



SINGAPORE TELECOMMUNICATIONS LIMITED

**RESPONSE TO CONSULTATION BY THE MINISTRY OF INFORMATION,
COMMUNICATIONS AND THE ARTS**

REVIEW OF THE TELECOMMUNICATIONS ACT (CAP. 323)

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SUBMISSION BY SINGAPORE TELECOMMUNICATIONS LTD

1. STATEMENT OF INTEREST

- 1.1. 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.
- 1.2. SingTel has a comprehensive portfolio of services that includes voice and data services over fixed, wireless and Internet platforms. SingTel provides services to both corporate and residential customers and is committed to bringing the best of global communications to its customers in the Asia Pacific and beyond.
- 1.3. SingTel welcomes the opportunity to make a submission in response to the consultation paper issued by the Ministry of Information, Communication and the Arts (**MICA**) on 27 August 2010 (**Consultation Paper**) in relation to the Review of the Telecommunications Act (Cap. 323) (**Act**).
- 1.4. As a leading provider of telecommunications services and a leading proponent of innovation and competition, SingTel has a strong interest in the effective regulation of Singapore's telecommunications sector. SingTel has views about both the strengths and weaknesses of the MICA's Consultation Paper and proposed amendments to the Act as outlined below.

2. SUMMARY OF MAJOR POINTS

Question 1

- 2.1. SingTel considers that the proposed amendment to allow financial penalties of 10% of the annual business turnover of licensable services would be inconsistent with the principles of fair and proportionate regulation.
- 2.2. In particular, there is no demonstrated need for such an increase in penalty when to date the IDA has not seen fit to impose the current maximum \$1 million penalty. In addition, SingTel thinks it unnecessary to increase penalties on the basis of aligning the Act with the Electricity Act (Cap.89A) and Gas Act (Cap.116A) as the different market structures and conditions in such industries, and hence likely effect of relevant breaches, warrant a different approach to financial penalties. Additionally, the MICA has overlooked the importance of reputational damage as an effective deterrent to non-compliance.
- 2.3. Furthermore, SingTel does not believe the turnover of a company is a relevant factor when considering a penalty. Whether the breach is by a small or large company, it is the effect of the conduct that is relevant, not the size of the organisation.
- 2.4. Consequently, SingTel recommends that the MICA not introduce new provisions to allow for financial penalties of 10% of the annual business turnover of licensable services to be imposed.

Question 2

- 2.5. SingTel considers that the proposed amendment to provide powers to revoke, suspend or reduce the term of a licence for non-payment of a financial penalty would be inconsistent with the principles of proportionate enforcement such that it should not be implemented.
- 2.6. However, to the extent that the MICA considers it appropriate, SingTel is of the view that a tiered process should be established which involves:
 - (i) first, issuing a remedial notice;
 - (ii) then, issuing a formal warning; and

- (iii) finally, revoking, suspending or reducing the term of a licence only after affording the relevant licensee an opportunity to comment..

Question 3

- 2.7. SingTel considers that the proposed amendment narrowing a Public Telecommunication Licensee's (PTL's) powers in sections 9, 12, 13, 14, 18 and 70 from "any telecommunications service" to the provision of "basic telecommunications services" will undermine the expedient and efficient construction and installation of telecommunications systems and services. SingTel considers that the amendment should not be introduced.

Question 4

- 2.8. SingTel agrees with the proposed amendment to allow the IDA to issue written orders to require compliance with the Code of Practice for Info-communications Facilities in Buildings (COPIF). This is essential to facilitate the roll-out of telecommunications systems and services.

Question 5

- 2.9. SingTel notes the proposed amendment to include business trusts and has no comment.

Question 6

- 2.10. SingTel considers that the proposed amendment to provide the power to declare a specified telecommunications licensee is too broad and does not provide guidance as to the public interest test to be applied.
- 2.11. SingTel considers that the public interest test in s32H(1)(b) should apply as the second limb in relation to each of s32H(1)(a)(i) and s32H(1)(a)(ii) to ensure that there is a rational basis for the declaration of a specified telecommunications licensee. That is, a specified telecommunications licensee declaration should be limited to instances where:
 - (i) a licensee is a PTL; or
 - (ii) owns/controls any critical support infrastructure; **and**
 - (iii) the Minister believes it is in the public interest.

