

**EXPLANATORY MEMORANDUM
ISSUED BY
INFO-COMMUNICATIONS DEVELOPMENT AUTHORITY OF SINGAPORE

REQUEST OF SINGAPORE TELECOMMUNICATIONS LTD
FOR EXEMPTION FROM DOMINANT LICENSEE OBLIGATIONS
WITH RESPECT TO THE
INTERNATIONAL TELEPHONE SERVICES MARKET**

12 November 2003

Introduction

- 1 Singapore Telecommunications Ltd (“SingTel”) has requested the Info-communications Development Authority of Singapore (“IDA”), pursuant to Section 2.6.1 of the Telecommunication Competition Code (“Code”), to exempt it from “the Dominant Licensee obligations set out in the Code with respect to the International Telephone Services (“ITS”) market” (a copy of SingTel’s Exemption Request is available on IDA’s website).
- 2 IDA has reviewed the evidence regarding the level of competition in the provision of ITS. The evidence shows that, 3 years after the full liberalisation of the Singapore telecommunication market, the Wholesale ITS market is now effectively competitive. As market forces are effective in promoting and preserving competition amongst Licensees in the Wholesale ITS market, Dominant Licensee regulation is no longer necessary. IDA will therefore exempt SingTel from those Dominant Licensee obligations applicable to its participation in this market.
- 3 The Residential and Commercial Retail ITS (collectively, “Retail ITS”) markets are also substantially competitive. The continued application of *ex ante* regulation through the tariff filing requirement specified in Section 3.3.4 of the Code is no longer necessary to protect End Users or promote and preserve effective competition amongst Licensees in the Retail ITS markets. IDA will therefore exempt SingTel from that requirement. However, competition in the 2 markets have not developed to the extent that SingTel’s behaviours are effectively checked by market forces and that existing regulatory requirements imposed on SingTel are no longer necessary. There remains the potential for SingTel to leverage on its market power in providing other retail services and on its control of “upstream” inputs essential for providing Retail ITS to compete unfairly in the Retail ITS market. Therefore, IDA will continue to require SingTel to comply with all other Dominant Licensee obligations applicable to its provision of Retail ITS to serve as competition safeguards. IDA will monitor and ensure SingTel’s compliance with the other obligations through *ex post* regulation.

SingTel’s Exemption Request

- 4 SingTel has requested that IDA exempts it from the application of Dominant Licensee obligations in the “ITS market” and has made a number of arguments in support of its Exemption Request. For example, SingTel argues that there is a single ITS market, which includes all services that enable communications between Singapore and locations outside of Singapore. SingTel also contends that there is no need to assess the competitiveness of the ITS market on a “route-by-route” basis. SingTel further

claims that the ITS market is “vigorously competitive” with a large number of Facilities-based and Services-based Licensees authorised to provide ITS and that in recent years, ITS rates have fallen significantly. SingTel also notes that there are “no barriers” for End Users or other Licensees to switch from one ITS provider to another. IDA released SingTel’s request, along with a consultation paper, on 10 April 2003. These documents are posted on IDA’s website.

- 5 SingTel did not request to be exempted from any of the provisions of Section 5 of the Code relating to its duty to adopt a Reference Interconnection Offer (“RIO”) and to provide interconnection related services to other Licensees.

IDA’s Public Consultation

- 6 IDA had previously sought public comments regarding SingTel’s Exemption Request. A total of 10 responses were received. The comments are posted on IDA’s website.
- 7 All the commenters noted that SingTel had neither estimated, nor provided any discussion of, its market share. Most commenters also noted SingTel’s public statements indicating that “8 out of 10” callers use SingTel’s ITS. Several commenters suggested that IDA not even consider any request for exemption until a Dominant Licensee’s market share fell below a fixed threshold, such as 50%. Commenters also suggested that SingTel should have defined narrower markets, such as wholesale and retail markets and that IDA should adopt a route-by-route assessment.
- 8 Most commenters also argued that, despite existing regulatory safeguards, SingTel had the ability to leverage its market power in the market for inputs required to provide ITS – such as direct exchange lines (“DELs”), local leased circuits and cable landing – in a manner that could restrict competition in the ITS market. In addition, they argued that SingTel had unique economies of scale and scope, as well as significant residual advantages as the historic monopoly service provider, which resulted in continued market power and, therefore, the need for continued Dominant Licensee regulation. Some commenters also argued that new entry into the ITS market was difficult due to consumer inertia and SingTel’s retention of the “001” access code.
- 9 As part of the review process, IDA also conducted interviews with SingTel and with most of the parties that filed comments. At the interviews, the parties elaborated on the views specified in their comments and responded to specific questions. IDA also took into consideration feedback from End Users through surveys and interviews.

