

REACH LTD.

**(on behalf of Reach International Telecom (Singapore) Pte Limited
Company Registration Number 199605253M)**

**SUBMISSION IN RESPONSE TO IDA'S CONSULTATION PAPER
PRELIMINARY DECISION REGARDING THE REQUEST OF SINGAPORE
TELECOMMUNICATIONS LIMITED FOR EXEMPTION FROM DOMINANT
LICENSEE OBLIGATIONS WITH RESPECT TO THE "INTERNATIONAL
CAPACITY SERVICES" MARKET**

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Contact Details:

Mr. Dermot Keilthy
Director, Regulatory Affairs
REACH
20/F Telecom House
3 Gloucester Road
Wanchai
Hong Kong

Tel: +852 2983 3633
Fax: +852 2962 5012
Email: Dermot.Keilthy@reach.com

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EXECUTIVE SUMMARY

- REACH is pleased that IDA has given industry a further opportunity to comment on SingTel's Exemption Request in relation to ICS. We trust that, although IDA has made a preliminary decision, it will remain open to industry submissions.
- REACH believes that IDA's ICS Preliminary Decision is sound in finding that product-specific terrestrial IPLC markets are still dominated by SingTel.
- We also support IDA's finding that SingTel still dominates backhaul markets.
- It is appropriate for IDA to take the approach of treating SingTel as dominant across all of these markets, given that it largely controls them.
- At the same time as making conclusions of dominance across the board, IDA should still recognise that the actual markets, properly defined, are narrower – being route or even cable system specific.
- REACH submits that IDA should also be stronger in its descriptions of SingTel dominance and avoid using data that misrepresents the competitive situation.
- Although IDA wishes to revisit competition in these markets in the future, it should not commit itself to a two year period. Rather, it should tie in any review to the date when IDA's regulation of LLCs has taken full effect.
- While supporting IDA's findings on terrestrial IPLCs and backhaul, REACH believes that the ICS Preliminary Decision is wrong in relation to other markets, with IP transit and IMDS conclusions of particular concern.
- In the first instance, IDA's market definitions are questionable. REACH believes the markets are more narrowly defined.
- Further, we are of the view that data, such as price drops, used to support the IDA's market assessments begs questions both in terms of the data itself and the way it has been interpreted.
- IDA's conclusion in relation to satellite IPLCs also appears problematic. SingTel must be dominant with nearly 100% market share.
- IDA must also take care not to underestimate SingTel's power in satellite markets resulting from its control over satellite earth stations.
- In terms of the general approach taken by IDA, we do not comment in detail as we assume that IDA will properly consult on such matters prior to issuing guidelines in this area.
- We do stress that IDA should ensure that it follows through any statements of general approach into its analysis, particularly in relation to the SSNIP test.
- REACH also submits that IDA has not presented sufficient analysis of why each dominant licensee obligation is no longer necessary to protect customers and competition as required by the Code.

- We suggest that IDA should reconsider, in particular, the need to retain application of section 7 of the Code to services otherwise exempt from dominant licensee obligations. This is very important given the absence of a backstop such as a general competition law applicable to telecommunications.
- REACH is pleased to see IDA's general approach will include self supply in assessing market definition and shares but we remain concerned that IDA has carved out situations where SingTel takes advantage of its vertical integration to structure its internal supply differently from its supply to others.
- Finally, we note again our concern that the IDA accepts exemption requests from SingTel that do not appear to meet Code requirements. Appearances count when it comes to regulatory transparency and accountability.

TABLE OF CONTENTS

STATEMENT OF INTEREST

PART I COMMENTS ON PRELIMINARY FINDINGS RE DOMINANCE

IDA HAS CORRECTLY CONCLUDED SINGTEL DOMINATES IPLC MARKETS

- Product market is Terrestrial IPLC specific**
- Definition of IPLC market must catch any IPLCs ‘dressed up’ as IMDS**
- Hubbing is not a substitute for direct routes**
- IDA correct to err on side of caution if not rigorously analyzing geographic market**
- SingTel does dominate T IPLC markets**

IDA HAS CORRECTLY CONCLUDED SINGTEL DOMINATES BACKHAUL

- As a domestic service, backhaul should be accessed separately**
- IDA correct to err on side of caution if adopting border market definition**
- Backhaul conclusion is sound but assessment needs more rigour**

FURTHER REVIEW ONLY USEFUL ONCE IMPACT OF LLC REGULATION CLEAR

IP TRANSIT MARKET WRONGLY CLASSIFIED AS COMPETITIVE

ICS PRELIMINARY DECISION ON IMDS IS FLAWED

- Need for careful analysis of A end market share in IMDS context**
- IMDS markets may be more narrowly defined**
- LLC impact on IMDS should not be ignored**
- Evidence of competition is questionable**

INADEQUATE EVIDENCE PROVIDED FOR COMMENT ON OTHER MARKETS

- SingTel must dominate satellite IPLC markets with 100% market share**
- SingTel control of earth stations entrenches satellite dominance**

PART II COMMENTS ON GENERAL ANALYTICAL APPROACH

Overall approach is sound

IDA statements of approach must be meaningful

IDA must analyse whether dominance obligations unnecessary

Assessment of self-supply

Thresholds for presumed dominance are helpful

IDA must enforce criteria for exemption request before moving to analysis stage

CONCLUDING COMMENTS

ATTACHMENT

Confidential Attachment A

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STATEMENT OF INTEREST

Reach Ltd. ("**REACH**") provides this submission in response to IDA's Consultation Paper *Preliminary Decision Regarding The Request Of Singapore Telecommunications Limited For Exemption From Dominant Licensee Obligations With Respect To The "International Capacity Services" Market ("ICS Preliminary Decision")*. This submission should also be read in the context of REACH's comments in April 2004 ("**First REACH Submission**") on the IDA's initial consultation on ICS markets ("**ICS Consultation**") and the SingTel Request for Exemption attached to the ICS Consultation ("**Exemption Request**").

