Singapore Telecommunications Limited

Submission on the Second Triennial Review of the Code of Practice for Competition in the Provision of Telecommunication Services

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SingTel

Contents

1 Introduction

Singapore Telecommunications Limited and its related companies (**SingTel**) are licensed to provide telecommunications services in Singapore. SingTel is committed to the provision of state-of-the-art telecommunications technologies and services in Singapore.

SingTel has a comprehensive portfolio of services that includes voice and data services over fixed, wireless and Internet platforms. SingTel services both corporate and residential customers and is committed to bringing the best of global communications to its customers in the Asia Pacific and beyond.

SingTel welcomes the opportunity to make a submission in response to the consultation paper issued by the IDA on 12 November 2008 in relation to the Second Triennial Review of the Code of Practice for Competition in the Provision of Telecommunication Services 2005 (**Consultation Paper**).

As a leading provider of telecommunications services and a leading proponent of innovation and competition, SingTel has a strong interest in effective pro-competition regulation of Singapore's telecommunications sector. SingTel has views about both the strengths and weaknesses of, and the need to reform, the Code of Practice for Competition in the Provision of Telecommunication Services 2005 (**Telecom Competition Code**).

This submission sets out SingTel's comprehensive comments on the Telecom Competition Code.

This submission is structured as follows:

- Section 1 – Introduction
- Section 2 – Executive Summary
- Section 3 – General Comments
- Section 4 – Facilities-based competition is already a reality in Singapore
- Section 5 – The primacy of the objective of facilities-based competition
- Section 6 – Dominance
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- Section 8 – Recalibration of IRS regulation
- Section 9 – Abuse of dominance and anti-competitive agreements
- Section 10 – Other comments

SingTel believes that the adoption of the proposals set out in this submission will ensure that the Telecom Competition Code remains relevant as competition in the Singapore telecommunications sector further intensifies and technological developments change the competitive landscape for telecommunications.

2 Executive Summary

2.1 Key messages

- Singapore has a vibrant and vigorously competitive telecommunications sector.
- The IDA has missed an important and significant opportunity to reform the Telecom Competition Code.
- The Consultation Paper does not make any real or meaningful attempt to evolve and reform the Telecom Competition Code to take account of increased levels of competition and recent developments in 'regulatory thinking' in other jurisdictions.
- The Consultation Paper does not even maintain the 'status quo' associated with previous reviews – it goes backwards – by challenging some of the most basic and universally accepted principles for de-regulating the telecommunications sector.
- The Consultation Paper demonstrates a strong bias towards regulation. It does not contain any analysis of the state of competition in defined telecommunications markets and ignores the substantial evidence indicating that Singapore has high levels of facilities-based competition.
- The Consultation Paper does not consider market developments that are on the immediate horizon and the impact that these developments will have on the need for continuing regulation of telecommunications markets.
- Singapore is already behind leading jurisdictions in the de-regulation of its telecommunications sector. The implementation of the proposals contained in the Consultation Paper will only serve to further widen this gap and place Singapore even further behind.
- After more than 8 years of competition, this is not the time to 'go backwards' or even to maintain the 'status quo' – it is time for the IDA to undertake necessary and fundamental de-regulation of the Singapore telecommunications sector to ensure consistency with international best practice.

2.2 Key reforms

SingTel considers that it is imperative for the IDA to:

- assess dominance and the need for *ex ante* regulation on a market-by-market basis, consistent with international best practice
- remove tariff filing obligations and unnecessary retail regulation, consistent with international best practice
- re-calibrate the scope of interconnection regulation, in recognition of the high levels of facilities-based competition in Singapore and the associated low levels of take-up of Interconnection Related Services (**IRS**)
- take a more proactive approach to the removal of regulation and significantly improve the exemption process

2.3 Facilities-based competition is already a reality in the Singapore – this needs to be reflected in the regulatory framework

- Singapore has unique characteristics that have resulted in high levels of facilities-based competition.
- Facilities-based competition is already well entrenched in Singapore.
- The 'last mile' is not a bottleneck in Singapore:
  - Singapore currently has 2 competing nationwide wireline networks
  - the Government funded Next Generation Broadband Network (**NGNBN**) will result in the deployment of a 3rd nationwide wireline network.
- International regulators strongly favour the objective of facilities-based competition ahead of services-based competition, given the enduring nature of infrastructure-based or platform-based competition.
- There is no need for the IDA to equate, and give equal consideration to, the regulatory objectives of services-based competition and facilities-based competition.
- The promotion of facilities-based competition creates and provides the basis for services-based competition downstream markets, as is evidenced by the NGNBN.

2.4 The licensed entity-based approach to dominance isolates Singapore from all other liberalised jurisdictions – it is time for the IDA to move forward with a market-based approach

- The IDA must remove the licensed entity-based approach to dominance to ensure consistency with international best practice.
- The licensed entity-based approach results in disproportionate and over-reaching regulation and creates a cycle of perpetual regulation.
- There is no evidentiary basis for regulation that arises from a licensed entity-based approach to dominance.
- The IDA's licensed entity-based approach to dominance is entirely inconsistent with international best practice.
- The anomalous nature of the licensed entity-based approach to dominance is reflected in the application of Dominant Licensee regulation to all 3 telecommunications licensees that have (or will establish) 'last mile' infrastructure in Singapore.
- Singapore must move to analyse dominance using a market-by-market approach.
- There is ample international precedent to guide the IDA's application of a market-based approach to dominance, and straightforward processes are available to guide the IDA's transition from a licensed entity-based to a market-based approach.
- There is also significant scope for the IDA to improve its decision making processes in response to exemption requests, and greater scope for the IDA to proactively assess the state of competition and the continuing relevance of regulation in telecommunications markets.

- The IDA is required to ensure that regulation is applied in a proportionate and targeted manner – this regulatory principle cannot be satisfied with the continuation of the licensed entity-based approach and can only be satisfied through:
  - the use of a market-based approach to dominance; and
  - the IDA taking a proactive role in the removal of regulation, rather than simply being reactive to exemption requests from SingTel.

2.5 Rollback and fix flaws in regulation of interconnection and access

- The list of IRS should be reviewed and those IRS with little or no take-up removed.
- Overseas regulators are in the process of re-calibrating their regulatory frameworks to remove *ex ante* regulation in parts of the telecommunications sector that are subject to effective competition.
- After more than 8 years, the time has come for the IDA to review the basis for the continued regulation of all IRS.
- There is ample scope for the IDA to remove Unbundled Network Elements (**UNE**), such as local loops, sub-loops and line sharing, from the list of IRS – there is already effective infrastructure competition in the 'last mile' and an abundance of alternative supply options for requesting licensees.
- SingTel supports the IDA's proposal to remove radio towers and tower sites from the list of IRS, but considers that there is also significant scope for the IDA to remove the following services from the list of IRS, at a minimum:
  - access to building MDF distribution frames;
  - access to outdoor cabinet distribution frames;
  - access to lead-in duct and its associated lead-in manholes;
  - roof space and co-location space at roof sites; and
  - co-location at points of access.

2.6 Rollback tariffing regulation and tariff publication requirements

- Regulators around the world are withdrawing retail tariffing regulation – the IDA should also remove tariffing regulations.
- The tariffing obligations applicable to a Dominant Licensee are outdated and, in light of the application of *ex post* competition law, serves little or no purpose.
- Singapore is one of the only developed countries that still imposes retail tariff filing obligations.
- Tariff filing obligations are counter-productive – they limit product innovation and encourage 'shadow pricing' to the detriment of competition and the interests of end-users.

2.7 The abuse of dominance provisions in the Telecom Competition Code require substantial reform

- SingTel does not support the proposed amendments to the abuse of dominance provisions in the Telecom Competition Code.

- The extent of any "alignment" that the IDA intends to make between the *ex post* competition law regime under the Telecom Competition Code and the Competition Act remains unclear in the IDA's Consultation Paper.

- Any attempt by the IDA to 'align' the Telecom Competition Code with the Competition Act must not involve 'cherry picking' – the IDA must not 'cherry pick' certain aspects of the Competition Act where it is convenient to do so, without also adopting the more rigorous standards that exist under Singapore's general competition law.

- The IDA's automatic presumption of Significant Market Power (**SMP**) in respect of abuse of dominance cases involving SingTel (or another Dominant Licensee) is contrary to international best practice and should be removed by the IDA.

3 General Comments

3.1 The IDA's review of the Telecom Competition Code is wholly inadequate

The Telecom Competition Code is the most significant and far-reaching regulation that applies to the Singapore telecommunications sector.

Notwithstanding the importance of the Telecom Competition Code, the Consultation Paper (at only 14 pages) takes little, if any, account of the issues affecting the Singapore telecoms sector now and in the near future.

SingTel strongly disagrees with the IDA's claim that:[1]

> *"there is no need for a major overhaul of the Code as it continues to be relevant and consistent with international best practices".*

To the contrary, the Telecom Competition Code:

(a) is not consistent with international best practice – in fact, there are several important aspects of the Telecom Competition Code that are entirely inconsistent with international best practice; and

(b) requires an overhaul to remain relevant in the next few years, as facilities-based competition intensifies further with the deployment of a 3rd nationwide wireline network.

While other jurisdictions and supra-national institutions, such as the European Commission, have been busy re-calibrating their regulatory regimes to be more targeted, the IDA proposes to do little or nothing in terms of reform. The Consultation Paper represents a missed opportunity for much needed reform of the Telecom Competition Code.

The Consultation Paper does not make any real attempt to evolve and reform the Telecom Competition Code to take account of increased levels of facilities-based competition in the Singapore telecommunications sector, or developments in 'regulatory thinking' in other jurisdictions.

[1] IDA, Consultation Paper, paragraph 4.

The Consultation Paper does not even maintain the 'status quo' associated with the last review – it goes backwards.

The Consultation Paper demonstrates a strong bias towards regulation and lacks any analysis of the state of competition in relevant markets.

The Consultation Paper does not contain any proper consideration of the impact of market developments on the state of competition, such as the increased levels of facilities-based competition that will follow the deployment of a 3rd nationwide wireline network.

Singapore is already behind leading jurisdictions in its de-regulation of the telecommunications sector.

This is not the time for Singapore to 'go backwards' or even to maintain the 'status quo' – it is time for the IDA to undertake a necessary and fundamental de-regulation of the Singapore telecommunications sector to ensure consistency with international best practice.

3.2 Timeliness of IDA's review of the Telecom Competition Code

SingTel also wishes to express its concern about the delayed nature of the IDA's review of the Telecom Competition Code.

