



**CABLE & WIRELESS**

**Comments by Cable and Wireless  
Submitted in Response to the Public Consultation on request by Singapore  
Telecommunications Limited for Exemption from Dominant Licensee  
Obligations with Respect to the International Capacity Services Market**

**15 April 2004**

**INTRODUCTION**

Cable and Wireless plc (C&W) is pleased to submit comments in response to the Public Consultation on Request by Singapore Telecommunications Limited (“SingTel”) for exemption from dominant licensee obligations with respect to the International Capacity Services (ICS) market pursuant to subsection 2.6.1 of the Code of Practice for Competition in the provision of telecommunications services. C&W is also submitting separately to this paper a Confidential Annex, which is not for publication by the IDA.

C&W is a leading supplier of global voice, data and IP services, operating networks and facilities in major business centers throughout the world. C&W has significant investments and presence in Singapore and the Asia Pacific region, and is committed to serving business customers by enhancing the choice, quality, value and global reach of the communications services it provides. C&W believes that this objective is consistent with the info-communications environment that IDA is seeking to create for businesses in Singapore.

C&W operates through two companies in Singapore: Cable & Wireless Global Pte Ltd., which has held a Facilities Based Operator (FBO) licence since 1 February 2002, and Cable & Wireless Regional Businesses (Singapore) Pte Ltd., which has held a Services Based Operator (SBO) licence since 10 December 2001. C&W customers are mostly Multi-national Corporations (MNCs) based in Singapore, with LAN/WAN requirements as well as regional data/IP connectivity. In order to serve our MNC customers, C&W buys local loop, IPLCs and backhaul services from SingTel. Given the focus of C&W in Singapore, our main areas of concern with the SingTel application are with ICS services such as IPLCs and backhaul, rather than services such as Digital Video Broadcast. The rest of this submission, therefore, focuses primarily on the implications of granting SingTel’s request with respect to these services.



**CABLE & WIRELESS**

## **THE CONTINUING NEED FOR EX ANTE REGULATION OF SINGTEL**

C&W's experience has been that, if competition is to flourish, it is important that the appropriate balance is found between ex ante regulatory rules and ex post competition law. Regulatory bodies are sometimes tempted to remove detailed regulatory rules on incumbent operators almost immediately after the process of liberalisation has started but it will often take some time for effective competition to develop. It is, therefore, crucially important that any requests by the incumbent to remove existing obligations are only considered following the submission of full and relevant evidence by the incumbent to support its claims that it is no longer dominant, and a detailed review of the markets in question by the regulatory body. Indeed, this has been C&W's own experience in the geographies where it is the established incumbent and it is fully supportive of this process, which also reflects best international practice.

In this respect, it is useful to consider the experience of the UK, where the liberalisation process started some 20 years ago with the privatisation of BT and the introduction of the 1984 Telecommunications Act. The process of deregulation since that time has been a gradual one, which only really began to gather pace in the mid 1990s, when the UK Government liberalised international services and also attempted to introduce infrastructure competition. Despite these measures, BT has maintained its strong position in a number of UK telecommunications markets, most notably in local access markets but also in other markets that depended on access to BT's ubiquitous network. Consequently, Oftel (and its successor Ofcom) continues to maintain a certain degree of regulatory controls on BT, particularly to ensure that competitors can gain access to its network on fair and non-discriminatory terms. These controls are not just confined to the local loop, however, but also apply to services such as backhaul and the provision of international services on certain routes.

Oftel/Ofcom's approach has been reinforced by the introduction of the new European regulatory framework in July 2003, which required Oftel and all the other National Regulatory Authorities (NRAs) within the European Community to review any existing regulatory obligations on BT and other telecommunication providers, and to consider whether any additional regulatory obligations were needed. The implementation of the Framework has required each NRA to undertake extensive market reviews – often taking 3 to 6 months to complete – including consultation with other industry participants, to ensure the appropriate balance between ex ante regulation and ex post competition law.

Again, this illustrates that incumbent operators will often require ongoing regulation even though the liberalisation process may have been underway for a considerable time. C&W would therefore urge the IDA not to release SingTel



**CABLE & WIRELESS**

prematurely from its existing regulatory obligations, and certainly not without conducting a thorough review of the various markets involved, as this could undermine the aims of the liberalisation process.

