

ASIA PACIFIC CARRIERS' COALITION

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**Submission by the Asia Pacific Carriers' Coalition
in Response to
SingTel's Request for Exemption from Dominant Licensee Obligations**

BACKGROUND

This submission is provided by the Asia Pacific Carriers' Coalition (APCC) in response to the 16 November 2007 invitation of the InfoComm Development Authority of Singapore (IDA) to comment on a request filed by Singapore Telecommunications Limited (SingTel) for exemption from dominant licensee obligations (SingTel's Request).

The APCC is an industry association of global and regional carriers operating in Asia Pacific, formed to work with Governments, National Regulatory Authorities and Consumers to promote open market policies and best practice regulatory frameworks throughout the Asia Pacific region that will support competition and encourage new and efficient investment in telecommunications markets.

This submission, made by the APCC, reflects the opinion of the majority of its members.

1. INTRODUCTION

- 1.1 The APCC is deeply concerned that SingTel's request for exemption from dominant licensee obligations is premature, lacks evidentiary foundation, and the "Customer Segment Request" is not a "narrow request" in terms of the IDA's relevant guidelines.
- 1.2 Because SingTel has withheld as "confidential" virtually all relevant data and the IDA has not published its own findings or preliminary reasoning, there is little evidence for any other party to comment on, besides SingTel's assertions that certain markets are competitive. The APCC therefore limits these comments to noting particular shortcomings of SingTel's Request and particular indicators of SingTel's persisting market power in the markets in question. The APCC would also strongly encourage the IDA to undertake and publish more detailed economic analysis of the markets in question.
- 1.3 The APCC acknowledges that, as the IDA has said, "...as competition develops, it may no longer be necessary to apply each of the Dominant Licensee obligations

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to every facility operated and/or service provided by a Dominant Licensee.”¹ The withdrawal, however, of dominant licensee obligations should be a phased process, proportionate to the proven development of competition. The process of liberalization can easily be severely set back by premature liberalization of particular markets or market segments. To ensure that does not occur, the regulating authority must be *certain* that the putatively competitive market is in fact competitive and will remain competitive if dominant licensee controls are removed.

- 1.4 The APCC submits that SingTel's Request should be declined in full, on the grounds that:
- (a) In the absence of any independent market analysis involving the entire market it is not possible to establish that the relevant markets are indeed competitive. Further market analysis needs to be carried out and made available to all market participants, to fully determine this crucial issue.
 - (b) The “Customer Segment” defined by SingTel does not qualify as a narrow request and even if, hypothetically, it did, it is the APCC's view, in the absence of independent and robust evidence to the contrary, that this segment is not sufficiently competitive that exemption from any of the dominant licensee regulations can be granted at this time.
 - (c) In relation to the “Market Based Request,” the APCC's view, in the absence of independent and robust evidence to the contrary, that the markets asserted by SingTel as being ‘competitive’ are not sufficiently competitive that exemption from any of the dominant licensee regulations can be granted at this time.
- 1.5 If SingTel's Request were given effect, the result would certainly not be to promote further competition in the telecommunications industry but, rather would be to create a real risk that existing competition and the benefits of that competition would be undermined or negated.

¹ IDA “Public Consultation on Request by Singapore Telecommunications Limited for Exemption from Dominant Licensee Obligations with respect to the Business and Government Customer Segment and Individual Markets pursuant to sub-section 2.5.1 of the Code of Practice for Competition in the Provision of Telecommunications Services 2005” (16 November 2007) para 1.2.

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2. CONSULTATION PROCESS

- 2.1 The SingTel Request repeatedly asserts the competitiveness of the various markets in which SingTel seeks exemption but discloses no firm evidence of competition occurring.
- 2.2 To the extent that the data on which SingTel seeks to rely is withheld as "confidential," the APCC submits that the IDA must discount the weight that it attaches to such data. It is only if data is exposed to comments from different perspectives and tested by debate that its reliability can be established. In this respect, APCC would request that the IDA should undertake to conduct its own market analysis. At present, SingTel discloses in the "non-confidential annexes" only the particular exemptions it requests and views as to rivals' comparable products.² SingTel withholds, in twenty "confidential annexes," all of the material information relating to its own business, markets, pricing and market shares (see table 1).

