the list of ICS services;
  - a distinction must be made between wholesale and retail markets;
  - domestic backhaul should not be included in the list of ICS
  
- Competitiveness
  - SingTel must support its exemption request with verifiable data, including market share information and international benchmarking studies

Any premature lifting of dominant licensee requirements on SingTel with respect to ICS would be detrimental to the industry, consumers and investors as it could potentially negate the benefits of competition thus far and hinder the development of future competition. As such, careful consideration and further analysis need to be undertaken.



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### **1 INTRODUCTION**

- 1.1 BT thanks IDA for the opportunity to comment on Singapore Telecommunications Ltd (SingTel) submission in requesting an exemption from dominant licensee obligations in the provision of International Capacity Services (ICS).
- 1.2 BT's comments are respectfully submitted to the IDA in the following.

### **2 GENERAL COMMENTS**

#### ***SingTel has not provided verifiable data to support its exemption request***

- 2.1 SingTel, in having submitted this request for exemption from dominant status in the provision of International Capacity Services (ICS), has initiated a process of market review. A key component of any assessment of markets in the review process is the use of verifiable market data, which would include information on market share figures, price bench-marking etc. Section 2.6.1 of the Telecom Competition Code (2000) requires that a dominant licensee seeking exemption from any special provisions must provide verifiable data to support its request.
- 2.2 In the absence of such verifiable market data, any attempt to arrive a decision on SingTel's exemption request would be a meaningless exercise. BT would suggest that the IDA either requests SingTel to conduct a more comprehensive market analysis complete with independent, verifiable data, or conducts an independent and comprehensive analysis of the competition in the ICS market itself and seeks public comment on its own analysis.

#### ***Market share is a prerequisite in any analysis of a market's competitiveness***

- 2.3 In Section 1.4 of its submission, SingTel outlines the criteria laid down in the Code to grant an exemption from Dominant Licensee obligations. These are, predominantly, that the obligations are no longer necessary to *protect end users* or to *preserve effective competition*. The onus of proving these two very important and key concepts lies with the dominant licensee. In BT's opinion, SingTel has not only failed to prove its case, but has also made some fundamental errors in its market definition and competitiveness analysis. Moreover, although SingTel maintains that competition in the ICS market is "vigorously competitive", it fails to back this assertion with one market share figure, with one international price benchmarking study or with any real analysis to demonstrate effective competition.
- 2.4 SingTel also points to the large number of competitors as evidence of a competitive market. BT would submit that the actual number of competitors is not strictly relevant – it is the effectiveness of competitors that is important and this can be demonstrated, inter alia, by analysing market shares as well as the impact those competitors are having on the market place and on the behaviour of the dominant operator.
- 2.5 The statement that SingTel is in a less competitive position when competing for the provision of international capacity on a global basis is inaccurate. SingTel is a significant global player. According to its own website, "SingTel is Asia's leading communications group with operations and investments in more than 20 countries and territories around the world". It is not in a disadvantaged position on the world stage.

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***Regulation should be relaxed because there is effective competition, and not because there is an absence of market failure***

- 2.6 SingTel bases its submission on the premise that “*market forces should be relied upon unless there is a market failure*”<sup>1</sup>. This is an inaccurate view of how regulation works. Regulation should remain in place until market forces and general competition law are deemed sufficient to correct any potential market failure. Therefore, there must be effective competition in place before regulation can be relaxed. If there is any chance of market failure in any part of a market, regulation, to some extent, must continue to pre-empt such failure. It does seem that Singapore remains some way from reaching such a position at present. There is no indication that the “competitive price” – a benchmark for effective competition, has been reached in Singapore and in the markets identified by SingTel.
- 2.7 The European Commission has adopted guidelines on market analysis and the assessment of Significant Market Power (SMP) as required by Directive 2002/21/EC on a new common regulatory framework for electronic communications service (the Framework Directive). The guidelines set out the principles that national regulatory authorities will use to define markets and analyse effective competition. BT would refer the IDA to these documents as a useful resource.<sup>2</sup>

