



PUBLIC CONSULTATION ON REQUEST BY SINGAPORE TELECOMMUNICATIONS LIMITED FOR EXEMPTION FROM DOMINANT LICENSEE OBLIGATIONS WITH RESPECT TO THE INTERNATIONAL TELEPHONE SERVICES MARKET PURSUANT TO SUBSECTION 2.6.1. OF THE CODE OF PRACTICE FOR COMPETITION IN THE PROVISION OF TELECOMMUNICATION SERVICES

A Response from British Telecommunications (BT)

1 INTRODUCTION

- 1.1 BT thanks IDA for the opportunity to comment on SingTel's submission in requesting an exemption from dominant licensee obligations in the provision of International Telephone Services (ITS). BT is also grateful to the IDA for acceding to requests for an extension of the initial deadline for submission of responses by a further 2 weeks.
- 1.2 BT's comments are respectfully submitted to the IDA in the following.

2 GENERAL COMMENTS

- 2.1 SingTel, in having submitted this request for exemption from dominant status in the provision of International Telephone Services (ITS), has initiated a process of market review. BT is concerned that SingTel has sought to be exempted from substantial dominant licensee obligations¹ in ITS at such a nascent stage in Singapore's experience of competition. We are further concerned that SingTel has sought exemption over a wide range of ITS².
- 2.2 In its submission, which attempts to define the market and assess competition using economic criteria, SingTel has cited international best practices of the European, UK and US regulatory authorities in market review and competition assessments. Nonetheless, the analysis in SingTel's submission is not uniformly sound. While SingTel has attempted to define the market and to assess competition using economic criteria, the analysis is marred through its selective and interchangeable use of market definition and competition measurement criteria. Furthermore, the arguments lack quantitative bite. It is necessary in carrying out such reviews to define markets accurately and assess competition on each of the identified markets. While some of SingTel's claims may be sound and valid, more quantitative and qualitative analysis needs to be undertaken.
- 2.3 Fundamentally, as there has been insufficient analysis undertaken by SingTel to define the markets, BT is of the view that it is premature at this stage of the consultation to conclude if the IDA should grant or reject SingTel's request for exemption from dominance in ITS. As such, BT recommends that the IDA issue subsequent consultation(s) following a thorough analysis of the ITS market and competition by SingTel. BT would also like to suggest that the IDA itself conduct an independent and comprehensive analysis of competition in the various ITS markets and seek comment on its own analysis.

¹ Without limitation, sections 3.3.1 – 5, 5.8.1 – 3, 7.2.1 – 2 of the Code.

² A total of 18 ITS encompassing wholesale, retail residential and retail business.



2.4 BT suggests that the analysis should involve: -

- A full and comprehensive review of the ITS market definition;
 - SingTel has started the market review process by identifying 18 ITS which could be further categorised into submarkets;
 - As a starting point, the 18 ITS could be split into retail and wholesale markets;
 - Further splits within retail and wholesale markets depending on the market characteristics.
- Following categorisation of the 18 ITS into the relevant markets, an objective assessment of competition should be conducted in each of the relevant markets identified; and
- Finally, application of regulation proportionate to the extent of competition in those markets.

2.5 By international standards, sectoral regulation via a Code of Practice for Competition in the Provision of Telecommunication Services ("Code") is a weak piece of legislation as it lacks the support of a legal framework to adequately address and rectify anti-competitive behaviour and abuse of dominant position. BT welcomes and supports the Singapore Government's recent announcement to enact a generic competition law that would be applied across all sectors of businesses in Singapore and the establishment of an independent competition authority. Competition law may in fact encourage a more pro-competitive environment as it is *ex-post* while regulation on the other hand, is *ex-ante*.

2.6 In the absence of guidance from the Code, BT supports SingTel's attempts to define the ITS markets and assess competition. However, the analysis needs further development and be supported by more evidence. Before a market's competitiveness can be fully assessed, it is well recognised by competition authorities world-wide that market definition must first take place.