Our comments are made on behalf of our subsidiary, Reach International Telecom (Singapore) Pte Ltd. This entity is the holder of a Facilities Based Operator Licence ("**FBO**") in Singapore under which it supplies a broad range of products to other operators, including the type of services included in the Exemption Request (which we loosely refer to here as "**ICS**" for consistency with the documents above¹). Aside from an overarching interest in Singapore being a competitive telecommunications hub, REACH therefore has a particular interest in the ICS Preliminary Decision as a competitor of SingTel. REACH also has a particular interest as a wholesale acquirer of other services included in (e.g. domestic backhaul), or relevant to (e.g. cable station access and connection services), the Exemption Request.

At the outset, REACH wishes to express its support for IDA's findings to date that:

- SingTel continues to dominate the backhaul market.
- SingTel continues to dominate Terrestrial IPLC ("**T IPLC**") markets and IDA should err on the side of caution and retain dominant licensee regulation over all IPLC markets where key routes lack competition.

We urge IDA to hold firm this stance through to its final decision on the Exemption Request. We trust that IDA will give us an opportunity to provide further input should it need additional support for these conclusions as a result of any challenges from SingTel.

¹ We note again as per the First REACH Submission that ICS is more commonly used to describe true capacity services such as IPLCs and that it is not correctly applied to managed services such as IMDS or domestic services such as backhaul.

PART I COMMENTS ON PRELIMINARY FINDINGS RE DOMINANCE

IDA HAS CORRECTLY CONCLUDED SINGTEL DOMINATES IPLC MARKETS

Product market is Terrestrial IPLC specific

REACH is pleased to see that IDA has ignored SingTel's blanket ICS market definitions and correctly identified a T IPLC product market, distinct from satellite, IMDS and other international services in the Exemption Request. We urge IDA to retain this approach in its final decision.

In this regard, we hope that IDA's final decision will be stronger in its statements on IMDS (refer e.g. para 43(b) of the ICS Preliminary Decision) to the effect that IPLCs and IMDS are not in the same market. From a customer perspective, where there is demand for a regional managed network, IPLCs are not a substitute for IMDS. That is why many customers are prepared to pay much more for a managed service, despite drops in IPLC prices.

The ICS Preliminary Decision is also sound in finding that IRUs and T IPLCs are in separate markets due to lack of substitutability. One reason given by IDA is that IRUs do not include dry segments. REACH wishes to clarify that sales of IRUs may be done on a PoP to PoP basis and these should still be considered part of what IDA has identified as a separate IRU market dominated by SingTel, as distinct from the IDA-defined T IPLC market for PoP to PoP T IPLCs.

We also ask that IDA further clarify its discussion of IRUs as we are concerned that, while IDA has defined IRU markets separately, it has not clearly stated that SingTel remains subject to dominant licensee obligations in the supply of IRUs. We suspect that this is because IRUs were not listed in the Exemption Request but believe that, for the avoidance of doubt, the final ICS decision should expressly recognise that competition in the supply of IRUs is not effective and SingTel remains dominant.

Definition of IPLC market must catch any IPLCs 'dressed up' as IMDS

If IDA continues to find that IMDS markets are competitive (see comments below), it must ensure that SingTel cannot evade dominant licensee obligations applicable to T IPLCs by 'dressing up' IPLCs to look like IMDS. It could be all too easy for SingTel to add just a bit of functionality or management to capacity and then argue the service is not covered by dominance obligations. This is a real danger and is just one reason why IDA should be cautious in finding SingTel non-dominant in IMDS markets, without full consultation on matters such as appropriate market definition.

We note the proposal to require SingTel to approach IDA before offering new services so that IDA can determine which market the service falls within. REACH trusts that IDA will allow for industry comment if the classification could be contentious. Although SingTel may argue commercial sensitivity, it is important that IDA gets balanced information and that industry has a chance to comment on which services get exempted from dominant licensee obligations, as it has with the current SingTel list of ICS.

Hubbing is not a substitute for direct routes

REACH strongly supports the IDA finding that hubbing is not a substitute for direct T IPLC routes. Applying a proper competition analysis, it follows that T IPLC markets are defined on a route-by-route basis and that the availability of hubbing does not constrain SingTel dominance on these routes.

We do not wish to reiterate all our comments from the First REACH Submission in relation to customer demand for direct routes. However, in line with the ICS Preliminary Decision, we stress again that when customers are requesting capacity, REACH is seeing increasing sophistication of demand to the point of customers wanting T IPLCs on specific routes and even cable systems. REACH's experience is also that it is receiving more point-to-point connectivity requests as customers look to build their own backbone networks. This is quite different from a few years ago when IPLC markets were considered in Hong Kong.

IDA correct to err on side of caution if not rigorously analysing geographic market

As indicated above, REACH continues to believe that correct market analysis dictates a route-by-route or even cable-by-cable system market definition for T IPLCs, since hubbing is not considered a substitute for direct routes and customers are increasingly demanding of quality. IDA appears to have reached the same conclusion in theory: "...IDA recognises that each route is theoretically a different market and hence, a route-by-route market definition may be appropriate..." (p16 ICS Preliminary Decision). However, it then talks of the market being a broad T IPLC market.

