



COMMENTS TO IDA'S PUBLIC CONSULTATION ON SINGTEL'S REQUEST FOR EXEMPTION FROM DOMINANT LICENSEE OBLIGATIONS IN BUSINESS AND GOVERNMENT CUSTOMER SEGMENT AND INDIVIDUAL MARKETS

EXECUTIVE SUMMARY

BT does not support SingTel's request for exemption from its Dominant Licensee obligations by either customer segment or by markets. BT considers that the requested deregulation is premature as the markets are not sufficiently competitive to allow competition to thrive in absence of such obligations. Furthermore, should the exemption be granted, there would be no legal avenues to redress anti-competitive conduct in such markets.

BT's opposition to the deregulation is based on the fact that SingTel's Exemption Request submission:-

1. Fails to include verifiable data; and
2. Fails to demonstrate that the continued application of such provisions applicable to SingTel as the Dominant Licensee in the two market segments identified is no longer necessary to protect the end-users or to promote/preserve effective competition amongst licensees.

BT further contends that:-

1. No exemptions should be granted to SingTel until the telecommunications sector is included in Singapore's national competition regime, the Competition Act 2004; and
2. As a minimum, the protections from abuse of a dominant position under the Code of Practice for Competition in the Provision of Telecommunication Services 2005 should remain in place regardless of any concessions made to SingTel.

In the event IDA grants SingTel's Exemption Request, BT considers that IDA would be prematurely deregulating such market(s) without conducting a sufficiently neutral, transparent, detailed and independent analysis of the relevant market(s). Prior to any assessment of dominance, the IDA should carry out an analysis in accordance with best practices of competition authorities or other sectoral regulators in other jurisdictions, as well as practices of the Competition Commission of Singapore, in a manner consistent with the Analytical Framework for Assessing Request for Exemption Applicable to Services.

Premature deregulation would be detrimental to the telecommunications industry, consumers and investors and potentially negate the benefits of competition thus far and hinder the development of future competition. Furthermore, should such exemption(s) be granted, the industry would have no legal avenues available to challenge any alleged anti-competitive behaviour by a player with significant market power in a telecommunications market due to the absence of redress under the Competition Act.



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Given the above, BT contends that IDA should:

1. Reject outright the SingTel's Exemption Request or alternatively defer any decision until IDA has conducted a full market analysis including defining the relevant market, conducting economic analysis, assessing the competitive state of the defined market and actual market performance including consideration of other factors such as market concentration, impediments to market entry/expansion, substitution, ability to leverage market power;
2. Alternatively, should IDA decide to grant SingTel's request without conducting such an analysis, to limit such an exemption and maintain in place the essential protections from abuse of a dominant position under the Code of Practice for Competition in the Provision of Telecommunication Services 2005.



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INTRODUCTION

BT Singapore Pte Ltd (BT) thanks the Info-Communications Development Authority of Singapore (IDA) for the opportunity to comment on the Request by Singapore Telecommunications Limited (SingTel) for Exemption from Dominant Licensee Obligations with respect to the Business and Government Customer Segment and Individual Markets (SingTel's Exemption Request) pursuant to sub-section 2.5.1 of the Code of Practice for Competition in the Provision of Telecommunication Services 2005 (Code).

BT is also grateful to IDA for granting an extension of the initial deadline for submission of responses by a further three weeks.

BT's submission consists of two main parts. **Part One** consists of BT's general comments on SingTel's Exemption Request. **Part Two** provides BT's detailed comments on SingTel's submission documents.

PART ONE: GENERAL COMMENTS

Competition Regulation Perspective

1.1 BT's concerns:

1.1.1 SingTel has sought to be fully exempted from all of its duties¹ as a Dominant Licensee to provide telecommunication services on just, reasonable and non-discriminatory terms, to file and publish tariffs, and to provide services consistent with effective tariffs capturing ALL retail telecommunications services provided to business and government customers with an annual spend in excess of S\$250,000 and individual markets;

1.1.2 BT would particularly be concerned if SingTel were to be exempted from the prohibitions against abuse of its dominant position in the Singapore market, particularly in terms of pricing abuses² such as predatory pricing, price squeezes and cross-subsidisation, and other abuses³ such as discrimination and predatory network alteration. It is stipulated in paragraph 2.6 of the Advisory Guidelines Governing Petitions for Reclassification and Requests for Exemption under sub-sections 2.3 and 2.5 of the Code (Exemption Guidelines) that IDA will give **special scrutiny** to such request by a Dominant Licensee to be exempted from the prohibitions contained in subsection 8.2 of the Code, against abusing its dominant position; and

¹ Without limitation, sub-sections 4.2.1.1 – 4.2.1.3, 4.2.2.1 – 4.2.2.3, 4.3, 4.4.1, 4.4.2.1, 4.5 and 4.6 of the Code.