***Further market analysis needed to establish true economic and commercial substitutes between the services***

- 2.8 Any market review consists of two strands – market definition and analysis of competition in that market. SingTel submits a very broad market definition for ICS, consisting of 10 individual products/services. As regards the product market, analysis requires an assessment of both demand-side and supply-side substitution. BT would question the legitimacy of SingTel's analysis, in particular its conclusions on substitution. For example, although there may be a degree of substitutability between managed services using technologies such as frame relay, ATM and IP VPNs, the same may not apply between IPLCs-IRUs and satellite-cable.
- 2.9 BT would suggest that a more in-depth market analysis be conducted to establish true economic substitutes, including demand-side and supply-side substitution analysis. Moreover, although convergence is relevant to consider, experience shows that it should not be overly relied upon in forward looking analysis. It may indeed create some degree of overlap between services but this overlap may only take place at the fringes and may not be enough to establish full substitutability.
- 2.10 As regards geographic market, SingTel submits that the market is regional or global. This may be the case for some wholesale ICS services, but BT would submit that it is not necessarily the case for retail services. There may be bottlenecks on certain routes where SingTel remains the dominant operator and, thus, regulation would need to be continued to prevent market failure. It is also unlikely that domestic backhaul could be classified as a regional or global market.

***SingTel's use of quotes from the OFTA Decision in its submission is questionable***

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<sup>1</sup> Section 2.2 of SingTel's submission

<sup>2</sup> These documents are available on the following websites: -

- <http://europa.eu.int/comm/competition/liberalisation/others>
- [http://europa.eu.int/information\\_society/topics/telecoms/regulatory/new\\_rf/index\\_en.htm](http://europa.eu.int/information_society/topics/telecoms/regulatory/new_rf/index_en.htm)
- [http://europa.eu.int/information\\_society/topics/telecoms/regulatory/maindocs/comgreen/index\\_en.htm](http://europa.eu.int/information_society/topics/telecoms/regulatory/maindocs/comgreen/index_en.htm)

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2.11 SingTel has selectively applied the OFTA decision on Reach's dominance exemption to its advantage. Comparing the SingTel and Reach submission, BT notes that there are substantial differences between the two submissions. Some examples are highlighted below: -

SingTel Submission	Reach Submission
Exemption sought for 10 International Capacity Services, which includes IPLCs, international frame relay, ATM, IP-VPNs, domestic backhaul, satellite TV, VSAT, digital video broadcast, leased satellite bandwidth, IP transit	Exemption sought for external bandwidth service, i.e. IPLCs
SingTel is licensed for both domestic and international services	Reach is licensed for international services only
Omits verifiable data, e.g. market share figures, price benchmarks	Verifiable data provided, e.g. market share figures, pricing trends

**3 SPECIFIC COMMENTS**

***International Capacity Services (ICS) must be defined***

3.1 Section 1.2 of SingTel's submission does not provide an economic definition of International Capacity Services (ICS) but has listed 10 services which it considers to be ICS. Any market review should be preceded by defining the market, together with an identification of the services that serve the market segment in review. The market definition process is fluid and may change as technological and market conditions evolve. A number of markets and sub-markets may be identified and it is important that the final analysis is forward-looking and dynamic. Once the market is defined, a thorough analysis must take place of the competitiveness of each market or market segment. One of the most important factors to consider in assessing whether a licensee is dominant in a particular market is the evidence of market shares.

***A distinction should be made between the wholesale and retail markets***

3.3 In Section 1.2 of SingTel's submission, SingTel has listed a total of 10 ICS markets for which it is seeking exemption from dominant licensee obligations, without distinction as to whether the services are offered on a retail or wholesale basis. Whilst in most market review assessments, this distinction between wholesale and retail markets would be made, BT notes that SingTel, in its submission and assessment of the market, has classified a number of sub-markets but claims that these are not separate markets (when some of these markets could indeed be separate.)

3.4 In the absence of a thorough analysis of the market, it would be premature to accept SingTel's claims that the 10 ICS services listed form a single market. This approach is inconsistent with the IDA's licensing framework acknowledging the existence of separate markets for wholesale and retail services by categorisation of facilities and service based licences. BT submits that further classification of the services into retail and wholesale markets is necessary before an analysis can be undertaken to assess the competitiveness of each of the markets identified.