It has to be borne in mind that competition in Singapore is still at a nascent stage, with fixed line competition even more immature than in most other developed economies. StarHub has been in existence since only 1998, and multi-operator fixed line competition since 2000, and so the expectation that SingTel retains market power is even stronger. C&W estimates that SingTel retains control of 85-90% of Singapore's access lines, and 70-80% of commercial buildings in Singapore have no alternative to using a SingTel access line. C&W concludes, therefore, that in Singapore there should be an expectation that competitors will be dependent on SingTel for the provision of local access lines to their customer sites. It would be inappropriate therefore, for SingTel to be released from regulatory controls at such an early stage in the liberalisation process.

C&W notes that the IDA has yet to set out its own views on SingTel's request for exemption. C&W would respectfully suggest that, in the interests of transparency and open decision-making, the IDA release an information paper (setting out its proposed position on this issue). A further round of consultation could then be held with the interested parties, prior to making any final decisions.

### **SPECIFIC COMMENTS ON SINGTEL'S APPLICATION**

C&W does not believe that the SingTel application contains sufficient supporting evidence for the IDA to make an informed judgement on the merits of its application. Indeed, it notes that SingTel has not supplied even basic information such as its estimated market shares, which must cast doubt on the merits of SingTel's case. Instead, SingTel has attempted throughout its submission to draw parallels with the recent application by Reach for non-dominance status in Hong Kong, despite the circumstances of Reach and SingTel being entirely different. Reach is a Joint Venture and is neither the incumbent in Hong Kong nor the owner of the local loop. SingTel is, of course, both the incumbent and the owner of the local loop and so has the ability to affect how competition develops in Singapore to a much greater degree. And Hong Kong is not the same as Singapore in other respects, which means that a full and separate analysis of these markets in Singapore is required.

C&W would urge the IDA to insist that SingTel provides the relevant data so that it can conduct a thorough review of the markets in question, before considering this application. Indeed, as is discussed further below, it is a requirement of the Code of Practice for Competition in the Provision of Telecommunication Services ("the Code") that such verifiable data is submitted whenever a Dominant



## **CABLE & WIRELESS**

Licensee requests an exemption. C&W does not understand, therefore, how the IDA can even consider SingTel's application in the absence of this data.

### Market definition

C&W questions SingTel's views on market definition, in particular its view that there is a single market for all ICS services, consisting of International Private Leased Circuits (IPLCs); International Frame Relay; International ATM; International IP VPN; Domestic Backhaul; Satellite TV Uplink/Downlink; Very Small Aperture terminal (VSAT) service; Digital Video Broadcast (DVB) IP; Leased Satellite Bandwidth and IP Transit service.

C&W does not believe it is appropriate for SingTel to group together all the ICS services as one generic group, with the inference that they are all substitutable for each other and therefore part of the same product market. For example, it should be fairly clear that services such as Satellite TV Uplink/Downlink; Digital Video Broadcast and VSAT services are not substitutable – on either the demand or the supply side - for the other ICS services listed, such as backhaul and IPLCs, and C&W notes that SingTel has included nothing to substantiate its claims that they are all part of the same market.

As far as the other possible ICS markets are concerned, C&W disputes the inclusion of Domestic Backhaul as part of the same market as ICS services such as IPLCs. Backhaul is not a substitute for ICS services; it is an input required by competitors in order to be able to compete in the provision of other ICS services. Indeed, it is interesting that SingTel seems to justify the inclusion of backhaul in a wider ICS market on the basis that it is provided as a bundled service. In fact, C&W, and possibly other providers of ICS, would like to purchase backhaul separately but in some instances SingTel refuses to supply backhaul as an unbundled service. This is discussed further below and in the Confidential Annex.