² Without limitation, sub-sections 8.2.1.1 – 8.2.1.3 of the Code.

³ Without limitation, sub-sections 8.2.2.1 – 8.2.2.2 of the Code.



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- 1.1.3 If SingTel were to be granted its Exemption Request, SingTel would have effectively obtained the deregulation of wholesale services⁴.
- 1.2 "Special scrutiny" is particularly important given the exclusion of the telecommunications sector from the provisions of the Competition Act 2004 (CA). In light of the fact that the CA does not apply to the telecommunications sector, any exemption from the competition provisions of the Code would give SingTel *carte blanche* to behave as it likes and would remove protections afforded to non-dominant licensees and consumers.
- 1.3 For example, in the event that SingTel is not obliged to offer uniform prices to customers in the relevant markets, it could selectively reduce the prices which it offers to customers for services which are deemed competitive, while keeping high prices for services which may be non-competitive thereby cross subsidizing markets and engaging in predatory pricing. Smaller competitors might not be able to compete with SingTel and consequently market entry could be foreclosed in the markets previously deemed competitive. BT contends that the acceptance of this outcome will not be consistent with IDA's statutory duty to promote competition. Maintaining regulations can address this concern by prohibiting the Dominant Licensee from offering targeted prices.
- 1.4 Considering that the CA does not cover the telecommunications sector, BT submits that granting SingTel's Exemption Request is premature at this stage. IDA should not consider SingTel's Exemption Request until the CA is amended to cover the telecommunications sector. Otherwise, there is too great a risk that SingTel could take advantage of its market power. At the very least, the protections against abuse of a dominant position in the Code should remain until the telecommunications sector is included in the CA.
- 1.5 The practice of enshrining a general prohibition against abuse of a dominant position and analysing allegations of abuse on a case by case basis is followed in the US, EU, Australia, and many other countries. A policy whereby the telecommunications sector is excluded from the CA and the incumbent is permitted exemptions from the competition provisions of the Code will result in Singapore's competition policy being misaligned with other regulatory regimes worldwide. This piecemeal approach to competition law in the telecommunications sector will give uneven results and lead to unfairness.
- 1.6 If such a degree of deregulation is permitted in the business and government customers segment and individual markets segment, the critical checks and balances to ensure a fair, competitive and transparent environment in such markets which are found in the CA should cover the telecommunications sector.

⁴ Pursuant Sub-section 4.3 to the Code, SingTel is required to offer any telecommunications service on a wholesale basis if directed by IDA to do so and in the absence of such direction, SingTel must offer the wholesale telecommunications service at prices, terms and conditions that are just, reasonable and non-discriminatory, must allow any licensee to purchase the wholesale telecommunications service, must not restrict the ability of another licensee to use the wholesale telecommunications services as an input into another service, and must not require the licensee to disclose that it is using the Dominant Licensee's wholesale telecommunications service as an input.



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Market Competition Perspective

