

**CONSULTATION ON THE PRELIMINARY DECISION
REGARDING THE REQUEST OF SINGAPORE
TELECOMMUNICATIONS LTD FOR EXEMPTION FROM
DOMINANT LICENSEE OBLIGATIONS WITH RESPECT
TO THE “INTERNATIONAL CAPACITY SERVICES”
MARKET**

6 January 2005

**JOINT SUBMISSION OF MEMBERS OF
THE ASIA PACIFIC CARRIERS’
COALITION**

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STATEMENT OF INTEREST

We appreciate the opportunity given by the Infocomm Development Authority (“IDA”) to comment on the preliminary decision (“Preliminary Decision”) regarding the request of Singapore Telecommunications Ltd’s (“SingTel”) for exemption from dominant licensee obligations with respect to the “international capacity services” (“ICS”) market.

The carriers from the Asia Pacific Carriers’ Coalition (“APCC”) involved in preparing this joint submission (“Submission”) are AT&T Worldwide Telecommunications Services Singapore Pte Ltd, BT Singapore Pte Ltd, Cable & Wireless Global Pte Ltd, MCI WorldCom Asia Pte Ltd, Reach International Telecom (Singapore) Pte Ltd, Macquarie Corporate Telecommunications Pte Ltd and T-Systems Singapore Pte Ltd.¹ The carriers may also be submitting their own individual more detailed comments.

All of these carriers are currently participating to differing extents in the ICS market and therefore the preliminary decision to exempt SingTel from its dominant licensee obligations in relation to certain services is extremely important to each of these carriers.

¹ While this submission has been approved by the majority of APCC members, it is not necessarily endorsed by all individual Corporate Members of APCC

COMMENTS

APCC's Comments are structured in two parts – Firstly, we provide some general comments with respect to the Preliminary Decision, its effect on competition and IDA's definition of a "market". Secondly, we comment on the Preliminary Decision for the individual ICS markets.

GENERAL COMMENTS

1. Further Analysis needed on the Effect on Competition should Regulation be Relaxed

- 1.1 APCC submits that further analysis is required in order to better predict the state of and effect on competition should regulation on SingTel be relaxed. We believe that this is necessary because once IDA lifts regulation on SingTel in certain markets, these markets will (i) no longer be regulated by the dominant licensee obligations under the Telecommunication Competition Code ("Code") and (ii) will not be regulated by general competition legislation as the telecommunications sector is excluded from the Competition Act. APCC submits that this consequence means that rigorous analysis should be done by IDA before any Code regulations on SingTel are lifted. In most jurisdictions, when competition is deemed effective enough to allow *ex ante* regulation to be relaxed, the underlying basis for the relaxation is that there is effective *ex post* competition law in place to prevent any market failure. We would suggest that there should be no relaxation of the dominant licensee obligations until such competition law safeguards are in place. Moreover, neither the existing, nor the proposed, general competition law provisions in the Code create a sufficient safeguard.
- 1.2 We are concerned that the effect of the Preliminary Decision will be that should IDA grant SingTel's request, in those markets in which SingTel is exempted from its dominant licensee obligations, there will be effectively no competition regulation. We submit that a decision to exempt a dominant licensee from the ambit of competition regulation should only be made after significant independent analysis has determined that there is no reasonable possibility of such dominant license regaining significant market power or leveraging its position in closely related markets to achieve such a result.
- 1.3 SingTel has filed for exemption from dominant licensee requirements in the following areas:-
 - Section 3.3.1 – Duty to provide service on demand
 - Section 3.3.2 – Duty to provide service at just and reasonable prices
 - Section 3.3.3 – Duty to provide service on a non-discriminatory basis