REACH does not wish to be pedantic but, given the importance of the decision, we would ask that the IDA be even clearer in stating that T IPLC markets are route specific not just in theory but reality. It is simply that the IDA is analysing and making a finding of dominance across all of these markets, rather than each route individually, because SingTel on the whole remains dominant such that individual analysis is not warranted. This may be a matter of terminology only but we believe it important in terms of analytical rigour and clarity.

The IDA should more clearly split between market definition and market assessment issues. It is still necessary to use a narrower market definition as a tool to find in the first place that competitive conditions are similar. The similarity of competitive conditions would not put all routes in the same market. It just means that the assessment of each market would lead to a similar result, such that the IDA's finding applies across a broader T IPLC market.

We submit that the IDA should clarify this issue throughout the final ICS decision, with words to the effect that "*While assessed together, this does not mean that IDA is making a definitive statement that all IPLC routes are actually in the same market. Nor does it preclude IDA from assessing the products separately in the future when competitive conditions may have changed*".

All of this aside, REACH supports the IDA approach of erring on the side of caution and finding SingTel dominant across all IPLC route markets. A broad market definition makes

sense when used as a tool to stop abuse of dominance in related markets where they are all largely subject to the same lack of competition. It would be manifestly wrong to go the other way and apply a broad IPLC market definition to give SingTel a blanket exemption where there is only limited competition in more narrowly defined markets. We discuss this further below.

SingTel does dominate T IPLC markets

REACH supports IDA's preliminary finding that SingTel continues to dominate T IPLC markets. We believe that the IDA could present a stronger picture of this domination in its final decision than it has in the ICS Preliminary Decision. For example, statements that competition has improved because SingTel prices have reduced 95% since liberalisation do not paint an accurate picture of price trends across T IPLC services and the meaning of those trends.

Capacity prices have dropped everywhere not only as a result of liberalisation but also excess capacity. The fact that SingTel charged high prices for T IPLCs in its monopoly environment and has had to significantly reduce them post liberalisation is no doubt true. However, REACH submits that this in no way evidences that the T IPLC market is becoming competitive. We query what proof there is that the 95% price reduction figure provided by SingTel and used by IDA is representative of all T IPLC prices. We also query what proof there is that the price reductions are a result of competitive constraints on SingTel as opposed to trends seen across the region. Finally, we query what proof there is that the price reductions have brought T IPLC prices close to best practice. In this regard, we stress that the onus of proof is on SingTel. It would be wrong for IDA to simply accept data from SingTel just because other operators have not provided counter information.

To illustrate, if SingTel are now selling T IPLCs at market rate, as the current market price on routes from Singapore to Hong Kong for DS3 is around USD 5,000 per month, a 95% reduction would mean SingTel was selling Singapore-Hong Kong DS3s for about USD 100,000 per month a year ago. This was not the case – the market price for DS3s between Singapore and Hong Kong a year previously was in the range of USD 10,000 to USD 15,000 per month. Alternatively, using these prior year figures as a starting point, a 95% price reduction would mean SingTel now selling DS3s at USD 750 per month. REACH can only surmise that the 95% reduction quoted is against SingTel's previously published prices – which bore little resemblance to actual prices in the marketplace.

Despite the onus being on SingTel, REACH is providing IDA with some pricing material that points to a conclusion SingTel pricing is not best practice and further suggests that it cannot have been reduced by 95% across the board or on key routes (Confidential Attachment A). We also point the IDA to public information showing that prices are excessively high on the key India-Singapore route. For example, TeleGeography figures show that the DS3 prices for this route are higher than for other India routes which involve much greater distances such as to London or Los Angeles.²

² TeleGeography's "Bandwidth Pricing Report", June 2004.

REACH therefore asks that loose statements in the ICS Preliminary Decision which overstate the level of competition in ICS markets (eg. re 95% price reductions) be removed from the final decision.

We also believe that IDA has substantially underestimated SingTel's share across a broadly defined IPLC market. Rather than in excess of 60% sold (or activated) capacity, REACH maintains that SingTel controls in excess of 75% activated capacity. Information provided by IDA to REACH of REACH's share of the T IPLC market strongly suggests that SingTel's share of this market is significantly above the 60% floor mentioned by IDA, rather than just marginally so.

We are pleased that, in addition to its overall calculation, IDA has undertaken a route-specific analysis of market share. This sort of specificity is needed before determining that a broader assessment of dominance will produce an acceptable result. We do not doubt IDA's finding that SingTel has a market share in excess of 90% for five of its top 10 routes. We also submit that the share would be well in excess of the 40% presumption of dominance on other routes – REACH would have anticipated SingTel's market shares of the Singapore-Hong Kong and Singapore-Japan routes to be around the 60% mark.

Even if the SingTel market shares on the Singapore-Hong Kong and Singapore-Japan routes are lower than REACH's expectations, we believe SingTel still retains significant market share with its market power enhanced by its overall dominance of T IPLC markets and critical input markets. REACH is concerned that the discussion in the ICS Preliminary Decision leaves an impression that a market share less than 40% indicates an acceptable amount of competition. We submit that IDA should make clearer the fact that the 40% figure leads to a presumption of dominance but shares less than that are still strong evidence of dominance – they just don't result in a presumption. A safe harbour from dominance would be a substantially lower figure with no other dominant characteristics present.

REACH observes that SingTel's financial results indicate that it is doing very well in the T IPLC market, even if it does not provide actual market shares. In its latest results, SingTel states that the demand for its IPLC bandwidth has more than doubled for the year.³ REACH does not believe that the market as a whole has doubled, suggesting that SingTel outperforms the market in terms of retention and capture of T IPLC customers – possibly growing its market share rather than it being eroded by competition. SingTel's IPLC revenue also increased 12% on a year on year basis despite the price declines that have been experienced. REACH believes that SingTel still has further “monopoly” margin left in its T IPLC prices, and these T IPLC prices may put SingTel in a position to employ price squeeze tactics in downstream markets.