3.5 In fact, SingTel also acknowledges in paragraph 4.20 of its submission that "... with respect to ICS, the product dimension may have two levels – a retail functional level and a wholesale functional



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*level...* Market definition and analysis should be performed at each level for each product. Some products may not have a retail level (e.g. domestic backhaul, IRUs) and for others, there may be an overlap between retail and wholesale, but the distinction must be made and competitiveness analysis performed on each market identified.

***IDA should carefully consider the consequence of any exemption in terms of whether it would promote and preserve effective competition amongst licensees***

3.6 SingTel, in section 1.3 of its submission, has listed 10 duties for which it seeks exemption<sup>3</sup>, *without limitation*. BT would like to highlight that any exemption granted to SingTel should be specific and not *without limitation*, as provided for under section 2.6 of the Telecom Competition Code<sup>4</sup>.

3.7 The existing dominant licensee requirements placed on SingTel have benefited the industry in stimulating competition by allowing new entrants to obtain services from SingTel on just and reasonable terms. For example, the requirements have stimulated competition in the provision of IPLCs by allowing resellers of IPLCs, under IDA's SBO Individual licence scheme, to obtain IPLCs from SingTel on a wholesale basis. In considering SingTel's exemption request, IDA would need to carefully consider whether the exemption would promote and preserve effective competition amongst licensees<sup>5</sup>, e.g. the impact on resellers of SingTel's IPLC services if SingTel was no longer required to offer IPLCs on a wholesale basis. Moreover, competition would also be affected if the obligation to provide service on a non-discriminatory basis was withdrawn. Any premature lifting of dominant licensee provisions on SingTel would be detrimental to the industry as it could potentially obliterate the benefits of competition thus far and impede the development of future competition.

3.8 Consequently, BT would urge the IDA to consider very carefully the effects of granting any relaxation of the existing requirements in relation to each service outlined in SingTel's submission.

### ***Domestic backhaul should not be included as part of the ICS market***

3.9 SingTel has included domestic backhaul as part of the ICS market. Section 4.9 of SingTel's submission states that *"backhaul is bundled or clustered with international capacity. It is efficient to provide both international capacity and backhaul in a bundle and hence it is supplied in that manner."* Domestic backhaul can become a bottleneck access to international capacity where access to backhaul networks is restricted by a monopoly supplier. SingTel owns a number of private cable

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<sup>3</sup> Exemptions sought include the following provisions of the Telecom Competition Code (without limitation): -

- Sections 3.3.1-3 : Duty to provide service on demand, at just and reasonable prices, terms and conditions and on a non-discriminatory basis
- Sections 3.3.4 - Duty to file and provide service pursuant to tariffs
- Section 3.3.5 - Duty to provide unbundled telecommunication services
- Section 5.8.1 - Duty to allow resale of end user telecommunication services
- Section 5.8.2 - Duty to allow sales agency
- Section 5.8.3 - Duty to tariff and make wholesale telecommunication services generally available
- Section 7.2.1 - Pricing abuses
- Section 7.2.2 - Other abuses

<sup>4</sup> Section 2.6 of Telecom Competition Code "... IDA will consider requests from dominant licensees to exempt them from specific requirements."

<sup>5</sup> Section 2.6.1 of Telecom Competition Code "... The dominant licensee 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."



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systems landing in Singapore, e.g. C2C, i2i, ArcAsia. BT understands that several operators have been denied access to cable landing stations for the provision of such backhaul services.

3.10 Fundamentally, domestic backhaul is not international capacity in itself but is an access link to international capacity from domestic sites and vice versa. Traffic conveyed via a domestic backhaul network is limited to its coverage and provision within the licensed territory. In addition, domestic backhaul is not a substitute of the other 9 ICS services listed but is an essential service in the provision of ICS. As such, BT submits that domestic backhaul should not be included as part of the ICS market. Most jurisdictions, including the UK, would consider backhaul to be a domestic service.

3.11 A recent USTR 2004 Report on Section 1377 Review of Telecoms Trade Agreements has identified the provision of access to wholesale transmission capacity (local leased circuits and submarine cable capacity) in Singapore as an area of competitive concern. An excerpt of the USTR report is reproduced below.