The Second Triennial Review is actually not a triennial review at all. It is misleading for the IDA to claim that this represents a 'triennial review' of the Telecom Competition Code, given that this review is only the second review of the Telecom Competition Code since 2000.

As the IDA is aware, the review of the 2000 version of the Telecom Competition Code commenced on 7 October 2003 and was not finalised until 18 February 2005, with the current version of the Telecom Competition Code taking effect on 4 March 2005, approximately 4½ years after the commencement of the 2000 version of the Telecom Competition Code. The 2000 version of the Telecom Competition Code subsisted for longer than the intended 3 year period.

The Second Triennial Review of the Telecom Competition Code should have taken place in 2006, but was only initiated by the IDA on 12 November 2008, almost 2 years after the intended period.

The practical effect of these delays is that the Telecom Competition Code will have been reviewed only twice in a 9 year period, instead of the intended 3 times..

The fact that these reviews have taken place several years after they are supposed to means that the concerns raised during the consultation process may not necessarily reflect the dynamics of the market by the time the revised version of the Telecom Competition Code is concluded. More frequent reviews are required to ensure that the Telecom Competition Code remains relevant and accurately reflects the state of competition in the Singapore telecommunications sector.

Given the delays in its review of the Telecom Competition Code, it is not appropriate for the IDA to simply suggest, without any analysis, that *"there is no need for a major overhaul of the Code".*

SingTel submits that it is necessary for the IDA to undertake a proper and comprehensive review of the Telecom Competition Code that considers in detail the various issues

identified by SingTel in this submission (and by other interested parties in the consultation process).

3.3 Implementation of regulatory principles in the Telecom Competition Code

The Telecom Competition Code contains a list of regulatory principles that the IDA must take into account in its implementation of the Telecom Competition Code.

These regulatory principles include the following:[2]

(a) reliance on market forces;

(b) promotion of effective and sustainable competition;

(c) promotion of facilities-based competition;

(d) proportionate regulation;

(e) technological neutrality;

(f) transparent and reasoned decision making;

(g) avoidance of unnecessary delay;

(h) non-discrimination; and

(i) consultation with other regulatory authorities.

While these regulatory principles remain relevant, it is unclear as to how the IDA's proposed changes to the Telecom Competition Code could provide a basis for the implementation of these regulatory principles, or bring about decisions that are reflective of these requirements.

For example, it is unclear:

(a) how the IDA's maintenance of a licensed entity-based approach to dominance provides for "reliance on market forces" or would result in "proportionate regulation", or would otherwise lead to "transparent and reasoned decision making";

(b) how the continuation of the outdated tariffing regime could be considered to constitute "proportionate regulation" or a "reliance on market forces"; and

(c) how the IDA's failure to comprehensively review the list of IRS constitutes "proportionate regulation" and "transparent and reasoned decision making".

SingTel submits that it is not possible for the IDA to meet these regulatory principles in its implementation of the Telecom Competition Code in the event that the review of the Telecom Competition Code itself is contrary to these principles, as is currently the case.

The Consultation Paper does not provide a proper framework for the review of the Telecom Competition Code. There is no suggestion as to how the IDA's proposal to

[2] IDA, *Telecom Competition Code*, section 1.5.

maintain the Telecom Competition Code substantially in its current form (with only fairly modest and regressive amendments) is consistent with the regulatory principles that underpin the Telecom Competition Code and should drive decision making by the IDA.

The lack of a proper framework for review is evident in the fact that the IDA has sought to justify its decision that *"there is no need for a major overhaul of the Code"* by claiming that it has *"continued to prove useful over the past few years in meeting the objectives of: (a) ensuring that licensees comply with the minimum rules put in place to protect consumers' interest in a competitive market"; (b) "facilitating entry by new players;…and; (c) ensuring that players do not engage in unfair practices…when competing for customers"*.[3]

These references to the IDA's objectives are more limited than the objectives under the Telecom Competition Code. Further, the IDA appears to rely on "pragmatic solutions" as an objective, rather than relying on evidence of a high degree of facilities-based competition.

The IDA has not demonstrated to the industry why, after more than 8 years, it is not appropriate to substantially revise the Telecom Competition Code as a means of de-regulating the Singapore telecommunications sector and to ensure that the regulatory principles in the Telecom Competition Code are capable of proper implementation.

4 Facilities-based competition is already a reality in Singapore

4.1 Summary

(a) Singapore has unique features that have already resulted in high levels of facilities-based competition.

(b) Facilities-based competition is already a reality in Singapore.

(c) There is already extensive competition in the "last mile" with the existence of 2 nationwide wireline networks and multiple broadband enabled wireless networks.

(d) The deployment of the Singapore NGNBN will result in a 3rd nationwide wireline network in the 'last mile'.

4.2 Facilities-based competition is already a reality in Singapore

Singapore has unique features that distinguish its telecommunications sector from other countries, such as the United States, Australia and European countries. Many of these unique features have already resulted in high levels of facilities-based competition.

These characteristics have shaped the rapid and highly developed state of competition in the Singapore telecoms sector and include:

(a) Singapore's small and compact geography – which permits new entrants to readily deploy alternative infrastructure in Singapore;

(a) Singapore's high population density – with a population density in excess of 6,000 persons per square kilometre, economies of density are readily available to new entrants wishing to construct their own network infrastructure; and

[3] IDA, Consultation Paper, paragraph 3.

(b) the high concentration of multi-national corporations – which has facilitated network rollouts in Singapore by large regional and global operators.

Over the past 10 years, there has been significant facilities-based investment in the Singapore telecommunications sector, resulting in the existence of 2 nationwide wireline networks and extensive duplication of infrastructure.

StarHub's extensive network deployment, which now covers 99% of Singapore, is well documented and provides a strong source of facilities-based competition against the SingTel legacy network.

Singapore is in an almost unique position where extensive infrastructure investment is either already in place (in the case of the existing SingTel, SCV and StarHub networks) or will be made in the near future (in the case of the NGNBN). The deployment of the Singapore NGNBN will result in the creation of a 3rd nationwide wireline network.

It cannot be the case that the 'last mile' represents an enduring bottleneck in such an instance, as there will shortly be 3 nationwide wireline networks that will compete with each other for end-users, as well as complementary wireless and mobile networks (which can also support such services).

The nationwide wireline networks include:

(a) SingTel's network, over which SingTel supplies:

(i) voice, internet, IPTV and other services to end users;

(ii) fibre-based services; and

(iii) the Wholesale-B Access Service to Internet Access Service Providers (I**ASPs**);

(b) StarHub's existing networks, over which StarHub supplies:

(i) voice, internet, PayTV and other services to end-users;

(ii) a 100 Mbps broadband service to retail end-users; and

(iii) a range of wholesale services to telecommunications licensees;

(c) the Singapore NGNBN, which will initially provide a minimum download speed of 100 Mbps per end-user (scalable to 1 Gbps per end user) to 95% of end-user premises by 2012, with services being available progressively from as early as 2010;[4] and

(d) any network enhancement or additional network established by an existing or new participant, such as SingTel, SCV or StarHub.

These wireline networks are supplemented by the following:

(a) 3 nationwide mobile networks, offering high speed broadband services:

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[4] IDA, *Singapore's Next Generation National Broadband Network To Be Nationwide by 2012*, Media Release, 26 September 2008.

(i) SingTel Mobile announced that it would invest S$220 million in its 2G and 3G mobile networks as part of its expansion and enhancement programme so that customers can expect even better user experience, including download and upload data speeds of up to 42 Mbps and 12 Mbps respectively;

(ii) StarHub has a similar programme to expand and upgrade its current nation-wide 3.5G mobile broadband network to HSPA+ by 2Q-2009 to offer better overall mobile coverage island-wide, and support even larger volumes of data traffic than current offerings in the marketplace; and

(iii) M1 has also announced similar plans,

(b) wireless broadband access, following the IDA's grant of 6 new wireless broadband access (**WBA**) licences to 6 entities to offer WiMAX services; and

(c) Wireless@SG, a widely available and pervasive wireless broadband network arising from the IDA's launch of Wireless@SG in December 2006. As at April 2008, there were more than 7,260 Wireless@SG hotspots located around Singapore, with WiFi services offered by iCell Network Pte Ltd, QMAX Communications Pte Ltd and Singapore Telecommunications Ltd. There are now more than 1 million registered users;

(d) extensive fibre deployments, as demonstrated by the following sample:

(i) as at September 2008, at least 1 SingTel competitor in the Singapore CBD has installed fibre in at least 90% of MDF rooms;

(ii) StarHub has an extensive CBD and non-CBD local access network capable of serving all areas in Singapore. Between March 2007 and September 2008 – SingTel's sightings of StarHub's presence in the CBD shows an increase of approximately **[CONFIDENTIAL]**, with deployment to an additional **[CONFIDENTIAL]** MDF rooms in the CBD area. SingTel's sightings of StarHub's presence in non-CBD areas (including in Ang Mo Kio, Bukit Panjang, Geylang, Queenstown, Paya Lebar and Telok Blangah) also show a large increase over just a period of 1 ½ years;

(iii) multiple locations in CBD and non-CBD areas where SCV has terminated SingTel fibre services and is now using fibre on StarHub's network; and

(iv) there are at least 14 data centres (of which SingTel is aware) where StarHub has rolled out network infrastructure from which it can serve multiple customers.

In light of the existing levels of network competition and the prospect of 3 nationwide wireline networks, conventional wisdom suggests that facilities-based competition is already well entrenched in Singapore and that there is little, if any, justification for moving away from this model.

5 The primacy of the objective of facilities-based competition

5.1 Summary

(a) While services-based competition is an important aspect of the competitive process, there is no need for the IDA to equate, and give equal consideration to,

the regulatory objectives of services-based competition and facilities-based competition.

(b) Facilities-based competition represents the best form of competition and is the only form of competition that provides for sustainable and enduring competition in the absence of regulation.

(c) There is no logical reason for the IDA to modify its regulatory principles to undermine the primacy of the objective of facilities-based competition.

(d) International best practice also strongly favours facilities-based competition as a means of creating sustainable and enduring competition.

(e) The promotion of facilities-based competition also serves as a basis for the creation and delivery of services-based competition, as is evidenced by the NGNBN.