- Section 3.3.4 – Duty to 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, e.g. predatory pricing, price squeeze, cross subsidisation
 - Section 7.2.2 – Other abuses, e.g. discrimination, predatory network alteration
- 1.4 APCC submits that it would be necessary for IDA to conduct a thorough foreseeability test on competition in the event these dominant licensee obligations on SingTel are relaxed. For example, if SingTel is no longer required to file tariffs (Section 3.3.4), the threat is that it could reduce prices excessively and/or randomly with possible resultant predatory effects (Section 7.2.1) to gain market share and drive out competitors from the market. Furthermore, in view of the fact that telecommunications is to be excluded from the scope of Singapore’s Competition Law, there would be no *ex post* mechanism to prevent such abuses in the first place. We would further submit that IDA, in making its final decision on ICS services, should assess whether it is appropriate to order relaxation of all dominant licensee obligations in a given market or whether it would be more appropriate to order relaxation of just some of these obligations as a start point.
- 1.5 Finally, considering the possibility that certain provisions in the existing Telecom Competition Code could be changed when the revised Code comes into effect, any discussion or comment on the effect of withdrawing dominant licensee obligations at this stage seems to be rather premature. APCC is effectively being asked to comment in ‘a vacuum’ and would need certainty as to what these dominant licensee obligations would be so that the impact of their withdrawal on these markets could be better ascertained. APCC would thus suggest that IDA not make its final decision (and for final comment) until after the revised Telecom Competition Code comes into force.
- 1.5 In summary, APCC believes that any decision on SingTel’s request for exemption without an analysis of the consequences to competition would be premature and damaging to the industry if the effect would be to eliminate competition and negate the benefits of competition to the industry. APCC also believes that in making its final decision, IDA needs to take into account the effects of the exclusion of the telecommunications industry from the scope of the new Competition Law and the fact that the Telecom Competition Code is currently under review.

2. Definition of the “Market”

- 2.1 As an initial comment, we concur generally with IDA’s discussion of the methodology to be used for market definition, although we are concerned in some

respects by its application. In particular, IDA has departed from international best practice in some instances, which are discussed further below.

- 2.2 APCC generally agrees with IDA's analysis that there is some degree of substitutability between the services. However, we also agree with IDA's assessment that the ten service categories filed by SingTel do not constitute a single market for International Capacity Services (ICS) and that each are separate independent markets.
- 2.3 We note that in assessing the market for each of the ten service categories, little detail as to the analysis (statistical or otherwise) was provided. We are also concerned that calculations such as those with respect to market share were conducted in such a way and based on numbers which may not wholly reflect the way in which business is conducted. We would request that IDA provide more detail for all categories in this respect. APCC believes that IDA should provide the maximum possible transparency of methodology and evidence in this, and all other, regulatory decisions.
- 2.4 The APCC believes that the wholesale/retail distinction whereby IDA regards the wholesale and retail markets to be similar for each of the ten service categories, because similar competitive provisions apply, is fundamentally flawed. In many cases these similarities are directly attributable to market failure i.e. SingTel's refusal to develop true wholesale products for an equivalent retail service. Accordingly, we submit that in defining the market for a service, distinction does need to be made between the retail and wholesale markets. By way of example, the European Commission, in its Recommendation on relevant product and service markets within the electronic communications sector (11 February 2003) states that there are "at least two main types of relevant markets to consider: markets for services or products provided to end users (retail markets), and markets for the inputs which are necessary for operators to provide services and products to end users (wholesale markets)." The Commission further states that the starting point for market definition is a characterisation of the retail market over a given time horizon, taking into account the possibilities for demand and supply-side substitution. The wholesale market is identified subsequently to this exercise being carried out in relation to the retail market. The wholesale market is a market "involving the demand of products of, and supply of products to, a third party wishing to supply end users". In its recent market review consultations, Ofcom, the UK regulator, following European Commission guidelines, stated:

"This consultation document defines the relevant markets both at the retail and the wholesale level. The analysis of retail market definitions is logically prior to the definition of upstream (wholesale) markets. This is because demand for upstream services is a derived demand i.e. the level of demand for wholesale inputs depends on the demand for outputs (retail services). The definition of a retail market is likely to influence the market definition, and consequently any assessment of SMP,

in related upstream markets. The relevant upstream markets are generally (at least) as broad as the demand-side substitutes in the relevant retail market.”

In its Preliminary Decision, IDA shows little sign of having conducted a precise analysis of wholesale and retail markets and APCC would urge IDA to undertake such analysis.

2.5 In addition, we urge IDA to consider the effects of a decision that SingTel is non-dominant on the future competitiveness of each of the relevant markets. This is of vital concern because telecommunications is excluded from the regulation of the Competition Act, which would have provided a safety net for competition abuses. In particular, we are concerned that while SingTel may be considered not to have significant market power at this particular point in time, this may be due to the fact that the competition regulation is working and that a withdrawal of competition regulation on SingTel may change this position, leading it to regain significant market power in future. By way of example, in U.K. and the European Union, the standard way to define telecoms markets under the new framework is to:

- (a) define all markets in the absence of regulation, starting downstream and moving upstream;
- (b) assess market power in the furthest upstream market, defined in the absence of regulation and identify appropriate remedies; and then to
- (c) redefine all markets further downstream in the presence of the upstream regulation and use these redefined markets for the assessment of market power and appropriate remedies.