### **Access to Leased Lines and Submarine Cable Capacity**

Key countries of concern: Germany, India, Switzerland, Singapore

USTR is concerned that there still appear to be unreasonable and potentially discriminatory practices and lack of effective legal protection relating to access to wholesale transmission capacity (local leased lines and submarine cable capacity) in several countries. These practices hinder the ability of basic and value-added service suppliers to provide competitive services using these wholesale inputs. Regulatory intervention in Germany, India, and Singapore has helped address problems in the short term, but without clear rules backed up by a regulator with adequate enforcement powers, incumbent operators may succeed in blocking long-term solutions.

### ***SingTel is a strong pan-Asian operator and a significant global player***

3.12 In its submission, SingTel repeatedly states that it competes on a regional basis. With the acquisition of Optus, SingTel now has a core business in Australia. To tap the rapidly growing communications markets in the Asia Pacific, SingTel has strategic investments in leading communications service providers in Hong Kong, India, Indonesia, the Philippines, Taiwan and Thailand<sup>6</sup>, including operations in Malaysia, Vietnam, Japan, Korea and China. As no other Asian carrier is known to have such an extensive pan-Asian footprint, SingTel would be considered a dominant Asian carrier despite facing regional competition. Quoting BG Lee Hsien Yang, CEO SingTel in a 29 Feb 2000 press release, "*SingTel will continue to focus on its vision to be Asia's Dominant and leading-edge info-communications carrier*".

3.13 The statement that SingTel is in a less competitive position when competing for the provision of international capacity on a global basis is inaccurate. SingTel's Annual Report 2001/2002 claims that "... besides the Group's hubs in Singapore and Australia, there are 21 SingTel representative offices in 13 markets. These offices enhance the Group's ability to provide one-stop service for communication services involving multiple destinations." SingTel's presence extends to the US and Europe as well, making it a global player. It uses its powers over bottleneck access to leverage its market power elsewhere to the detriment of consumers in Singapore.

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<sup>6</sup> SingTel Annual Report 2001/2002



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3.14 As regards market outcomes as a measure of effective competition, BT would suggest that the increased cable capacity in Singapore simply mirrors other markets in Asia and around the world and the increased demand globally for communications services. Finally, SingTel advocates that ICS price trends are indicative of vigorous competition, but fails to provide any evidence of such a claim. More importantly, it fails to provide international price benchmarking studies to demonstrate Singapore's competitiveness via-a-vis other markets.

### ***Specific buying characteristics of corporate and government end users may constitute a separate market***

3.15 As part of its assessment of competitiveness, SingTel argues in section 2.7 of its submission that ICS are typically provided to corporate and government end users. This may be the case on a retail level but not, of course, on a wholesale level, which constitutes a separate market with different customers. In BT's opinion, the specific nature of these services and buyer characteristics of these customers may lead to the conclusion that they constitute a separate market. Indeed, in several cases (see Atlas IV/35.337 and BT-MCI IV/34.857) the European Commission found a separate market for advanced telecommunications services to corporate users. In this case, it would be inaccurate to extend any arguments on competitiveness to other parts of the ICS market(s), as SingTel has done.

### ***SingTel controls bottleneck facilities that provide a direct connection to end-users within Singapore***

3.16 IDA's consultation paper on "Designation of Singapore Telecommunications Limited's Local Leased Circuits (LLCs) as Mandatory Wholesale Services" issued on 30 May 2003 introduces local leased circuits as "important elements in the telecommunication market that are commonly used by telecommunication service providers to provide telecommunication services to wholesale and retail customers, and by business users to communicate with their local and international offices. Internet Access Service Providers (IASPs) also rely heavily on LLCs for connecting their customers to their central offices for provision of Internet Access Services."

3.17 Local leased circuits are required for the provision of international frame relay, ATM, IP VPN services for the purpose of connecting an end-user site to a service provider's frame relay, ATM, IP VPN node. IDA acknowledges in its Explanatory Memorandum issued on 16 Dec 2003 paragraph 15 that "there is a current lack of competition in the wholesale LLC market." Indeed, the excerpt reproduced below from an OECD report<sup>7</sup> on local access circuits shows that Singapore is increasingly falling behind in world ranking in terms of access pricing, bearing further testament to the lack of competition in this market.