5.2 The objective of facilities-based competition should continue to be given primacy as per international best practice

SingTel has previously expressed concerns about the IDA's failure to pay sufficient regard to the principle of facilities-based competition, notwithstanding the requirements of section 1.5.3 of the Telecom Competition Code, which states:

> *"IDA believes that effective and sustainable competition will be best achieved through facilities-based competition."*

In its Consultation Paper, the IDA has proposed amendments to the Telecom Competition Code 2005 to give "equal consideration" to the principle of services-based competition:[5]

> *"Moving forward, IDA intends to modify its regulatory principles to give equal consideration to promoting services-based competition, especially in markets where facilities-based competition appears difficult, as a pragmatic solution towards achieving IDA's overall objective of promoting effective and sustainable competition in the market"* (our emphasis).

SingTel strongly disagrees with the IDA's proposed changes to the Telecom Competition Code, which go further than previous statements by the IDA and give undue and inappropriate emphasis to the regulatory objective of services-based competition.

The IDA's proposed changes are wrong from an economic perspective and squarely at odds with international best practice.

It is incorrect for the IDA to suggest that services-based competition would contribute towards *"the IDA's overall objective of promoting effective and sustainable competition in the market"* (our emphasis).

It is universally recognised that facilities-based competition is the only form of competition that can deliver enduring or sustainable competition, as the existence of this form of competition is not dependent on the continuing existence of regulation.

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[5] IDA, Consultation Paper, paragraph 11.

That is not to say that the objective of services-based competition is not an important element of the regulatory framework – it is – however, it is inappropriate for the IDA to equate, and give equal consideration to, the objectives of services-based competition and facilities-based competition as a matter of regulatory emphasis. This is because the promotion of facilities-based competition also provides the basis for the delivery of services-based competition.

Accordingly, it is appropriate for the IDA to give primacy to the objective of facilities-based competition.

As the former EU Competition Commissioner has stated:

> *"In the longer term the regulatory framework should privilege operators which base their competitive advantage on building their own infrastructure, simply because they are those who are likely to best improve the competitive conditions of the market."*[6]

The European Regulators Group has also commented that[7]:

> *"Competition over competing infrastructure has many advantages. The pressure to minimise costs is exerted over the whole value chain. This will induce greater scope for innovation, process innovation etc. which creates a downward dynamic for costs. Consumers also benefit from more diversified offerings, which correspond more closely to their individual needs. There is general agreement that a great potential harm to welfare occurs when replication is feasible but not promoted. This will delay the roll out of new and innovative services and, particularly in relation to broadband, may have large negative consequences on the general economy."*

The IDA's Consultation Paper fails to identify any risk or loss of consumer welfare associated with giving the objectives of facilities-based competition and services-based competition equal consideration.

The risk of a loss of consumer welfare associated with delays in facilities-based investment is particularly acute given the small size of the Singapore economy (relative to its trading partners). Singapore's fulfilment of the objective of becoming a global communications hub and being about high levels of end-user take-up of advanced services has been realised through the facilities-based rationale.

It would be unwise for the IDA to jeopardise these gains by placing an inappropriate level of emphasis on the objective of services-based competition in its regulatory principles.

The risks of giving equal consideration to the objectives of services-based competition and facilities-based competition, and the negative consequences this has on investment

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6 Mario Monti, *Competition and Regulation in the Telecom Industry – The way forward*, Speech/03/604, ECTA Conference, Brussels, 10 December 2003.

7 European Regulators Group, *Revised ERG Common Position on the approach to Appropriate remedies in the ECNS regulatory framework*, Final Version, ERG (06) 33, May 2006, page 60. http://erg.eu.int/doc/meeting/erg_06_33_remedies_common_position_june_06.pdf

incentives, has been recognised recently by the Canadian Telecommunications Policy Review Panel, in its recent review of Canada's telecommunications framework[8]:

> *"[W]hile the CRTC [Canadian Radio-television and Telecommunications Commission] has identified facilities-based competition as an objective of its regulatory framework, it has adopted mandated wholesale access policies that, in the Panel's view, seriously undermine, if not foreclose, the achievement of that objective…*
>
> *One argument advanced in favour of a very broad scope of mandated wholesale access is that such an approach would promote all forms of competition by making it easier for competitors to resell any portion of the ILECs' network that they want. However, in the Panel's view, a broader scope makes the distortion of entry and investment decisions more pervasive. For this reason, a broad scope of mandated wholesale access would not in fact promote all forms of competition. Rather, it would promote only one form of entry (i.e. resale), thus perpetuating disincentives for new entrants to build facilities entrenching the ILEC's SMP over the network and its elements. This would extend the need for a broader scope of regulation than would otherwise be necessary."*

SingTel is not aware of any developed country that seeks to give equal consideration to the regulatory objectives of facilities-based competition and services-based competition. The IDA's proposal is completely at odds with international best practice and should be revised.

As OPTA, the Dutch regulator, has recognised, it is necessary for regulatory principles to recognise the primacy of the objective of facilities-based competition as it is the only form of competition that can deliver enduring or sustainable competition:[9]

> *"In terms of the objective of fostering competition another important distinction is that between infrastructure competition (i.e. competition between infrastructures) and service competition (i.e. competition within an infrastructure). The ultimate goal of the regulatory framework is to bring about a situation of enduring competition. This is effective competition that is not – or is no longer – dependent on sector-specific regulation for its existence and effectiveness. The commission takes the view that a situation of enduring competition can best be achieved by giving priority in the choice of obligations, wherever possible, to measures that foster infrastructure competition"*(our emphasis).

In the same fashion, SingTel strongly submits that the Telecom Competition Code must reflect the primacy of the objective of facilities-based competition.

5.3 The IDA's justification for giving equal consideration to the objectives of facilities-based competition and services-based competition is unfounded

The IDA's justification of its proposal to give equal consideration to the regulatory objectives of facilities-based competition and services-based competition is weak and inaccurate.

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8 Canadian Telecommunications Policy Review Panel, *Final* Report, 2006, section 3-35. See, http://www.telecomreview.ca/eic/site/tprp-gecrt.nsf/eng/h_rx00054.html

9 OPTA, *Draft Policy Rules: Tariff regulation for unbundled fibre access*, OPTA/AM/2008/202710, The Hague, 24 November 2008, paragraph 16.

In its Consultation Paper, the IDA has stated:

> *"However, while facilities-based competition has proven effective in certain segments of the telecom market (such as the mobile/wireless markets), there remains markets where the replication of facilities appears difficult or unfeasible (due to high barriers to entry or high sunk costs) even in the longer term (such as the fixed line market)"*[10].

Such an explanation is simply unfounded.

In a matter of a few years, end-users in Singapore will be serviced by 3 competing nationwide wireline networks, with this number being higher in certain areas, such as the Singapore CBD and business parks.

The IDA cannot reasonably suggest that facilities-based competition is an elusive goal in the Singapore fixed line segment – it is already a reality – the 'last mile' does not constitute a bottleneck when it is covered by 3 separate and competing nationwide wireline networks.

There is no logical basis for the IDA to differentiate between the fixed and mobile segment in Singapore, as there is already extensive (and comparable) replication of infrastructure in both these segments. Both the fixed and mobile segments will soon be served by 3 nationwide networks.

The IDA's proposal is unfounded – the Consultation Paper does not contain any analysis or assessment of the extent of infrastructure duplication in Singapore to substantiate such a proposal. It is not possible to make such statements with any validity – and reach a conclusion – without first undertaking a comprehensive assessment of the extent of infrastructure duplication in Singapore.

5.4 The deployment of the Singapore NBNGN will enhance facilities-based competition

SingTel disagrees with the IDA's categorisation of the Singapore NGNBN as only a promotion of services-based competition.[11]

While the Singapore NGNBN will encourage services-based competition upon the take-up of services by retail service providers (**RSPs**), the deployment of the passive and active infrastructure of the Singapore NGNBN will result in the creation of a 3rd nationwide wireline network, thereby further enhancing facilities-based competition.

Accordingly, it is the deployment of the passive and active infrastructure of the NGNBN and its associated creation of facilities-based competition that creates and provides the basis for services-based competition at the RSP level.

It is therefore inaccurate for the IDA to suggest that the NGNBN will only result in the creation of services-based competition. The services-based competition created by the NGNBN amongst RSPs will occur as a consequence of the facilities-based competition established by the deployment of the NGNBN. The creation of services-based competition at the RSP level is a by-product of the facilities-based competition that will

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10 IDA, Consultation Paper, paragraph 9.

11 Ibid, paragraph 10.

occur downstream following the deployment of the passive and active infrastructure of the NGNBN.

5.5 SingTel's submission

SingTel submits that section 1.5.3 of the Telecom Competition Code should be replaced with the following:

> *"IDA believes that effective and sustainable competition will be best achieved through facilities-based competition. However, where there are technological, market or other impediments and there is clear, tangible evidence that facilities-based competition will not emerge or be encouraged, the IDA may permit services-based competition over the short term".*

6 Dominance

6.1 Summary

(a) The IDA's licensed entity-based approach to dominance results in over-regulation and is contrary to the principle of proportionate regulation.

(b) The IDA's licensed entity-based approach to dominance is inconsistent with international best practice – there is no other liberalised developed jurisdiction that currently adopts a licensed entity-based approach to dominance.

(c) The IDA's dominance classification is particularly inappropriate in a market with a high level of facilities-based competition.

(d) The IDA is required to ensure that regulation is applied in a proportionate and targeted manner – the primary means by which the IDA can satisfy this regulatory principle is to ensure that it proactively removes regulation in respect of competitive markets. At present, the IDA's process of de-regulating the telecommunications sector is limited and reactive to exemption requests from SingTel.

6.2 The licensed entity-based approach to dominance is disproportionate and results in over-regulation

SingTel submits that the IDA should adopt a more refined approach to dominance and regulation. In particular, the IDA should change the dominance test in the Telecom Competition Code so that it is based on a market-by-market analysis rather than the broad-brush licensed entity-based approach.

At present, the IDA takes a presumptive approach to the imposition of regulation and a passive approach to the removal of regulation. The onus and burden rests with the Dominant Licensee to actively seek exemptions on a market-by-market basis. Essentially, a Dominant Licensee is *presumed "guilty" until they prove their "innocence*".

SingTel does not agree with the IDA's application of dominance on a licensed entity basis. A licensed entity-based approach is inconsistent with the principles of reasonable and proportionate regulation, as it results in the application of Dominant Licensee obligations without any consideration, and regardless of, the competitive state of individual markets.