Given SingTel's market share and the lack of factors countering this, the ICS Preliminary Decision to continue to classify SingTel as dominant across all T IPLC markets is, in our view, entirely justified. Until such time as SingTel can prove there is effective competition on all T IPLC routes, it should not be exempt from dominance obligations. If IDA were to grant exemption on only certain routes then, as the ICS Preliminary Decision points out,

³ Financial results for the quarter to September 2004, “Management Discussion and Analysis for SingTel”, page 20. See http://home.singtel.com/investor_relations/financial_results/default.asp

IDA would find itself in an administrative tangle trying to control cross-route anticompetitive conduct. If IDA were to grant exemption across the board before all routes are effectively competitive, then competition on remaining dominated routes would never take hold. IDA should only consider an exemption when the routes that remain dominated by SingTel are so insignificant that they do not impact on broader competitive conditions.

IDA HAS CORRECTLY CONCLUDED SINGTEL DOMINATES BACKHAUL

As a domestic service, backhaul should be assessed separately

REACH is pleased to see that IDA has rejected SingTel's attempts to treat backhaul as in the same market as international capacity. It is correct to define backhaul as a discrete wholesale product market.

However, we remain concerned that IDA is still including an assessment of a domestic service in a review of international services. IDA justifies its consideration of SingTel's broad Exemption Request on the basis that any incumbent would try to include as many services as possible. However, leaving aside our issues with this approach, there still has to be a limit. The IDA's approach would allow SingTel to make an exemption request for all services it offers.

IDA should have treated domestic backhaul as separate from international markets and reviewed it as such. It must bear this in mind when it reviews backhaul in the future. The competitive environment is much more aligned to domestic facilities based services such as LLCs than to international services like IMDS.

IDA correct to err on side of caution if adopting broader market definition

At this point, REACH notes again that IDA should take care in its discussion of market definition. The ICS Preliminary Decision states that there is "theoretical justification" for defining separate backhaul markets for each cable system, or at least for each cable station since backhaul from one station is not substitutable for backhaul from another. But then IDA claims that since the competitive conditions are similar it is reasonable to assess all routes together. We repeat that the IDA should more clearly split between market definition and market assessment issues. It is still necessary to use a narrower market definition as a tool to find in the first place that competitive conditions are similar. The similarity of competitive conditions would not put all routes in the same market. It just means that the assessment of each market would lead to a similar result, such that the IDA's finding applies across a broader backhaul market.

This seems consistent with the ICS Preliminary Decision statement in para 23 that "*In some cases, IDA may conclude that, even though different product offerings may theoretically be in different markets, it is appropriate to assess the need for continued regulation of these product offerings together because they are subject to similar market conditions.*" We submit that the IDA should clarify this issue here, and throughout the final ICS decision, with words to the effect that "*While assessed together, this does not mean that IDA is making a definitive statement that these backhaul products are actually in the same market. Nor does it preclude IDA from assessing the products separately in the future when competitive conditions may have changed*".

Ultimately, as with T IPLCs, REACH supports the IDA approach of erring on the side of caution and finding SingTel dominant across all backhaul route and system markets. A broad market definition makes sense when used as a tool to stop abuse of dominance in related markets where they are all largely subject to the same lack of competition. It would be manifestly wrong to go the other way and apply a broad backhaul market definition to give SingTel a blanket exemption where there is only limited competition in more narrowly defined markets.

Backhaul conclusion is sound but assessment needs more rigour

REACH agrees with the ICS Preliminary Decision that SingTel continues to dominate backhaul but we believe the final decision could be improved. While IDA's discussion of backhaul market definition suggests that the competitive conditions for each cable system are similar, it does not elaborate in its market assessment, particularly in relation to key market share criteria. IDA states that, taking into account self supply, SingTel only has about 50% of the backhaul market. It does not seem to find that this market share is similar across all routes. Rather, it finds that SingTel remains the only supplier of backhaul for C2C, i2i and TIS cables. This 100% market share, as compared to other routes where there may be other suppliers, would indicate different competitive conditions and more defined backhaul markets. Therefore a loose statement that SingTel only has 50% market share does not paint an accurate picture.

However, as noted above, we agree that while SingTel has such a high degree of dominance, it makes sense to classify it as dominant across all backhaul markets. REACH is simply suggesting that IDA strengthen its final decision with clearer statements of SingTel's market share, rather than emphasising a 50% figure that is not representative of each backhaul market. As with T IPLCs, we stress that the onus of proof is on SingTel. It would be wrong for IDA to simply accept data from SingTel just because other operators have not provided counter information.

Aside from market share issues, we agree with IDA's assessment that SingTel's dominance is entrenched by its ability to leverage control of cable landing stations and provision of connection services. SingTel has shown its propensity to act anti-competitively with the conditions it has imposed on other FBOs in relation to backhaul connection. This conduct was not stopped by competitive forces but rather by regulatory intervention, demonstrating SingTel's continued dominance. As IDA points out, it will be some time before IDA's intervention in this area takes full effect. Even then, it is unlikely to be the case that amended RIO conditions are enough in themselves to render SingTel non-dominant in the supply of backhaul as there remain other barriers to competition.

FURTHER REVIEW ONLY USEFUL ONCE IMPACT OF LLC REGULATION CLEAR

We are pleased to see clear statements in the ICS Preliminary Decision that SingTel's dominance of T IPLC and backhaul markets is entrenched by control of input and complement markets for LLCs, backhaul, cable station access and connection. While recent regulatory changes will certainly improve the competitive landscape, we are still far from a state of effective competition.