Consequently, we would urge IDA to confirm and demonstrate that it has not defined the market and assessed competition on the basis of existing regulation, as this would produce a misleading result.

SPECIFIC COMMENTS

3. Introduction

3.1 APCC agrees with IDA’s Preliminary Decision to reject SingTel’s non-dominance request for backhaul, telecast local access, teleswitch services and terrestrial International Private Leased Circuits (“IPLCs”). Notwithstanding this, APCC does have further comments, which will be discussed below, on IDA’s analysis of the backhaul, telecast local access, teleswitch services and terrestrial IPLC markets.

3.2 APCC does not agree with IDA's Preliminary Decision to grant SingTel's non-dominance request in the International Managed Data Services ("IMDS") market and we discuss this in more detail below.

3.3 In respect of IDA's Preliminary Decision to grant SingTel's non-dominance request in the other markets, we urge IDA to reconsider its decision based on our comments set forth below.

4. Backhaul

4.1 As indicated in paragraph 33 and 110 of IDA's Preliminary Decision, we agree with IDA that the geographic market for backhaul is national and that it is a domestic capacity service (not an international capacity service) constituting a separate market.

4.2 Notwithstanding the incorrect classification by SingTel, APCC also agrees with IDA's assessment that based on the evidence gathered, the market for backhaul is not competitive and SingTel is dominant in the provision of backhaul services. Furthermore, the fact that prices of backhaul services have remained largely unchanged since liberalisation supports IDA's assessment that the market for backhaul services is not competitive. Consequently, APCC submits that regulation on SingTel for backhaul services should continue to apply.

4.3 Please note however that given our analysis that the backhaul service is a domestic rather than an international service, some carriers may not have provided as much information relating to these services as they would have if they had known IDA would review these domestic markets. Therefore, should IDA review these services again in future, we would ask that IDA consult us so that we may provide more detailed data on these services.

5. Telecast Local Access/Teleswitch Services

5.1 We agree with IDA that telecast local access and teleswitch services are local connectivity services rather than international connectivity services as suggested by SingTel and that these services constitute a separate market.

5.2 Notwithstanding the incorrect classification by SingTel, APCC also agrees with IDA's assessment that based on the evidence gathered, the market for telecast local access and teleswitch services is not competitive and regulation on SingTel should continue to apply.

5.3 Please note however that given our analysis that telecast local access and teleswitch services are domestic rather than international services, some carriers may not have provided as much information relating to these services as they would have if they had known IDA would review these domestic markets. Therefore, should IDA

review these services again in future, we would ask that IDA consult us so that we may provide more detailed data on these services.

6. Terrestrial IPLCs

- 6.1 We agree with IDA's assessment that the terrestrial IPLC market is not competitive and that SingTel remains dominant in the market for terrestrial IPLCs, therefore regulation on SingTel should continue to apply.
- 6.2 APCC also agrees with IDA that SingTel's dominance in the terrestrial IPLC market is so evident that it is unnecessary to undertake a detailed market definition analysis and for the present purposes it is sufficient for the IDA to review the competitiveness of the terrestrial IPLC market as a whole.
- 6.3 In addition to IDA's analysis of SingTel's dominant position in the terrestrial IPLC market, SingTel's own report of its performance for the 12 months ended 30 September 2004 clearly demonstrates SingTel's dominance in this market when it says that, in relation to SingTel's international leased circuits, "demand for bandwidth more than doubled from a year ago"². Such a high growth level of over 100% in SingTel IPLC bandwidth sales over the year outstrips the level of equivalent capacity growth by many (if not all) other competitive carriers. It would be naive of SingTel to maintain that it is not dominant in a market where it not only has a market share well above the level for a presumption of dominance, but in which its own market share also continues to grow at a rate above the competition.
- 6.4 As regards IDA's assessment of market definition, we submit that IDA's retail/wholesale distinction is flawed. In the IPLC market, the dominant licensee does not provide a true wholesale product, nor has it been required to do so. As IDA stated in paragraph 42 of its Preliminary Decision, IPLC services are provided and priced to wholesale customers in substantially the same way as to retail customers i.e. telecoms carriers are forced to purchase IPLC inputs at retail rather than at wholesale prices. As IDA would be aware, there is likely to be a "price squeeze" situation where retail prices and wholesale costs for related services move toward a similar price point. Consequently, new market entrants find it extremely difficult to enter the market and compete with the incumbent at retail level, to the detriment of end users. As a result, this is not an indication that competitive conditions are the same in both retail and wholesale markets; rather it is an indication of market failure and the uncompetitiveness of the wholesale market for terrestrial IPLCs.