- 2.12. In effect, the public interest test should always be satisfied. Additionally, the public interest test to be applied should be a cost benefit test whereby the public benefit must outweigh the detriment associated with the declaration of a specified telecommunications licensee.

Question 7

- 2.13. SingTel considers the proposed amendment to provide powers to require structural or operational separation is contrary to principles of proportionate regulation and should not be introduced.

- 2.14. However, in the event that the MICA elects to introduce such provisions:

- (i) the wording in s69C(1)(a)(i) and s69C(1)(a)(ii)(B) should be amended to read “significantly raises barriers” instead of “creates barriers”, in line with established market failure tests.
- (ii) the Minister should be required to have regard to all of the criteria in s69C(2) when deciding whether to direct separation, not just one or more of them; and
- (iii) the relevant criteria to be considered in s69C(2) should be amended to include:
 - (a) whether the separation promotes incentives to invest; and
 - (b) the likely costs of separation.

3. **QUESTION 1: REVISION OF CEILING FOR MAXIMUM FINANCIAL PENALTIES TO ALLOW FOR A PENALTY OF 10% OF THE ANNUAL BUSINESS TURNOVER OF LICENSABLE SERVICES**

- 3.1. SingTel considers the proposal to introduce financial penalties amounting to 10% of annual business turnover to be unnecessary in the current circumstances. SingTel believes that the current penalty of \$1 million is substantial enough to act as a strong deterrent to non-compliance with regulatory conditions.

- 3.2. SingTel considers that the MICA should have regard to the principle of proportionate regulation as espoused in the Telecom Competition Code (**Code**). In particular, regulation should be “no broader than necessary to achieve IDA’s stated goals”.¹
- 3.3. In light of the fact that the IDA has never imposed the maximum \$1 million penalty, the decision to increase the penalty to a percentage of turnover would appear unnecessary. SingTel considers that the introduction of such a provision may be justified if the IDA had highlighted ongoing instances where the maximum penalty imposed a limitation on what the IDA deemed an adequate financial penalty to address the relevant breach. However, the converse situation has been true, whereby there have been no instances where the IDA has felt the need to impose a maximum fine. As such, the proposal to increase financial penalties is disproportionate.
- 3.4. The MICA suggests that the current penalty cap should be increased such that it is better aligned with existing legislation such as the Electricity Act (Cap.89A) and Gas Act (Cap.116A). However, SingTel is of the view that the different market structures and conditions in such industries, and hence likely effect of relevant breaches, warrant a different approach to financial penalties.
- 3.5. Instead, financial penalties in the Act should be relevant to the telecommunications industry. As outlined in the Code, penalties should be “carefully crafted to achieve clearly articulated results”.² As mentioned above, SingTel notes that there have been no instances to date of the IDA imposing the maximum \$1 million penalty. Therefore, increasing penalties purely for the purpose of aligning the Act with other sectors seems inconsistent with the Code.
- 3.6. Additionally, SingTel considers that financial penalties should be levied based on the effect of the conduct and not the size of the organisation. Imposing penalties as a percentage of annual turnover penalises larger companies more so than smaller ones without taking into consideration the effect of the conduct. For example, a smaller telecommunications provider may engage in conduct that has substantial ramifications for other stakeholders and consumers. However, a larger provider may incur a more substantial financial penalty for a more nominal breach purely on the basis of its larger turnover. Consequently, the proposed amendment is likely to unreasonably discriminate against larger providers.

