



**EXPLANATORY MEMORANDUM ON THE DECISION OF THE INFO-COMMUNICATIONS DEVELOPMENT AUTHORITY OF SINGAPORE  
IN RELATION TO THE PROPOSED CHANGE IN OWNERSHIP IN  
ASIA NETCOM SINGAPORE PTE LTD**

**5 SEPTEMBER 2006**

**PART I : BACKGROUND**

**PART II : IDA'S ASSESSMENT**

**PART III : IDA'S DECISION**

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**PART I: BACKGROUND**

- 1 Asia Netcom Singapore Pte Ltd ("**ANC**") is a Facilities-Based Operator ("**FBO**") which provides the following key telecommunication services in Singapore:
- (a) backhaul – to its own cable landing station in Changi;
  - (b) terrestrial International Private Leased Circuit ("**IPLC**"); and
  - (c) sale of submarine cable capacity.

ANC also owns a submarine cable system known as East Asia Crossing ("**EAC**"), serving the Asia Pacific region eastwards of Singapore.

- 2 In June 2006, China Netcom Corporation International Ltd ("**China Netcom**"), the ultimate parent company of ANC, entered into a Share Purchase Agreement with the private investment funds – Ashmore Investment Funds ("**Ashmore**"), Spinnaker Investment Funds ("**Spinnaker**") and Clearwater Undersea Cable Investments, L.P. ("**Clearwater**") to sell to the latter its entire Ownership Interests in its wholly-owned subsidiary – Asia Netcom Corporation Ltd ("**ANCL**"), which indirectly owns 100% of ANC. An investment holding company, Connect Holdings Ltd ("**CHL**"), was set up by these private investment funds to hold all Ownership Interests of ANCL. The transaction would result in CHL holding 100% Indirect Ownership Interests in ANC.
- 3 On 12 July 2006, CHL, Ashmore and Spinnaker (collectively referred to herein as the "**Acquiring Parties**"), and ANC jointly submitted a Long Form Consolidation Application ("**Consolidation Application**") to IDA for approval<sup>1</sup>. The Acquiring Parties and ANC are collectively referred to herein as the "**Applicants**". The Consolidation Application concerned an acquisition of an Indirect Ownership Interest of more than 30 percent in ANC by each of the Acquiring Parties (the "**Consolidation**")<sup>2</sup>.

**PART II: IDA'S ASSESSMENT**

- 4 IDA's primary objective in any Consolidation Review is to assess if the proposed Consolidation is likely to substantially lessen competition in any

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<sup>1</sup> Clearwater would have a less than 12% Indirect Ownership Interest in ANC, and hence does not need to seek IDA's approval.

<sup>2</sup> Unless otherwise defined, all capitalised terms used in this Explanatory Memorandum shall have the same meaning ascribed to them in the Telecom Competition Code or the Telecom Consolidation Guidelines.

Singapore telecommunication market or harm public interest. Where the Consolidation does not raise any competition concerns, IDA will generally allow the consummation of the Consolidation without Conditions. Where competition concerns exist which can be addressed through the imposition of structural or behavioural Conditions, IDA will generally allow the consummation of the Consolidation subject to Conditions. Otherwise, IDA may prevent the consummation of a Consolidation.