² "Singapore Telecommunications Limited and Subsidiary Companies, Management Discussion and Analysis of Unaudited Financial Condition, Results of Operations and Cash Flows for the Second Quarter and Half Year Ended 30 September 2004", page 20.
<http://home.SingTel.com/investor_relations/financial_results/default.asp>

7. The IMDS Market

- 7.1 We strongly believe that IDA's Preliminary Decision to grant SingTel non-dominance status in the IMDS market is incorrect. For the reasons outlined in this Submission, we strongly urge IDA to reconsider its Preliminary Decision.
- 7.2 As discussed above, if IDA grants an exemption of all of the dominant licensee obligations in the IMDS market and given that the telecommunications sector is excluded from the ambit the Competition Act, there will effectively be no competition regulation in the IMDS market. We urge IDA to conduct further analysis and investigation on the effect this will have on competition in the market.
- 7.3 As regards market share figures outlined by IDA, we believe that the calculation of SingTel's market share in the IMDS market as only 30% may be flawed. IDA has informed us that in providing its figures to IDA, SingTel has not included the cost of local leased circuits ("LLCs"), in its revenue figures but has instead separated the revenue for each part of the IMDS. As LLCs represent a significant cost (comprising approximately 50%³ of the provision of IMDS), the revenue for IMDS of competing carriers may be inflated if the revenue for the entire end to end service (including LLCs) has been provided to IDA. This is particularly important as we understand from IDA that SingTel only provided revenue figures for the international connectivity. On this point, we wish to highlight the following inconsistency: SingTel's half year IMDS revenues have been reported at US\$46mln or US\$92mln⁴ (estimated) on an annualised basis. According to IDA's notification to the operators of their respective share of the IMDS market based on their submitted annual revenue figures, the estimated value of SingTel's 30% market share based on IDA's methodology places it in the range of US\$10-15mln which appears to be inconsistent and a huge discrepancy against SingTel's reported financial figures.
- 7.4 We urge IDA to reconsider its market share calculations as SingTel appears to have understated its IMDS revenue figures to IDA and to request revised revenue figures from SingTel and other carriers to ensure that all operators are providing comparable revenue data.
- 7.5 To further illustrate the need for analysis, we highlight below some of the other discrepancies noted in IDA's analysis of this market:
- 7.5.1 IDA has stated in paragraph 83 of its Preliminary Decision that it "believes that SingTel has less ability to use its dominant position in the LLC market to impede competition in the IMDS market than it has in the Terrestrial IPLC market". Just because SingTel has *less* ability to use its dominant

³ SingTel's reported revenues for 3Q2004 provides a half year data revenues of S\$453mln of which S\$204mln is from the associated sale of local leased circuits.

⁴ SingTel's Management Discussion and analysis of financial condition and results of operations for the 2nd quarter shows a half year IMDS revenue of S\$76mln or an estimated annualized US\$92mln.

position does not mean that it has no ability to use its dominant position. In the absence of a robust system of Competition Law applying, the telecommunications industry will have no competition safeguards, (especially given that the remaining competition provisions in the Code are wholly inadequate). APCC submits that in these circumstances, the industry cannot afford to take any risk of a relaxation of regulation on SingTel.