As IDA has highlighted, SingTel's continued attempts to delay and obstruct regulatory improvements mean that it will continue to be dominant for some time. In relation to LLCs, not only has SingTel delayed with its appeal, but it continues to frustrate competition with its technical conditions for LLCs. Therefore IDA should only expect to see an effect on the market once all LLC issues are resolved, and the LLC decision is fully implemented, including the move to cost based pricing. Even then, a suitable period will be required for competition to develop.

As a result, IDA may need to delay its review of T IPLC and backhaul markets to track developments with LLCs. IDA should not commit in its final ICS decision to a two year timeframe. Rather, it should suggest that a review before two years would not be appropriate and that it will only consider a further exemption request from SingTel in relation to ICS 12 months after full implementation of cost based LLC pricing.

IP TRANSIT MARKET WRONGLY CLASSIFIED AS COMPETITIVE

REACH submits that the IDA should amend its proposed decision in relation to IP transit. Dominance obligations should continue to apply to SingTel's supply of this service.

REACH does not have any particular comments at this point in relation to the IDA's statements on IP transit market definition. We do of course continue to support that this is a separate market from other services in the Exemption Request and that its geographic scope is limited to Singapore sales.

Where REACH really questions the ICS Preliminary Decision is in relation to its apparently superficial assessment that the IP Transit market is already effectively competitive. REACH submits that the IDA should further examine this matter before issuing a final decision as we firmly believe that SingTel still dominates this market.

The principle reason that IDA gives for finding the market competitive is a price drop of 60% since March 2004. In the first instance, we question the accuracy of the 60% figure as being representative of the market. Regardless of what the correct price drop figure is, we do not believe that this can simply be attributed to competition placing constraints on SingTel. According to TeleGeography, prices for IP Transit have been trending down both globally and regionally, not just in Singapore. In fact, transit prices have fallen sharply across the board in the past year.⁴ In other words, it is incorrect to use price drops in Singapore as evidence that SingTel is constrained in pricing by competition to the extent that it is no longer dominant.

A more valid measure of effective competition would be whether SingTel's prices have dropped to a level in line with international best practice (assuming that international prices have reached this point). In this respect, IDA has acknowledged that SingTel's prices are still relatively high compared to other regional hubs such as Hong Kong. REACH's experience is also that SingTel's IP transit prices remain high even after the recent price reductions– which are generally an indication of a lack of competition – and we believe that the drop in effective wholesale prices has been more in the region of 30% than 60%. However, IDA dismisses this evidence on the basis that international benchmarking is not

⁴ TeleGeography's "Bandwidth Pricing Report", July 2004.

appropriate because Singapore market characteristics justify higher prices eg. it is a small market and is far from key destinations like the United States. REACH submits that the Singapore market for IP transit is not so different as to justify prices that are higher even after taking into account volume and distance aspects. In fact, relevant costs are relatively distance independent. Further, as SingTel has direct interests in capacity on cable systems such as i2i (India), SMW3 (India, Hong Kong, UK and South East Asia), TIS (Thailand, and Indonesia), and C2C (Japan – enabling low cost onward connectivity to the USA), there is no reason why SingTel's costs to provision IP transit services in Singapore should be materially different from other regional IP hubs.

TeleGeography appears to believe that Asian prices will continue downwards toward the Europe and United States levels as competition improves, with no mention of the size or distance issues that IDA appears to believe justify continued high prices in Singapore. In fact, TeleGeography's pricing analysis seems to indicate that on longer routes the price per mile may be similar or even less than on shorter routes. REACH is concerned that if IDA steps back now from supporting IP Transit competition, then TeleGeography's predictions of Asian prices reaching the same competitive levels as elsewhere will not come true for Singapore. Price drops so far have been the easy part – a natural result of liberalisation and excess capacity. They do not prove that the market is competitive. The hard part, which requires regulatory support, is getting prices down to best practice levels.

IDA also suggests that there are many new competitors who have deployed capacity to major hubs, such that SingTel's IP transit market share based on capacity is less than 30%, taking into account self supply. REACH submits that SingTel is likely to have a much higher share, based on our knowledge of the market as an IP transit supplier – a SingTel market share of 60% or greater would be more plausible.

REACH also submits that IDA appears to have underestimated, or at least understated in the ICS Preliminary Decision, the impact of SingTel's control of related markets on the IP transit market. In its description of the IP transit market (paras 46-48 of the ICS Preliminary Decision), IDA makes clear that LLCs are a key requirement of dedicated Internet access, which although a separate market from IP transit, is obviously related. It can be considered a downstream market, as it was when OFTA considered REACH IP backbone services in Hong Kong. In Singapore (unlike Hong Kong where the LLC provider is structurally separate from REACH), SingTel completely dominates the supply of LLCs, which flows through to the supply of Internet access and upstream to IP transit markets. In this regard, IDA must look at SingTel as a group here, including SingNet. REACH observes that SingNet offers very low pricing. SingTel is able to maintain high wholesale IP prices but SingNet is clearly able to discount these, as well as LLC prices, at the retail level, with the benefits remaining within the group.

Similarly, in its description of the IP transit market (paras 46-48 of the ICS Preliminary Decision), IDA indicates that IPLCs are not a suitable alternative for IP transit including because the costs are so high. However, IDA does not go on to recognise that SingTel's dominance of the upstream international bandwidth markets flows through into IP transit markets. Again, when OFTA considered IP backbone services in Hong Kong, it treated external bandwidth services as a relevant upstream market, although the impacts were limited as this market was competitive. Contrast Singapore where SingTel still dominates this upstream market with its market power flowing through to IP transit markets.