¹ See section 1.5.4 of Telecom Competition Code 2005

² See section 1.5.4 of Telecom Competition Code 2005

- 3.7. Furthermore, SingTel considers that non-financial consequences act as an additional and more effective deterrent than increasing financial penalties. Such consequences should not be disregarded or underestimated by the MICA. SingTel notes that the reputational consequences of enforcement action are often more significant than the financial consequences. Adverse media publicity associated with licence breaches incurs reputational costs which act as a strong deterrent.
- 3.8. The MICA should not overlook the value of such non-financial consequences as an effective deterrent. Reputational losses, coupled with the current financial penalties act as a sufficient disincentive to breaching the regulatory conditions such that the introduction of higher financial penalties is unnecessary.
- 3.9. ***Recommendation: That the MICA retains the current provisions in the Act regarding financial penalties.***

4. **QUESTION 2: POWERS FOR IDA TO SUSPEND, REVOKE, OR REDUCE THE PERIOD OF A LICENCE IN RESPONSE TO NON-PAYMENT OF A FINANCIAL PENALTY**

- 4.1. SingTel considers that the proposed provision empowering the IDA to suspend, revoke or reduce the term of a licence in response to non-payment of a financial penalty is inconsistent with the principles of proportionate enforcement.
- 4.2. The MICA's concerns about the current difficulties associated with the recovery of financial penalties, in particular of small amounts, would be disproportionately addressed by introducing such a power.
- 4.3. SingTel notes that such a power is not prevalent in other jurisdictions. For example, in Australia the grounds for cancellation of a licence under the *Telecommunications Act 1997* (Cth) are very limited. Such revocation only applies in situations where a licensee:
- (i) fails to pay their annual charge (s72(1));
 - (ii) fails to pay their universal service levy (s72(2)); or
 - (iii) becomes a disqualified body corporate or partnership (s72(3) and s72(4)).
- 4.4. Under s571 of the *Telecommunications Act 1997* (Cth), the Minister, Australian Communications and Media Authority (ACMA) or the Australian Competition and

Consumer Commission (ACCC) may institute legal proceedings for the recovery of pecuniary penalties in relation to a breach of a carrier condition, but no powers exist to affect a carrier's licence for failure to subsequently pay an imposed financial penalty.

- 4.5. In the event that the MICA proposes to introduce a measure allowing the IDA to revoke, suspend or reduce the term of a licence, SingTel considers that such a power should be exercised only as a last resort and in extenuating circumstances. SingTel suggests that the MICA establish a tiered process for the purposes of recovering financial penalties.
- 4.6. For example, under s69 of the *Telecommunications Act 1997* (Cth), the ACMA may issue a remedial direction in relation to a contravention of a carrier's licence conditions. Additionally, under s70(1) the *Telecommunications Act 1997* (Cth), ACMA may issue a formal warning if a carrier contravenes a condition of their carrier licence.
- 4.7. SingTel considers that the MICA should adopt a similar approach in relation to recovery of a financial penalty such that it issues a remedial warning, followed by a formal warning if a licensee fails to pay within a specified timeframe.
- 4.8. This will bring the outstanding financial penalty to the licensee's attention and provide it with the opportunity to respond to the Minister's notices with any reasons for the delay or non-compliance. Where such reasons are a result of genuine issues associated with making a payment (e.g. the availability of funds or obtaining necessary approvals), the Minister should have regard to such circumstances and work with the licensee to reach a mutually acceptable arrangement.
- 4.9. Only after such processes should the Minister consider revoking, suspending or reducing the term of a licence.
- 4.10. ***Recommendation: The MICA should not introduce powers for the IDA revoke, suspend or reduce the term of a licence. In the alternative, adopt a tiered process that requires:***
 - (i) ***first, issuing a remedial notice;***
 - (ii) ***then, issuing a formal warning; and***
 - (iii) ***finally, revoking, suspending or reducing the term of a licence after affording the relevant licensee an opportunity to comment.***

