

15 July 2011

Info-communications Development Authority of Singapore
10 Pasir Panjang Road
#10-01 Mapletree Business City
Singapore 117438

Attention: Ms Aileen Chia
Deputy Director-General (Telecoms & Post)

Dear Ms Chia

**SINGTEL COMMENTS ON OPENNET'S PROPOSED CO-LOCATION
SUPPLEMENTARY COOLING SERVICE**

1. Singapore Telecommunications Ltd (**SingTel**) is pleased to provide comments on the draft Schedule 12B – Co-Location Supplementary Cooling Service (**Schedule 12B**) proposed by OpenNet Pte Ltd (**OpenNet**) in relation to its Interconnection Offer (**ICO**).
2. In this letter SingTel sets out four sets of concerns about the Schedule 12B in its current form. Those concerns are as follows:
 - (a) Requesting Licensees should not be required to use OpenNet's cooling service (the **Cooling Service**);
 - (b) changes to the terms of the Cooling Service should be subject to public consultation and regulatory approval;
 - (c) the term of the Cooling Service is unduly long, and the Requesting Licensee's termination rights are unclear; and
 - (d) OpenNet should be responsible for its actions and omissions in relation to the Cooling Service.

Requesting Licensees should not be required to use OpenNet's cooling service

3. Clause 1.8 of Schedule 12B states that:

Requesting Licensee[s] shall not bring in their own supplementary cooling system if OpenNet has deployed [a] Co-Location Supplementary Cooling Service pursuant to this Schedule 12B.

4. OpenNet's requirement locks-in/compels all Requesting Licensees to use OpenNet's Cooling Service when other, more efficient and more economically viable, solutions may be open to Requesting Licensees does not comply with the NetCo Interconnection Code 2009.
5. SingTel notes that Section 2.3(c) of Appendix 1 to the NetCo Interconnection Code 2009 states that the ICO shall:

...be modular, allowing a Qualified Person to purchase only those Mandated Services that it wants to obtain;

Similarly, Section 6.3.3.2 of the Telecom Competition Code 2010 requires a Dominant Licensee's RIO to:

(iii) be modular, allowing a Requesting Licensee to purchase only those Interconnection Related Services and Mandated Wholesale Services that it wants to obtain;

6. Consistent with the well established interconnect principle, Requesting Licensees should be given the choice to either acquire OpenNet's Cooling Service, or to install their own cooling solutions. OpenNet should not preclude Requesting Licensees from determining and choosing the best solution for the Requesting Licensee's cooling needs.
7. **[Commercial in confidence]**
8. Clause 1.8 should be deleted in its entirety. In addition, OpenNet should offer its terms and conditions for a Requesting Licensee to install and operate cooling

solutions for its own equipment in the Co-Location Space. Such terms and conditions should be subject to public consultation and the charges should be cost based and on a cost recovery basis.

Public consultation and regulatory approval of changes to terms of service

9. Schedule 12B contains a number of provisions in which OpenNet reserves the right to unilaterally alter the terms and conditions under which it provides the Cooling Service.
10. Clause 6.3 states that a Monthly Recurring Charge and Power Charge set out in Schedule 15 of its ICO *'may be revised if there are no requests or inadequate requests to implement the supplementary cooling system after one (1) year from the date of offer of ICO Schedule 12B'*.
11. In clauses 6.13 and 8.2, OpenNet states that if a cooling system used to provide the Cooling Service reaches its *'End of Life'* (as advised by the manufacturer or due to a technical fault) OpenNet may offer a replacement system or service *'on revised specifications, price, terms and conditions'*. Under clause 8.2, a Requesting Licensee may only accept or reject OpenNet's offer. These provisions allow OpenNet to unilaterally vary the ICO in relation to the Cooling Service. Combined with clause 1.8 (discussed above), Requesting Licensees must either accept such unilateral variation or be left without a cooling service (which is impractical).
12. The initial ICO is offered by OpenNet following public consultation and IDA approval. Any change to the ICO should similarly be subject to the review and modification procedures and provisions pursuant to section 10, 11 and 12 of the NetCo Interconnection Code 2009. Consequently:
 - (a) Clause 6.3 should be amended to state that if there are no requests, or inadequate requests, to implement the Cooling Service after 1 year from the date of offer of ICO Schedule 12B, OpenNet may revise Schedule 12B subject to the Authority's review and approval.
 - (b) Clause 6.3 should also:

- (i) set out what criteria will be used to determine whether there have been '*inadequate requests*' to implement the Cooling Service; and
 - (ii) allow Requesting Licensees to terminate the Cooling Service if they do not agree to the amended proposed revisions offered by OpenNet, without the Requesting Licensee having to pay for the remainder of the term of the Cooling Service licence.
- (c) Clause 8.2 should be amended to state that:
- (i) if OpenNet is aware that cooling systems used to provide the Cooling Service will reach their 'End of Life', it must provide at least 6 months' notice, and otherwise OpenNet must provide as much notice as is reasonably practicable;
 - (ii) OpenNet will, at the time of notice, propose new, additional or replacement system/s and propose any revised specifications, price, terms and conditions;
 - (iii) OpenNet will consult affected Requesting Licensees to obtain comments regarding its proposals;
 - (iv) OpenNet will amend its proposals in response to comments provided by the affected Requesting Licensees;
 - (v) OpenNet will submit its amended proposals to the IDA for approval; and
 - (vi) OpenNet will provide Requesting Licensees with an offer for an amended Cooling Service based on the terms and conditions (including the systems, specifications and price) approved by the IDA.

