

**COMMENTS OF MEDIARING LTD TO THE IDA CONSULTATION
PAPER:**

**CONSOLIDATION INVOLVING PACIFIC INTERNET LIMITED AND
CONNECT HOLDINGS LIMITED**

11 March 2007

1. STATEMENT OF INTEREST

Statement of Interest

- 1.1 MediaRing Ltd (“**MediaRing**”) thanks the Info-communications Development Authority of Singapore (“**IDA**”) for the opportunity to comment on the proposed consolidation involving Pacific Internet Limited (“**Pacific**”) and Connect Holdings Limited (“**Connect**”) (the “**Proposed Consolidation**”) and hereby respectfully submits its comments to the Proposed Consolidation for IDA’s kind attention and review.

- 1.2 MediaRing is a company incorporated in Singapore. It is licensed by IDA as a Services Based Operator (SBO) to provide a range of telecommunication services. Its core services comprise the provision of a suite of high quality and industry leading Voice over Internet Protocol (VoIP) services for business and retail customers in Singapore and other markets in the Asia-Pacific region, as well as a few regions outside the Asia-Pacific region. However, our focus market in the immediate future will remain the Asia-Pacific region.

- 1.3 As a non-vertically integrated SBO (Individual) Licensee, MediaRing requires and relies on other Facilities Based Operator (FBO) Licensees for, the upstream input of *international bandwidth capacity and associated capacity services* (“**ICS**”) as an essential input in order to provide its downstream services to its business and retail customers.

Summary of Concerns

- 1.4 As a non-vertically integrated SBO (Individual) Licensee, MediaRing is primarily concerned that the Proposed Consolidation will create a Post Consolidation Entity¹ that will be a vertically integrated entity capable of offering both upstream ICS as well as retail ISP services in Singapore, as well as other retail telecommunications services in Singapore telecommunications markets, including the markets described at page 7 of the CRA International report² (“**CRA Report**”). Such concerns are heightened by the potentially dominant position the Post-Consolidation Entity may have in the ICS capacity market in Singapore for carrying traffic to and from the Asia-Pacific region³.
- 1.5 It is our humble opinion that most, if not all, non-vertically integrated SBO licensees in Singapore will share our concerns expressed in this submission. It is our hope that our representations herein are indicative of and mirror to a large extent, the concerns of the smaller non-vertically integrated SBO entities in Singapore who are currently offering IP based communication services.
- 1.6 Such a Post-Consolidation Entity will be markedly different from Pacific as it currently is; and as such, the following constitute MediaRing’s primary concern with the Proposed Consolidation:
- (i) the possibly anti-competitive incentives the Post-Consolidation Entity may have due to its markedly different, larger, and vertically integrated nature; and
 - (ii) the adverse competitive effects this may have on smaller, non-vertically integrated players in the Singapore telecommunications market
- 1.7 MediaRing believes that there is a likelihood of anti-competitive effects coming about if the Proposed Consolidation was approved or approved without conditions (as discussed in further detail in Section 2 of this submission). If such concerns are realised, the

¹ As that term is defined in Section 1.1 of the IDA issued Advisory Guidelines Governing Consolidation Review Process under Section 10 of the Code of Practice for Competition in the Provision of Telecommunication Services 2005 (“**Consolidation Guidelines**”)

² Report titled: “Analysis of competitive effects of proposed acquisition of Pacific Internet Limited by Connect Holdings Limited” filed in support of the Proposed Consolidation

³ As discussed in Section 2 of this submission

Proposed Consolidation will be likely to impede the development of future competition in one or more telecommunications markets in Singapore.

- 1.8 In light of this concern, MediaRing notes IDA's position in Section 6.1.1(b)(ii) of the Consolidation Guidelines, i.e. that a Consolidation substantially lessens competition where the Consolidation would be likely to significantly impede the development of future competition in the Singapore telecommunication market.