5. **QUESTION 3: PROPOSED MODIFICATIONS TO PTL RIGHTS**

- 5.1. SingTel considers that the proposed amendment, which limits the privileges of a PTL to apply only in relation to “basic telecommunications services” (BTS), should not be introduced. To date, PTLs have acted judiciously in the exercise of their privileges and as such, there is no need to alter such rights.
- 5.2. At present, the Act provides PTLs with certain powers under sections 9, 12, 13, 14, 18 and 70 for the provision or installation of any telecommunications service. For example, s14(1)(a) of the Act allows for a PTL to “lay, place or carry on and erect such installation or plant used for telecommunications as may be necessary or proper for such purposes” in relation to “any telecommunications service”. The proposed amendments limit a PTL’s rights such that they apply only to the BTS and not “any telecommunications service”.
- 5.3. PTLs provide a range of services beyond the BTS that will be affected by the narrowing of the definition. The broader privileges are necessary to allow PTLs to build networks and install systems effectively and efficiently irrespective of which telecommunications service they apply to. The proposed amendments would potentially impede efficient construction and installation.
- 5.4. SingTel is of the view that PTLs should be able to exercise such powers to complete works without continually having to determine whether they relate specifically to a BTS as this is likely to cause uncertainty and potential detriment.
- 5.5. ***Recommendation: The MICA should retain the current legislation drafting such that any privileges under the Act relate to any telecommunications service and are not limited to the BTS.***

6. **QUESTION 4: IDA POWERS TO ISSUE WRITTEN ORDERS IN RELATION TO COPIF**

- 6.1. SingTel agrees with the proposal to allow the IDA to issue written orders to require compliance with the COPIF. This is essential to facilitate the deployment of telecommunications systems and services by providers such as SingTel.
- 6.2. ***Recommendation: SingTel welcomes the proposed introduction by the MICA of powers for the IDA to issue written orders to require compliance with the COPIF.***

7. **QUESTION 5: INTRODUCTION OF NEW CONCEPTS RELATING TO MERGERS AND ACQUISITIONS**

7.1. SingTel notes the inclusion of business trusts and has no comment in relation to the proposed amendment.

8. **QUESTION 6: MINISTER'S SPECIAL ADMINISTRATION ORDER POWER**

8.1. SingTel considers that the power provided under s32H(1) to declare a specified telecommunications licensee is too broad and does not provide guidance as to the public interest test to be applied.

8.2. SingTel considers that the public interest test in s32H(1)(b) should apply as the second limb in relation to each of 32H(1)(a)(i) and 32H(1)(a)(ii). That is, a specified telecommunications licensee declaration should be limited to instances where:

- (i) a licensee is a PTL; or
- (ii) owns/controls any critical support infrastructure; **and**
- (iii) the Minister believes it is in the public interest.

8.3. The public interest test should always be satisfied. This will ensure that there is a rational basis for the declaration of a specified telecommunications licensee.

8.4. SingTel considers that the public interest test should be a cost benefit test whereby the public benefit must outweigh the detriment associated with the declaration of a specified telecommunications licensee. Exceptions to such a test should be limited to extenuating circumstances, for example, in the interests of national security to ensure consistency in decision making.

8.5. In addition, the MICA should outline a consultative process pursuant to which the Minister is to reach a decision that such a declaration is in the public interest. This should include inviting submissions from the relevant licensee and publishing a decision outlining the reasons for arriving at a decision

8.6. *Recommendation: A specified telecommunications licensee declaration should be limited to instances where:*

- (i) a licensee is a public telecommunications licensee; or*
- (ii) owns/controls any critical support infrastructure; and*
- (iii) the Minister believes it is in the public interest.*

Additionally, the public interest test to be introduced should be based on a cost benefit test whereby the public benefit must outweigh the detriment associated with the declaration of a specified telecommunications licensee.

Furthermore, the application of the proposed test for declaration of a specified telecommunications service by the MICA should be transparent including inviting submissions from the relevant licensee and requiring the Minister to publish a decision outlining the reasons for arriving at a decision.

9. **QUESTION 7: MINISTERIAL POWER TO REQUIRE STRUCTURAL OR OPERATIONAL SEPARATION**

9.1. SingTel considers that the powers to require structural or operational separation are unnecessary. In particular, SingTel notes the consultation conducted by the IDA in April 2008 concluded that operational or structural separation was unlikely to be required in the current Singapore context.