C&W also strongly disagrees with SingTel's contention (at paragraph 4.6) that IPLCs and IRUs are part of the same market. IRUs, being wholesale services, are inputs to IPLCs, which are retail services. As for SingTel's claims that satellite capacity is substitutable for cable capacity, C&W would wish to draw the IDA's attention to the fact that the European Commission has repeatedly held that satellite capacity is not currently substitutable for cable capacity.<sup>1</sup>

C&W contends, therefore, that SingTel should be required to analyse exactly why it thinks all these different types of ICS are in the same market, and that it should also be required to provide the IDA with detailed market share information for all

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<sup>1</sup> Cases: British Telecom/MCI (II), 97/815/EC; BT/AT&T JV.15



the potential ICS markets. (Which, indeed, is a requirement under section 2.5.2.2 of the Code.) Carriers such as C&W can only provide guesstimates of SingTel’s market shares due to the confidential nature of the information required, but the IDA should have the authority to request this data from SingTel and other market participants.

In terms of the geographic scope of the relevant product markets, C&W has strong reservations about SingTel’s argument that a route-by-route analysis is no longer required. Whilst C&W recognises that Singapore is increasingly being used as a major hub for international traffic, it believes that the extent of competition still varies from route to route. For example, Table 1 below, which is based on C&W’s understanding of the situation on various international routes, shows that SingTel is one of just three providers on the Singapore-China route and one of only two providers of wholesale services on the routes between Singapore-Thailand; Singapore-Indonesia and Singapore-India<sup>2</sup>. As the IDA is no doubt aware, competition on routes where there is a duopoly situation is likely to be more muted than on routes where there are a greater number of competitors. C&W would urge the IDA, therefore, not to abandon a route-by-route analysis at this time but to conduct a full analysis of the market on a route-by-route basis.

**Table 1**

<b>Direct Route from Singapore</b>	<b>Wholesale Service Provider</b>
Japan	SingTel, CW, Reach, ANC, KDDI, StarHub
Korea	SingTel, Reach, ANC
China	SingTel, Reach, ANC
Hong Kong	SingTel, CW, Reach, ANC, Equant, BT, MCI, Sprint
Taiwan	SingTel, Reach, ANC, MCI
Thailand	SingTel, Reach
Philippines	SingTel
Vietnam	SingTel
Malaysia	SingTel, Reach
India	SingTel (i2i), Flag
Indonesia	SingTel, Reach
Australia	SingTel, Reach

*Source: C&W*

Competitiveness of the various International Carrier Services (ICS) markets

<sup>2</sup> The provider of capacity on the Singapore-India route is i2i, an affiliate of SingTel



C&W reiterates its point that in SingTel's discussion of the competitiveness of the various ICS markets, and particularly in the section on measures of effective competition, SingTel has made no mention of its market shares. C&W again notes that the evidence to be considered by the IDA when a licensee has petitioned for reclassification under section 2.5 of the Competition Code includes both the Licensee's market share and the level of concentration in the market (paragraph 2.5.2.2 Competition Code). The same principles should apply to a request for an exemption from certain dominance requirements under paragraph 2.6.1. Furthermore, under the Competition Code it is the party seeking the reclassification (paragraph 2.5.1.3) or the exemption (paragraph 2.6.1) - in this case SingTel - who has the primary burden of proof to submit verifiable data and evidence to the IDA that the licensee meets the reclassification or exemption requirements.

C&W would also like to highlight that it is standard practice of all competition and regulatory authorities, including those in Europe, the USA and the Asia-Pacific such as Hong Kong and Australia to take account of market shares when assessing dominance. Indeed high and stable market shares are often sufficient evidence alone of dominance.

For example, under the new European Regulatory Framework, the EC has stated in its guidelines on market analysis and the assessment of significant market power<sup>3</sup>:

*According to established case law, very large market shares – in excess of 50% - are in themselves, save in exceptional circumstances, evidence of the existence of a dominant position. An undertaking with a large market share may be presumed to have SMP, that is, to be in a dominant position, if its market share has remained stable over time.*

In this regard, it is essential that the IDA requests market share information from SingTel, covering at least each of the years since liberalisation, and for all the potential ICS markets identified.