3 MARKET DEFINITION

3.1 For example, in European competition law the courts have consistently ruled that the Commission must define a market before a conclusion on the market position of the firm or firms under investigation can be reached. The main practical purpose of market definition is to permit inferences about market power to be drawn from criteria used to assess dominance.

(a) SSNIP Test

3.2 The definition of the relevant market for competition policy purposes is based on the principle of hypothetical monopoly. This concept is well established in anti-trust legislation both in the European Union and the United States and provides a standard framework for market definition analysis. In essence, the principle states that a product (or geographic) market should be defined as the minimum set of products (or areas) that could be successfully monopolised. The principle is also known as the SSNIP test³.

³ SSNIP stands for "Small but significant non-transitory increased in price", after the wording of the formulation of the test in the US guidelines. The SSNIP test is also known as the '5% test', after the quantitative threshold described in the test. The SSNIP test is also commonly referred to as the 'hypothetical monopolist' test.



- 3.3 Simply, SSNIP test defines a market as the smallest set of services worth monopolising. As SSNIP tests involve an analysis of demand-side and supply-side substitution, it is a useful statistical tool to quantify the elasticity of demand of a service. This elasticity captures the joint effect of the existence of substitute products and the presence and importance of alternative suppliers.
- 3.4 Notwithstanding the usefulness of SSNIP tests in market definition exercises, it has been omitted in SingTel's analysis of market definition (although SingTel has somehow managed to identify the geographical and product dimensions of the market). BT is of the view that any sound analysis of the market must include the application of SSNIP tests to the ITS supplied by SingTel.
- (b) Distinction between Wholesale and Retail Services**
- 3.5 In Section 1.2 of SingTel's submission, SingTel has listed a total of 18 ITS that it is seeking exemption from dominant licensee obligations. The list encompasses the whole gamut of ITS provided to customers, with no distinction as to whether the services are offered on a retail or wholesale basis. While in most market review assessments, this distinction between wholesale and retail markets would be made, BT notes that SingTel, in its submission and assessment of the market, has classified a number of sub-markets but claims that these are not separate markets (when some of these markets could indeed be separate.)
- 3.6 In the absence of a thorough analysis of the market, it would be premature to accept SingTel's claims that the 18 ITS form a single market. This is inconsistent with the IDA's own licensing framework which acknowledges the existence of separate markets for wholesale and retail services through its categorising licensees as facilities and service based operators.
- 3.7 The terms retail and wholesale used by SingTel in its submission does not appear to be consistent with common understanding. For the avoidance of doubt, BT wishes to clarify that retail services are those services that a carrier sells to an end-user while wholesale services are those services that a carrier sells to another carrier. The distinction lies as to whether the services are allowed to be resold, modified, re-branded, order and pricing terms, etc.
- 3.8 It is critical to set the course of this market analysis right by first attempting to split the 18 ITS into respective wholesale and retail categories⁴, for example, IDD001, BC013, V019 services could be categorised under one market for retail international call origination services. Since demand for wholesale services is derived from the demand for retail services, as a starting point, the relevant retail markets should be analysed prior to conducting an analysis on the wholesale markets. Within the wholesale and retail markets, further distinctions may be made depending on demand and supply side characteristics, as elaborated below.

(c) Distinction between Residential and Business Markets for Retail Services

⁴ In the EC Guidelines and Access Notice (OJ C 265,22.8.1998, p.2), there are in the electronics communications sector at least two main types of relevant markets to consider – that of facilities provided to end users (retail markets) and that of access to facilities necessary to provide such services provided to other operators (wholesale markets).



- 3.9 Residential and business customers differ in their usage requirements, patterns and price sensitivity. For example, business users tend to require a greater range of services and have more stringent quality of service demands, e.g. diversity routing, dedicated channels. On the other hand, residential customers need fewer value added services and have lower quality of service requirements. In addition, the ability to price discriminate successfully between residential and business customers for essentially the same ITS would indicate that separate markets exist for residential and business customers.
- 3.10 The ability to undertake such price discrimination stems from a business customer's greater propensity to spend given that telecommunication services are considered critical business input for commercial profit.