Legal Standard and Assessment Methodology

- 10 Under the Code, a Licensee that is classified as a Dominant Licensee must comply with certain provisions applicable to Dominant Licensees when it provides any telecommunication service pursuant to that licence. The Code recognises, however, that, over time, a Dominant Licensee may become subject to competition in certain markets in which it participates. Therefore, the Code provides that, as competition develops, IDA will eliminate regulations that are no longer necessary to prevent Dominant Licensees from acting anti-competitively.

- 11 Section 2.6.1 of the Code sets out the basic procedures and standards governing requests for exemption from any special provision applicable to Dominant Licensees. Specifically, Section 2.6.1 provides that:

“A Dominant Licensee that seeks exemption from any special requirements applicable to such Licensees should submit an application to IDA that identifies the specific provisions (with subsection numbers) of this Code from which the Licensee seeks exemption. The Dominant Licensee must demonstrate that continued application of the provision to a specific facility and/or service is not necessary to protect End Users or promote and preserve effective competition amongst Licensees. The Dominant Licensee must provide verifiable data to support its request.”

- 12 Pursuant to Section 2.6.1 of the Code, the Dominant Licensee is responsible for providing “verifiable data” that supports its request for an exemption. This evidence must persuade IDA that, if it grants the Dominant Licensee’s request for exemption, the Dominant Licensee will not be able to act in a manner that harms consumers or impedes competition.

- 13 In a case, such as the present one, in which the Dominant Licensee seeks to be exempted in connection with specific telecommunication services, the Dominant Licensee generally should submit verifiable data regarding:

- (a) the relevant market(s) for the telecommunication services for which the Licensee seeks an exemption;
- (b) the participants in the market;
- (c) the Licensee’s market share;
- (d) the level of concentration in the market;
- (e) the barriers to entry into the market;
- (f) the likelihood of timely and sufficient increases in output (either through new entry or the provision of additional services by current market participants) in response to a significant and non-transitory price increase by the Licensee; and
- (g) the likelihood that End Users would respond to a significant and non-transitory price increase by switching to a competing service provider.

- 14 In assessing a request for exemption, IDA will seek to apply economic analysis to determine whether the Dominant Licensee is subject to effective competition in the market in which it seeks an exemption. Generally, if a Dominant Licensee no longer has significant market power in a relevant market, continued application of the Dominant Licensee obligations will no longer be necessary in that market. In some cases in which a market is increasingly competitive, it may be possible to remove certain regulations, while retaining those that remain necessary.

- 15 In assessing a request for exemption, IDA will first seek to determine the relevant service and geographic markets in which the Dominant Licensee provides the service for which an exemption is sought. IDA will then seek to determine the competitiveness of each of the market identified by considering 3 key criteria: (a) market structure (number of operators, relative market shares, and ease of market entry and exit); (b) choice of substitute products; and (c) pricing levels and trend. IDA will not impose an absolute maximum market share, above which it will not consider an exemption request. However, all things being equal, the larger the Dominant Licensee’s market share, the greater its potential ability to act anti-

competitively and, therefore, the more necessary it is to retain regulation. Nonetheless, regardless of market share, IDA will consider market-specific factors that could increase or decrease the ability of the Dominant Licensee to act anti-competitively and, therefore, the need for continued regulatory intervention.

- 16 IDA will also consider whether granting the exemption will have any pro-competitive benefits, such as allowing the Dominant Licensee to introduce new services or respond more quickly to changing market conditions.