Structure of the Remainder of this Submission

- 1.9 In order to assist IDA in its review, Section 2 of this submission comprises an elaboration of MediaRing's competitive concerns with the Proposed Consolidation. Section 3 sets out MediaRing's conclusions.

2. COMPETITIVE CONCERNS

2.1 Post-Consolidation Entity capable of controlling a Large Market Share in the Upstream ICS Market in Singapore

The Singapore Submarine Cable Market

- 2.1.1** There are three major dedicated submarine cables connecting Singapore to nations in the Asia-Pacific region – C2C, EAC and APCN2. C2C and EAC are both owned by Connect while APCN 2 belongs to a consortium of operators, of which both Singapore Telecommunications Ltd (“**SingTel**”) and Starhub Ltd (“**Starhub**”) are principal members.
- 2.1.2** Because of latency and costs issues, MediaRing respectfully does not consider other routes (i.e. via Europe or India) as a suitable alternative for connecting Singapore to other Asia Pacific countries
- 2.1.3** Another cable: SEA-ME-WE 3 also provides some connectivity to the Asia Pacific countries. However, the bulk of its capacity is to the Western Europe and Middle East regions. Thus, even if it has recently upgraded its total capacity to 70 Gbps from 10 Gbps, we estimate that only a small proportion of it serves Asia Pacific routes.

2.1.4 Nonetheless, from our estimates, the C2C and EAC cables together control **21%** of the Ready-For-Service (RFS) ICS bandwidth in Singapore and, more importantly, **48%** for the Asia Pacific Region. We also understand that IDA has estimated that the cables “would have a combined market share of above 40%”⁴ for the same region.

2.1.5 However, if we were to exclude the minor cables (e.g. APCN, TIS) serving the region and discount SEA-ME-WE 3’s overall capacity, the combined market share of C2C and EAC approaches **60%**. Without examination of the underlying assumptions behind the calculations, we believe that the **13.61%**⁵ as suggested by CRA is conservative.

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⁴ IDA Explanatory Memorandum on the decision of the IDA in relation to the proposed change of ownership in Asia Netcom Singapore Pte Ltd

⁵ Report titled: “Analysis of competitive effects of proposed acquisition of Pacific Internet Limited by Connect Holdings Limited” filed in support of the Proposed Consolidation

Exhibit 1: Major submarine cable systems with landing points in Singapore

Route	Main owners	Countries Linked	RFS capacity, Gbps
APCN	• SingTel, KDD, Korea Telecom, ITDC, PLDT, Indosat, Telecom Malaysia	• Korea, Japan, Hong Kong, Taiwan, the Philippines, Thailand, Malaysia, Indonesia	• 5
APCN2	• Consortium model – principal consortium members include Telstra, China Telecom, CHT, C&W HKTI, Japan Telecom, KDD, Korea Telecom, NTT Com, SingTel, Telekom Malaysia, AT&T, MCI-WorldCom, Teleglobe, C&W Global Networks, Global One, StarHub, One Link Communications and PLDT	• China, Hong Kong, Japan, Korea, Malaysia, Philippines, Taiwan	• 160
Thailand-Indonesia-Singapore (TIS)	• PT Telkom, SingTel and CAT Telecom	• Thailand, Indonesia	• 30
Tata Indicom India-Singapore (TIC)	• VSNL	• India	• 320
I2i	• SingTel, Bharti Group	• India	• 160
C2C	• Connect Holdings	• Hong Kong, Taiwan, China, South Korea, Japan, Philippines, Vietnam, US	• 160
EAC	• Connect Holdings	• Hong Kong, China, Taiwan, The Philippines, South Korea, Japan	• 80
Sea MeWe-3	• Consortium model owned by 92 different carriers: SingTel and France Telecom are major stakeholders	• 39 landing points across the Pacific Rim, South East Asia, the Middle East, North Africa and Western Europe	• 70
Sea MeWe-4	• Consortium model owned by 16 different carriers including SingTel, MCI, France Telecom, CAT Telecom, Telekom Malaysia, Telecom Italia Sparkle, Telecom Egypt and Sri Lanka Telecom	• Malaysia, Thailand, Bangladesh, Sri Lanka, India, Pakistan, UAE, Saudi Arabia, Egypt, Tunisia, Algeria, Italy and France	• 160