(d) Distinction between Small and Major Business Markets

- 3.11 Oftel's Consultation Document on the Review of Fixed Narrowband Retail Markets acknowledges that the conditions of competition for supply to major businesses are different than those for supply to smaller businesses⁵. The European Commission also clearly recognises scope for defining separate markets for supply to major businesses. Furthermore, a separate market may exist for supply in the context of tenders, which are generally called only by major businesses and central/local governments.
- 3.12 BT notes that in various reports submitted by the Singapore Economic Review Committee (ERC) working groups⁶, efforts were taken to address specific measures for local enterprises, small medium enterprises (SMEs), multi-national companies (MNCs) and Government-linked companies (GLCs). BT submits that the studies undertaken in conjunction with these reviews suggest that these distinctions exist within the business market in Singapore and should be taken into consideration in this market review.

4 ECONOMIC CRITERIA TO ASSESS DOMINANCE

- 4.1 The EC and Oftel have a list of criteria that show the types of evidence that could be used to support a finding of dominance in market reviews⁷. The following criteria are cited in the EC Guidelines as relevant to the assessment of single dominance: -
- Market shares
 - Overall size of the undertaking
 - Control of bottleneck infrastructure
 - Technological advantages or superiority
 - Absence of or low countervailing buying power
 - Easy or privileged access to capital and financial markets
 - Diversification of products and services, e.g. bundled products or services
 - Economies of scale and scope
 - Vertical integration

⁵ Paragraphs 3.16, 3.22, 3.44, 4.61, 4.67, 4.84, 7.45, 7.51, 7.56, 7.58 and 7.62.

⁶ Examples (1) Report of the ERC Subcommittee on Service Industries; (2) ERC ICT Working Group Singapore 2012 Living Digital Hub; (3) Entrepreneurship and Internationalisation Subcommittee ERC Recommendations on Government in Business.

⁷ Oftel's Market Review Guidelines: Criteria for the Assessment of Significant Market Power
http://www.oftel.gov.uk/publications/about_oftel/2002/smpg0802.htm



- A highly developed distribution and sales network
- Absence of potential competition
- Barriers to expansion
- Ease of market entry

4.2 A dominant position can derive from any combination of the criteria, which taken separately may not be sufficient to determine whether or not there is dominance. In the analysis of competition in Section 5 of SingTel's submission, some criteria were used, whereas it is necessary to apply all criteria objectively to achieve a holistic assessment of competition. This begins with a determination of market share, which SingTel has omitted from its analysis.

(a) Market Share

4.3 Although market shares are not conclusive on their own, it is an important barometer that is widely adopted by the European Commission (EC) and leading national regulatory authorities in their assessment of market power. Market share is used as a starting point in the hypothesis as to whether the undertaking is presumed to have a dominant position or not. Countervailing factors are then considered to substantiate the hypothesis.

4.4 According to case law, a market share in excess of 50% would lead to a presumption of dominance. Under EC Guidelines, a market share threshold of 40% would trigger dominance concerns. An undertaking with market shares below 25% is generally presumed non dominant. Besides the size of an undertaking's market share, other factors which have been considered include the ability of the undertaking to maintain high market shares over time, relative share of competitors and the ease with which new entrants might erode that market share.

4.5 In terms of market share, SingTel claims in its Annual Report 2001 / 2002 that it *"had about 87% share of the ITS market as at Mar 2002"* and in addition, *"SingTel continued to maintain its market share across many of its businesses including international telephone and mobile services..."* In one of SingTel's current advertising statements, SingTel claimed that *"8 out of 10 choose us (SingTel) to carry their voices around the world."*

4.6 With a whopping 80% market share, it is unarguable that SingTel has achieved a stronghold of dominance in the ITS market.

(b) Overall Size of the Undertaking

4.7 In terms of market capitalisation, SingTel has consistently topped the list of companies in Singapore with a market capitalisation estimated at S\$43 billion⁸, surpassing major local banks and financial institutions. SingTel also boasts a strong balance sheet and cash-flow position with annual operating revenue close to S\$5 billion as reported in its Annual Report 2001 / 2002 and enjoys favourable investor ratings on its stock. With such a stark financial performance in an industry wrought by debt, SingTel would enjoy privileged access to capital and financial markets that few in the industry can acclaim to.