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<sup>7</sup> OECD Report "Local Access Circuit Price Benchmarking for Key Asia Pacific Countries" (DSTI/ICCP/TISP/RD2003(2))

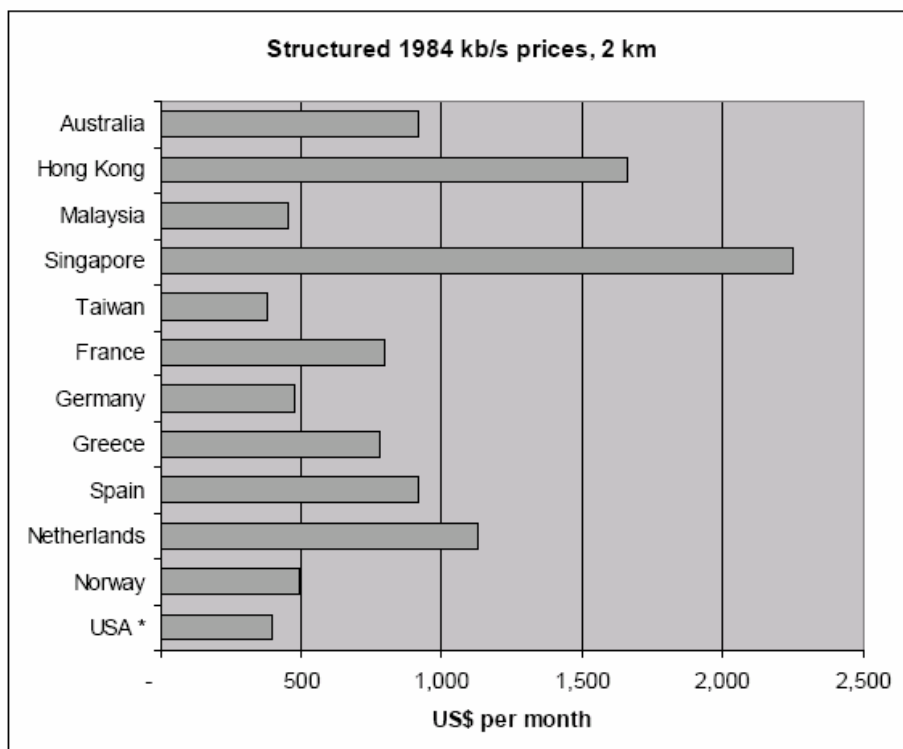


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**3.2 Comparing structured 2 Mb/s circuits**

One specific issue is the price for a structured 2 Mb/s (at 1984 kb/s) circuit. Benchmarking such circuits gives a somewhat different picture than for un-structured 2Mbps (2048 kb/s) circuits. It is important to note that most international circuits will require the use of a structured access circuit at the prices referred to in Figure 9.

**Figure 9: Comparing prices for structured 2 Mb/s service (1984 kb/s)**



3.18 Many FBOs and SBOs still continue to rely on SingTel for the supply of local leased circuits for the provision of international frame relay, ATM and IP VPN services. Any consideration to grant SingTel regulatory freedom in the provision of international frame relay, ATM and IP VPNs is premature pending decision on SingTel's local leased circuits as a mandatory wholesale service. Regulatory freedom should not be given to SingTel for the provision of international frame relay, ATM, MPLS services as it would give SingTel the ability to leverage its market power in the local leased circuits (upstream market) to engage in anti-competitive practices in the provision of international frame relay, ATM, IP VPN services (downstream market).

3.19 Again, SingTel's claim of the existence of other providers of international managed services simply indicates that there are alternative suppliers for such services but bears no correlation to the state of competition for these services. BT would once again stress the importance of market share figures as a starting point to assess the degree of competition in these markets.