Notes:

- Shaded rows indicate primary Asia Pacific cables
- APCN 2 is owned by a consortium of operators. For non-consortium members to acquire any upstream ICS capacity from it, they have to approach consortium members such as SingTel and Starhub. SingTel and Starhub are both vertically integrated operators that also compete on the retail sector side with downstream providers such as MediaRing.

Sources: Telegeography, www.iscpc.org, SingTel, VSNL,

2.2 The Post-Consolidation Entity May Be able to Use its Large Market Share in Upstream ICS to Cause Potentially Unreasonable and Substantial Adverse Competitive Impacts on Smaller Non-Vertically Integrated Players in Downstream Singapore Telecommunications Markets

2.2.1 Potential Adverse Market-side Effects of the Proposed Consolidation

2.2.1.1 Currently, Connect only provides upstream ICS services (e.g. connectivity, data communications etc) to enterprises such as MediaRing. It does not serve end consumers and so is not in direct competition with the majority of their customers for upstream ICS capacity. However, the Post-Consolidation Entity will own Pacific, an ISP and a provider of downstream services directly serving end users.

2.2.1.2 As a vertically integrated provider with significant market share in upstream ICS and a presence in downstream markets, the Post Consolidation Entity's downstream operations will compete directly with its own customers for upstream ICS.

2.2.1.3 As such, the Post Consolidation Entity would be one with a significant market share in the upstream ICS market in Singapore, while at the same time, via Pacific and ANC, competing against non-vertically integrated entities like MediaRing which may rely on the Post Consolidation Entity for the provision of upstream ICS.

2.2.1.4 MediaRing are concerned that the Post-Consolidation Entity may use its potentially dominant position in the upstream ICS market to:

- (i) provide unreasonably favorable asymmetrical tariffs to Pacific;
and/or
- (ii) reduce QoS for Pacific's competitors by prioritizing traffic.

MediaRing notes that the above practices are specifically proscribed by IDA in Sections 8.3 and 8.3(a)(iii)⁶ of the Telecom Competition Code⁷ (“Code”) as being practices that may be likely to unreasonably and substantially lessen competition in the telecommunications market in Singapore.

2.2.1.5 MediaRing believes that the market-side competitive impact of the above effects on smaller non-vertically integrated players in the Singapore telecommunications market may be adverse and will be likely to significantly impede the development of future competition in the Singapore telecommunications market.

2.2.2 Likelihood of Post Consolidation Entity discriminating among Non-vertically Integrated Telecommunication Service Providers in Singapore

2.2.2.1 The CRA Report takes the position that the Post-Consolidation Entity should be left unconstrained to give preferential treatment to Pacific as it sees fit⁸.

2.2.2.2 Such preferential treatment may result in unreasonable discrimination in the terms and conditions offered to acquirers of upstream ICS capacity; for instance, if the discrimination were non-transitory and prolonged.

2.2.2.3 Indeed, MediaRing finds such concerns heightened by the following statement in the CRA Report, which it believes is indicative of a clear intention to engage in discrimination following the Proposed Consolidation:

⁶ And as per the detailed explanations of the workings of these Sections set out in Sections 3.3.1(e) and 3.3.5 of the Advisory Guidelines Governing Abuse of Dominant Position, Unfair Methods of Competition and Agreements Involving Licensees that Unreasonably Restrict Competition Under Section 8 and 9 of the Code of Practice for Competition in the Provision of Telecommunication Services 2005 (“**Competition Guidelines**”)

⁷ Code of Practice for Competition in the Provision of Telecommunications Services 2005

⁸ See: Section 7 of the CRA Report (at p.26)

“Simply put, if internal vertical efficiencies make it possible for ANC to supply international capacity to PacNet at a lower price than it is able to supply to third parties, then it should be free to do so...”⁹

2.2.2.4 It is MediaRing’s humble opinion that such unrestrained action could be detrimental to consumers in the long run, as the market-side effects mentioned at paragraphs 2.2.1 to 2.2.2.3 above can significantly impede the development of future competition in the Singapore telecommunications market, especially in the downstream IP based services arena.