Table 1 –Index of Confidential Annexes to SingTel's Request

Confidential Annex 1	Requests for Proposals. Competitive Tenders
Confidential Annex 2A	Market Share – Business Local Telephony Service
Confidential Annex 2B	Market Share – Local Leased Circuit Service
Confidential Annex 2C	Market Share – Local Managed Data Services
Confidential Annex 2D	Market Share – International Private Leased Circuit Service
Confidential Annex 2E	Market Share – International Managed Data Services
Confidential Annex 2F	Market Share – Domestic Backhaul Service
Confidential Annex 3	Tariff Filings and Customised Tariffs
Confidential Annex 4	Quantum of Promotional Discounts Offered for Identified Services 2000 to 2007
Confidential Annex 5	Comparison of SingTel Business Telephone Fixed Line (DEL) service tariffs with overseas cities price control benchmark, April to June 2007
Confidential Annex 6	Competitive Quotes
Confidential Annex 7	Termination of PhoneNet and I-PhoneNet Lines
Confidential Annex 8	Migration to IP PBX or PBX Services by Customers
Confidential Annex 9	Comparison of SingTel retail local leased circuit prices with overseas cities price control benchmark

² The non-confidential annexes are headed as follows: "Non-Confidential Annex 1A - Exemptions sought under the Customer Segment Request"; "Non-Confidential Annex 1B - Exemptions sought under the Market Based Request"; "Non-Confidential Annex 2 - Competing Providers and Available Services"; "Non-Confidential Annex 3 - Products and Services Offered by Competitors"; "Non-Confidential Annex 4 - Description of Services [comparing SingTel services with competitors' services]".

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Confidential Annex 10	Estimated number of LLCs / LMDS lost
Confidential Annex 11	Customised LLC tariffs (2004 to 2007)
Confidential Annex 12	Observed Competitor [Confidential] Roll-Out
Confidential Annex 13	List of CBD and non-CBD locations where StarHub has rolled out its network
Confidential Annex 14	Starhub Roll-Out to data centres
Confidential Annex 15	Annual Diginet Revenues
Confidential Annex 16	Total Digiplus Take-up
Confidential Annex 17	Digiplus take-up by FBOs
Confidential Annex 18	LLC take-up by competitors
Confidential Annex 19	Domestic backhaul competitors
Confidential Annex 20	SingTel domestic backhaul price decline

- 2.3 Generally, an operator is entitled to protect the confidentiality of information which, if disclosed, is likely to have a material adverse impact on its business. Because other interested parties can only comment on so much of the information as is made public, however, the IDA can only have confidence in information that has been publicly disclosed or that has been independently obtained and verified. The information in each "Confidential Annex" cannot be regarded with confidence without such independent verification: it might be inaccurate, based on doubtful assumptions or incomplete.
- 2.4 Additionally, the APCC notes that the IDA's invitation to comment on the SingTel Request was not accompanied by a paper setting out the results of any IDA investigations or describing any preliminary views formed by the IDA and it is unclear whether the IDA has conducted such analysis. Interested operators and members of the public are entitled to have the opportunity to comment on the findings and reasoning of the IDA, as well as on the assertions of the applicant. At the present time, affected operators and other interested persons are unable to comment on either the evidential basis for SingTel's Request or the IDA's reasoning in relation to it.
- 2.5 The APCC requests, therefore, that the IDA either: (a) decline SingTel's request in full; or (b) if the IDA wishes to consider further any aspect of SingTel's Request, the IDA should provide thorough market information reflecting its own findings or those from other sources and consult with the industry on the IDA's preliminary findings and proposals before making any determination.
3. **NECESSITY OF COMPETITIVE SAFEGUARDS**
- 3.1 The APCC submits that the continued application of competitive safeguards on Singtel is absolutely necessary to the continuing development of competition in

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Singapore's telecommunications industry. In Singapore, SingTel (and other telecommunications operators) have a statutory exemption from the general competition law.³ Accordingly, the IDA should consider very carefully before exempting SingTel from the competitive safeguards provided by the dominant licensee obligations.

