ASIA PACIFIC CARRIERS' COALITION

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September 23, 2008

Mr. Andrew Haire
Deputy Director-General (Telecoms)
Infocommunications Development Authority of Singapore
8 Temasek Boulevard
#14-00 Suntec Tower Three
Singapore 038988

BY FAX & EMAIL
Fax No. 6211 2116

Dear Mr. Haire

Re: Response to IDA's Preliminary Decision on the Request by Singapore Telecommunications Limited For Exemption from Dominant Licensee Obligations with respect to the Business and Government Customer Segment and Individual Markets" (issued August 26, 2008)

We refer to the above Consultation Paper.

Please find enclosed the Asia Pacific Carriers' Coalition's response to the Consultation Paper on "IDA's Preliminary Decision on the Request by Singapore Telecommunications Limited For Exemption from Dominant Licensee Obligations with respect to the Business and Government Customer Segment and Individual Markets".

Should IDA wish to discuss any of these matters in greater detail please feel free to contact us at the address above or through president@asiapacificcarriers.org or secretary@asiapacificcarriers.org.

Yours faithfully

Dieter Sieber
President, Asia Pacific Carriers' Coalition
Enc.

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Submission by the Asia Pacific Carriers' Coalition

Response to IDA's Preliminary Decision on SingTel's Request for Exemption from Dominant Licensee Obligations

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STATEMENT OF INTEREST

This submission is provided by the Asia Pacific Carriers' Coalition ("**APCC**") in response to the 26 August 2008 invitation of the InfoComm Development Authority of Singapore ("**IDA**") to comment on its "Preliminary Decision on the Request by Singapore Telecommunications Limited for Exemption from Dominant Licensee Obligations with respect to the Business and Government Customer Segment and Individual Markets" ("**Preliminary Decision**").

The APCC is an industry association of global and regional carriers operating in Asia Pacific, formed to work with Governments, National Regulatory Authorities and Consumers to promote open market policies and best practice regulatory frameworks throughout the Asia Pacific region that will support competition and encourage new and efficient investment in telecommunications markets.

APCC submissions reflect the consensus of opinion among at least a majority of its members. Therefore none of the views expressed in this submission should be attributed to any individual member of the APCC.

1. SUMMARY OF MAJOR POINTS

1.1 The APCC is generally in agreement with most of the IDA's preliminary conclusions and supports the IDA in its preliminary decision that it should decline to grant SingTel's proposed Customer Segment Request.

1.2 The APCC is concerned that the IDA's Preliminary Decision does not adequately disclose the basis on which the IDA proposes to make its determination. Specifically, the Preliminary Decision describes the IDA's reasoning in qualitative terms but discloses *none of the quantitative data* provided by either SingTel or the numerous respondents to the IDA's "Provision of Information" requests. Nor does the Preliminary Decision set out any of the quantitative analysis carried out by the IDA and its external consultants.

1.3 In order that the operators, their customers and the public at large can have confidence in the IDA's decision-making process and the decisions it reaches, it is imperative that both the quantitative data and the analysis of that data must be

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exposed to comment, the APCC respectfully submits. Operators' legitimate confidentiality interests can be protected by various means, including disclosure of aggregated quantities only and by publication of analysis with particular figures redacted.

1.4 The APCC is also concerned that the Preliminary Decision might incorrectly analyze the role of "self-provided backhaul" in the market for backhaul service in Singapore and may consequently fall into error in proposing to conclude that "...the market for Backhaul is now competitive."[1] Because the IDA has withheld all quantitative data from the Preliminary Decision, it is not possible for the APCC, or anyone else, to form a meaningful view as to the validity or otherwise of the finding that SingTel's share of the Backhaul market has "fallen below 40 percent".

2. LACK OF TRANSPARENCY OF ANALYSIS

2.1 The APCC is deeply concerned that the Preliminary Decision, though appearing on the surface to be correct for the most part (except in relation to Backhaul), does not set out the evidentiary and analytic foundation that would conventionally be expected in a decision of this significance.

2.2 In the absence of any transparency as to the data relied on and the methods by which it was handled, interested parties necessarily are unable to understand how key conclusions were reached and therefore are unable to form a meaningful view as to the correctness or otherwise of those conclusions. Nor can any party contribute constructively regarding means by which the analysis might be refined or improved.