ICS PRELIMINARY DECISION ON IMDS IS FLAWED

Need for careful analysis of A end market share in IMDS context

The discussion of IMDS in the ICS Preliminary Decision suggests that IDA has defined an A end correctly but it is not clear that it has then gone on to apply the same definition in calculating market share or has simply relied on, for example, revenues reported to IDA for licence fee purposes.

Our concern arises from IDA references to A ends meaning sales of IMDS made within Singapore. This appears to be a little loose as sales made/contracts signed/revenues recorded in Singapore may not relate to services provided to A end customers. In the case of international operators, IMDS services sold in other countries may be recorded by a Singapore business for numerous reasons, including taxation, sales force structure etc. But to classify these as Singapore sales for competition law purposes distorts an assessment of SingTel's market share of Singapore business. We would ask the IDA to clarify how it calculated A end market shares – by reference to revenues recorded in Singapore or by a more complicated analysis of which customers were true A ends with a Singapore hub making the decision on purchasing IMDS in Singapore.

We would also ask that IDA clarify and make sure that it has assessed revenues for each operator on the same basis. In particular, to the extent that SingTel revenues exclude LLC inputs, so should the revenues of other licensees. IDA also needs to closely consider the accuracy of its calculations in light of SingTel's ability to attribute more revenue to LLCs (thus making its IMDS revenue appear less) when its real internal cost is lower. On the other hand, the costs to competitors of LLCs cannot be so manipulated.

IMDS markets may be more narrowly defined

IDA has found no retail and wholesale split in the IMDS market as there is hardly any wholesale business. However, operators do supply IMDS to other operators for retail distribution, for example to increase their overall market. REACH submits that there may be an increasing move towards wholesale supply of IMDS for further value add and rebranding by other operators. This might be a result of network rationalisation and more cautious approaches to network investment by operators at the retail level, as well as excess capacity in the hands of wholesalers.

REACH also suspects that there may be a further split between high and low end IMDS with SingTel more likely to be dominant in the supply of IMDS to medium Singapore businesses. While REACH operates in the wholesale space, we would not be surprised to find that typically the global operators will be competing more for the top 100 MNCs with smaller customers serviced only by SingTel, StarHub and a range of smaller licensees.

LLC impact on IMDS should not be ignored

We disagree with IDA's finding that SingTel domination of LLCs has no significant adverse impact on IMDS competition. While the impact on T IPLCs may be greater, it is still serious enough in IMDS markets to warrant continued dominant licensee regulation on SingTel. LLCs are a large component of IMDS prices and price is still an important part of an IMDS purchasing decision.

REACH submits that herein lies the danger of rolling back dominant licensee obligations in relation to IMDS. If SingTel can do whatever it likes in relation to IMDS pricing, it could, for example, engage in a price squeeze charging very low prices for IMDS such that its competitors cannot compete and make a reasonable margin once they have paid SingTel its input LLC prices. Just because IDA has now moved to regulate LLC prices does not mean they are anything near cost leaving SingTel ample opportunity to engage in anti-competitive price squeezes.

Evidence of competition is questionable

In relation to IMDS, REACH once again finds itself questioning the evidence included in the ICS Preliminary Decision that this market is competitive. In particular, the statement that IMDS prices have dropped by 90% is patently incorrect. While REACH does not operate in the critical retail space, we are sure from our industry intelligence that other operators could clearly demonstrate this point. REACH's own knowledge of the IMDS market suggests price declines roughly equivalent to realistic measures of T IPLC prices reductions – in the range of 40% over the last year, and only on certain routes.

The fact that SingTel charged high prices for IMDS in its monopoly environment and has had to significantly reduce them post liberalisation is no doubt true. However, REACH submits that this in no way evidences that the IMDS market is becoming competitive. We query what proof there is that the 90% price reduction figure provided by SingTel and used by IDA is representative of all IMDS prices. We also query what proof there is that the price reductions are a result of competitive constraints on SingTel as opposed to trends seen across the region. Finally, we query what proof there is that the price reductions have brought IMDS prices close to best practice. In this regard, we stress that the onus of proof is on SingTel. It would be wrong for IDA to simply accept data from SingTel just because other operators have not provided counter information. REACH therefore asks that loose statements in the ICS Preliminary Decision which overstate the level of competition in ICS markets (eg. re 90% IMDS price reductions) be removed from the final decision.

REACH also observes that the latest SingTel financial results suggest that it is doing very well in the IMDS market, showing a 35.4% increase in revenues for the past six months, and ATM specifically showing a 12.6% increase. This is at a time when prices are supposedly falling, suggesting a considerably larger increase in volumes and probably market share.⁵ As a group, SingTel has previously forecast that its local and regional VPN revenues will grow at more than 61% a year up to 2008.⁶ As for ATM and FR, when SingTel previously reported its numbers for these services, it was making over USD60 million.⁷

Leaving aside that the actual amount of the price reduction is overstated, we also submit that price reductions are not necessarily proof of competition. As we point out above, they

⁵ Financial results for the quarter to September 2004, "Management Discussion and Analysis for SingTel", page 20. See http://home.singtel.com/investor_relations/financial_results/default.asp. (While ISDN and FR show declining revenues, this is to be expected as these are becoming old technologies. It does not mean that SingTel no longer has dominance in their supply)

⁶ Various 2003 press releases eg http://it.asia1.com.sg/newsdaily/news005_20030515.html

⁷ SingTel Financial Reports prior to 2003 included FR and ATM revenues.

could just as easily indicate price squeezing tactics by SingTel. IDA will be aware that this was a major industry concern when we first began lobbying IDA for LLC regulation.