Whilst it is difficult for C&W to estimate SingTel's market shares in the various ICS markets identified, C&W would offer the following "guesstimates" with respect to some of these services. C&W believes that SingTel is dominant in the provision of backhaul services in Singapore, estimating its market share to be approximately 80%. It believes that it is able to leverage this dominance into

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<sup>3</sup> Commission Guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services, 2002/C 165/03



**CABLE & WIRELESS**

other ICS markets – for example, through bundling - to the detriment of competition and, ultimately, consumers.

For example, C&W has two nodes in Singapore, one of which is situated at ComCenter, which is a SingTel datacenter. SingTel restricts access to other carriers to this centre, which means that C&W can only purchase both backhaul and local loop through SingTel. So whilst C&W's FBO licence allows it to build backhaul capacity, it cannot get into the building to connect to its own node due to the restrictions that SingTel places on access. The separate Confidential Annex also provides details of another instance where SingTel has refused to supply C&W unbundled backhaul.

There are very few alternative suppliers of backhaul in Singapore. As stated in SingTel's applications, the suppliers are StarHub, MCI, Reach, France Telecom and AGC. Only StarHub, however, is considered to offer backhaul services that are sufficiently comparable to those of SingTel as all the other suppliers of backhaul offer insufficient coverage with most only having built up backhaul capacity to connect with their own nodes. This means that C&W cannot use them as alternative suppliers as it has a different node location. And as already noted above, even though C&W is authorised under its licence to self-provide backhaul, SingTel's restrictions on access at the datacentre where C&W has one of its nodes prevents us from using this capability. There would also be a cost implication to self-provision of backhaul. Indeed, it should not be necessary in a liberalised environment for small operators to have to build capacity rather than be able to buy it and the requirement to build makes entry by smaller competitors more difficult.

C&W has a policy of trying to procure backhaul services from at least 2 suppliers, with SingTel being the preferred supplier due to its extensive local loop and cable station coverage. But SingTel's ownership of almost all the cable landing stations in Singapore, together with its dominance in the local loop, will enable SingTel to leverage its dominance into domestic backhaul and into international submarine capacity segments if the current obligations contained in SingTel's licence are lifted as a result of this application.

One of the other key indicators used to assess dominance is the extent to which prices are above the competitive level. The Confidential Annex shows the renewal price that C&W is paying for backhaul in Singapore. The price for this capacity seems to be very high when compared to the market price for a PoP to PoP Hong Kong to Singapore circuit.



As far as other prices are concerned, C&W would like to refer the IDA to the following table showing bandwidth prices on major Asiatic routes, as reported in Telegeography.

**Table 2**

## **Bandwidth Pricing Database Service**

**Bandwidth Pricing Database Service, Second Quarter Report (Ending December31, 2003)**

**All Charges per MONTH.**

<b>Intra Asia</b>	<b>STM1 Monthly Rental Charges (US\$)</b>			
	<b>High</b>	<b>Low</b>	<b>Average</b>	<b>Median</b>
Hong Kong – Singapore	\$37,600	\$15,200	\$25,510	\$23,889
Hong Kong – Taipei	\$33,333	\$8,000	\$17,784	\$13,461
Hong Kong – Tokyo	\$30,000	\$8,000	\$19,145	\$19,380
Singapore – Tokyo	\$30,182	\$15,200	\$21,179	\$18,908
Seoul – Tokyo	\$37,500	\$9,000	\$21,960	\$19,380
Seoul – Hong Kong	\$37,500	\$9,000	\$22,269	\$20,306
Taipei – Tokyo	\$34,783	\$8,000	\$21,399	\$19,550

**Bandwidth Pricing Database Service, Second Quarter Report (Ending September30, 2003)**

**All Charges per MONTH.**

<b>Intra Asia</b>	<b>STM1 Monthly Rental Charges</b>			
	<b>High</b>	<b>Low</b>	<b>Average</b>	<b>Median</b>
Hong Kong – Singapore	\$38,000	\$15,000	\$25,382	\$21,263
Hong Kong – Taipei	\$35,000	\$9,000	\$22,068	\$20,258
Hong Kong – Tokyo	\$31,248	\$9,000	\$21,920	\$21,638
Singapore – Tokyo	\$45,000	\$14,400	\$26,792	\$23,766
Seoul – Tokyo	\$50,000	\$9,000	\$30,226	\$37,500
Seoul – Hong Kong	\$38,000	\$9,000	\$22,006	\$17,769
Taipei – Tokyo	\$38,000	\$9,000	\$23,301	\$20,538

**Source: Telegeography**

The table shows that the prices for routes with Singapore at one end are, on average, higher than other routes (the average of the two Singapore routes is US\$23, 345 compared to US\$20,511 for the average of the other five routes).