3.2 If SingTel were granted exemption from its present dominant licensee obligations, then, for the services or customer class within the scope of that exemption, SingTel would remain exempt from the general competition law and:

- SingTel would no longer be required to provide services at just and reasonable prices and terms;
- SingTel would no longer be required to provide services on non-discriminatory prices and terms;
- SingTel would no longer be forbidden to 'tie' the sale of a service to sale of any other service or equipment;
- SingTel would no longer be required to provide service to any end user on reasonable request;
- SingTel would no longer be required to provide services for resale by other licensees;
- SingTel would no longer be required to allow resale by all licensees on similar commissions;
- SingTel would no longer be required to file service tariffs with the IDA;
- SingTel would no longer be required to publish its service tariffs on its website;
- SingTel would no longer be required to provide services in accordance with tariff terms;
- SingTel would no longer be forbidden to engage in predatory pricing;
- SingTel would no longer be forbidden to engage in "price squeezing";
- SingTel would no longer be forbidden to engage in cross-subsidisation;
- SingTel would no longer be forbidden to discriminate between its affiliates and non-affiliated licensees;
- SingTel would no longer be forbidden to engage in "predatory network alteration" imposing costs on interconnected licensees.⁴

³ The Competition Act Schedule 3 Section 5

⁴ See SingTel's Request, Non-Confidential Annexes 1A and 1B; and provisions of the Code of Practice for Competition in the Provision of Telecommunications Services 2005 referenced therein.

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- 3.3 The residual competitive safeguards on SingTel (as for other licensees in Singapore) would be, in summary, a duty to interconnect, susceptibility to a possible future infrastructure sharing decision of the IDA, a prohibition on agreements that restrict competition, and the access requirements of SingTel's Reference Interconnection Offer (RIO). The list of exemptions sought by SingTel is unduly extensive and for Singtel not to be subject to normal competition safeguards under either general competition law or industry-specific regulation where it possesses significant market power would seriously jeopardize the progress made to date in introducing competition to Singapore's telecommunications markets.
- 3.4 Access requirements such as the interconnection obligation, the duty to share infrastructure and the RIO terms certainly are helpful pro-competitive measures. When such requirements work, they facilitate new market entry in downstream markets. It would be quite wrong, however, to assume that the existence of access regulation proves a market's competitiveness, or that it necessarily dilutes SingTel's dominance, or that the access regulations serve as a substitute for prohibitions on anti-competitive behaviour. The most direct consequence of access regulation is to facilitate market entry, although the entry of more players to the market does not necessarily mean competition in the market has increased. Access regulation can facilitate competition in downstream markets; it does not guarantee the competitiveness of upstream or downstream markets.
- 3.5 Whether economies of scale and scope are enjoyed by an operator is normally taken into account as a factor in assessing market power. SingTel, with its legacy network throughout Singapore, clearly enjoys very substantial economies of scale that cannot be experienced by new entrants rolling out networks to particular market segments. SingTel may also be in a position to provide bundled products to customers than its less integrated competitors cannot offer. It is essential that in any market analysis assessing SingTel's position in the market these factors are taken into consideration.
- 3.6 The APCC is concerned that if SingTel were to be exempted from its dominant licensee obligations under Parts 4 and 8 of the Competition Code, then the development of competition in Singapore's telecommunications industry would be at serious risk of stalling and regressing.