- 1.7 BT submits that SingTel's Exemption Request has initiated a need for economic and market analysis conducted and led by IDA to ensure a thorough and transparent analysis. It would be too early to deregulate without such neutral, transparent and detailed analysis conducted and led by IDA on the relevant markets in line with the Analytical Framework⁵ for Assessing Request for Exemption Applicable to Services, i.e. economic analysis, market definition, competitiveness assessment and other factors. Moreover, this analysis should be available for comment by industry participants.
- 1.8 We note that the vast bulk of data in SingTel's Exemption Request has been redacted and marked as confidential. There is no clear justification or rationale to SingTel's setting of the threshold amount in its submission. In absence of such detailed and transparent analysis, it would be extremely difficult for BT as well as other stakeholders to provide detailed and well directed comments.
- 1.8.1 Although BT would welcome a more detail analysis, based on information available, BT disagrees with the proposed deregulation of all retail telecommunications services provided to business and government customers with an annual spend of S\$250,000 and individual markets for a number of reasons.
- 1.8.2 Firstly, BT would note the threshold of S\$250,000 identified by SingTel for its exemption request with respect to business and government customers is LOW in light of BT customers' average annual spend. Such threshold would in effect capture almost all business and government customers of BT in Singapore. An initial analysis of BT's customer spend would indicate that approximately 80% of BT's customer would be over this threshold. As such, a detailed market analysis on the average annual spend in the relevant markets is critically necessary to ensure justification of such threshold and/or to facilitate IDA in setting a more appropriate threshold should IDA decide to allow the exemption in whole or in part.
- 1.9 Secondly, BT believes that it is too early to lift the dominance controls on SingTel as we believe that SingTel's provision of non-discriminatory and appropriate wholesale products is not sufficiently developed to warrant such a radical move. Wholesale services have only been provided since 2005 and comparative KPI data is not publicly made available by SingTel by which other operators can be assured that they receive the same wholesale services on the same prices, terms and conditions that SingTel is providing to its downstream arms. As a result, there is insufficient evidence at this point to establish non-discrimination and to enable dominance to be lifted from SingTel.
- 1.10 Thirdly, market players depend on SingTel for last mile access to be able to provide services to their business customers hence are in a disadvantaged position. Market players do not currently enjoy any true benefits from SingTel's RIO, i.e. the Interconnection Related Services (IRS) and Mandated Wholesale Services (MWS). The IRS made available requires physical interconnection of an operator's equipment at SingTel's premises and there is currently no MWS made available. Market players negotiate commercially with SingTel to procure last mile access. Consequently, it is possibly that disparity could occur between commercially negotiated pricing by market

⁵ As provided under sub-paragraph 2.4 of the Exemption Guidelines.



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players and discounted pricing offered by SingTel to its business customers (end-users). Hidden cross subsidy and discriminatory behaviour could occur in such an environment. Such practices are generally difficult to prove. As such, the provisions in the Code remain essential tools to enable competition to develop.

- 1.11 A critical question that arises relates to the impact of the deregulation at this point in the development of the relevant markets, of which the healthy and competitive development of such markets would effectively support the Singapore Government's objective to promote and sustain Singapore as the global hub for the MNCs. Would such move to deregulate at this early stage be in the interests of the business/consumers and the development of effective and sustainable competition and innovation? SingTel is seeking the removal of all retail and wholesale obligations, and the permission to act in a discriminatory and potentially anti-competitive manner. This is contrary to the spirit of open/equal access. In the event the whole package of exemption request is approved by IDA, BT would submit that it would send a very negative signal to the global business community in terms of telecommunications investments in Singapore. BT would also urge the IDA to consider the impact of such a request on the iN2015 project.
- 1.12 Finally, BT would note that the term "business customer" is not defined clearly in SingTel's submission, i.e. whether it includes both corporate customers as well as service provider customers such as BT. There should not be any discrimination in SingTel's treatment towards its "business customers".

BT's International Experience

With reference to our comments above, we would like to share with IDA our experiences on this subject matter in the United Kingdom and more generally.

- 1.13 BT as the incumbent telecommunications provider in the UK is subject to ex-ante regulation at the retail level in relation to a number of services. For example, regulation applies to retail leased lines up to and including 8Mbit/s, retail business exchange lines (including ISDN 2 and ISDN 20), retail business local and national calls, calls to mobiles, and operated assisted calls. In response to Ofcom's finding of SMP held by BT in the relevant markets, Ofcom imposed a range of remedies on BT. However, the remedies imposed in the business markets are not always identical to those imposed in the residential markets.
- 1.14 BT has argued over the course of the last few years that Ofcom should permit bespoke pricing in respect of services offered to large business customers. Ofcom has undertaken several consultations with industry and conducted its own research on the potential impacts of any lessening of regulation before reaching any decision. Where a relaxation of the SMP conditions is proposed or agreed, Ofcom has imposed a strict of criteria and detailed governance processes.