- 7.5.2 Paragraph 83 of IDA’s Preliminary Decision also states that “non-price considerations.... *appear* to be more important considerations of IMDS customers”. Again, given the onerous consequences, we urge IDA to consider undertaking more statistical analysis before making a final decision. Our experience is that price still plays a fundamental consideration in the sale of IMDS (customers will not even consider a service, no matter how good, unless it first meets their price expectations). Non-price considerations such as network reach and resilience are secondary. Therefore, IDA should not discount the importance of the price of inputs on which operators other than the incumbent are dependent, especially as LLCs constitute approximately 50% of an average IMDS offering. We respectfully submit that non-price considerations are not sufficient to warrant the lifting of competition regulation in a market.
- 7.5.3 In paragraph 84 of its Preliminary Decision, IDA discusses the falling prices of IMDS services but again gives no particulars as to how this was achieved. In order to substantiate this claim it is important that IDA demonstrates the data to support it. For example, IDA states that “SingTel’s IMDS prices have dropped significantly” but does not quantify the reduction nor qualify the period. Further, we would urge IDA to consider the economic reality of these price decreases and the true impact of competition in the IMDS market. For example, is SingTel dropping prices to meet competition or for anti-competitive purpose?
- 7.5.4 In paragraph 85 of its Preliminary Decision, IDA states that “SingTel is not a significant participant in the provision of IMDS services to MNCs in Singapore because it does not have the geographical reach of the global players”. The APCC would question the accuracy of IDA’s statement in light of the following:-
- 7.5.4.1 It does appear from SingTel’s website (www.singtel.com) that SingTel has a significant global presence. For example, SingTel claims to have “a highly developed international network [which] provides direct connections from Singapore to more than 100 countries as well as second-to-third country connectivity.” In addition, SingTel states that “it has established SingTel Global Offices in 16 countries and territories worldwide. These points of presence, together with its global infrastructure, enhance the Group’s competitiveness by providing it with expanded reach and enabling it to offer high quality, seamless services to its customers across borders.”

7.5.4.2 Furthermore, a recent newspaper article⁵ reported SingTel making inroads into Europe with recent multi-million dollar deals with German carmaker BMW, French retailer Decathlon and German logistics giant Schenker.

We would therefore question IDA's statement that SingTel "does not have the geographical reach of the global carriers".

7.6 For the many reasons stated in our Submission, we strongly urge IDA to reconsider its Preliminary Decision and conduct further analysis into this market and the effects on competition. Even if a market share by SingTel is assumed (which for the reasons discussed above, APCC believes to be too low), IDA has stated that SingTel has a "dominant position in the LLC market" which constitutes a "significant portion of the cost of providing IMDS". Even with the LLC decision made by IDA earlier this year, IDA states that "the full impact of the LLC Decision will only be apparent over time". Consequently, we would urge IDA to wait until the full impact of its LLC Decision is achieved in the market, before relaxing any regulatory provisions in the downstream IMDS market. We would therefore ask IDA to conduct a full analysis of IMDS once the full effect of its LLC decision is felt, and only then consider any withdrawal of regulation.

8. International IP Transit Market

8.1 We believe that the fall in price by more than 60% since March 2004 as well as IDA's estimate of SingTel's market share as 30% may be flawed. We would request IDA to make available more detailed information regarding the way in which these figures were reached, in order that we may assess any anomalies in that data.

9. Leased Satellite Bandwidth/VSAT/DVB-IP/Satellite TV Uplink/Satellite TV Downlink

9.1 As discussed in paragraph 2.3 above, we would request IDA to make available more detailed information regarding the statistical analysis of each of these separate markets, in order that we may better assess any anomalies in the data.

10. Satellite IPLC Market

10.1 We are extremely concerned about IDA's conclusion that, although SingTel has almost 100% share in the satellite IPLC market, the continued application of dominant licensee regulation is deemed no longer necessary.

10.2 We are concerned that IDA would regard a 100% market share of a licensee to be competitive, even "given a unique set of conditions". A licensee having 100% market share is a monopoly and dominant licensee regulations should apply

⁵ Straits Times (6 December 2004) "SingTel Guns for Regional Corporate Network Business".

regardless of other conditions. This is necessary to ensure a dominant licensee does not leverage its position either in this particular market or into closely related markets, especially in this instance where IDA claims there is little real incentive for new players to enter this market.

- 10.3 It is not clear from IDA's analysis why SingTel would need relief from dominant carrier regulation. After all, regulation cannot be impeding it in the marketplace because it has no competitors. The risk of any potential new entrants being deterred from market entry because of SingTel's unregulated market power far outweighs any potential administrative burden on SingTel arising from compliance with dominant carrier regulation – which should be the only benefit SingTel would realise as a result of lifting of regulations.
- 10.4 We also question the reasons for the lack of competitors in this market. IDA should certainly investigate whether the fact that SingTel has such power in this market has led competitive carriers to conclude that there is no chance of successful competitive entry, rather than because other carriers are simply not interested in participating in this market.