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4. THE 'CUSTOMER SEGMENT REQUEST'

- 4.1 The APCC submits that SingTel's "Customer Segment Request" is unacceptably expansive, amounting, as it would, to giving SingTel a free hand to operate in virtually the entire government and enterprise sector free of all the normal competition safeguards.
- 4.2 The APCC also submits that the expansiveness of the Customer Segment Request means that it is not within the scope of "narrow exemptions" permissible under the IDA's Exemption Guidelines.
- 4.3 The APCC and other interested parties do not know how large the overall market is for "business and government customers with an annual spend on telecommunications services of at least S\$250,000." Nor do we know what share of that market SingTel currently supplies: SingTel claims that it "serves approximately [CONFIDENTIAL (sic.)] business and government customers." SingTel adds that it considers that level of expenditure as "representing a very small number of [CONFIDENTIAL (sic.)] or [CONFIDENTIAL (sic.)] of business and government customers."⁵ Nor is the APCC (or any other interested person) able to identify which businesses or government bodies would fall within this "customer segment," since all businesses and many government agencies do not make public the amount of their annual expenditure on telecommunications services. The APCC submits that an application for exemption in respect of this "customer segment" cannot be entertained when such fundamental data is undisclosed.
- 4.4 In any event, the choice of a cut-off point of S\$250,000 appears to be wholly arbitrary with very little evidence to suggest that that the number of customers involved at that threshold amounts to "a very small number". In any case, it can be argued that the number of these customers is not really the point. If a customer segment is defined by their annual expenditure, their significance is not their overall numbers but their proportion of Singapore annual expenditure on telecommunications services. It is possible that a very small number of customers can be responsible for the majority of revenue.
- 4.5 The request in respect of business and government customers is plainly very broad in scope and not a "narrow request" as contemplated by the IDA's Exemption and Reclassification Guidelines. Those Guidelines refer to the possibility of exemption from "a special provision applicable to a specific

⁵ SingTel's Request, para 2.3.

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telecommunications service or facility when the Dominant Licensee provides that service or facility to a particular class of customers or in a particular geographical area.”⁶ The APCC submits that the blanket exemption of all business and all government customers (i.e. all non-residential customers) with expenditure above an arbitrary threshold, from all of the Dominant Licensee obligations, for all services, provided by means of all facilities, throughout all of Singapore cannot be construed as a “narrow exemption”. It is our view, therefore, that the “Customer Based Request” must be rejected in full.

5. THE ‘MARKET BASED REQUEST’

5.1 With regard to the “Market Based Request” made by SingTel, the APCC is concerned that:

- SingTel continues to control critical infrastructure, which gives it market power in some or all of the specified markets;
- SingTel has asserted confidentiality over information vital to the assessment of competition, so interested parties cannot comment on the veracity of that data;
- the IDA has not published any findings or preliminary reasoning in relation to a market investigation, which ought to be undertaken before the IDA decides whether to grant any exemption.

5.2 SingTel contends, but does not demonstrate, that “...there is particularly vigorous and effective competition in each of these six (6) markets...”⁷ SingTel claims it has been unable “to prevent the erosion of its market share”⁸ of IMDS and that in LMDS competitive service providers “are making significant encroachments on SingTel’s market share.”⁹ But the IDA cannot take any action, the APCC submits, until SingTel is able to prove that vigorous competition is already occurring and will continue to occur if safeguards are removed. As the IDA has previously stated, “...to the extent that a Dominant Licensee has any reasonable possibility

⁶ IDA Exemption and Reclassification Guidelines (September 2005) s 2.1(f).

⁷ SingTel’s Request, para 2.12.

⁸ SingTel’s Request, para 6.200.

⁹ SingTel’s request, para 6.136.