2.2.3 Likelihood of Post-Consolidation Entity Entering the VoIP Market and Possible Consequent Adverse Competitive Effects

2.2.3.1 Pacific has publicly declared that it intends to add voice services to its current data-centric portfolio. In their 2005 Annual report, they highlight that they have acquired T3 Communications, an Australian telecommunications company and have also partnered with Skype, an international VoIP provider. Regarding entry into the downstream voice services market, the report states:

“This is the first of several partnerships we look forward to establishing as part of our commitment to deploy VoIP across the Group’s network”¹⁰

2.2.3.2 Total international outgoing voice minutes from Singapore in 2005/2006 exceeded 2,600 million minutes¹¹. Of this, the vast majority was to Malaysia, which accounted for 30% of the overall outgoing international

⁹ CRA Report, paragraph 3 at p.26

¹⁰ Pacific Internet 2005 Annual Report

¹¹ Telegeography 2006 Yearbook

calls. Excluding Malaysia, at least 56%¹² of total minutes were to countries within the Asia-Pacific region.

2.2.3.3 As such, MediaRing is concerned that the Post Consolidation Entity may act in an anti-competitive manner with regards to connectivity pricing and services for upstream ICS capacity in the Asia Pacific region. This concern is in light of:

- (i) the significance of the Asia-Pacific destinations to the international calling market;
- (ii) the potentially dominant market share in the Asia-Pacific ICS market that Connect currently controls, as discussed in Section 2.1 above; and
- (iii) the presence, and impending growth of Pacific in the VoIP market.

2.2.3.4 MediaRing is also concerned that the Post-Consolidation Entity may use its potentially dominant position in the upstream ICS market to:

- (i) provide unreasonable favourable asymmetrical tariffs to Pacific; and/or
- (ii) reduce QoS for Pacific's competitors by prioritizing Pacific's voice traffic

MediaRing notes that the above practices are specifically proscribed by IDA in Sections 8.3 and 8.3(a)(iii) of the Code¹³ as being practices that may be likely to unreasonably reduce competition in the telecommunications market in Singapore.

¹² According to Telegeography, 56% of outgoing international calls (ex-Malaysia) can be traced to Asia-Pacific destinations; another 21% is classified under "others", while the remainder is to European or W. Asian countries

¹³ And as per the detailed explanations of the workings of these Sections set out in Sections 3.3.1(e) and 3.3.5 of the Competition Guidelines

2.2.3.5 For the above reasons, MediaRing believes that despite the CRA Report's position that the Proposed Consolidation could have pro-competitive effects¹⁴; any market-side competitive impact on smaller, non-vertically integrated players in the Singapore telecommunications market as a result of the Proposed Consolidation could be adverse.

2.2.3.6 Indeed, in MediaRing's humble opinion, sustained pro-competitive effects may not be possible without the continued presence of smaller and nimbler, non-vertically integrated players such as MediaRing in the Singapore telecommunications market.

3. CONCLUSIONS

3.1 MediaRing's primary concerns in this submission stem from the fact that a markedly different, vertically integrated Post-Consolidation Entity will enter the Singapore telecommunications market following the Proposed Consolidation.

3.2 Specifically, the Proposed Consolidation will create a vertically integrated Post-Consolidation Entity in Singapore's telecommunications market that:

- (i) will have a large market share in the upstream ICS market;
- (ii) will, via its ownership of C2C, ANC and Pacific, have a consequent presence in both upstream and downstream markets; and
- (iii) will have the capability of using its position in the upstream ICS market in Singapore to unreasonably and substantially lessen competition in downstream telecommunications markets in Singapore, as well as to impede the development of future competition in such markets

MediaRing believes that the real possibility of the above concerns being realised could make the Proposed Consolidation likely to substantially lessen present or future competition in downstream telecommunications markets in Singapore.

