



## **FRANCE TELECOM GROUP ORANGE**

### **Response to an IDA Public Consultation on Preliminary Decision on Request by Singapore Telecommunications Limited for exemption from Dominant Licensee obligations with respect to the Business and Government Customer Segment and Individual Markets (“Preliminary Decision”)**

**23 September 2008**

Respondent contact details:

Jayson Ho  
Resident Director  
France Telecom Long Distance Singapore  
Office: (65) 6517 1008  
Email: [jayson.ho@orange-ftgroup.com](mailto:jayson.ho@orange-ftgroup.com)

Valerie Tan Hsu Phen  
Head of Regulatory Affairs, Asia Pacific  
Office: (65) 6419 6341  
Email: [valerie.tan@orange-ftgroup.com](mailto:valerie.tan@orange-ftgroup.com)

Blk 750 Oasis, Chai Chee Road  
#04-02, Technopark @ Chai Chee  
Singapore 469000





## ***Table of Contents***

Summary of Major Points	3
Statement of Interest	3
Comments	3
Conclusion	8



### **Summary of Major Points**

France Telecom Long Distance Singapore Pte Ltd (FTLDS) disagree with the Preliminary Decision assessment that the Singapore Backhaul market is now competitive. We respectfully request the IDA to reconsider its Preliminary Decision, giving weight to the facts that –

- Local Leased Circuits (LLC) is a critical input for wholesale Backhaul services.
- Gaps in regulating LLC services leave SingTel's dominance in the LLC market inadequately addressed.
- SingTel has the ability to act independently of competitive market forces and therefore continues to possess Significant Market Power (SMP) in the market for Backhaul services.
- The current playing field for Backhaul services favors SingTel.

### **Statement of Interest**

FTLDS thanks the IDA for this opportunity to submit comments regarding IDA's analysis in the Preliminary Decision ("Second Public Consultation").

FTLDS operates a Backhaul network and provides Backhaul services in Singapore under a Facilities Based Operator (FBO) License. In response to the First Public Consultation, FTLDS presented facts submitting that SingTel continues to have the ability to exercise SMP in the Backhaul market and that IDA's decision can only be to fully deny SingTel's request for exemption from dominant licensee obligations.

However, the Preliminary Decision was to grant SingTel a partial exemption from the application of *ex-ante* competition safeguards under Section 4 of the Telecoms Competition Code<sup>1</sup>. This response therefore sets out FTLDS' reservations with the analysis of the Backhaul market in the Preliminary Decision.

### **Comments**

#### **FTLDS disagrees that the Singapore Backhaul market is now competitive**

FTLDS is obliged to disagree that "the market for Backhaul is now competitive"<sup>2</sup>. If the Backhaul market was indeed subject to effective competition, then FTLDS would have been able to compete with SingTel to provide Backhaul services anywhere in the defined

---

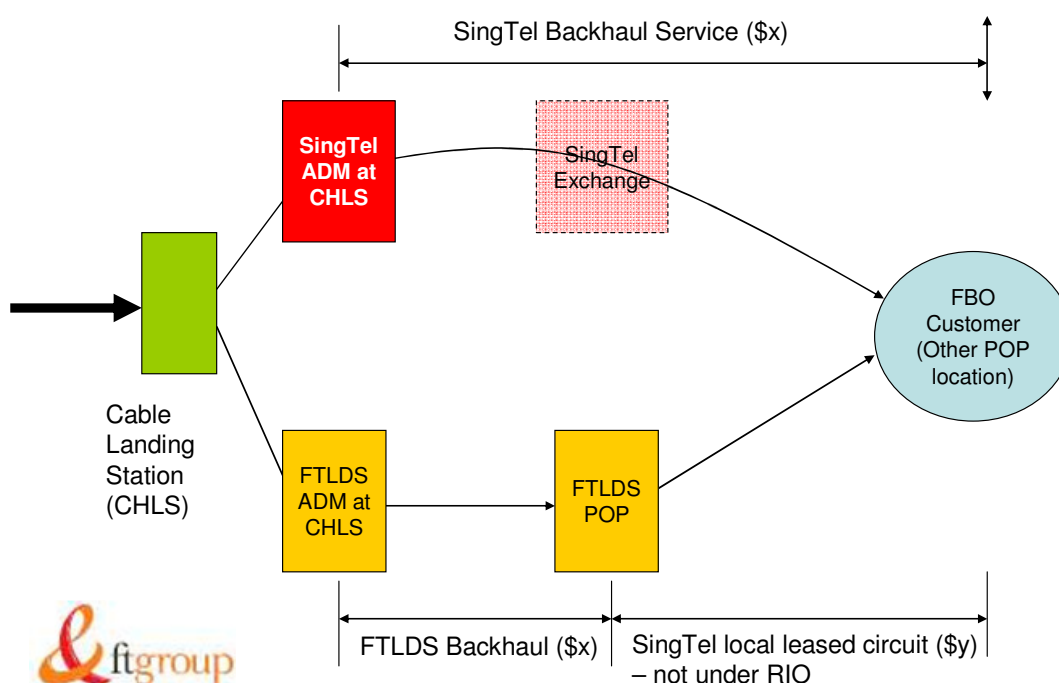
<sup>1</sup> Code of Practice for Competition in the provision of Telecommunication Services 2005

<sup>2</sup> Preliminary Decision, para62

geographic market which is Singapore. However, FTLDS' has found this not to be the case<sup>3</sup>.