However, the most significant piece of information is that the “Low” price for routes with Singapore at one end is always significantly higher than the lows for all other routes. Genuine price competition will occasionally result in unusually low prices (especially when short run marginal costs are low) in order for the market to clear excess short-term spare capacity. However, this is not happening on routes into and out of Singapore.





## **CABLE & WIRELESS**

Furthermore, the trend over the 3 months (September to December 2003) shows that this situation is getting worse. The lowest prices on the Singapore routes are increasing, whilst lowest prices on all other routes have either fallen (most of them) or stayed the same. The table also emphasises the importance of conducting a route-by-route analysis of competition.

C&W notes that SingTel has provided very little hard evidence of price movements in its submission saying, for example at paragraph 5.45, “it is very difficult to quantify in absolute terms the average price reductions since April 2000”. Whilst there may be certain difficulties in providing information for all suppliers, C&W does not understand why SingTel has not been able to provide data on its own price movements to the IDA. It believes that the IDA must request this data from SingTel in order to make an informed judgement about its application.

C&W contends that one clear indicator of market dominance is that SingTel has found it unnecessary to respond to the same extent with price cuts of its own. The effect of SingTel exploiting its dominant position is to provide room for the second PBTS operator, StarHub, to practise shadow pricing for backhaul, and perhaps also raise prices of its own above benchmark levels.

As far as other evidence that should be considered by the IDA, C&W would like to highlight that SingTel maintains ownership of cable landing stations in Singapore, and newer entrants either do not have the capex to spend to build their own these days, or are constrained by the availability of land space in Singapore. That is, shorelines are not long enough to have many cable landing stations built across the island-state, which acts as a barrier to entry. It is uneconomic and should be unnecessary for an entrant to have to go to the extreme lengths of building its own cable landing station. More fundamentally, there is no motivation to build additional cable stations when there are no new cables to land.

### Effects of lifting certain obligations on SingTel

C&W believes that, if indeed the supply of ICS is currently as competitive as SingTel claims it is, a major reason for this is the existing regulatory controls on SingTel. C&W is concerned that, should these controls be removed, this would affect the competitiveness of these services. C&W has particular concerns regarding the removal of the following obligations:



**CABLE & WIRELESS**

### *Section 3.3.3 Duty to Provide Service on a Non Discriminatory Basis*

Under this section of the Code, SingTel is currently prevented from discriminating in favour of a subsidiary, affiliate, or related entity. In particular, it is required to provide telecommunications services at the prices, terms and conditions contained in its effective tariffs. C&W is concerned, therefore, that the removal of this obligation would give SingTel the opportunity to offer more favourable terms to its own operations than it offers to independent third parties.

### *Section 3.3.4 Duty to File and Provide Service Pursuant to Tariffs*

As a Dominant Licensee with respect to ICS services, SingTel is currently obliged to provide telecommunications services at the prices, terms and conditions specified in its approved tariffs. Where retail services use as an input the access or interconnection services provided by the dominant operator (in this case SingTel), price publication requirements assist regulators (and competitors) to ensure that the retail services of the incumbent are not being priced in such a way that competitors are subject to a margin squeeze. C&W is concerned, therefore, that the removal of this requirement will remove the ability to verify that SingTel is offering its access and interconnection services on a non-discriminatory basis and that competitors are not being subjected to a margin squeeze for retail services where SingTel is able to offer an end-to-end service. This is a real concern to C&W, given that SingTel has specifically asked to be released from the obligations in Section 7.2.1 of the Code, which includes a prohibition on Price Squeezes (see below).