Term and termination rights

13. Clause 8.1 states that the Cooling Service under Schedule 12B is provided for an eight year term. This is too long and should be shortened to two years, to be commensurate with the minimum term for Co-Location Services under Schedule 12 of the ICO, since the Cooling Service will no longer be required when the licence for Co-location Services is terminated.
14. Clause 10.2 sets out extensive rights for OpenNet to terminate the Cooling Service. Apart from clause 10.5, which requires one month's notice, Requesting Licensees have no such rights. Requesting Licensees cannot even terminate the Cooling Service if OpenNet acts in a grossly negligent manner or breaches the ICO Agreement. A new clause should be inserted before clause 10.5 which allows a Requesting Licensee to immediately terminate the Cooling Service if:
- (a) OpenNet acts negligently;
 - (b) OpenNet breaches the terms of the ICO;
 - (c) OpenNet provides the Cooling Service in contravention of an applicable law, licence, code, regulation or direction;
 - (d) the Cooling Service has become unsafe for its purpose;
 - (e) a Central Office has become unfit for its purpose; or
 - (f) the Requesting Licensee's public telecommunications licence, or its right to use equipment for which the Cooling Service is provided, has been revoked, terminated or expired.
15. Clause 10.6(b) should be amended to state:

OpenNet shall reinstate the Co-Location Space and recover/reinstate all cables/supports/opening. Other than in circumstances where the Requesting Licensee's discontinuation of the use of the Co-Location Equipment is a direct result of OpenNet's decommissioning of the Central Office under this Schedule 12, or where the termination occurs as a result of OpenNet's fault, OpenNet shall and recover the cost of such reinstatement from the Requesting Licensee. OpenNet shall notify the

Requesting Licensee of the costs payable by the Requesting Licensee prior to OpenNet's reinstatement of the Co-Location Space. The Requesting Licensee shall pay to OpenNet such costs notified to it by OpenNet. For the avoidance of doubt, OpenNet does not require the Requesting Licensee's approval of the costs, and may proceed to reinstate the Co-Location Space once it notifies the Requesting Licensee of the costs payable by the Requesting Licensee, ~~other than in circumstances where the Requesting Licensee's discontinuation of the use of the Co-Location Equipment is a direct result of OpenNet's decommissioning of the Central Office under this Schedule 12, or where the termination occurs as a result of OpenNet's fault; and~~

OpenNet should be responsible for its actions and omissions

16. Several provisions in Schedule 12B exempt OpenNet from responsibility for its own acts and omissions. These provisions are inequitable and provide no incentive for OpenNet to exercise due care in the provision of the Cooling Service.
17. Under clause 6.9(d) the Requesting Licensee is responsible for providing adequate working space around equipment used for the Cooling Service. However, under clause 3.8, OpenNet has sole discretion for the placement of cooling equipment. Consequently the Requesting Licensee may not be able to control the space around cooling equipment and should not be responsible for doing so. Clause 6.9(d) should be deleted.
18. Clause 7.6 states:

OpenNet accepts no liability whatsoever for any loss or damage caused by the fault to the supplementary cooling system or any property of Requesting Licensee or any third party howsoever caused or arising.

Clause 4 of Annex 12D and clause 4 of Annex 12E contain similar provisions.

19. Under these provisions, if OpenNet incorrectly installs, or fails to maintain, cooling equipment and the Requesting Licensee's equipment is damaged as a

- result of that installation or maintenance, OpenNet bears no responsibility. This is unacceptable given OpenNet's proposal that Requesting Licensees must procure the Cooling Service from OpenNet under this Schedule 12B and cannot substitute their own cooling solution, even if unsatisfied with the terms of Schedule 12B.
20. These provisions should be amended to be subject to "*other than to the extent that it is the result of a grossly negligent, wilful or reckless breach of this ICO Agreement by OpenNet.*"
 21. In summary, SingTel's primary concern is that a Requesting Licensee should be allowed to procure, install and operate its own cooling solutions to ensure that such solutions are the most efficient solutions for a Requesting Licensee's commercial and technical needs. SingTel submits that the IDA should direct OpenNet to ensure that Requesting Licensees retain the right to select the most efficient solutions for cooling their own equipment and that if OpenNet supplies a Cooling Service, it does so under reasonable, fair and equitable terms by adopting the amendments proposed in this submission.
 22. Please do not hesitate to contact us if you have any queries or require further clarification.

Yours sincerely

Sean Slattery
Vice President
Regulatory & Interconnect Strategy