In reality, FTLDS would only be able to compete on a level playing field with SingTel in those limited and localized circumstances where a FBO customer is collocated at a FTLDS POP. On the other hand, SingTel's superior network coverage and dominance in the LLC market enables SingTel to compete with alternative Backhaul providers in any location where the FBO customer POP is located. Diagram 1 below clearly illustrates the competitive advantage that SingTel has.

## Wholesale Backhaul Service



**Diagram 1: Comparison between SingTel vs. FTLDS Backhaul Service**

The existence of alternative Backhaul providers cannot be taken *prima facie*, that the Backhaul market is competitive. Other market dynamics need to be considered –

- SingTel can compete with any Backhaul provider regardless of FBO customer POP location whereas due to the localization of Backhaul service provisioning, not every Backhaul provider can compete viably with SingTel anywhere in Singapore.

<sup>3</sup> Confidential Annex

- Most FBO customers require site diversity and Backhaul contracts are often awarded to a single supplier in which case SingTel has a clear competitive advantage since most alternative Backhaul providers only have limited coverage.

### **Derivation of SingTel's market share lacks transparency**

IDA has rightly concluded that the Backhaul market includes both self-provided Backhaul and third-party Backhaul<sup>4</sup>. FTLDS had highlighted that the market share estimates submitted in SingTel's Request had only included third party Backhaul services<sup>5</sup>. For transparency, FTLDS would request the IDA to clarify how it had arrived at the assessment that "SingTel's market share (based on capacity) has fallen below 40 percent"<sup>6</sup>.

Various factors count towards the assessment of Backhaul market shares. Verification of IDA's assessment of SingTel's market share would necessitate an understanding of at least, the following variables –

- The landing stations that were included in the market sizing
- Whether there was consistency of measurement in the data collected and any accounting for variances
- How did IDA treat Backhaul that was being sold for transit traffic?
- Was there any double counting of Backhaul capacity supplied to FBO customers as inputs to provision other downstream services such as IPLC, IMDS?

While an important barometer, market share is a starting basis and weight must be given to the fact that LLC are critical inputs for wholesale Backhaul services and that gaps exist in regulating SingTel's dominance in the LLC market.

### **LLC are critical inputs for wholesale Backhaul services and gaps exist in regulating SingTel's dominance in the LLC market**

IDA has rightly concluded that SingTel continues to have SMP in the retail LLC market<sup>7</sup> and that retail LLC competition has not yet proven effective<sup>8</sup>. On the wholesale level, operators purchase SingTel LLC as inputs for provisioning other services such as IPLC,

---

<sup>4</sup> Preliminary Decision, para60,61

<sup>5</sup> SingTel's Request, s6.230

<sup>6</sup> Preliminary Decision, para63

<sup>7</sup> *ibid*, para49

<sup>8</sup> *ibid*, para56

IMDS<sup>9</sup> as well as Backhaul services. Where a SingTel LLC is required to provision a Backhaul service from an alternative FBO Backhaul provider POP to a FBO customer POP (i.e. FBO site to FBO site), the SingTel RIO mandated wholesale LLC services excludes such LLC<sup>10</sup>, which are instead purchased on commercial terms and prices.

The fact that SingTel's pricing structure for commercially purchased LLC is volume based<sup>11</sup> sets the stage for potential margin squeeze. Compared to cost-based pricing, volume based pricing creates the possibility that a sizeable end-user customer may purchase retail LLC at a better rate than a FBO purchasing wholesale LLC as inputs for provisioning Backhaul services.

**The Section 8 *ex-post* competition provisions are notoriously difficult to enforce and penalties under the Telecoms Competition Code are insufficient to deter anti-competitive conduct**

Although the Telecoms Competition Code provides a process for addressing anti-competitive conduct such as margin squeeze, in practice it is notoriously difficult to enforce the *ex post* Section 8 prohibitions on abuse of dominant position<sup>12</sup>. And even if enforcement measures<sup>13</sup> are taken, the maximum S\$1 million financial penalty is insufficient to deter SingTel and remedial action may not offer adequate restitution. As such, the Section 4 behavioral safeguards must continue to apply to SingTel and IDA should fully reject SingTel's Request.