### *Section 3.3.5 Duty to provide unbundled telecommunications services*

Similar concerns arise should this condition be removed, as it would seem to offer SingTel the ability to bundle potentially competitive services with services in which it is dominant. (At this point, C&W would like to refer the IDA to the information contained in the Confidential Annex.) In particular, C&W is concerned that the removal of this obligation will enable SingTel to bundle certain ICS services with local services and to price that bundle at a level that a competing supplier of such ICS, without local loop facilities, could not possibly compete with. The consequence of this is that customers are unlikely to buy the components of the bundle separately and eventually the only supplier of certain ICS suppliers will be SingTel. With all competition removed, the long-term effect of this would be that SingTel would be in a position to increase prices to the detriment of customers. If SingTel is perceived as an incumbent with deep pockets that has driven out such competitors in the past, this is likely to act as a barrier to any future competition.



## **CABLE & WIRELESS**

The concerns about the removal of this obligation are increased when the combined effects of its removal and that of obligation 3.3.3 (see above) are considered. C&W believes that the combined effect of the removal of these two obligations, whereby SingTel would be able to target specific customers (namely business customers) with lower prices **and** bundle potentially competitive services with services that only SingTel can provide, would offer scope for significant anti-competitive effects.

### *Section 7.2.1 Pricing Abuses*

C&W has serious concerns that SingTel is asking to be released from the obligations contained in Section 7.2.1 of the Code, which relate to Pricing Abuses, in particular, it is concerned about the removal of the following obligations:

#### *Section 7.2.1.2 Price Squeezes*

C&W has already outlined above in relation to condition 3.3.4, its concerns about the ability of vertically integrated dominant companies to engage in price squeezes, to the detriment of competition in retail markets. C&W believes that SingTel's request to have this specific obligation removed must be refused.

#### *Section 7.2.1.3 Cross-subsidisation*

C&W believes that this condition, which requires accounting separation, is essential to ensure that effective competition in all ICS markets is allowed to develop. Removal of the requirement for accounting separation would enable SingTel to allocate common costs in a way that could seriously undermine competition. For example, where exchange space in Singapore is used to co-locate local and international switches (as it inevitably will be), SingTel could allocate all the common costs (such as property management and security costs and the fixed costs of air conditioning systems) to the local switch. This would enable SingTel to price international services down to marginal cost, making it impossible for non-integrated international operators to compete, since they will need to bear the full cost of their switch sites. C&W believes it is important that potentially competitive services bear their fair share of common costs for competition not to be undermined. This can only be achieved through proper and independently audited accounting separation requirements between SingTel's local and international services.



**CABLE & WIRELESS**

### *Section 7.2.2.1 Discrimination*

C&W repeats its concern that any obligations that prevent SingTel from discriminating in favour of its own subsidiaries or affiliates are essential for the continued development of competition and as such, should not be lifted.

In addition, this requirement currently prevents SingTel from offering special discounts to customers who are largely contestable by competitors, whilst recouping margins on customers who are less contestable. The current non-discrimination requirement on SingTel, therefore, allows the benefits of competition to be spread more evenly across all customers. The requirement must be retained until the market is truly competitive across all customer groups.

### **CONCLUSION**

For the reasons outlined above, C&W urges the IDA to give this matter careful consideration. C&W believes that SingTel is still the dominant incumbent carrier. Any removal of the restrictions or compliance requirements which could be used to allow SingTel to cross subsidise or abuse its position to the detriment of competitors, customers and the market should be resisted, and is not in the best interests of a transparent market and competition.

Any appearance that ICS markets are competitive is, in the view of C&W, a consequence of the current obligations in place on SingTel (such as tariff filing, unbundling, and refrain from cross subsidisation through accounting separation). SingTel has successfully maintained its high market shares even with these obligations, and so any relaxation would significantly damage the early stages of competition. SingTel needs to provide far more information in order for the IDA to make an informed decision on its application. Indeed, we believe the IDA would be acting beyond its powers if it were to grant SingTel's application on the basis of the incomplete information supplied by SingTel and this could leave the IDA open to legal challenge.

We would be happy to discuss this submission further with the IDA, should the IDA require further clarification from us. The relevant contact details are shown below.

Yours sincerely

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