REACH also believes that the fact that other operators may have a wider global reach is wrongly used as evidence that SingTel no longer dominates the Singapore market. SingTel still has substantial global reach and is strong in the region. It is clearly able to provide global IMDS and is a key supplier to Singapore based customers, given its network and business is tailored to their demands. As a result, it still has significant advantages over the global operators in relation to the *Singapore* and even regional market.

INADEQUATE EVIDENCE PROVIDED FOR COMMENT ON OTHER MARKETS

REACH has some concern that the ICS Preliminary Decision contains inadequate evidence and essentially sets out a proposed method of analysis and high level conclusions rather than actual market assessments. In many of the markets where IDA proposes to find SingTel non-dominant, we feel unable to make detailed submissions due to lack of material in the ICS Preliminary Decision to comment on. However, this does not mean we agree with IDA's preliminary findings. We continue to believe that SingTel's dominance penetrates across all international markets, as well as domestic. Therefore while not providing detailed analysis we do wish to make a few comments on other markets in the ICS Preliminary Decision.

SingTel must dominate satellite IPLC markets with 100% market share

The ICS Preliminary Decision states that SingTel has close to 100% of the satellite IPLC market yet is not dominant. REACH submits that this conclusion must be flawed. It is extremely unusual for any party with such a high market share to be found non-dominant in any market in any context. While there are very limited exceptions, in such cases one finds extremely unusual and overwhelming factors countering market share. The IDA has not identified any such factors in the case of satellite IPLCs and appears to have placed more weight simply on the fact that industry did not protest enough about these services (when this was because we were more concerned with the fundamentals of the ICS Consultation). Other factors identified by IDA are not compelling. It is not an exceptional factor that operators could lease satellite bandwidth and enter the market. The fact that they haven't indicates that the market is not so readily contestable. Further, while satellite IPLC may be on the decline, this does not mean it is a market that cannot be dominated. Particularly for the routes where customers need to use satellite IPLCs, SingTel will remain dominant and should be regulated as such. It would be dangerous for IDA to find that, since there are no real competitors in this market, it 'may as well' roll back regulation on SingTel. What would IDA then do if an operator did decide to enter the market? IDA could then find that it does need to take action but this will be difficult when IDA has already reclassified SingTel as non-dominant because of insufficient industry challenge rather than rigorous analysis.

REACH queries in any event why SingTel needs regulation removed when it has close to 100% of the market. Regulation cannot be impeding it as it has no competitors. The risk of any potential new entrants being deterred from market entry because of SingTel's unregulated market power is far greater than any potential administrative burden on

SingTel from compliance with dominant licensee regulation (which should be the only benefit SingTel realises as a result of rolling back regulation).

SingTel control of earth stations entrenches satellite dominance

We note that (with the exception of ST) SingTel operates the only satellite earth station in Singapore. This allows it to dominate the supply of satellite based services since it is not possible to access these services without a station. Its control over earth stations means that market power cannot be assessed simply by analysis of market share with reference only to number of dishes or transponder capacity. It is not the case that earth stations are so easy to build. The earth stations are bottlenecks and there are good reasons why they have not been replicated.

PART II COMMENTS ON GENERAL ANALYTICAL APPROACH

Overall approach is sound

REACH is of the view that the general analytical approach in the ICS Preliminary Decision is sound and has produced a correct finding that SingTel still dominates T IPLC and backhaul markets. IDA has clearly gone to some lengths to develop its thinking on competition matters. In this regard, we applaud the IDA for rejecting SingTel's incorrect application of Hong Kong precedent. Overseas precedent has substantial value but only to the extent it is correctly analysed and applied to the Singapore context.

We only make limited comment here on IDA's general approach as we trust that the principles of analysis outlined in the final ICS decision will be part of IDA's consultation on guidelines for competition assessments. We assume that IDA is not setting in stone now what are effectively going to be guidelines.

IDA statements of approach must be meaningful

While we generally agree with the market definition principles proposed in the ICS Preliminary Decision as being in line with best practice, the actual application or analysis of these principles receives little discussion. In particular, IDA places primary emphasis on use of the SSNIP test but then does not discuss how it applied this test to each of the services in the ICS Preliminary Decision. In fact, the analysis appears limited to more of a logical, functional approach to substitutability. REACH believes this is sensible as it is not necessary to apply a SSNIP test if services are manifestly not substitutes. However, for the sake of rigour, we submit that IDA should express more clearly that this is part of its market definition approach. When it comes to actual analysis, it should then identify when it has applied a SSNIP test and when it has taken a more functional approach. This would address the current appearance of IDA stating a market definition approach but then not seeming to apply it.

At this juncture, we mention again that we do not think IDA has properly applied its market definition principles to IMDS. We question whether IDA has performed a SNIPP test before putting ATM, FR and IP VPN in the same market. REACH firmly believes that correct use of this test would point to the opposite conclusion, with these services falling into separate markets, each dominated by SingTel.

IDA must analyse whether dominance obligations unnecessary

Another concern REACH has previously raised is that SingTel and IDA do not seem to follow Code requirements for evidence each dominant licensee obligation is unnecessary to protect end users and preserve competition. The SingTel Exemption Request and the ICS Preliminary Decision contain no real discussion of each provision and its importance. IDA has referred to the importance of section 7 provisions prohibiting price and non price predation in para 25: *“IDA will give special scrutiny to requests by a Dominant Licensee that seek exemption from the prohibitions contained in Section 7 of the Code, against abusing its dominant position”*. However, having said that, IDA simply exempts SingTel from all provisions for each market in which it finds some competition.