**The consequences of exempting SingTel from the Section 4 *ex-ante* competition safeguards must be considered**

Exempting SingTel from Section 4 *ex-ante* provisions will give SingTel the ability to act independently of market forces. As an example, if SingTel is no longer subject to non-discriminatory requirements<sup>14</sup> and tariff filing and publication<sup>15</sup>, there will be no behavioral

---

<sup>9</sup> *ibid*, para53

<sup>10</sup> The IRS Tail Circuit Service is a dedicated end-to-end digital transmission service connecting the End User's site and the Requesting Licensee's co-location equipment at the SingTel Exchange Building nearest to and serving the End User's site, *SingTel RIO Schedule 4C, para1.2*; The IRS Tail Circuit Service will not be provided between (1) two FBO sites or (2) two End User sites, *SingTel RIO Schedule 4C, para1.5*

<sup>11</sup> Preliminary Decision, para57

<sup>12</sup> A practical limitation is that vital pricing information which is required as evidence to show pricing abuses, is subject to commercial non-disclosures.

<sup>13</sup> Telecoms Competition Code, s11.4.4

<sup>14</sup> *ibid*, s4.2.1.2

<sup>15</sup> *ibid*, s4.4

safeguards to constrain SingTel from short term predatory pricing to churn customers and win market share.

In the present circumstances, FTLDS is not able to compete with SingTel for Backhaul business where the FBO customer is not collocated at FTLDS POPS due to the costing of an additional LLC into the FTLDS Backhaul pricing (Diagram 1). FTLDS considers that the ability to conduct a viable Backhaul business will be threatened if SingTel were to be exempted from the Section 4 provisions. In the event should SingTel no longer be subject to non-discriminatory and tariff filing obligations, then SingTel can price Backhaul services to FBO customers collocated at FTLDS POPS at a level where FTLDS would not be able to match commercially except if FTLDS subsidized the business<sup>16</sup>. This is because SingTel runs a depreciated network in Singapore and its commercials would allow SingTel to sustain the Backhaul business at a much lower price level than new entrants such as FTLDS. IDA must consider the fact that deploying a Backhaul network requires substantial capital investment and that SingTel's incumbency confers upon SingTel cost advantages that give it the ability to act independently of competitive market forces.

In general, IDA will grant an exemption if it finds that the Dominant Licensee lacks SMP in the market or markets in which it provides the service for which it seeks the exemption, where 'SMP' means the ability to unilaterally restrict output, raise prices, reduce quality or otherwise act, to a significant extent, independently of competitive market forces<sup>17</sup>. SingTel's ability to act independently of market forces means that it clearly possesses SMP in the market for Backhaul services and as such, it would be wholly inappropriate to exempt SingTel from its dominant licensee obligations.

### **The Backhaul playing field is currently tilted in favor of SingTel**

In France, France Telecom is obliged to separately identify and tariff the "terminal segment" (defined as the circuit between the customer's site and first transmission equipment) and "complement terrestre" or backhaul (defined as the circuit between the submarine cable head landing station and the closest transmission equipment where other carriers can interconnect)<sup>18</sup>. Furthermore, there are also controls on tariffs applied by France Telecom on the terminal segment, which must not lead to the eviction from the market of alternative carriers and subject to this eviction requirement, the tariffs applied by France Telecom must be cost-oriented. In addition, accounting constraints are imposed on France Telecom, such as the identification of all costs of the services offered on the relevant markets and isolation in the accounts of the regulated activities' financial

---

<sup>16</sup> Confidential Annex

<sup>17</sup> Advisory Guidelines governing petitions for reclassification and requests for exemption under sub-sections 2.3 and 2.5 of the Code of Practice for Competition in the provision of Telecommunication Services 2005, s2.4 (b)

<sup>18</sup> ARCEP Decision n°06-0592 dated 26 September 2006 on the relevant market for wholesale capacities (in French) in accordance with the European Commission recommendations



details (transparency of the tariffs applied to external carriers as well as transfer pricing applied to the affiliates to ensure non discrimination).

In comparison, SingTel's single tariff structure for its customized Backhaul service<sup>19</sup> suggests that LLC have been bundled into SingTel's pricing for Backhaul services (Diagram 1). This arrangement, coupled with SingTel's dominance in the LLC market and gaps in the regulation of wholesale LLC services clearly tilts the playing field in favor of SingTel.

In fact, these circumstances call for regulatory measures to promote a level playing field in the Singapore Backhaul market. SingTel should be required to separately price the LLC component (where the FBO customer is not collocated at SingTel Exchange) and SingTel LLC services should be subject to effective cost based regulation.

### ***Conclusion***

FTLDS believes that the facts clearly point to SingTel's possession of SMP in the Backhaul market and this can only lead to the conclusion that SingTel's request for exemption from dominant licensee obligations must be denied in full. FTLDS would also submit that measures are necessary to level the playing field for Backhaul services in Singapore.

We look forward to participating in the process of verifying SingTel's market share.

---

<sup>19</sup> [http://home.singtel.com/about\\_singtel/company\\_profile/feedback\\_statistics\\_reports/tariff/default.asp](http://home.singtel.com/about_singtel/company_profile/feedback_statistics_reports/tariff/default.asp)

