



CABLE & WIRELESS

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

08 May 2003

INTRODUCTION

Cable and Wireless plc (C&W) is pleased to submit comments in response to the Public Consultation on Request by Singapore Telecommunications Limited ("SingTel") for exemption from dominant licensee obligations with respect to the International Telephone Services (ITS) market pursuant to subsection 2.6.1 of the Code of Practice for Competition in the provision of telecommunications services.

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

GENERAL COMMENTS

C&W's experience has been that, if competition is to flourish, it is important that all industry players can obtain access to essential facilities that, by their nature, can only be economically and/or technically provided by the existing incumbent operator (in this case SingTel).

Of critical importance are the terms and conditions attached to this access. If competition is to flourish, access must be supplied on non-discriminatory terms and conditions - meaning that the terms and conditions associated with competitors' access to these facilities do not place them at any disadvantage compared to SingTel itself. C&W is therefore pleased to note SingTel's recognition (in paragraphs 5.11 to 5.14 and again in paragraph 6.2 of its Request) that interconnection and access services required for the provision of International Telecommunication Services will not be affected by this application. The IDA will be aware, however, of the ongoing concerns of C&W and other



CABLE & WIRELESS

competitive operators that SingTel is not, in fact, currently complying with these obligations. C&W believes this is a fundamental to the continued development of competition in Singapore in these, and indeed other, telecommunications services.

Notwithstanding the continued application of these requirements on SingTel, there are aspects of this application that give C&W cause for concern. In particular, C&W believes that it is premature for SingTel to argue that it is non dominant in the ITS market in view of its significant and stable market share in these services. In addition, SingTel's dominance in the local loop in Singapore offers it the opportunity to leverage that dominance into adjacent markets. In particular, it gives it the possibility to leverage its dominance from the local network into the long distance network. In the light of this, C&W is concerned that if the application is granted at this time, as a result of which SingTel is released from certain obligations such as price publication and accounting separation, it would enable SingTel to engage in practices such as price squeezing and predation. This would further inhibit the development of effective competition in these services.

In addition, C&W is concerned that the removal of existing obligations on SingTel and the consequent move to an ex post analysis of any abuses of its market position in these services, will place the burden of proof unfairly on competitors, rather than on SingTel. The requisite level of proof will often be difficult for competitors to provide - at least within a short enough timeframe to prevent any such abuses having a significant effect on the competitive process. Indeed, it is not unknown in jurisdictions where a greater reliance on ex post competition law has been made for competitors to actually leave a market before they have been able to present the level of proof that is required by regulators and/or competition authorities. This is because proof will often depend on information that is only readily available to the dominant operator. Ex ante obligations, by contrast, avoid this problem by ensuring that dominant operators do not have the scope to abuse their position in the first place.

The above issues are explored in more detail below.



CABLE & WIRELESS

SPECIFIC COMMENTS

SingTel's current market position with respect to International Telecommunications Services

Market definition

C&W questions SingTel's views on market definition, in particular its view that VOIP should be included as a substitute for PSTN access. C&W believes that it may be premature to include VOIP in the market at this time, as there are still questions over the extent to which such services are deemed to be of sufficient quality by end users. In this regard, C&W notes that the quote used by SingTel to justify the inclusion of these services in the relevant market refers to residential users only. C&W would question whether, generally, business users regard VOIP as being of sufficient quality just yet to be regarded as substitutable and would urge the IDA to undertake a full analysis of this issue.

C&W also has reservations about SingTel's argument that a route-by-route analysis is no longer required. Whilst C&W recognises that Singapore is increasingly being used as a major hub for international traffic, it believes that there may still be some destinations (typically on low volume destinations) where there is little scope for alternative route substitution. C&W would urge the IDA, therefore, not to abandon a route by route analysis at this time but to conduct a full analysis of the market on a route by route basis. This is particularly in light of the high market share figures quoted by SingTel on its own website, as is discussed in the next section.

Competitiveness of the International Telephone Services (ITS) Market

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



CABLE & WIRELESS

C&W would also like to highlight that it is standard practice by many competition authorities, including those in Europe, the US and parts of Asia-Pacific such as Hong Kong and Australia to take account of market shares when assessing dominance. Indeed in some cases, high and stable market shares are prima facie evidence of dominance.

For example, under the new European Regulatory Framework, the EC has stated in its guidelines on market analysis and the assessment of significant market power¹:

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

In this regard, C&W would refer the IDA to the latest SingTel Annual Report² where it claims to hold an 87% market share of International Telecom Services. Indeed, it says:

It has been two years since full competition has been introduced in the Singapore telecommunications market and SingTel continues to maintain its leading position despite the entry of numerous players. As at March 2002, SingTel had about 87 per cent share of the international telephone services market...

This strongly suggests that SingTel has been able to effectively defend its market share despite, by its own admission, the opening up of the market to competition. This must cast doubt on the extent to which it is subject to effective competition in these services.

Effects of lifting certain obligations on SingTel

C&W believes that, if indeed the supply of ITS is currently as competitive as SingTel claims it is, a major reason for this is the existing regulatory controls on SingTel. C&W is concerned that, should these controls be removed, this would

¹ Commission Guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services, 2002/C 165/03

² SingTel Annual Review and Summary Financial Statement 2001/02 (page 7 of Business and Operations Review). Available at http://home.singtel.com/investor_relations/annual_reports/default.asp



CABLE & WIRELESS

affect the competitiveness of these services. C&W has particular concerns regarding the removal of the following obligations:

Section 3.3.3 Duty to Provide Service on a Non Discriminatory Basis

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

Section 3.3.4 Duty to File and Provide Service Pursuant to Tariffs

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

Section 3.3.5 Duty to provide unbundled telecommunications services

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



CABLE & WIRELESS

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

Section 7.2.1 Pricing Abuses

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

7.2.1.2 Price Squeezes

C&W has already outlined above in relation to condition 3.3.4, its concerns about the ability of vertically integrated dominant companies to engage in price squeezes, to the detriment of competition in retail markets. C&W believes that SingTel's request to have this specific obligation removed, when it is clearly dominant in the supply of local loop services that will be essential inputs to ITS services offered by competitors, must be refused.

7.2.13 Cross-subsidisation

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



CABLE & WIRELESS

7.2.2.1 Discrimination

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

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

CONCLUSION

For the reasons outlined above, C&W urges the IDA to give this matter careful consideration. The local access network still remains uncompetitive with SingTel being the dominant incumbent carrier. Any removal of the restrictions or compliance requirements which could be used to allow SingTel to cross subsidise or abuse its position to the detriment of competitors, customers and the market should be resisted, and is not in the best interests of a transparent market and competition. The IDA should not expect local network competition to become effective in the near future and should take regulatory action to safeguard the interests of service providers and end-users in the interim.

Any appearance that international services are competitive is, in the view of C&W, a consequence of the current obligations in place on SingTel (such as tariff filing, unbundling, and refrain from cross subsidisation through accounting separation). SingTel has successfully maintained its high market share even with these obligations, and so any relaxation would significantly damage the early stages of competition.

We would be happy to discuss this further with the IDA, should the IDA require further clarification from us. Please get in touch directly with Ms Alexandra Ho of our C&W offices at: +65 6 4775860, email: alexandra.ho@cw.com.

Yours sincerely

Jonathan Sandbach
VP Public Policy, Japan/Asia