IDA's Assessment of SingTel's Exemption Request

- 17 Although SingTel has made some vigorous arguments, it has not provided all of the “verifiable data” that would enable IDA to adequately assess whether Dominant Licensee obligations are necessary to protect End Users or promote and preserve effective competition amongst Licensees. For instance, SingTel has not adequately defined the relevant markets in which it provides the services for which it seeks an exemption. Rather, it has aggregated all of the service offerings into a single category, which it has labelled as the “ITS market”. As discussed further below, IDA believes that the services for which SingTel seeks an exemption fall into 3 different relevant markets: the Wholesale ITS market; the Residential Retail ITS market; and the Commercial Retail ITS market. SingTel also did not estimate its market share in the relevant market.
- 18 Despite these shortcomings and in view of the fact that this is the first exemption request submitted for IDA's review, IDA has decided to consider the merits of SingTel's Exemption Request.

Economic Analysis

Market Definition

- 19 Based on the information gathered through the consultation process regarding “demand-side” substitutability, IDA has determined that it is appropriate to define 3 distinct service markets: the Residential Retail ITS market; the Commercial Retail ITS market; and the Wholesale ITS market.
- (a) *The Residential Retail ITS Market*
The Residential Retail ITS market consists of services that enable residential End Users to make and receive voice telephone calls between Singapore and location outside of Singapore.
 - (b) *The Commercial Retail ITS Market*
The Commercial Retail ITS market consists of services that enable business End Users to make and receive voice telephone calls between Singapore and location outside of Singapore.
 - (c) *The Wholesale ITS Market*
The Wholesale ITS market consists of “minutes” of capacity sold to other Licensees to enable them to carry voice telephone calls between Singapore and any location outside of Singapore. The market does not include the use of infeasible rights of use in international submarine cable, international

private leased circuits, or international capacity that a Facilities-based Licensee “self-provides”.

- 20 Based on IDA’s assessment, the following table identifies the relevant market or markets in which SingTel provides each of the ITS for which it seeks an exemption:

Description	Residential Retail ITS	Commercial Retail ITS	Wholesale ITS
Basic international voice services of variable quality	IDD001 STD020 BudgetCall013 V019	IDD001 STD020 BudgetCall013 V019	Wholesale Basic Wholesale Silver Wholesale Gold
Calling cards	Prepaid calling cards ICC	Prepaid calling cards ICC	NA
General Value-Added Service (VAS)	Overseas collect call Operator-assisted services	Overseas collect call Operator-assisted services	NA
Business-focused services	NA	International toll-free services Overseas paid 800 FaxPlus 012 World Conference Voice VPN CSTN	NA

- 21 The evidence collected does not indicate any relevant difference in competitive conditions involving the provision of ITS in different locations within Singapore. IDA, therefore, concludes that the relevant geographic market for Residential Retail ITS, Commercial Retail ITS and Wholesale ITS is national.
- 22 IDA has considered the suggestion, made by some commenters, that it should assess the competitiveness of the ITS markets on a route-by-route basis. IDA has concluded that, based on the current evidence, it is not necessary to do so. IDA recognises that each route is theoretically a different market¹ and hence, a route-by-route analysis may be appropriate in cases in which the evidence indicates relevant difference in the level of competition on different routes. In the present case, however, SingTel has not suggested that competition may be greater on some routes than others; rather it has requested an exemption on all routes. Commenting parties have also not provided evidence of significant route-by-route differences. In the absence of evidence that competitive conditions differ significantly from route to route, IDA finds little basis to undertake a route-by-route assessment.

Competitiveness of Residential and Commercial Retail ITS markets

- 23 Based on its review of the evidence, IDA has determined that competitive conditions in both the Residential Retail ITS and the Commercial Retail ITS markets are fairly similar. IDA, therefore, presents its assessment of both markets together.
- 24 IDA has concluded that the 2 Retail ITS markets are substantially competitive. At least 8 Facilities-based Licensees and 50 Services-based Licensees are providing or licensed to provide Retail ITS in the 2 markets. Prices of SingTel’s Retail ITS have

¹ For example, an End User who wishes to make international calls to China will not see call services to India as a substitute.

dropped significantly since full liberalisation. For example, prices for SingTel's IDD001 service have declined by 43% between 1998 and 2003 for the weighted average tariff for 10 international destinations². IDD001 rates to some destinations have fallen by as much as 60% since liberalisation.