Section 1.5.4 of the Telecom Competition Code provides that regulation should be applied in a proportionate manner:

> *"…IDA will seek to impose regulatory requirements that are carefully crafted to achieve clearly articulated results. Such requirements will be no broader than necessary to achieve IDA's stated goals."*

SingTel disagrees with the IDA's statement in the Consultation Paper that applying a "market-by-market" approach to dominance would not lead to a different result to what exists now under the "licensed entity-based" approach. The IDA has stated that:

> *"In IDA's assessment, the "market-by-market" approach is unlikely to yield different results from the current "licensed entity" approach …"*[12]

Such a statement presumes that SingTel would be found to be the Dominant Licensee in all markets if an assessment was to take place on a market-by-market basis, notwithstanding the fact that such an assessment has never been performed.

This claim is simply unfounded.

SingTel submits that before the IDA can form any such conclusion, the relevant markets need to be defined and it would have to be established, on a forward looking basis, that SingTel is dominant in the relevant pre-defined market. No such analysis has been undertaken by the IDA.

It is incorrect to make the claim that SingTel would be found to be dominant even if a market-by-market analysis was applied without actually undertaking the market analysis to substantiate such a conclusion.

The definition of a market and an entity's dominance within that market is a fundamental prerequisite to the imposition of *ex ante* regulation.

Given the competitive state of many telecommunications market segments in Singapore, a licensed entity-based approach results in disproportionate and unnecessary regulation.

This would result in SingTel being regulated in highly competitive markets until it was exempted, meaning that regulation would ensue for a considerable period while the IDA deliberated as to whether the removal of regulation was warranted. Such an approach is inconsistent with the IDA's own statements regarding proportionate regulation and has the effect of distorting and dampening competition, not enhancing it.

SingTel also wishes to emphasise that the IDA's assertion that the costs associated with undertaking a market-by-market analysis will outweigh the benefits[13] is unsubstantiated and fails to acknowledge the costs associated with over-regulation. As discussed in section 5.2, the imposition of unnecessary regulation is not cost free – it dampens competition by creating disincentives for facilities-based investment.

6.3 IDA's approach to dominance is inconsistent with international best practice

The IDA's broad-based licensed entity approach to dominance is inconsistent with international best practice.

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12 Ibid, paragraph 17.

13 Ibid, paragraph 17.

An entity-based application of the dominance test is not used in any other liberalised country in the world.

As the IDA has acknowledged in its Consultation Paper, the European Commission requires national regulatory authorities to conduct a market-by-market analysis to determine whether a particular undertaking is dominant in that market, with *ex ante* regulation only being imposed to the extent necessary to address the competition problem identified in the relevant market.

The European Commission has stated:[14]

> *" … under the new regulatory framework, in contrast with the 1998 framework, the Commission and the NRAs will rely on competition law principles and methodologies to define the markets to be regulated ex-ante and to assess whether undertakings have significant market power ('SMP') on those market".*

However, European Commission countries are not the only countries that are required to undertake such an analysis for the purposes of *ex ante* regulation. In the below table, SingTel summarises the application of the dominance test in various EC and non-EC jurisdictions:

Jurisdiction	Market-by-market approach to dominance
Australia[15]	✓
Canada[16]	✓
European Union[17]	✓
Finland[18]	✓
France[19]	✓
Germany[20]	✓

14 European Commission Framework Directive – Commission guidelines on market analysis and the assessment of significant *market* power under the Community regulatory framework for electronic communications networks and services – 2002/C 165/03, dated 11.7.2002, at paragraph 5.

15 Part XIC of the *Trade Practices Act* 1974 (Cth).

16 See generally, Canadian Radio-Television and Communications Commission, *Telecom Decision CRTC 2008-17: Revised regulatory framework for wholesale services and definition of essential service*, Ottawa, 3 March 2008.

17 European Commission, Directive (2002/21/EC) of the European Parliament on a Common Regulatory Framework ('EC Framework Directive'), section 27.

18 EC Framework Directive.

19 EC Framework Directive.

20 EC Framework Directive.

Jurisdiction	Market-by-market approach to dominance
Hong Kong[21]	✓
Italy[22]	✓
Netherlands[23]	✓
New Zealand[24]	✓
Spain[25]	✓
United Kingdom[26]	✓
Singapore	✗

In accordance with international best practice, SingTel believes that a careful and analytical approach must be taken to market definition and its application to dominance.

SingTel submits that a best practice test based on market-by-market analysis would be appropriate for Singapore, particularly given the uniquely competitive nature of the telecommunications market in Singapore.

6.4 The IDA's previous justification for a licensed entity-based approach to dominance no longer holds true

Facilities-based competition is already a reality in Singapore, with the existence of 2 nationwide networks and the deployment of a 3rd nationwide network over the next couple of years.

The IDA has stated, in the previous review of the Telecom Competition Code in 2003, that the IDA took the position that a "licensed entity-based" approach should continue to apply because competition *"was less uniformly developed in Singapore than in some other jurisdictions."*[27]

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21 OFTA, *Guidelines to assist the interpretation and application of the competition provisions of the FTNS licence,* June 1995. See also, OFTA, *Application for a declaration of non-dominance for Reach Networks Hong Kong Limited in the market for "Legacy Services"*, Statement of the Telecommunications Authority of Hong Kong, 30 December 2002.

22 EC Framework Directive.

23 EC Framework Directive.

24 New Zealand Commerce Commission, *Telecommunications Act Guidelines*, October 2008, section 9A.

25 EC Framework Directive.

26 See generally, Ofcom, *Business Connectivity Review – Review of retail leased lines, wholesale symmetric origination and wholesale trunk segments markets,* Statement, 8 December 2008.

27 IDA, Consultation Paper, paragraph 16.

On that basis, the IDA concluded that a "licensed entity-based" approach would be appropriate given the state of competition in the telecommunications market at the time of the last Telecom Competition Code review.

The IDA has maintained this position in its current Consultation Paper and sought to retain the "licensed entity-based" approach without making any reference to the current state of competition in Singapore, some 5 years on.

The competitive nature of the Singapore telecommunications sector, as evidenced in section 4, means that this previous line of argument and the IDA's reliance on it as a means of justifying the licensed entity-based approach to dominance no longer holds true. The IDA cannot honestly and reasonably claim that competition remains less uniformly developed in Singapore than in some other countries – in fact, the opposite is true.

6.5 IDA has determined all 3 operators with 'last mile' infrastructure are dominant

The perverse nature of the IDA's approach to dominance is reflected in the fact that all 3 telecommunications licensees that have (or will establish) 'last mile' infrastructure are deemed to be Dominant Licensees for the purposes of the Telecom Competition Code.

In addition to SingTel and StarHub, the OpenNet consortium (which will hold the NetCo FBO licence) will be considered to be a Dominant Licensee.

In its Consultation Paper, the IDA has stated that:

> *"… going forward, additional Licensees, such as the Licensee that will operate the Next Generation National Broadband Network's passive infrastructure, could be classified as Dominant Licensees."*[28]

It would appear that the IDA considers that any and all 'last mile' infrastructure is indicative of dominance, regardless of how many separate networks may be competing against each other in the *same last mile*.

The fact that there is facilities-based competition from 2 (and soon to be 3) nationwide telecommunications licensees in the 'last mile' should, in itself, suggest to the IDA that the continued application of dominance licensee regulation remains highly inappropriate and irregular. At the very least, it should result in the IDA questioning its existing approach to dominance and undertaking analysis on a market-by-market basis to determine the extent to which the continuation of dominance licensee regulation remains warranted.

SingTel is not aware of any other country that imposes such a broad brush of regulation in circumstances where there are *2 or more fixed line networks* with at least over 95% coverage of the country.

6.6 The IDA's approach to exemption requests and its passive approach to de-regulation

The IDA has not removed regulation in a telecommunications market over the past 8 years on its own initiative. The onus has always been on SingTel to request the removal

[28] Ibid, paragraph 18.

of regulation through the exemption process, notwithstanding sections 1.6 of the Telecom Competition Code.

This is an unsatisfactory situation: it means that one operator (i.e. SingTel) instigates and provides the only substantial economic analysis of the state of competition in telecommunications markets, with the IDA's role being confined to producing short consultation pieces designed to enable all other stakeholders to respond to SingTel's exemption applications.

The exemption process is overly cumbersome and places the sole burden on SingTel, as the Dominant Licensee, to provide all evidence and submissions simply to initiate the request.

The IDA has been passive in this regard when it should be proactively and regularly assessing the state of competition in telecommunications markets and the continuing need for regulation in these markets.

Nearly all regulators now conduct a regular, regulator initiated review of the continued relevance of *ex ante* regulation. For example:

(a) in Malaysia, the MCMC has recently completed its year-long second review of its Access List and Mandatory Standard on Access. [29] This review was initiated by the MCMC on both occasions in response to the immense technological changes and regulatory challenges over the period. In its latest review, the MCMC based its analysis on the state of competition in each of its 7 identified communications and multimedia markets. Its public consultation was based on existing and likely future competition, the result being a robust and well-reasoned inquiry and report that concluded removal of regulation in some areas, as well as modification and retention in others. The critical point is that this inquiry was regulator-initiated and focused on real market analysis rather than theoretical discussion;

(b) in Australia, the declaration of telecommunications services is subject to fixed timeframes and the ACCC is specifically obliged to review the continued relevance of declaration in accordance with a strict statutory process;[30] and

(c) in Hong Kong, OFTA releases its Report on the Performance of Hong Kong's Telecommunications Market in October 2008, which is the latest in its series reviewing the impact of competition on the pricing and performance across all market sectors.[31]

By contrast, the only IDA-initiated review is its Telecom Competition Code review. Even then, this is a review that is required to be undertaken within a specific timeframe under the Telecom Competition Code and is not one which is initiated by the IDA in a proactive manner.

Every review of markets and competition over the past 8 years has been initiated by SingTel through the exemption process. The consequence of this is that by the time the process is initiated and completed, market dynamics have moved on even further. This would not happen in a regulatory environment in which the regulator is proactive.

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29 MCMC, *Public Inquiry Report, Review of Access List and Mandatory Standard on Access*, 21 December 2008. See, http://www.skmm.gov.my/registers/cma/report/PI_Report_21_Dec_08.pdf

30 Part XIC of the *Trade Practices Act 1974* (Cth).

31 http://www.ofta.gov.hk/en/report-paper-guide/report/rp20081012.pdf

It also means that the IDA has never comprehensively undertaken a review of the state of competition across the Singapore telecommunications sector as a whole.