BT's pricing of services for business customers



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1.15 Following the October 2003⁶ consultation with industry, Ofcom (formerly Oftel) published a final statement in May 2004⁷ relation to the pricing of services to business customers. In that statement, Ofcom concluded, among other things:

1.15.1 Where BT's retail services are replicable both technically and commercially by BT's competitors, BT should be permitted to offer discounted bundles of services which include services from markets where BT still has SMP, provided that prices for these bundles are published and made available to all broadly comparable customers;

1.15.2 Such bundles would be required to pass a net revenue test and also an implicit price – cost test (under which non-SMP services would be treated as a single unit) to prevent anti-competitive leverage of power from SMP to non-SMP markets;

1.15.3 There would be a presumption, unless proved otherwise in each specific case that saw tooth discounts are anti-competitive; and

1.15.4 Contracts awarded after tendering could not reliably be distinguished from contracts awarded by other means, and, therefore, that regulation should not be applied in a way which relies on such a distinction.

Consultation on regulation in business retail markets

1.16 In September 2005, Ofcom published a consultation document, "**Regulation of Business Retail Markets**"⁸ intending to establish an appropriate strategy for phased withdrawal from ex-ante regulation of retail business markets (beyond any decision to allow BT to offer published discounts for service bundles which include services from markets where BT has SMP).

1.16.1 The consultation included Ofcom research on the views and behaviour of business customers with the objective of identifying differences between larger and smaller business users of telecommunications services. Ofcom gathered data from BT and its competitors and conducted surveys of business users.⁹ However, the data gathered did

⁶ Oftel, BT's pricing of services for business customers, 15 October 2003

(<http://www.ofcom.org.uk/static/archive/oftel/publications/licensing/2003/price1003.pdf>)

⁷ Ofcom, BT's pricing of services for business customers, statement, 27 May 2004

(http://www.radioauthority.org.uk/consult/condocs/pricing_business_customers/ofcom_statement/business_pricing.pdf)

⁸ Ofcom, Regulation of business retail markets, consultation, 7 September 2005

(<http://www.ofcom.org.uk/consult/condocs/busretail/busretailreg.pdf>)

⁹ Ofcom's surveys of business users include:-

-113 online interviews with telecoms decision makers in UK large businesses (251+ employees) via Ofcom's online panel, conducted by Continental Research on behalf of Ofcom;

-500 telephone interviews with telecoms decision makes within medium size businesses (51-250 employees), conducted by Continental Research on behalf of Ofcom;

-200 telephone interviews with telecoms decision makers/influencers in member companies of the Communications Management Association (CMA), conducted by Research in Communications (Recom) on behalf of Ofcom. 31% of respondents to the CMA survey work in organizations with more than 2500 employees.

The first two of these surveys contained questions about respondents' purchasing of telecommunications services, their use of different suppliers, the extent to which they use BT, the key criteria when selecting a supplier, switching, their experience and ability to negotiate with BT, and their views on the value of retail regulation. The purpose of these surveys was to attempt to detect any indications of variations between the behaviour of large and medium size business users in their purchasing of services from



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not indicate marked differences in market conditions or customer expectations between the supply of communication services to large businesses and smaller businesses.

Replicability

- 1.17 Following a July 2005 consultation document on the topic of replicability¹⁰, which resulted from the May 2004 statement on the pricing of BT's services to business customers, and the research undertaken in its September 2005 consultation on regulation in business retail markets, Ofcom published a final statement on replicability in April 2006.¹¹
- 1.18 In this document, Ofcom outlined the criteria, processes and governance surrounding its proposal to allow BT to bespoke deals to business customers for specific business services. While BT continues to be designated as holding SMP in the market for business exchange lines, Ofcom relaxed the SMP remedies imposed on BT by allowing it to no longer be required to publish price, terms and conditions for business exchange lines to customers who spend more than £1m (S\$3m) per annum on telecommunication services with BT. Ofcom's consent included new requirements for BT to maintain records and provide reports to Ofcom on particular aspects of this matter.
- 1.19 BT notes that while SMP remedies have been partially relaxed, some remedies continue to apply as well as competition law.
- 1.20 So far, Ofcom has only given consent to BT in May 2007 that its retail business exchange lines are replicable using BT's wholesale line rental product. Therefore, BT is able to offer unpublished bespoke prices for this service to customers whose spending with BT (on all communications services) in the UK is in excess of £1m per year. This is subject to strict governance procedures, including specific cost floors at the retail Fully Allocated Cost plus network transfer charge, quarterly reporting requirements outlined by Ofcom as well as maintaining records and contracts which Ofcom can request at any time. Ofcom can also withdraw its consent at any time.
- 1.21 In contrast, SingTel sought complete deregulation on all telecommunications services provided to business and government customers who spend more than S\$250,000 (£82,000) per annum on telecommunication services with SingTel. Such threshold set by SingTel is not justified in a transparent and rational manner. Based on such threshold, all business customers including small and medium enterprise, all levels of corporate customers as well as government customers would be captured for the Exemption Request.