4.8 SingTel has positioned itself as a leading player in Asian telecommunications and in line with its regionalisation strategy, has acquired substantial assets across the Asia Pacific,

⁸ SingTel and Optus combined, based on 31 Mar 2001 audited financial statements of SingTel and Optus, no adjustments.



such as in Thailand (AIS), Philippines (Globe Telecom), Indonesia (Telkomsel), India (Bharti), Australia (Optus) etc., and built up its own operating presence across the region. These relationships would accord SingTel a competitive advantage in regional markets as well.

(c) **Vertical Integration**

- 4.9 An organisation is considered to be vertically integrated if it controls both upstream and downstream markets. Vertical integration may promote dominance through the potential ability to leverage market power in an upstream market to gain a competitive advantage in a downstream market. The extent to which SingTel is vertically integrated should not be underplayed in assessing its dominance – this criteria has not been mentioned in SingTel's submission.

(d) **Barriers to Entry**

- 4.9 SingTel's conclusion of Section 5.5 – 5.10 of its submission that since the ITS market is characterised by low barriers to entry and hence is effectively competitive is potentially flawed. Low regulatory barriers such as the abolition of foreign equity limits, unlimited number of ITS licensees and transparent licensing frameworks are calculated liberalisation initiatives aimed at encouraging investment in telecommunication services. On the other hand, the existence of a level playing field is critical to ensure that these businesses are able to compete effectively in the market in a viable and sustainable manner. On this basis, it is necessary to attend to the incidences of market failure in the industry, e.g. licensees who have exited the market.
- 4.10 Considering that FBOs would be required to commit to infrastructure rollout backed by a performance bond, the barriers to entry for FBOs are considered high and in some cases cost prohibitive as network and rollout costs are sunk costs in the event of market failure.

(e) **Control of Bottleneck Infrastructure**

- 4.11 Despite the large number of FBO and SBO licensees in the ITS market, SingTel remains a major supplier of both transmission and access to facilities other carriers need in order to provide international services.
- 4.12 As the designated Terminal Party for a number of major cable systems with landing points in Singapore⁹, SingTel controls access to facilities and infrastructure which are critical to FBOs in order to access and utilise their international capacity. For example, SingTel owns three of the four submarine cable landing stations in Singapore. It is noted that the IDA recognised the necessity to designate co-location and connection services at these submarine cable landing stations as an interconnection service to be offered by SingTel under its Reference Interconnection Offer (RIO) to address this aspect of SingTel's dominance.

(f) **Absence of Potential Competition**

- 4.13 It is estimated that close to 50% of SBO Class licensees involved in the resale of public switched telephone services are hotels. Majority had established arrangements with SingTel to resell its ITS prior to liberalisation – the degree of churn by these hoteliers to

⁹ Such as SMW-3, APCN, APCN2, i2i, c2c.



other service providers such as StarHub and M1 post liberalisation would be a measure of the extent of competition in this segment. In addition, as hotels offer telecom services to augment and add value to their business (not a core business), they also form a distribution network for SingTel's ITS.

5 CONCLUSION

- 5.1 BT considers that SingTel's submission to the IDA is neither comprehensive in scope nor fully competent and objective in its analysis. Accordingly, even with the benefit of public and industry comment, the submission provides an entirely inadequate basis for the IDA to reach conclusions which would be appropriate to and allow the development and sustenance of a competitive telecommunications sector in Singapore.
- 5.2 In submitting this request, SingTel has in fact triggered a process of market review. BT believes that having received SingTel's request, IDA should consider the preparation of its own analysis of SingTel's 18 ITS to enable the IDA to reach a conclusion on SingTel's market power in each of the markets identified. Following this, IDA's conclusions may be then circulated as a provisional report upon which the industry and public might be invited to comment. At the conclusion of such a process, IDA would be in a better position to determine the extent of SingTel's dominance in each of the markets identified.



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