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of regaining significant market power in a market, retaining these prohibitions may be necessary...".¹⁰

- 5.3 Even if it could be shown there was an argument for removing some of the *ex-ante* obligations, and the APCC does not believe that there is, there cannot be any justification for removing the *ex-post* prohibitions against anti-competitive conduct that are imposed on SingTel under Section 8 of the Competition Code.
- 5.4 Unlike in other developed markets such as Europe, telecommunications in Singapore falls outside the scope of general competition law and is only regulated under the Competition Guidelines administered by the IDA. If IDA were to grant SingTel an exemption from the Section 8 prohibitions on abuse of dominant position, the effect would be to give SingTel liberty to engage in anti-competitive forms of behaviour, such as predatory pricing, price squeezes and anti-competitive tying etc.
- 5.5 SingTel argues that there have been no complaints as to their conduct, which shows there would be no danger to removing the restrictions. On the contrary, the APCC submits that one of the reasons that there may not have been any complaints is that SingTel currently is obliged to conform to the Competition Code. If SingTel has complied with the law, that is not an argument for the law being unnecessary. If these restrictions were taken away from SingTel, then companies adversely affected by any anti-competitive behaviour would have no recourse under the law or to the regulatory authority. This has the potential to cause severe damage to the competitive environment in Singapore and potentially to end customers.
- 5.6 Despite the lack of market data disclosed in SingTel's Request, it is apparent there is cause to doubt SingTel's claims concerning the competitiveness of individual markets. We comment on three markets: 1. Business Local Telephony Service (BLTS); 2. Local Leased Circuits (LLC); 3. Backhaul.

Business Local Telephony Service

- 5.7 In their request for exemption of Business Local Telephony Service (BLTS), SingTel note that "Retail BLTS includes the Business Direct Exchange Line (DEL) services..." and suggest as an alternative to exemption of "each and all" of

¹⁰ IDA Consultation Paper: "Preliminary Decision regarding the request by Singapore Telecommunications Limited for Exemption from Dominant Licensee Obligations with respect to the 'International Capacity Services' Market" (25 November 2004) para 25.

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the BLTS products that the IDA grant exemption for “all SingTel retail BLTS product offerings except the Business DEL service.”¹¹ This is significant: SingTel’s control of the underlying exchange line over which telephony services are delivered is the most fundamental source of their continuing market power. Infrastructure control places SingTel in a privileged position relative to all other operators in Singapore.

- 5.8 All of the data on which SingTel bases its claim to non-dominance of the BLTS market is withheld on confidentiality grounds, so the APCC cannot comment on what SingTel might be claiming conditions in the BLTS market to be.
- 5.9 In relation to BLTS (and the other local services) there needs to be a thorough analysis made of current market conditions, including the scope of the market as well as the intensity of competition in it. There are strong arguments to believe that VoIP services and IP telephony are not substitutable for basic local telephony. VoIP is far more relevant to the international market, as VoIP is usually seen by users as a means to make cheaper international calls. There may be a case therefore to consider VoIP to be a substitute for international calls but it is very doubtful a domestic local services market as broad as the BLTS market SingTel proposes can be sustained.
- 5.10 Local telephony VoIP and IP telephony aligned with level 3 numbers are not substitutes for basic telephony services. For instance, it is likely that level 3 operators will not provide access to the emergency services and their customer’s numbers will not be listed in the Telephone Directory or be available from the Directory Enquiries Number. These services have very different characteristics, which militate against them being in the same market.
- 5.11 There are also significant barriers to entry to the basic services market by IP Telephony providers, both for providers of level 3 numbers and level 6 numbers. One of these is the cost of opening up number levels for new operators. The IDA itself has seen this as an issue in its Consultation Paper of 5 July 2007 “Proposed Regulatory Framework For Telephony Services Over Wireless Broadband Networks And Interconnection Framework For Telephony Services”. In this paper, the IDA proposed that “each network operator is to bear its own cost of opening up a new number level, as subscribers of new and existing operators would stand to benefit from interconnection” while noting that that the “existing fixed-line and mobile network operators absorb their own cost of opening up new number levels

¹¹ SingTel’s request, para 6.31.

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among themselves". This has not yet happened and therefore constitutes a significant barrier to entry to new operators.

