

**M1'S RESPONSE TO IDA'S CONSULTATION PAPER 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**

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M1'S RESPONSE TO IDA'S CONSULTATION PAPER 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

Introduction

- 1 M1 welcomes the opportunity to submit our views and comments to IDA for its consideration in its decision on Singapore Telecommunications Limited's ("SingTel") request for exemption from Dominant Licensee Obligations with respect to the International Telephone Services (ITS) Market.
- 2 M1 has been providing cellular mobile and paging services to the Singapore market since 1 April 1997 and in August 2000, we launched our international telephone services. In April 2001, M1 also obtained the FBO Licence for the Provision of 3G Mobile Communication System and Services and the 3G Spectrum Right.
- 3 M1 agrees that the Singapore international telecommunications market has changed significantly in recent years after the liberalisation. The overall market has grown with the increase in competition and technological developments have brought about the availability of alternative means of delivering international traffic. However, this does not mean that there are no longer any concerns over market dominance issues and possible anti-competitive abuses.
- 4 SingTel's request for exemption from Dominant Licensee obligations should be evaluated against the test of whether it still possess substantial degree of market power that is in excess of any market power held by any of its competitors, thus affording it the power to behave independently of its competitors and enables it to prevent effective competition.
- 5 M1 submits that SingTel still possess substantial market power:
 - Despite liberalisation of the market, SingTel has maintained a significant market share;
 - SingTel holds a unique market position, being vertically integrated and able to offer the whole range of ITS;
 - SingTel still enjoys incumbency advantages that are unavailable to its competitors in the ITS market; and
 - Effects of SingTel's dominance in fixed line market are extended into ITS, which is a strategic barrier to entry.
- 6 SingTel will be able to leverage off its strong market position to potentially engage in predatory action, sacrificing short-term profitability to eliminate or weaken competitors in the market. M1 believes that a grant of exemption to SingTel from the dominant Licensee obligations under the Code with respect to the ITS market will raise the risk of anti-competitive abuse of market power by SingTel, seriously undermine IDA's objective of ensuring a fair and balanced competitive market, and eventually negate all benefits of market liberalization. Reliance on market forces and *ex-post* regulatory enforcement will be inadequate and less effective as it takes time. Therefore, we submit that SingTel's continued dominance classification is necessary to allow effective and sustainable competition in the ITS market.

Evaluation of SingTel's Market Position

7 Market Share

7.1 Market share is a strong indicator of the relative market power of players in the market and is commonly used in assessing market dominance:

- IDA used market share of 35% as an indicia of market power in its public consultation on mergers and acquisitions¹.
"IDA will be more likely to deny or impose Conditions on the grant of an Application where Post Consolidation Entity will have a market share of more than 35 percent – a level which, most jurisdictions recognize, there is a greater likelihood that a firm will be able to exercise market power."
- Ofel's criteria for the assessment of significant market power states the following²:
"According to case law, a market share over 50% would lead to a presumption of dominance. In the European Commission's decision-making practice, single dominance concerns normally arise where an undertaking has at least a 40% market share. However, there may still be concerns about dominance where an undertaking has less than 40% market share."
- OFTA stated in the August 1999 non-Dominance Statement³:
"the TA has considered that if a firm has a market share of persistently above 50%, it is likely that it is dominant. Therefore, when looking at other market conditions, he needs to satisfy himself that these demonstrate that the market is competitive and/or contestable before he would classify a firm with market share above 50% as non-dominant"
- AT&T was declared by FCC as no longer dominant in International Market only when its overall market share declined to less than 60% in 1996⁴.

7.2 Two years from market liberalisation, SingTel still maintains a majority market share of **87%** in ITS.⁵ The insignificant decline of SingTel's market share from 95% at end-Mar 2001 to 87% at end-Mar 2002 clearly reflects the difficulty new entrants faced in market penetration. The remaining 13% market share is shared by a large number of competitors which entered the ITS market after liberalisation. The list of IDA licensees as summarized by SingTel⁶ includes: -

¹ IDA, *Advisory Guidelines governing applications for Licence Assignments or Changes in Ownership of a Licensee in connection with a proposed consolidation*, para 4.6.1 (Oct 2001).

² Ofel, *Ofel's market review guidelines: criteria for the assessment of significant market power*, 5 August 2002.

³ OFTA, *Non-Dominance Statement* (August 1999).

⁴ FCC, *AT&T declared no longer dominant in International Market*, May 9, 1996.

⁵ *SingTel Annual Report 2001/02*, p 22. The market share is computed based on SingTel's total outgoing international (including Malaysia) and transit minutes over the industry minutes as published by IDA from Jan 2001.

⁶ *SingTel's request for exemption, International Telephone Services*, 10 April 2003- pp14.