6.7 IDA's exemption request decisions are poorly reasoned and lack rigour

In SingTel's experience, the IDA's decision making processes in respect of exemption requests are characterised by the following:

(a) failure to undertake proper market analysis and provide sufficient justification for its conclusions;

(b) failure to take sufficient regard of the extensive verifiable data provided by SingTel in relation to the state of competition in the relevant market, preferring instead to rely on largely and unsubstantiated statements from SingTel's competitors as a means of retaining unnecessary regulation; and

(c) unnecessarily long timeframes for decision making.

These shortcomings are demonstrated in the IDA's preliminary decision in respect of SingTel's Exemption Request for the Business and Government Customer Segment (**BGTS**) and Individual Markets .

The unsatisfactory nature of the IDA's decision making process is reflected in the following facts:

(a) the length of time taken to reach a preliminary decision – SingTel provided its main submission of over 100 pages, as well as a substantial amount of other information in annexures in March 2007 – it was not until 26 August 2008, approximately 18 months later, that the IDA released its preliminary decision.

(b) in the IDA's preliminary decision, the IDA:

  (i) failed to analyse markets using a forward-looking approach;

  (ii) placed too much emphasis on market share, while failing to take account of other factors, such as the evidence of extensive facilities-based competition and continuing price reductions;

  (iii) failed to analyse markets in a manner that recognises competitive variations based on geography;

  (iv) continued to insist that it is possible for SingTel to leverage power from the LLC market into other competitive markets, even though:

    (A) this possibility is not recognised by other regulators in the circumstances suggested by the IDA;

    (B) the second markets are vigorously competitive (and have been acknowledged as such by the IDA) and cannot be 'made' uncompetitive by SingTel; and

    (C) SingTel remains subject to extensive wholesale regulation in markets where it is alleged to be dominant; and

  (v) rejected SingTel's proposal for S$250,000 to be the threshold level for relevant customers in the "Customer Segment Request" in a matter of

paragraphs, claiming it was "administratively challenging", without offering an alternative threshold.

The slow process that has characterised the exemption process are apparent in the following timelines. Not including the preparation times for the application and submissions on the same, SingTel has previously highlighted in its comments on the Exemption Guidelines:

(a) the ITS submission was made in January 2003, published in April 2003, and a decision by the IDA was not made until November 2003;

(b) it took the IDA over 13 months to finalise its decision with respect to the International Capacity Services exemption application;

(c) SingTel's Exemption Request for the Business and Government Customer Segment and Individual Markets is still awaiting a final decision after being first released for consultation in November 2007.

6.8 SingTel's submission

SingTel submits that the IDA should amend the Telecom Competition Code to remove the existing licensed entity-based approach to dominance and determine dominance (and the applicability of Dominant Licensee regulation) on a market-by-market basis.

As part of the market-by-market approach to dominance, the IDA will need to:

(a) define markets for the purposes of imposing Dominant Licensee regulation;

(b) assess whether SingTel (or any other entity) is dominant in a defined market; and

(c) assess the competition issues that exist in that market for the purposes of determining appropriate remedies.

In assessing dominance in markets (and determining the applicability of Dominant Licensee regulation), SingTel submits that the IDA should apply the "three criteria" test put forward by the European Commission for use by national regulatory authorities for determining whether a market should be subject to *ex ante* regulation. This test provides that *ex ante* regulation may only be imposed where the following three elements are present: [32]

(a) the presence of high and non-transitory barriers to entry (i.e. consideration of legal, structural or regulatory nature);

(b) a market structure which does not tend towards effective competition within the relevant time horizon (i.e. examination of the state of competition behind the entry barriers); and

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[32] European Commission, *Commission Recommendation on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services*, 2007/879/EC, 28 December 2007, paragraph 5. See also, European Regulators Group, ERG Report on Guidance on the application of the three criteria test, ERG (08) 21 , June 2008. http://erg.eu.int/doc/publications/erg_08_21_erg_rep_3crit_test_final_080604.pdf

(c) the insufficiency of competition law alone to adequately address the market failure(s) concerned.

Any decision by the IDA to impose Dominant Licensee regulation in respect of a market should have a fixed term of no longer than 12 months and be subject to public consultation prior to both the preliminary decision and final decision.

7 Tariffing

7.1 Summary

(a) The IDA should remove tariffing obligations on SingTel.

(b) Tariffing has an adverse impact on product innovation and competition – this has been recognised by overseas regulators, including Ofcom.

(c) The continuation of tariffing obligations on SingTel is inconsistent with international practice – overseas regulators have moved away from regulation at the retail level in favour of targeted regulation at the wholesale level and greater reliance on *ex post* competition law.

7.2 Tariffing regulation reduces product innovation and competition

The tariffing requirements in section 4.4 of the Code are outdated and, in light of the *ex post* regulatory options available to the IDA, they serve no purpose.

SingTel strongly submits that these provisions should be removed, in line with international best practice.

Section 4.4.1 of the Telecom Competition Code requires tariff filing and written approval for any of the following services, including on a trial basis:

(a) end user services, including customised tariffs;

(b) resale services;

(c) wholesale services; and

(d) any other services as directed by the IDA.

In the past 12 months, SingTel has submitted a total of **[CONFIDENTIAL]** tariff filings. All but 1 of these tariff filings has been approved by the IDA, with this tariff being rejected on the basis of a provisioning timeline (rather than a pricing issue).

The fact that the IDA has approved virtually all the tariff filings lodged by SingTel strongly suggests that tariffing approval serves no useful purpose.

The process and criteria for tariff review in sections 4.4.2.1 and 4.4.3 of the Telecom Competition Code is unnecessarily detailed and acts as an inhibitor to innovative service offerings, as well as consumers generally.

There is widespread consensus amongst overseas regulators that tariffing dampens competition and innovation in product development. Oftel (now Ofcom) has previously stated:

> *"There are 3 main aspects to this concern; (i) in a market consisting of a limited number of influential players (commonly known as an oligopolistic market), visibility of tariffs published by each player may lead to tacit collusion to keep prices high, (ii) in a market dominated by one player, if the dominant player is obliged to publish its prices, smaller players may follow those prices rather than compete more boldly and (iii) the loss of first mover advantage, which is particularly apparent where a dominant player must provide advance notification of tariff changes, may remove the dominant player's incentive to compete on price; making it more profitable to maintain prices at a relatively high level in return for a modest loss of market share. In none of these cases will customers enjoy the benefits of vigorous competition…*[33]

Ofcom subsequently allowed the retail price controls that were applicable to BT to lapse on 31 July 2006, noting again that *"retail price regulation can have an impact on the wider market (e.g. possibly restricting tariff innovation)"*[34].

Similarly, the Canadian Telecommunications Policy Review Panel has identified the adverse impact on competition associated with tariffing regulation:[35]

> *"The requirement for ex ante approval of tariffs imposes certain regulatory costs on service providers. First, the tariff approval process and the requirement for supporting documentation are administratively burdensome and costly to produce. Second, ex ante approval of tariffs can introduce lengthy delays from the time a service provider makes a decision to introduce a service to the time when it can offer it to customers. At times in the past, such delays have extended for months or occasionally even years. However, the CRTC recently has introduced streamlined processes that can in some cases reduce the time to approve a tariff to a matter of ten days or so.*
>
> *Nonetheless, in a rapidly evolving market, a delay of ten days, combined with the greater amount of time required to assemble the information necessary to comply with CRTC filing requirements, can impede a service provider's ability to respond to customer requests or to marketplace developments. This is especially true in a competitive "bid" situation, where a counter-offer may have to be immediate to be of value. In these instances, any regulatory requirement to prepare tariff applications and to receive prior tariff approval can hinder competition and potentially deprive customers of lower prices."*

These findings show the effect of a tariff approval process is actually a reduction in the level of competitive tension and product innovation between competitors.

7.3 The continuation of tariffing regulation is inconsistent with international best practice

Overseas regulators have recently moved to cease tariff regulation, placing greater reliance on *ex post* competition law.

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33 Oftel, *BT's regulatory obligations to provide advance notification of price changes and to maintain a published price list*, 28 June 2001, paragraphs 3.9 and 3.10.

34 Ofcom, *Retail Price Controls*, Explanatory Statement, 19 July 2006, paragraph 1.4. See, http://www.ofcom.org.uk/consult/condocs/retail/statement/rpcstatement.pdf

35 Canadian Telecommunications Policy Review Panel, *Final* Report, 2006, section 3.26.

The Consultation Paper does not make any reference to the need to fundamentally reform the IDA's approach to tariffing and fails to take any account of international developments in this area.

The position of Singapore contrasts sharply with Hong Kong, which dispensed with its tariff approval requirements years ago in favour of a notification and publication regime. This has not caused any harm to Hong Kong's telecoms markets, nor its consumers or investors.

It is now several years since OFTA revoked retail tariff approval requirements which applied to services supplied by the incumbent operator, PCCW-HKT, including PSTN services. Accordingly, PCCW-HKT is no longer subject to *ex ante* tariff approval.

Similarly, OPTA, the Dutch regulator, has recently moved to remove tariffing regulation applicable to KPN, stating:[36]

> *"An important finding which emerged from the fixed telephony analysis is that competition is strong enough in the consumer telephony market – and it is expected to remain so – to support the assumption that there is no longer any need for OPTA to protect consumers from potential problems pertaining to competition, such as a situation in which KPN, the former telephone service monopolist, would charge excessively high tariffs. Now competition has assumed this role. This means that the Commission will deregulate this market in its entirety".*

Singapore is now one of the few developed countries that still imposes retail tariff filing regulations. Regulators in the rest of the world have accepted that *ex post* regulation and more targeted regulation at the input level is capable of delivering the same protections once considered necessary to ensure appropriate price controls.

The following table provides evidence of this trend:

Country	No requirement for pre-approval of prices by regulator?
Australia	✓
Germany	✓
Hong Kong	✓
Netherlands	✓
New Zealand	✓
Sweden	✓

[36] OPTA, *Fixed Telephony, Broadband and Leased Line Preliminary Draft Decisions: Context and Perspective*, OPTA/AM/2008/201603, 15 July 2008, Public Version, section 2.1.1.

Country	No requirement for pre-approval of prices by regulator?
United Kingdom	✓
Singapore	✗

The decision to remove tariffing regulation in many jurisdictions, has occurred notwithstanding the existence of high market share by the incumbent operator. For example, the decision by Ofcom[37] and OPTA[38] to remove retail price controls in respect of the residential fixed lines was made notwithstanding the fact that BT and KPN had respective market shares between 70-80%.