- 25 There is a diverse range of service offerings in Singapore's Retail ITS markets today, with differing service quality levels to meet the different needs of various users. Apart from the traditional IDD services, alternative services have emerged since market liberalisation; for example, International Simple Resale (ISR), call-back and Voice over IP (VoIP)-based services, giving consumers choice over price and quality-of-service standards. SingTel has also introduced lower-quality IDD services at lower rates than its traditional 001 service. Taking into account SingTel's BudgetCall 013 service, the weighted average tariff for 10 international destinations³ has declined by 47% since 1998, and by 73% when considering SingTel's v019 service. Rates for Retail ITS delivered using alternative means to some destinations have fallen by as much as 80%.
- 26 However, several factors suggest that SingTel retains at least a degree of market power. Unlike most other providers of Retail ITS, SingTel retains significant market control for several "upstream" inputs that are essential to provide Retail ITS services such as direct access to End Users and access to cable landing stations. SingTel is also able to provide End Users with a bundle of products including DELs, leased lines, broadband access and ITS. Although IDA has adopted regulations to reduce entry barriers, as a vertically integrated service provider, there remains the potential for SingTel to leverage on its significant market power in other retail and "upstream" input markets to compete unfairly.
- 27 In addition, despite the progress that has been made in terms of competitiveness pricing and choices available, SingTel's market share in the Retail ITS markets remains in excess of 60%. Although IDA has not imposed any numeric threshold above which an exemption will never be granted, IDA believes that a market share above 40% creates a presumption of market power and, therefore, the need for continuing regulation. Other than StarHub and M1, none of the Licensees that offer Retail ITS has a market share of any significance. Indeed, the vast majority of operators licensed to provide Retail ITS collectively control less than 15% of the market. This may reflect "natural" entry barriers such as inertia of End Users to switch service providers and higher retail service provisioning cost (such as billing, advertising and customer care).

Competitiveness of Wholesale ITS Market

- 28 The Wholesale ITS market is fully competitive. SingTel's share in the Wholesale ITS market is around 30%. At least four other service providers – MCI, REACH, StarHub and M1 – are active participants in this market. At the same time, the market has shown both significant price declines, as well as volatility – suggesting that competitive forces are working effectively.

² They are Malaysia, United Kingdom, Hong Kong, China, Indonesia, United States, Australia, Japan, Thailand and the Philippines.

³ See footnote 2.

- 29 The Wholesale ITS market is also characterised by very low switching costs. Licensees, particularly Services-based Licensees, often purchase international “minutes” on a daily basis. They have proven themselves willing and able to switch service providers rapidly in order to obtain lower prices and/or better quality service. The cost of new entry is also reasonably low – especially for international operators, which already control significant international capacity. If SingTel prices its service uncompetitively, Licensees will switch to other service providers.
- 30 Finally, SingTel’s ability to leverage on its significant market power in other retail and “upstream” input markets does not have a significant impact on its ability to compete in the Wholesale ITS market.

IDA’s Decision

Inapplicable Provisions under the Code

- 31 In view of IDA’s decision to analyse the merits of SingTel’s Exemption Request across 3 different market segments, certain provisions for which SingTel has asked for exemption from do not apply in the case of the Wholesale ITS market. These are:
- (a) Sections 3.3.1, 3.3.2, 3.3.3, 3.3.4 and 3.3.5 governing the provision of End User telecommunication services;
 - (b) Sections 5.8.1 and 5.8.2 governing the resale of End User telecommunication services and the duty to allow sales agents.

Therefore, it is not necessary and would not be valid for IDA to grant SingTel an exemption from the application of these provisions in the Wholesale ITS market.

- 32 Similarly, Section 5.8.3 – Duty to tariff and make wholesale telecommunication services generally available, from which SingTel has sought an exemption, does not apply to both the Retail ITS markets. Therefore, IDA need not grant SingTel an exemption from the application of this provision in the Retail ITS markets.
- 33 Section 7.2.1.2 (Price Squeezes), Section 7.2.1.3 (Cross-subsidisation), Section 7.2.2.1 (Discrimination), each contains 2 distinct prohibitions. First, each provision prohibits a Dominant Licensee from using its market power to engage in a specified form of conduct, such as discriminating in favour of an affiliate. Second, each provision prohibits *any* Licensee from being the beneficiary of this type of conduct by another entity (whether or not a Licensee) that has market power. For example, a Non-Dominant Licensee that is affiliated with an entity that has market power in a non-telecommunication market cannot accept cross-subsidisation from its non-licensed affiliate. The “second prohibitions” are not special provisions applicable to Dominant Licensees. Therefore, the Section 2.6.1 exemption procedures are not applicable to these provisions. Thus, to the extent that IDA grants SingTel an exemption from these provisions, it applies only to the “first prohibition”. SingTel, like all Licensees, remains subject to the prohibitions against benefiting from anti-competitive conduct by affiliated entities that have market power.