9.2. SingTel is of the view that the situation has not changed since that consultation. To the contrary, the level of competition in the telecommunications sector has increased with the deployment and launch of the Next Generation Nationwide Broadband Network (NGNBN).

9.3. The main justification for the use of operational separation (and its implementation in certain countries such as the UK and NZ) is the existence of a single nationwide wireline network, low levels of network based competition and chronic instances of discrimination by the incumbent operator.

9.4. This not the case in Singapore which has three nationwide wireline networks offering telecommunications services, including:

- (i) the SingTel network;

- (ii) the StarHub network; and
- (iii) the NGNBN.

9.5. Additionally, two out of three of these nationwide wireline networks provide for access pursuant to IDA-approved interconnection offers, namely the SingTel network and the NGNBN.

9.6. The MICA has suggested that such a power may be necessary to address the potential for new bottlenecks forming in other parts of the telecommunication service value chain. However, SingTel considers this highly unlikely in light of the levels of competition and access in Singapore.

9.7. However, if the MICA is minded to introduce such a provision, SingTel is of the view that the relevant criteria in relation to both:

- (i) who may be subject to separation; and
- (ii) when to direct such separation,

should be reconsidered.

9.8. Under the newly proposed s69C of the Act, the MICA has proposed that a licensee can only be subject to separation where it:

- (i) either operates a telecommunications system; or
- (ii) has the ability to exercise significant market power (**SMP**);

in a market for a telecommunication service that is required by other telecommunications licensees for the provision of telecommunication services; and

- (iii) it is so costly or difficult for “a competitor” to replicate or provide that requiring “the competitor” to do so would “create a significant barrier” to market entry.

9.9. SingTel is of the view that there must be an existing demonstrated market failure that the separation aims to remedy. The approach to significant barriers to entry must be systematic in nature and not determined on a competitor-by-competitor basis. The test should concern itself with competition, rather than individual competitors. Therefore,

SingTel considers that more appropriate wording for the Act would be “significantly raises barriers”.

9.10. Such an approach is more in line with established market failure tests and ensures consistency and transparency in assessing who should be the subject of separation.

9.11. Additionally, SingTel is of the view that the Minister should have regard to all of the criteria outlined in the proposed s69C(2) of the Act when determining whether to impose separation in the public interest. Imposing separation will have significant ramifications for a licensee such that it is necessary to ensure that one criterion is not the basis of a separation without having regard to, and balancing the competing interests, of all the other factors.

9.12. Furthermore, SingTel is of the view that the criteria in s69C(2) of the Act should also take into consideration:

- (i) Whether the separation promotes incentives to invest: that is, the Minister should take into consideration the effect of the separation such that it ensures that separation does not dampen investment incentives and ultimately have detrimental market effects; and
- (ii) The likely costs of separation: such costs are not limited to the administrative costs associated with separation. SingTel is of the view that it is imperative to take into consideration broader costs including the loss of economies of scale and scope and loss of efficiency more generally which would be caused by separation.

9.13. ***Recommendation: The proposal to provide powers to the Minister to require structural or operational separation should not be introduced.***

However, in the event that the MICA chooses to introduce such provisions:

- (i) ***the wording in s69C(1)(a)(i) and s69C(1)(a)(ii)(B) should be amended to read “significantly raises barriers” instead of “creates barriers”.***
- (ii) ***the Minister should be required to have regard to all of the criteria in s69C(2) when deciding whether to direct separation; and***
- (iii) ***the relevant criteria in s69C(2) should be amended to include:***
 - (a) ***whether the separation promotes incentives to invest; and***



(b) the likely costs of separation.

10. **CONCLUSION**

10.1. SingTel welcomes the opportunity to provide input into the revision of the Act.

10.2. SingTel considers that the MICA should reconsider some of its amendments in light of the suggestions and reasoning put forward by SingTel and welcomes further changes to the Act to address these issues.