markets where BT has SMP. The third survey amplifies an annual survey of the CMA's membership and was intended to complement the first two surveys. The findings of these 3 surveys are summarized more fully in an Ofcom report available at <http://www.ofcom.org.uk/research/telecoms/reports/pricing.pdf>.

¹⁰ Ofcom, The replicability of BT's regulated retail business services, consultation, 20 July 2005

(http://www.ofcom.org.uk/consult/condocs/bt_retail/bt_retail.pdf)

¹¹ Ofcom, The replicability of BT's regulated, retail business services and the regulation of business retail markets, statement, 12 April 2006

(<http://www.ofcom.org.uk/consult/condocs/busretail/statement/statement.pdf>)



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- 1.22 In support to our comments in sub-paragraph 2.5 below, we would like to share with IDA BT's experience when BT wanted Ofcom to look at paring back its regulatory obligations in the mid 1990s, it prepared an in-depth market review of all its markets (on both the retail and wholesale level) and shared it with the whole industry. It is well known that the incumbent has access to a far greater depth of market information than any other competitor and most probably the regulator itself. To earn exemptions from protections, it must demonstrate to the industry as well as the regulator the true condition of competition in the market. The fact that SingTel has not allowed the industry access to this information shows that it wishes to maintain its dominant position in the market – information is the key.
- 1.23 Further to sub-paragraphs 1.4 and 1.5 above, in the European Union (under general EU competition law and in the national competition laws of EU member states), there is a blanket prohibition on abuse of a dominant position under the EC Treaty and operators cannot apply for exemptions from it. This protection will be removed in Singapore should IDA grant SingTel's Exemption Request.
- 1.24 We would respectfully observe that the normal practice across Europe is to undertake market review analysis on such matters, which would involve the regulatory authorities collecting relevant data from across the industry and seeking responses to specific questions posed by the regulatory authority in a public consultation process.

PART TWO: SPECIFIC COMMENTS

The following paragraphs set out BT's specific detailed comments arising from SingTel's Exemption Request. The structure of this section mirrors the structure of SingTel's request.

Part A – Introduction

- 2 BT disagrees that the provision of telecommunication services to business and government customers with an annual telecommunications spend in excess of S\$250,000 is extremely competitive.
- 2.1.1 BT considers that the threshold level chosen by SingTel is arbitrary and too low. SingTel claims that this level represents the 'minimum spend of a very small number of [confidential] or [confidential] business and government customers'. It is not clear from this statement whether any particular characteristics were sought for this small number of customers or whether selecting a different set of customers may have resulted in a threshold of many multiples of S\$250,000. Based on our initial analysis of BT's customer spend mentioned in sub-paragraph 1.8.2 above, such threshold would affect a substantial percentage of our customers in Singapore. In absence of a transparent and neutral market analysis conducted and led by IDA, SingTel's claim that such identified market segment is extremely competitive is not justified.
- 2.1.2 BT disagrees with claims by SingTel that there is strong countervailing purchasing power held by the identified market segments for business and government customers, and for the identified individual market segments, that there is strong infrastructure and service-based competition sufficient to warrant SingTel's Exemption Request.