Discontinued ITS Offered by SingTel

- 34 One service for which SingTel has sought an exemption, Evoiz, has been discontinued. Therefore, IDA has decided not to consider the request.

Exemptions for Residential and Commercial Retail ITS

- 35 Given that the 2 Retail ITS markets are substantially competitive, the continued application of *ex ante* regulation through the tariff filing requirement specified in Section 3.3.4 of the Code is no longer necessary to protect End Users or promote and preserve effective competition amongst Licensees in the Retail ITS markets. IDA will therefore exempt SingTel from that requirement. However, competition in the 2 markets has not developed to the extent that SingTel's behaviours are effectively checked by market forces and that existing regulatory requirements imposed on SingTel are no longer necessary. IDA, therefore, will continue to require SingTel to comply with all other Dominant Licensee obligations applicable to its provision of Retail ITS. IDA's decision is explained in the sections below.

Section 3.3.4 of the Code

- 36 Section 3.3.4 of the Code requires a Dominant Licensee to file and provide service pursuant to tariffs. The tariff requirement is intended to provide an ex-ante means by which IDA can ensure that Dominant Licensees are providing telecommunication services, on an unbundled basis, at just, reasonable and non-discriminatory prices, terms and conditions. However, in an increasingly competitive market, tariff filing requirements can sometimes impede competition by facilitating price coordination amongst Licensees; they also may delay Dominant Licensees' from reacting promptly and effectively to changing market conditions. IDA has determined that the continued application of this requirement is no longer necessary to protect End Users or promote and preserve effective competition amongst Licensees in the Retail ITS markets. IDA retains a number of other means of ensuring that SingTel is providing Retail ITS on an unbundled basis, and at just, reasonable and non-discriminatory prices, terms and conditions. Specifically, IDA retains the authority to audit SingTel's provision of Retail ITS. In the event IDA concludes that SingTel is not complying with these requirements, IDA may take enforcement action pursuant to Section 10.3 of the Code. Any party that believes that SingTel is in breach of these requirements may also file a Request for Enforcement pursuant to Section 10.4 of the Code.

Remaining Provisions under Section 3.3 of the Code

- 37 Although IDA is eliminating SingTel's obligation to file tariffs for its Retail ITS, IDA has determined that the Dominant Licensee obligations contained in Sections 3.3.1, 3.3.2, 3.3.3 and 3.3.5 of the Code remain necessary to protect End Users or promote and preserve effective competition amongst Licensees in the Retail ITS markets. These provisions would ensure that SingTel continues to provide telecommunication services on reasonable request; at just, reasonable and non-discriminatory prices, terms and conditions; on a non-discriminatory basis; and on an unbundled basis. SingTel's request for exemption from these provisions for its Retail ITS, therefore, is not granted.

Sections 5.8.1 and 5.8.2 of the Code

- 38 SingTel's request to be exempted from the Dominant Licensee obligations contained in Sections 5.8.1 (allowing resale of End User telecommunication services) and 5.8.2 (allowing sales agencies non-discriminatorily) of the Code for its Retail ITS is not granted. These provisions remain necessary to protect End Users or promote and preserve effective competition amongst Licensees in the Retail ITS markets.