- 32 FBOs and approximately 640 SBOs
- 29 ICC operators offering 100 different cards
- 109 Internet-based Voice and/or Data Service Licensees
- 29 Call back/Call origination service Licensees
- Hundreds of resellers of ITS

Unlike SingTel which offers the whole range of ITS, majority of the other licensees are niche players offering specific services to targeted market segments. Thus, they have minimal market power individually, while SingTel still retains strong market power in the overall ITS market.

8 Unique Monopolistic Incumbent Advantages

8.1 After market liberalisation, SingTel still enjoys monopolistic incumbent advantages as summarized below: -

- *Preferred supplier of overseas operators due to historical incumbency*
SingTel is able to continue to leverage off its captive traffic volume in bilateral negotiations with overseas operators. Such incumbency advantages are especially important for Category II routes where the smaller traffic volume gives minimal incentive for overseas operators to split traffic between various operators in Singapore. SingTel is also able to commit the overseas partners in extended periods and/or large volume of traffic, making it difficult for the other players to negotiate a share of the inbound traffic and thus increasing the latter's net cost of terminating into those countries. Hence, SingTel remains dominant in many of the Category II routes even after liberalisation.
- *Established Legacy Networks and "First Mover" Advantage*
SingTel has a clear network advantage given the size and scope of its network. It still has significant control over access to international capacity and holds a strong position in adjacent markets. It has a ubiquitous domestic infrastructure and is the dominant source of connectivity to customer premises. While new entrants had to make substantial investments in obtaining or building network infrastructure and capacity, SingTel was able to direct both its current and near-term investments towards the deployment of new technologies and services and market expansion.
- *Extension of Fixed Line Dominance into ITS Market*
Research has shown that majority of IDD calls were made via fixed lines. To date, SingTel remains the dominant provider of PSTN services with negligible market share loss despite market liberalisation in Apr 2000⁷. As most of the ITS calls originate from fixed lines, the effects of dominance are extended into ITS market through provision of fixed line services and the ingrained international dialling habit of consumers. SingTel also has the unique advantage of single point of sale and billing for local and international services which is a convenience appreciated by customers. These contributed to consumer inertia, making it less likely for customers to switch suppliers.

8.2 The above advantages enjoyed by SingTel have created a significant competition gap between SingTel and the other ITS operators. This gap is far from being bridged as reflected in SingTel's current substantial market share.

⁷ SingTel Annual Report 2001/02, p23.

Concerns Regarding Anti-Competitive Practices

- 9 The Singapore ITS market is characterised by the following: -
- SingTel, the former incumbent monopoly, being the only operator with market share in excess of 35%;
 - Market is highly concentrated with SingTel having 87% market share; and
 - Strategic advantage to SingTel through extension of fixed line dominance into ITS market.
- 10 SingTel not only has a ubiquitous network that is difficult to replicate, it is also vertically integrated and operates on a series of levels. The cross-market leverage is a very important advantage. With its extensive resources and market power, there are potential risks of anti-competitive conduct whereby reliance on market forces to safeguard and regulate market competition will not be adequate. Particularly, M1 is concerned about the nature and impact of bundling activities, together with the likelihood of anti-competitive discrimination, predatory pricing and cross-subsidisation which will be difficult to detect or stop prior to there being an anti-competitive effect.
- 11 SingTel has demonstrated the ability to give deep discounts and sustain low prices for extended periods both to fend off competition as well as to undermine its competitors. For example, in the run-up to StarHub's commercial launch, SingTel offered **50%** discounts off its IDD 001, BudgetCall 013 and ICC services in Apr 2000. This was further followed by rate reductions of up to **59%** for its IDD 001 services to 29 destinations worldwide in May 2000. It has been similarly aggressive in ICC promotions and recently reduced ICC rates by **68%** to 13 countries. Given its strong foothold in the corporate market, SingTel is also able to offer substantial discounts to contract its customers, which is hard to match by competitors and creates a barrier to switching.
- 12 On the supply side, the relative negotiating power amongst the players tends to be determined by the player's share of traffic streams that it controls. There remains international routes where competition is limited and the alternatives for transit or refile on such routes are also limited. The smaller operators will continue to have a weak bargaining position compared to SingTel as the former incumbent monopoly, and the retail and wholesale prices are kept high since the smaller operators cannot compete effectively on these routes.
- 13 Conclusion**
- 13.1 M1's objective in this submission is not to prove SingTel's intent, but rather to address the potential for SingTel to restrict or reduce the extent of competition in the ITS market given its market power. The fact is that SingTel enjoys incumbency advantages and can leverage the economies of scale in the provision of services, thus having the ability to influence the ITS market.
- 13.2 The current regulatory obligations imposed on SingTel benefited consumers in terms of lower price, product innovation and wider consumer choice. Any premature lifting of its Dominant Licensee obligations is likely to impede the development of future competition in the ITS market and could potentially negate the benefits of market liberalisation. Hence, M1 urge that IDA should not accede to SingTel's current request for exemption.