Given the absence of a general competition law backstop for telecommunications, it is particularly important that IDA retain the application of section 7 *ex post* provisions even if rolling back *ex ante* regulation such as tariffing. To say that SingTel is not dominant in markets such as IMDS (such that section 7 does not apply) in advance of any conduct that may occur means there is no back stop. For example, in the future SingTel may engage in predation where the particular context dictates that a narrower market definition is appropriate. SingTel may have dominance and have acted anticompetitively in this context but because IDA has said that section 7 does not apply in advance, there is no way to punish SingTel. At best IDA could only go through a very long-winded process of reclassification.

In this regard, we stress that IDA should not see reclassification as an adequate backstop if it makes a wrong decision in relation to removing dominance obligations. Aside from being cumbersome, it would give SingTel far too much room to challenge IDA. It is quite possible that the evidence in the future might make the market look more competitive than it is now such that IDA would be hard-pressed to say that SingTel had suddenly ‘regained’ dominance. This would be the required test, rather than that IDA had simply made a mistake in rolling back dominance obligations because SingTel had been dominant all along.

There can be absolutely no harm to SingTel from IDA retaining the application of section 7 to markets otherwise exempted from *ex ante* dominance regulation. This is the typical approach in other jurisdictions. If SingTel does not engage in predation such as below cost pricing then the section will never affect it, as compared to *ex ante* requirements such as tariff filing. The application of section 7 does not stop pro-competitive behaviour such as quick introduction of new services.

We believe that IDA should therefore put some weight behind its para 25 statement that *“to the extent that a Dominant Licensee has any reasonable possibility of regaining significant market power in a market, retaining these prohibitions may be necessary to deter potential anti-competitive conduct.”* IDA needs to retain the application of section 7 to the services it otherwise proposes to exempt in the ICS Preliminary Decision. This is not just a matter of addressing the possibility of SingTel “regaining” power. Rather SingTel may still have market power in the supply of the service, in a different context or with the market differently defined, bearing in mind that market definition is just a tool for analysis and needs to be assessed in the context of particular conduct.

Assessment of self-supply

REACH is pleased to see express statements in the ICS Preliminary Decision that IDA will include self-supply when assessing market share. However, we believe IDA should clarify the markets where it has included self-supply in market share calculations.

We understand that capacity may be an easier measure of market share when including self supply, but note that in some instances it may be necessary to have regard to other measures.

We have strong reservations about IDA's intention to exclude self supply of an input service where SingTel classifies the input as a different service, higher up the chain than what it supplies to others. For example, in the case of ITS, the raw capacity that SingTel defines as the input does at some stage become traffic minutes self supplied (ie. at wholesale) before being supplied to customers. Also, from a functional perspective, the wholesale minutes offered by other carriers could be substituted for SingTel minutes, if SingTel did not have a policy of only using its own ITS inputs. We are concerned that IDA's proposed approach allows SingTel too much scope to evade dominance classification through the way it structures internal supply.

Thresholds for presumed dominance are helpful

We are supportive of the IDA's move to implement a presumption of dominance where market share is above 40%. We are concerned though that IDA continues to give SingTel leeway to file frivolous exemption requests by failing to set an absolute maximum market share above which it will not consider an exemption request.

IDA must enforce criteria for exemption request before moving to analysis stage

Finally, we note again our disappointment that IDA gives SingTel so much leeway to submit Exemption Requests that do not comply with Code Requirements. The ICS Exemption Request did not provide an adequate basis for industry to provide comments. While we are pleased to see that IDA rejected an earlier request from SingTel as long ago as 27 March 2003 (assuming this date reference in the ICS Preliminary Decision is correct), this does not of itself mean that the request put out for consultation a year later was adequate. If SingTel really did provide necessary verifiable data but all of this is confidential, IDA should at least list by topic what SingTel provided. This would ensure regulatory transparency and accountability and improve industry acceptance of the process.

We also believe that IDA goes too far in suggesting it is acceptable for an incumbent to submit overly broad Exemption Requests. This would mean that SingTel could slip in a few domestic services next time it asks IDA to look into IPLCs. A request should be limited to substitutable products. If IDA does not accept this point and continues to accept broad exemption requests, it should change its consultation process. Where it initially consults on a broad ranges of services but then determines that markets are narrower it should go out for a second round of public comment on each of those markets rather than moving to a preliminary or final decision.

To illustrate, in the present matter industry focused its first round comments on proving that the services identified by SingTel were in separate markets and that only true ICS in the form of IPLCs should be considered. Given that IDA chose to consider markets in a way not proposed by SingTel nor requested by competitors, industry has not had a chance to comment in a rational way. While IDA may be seeking input now, it could be a little late when IDA has already set out a preliminary decision and does not want commentators to start arguments from scratch.

CONCLUDING COMMENTS

We trust that IDA will be left with no doubt after reviewing industry submissions that its ICS Preliminary Decision is correct in relation to T IPLC and backhaul markets. SingTel still dominates these markets and must continue to be subject to dominant licensee obligations if competition is ever to become effective.

IDA may need to revisit its preliminary conclusions on other markets. In particular, REACH submits that competition is not effective in IP transit markets given that SingTel's prices are higher than other regional hubs and significantly higher than best practice jurisdictions. We also believe that the conclusions in relation to IMDS markets are flawed and that the evidence requires re-examination.

IDA must also question why SingTel seeks to be exempted from the various dominant licensee obligations if it does not intend to act anti-competitively. IDA should rely on regulation to ensure that SingTel cannot act in such a way pending the market maturing to a point of effective competition that similarly ensures SingTel is unable to act anti-competitively. To grant the Exemption Request at this stage would be relying on SingTel's good nature to do so, given the lack of competitive constraint on it.

REACH trusts that the above provides some useful feedback on the ICS Preliminary Decision, which IDA will give due consideration to. We remain ready to discuss ICS markets and SingTel's dominance generally with the IDA as and when required.