Retail markets in Singapore are now sufficiently competitive such that tariff provisions of the Telecom Competition Code are no longer necessary and should be removed completely.

The onus in this review is on the IDA to justify why it remains necessary for Singapore to be over-regulated in tariffs in a manner inconsistent with international best practice. The IDA has offered no justification for why it is in the best position to determine or justify whether a proposed tariff is "fair and reasonable" under section 4.4.3.1 of the Telecom Competition Code.

SingTel strongly submits that it is readily open for the IDA to use the findings from overseas regulators as a starting point for the removal of the outdated and unnecessary tariff filing provisions in the Telecom Competition Code.

7.4 SingTel's submission

SingTel submits that section 4.4 of the Telecom Competition Code should be removed in its entirety.

8 Recalibration of IRS regulation

8.1 Summary

(a) The list of IRS should be reviewed and those IRS with little or no take-up removed.

(b) Overseas regulators are in the process of recalibrating their regulatory frameworks to remove unnecessary *ex ante* regulation – the time has come for the IDA to review the basis for the continued regulation of all IRS.

(c) There is ample scope for the IDA to remove Unbundled Network Elements, such as local loops, sub loops and line sharing, from the IRS list.

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37 Ofcom, *Retail Price Controls*, Explanatory Statement, 19 July 2006, Annex 3. See, http://www.ofcom.org.uk/consult/condocs/retail/statement/rpcstatement.pdf

38 OPTA, *Fixed Telephony, Broadband and Leased Line Preliminary Draft Decisions: Context and Perspective*, OPTA/AM/2008/201603, 15 July 2008, Public Version, Appendix 1, paragraph 13.

(d) There is also ample scope to remove other services from the IRS list, not just access to radio towers and tower sites.

(e) SingTel is open to the 'grandfathering' of those IRS that have already been acquired by access requesting licensees to ensure that requesting licensees are not unduly affected by such a regulatory change.

8.2 Overseas regulators are recalibrating regulation to focus on enduring bottlenecks – the IDA needs to do the same

The telecommunications sector is currently in a phase of significant change, as telecommunications operators move forward with facilities-based investment in next generation access infrastructure.

These changes have not occurred in a vacuum – as means of ensuring that regulation remain relevant and does not discourage facilities-based investment in next generation access infrastructure, overseas regulators and supra-national institutions, such as the European Commission, have commenced recalibrating their regulatory frameworks to remove unnecessary regulation.

A key part of this recalibration is the focusing of regulation on 'enduring economic bottlenecks' at the input level.

Ofcom has stated:[39]

> *"…our preferred approach…involves regulation being targeted on parts of the network that are enduring economic bottlenecks, creating scope for deregulation elsewhere".*

The European Commission has also recently emphasised the need to remove *ex ante* regulation where competitive is effective as part of its reform to the EC regulatory framework:[40]

> *"Effective regulation is never too heavy. Whilst the reform will tackle some areas where the current rules have still not opened up the market to competition…the Commission recognises that the rules have worked in others. Therefore, it proposes to remove the requirements for ex ante regulation in major parts of the telecoms sector. In these markets, ex post regulation will become the norm, i.e. operators will have to seek redress for any problems through application to the competition authority and/or through the courts".*

The extent of recalibration occurring currently within the EC is well demonstrated by a recent recommendation by the European Commission, in which it has reduced the list of product and service markets susceptible to *ex ante* regulation from 18 to only 7.[41]

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39 Ofcom, *Final statements on the Strategic Review of Telecommunications, and undertakings in lieu of a reference under the Enterprise Act 2002,* Statement, 22 September 2005, paragraph 5.4. See, http://www.ofcom.org.uk/consult/condocs/statement_tsr/statement.pdf

40 http://ec.europa.eu/information_society/policy/ecomm/tomorrow/index_en.htm

41 European Commission, *Commission Recommendation on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services*, 2007/879/EC, 28 December 2007.

SingTel considers that the review of the Telecom Competition Code presents the IDA with a significant opportunity to determine whether there is a continuing need for SingTel to remain subject to a regulatory obligation to supply IRS to requesting licensees. This would be consistent with the principle of proportionate regulation set out in the Telecom Competition Code.

The Consultation Paper does not contain any attempt to analyse whether the existing list of IRS remains relevant, or whether "enduring economic bottlenecks" actually remain within the Singapore telecommunications landscape. Rather, the IDA simply makes the unsubstantiated assertion that:[42]

> *"IDA will maintain the rest of the IRS and MWS given that these services remain necessary to facilitate entry and rollout by new players entering the markets".*

SingTel strongly disagrees with the assertion that IRS should remain regulated on the basis that they are *"necessary to facilitate entry and rollout by new players"*. This is not the correct criteria for determining whether Dominant Licensee regulation should be imposed, and seeks to protect competitors, rather than competition.

As noted in section 6.8, the correct test for the imposition of *ex ante* regulation has been identified by the European Commission, which utilises a "three criteria" test for determining whether a market should be subject to *ex ante* regulation. This test provides that *ex ante* regulation may only be imposed where the following three elements are present: [43]

(a) the presence of high and non-transitory barriers to entry (i.e. consideration of legal, structural or regulatory nature);

(b) a market structure which does not tend towards effective competition within the relevant time horizon (i.e. examination of the state of competition behind the entry barriers); and

(c) the insufficiency of competition law alone to adequately address the market failure(s) concerned[44].

The European Commission has stated that[45]:

> *" … the fact that this Recommendation identifies those product and service markets in which ex ante regulation may be warranted does not mean that regulation is always warranted or that these markets will be subject to the imposition of regulatory obligations set out in specific Directives. In particular, regulation cannot be imposed or must be withdrawn if there is effective competition on these markets in the absence of regulation, that is to say, f no operator has significant market power within the meaning of Article 14 of Directive 2002/21/EC. "* (our emphasis)

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42 IDA, Consultation Paper, paragraph 33.

43 European Commission, *Commission Recommendation on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services*, 2007/879/EC, 28 December 2007, paragraph 5. See also, European Regulators Group, ERG Report on Guidance on the application of the three criteria test, ERG (08) 21 , June 2008. http://erg.eu.int/doc/publications/erg_08_21_erg_rep_3crit_test_final_080604.pdf

44 Ibid, paragraph 5.

45 Ibid, paragraph 18.

Based on this statement, the European Commission has made it clear that a market-by-market assessment and finding of dominance is necessary before a national regulatory authority can impose *ex ante* regulation with respect to a market.

SingTel strongly considers that a similar approach needs to be adopted by the IDA in determining whether the continued regulation of IRS remains appropriate. SingTel therefore recommends that the IDA should, as part of its market-by-market approach to dominance, apply the European Commission's "three criteria" test to ascertain the product and service markets that are susceptible to *ex ante* regulation and in respect of which SingTel is required to provide IRS.

8.3 Removal of IRS that have little or no take up

There is currently a wide range of IRS that currently has little or no take-up.

The levels of take up for these IRS are set out in the following confidential table:

Interconnection Related Service	Requesting Licensee	Level of take-up
Local loops and sub loops	**[CONFIDENTIAL]**	**[CONFIDENTIAL]**
Line sharing	**[CONFIDENTIAL]**	**[CONFIDENTIAL]**
Internal Wiring	**[CONFIDENTIAL]**	**[CONFIDENTIAL]**
Building MDF Distribution Frame	**[CONFIDENTIAL]**	**[CONFIDENTIAL]**
Outdoor Cabinet Distribution Frame	**[CONFIDENTIAL]**	**[CONFIDENTIAL]**
Lead-in Duct and its associated Lead-in Manholes	**[CONFIDENTIAL]**	**[CONFIDENTIAL]**
Tower Space & Co-location Space at Tower Site	**[CONFIDENTIAL]**	**[CONFIDENTIAL]**
Roof Space & Co-location at Roof Sites	**[CONFIDENTIAL]**	**[CONFIDENTIAL]**
Co-location at Point of Access	**[CONFIDENTIAL]**	**[CONFIDENTIAL]**

There is one obvious reason why there is no or little take up of these services – the existence of extensive facilities and services-based competition, which has resulted in telecommunications licensees either deploying and utilising their own infrastructure, or availing themselves of one of the various other wholesale services that is available in the marketplace.

This is well demonstrated in the broadband segment, where requesting licensees have a range of options other than local loops and sub-loops from SingTel as a means of providing broadband services to end-users. This includes:

(a) supply over separate network platforms, for example, StarHub currently provides broadband services over its own cable network;

(b) the availability of the Wholesale B-Access Service from SingTel; and

(c) the availability of wholesale service offerings from SingTel's competitors, for example, over the StarHub network.

SingTel submits that it is appropriate for the IDA to withdraw regulation in respect of these IRS on the basis that there is sufficient competition and alternative supply options available to requesting licensees.

Accordingly, SingTel agrees with the IDA's decision to remove radio towers and tower sites from the list of IRS, but also considers that there is ample scope to.

(d) remove Unbundled Network Elements, such as local loops, sub loops and line sharing, from the list of IRS – there is already effective infrastructure competition in the 'last mile' and an abundance of alternative supply options for requesting licensees

(e) remove the following services from the list of IRS:

(i) access to building MDF distribution frames

(ii) access to outdoor cabinet distribution frames

(iii) access to lead-in duct and its associated lead-in manholes

(iv) roof space and co-location space at roof sites

(v) co-location at points of access.

8.4 Strong pro-competition reasons for the removal of Unbundled Network Elements from the list of IRS

SingTel submits that there is a very strong case for the removal of Unbundled Network Elements from the list of IRS, including the obligation for SingTel to supply access to:

(a) local loops;

(b) sub-loops;

(c) line sharing; and

(d) distribution frames.

Facilities-based competition is already a reality in Singapore, with the existence of 2 competing nationwide wireline networks and the deployment of a 3rd network only a couple of years away.

Given the existence of 3 separate nationwide networks serving 'last mile', there is already extensive network or platform competition in Singapore that would justify the removal of SingTel's legacy obligations to provide access to local loops, sub-loops and line sharing.

There is ample international precedent to suggest that the existence of either 2 or 3 competing networks in the 'last mile' is sufficient to justify the removal of ULL and line sharing obligations. The removal of regulation in this situation is likely to stimulate further facilities-based investment in the Singapore telecommunications sector.