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- 2.1.3 For both price and non-price reasons and by reason of market position, influence and ubiquity, SingTel enjoys a unique position as a supplier. Fear and uncertainty factors and related matters are likely to have a disproportionate influence on business customers who may otherwise consider moving their business from SingTel. Business customers invariably acquire more than one connection/service from their service providers. Considering SingTel's market power in both voice and data related services, multi-site services and the bundling of voice/data services to businesses makes switching between service providers expensive.
- 2.1.4 We do not believe that for both price and non-price reasons, SingTel provides sufficiently robust wholesale products with non-discrimination supported through public KPI publication and equivalence of input. It is recommended that IDA seeks inputs not just from other telecommunications service providers but also from the end-users, i.e. the business/government customers to analyse SingTel's market power.
- 2.1.5 We disagree that the relevant customers and markets (products) are highly contestable or exhibit low barriers to entry.
- 2.1.6 We refer to SingTel's contention that it should be granted exemption from the remaining obligations under sub-section 8.2 of the Code for IMDS following the previous exemptions granted in 2005 and based on the reason that prices have reduced, there have been new innovations, and there have been no allegations of abusive conduct against SingTel. We believe that it is precisely because of the protections under sub-section 8.2 of the Code that there have been no allegations of abusive conduct against SingTel. The protections are in place to prevent abuses occurring in the first place. Once removed, SingTel will not have any reason to refrain from cross subsidies, discrimination, etc. It would be too easy for SingTel to use the dominant position it holds in one market to engage in anti-competitive conduct in a neighbouring market without risk of penalty.

2.2 Part A – Executive Summary

- 2.2.1 With regards to the Customer Segment Request, BT notes that SingTel has provided a checklist of all the positive reasons why their application should be supported. The opposite side of the coin is not presented. For example, with the lifting of dominant obligations on SingTel, business and government customers will be exposed to significant price and non-price pressure to move or retain their business with SingTel as competitors will inevitably find it more difficult to compete in the absence of the current regulatory controls on SingTel.
- 2.2.2 We refer to SingTel's claims that business and government customers are the first to be targeted by new entrants. SingTel's Customer Segment Request is for business and government customers with an annual spend of S\$250,000 on telecommunication services. We would argue that only a certain class of new entrant will be able to address such customer segment as there are likely to be more sophisticated service requirements over a number of locations which may be international. Hence only a smaller number of players will have the capability, reputation and the standing to address such requirements. In addition, customers are likely to have high service level requirements and are likely to be cautious in contracting with new market entrants.



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- 2.2.3 We disagree with SingTel's statement that it derives no advantage from mere ownership of infrastructure. Relevant market players are dependent on SingTel for access/inputs. IDA must ensure that SingTel is not given the ability to discriminate in favour of its downstream operation. One such method which can ensure this is "function separation" which should be considered by the IDA to determine whether it is appropriate in the Singapore market.
- 2.2.4 We refer to SingTel's contention that business and government customers acquire packages of voice and data services through competitive tenders for service, which are short-term in nature hence a large portion of the market is continually available for competition by both existing market participants and new entrants. This is not accurate. Based on BT's experience with our customers, the duration of a typical contract would normally depend on the complexity of the services rendered, i.e. minimum 3 years and above. Major deals, particularly in outsourcing may last up to 12 years.
- 2.2.5 BT notes SingTel's observations regarding "Multitude of Alternative Suppliers". We believe that the remarks regarding ownership, be that global or local, are not relevant to the discussion. Global companies such as BT Singapore make local investment decisions. If the market opportunities created by the regulatory environment are correct, decision to invest would be very positive. Otherwise, investors will withdraw.
- 2.2.6 We would observe that the number of players in the market is a sign that the regulatory obligations on SingTel have created the right starting point for competition. It is difficult to see that within two years, that starting point has turned into an extraordinary long-term sustainable reality without the need for regulatory controls as put forward by SingTel.
- 2.2.7 Hypothetically if IDA were to accept SingTel's Exemption Request, what checks and balances would be put in place to re-impose such obligations? Such regulatory uncertainty may cause a loss of investment confidence in Singapore. On the one hand SingTel appears to be seeking the removal of wholesale obligations, yet on the other hand SingTel claims that it will remain subject to regulation through anti-competitive conduct provisions in the Code and supplying regulated and non-discriminatory access to other operators as set out in the SingTel RIO.
- 2.2.8 SingTel claims that it has no market power. We believe such a remark is not verifiable because of all the redactions made in SingTel's submission. What is SingTel's true market share in the relevant market segments they have requested to be exempted from their dominant obligations? Relevant market players are dependent on SingTel for access/inputs. A transparent and neutral market analysis by IDA is necessary as only IDA has the power to conduct a full analysis. Even if SingTel should have less than 50% market share, SingTel has significant power in the market as a ubiquitous vertically integrated incumbent.
- 2.2.9 SingTel makes assurances that if its Exemption Request is granted, it will still have to comply with the prohibitions against anti-competitive conduct under the Code which is sufficient protection. As highlighted above, the Code is inadequate from a competition law perspective and that the telecommunications sector should be covered in the CA.