- 5.12 Even for new operators with level 6 numbers we believe that the lack of "true" number portability is a significant barrier to new entrants. It is well established that number portability is necessary to promote competition for basic telephony services and it is well established in most developed markets. Until this is introduced there will be significant inertia discouraging potential customers from changing operator owing to the fact they will have either to change their telephone number or to pay a fee to keep their existing one. This customer inertia clearly benefits the incumbent operator, which has the vast majority of existing customers, and serves to reinforce SingTel's continuing market power.

Local leased Circuits

- 5.13 The state of competitiveness in the Local Leased Circuit (LLC) market is impossible to assess from the information provided by SingTel. In terms of facilities based competition there are only two other providers with fiber optic networks in Singapore, StarHub and Verizon. By SingTel's admission, it is only in the Central Business District that all three networks are extensive. Therefore in the CBD there is limited facilities based competition with only three providers being present, while facilities based competition is undeveloped in the rest of Singapore.
- 5.14 The APCC has previously argued that there remain significant barriers to entry into this market.¹² Importantly, in Singapore there is only regulated relief on "tail" circuits if a carrier interconnects at the local exchange, there is no provision for tandem access. Therefore, to achieve nationwide access a competitive carrier must build its network to each of the 27 local exchanges.
- 5.15 SingTel have also announced a network rationalization effort that will cut the number of local exchanges from 27 to 12, with minimal transparency as to the details of these plans.
- 5.16 Although the IDA has tried to mitigate the impact of this rationalization by requiring SingTel to give 18 months notice prior to the proposed date of closure of an exchange, this does not significantly mitigate the risk of rolling-out network

¹² APCC submission to IDA dated 26 February 2007, provided in response to the IDA's "Public Consultation on Decommissioning of Co-Location Sites Offered under Singapore Telecommunications Limited's Reference Interconnection Offer".

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with a depreciable lifespan of 10 years to exchanges that may be phased out in 18 months. This constitutes a significant barrier to entry.

- 5.17 The arguments SingTel advances in terms of supply side substitutability also require a great deal more analysis. One of the possible reasons customers acquire LLCs is that they want to be assured of the security of their data. Other technologies suggested by SingTel as possible substitutes, such as ADSL, Wireless Local Loop or UMTS, will possibly not provide the level of security desired by such customers. This points to the need for far greater analysis of the market definition.

Backhaul

- 5.18 SingTel enjoys superior Backhaul network coverage and as such, is able to offer a single price for Backhaul services irrespective of the customer's POP location. This is not the case for alternative Backhaul providers, who may have to procure an additional local leased circuit to provision an end-to-end Backhaul service to a customer POP not co-located at the same premises. Clearly, alternative Backhaul players do not compete with SingTel on a level playing field.
- 5.19 It is also necessary to include self-supply of backhaul when assessing market shares. If self-supply is not included, the data can be seriously distorted with new entrants appearing to have far greater market share than they actually possess.
- 5.20 SingTel maintains that self-provided backhaul should not be included in the backhaul market as third party backhaul services are not a reasonable substitute for self-supply. There is no justifiable basis for the IDA to change its stated position in its April 2005 Explanatory Memorandum to its decision concerning SingTel's previous request for exemption from dominant licensee obligations with respect to the International Capacity Services market, that: "IDA believes that both services are in the same market because self-providing backhaul is a substitute for purchasing backhaul from another carrier". Because SingTel has only included third party Backhaul in the market share data submitted to IDA, the APCC submits that the IDA should require SingTel to resubmit this data including figures for self-supplied Backhaul.

6. CONCLUSION

- 6.1 The APCC submits that the present consultation is embarked on at too early a point in time. First, the APCC believes that the markets in question remain

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dominated by SingTel, who continues to control critical infrastructure. Secondly, the markets have not been the subject of a thorough competition review, which is an essential prelude to considering any further liberalization or deregulation. For the IDA to have confidence in the competitiveness of the markets, and for the markets to have confidence in the IDA's decision, all relevant data must be obtained and tested in debate. It is not enough for SingTel to make its case for non-dominance privately to the IDA.

ASIA PACIFIC CARRIERS' COALITION
Singapore, January 2008