SingTel submits that the situation in Singapore in is analogous to Hong Kong, where regulation of the local loop unbundling (i.e. Type II interconnection) has been removed,

subject to a transitional arrangement, as a means of encouraging greater levels of facilities-based investment:[46]

> "*We decide that, for buildings already connected to at least two self-built customer access networks, the current Type II interconnection policy applicable to telephone exchanges for individual buildings covered by such exchanges should be withdrawn, subject to the transitional arrangement... For these buildings, the benefits of additional consumer choice and competition brought about by mandatory Type II interconnection would be outweighed by the detriment from dampening investment incentive if mandatory Type II interconnection were continued in these buildings. Withdrawing mandatory Type II interconnection from these buildings would send a clear signal to the carriers, encouraging them to roll out their networks to buildings if they are not to be left out. In addition, it would also encourage the carriers to roll out their networks to buildings not yet connected to an alternative customer access network because once their self-built customer access networks reach a building, they would not face competition from carriers relying on Type II interconnection after a transitional period".*

The duplication of the SingTel network by both the StarHub and the Singapore NGNBN provides a strong justification for the removal of the unbundling obligations that are currently applicable to SingTel.

The removal of Unbundled Network Elements from the IRS list would not have any adverse impact on the state of competition in the relevant market. This is because:

(a) there is only very low take up of Unbundled Network Elements by requesting licensees;

(b) there are extensive already wholesale supply options available to requesting licensees, including:

  (i) the Wholesale-B Access Service and other services from SingTel;

  (ii) a range of wholesale services from StarHub; and

  (iii) in the next couple of years, connectivity services on the Singapore NGNBN through OpCo on an "effective open access basis"

In light of the existing levels of network competition and the prospect of 3 nationwide wireline networks, established and conventional wisdom suggests that broadband competition is already well entrenched in Singapore and that there is little, if any, justification for maintaining a legacy unbundling requirement on SingTel in respect of local loops, sub-loops and line sharing.

8.5 SingTel's submission

SingTel submits that the IDA should undertake a comprehensive review of the continuing need for the regulation of services in the IRS list. In particular, SingTel submits that:

(a) it is appropriate for the IDA to remove radio towers and tower sites from the IRS list;

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[46] Hong Kong Government, Legislative Council Brief, *Review of Type II Interconnection Policy*, File Ref: CTB/T 56/2/1(04), paragraph 10.

(b) there is ample scope for the IDA to remove Unbundled Network Elements, such as local loops, sub loops and line sharing, from the list of IRS, in recognition of effective infrastructure competition in the 'last mile', the abundance of alternative supply options for requesting licensees and the associated low levels of take up of these IRS; and

(c) there is also ample scope for the IDA to remove the following services from the IRS list:

(i) access to building MDF distribution frames;

(ii) access to outdoor cabinet distribution frames;

(iii) access to lead-in duct and its associated lead-in manholes;

(iv) roof space and co-location space at roof sites; and

(v) co-location at points of access.

9 Abuse of dominance and anti-competitive agreements

9.1 Summary

(a) SingTel does not support the proposed amendments to the abuse of dominance provisions in the Telecom Competition Code.

(b) The IDA's licensed entity-based approach to allegations of an abuse of dominance is inconsistent with general competition law principles and international best practice.

9.2 The IDA's proposal to align the ex post telecommunications regime with general competition law must not result in 'cherry picking' by the IDA

The IDA has acknowledged industry support for the application of the general competition law regime to the telecommunications sector in Singapore, but has also indicated that:

> *"Matters relating to the review of the sectoral carve-outs from the Competition Act and alignment of such sectoral competition frameworks would have to be discussed with the Ministry of Trade and Industry (MTI) and the Competition Commission."*[47]

Notwithstanding the above, the IDA has stated that:

> *"…IDA will consider aligning its framework (e.g. administrative penalty quantum) with the provisions in the Competition Act, during the review of the Telecommunications Act."*[48]

The extent of any "alignment" that the IDA intends to make between the two regimes remains unclear. The IDA has only identified the administrative penalty quantum in its Consultation Paper as an issue that may be subject to alignment.

47 IDA, Consultation Paper, paragraph 48.

48 Ibid.

In SingTel's view, any attempt at "alignment" by the IDA must not simply "cherry pick" certain aspects of the Competition Act while ignoring others. The IDA must not "cherry pick" certain aspect of the Competition Act where it is convenient to do so, without also adopting the more rigorous standards that exist under Singapore general competition law.

The IDA has remained silent on the need for the IDA to also adopt the more rigorous standards that exist under Singapore general competition law. By way of example:

Issue	Competition Law	Telecommunications Act
Threshold for establishing abuse of dominance	Conduct amounting to 'abuse of a dominant position in any market in Singapore'[49]	'Unreasonable restriction of competition'[50]
Market share level for dominance	60%[51] (indication only, not presumptive)	40%[52] (presumptive)
Appeal	Appeal to Competition Appeal Board[53]	Appeal to the IDA or Minister[54]
Licensed entity based approach to dominance	No presumption – market analysis required	Presumption – no market analysis performed[55]
Cost measurement criteria for predatory pricing	Multiple cost measures[56]	Average incremental cost only[57]

As illustrated, the Competition Act employs a more rigorous approach to defining the elements of dominance and abuse of dominant position, and contains an independent avenue of appeal.

It would be necessary for an 'alignment' by the IDA to also incorporate these more rigorous standards that exist under general competition law.

9.3 IDA should remove presumption of Significant Market Power in abuse of dominant position cases

In its Consultation Paper, the IDA has stated that:

> *"IDA thus proposes to revise Sub-section 8.2 of the Code to provide that all Licensees are subject to the prohibitions against abuse of dominant position, regardless of whether IDA has already classified the Licensee as a Dominant Licensee. This means that if a non-Dominant Licensee is determined, during an*

49 Competition Act 2004, section 47.

50 Telecom Competition Code, section 8.2.

51 CCS, *Competition Commission of Singapore Guidelines on the Section 47 Prohibition*, paragraph 3.8.

52 IDA, *Advisory Guidelines Governing Petitions for the Reclassification and Requests for Exemption under Sub-section 2.3 and 2.5 of the Code of Practice for Competition in the Provision of Telecommunications Services*, 2005, paragraph 2.4.2(a)(ii).

53 Competition Act 2004, section 72.

54 Telecommunications Act 1999, section 69.

55 Telecom Competition Code, section 2.2.1.

56 CCS, *Competition Commission of Singapore Guidelines on the Section 47 Prohibition*, section 11.4.

57 Telecom Competition Code, section 8.2.1.1.

> *investigation, to have Significant Market Power, and to have engaged in conduct that constitutes an abuse of that market power, IDA can take appropriate enforcement action. This revision to Sub-section 8.2 of the Code would make our approach consistent with general competition law. For the avoidance of doubt, for the purposes of this Sub-Section, a Licensee already classified as being a Dominant Licensee will be presumed by IDA to have Significant Market Power in all telecom markets it participates in, except in the specific markets where it has been granted exemptions by IDA from Dominant Licensee obligations"*[58] (our emphasis).

The fact that the IDA has presumed that SingTel would be the Dominant Licensee in each and every market, without first undertaking an assessment on a market-by-market basis, is in itself, contrary to the Competition Act and international best practice.

It would appear from the IDA's statement that when, for example, a complaint is made against a licensee other than SingTel, the IDA would investigate such a complaint by first defining the relevant markets and determining whether the relevant licensee is dominant in that market.

However, if a similar complaint is made against SingTel, the IDA would not determine the investigation based on a pre-defined market, rather it would effectively "skip a step" and automatically presume that SingTel is dominant for the purposes of determining whether abuse of dominant position has occurred.

SingTel submits that all complaints of anti-competitive conduct should be subject to a market analysis and consideration should be given to whether the relevant licensee is dominant in that market.

The automatic presumption that a firm has SMP in respect of alleged abuse of dominant position is contrary to established methods of market analysis, as evidenced by international best practice. SMP cannot be automatically assumed in any circumstance, particularly, in the context of *ex post* regulation.

A finding by the IDA that a dominant licensee has SMP in respect of an alleged contravention of sub-section 8.2 of the Telecom Competition Code must be made on a case by case basis, having regard to the specific facts and merits of each particular case.

Established principles of market analysis generally require regulators to assess whether a firm has abused its dominant position as follows[59]:

(a) as a preliminary step, defining the relevant market in which alleged abuse of dominant position has occurred;

(b) as a second step, determining whether the firm accused of abusing its dominant position has SMP in the relevant market; and

(c) as a third step, if the firm is found to have SMP in the relevant market, determining whether the firm has in fact abused its dominant position in the relevant market.

The fact that the IDA intends to automatically presume that only SingTel has SMP in respect of allegations of abuse of dominant position suggests that the IDA will, in effect

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58 IDA, Consultation Paper, paragraph 37.

59 See for example, Office of Fair Trading, The application of the Competition Act in the Telecommunications Sector, OFT 417, January 2000, at paragraph 5.1.

bypass the process of market definition and the assessment of whether the dominant licensee has SMP in the relevant market in respect of abuse of dominance cases where SingTel is the defendant.

SingTel is not aware of any comparable jurisdiction where a firm is automatically assumed to have SMP in relation to an allegation of abuse of dominant position or in the context of *ex post* regulation. In fact, all comparable jurisdictions explicitly require the regulator to define the relevant market in which the contravention allegedly occurred and assess whether the relevant firm has SMP before it can consider whether that power has been abused.

For example, the European Courts have held that a market must be defined before a dominant position can be found.[60] Similarly, the Australian Competition and Consumer Commission has noted that "market definition is fundamental to the assessment of alleged anti-competitive conduct"[61].

Market definition is essential in determining whether a Dominant Licensee has SMP, as it identifies those competitors that are capable of preventing or constraining the Dominant Licensee from acting independently of effective competitive pressure. The risks associated with not defining the relevant market have been highlighted by the Office of Fair Trading in the United Kingdom[62]:

> *"In the absence of an explicit market definition stage, subsequent analysis might be undertaken in an arbitrary manner. Without any coherent framework in which to conduct the analysis, there is a real danger that the analysis could degenerate to the level of 'I know abuse when I see it' in which there are no identifiable benchmarks against which to discriminate between 'competitive behaviour' and 'anti-competitive behaviour."*

The World Bank has endorsed a market-by-market approach to determining the question of dominance and stated that[63]:

> *"Market definition is an initial step in competition analysis. It provides the context in which to evaluate the level of competition and the impact of anti-competitive conduct*
>
> *…*
>
> *The first step in evaluating whether a firm dominates a market involves the definition of the relevant market in which the possible abuse occurs." (our emphasis)*

In practice, the IDA's approach to determining whether a Dominant Licensee has abused its dominant position is likely to be highly subjective and unable to properly differentiate between legitimate competitive conduct and a genuine abuse of dominant position.