2.3 Specifically, the APCC submits that interested parties should have the opportunity to review for themselves, and to comment on, the following kinds of information:

- the data-gathering processes undertaken, including:
  - the survey methods used to obtain market information;
  - the data extracted by the IDA from routine carrier filings;

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1 IDA Preliminary Decision, paragraph 62.

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- market statistics and other quantitative data relied on by IDA (aggregated to protect confidentiality);
- the sensitivity analysis and other methods applied to ensure reliability of the data;
- the methods of calculation employed to determine market shares and to reach other material conclusions; and
- the analytic methods and reasoning applied (e.g. how "self-provided backhaul" and "third party backhaul" capacity figures were factored into market analysis).

2.4 The IDA observes that "Because they are direct competitors of SingTel, the commentors are capable of providing their own independent assessment of the market." There are two substantial constraints on competitors' ability to provide "independent assessments" of the market. First, each competitor only knows what it buys and sells; it does not know the extent of the market as a whole. Only the IDA has information about the market as a whole. That is why the IDA must disclose that information and subject it to the discipline of public scrutiny. Secondly, due to its unique position as the sole dominant operator in Singapore, SingTel enjoys significant information asymmetries in its favour. Apart from being a persisting source of competitive advantage for SingTel, as a dominant operator, it means that the other operators have less information than SingTel to contribute to regulatory decision-making.

2.5 That one operator was able to provide some market data is commendable but that fact does not validate the IDA's process. As matters stand, the IDA has apparently based its decision on evidence which has not been subject to any consultative scrutiny to test its veracity. The operators can usefully assist the IDA to identify gaps and inaccuracies in both data and analysis, but only if those data and that analysis are disclosed in the course of consultation, as regulatory best practice requires.

2.6 The APCC does not, with respect, accept that the IDA has in fact used the consultative process which commentators have urged it to adopt. Merely exposing

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the "First Public Consultation" paper and the current Preliminary Decision to comment does not constitute adequate consultation, when those papers fail to set out the data and methodology that should properly be the subject of consultation.

3. ANALYSIS OF THE BACKHAUL MARKET

3.1 The APCC supports the IDA in its concern "...about SingTel's ability to leverage its dominance in the LLC market to adversely affect competition in the Backhaul market."[2] SingTel's continuing dominance in the bulk of the fixed network assets within Singapore, particularly the access network, continues to hamper Singapore achieving fully competitive markets for telecommunications services. The IDA must be vigilant, the APCC submits, to guard against all opportunities for SingTel to leverage that advantage into other markets, to the detriment of competition and consumers.

3.2 In relation to SingTel's dominance in the LLC market, it is important to note that competition in the Backhaul market is impeded where there is no competitive alternative for carriers but to purchase from SingTel the local loop from the POP to each customer's premises which is not subject to RIO (unless the customer happens to be collocated at the POP or the customer or FBO is collocated at SingTel's LEX). SingTel is able to exploit this situation to achieve significant competitive advantage. For example, in the case of an IPLC to be provided to a customer who is not collocated at the carrier's POP or SingTel's LEX and where the FBO is not collocated at SingTel's LEX, the circuit must include a local loop to the customer's premises, which local loop can be self-provided by SingTel at a "zero rated" price (i.e. for free) but which must be purchased from SingTel by other operators at an additional cost which is unregulated. The consequences of this are that SingTel has the ability to effect a margin squeeze and that IPLC competition is localized only where FBOs and their customers share collocation at the same data centres or where FBOs are collocated at SingTel's LEX.

3.3 The IDA recognizes in its Preliminary Decision that this is a danger, stating that it "remains concerned about SingTel's ability to leverage its dominance in the LLC market to adversely affect competition in the backhaul market." The IDA

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2 IDA Preliminary Decision, paragraph 66.

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concludes from this that it is necessary to retain the ex-post regulation under section of the 8.2 of the Competition Code. To prove an abuse of dominant position under section 8 of the Competition Code is, in reality, notoriously difficult. The APCC therefore submits that Section 8 provides, by itself, inadequate protection against SingTel's ability to abuse its market power. It would therefore be inappropriate to remove the Section 4 *ex-ante* obligations on backhaul in the current environment.