***IPLCs and other managed services are not substitutable***

3.20 SingTel submits that IPLCs and other managed network services such as International Frame Relay, ATM, IP VPN, are substitutable for one another. In assessing the degree of substitutability, factors such as service characteristics, pricing and usage need to be considered. Service capability differences between IPLCs and managed services (as shown in the table below) would suggest that the services are poor substitutes for each other and should be considered to be separate markets.



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Indeed, in the UK, IPLCs and managed services are considered separate markets. Moreover, section 4.5 of SingTel's submission would infer that there are separate retail and wholesale markets for IPLCs.

IPLCS	Managed Services
Point-to-point connectivity	Any-to-any connectivity
No switching capability	Switching capability
No value added services	Value added services
Used by corporate end-users (retail market) and FBOs/SBOs for resale or inputs to their own services (wholesale market)	Used by corporate end-users (retail market)

### ***IRUs do not compete with and are not substitutes for IPLCs***

3.21 SingTel's argument in section 4.6 of its submission that IPLCs compete with IRU capacity is fundamentally flawed. IRUs are simply paper rights to international capacity, i.e. raw un-activated bandwidth with no transmission capability, whereas IPLCs are finished bandwidth services used for point-to-point conveyance of international traffic. As IPLCs are activated IRUs, they do not compete, nor are they substitutes for, the other.

3.22 Historically, members of the traditional cable consortia were typically the national operators. The national operators owned the half-circuits to the ocean mid-point ("wet segments") and also owned and operated local infrastructure ("dry segments"). A simple agreement governed the relationship between consortium members and there was no need for capacity sale. It could be said that these operators enjoyed true "indefeasible rights of use". With the evolution of cable ownership structures to co-owned and private systems, the rights of consortium members became less uniform, governed by complex Construction and Maintenance Agreements (C&MA) and Shareholders Agreement, respectively.

3.23 In co-owned and private cable systems, consortium members would have some ownership of the wet segment but local infrastructure would be owned and operated by nominated consortium members (terminal parties). In response to SingTel's claims in section 4.6 of its submission that it "does not have any actual or effective control over any of these consortia cable systems", it is worth noting that: -

- SingTel owns 3 of the 4 cable landing stations in Singapore<sup>8</sup>;
- SingTel is terminal party / network administrator for a majority of cable systems landing in Singapore;
- SingTel owns stakes in numerous private cable systems, e.g. i2i, C2C, ArcAsia.

### ***Substitutability between satellite and cable capacity***

3.24 SingTel submits that so far as Singapore is concerned, satellite capacity and submarine cable capacity are substitutable.<sup>9</sup> Satellite can generally be used to deliver 4 categories of applications –

<sup>8</sup> SingTel owns the cable landing stations at Tuas, Katong and Changi. The cable landing station at Tanah Merah is owned by Asia Global Crossing.

<sup>9</sup> Paragraph 4.13 of SingTel submission.

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video broadcast, telephony, networking and internet trunking applications. Satellite and cable are generally substitutable as technologies but are rarely substitutes from a commercial deployment (i.e. demand-side) perspective. It is estimated that 55% of leased transponder capacity in Asia today is used for video broadcast<sup>10</sup>. Due to regulatory issues, it is not feasible to deliver video over cable, in this case, making cable a poor substitute for satellite for video broadcast applications.

3.25 Generally, when determining the extent of substitutability between satellite and cable services, the following factors should be considered: -

- Feasibility of commercial deployment
- Service delivery capability – point-to-point, point-to-multipoint applications
- Quality of service issues
- Deregulation issues
- Service coverage
- Marketing alliances and consolidation

BT would suggest that a more thorough analysis of satellite/cable substitution needs to be undertaken before conclusions can be drawn on market definition.

## **4 CONCLUSIONS**

4.1 SingTel's submission requesting for exemption from dominant licensee obligations for the provision of ICS has its shortcomings. The submission has failed to provide an accurate definition of the market and to undertake a comprehensive analysis on the competitiveness of the market(s). These shortcomings need to be addressed and it would be premature at this stage of the consultation for the IDA to arrive a decision on SingTel's request.

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<sup>10</sup> Frost & Sullivan Report "Commercial Geo-stationary Satellite Transponder Market in Asia: Growing Profitability in a Demanding Market (A528-66)"