- 5 The Applicants were of the view that the proposed Consolidation would not substantially lessen competition in any telecommunication market in Singapore. Rather, the Applicants believed that the proposed Consolidation would increase the competitiveness of the overall Singapore telecommunication market by ensuring the continuity of a viable competitor through the Consolidation.
- 6 The Consolidation is primarily a Horizontal Consolidation. The Acquiring Parties (Ashmore and Spinnaker) already own C2C Singapore Pte Ltd ("**C2C Singapore**"), which competes with ANC in the backhaul, IPLC and submarine cable capacity markets. ANC owns a submarine cable system – EAC – which serves the Asia Pacific region east of Singapore. C2C Singapore's submarine cable system - C2C - serves the same region.
- 7 In reviewing the Consolidation, IDA had also carefully considered if there is potential for the Post-Consolidation Entity (comprising the Acquiring Parties, ANC and C2C Singapore) to restrict access to "upstream" inputs or "downstream" facilities necessary to provide or deliver a telecommunication service to End Users in Singapore, thereby creating market foreclosure concerns. IDA also interviewed and sought the views of major industry players who are either competitors or customers of ANC. The operators were concerned about a common ownership in two (i.e., EAC and C2C) of the three major cables (the third one being APCN2) to the Asia Pacific region, which the operators are dependent on for cable diversity purposes. IDA had considered carefully the views of these players in its assessment.
- 8 As regards the market for submarine cable capacity, and based on the data provided by the Applicants and C2C Singapore, IDA estimated that the Post-Consolidation Entity would have a combined market share of above 40% of the lit submarine cable capacity from Singapore to the Asia-Pacific region. IDA was aware that most operators would rely on all three submarine cable systems to ensure diversity and for redundancy purposes. Given the common ownership issue, IDA was concerned with the Post-Consolidation Entity's ability to restrict competition in Singapore by reducing the ability of other operators to obtain capacity on EAC and/or C2C cable systems.
- 9 As regards the backhaul market, IDA assessed that the effect of the proposed Consolidation on the backhaul market is not sufficiently serious to warrant the imposition of Conditions. However, IDA noted that ANC's existing restrictions on access to its cable landing station prevent other operators (including operators who have purchased Indefeasible Rights of Use or "**IRUs**", or who have leased long term capacity in EAC) from building backhaul from the cable landing station. IDA recognised that backhaul and access to cable landing

stations are essential for operators to access the international capacity in the submarine cables. Should the need arise, IDA will separately examine this issue to determine whether reasonable access to ANC's cable landing station should be required to enhance competition.

- 10 As regards the terrestrial IPLC market, there are numerous providers in the market and competition has been growing<sup>3</sup>. IDA assessed that the effect of the proposed Consolidation on the terrestrial IPLC market does not warrant the imposition of Conditions.

### **PART III: IDA'S DECISION**

- 11 Based on the above assessment, IDA concluded that the above concerns were not sufficiently serious to warrant a denial of the Consolidation Application. However, the potential competition concerns relating to common ownerships in two of the three major cables serving the Singapore to Asia-Pacific route have to be addressed by imposing a Condition to allow non-discriminatory access to capacity in EAC and C2C by interested operators. This Condition would help mitigate potential impact on competition in the sale of submarine cable capacity and other downstream markets until new cable systems come on board. With the Condition in place to mitigate the competition concerns, the proposed Consolidation is likely to be pro-competitive as it would benefit the telecommunication markets in Singapore through the creation of a stronger competitor.

- 12 Given the above, IDA decided to impose the following Condition on the Applicants:

*"The Applicants shall ensure that ANC and C2C Singapore must allow similarly-situated licensed operators in Singapore to acquire and access capacity on their respective submarine cable systems (i.e., EAC and C2C), whether via acquisition of Indefeasible Rights of Use ("IRUs") or long or short term leases, on a non-discriminatory basis. This Condition shall be reviewed by IDA 2 years from the date hereof to determine whether it is still relevant and necessary in order to address competition concerns in the market for submarine cable capacity. For the avoidance of doubt, this Condition does not require ANC or C2C Singapore to make IRUs or long/short term leases available if it has decided not to sell or lease capacity to any operator."*

- 13 IDA issued its Decision on the Consolidation Application to the Applicants on 8 August 2006, granting approval for the Consolidation Application subject to the Applicants' acceptance of the Condition above. On 22 August 2006, IDA received notification from the Applicants indicating their acceptance of the Condition.

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<sup>3</sup> Please refer to IDA's 12 April 2005 decision on SingTel's exemption request for services in the International Capacity Services market.