2.3 Part A – Background



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- 2.3.1 BT notes the background remarks and would observe that the timeframe from 18 February 2005 to date is an extraordinarily short time in which SingTel could claim that its position has gone from dominance to non-dominance. Most markets in the world work in terms of decades not years. We believe that SingTel has and will continue to enter into long-term contracts with its business and government customers whom are greater than the two and a half years that has elapsed. This in itself is an indication that such significant change is unlikely in the time frame.
- 2.3.2 We also note that SingTel drew the IDA's attention to sub-section 1.5.1 of the Code which stipulates that "market forces are generally more effective than regulation in promoting consumer welfare". We would add a note of caution to the interpretation that SingTel seemed to draw from this which is, that without regulation, there would be no opportunity for market forces to have any effect whatsoever.
- 2.3.3 With reference to SingTel's claim that a number of non-dominant licensees have advantages in the provision of telecommunication services to business and government customers that SingTel does not have, such non-dominant licensees may have the advantage of an international network or greater range of services, but it does not surpass SingTel's incumbent advantage or the fact that it owns the local access network. Furthermore, such players may be caught by dominance regulation and competition law in other jurisdictions.
- 2.3.4 BT disagrees with SingTel's assertion that the continued application of Dominant Licensee regulation on SingTel in respect of the supply of telecommunications services to customers in the business and government customer segment would put SingTel at a significant competitive disadvantage. The current safeguards contained in the Code serve to ensure a level playing field and to uphold the competitive process.

2.4 Part B – Customer Segment Request

- 2.4.1 BT notes SingTel's remarks regarding their proposal for a "narrow request for exemption" in the business and government customer markets. As mentioned above, BT does not believe that the threshold of \$250,000 creates a "narrow" exemption.
- 2.4.2 We draw attention to SingTel's statement that global telecommunications providers are particularly vigorous competitors for supply of telecommunications services to customers in the business and government customer segment. Such global telecommunications providers do not have the advantage of domestic access element in their bidding for competitive tenders and are fully reliant on SingTel for that part.
- 2.4.3 With reference to SingTel's assertion that the majority of competitive tenders are for periods less than 24 months, BT disagrees and we would again highlight our comments mentioned in sub-paragraph 2.2.4 above.
- 2.4.4 BT would submit that the mere existence of numerous FBOs and SBOs is not evidence of a competitive market. Such assertion made by SingTel should be supported strongly



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by corresponding market shares based on various different parameters such as revenue, capacity, unit sales, and level of concentration.

- 2.4.5 BT disagrees with SingTel's claim that it does not have SMP at a wholesale level which it can leverage to serve the business and government customers segment, wherein any market power that SingTel may theoretically have at a wholesale level as a result of its ownership of relevant essential facilities/infrastructure is negated through interconnect and access regulation and the availability of alternative supply arrangements from other providers such as StarHub. If such exemption goes through, it could have a significant negative impact on market players, especially in the area of local access where market players are currently dependent upon SingTel for coverage and in the area of backhaul.
- 2.5 With regards to market share information, it is noted that SingTel has chosen not to share market share data with the industry. SingTel submits that "the evidence clearly shows that SingTel cannot act independently of its competitors and therefore, does not possess market power". We have seen no evidence in its submission that proves this. Without access to such information, the submission is meaningless and unverifiable. Is this a genuine public consultation? We share with IDA our experience in sub-paragraph 1.22 above.
- 2.5.1 With regards to continuing prohibition against anti-competitive conduct, SingTel may remain subject to regulatory oversight to a limited extent if it obtains an exemption, but we would, again as per our comments highlighted above, argue that the provisions of the Code are inadequate therefore the competition protections in subsection 8.2 of the Code must remain. Moreover, as we have previously stated, we believe that the competition provisions of the Code are inadequate when compared to those provided in the CA. Consequently, we would urge the Singapore Government to include the telecommunications industry in the CA to ensure fairness and an even-handed approach to all industries.
- 2.5.2 We respectfully recommend to IDA to review the underlying reasons which led to the decisions made by IDA in February 2005 towards the designations on SingTel in the consideration of SingTel's Exemption Request. We would welcome IDA's view on what changes IDA has seen in the market place since such decision made in 2005.
- 2.5.3 SingTel advised that its wholesale obligations will continue, allegedly unchanged, should IDA approve its request for exemption. However, this is not consistent with remarks made elsewhere in its submission and urgent clarification is required on exactly what SingTel's intentions are. BT seeks clarification from IDA on how it would effectively ensure such obligations have been fulfilled.
- 2.5.4 Furthermore, we do not believe that the wholesale obligations on SingTel are sufficient to protect its competitors against abusive behaviour should SingTel's Exemption Request be granted. A major review of wholesale arrangements including public domain publication of KPIs to demonstrate non-discriminatory behaviour needs to be undertaken in a consultation prior to any consideration of SingTel's Exemption Request.