¹⁴ i.e. by expanding the current pool of SingTel and Starhub to one consisting of SingTel, Starhub and the Post-Consolidation Entity

3.3 As such, MediaRing respectfully requests IDA to:

- (i) Fully consider its concerns about the Proposed Consolidation in conducting its review of the same, with such review including a consideration of the potential adverse impact the Proposed Consolidation may have on non-vertically integrated retail players in the Singapore telecommunications market; and
- (ii) If IDA believes such concerns are warranted, that IDA consider imposing appropriate conditions on the Post-Consolidation Entity that it sees as being proportionate and necessary to address such concerns. For instance, conditions designed to remove any incentives to engage in any anti-competitive practices.

3.4 In terms of possible conditions that IDA may consider, MediaRing respectfully expects that IDA may look to Sections 4¹⁵, 5¹⁶, and 6¹⁷ of the Code of Practice for Competition in the Provision of Telecommunication Services 2005 (“**Code**”), which set out numerous obligations and/or conditions that licensees may be subject to in order to inhibit incentives to engage in anti-competitive behavior, or to prevent abuse of any dominance in telecommunications markets in Singapore.

3.5 MediaRing notes that the above-mentioned conditions are, in turn, designed to check the sorts of anti-competitive practices described in Sections 8¹⁸ and 9¹⁹ of the Code, and in Sections 6²⁰ and 7²¹ of the Consolidation Guidelines.

3.6 As a respectful suggestion, such conditions could include, without limitation:

- Conditions aimed at ensuring that the pricing of services between Connect and Pacific is transparent and not unduly favorable to Pacific or ANC;

¹⁵Duty of Dominant Licensees to Provide Telecommunication Services on Just, Reasonable and Non-discriminatory Terms

¹⁶ Required Cooperation Amongst Licensees to Promote Competition

¹⁷ Interconnection with Dominant Licensees

¹⁸ Abuse of Dominant Position and Unfair Methods of Competition

¹⁹ Agreements Involving Licensees that Unreasonably Restrict Competition

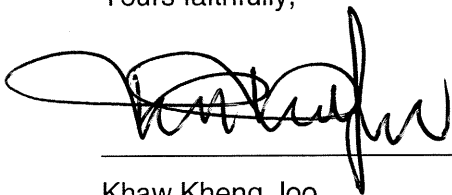
²⁰ Analytical Framework

²¹ Special Situations

- conditions aimed at ensuring equality of access such that Connect offers the same wholesale and upstream products and service that it offers itself (i.e. Pacific, ANC), to other wholesale customers at identical service levels and prices, and on substantially similar terms and conditions;
- conditions aimed at the maintenance of structural separation between Connect and Pacific following the Proposed Consolidation, in order to protect the flows of information and influence between downstream suppliers (i.e. Pacific, ANC); and
- conditions aimed at ensuring that the Post-Consolidation entity is not able to use market power in markets outside Singapore to adversely influence competition in Singapore's telecommunications markets. This could perhaps be accomplished by requiring the Post-Consolidation entity to notify IDA in the event it intends to acquire telecommunications assets in foreign jurisdictions, and to seek IDA's approval for the same in the event IDA believes that the relevant acquisition may result in the Post-Consolidation Entity having and/or leveraging Significant Market Power in a foreign jurisdiction, which could be used to unreasonably and significantly lessen competition in telecommunication markets in Singapore.

3.7 Please feel free to contact us if we may be of any further assistance to IDA in assessing the competitive impact of the Proposed Consolidation.

Yours faithfully,



Khaw Kheng Joo

Chief Executive Officer, MediaRing Ltd