Sections 7.2.1 to 7.2.2.2 of the Code

- 39 SingTel's request to be exempted from the Dominant Licensee obligations contained in Sections 7.2.1 to 7.2.2.2 of the Code for its Retail ITS is not granted. These *ex post* provisions remain necessary to protect End Users or promote and preserve effective competition amongst Licensees in the Retail ITS markets. Sections 7.2.1 through 7.2.1.3 of the Code prohibit a Dominant Licensee from pricing its telecommunication services in a manner that unreasonably restricts competition. In particular, a Dominant Licensee may not engage in predatory pricing, price squeezing or cross-subsidisation. Sections 7.2.2 through 7.2.2.2 of the Code prohibit a Dominant Licensee from abusing its position by means other than anti-competitive pricing. In particular, a Dominant Licensee may not discriminate in favour of its affiliate in the provision of inputs used to provide telecommunication services. These provisions need to be retained to ensure fair competition in the Retail ITS markets and allow IDA to take enforcement action under the Code if SingTel were to contravene the Code.

Exemptions for Wholesale ITS

- 40 As discussed above, the evidence indicates that the Wholesale ITS market is effectively competitive. Therefore, continued application of the Dominant Licensee obligations to SingTel for services provided in this market is no longer necessary to promote and preserve effective competition amongst Licensees.

Section 5.8.3 of the Code

- 41 SingTel's request to be exempted from Section 5.8.3 of the Code as applied to the Wholesale ITS is granted. This provision requires Dominant Licensees to tariff and make wholesale services generally available. Because the Wholesale ITS market is now effectively competitive, with SingTel not being able to act independently of market forces, there is no need for SingTel to continue to file its Wholesale ITS for IDA's prior approval. In the event SingTel seeks to provide Wholesale ITS uncompetitively, Licensees that purchase these services can easily switch to one of several other competing service providers.

Sections 7.2.1 to 7.2.2.2 of the Code

- 42 SingTel's request to be exempted from the applicable Dominant Licensee obligations contained in Sections 7.2.1 through 7.2.2.2 of the Code as applied to the provision of Wholesale ITS is granted. To the extent that a Dominant Licensee no longer has market power in a specific market, it cannot be found to have abused its dominant position in that market. Because SingTel no longer has market power in the Wholesale ITS market, it will not violate the prohibitions in Sections 7.2.1 to 7.2.2.2 of the Code.

Implementation

- 43 The exemption granted by IDA will become effective upon publication in the Government Gazette. IDA intends to publish the exemption in the Government Gazette within 14 days from the date of this decision.
- 44 This exemption order will remain in effect, unless IDA determines that re-imposition of the requirements under Section 3.3.4, Section 5.8.3 and/or Sections 7.2.1 through 7.2.2.2 of the Code is appropriate to protect End Users or preserve and protect

competition amongst telecommunication Licensees in the Retail or Wholesale ITS markets.

- 45 For the avoidance of doubt, IDA's exemptions should apply to any new ITS services that SingTel may, in future, offer. However, SingTel must obtain prior confirmation from IDA that the new service constitutes a Wholesale or Retail ITS.
- 46 Finally, IDA clarifies that in the event IDA does impose any additional provisions applicable to Dominant Licensees, it will determine, at that time, whether SingTel should be exempted from the application of that provision for Wholesale or Retail ITS.
- 47 The table below summarises IDA's decision on SingTel's Exemption Request:

Code Provisions	Residential Retail ITS Market	Commercial Retail ITS Market	Wholesale ITS Market
Section 3.3.1 – Duty to provide service on demand	X	X	NA
Section 3.3.2 – Duty to provide service at just and reasonable prices, terms and conditions	X	X	NA
Section 3.3.3 – Duty to provide service on a non-discriminatory basis	X	X	NA
Section 3.3.4 – Duty to file and provide service pursuant to tariffs	√	√	NA
Section 3.3.5 – Duty to provide unbundled telecommunication services	X	X	NA
Section 5.8.1 – Duty to allow resale of end-user telecommunication services	X	X	NA
Section 5.8.2 – Duty to allow sales agency	X	X	NA
Section 5.8.3 – Duty to tariff and make wholesale telecommunication services generally available	NA	NA	√
Section 7.2.1 – Pricing abuses (e.g., predatory pricing, price squeezes and cross-subsidisation)	X	X	√ for “first prohibition”
Section 7.2.2 – Other abuses (e.g., discrimination and predatory network alteration)	X	X	√ for “first prohibition”

Note:

- i. “X” – Reject SingTel's Exemption Request
- ii. “√” – Grant SingTel's Exemption Request
- iii. “NA” – Not Applicable