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2.5.5 We believe that should SingTel agree on a voluntary basis to functional separation and provide improved wholesale arrangements then it may be at the start of a journey towards eventual deregulation.

2.6 Part C – Market Based Request

2.6.1 SingTel expressed its concern that the Competition Authority of Singapore uses 60% as the dominance threshold and observed that it should be less than this and that market share is not the only measure and that market power is the key issue. We would agree that market power is a key issue and such power is often exhibited in market share. As multiple products are put in scope by SingTel, the argument that market power is simply defined as the ability to increase price above the competitive level for a significant time is somewhat erroneous.

2.6.2 Although key elements are redacted from SingTel's submission, it is clear that it continues to maintain high market shares in some if not all of the service offerings it wishes to be exempted.

2.6.3 We again note that SingTel wishes to remove wholesale obligations whilst arguing elsewhere in its submission that the retention of wholesale offerings protects its competitors. If such exemption goes through, it could have a significant negative impact on other market players, especially in the area of local access where market players are currently dependent upon SingTel for coverage and in the area of backhaul.

2.6.4 In relation to the market for retail business local telephony services, SingTel is obligated to provide a basic service under its licence although it is seeking exemption from Dominant Licensee obligations for the entire market. SingTel argues that the market is competitive, although indicates that its market share 'may exceed 40%'. BT agrees that market share is only one factor to indicate whether or not a company has significant SMP, however BT is unable to provide detailed comment as data for some of those other factors is marked confidential. BT notes that in the UK it is currently subject to ex-ante regulation for the provision of retail exchange line services to both residential and business. In addition, the European Commission recently revised its list of markets susceptible to ex-ante regulation but continued to include the retail market for access to the public telephone network at a fixed location for both residential and business customers.

2.7 Part D – Conclusion

2.7.1 BT disagrees with SingTel's conclusion for the reasons set out above.



COMMENTS TO IDA'S PUBLIC CONSULTATION ON SINGTEL'S REQUEST FOR EXEMPTION FROM DOMINANT LICENSEE OBLIGATIONS IN BUSINESS AND GOVERNMENT CUSTOMER SEGMENT AND INDIVIDUAL MARKETS

3 CONCLUSION

BT makes the following conclusion:-

- 3.1 It is too premature to lift dominance on SingTel in the business and government customers markets;
- 3.2 The relevant markets are not sufficiently competitive;
- 3.3 Wholesale products are not sufficiently robust; and
- 3.4 Rules to ensure equivalence of input and supply are not established.

4 RECOMMENDATION

BT makes the following recommendation:-

- 4.1 No exemptions should be granted to SingTel until the telecommunications sector is included in Singapore's national competition regime, the Competition Act 2004;
- 4.2 As a minimum, the protections from abuse of a dominant position under the Code should remain in place regardless of any concessions made to SingTel and competition law matters should be dealt with on a case by case basis, as and when they occur. This would be more in line with the world's best practice – competition authorities do not as a general rule grant exemptions to abuses of a dominant position to market sectors, but analyse them on a case by case basis; and
- 4.3 Consideration should be given to the abovementioned Ofcom's competition practices as well as to the Analytical Framework for Assessing Request for Exemption Applicable to Services in IDA's assessment of market competitiveness.

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