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60 Continental Can Co Inc. (Case 6/72 (1973) ECR 215).

61 Australian Competition and Consumer Commission, *Anti-competitive conduct in telecommunications markets – An information paper*, August 1999, page 28.

62 Office of Fair Trading, *The role of market definition in monopoly and dominance inquiries*, Economic Discussion Paper 2, OFT 342, July 2001, paragraph 3.14.

63 World Bank InvoDev, *Telecommunications Regulation Handbook*, Edited by Hank Intven, McCarthy Tetrault, November 2000, Module 5-14.

On this basis, SingTel considers that the issue of whether a Dominance Licensee has SMP in the relevant market in respect of an allegation of abuse of dominant position is determined by defining the relevant market in which alleged abuse of dominant position has occurred and then determining whether the relevant entity has SMP in the relevant market.

9.4 SingTel's submission

SingTel submits that:

(a) the IDA should remove the assumption in the Telecom Competition Code that a Licensee already classified as being a Dominant Licensee will be presumed by IDA to have Significant Market Power in respect of allegations of an abuse of dominant position;

(b) in the event that the IDA seeks to align the terms of the Telecom Competition Code with the Competition Act, it must do so in a manner that does not result in the IDA 'cherry picking' certain aspects of the general competition law regime, while resisting the adoption of other more rigorous standards set out in the general competition law.

10 Other comments

10.1 Service termination or suspension with prior notice

In relation to the IDA proposal at paragraph 29(i) of the Consultation Paper, the IDA intends to require that termination of an agreement or suspension of a service will be further regulated and neither party may terminate or suspend the agreement on the basis that the end-user has breached the terms and conditions of a separate agreement for another service.

SingTel submits that this requirement is unnecessary.

Service providers today frequently outsource the production of bills, payment receipts and credit management functions. As service providers already take measures to ensure that the confidentiality of their end-users' service information is protected, outsourcing functions should be viewed as a way to provide cost savings.

A consequence of outsourcing is instead of an end-user receiving (and in the process, producing, posting, receipting) multiple bills, an end-user is able to receive one bill for multiple services and pay the total payable amount due under that bill.

The practice of aggregating payable amounts under one bill is not an unusual practice in the telecoms sector. For example, credit card companies provide a channel for vendors to bill multiple bills under one transaction by billing and receiving money on their behalf.

In such circumstances, there is nothing extraordinary for suspension of services in an aggregate bill if the amounts due under the aggregate bill are outstanding. In short, if an end-user receives a bill for amounts relating to usage of service A and service B provided by licensees A and B respectively, where the end-user fails to pay the amount due on the aggregate bill, suspension of services A and B would be a reasonable consequence.

It is important to note that an end-user is not forced to have all its services billed in an aggregate bill. The end-user has the choice to request for its services to be billed in separate bills; this however would mean that an end-user would not be able to enjoy the benefits offered to them under using an aggregate bill. For example, by choosing to

receive separate bills, the end-user would have to monitor multiple bills and make payments for different bills or arrange for GIRO facility in respect of multiple bills. This practice could lead to late or no payments by the end-user.

Accordingly, SingTel submits that the practice of billing multiple services under a single aggregate bill is in fact beneficial to the end-user, and the suspension of services for no payment received under that bill is a reasonable practice.

SingTel submits that the IDA's position in respect of termination of agreements is unnecessary. Telecommunications licensees would not unnecessarily terminate agreements with end-users as this would lessen their competitive advantage in the market. In compliance with the Telecom Competition Code, licensees who may need to terminate an agreement generally do so if there is a breach of agreed terms and conditions and after the end-user has been given adequate notice and time to remedy the breach. Accordingly, suspension and termination is a last resort option for licensees and it would be inappropriate for the IDA to restrict these rights.

10.2 No charges for unsolicited telecommunication services

In its Consultation Paper, the IDA has proposed that

(a) licensees will be prohibited from providing unsolicited free telecom equipment and services to end-users that require the same end-user to unsubscribe after the free period;

(b) licensees must send reminders before end of trial periods to end-users who have signed up for trials; and

(c) the prohibition in Section 3.3 of the Telecom Competition Code should be a general prohibition under Section 3.2.

SingTel submits that whilst the IDA's proposal attempts to provide more guidance on acceptable business practice(s) in relation to the offer of services, the IDA's proposal would effectively lead to over-regulation. SingTel submits that such over-regulation would indeed dampen the development of competition, rather than enhance it.

As the IDA is aware, there are already sufficient guidelines in place to regulate the offer of services. These include:

(d) the Telecom Competition Code;

(e) the Broadcasting Act;

(f) the Audiotext Code of Practice;

(g) the Internet Code of Practice; and

(h) the Spam Control legislation, which has been passed by Parliament in April 2007.

In addition, end-users have recourse through the Consumer Protection (Fair Trading) Act. In respect of misleading advertisements, end-users may also approach the Advertising Standards Authority of Singapore (**ASAS**).

Given there are numerous avenues for consumers to seek review of misleading information, SingTel is concerned that the IDA's proposal adds another layer of unnecessary consumer regulation on the industry (with its associated compliance costs).

For example, in respect of the IDA's proposal at paragraph 29(ii) of its Consultation Paper, SingTel submits that requiring an end-user to take action to opt out of a free trial should not be construed as a breach of the Telecom Competition Code. Telecommunications licensees are permitted to offer free trials and there is no automatic subscription as end-users have the right to exercise their judgment not to continue with the service if they no longer require the service.

In respect of the IDA's proposal at paragraph 29(iii) of its Consultation Paper, SingTel submits that the need for a reminder notice before the end of the free trial is unnecessary when the end-user has clearly requested the free trial.

Trials are usually temporary and for specified periods commencing at the time that the customer opts for the free trial. Some trials are as short as a few days. To require a reminder notice of no less than 3 working days and no more than 10 working days before the end of the trial is unreasonable given the short period for which trials are usually taken up.

In some cases, end-users sign up or agree to free trials during the contracting process (e.g. when they sign up at the service counters). End-users may purchase a DEL service and obtain a free trial for a VAS. Under such circumstances, SingTel would need to send a reminder to the end-user when, in fact, the end-user would have already been informed at the point of contracting.

SingTel proposes that this requirement for a reminder be removed as long as the terms and conditions, including the charges where the customer chooses not to opt out at the end of the trial period, have been clearly conveyed at the point of signing up.

In respect of the IDA's proposal at paragraph 29(iv) of its Consultation Paper, SingTel notes that the proposal does not significantly change the level of regulatory requirements on telecommunications licensees. Given that licensees are required to include the current requirement in section 3.3 of the Telecom Competition Code in its contracts and also provide adequate notice of its terms and conditions to end-users, SingTel does not see how turning the obligation in section 3.3 of the Telecom Competition Code into a general obligation under section 3.2 would provide better safeguards for consumer interests.

10.3 Changes in Ownership & Consolidations involving Designated Telecommunication Licensees

SingTel provides comments below in relation to the IDA's proposed requirements vis-à-vis:

(a) alignment with other legislation as outlined in paragraphs 40 and 41 of the IDA Consultation Paper; and

(b) pending change in ownership structure as outlined in paragraph 42(c) of the IDA Consultation Paper.

SingTel notes that the new concepts of changes in voting power and inclusion of the definition of "associates" in other legislation are extremely wide and complex. Other industries are facing practical difficulties with the interpretation and determination of these new concepts. While there may be compelling reasons such as industry specific sensitivities or national security reasons that may be relevant for other industries, there does not appear to be any similar reasons in the telecommunications industry to compel the adoption of these new concepts. SingTel considers that the current regime of determination, based on voting shares is straightforward, practical and adequate.

Determination of the term "affiliates" in the current legislation presents a set of difficulties but they are to a large extent capable of determination.

In relation to the proposal for a licensee to submit information on "pending change in the ownership structure", it is not clear what the IDA means by "pending change". Licensees may be in ongoing discussions or negotiations which may take time to finalise and which may be price sensitive or subject to confidentiality requirements. Such negotiations may or may not result in changes to ownership structure. As such, we would propose that the IDA makes it clear what is meant by "pending change in the ownership structure" taking into account the difficulties that we have pointed out.

10.4 Approval of Interconnection Agreements by IDA

In paragraph 32 of its Consultation Paper, the IDA invites views and comments on the proposed clarification that should IDA request for additional information from Licensees within the 21-day review period when reviewing their Agreements or modifications to the Agreements, IDA - after providing written notice - may extend the review period by up to 21 days after the date on which the Licensee provides the additional information or clarification.

SingTel notes that any extension of the review period by the IDA would also lead to a delay in implementation of the Interconnection Agreements in question. As such, where the IDA intends to extend the review period for itself, it should accordingly also provide an extension to the deadline for implementation of the Interconnection Agreements in question.

10.5 Designation by IDA of Infrastructure That Must be Shared

SingTel submits that submarine cable landing station should be designated as Critical Support Infrastructure that should be shared. Licensees that control such CSI should allow access to it.

Licensees (other than SingTel) have established their own submarine cable landing stations for landing submarine cables in Singapore, e.g. StarHub's Changi Submarine Cable Landing Station and C2C's Changi Submarine Cable Landing Station. However, it remains the case that access to such submarine cable landing stations that are owned or operated by non-Dominant licensees is not forthcoming.

SingTel believes that submarine cable landing stations constitutes a CSI as it fulfils the criteria as set out by the IDA in section 7.3 of the Telecom Competition Code 2005:

(a) the infrastructure is required to provide telecommunication services;

(b) an efficient new entrant would not be able to obtain it from a third-party through a commercial transaction, at a cost that would allow market entry;

(c) the Licensee that controls the infrastructure has sufficient current capacity (co-location space) to share with other Licensee;

(d) the Licensee that controls the infrastructure has no legitimate justification for refusing to share the infrastructure with other Licensees; and

(e) failure to share the infrastructure would unreasonably restrict competition in any telecommunication market in Singapore.

Submarine cable landing stations are essential infrastructure required for licensees to access international connectivity and provide telecommunication services to end-users.

All Facilities-Based Operators (**FBOs**) should be able to access cable stations owned or operated by any other licensees.

Once submarine cable landing stations are designated as CSI, it would be open to the IDA to facilitate access by utilising the terms and conditions for accessing submarine cable landing stations under the Reference Interconnection Offer (**RIO**).