3.4 The IDA's definition of a "backhaul market" dates to the "ICS Decision" of 12 April 2005, in which the IDA stated: "The Backhaul market includes both self-provided backhaul (i.e. the provision of backhaul, by a Licensee, to itself) and third-party backhaul (i.e. the provision of wholesale backhaul, by a Licensee, to another Licensee.)"[3] In its Preliminary Decision, the IDA states that it "...sees no reason to depart from" its conclusions as to the existence of a national wholesale market for self-provided and third-party backhaul service.

3.5 While the APCC agrees with the definition of a national wholesale market for backhaul service, which includes self-provided backhaul, we are deeply concerned that the extent of competition within this market may have been seriously over-estimated, perhaps because the effect of self-provision of backhaul has been incorrectly analysed. The Preliminary Decision states that: "The evidence gathered in this proceeding demonstrates that the market for Backhaul is now competitive."[4] The Preliminary Decision also reports that "SingTel's market share (based on capacity) has fallen below 40 percent."[5] The evidence on which these conclusions are based is undisclosed.

3.6 While the APCC believes that SingTel faces some degree of competition in the wholesale Backhaul market, we find it difficult to accept, in the absence of quantitative evidence, that 60 percent of Backhaul capacity in Singapore is provided by FBOs other than SingTel. We are therefore very much concerned that some form of error may have intruded on the analysis, such as:

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3 IDA Explanatory Memorandum on the ICS Decision, paragraph 49.
4 IDA Preliminary Decision, paragraph 62.
5 IDA Preliminary Decision, paragraph 63.

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- misunderstanding by operators of the IDA's questions and consequent inconsistency in their responses;
- double-counting of capacities; or
- incorrect analytic treatment of self-provided capacity.

3.7 Although the concept of 'backhaul' is superficially a simple one (e.g. "capacity from a cable landing station in Singapore to the Licensee's international gateway or point-of-presence (POP) in Singapore"), there are in fact a large number of variables involved in its measurement. The amount of backhaul capacity in use cannot be read directly off a piece of network equipment or a contract, but has normally to be extracted from billing system data which necessarily records sales of diverse kinds of products, by different companies in each carrier's group, in different countries. There is significant risk that respondents may have construed the IDA's questions differently, applied different parameters in calculating backhaul capacities and hence provided inconsistent information. The APCC hopes this is not the case but notes that the Preliminary Decision does not include sufficient information to allow this possibility to be ruled out.

3.8 Similarly, it is not possible to determine from the Preliminary Decision just how the "self-provided backhaul" information gathered from operators by the IDA has been interpreted and used. It seems possible, though it is not explicit from the Preliminary Decision, that "self-provided backhaul" might perhaps have been counted as directly competitive with "third-party backhaul" sold to FBOs. Such an analysis would be consistent with the proposition stated in the IDA's April 2005 decision that self-provided backhaul and third-party backhaul "...are in the same market because self-providing backhaul is a substitute for purchasing backhaul from another carrier".[6] The difficulty is that for most carriers self-provided backhaul *is* purchased from another carrier, usually SingTel. That is, SingTel "self-provides" backhaul by diverting it away from sale to other FBOs to use for its own services, such as IPLC, whereas other carriers usually have to purchase the very backhaul which they self-provide as an input to their IPLC and other services.

6 IDA Explanatory Memorandum on the ICS Decision, paragraph 50.

3.9 Backhaul purchased by operators other than SingTel is predominantly used by them as an input to production of end-to-end services that are offered in other markets (e.g. in the Terrestrial IPLC market) and only a fraction of it is re-supplied in the Backhaul market. That is, operators who self-provide backhaul participate *on the demand side* of the Backhaul market only: their "self-provided backhaul" does not enhance competition in the Backhaul market, which is dominated by SingTel. The APCC hopes and expects that the IDA has not fallen into the error of conflating the two different sides of the market, but is concerned that the text of the Preliminary Decision does not rule that out.

4. CONCLUSIONS

4.1 In light of the concerns outlined above, the APCC submits that it is highly desirable in all parties' interests, and the public interest in sound and transparent regulatory processes, that the IDA release a Further Preliminary Decision that sets out:

- the data-gathering processes undertaken, including:
    - the survey methods used to obtain market information;
    - the data obtained by IDA pursuant to routine filings;

- market statistics and other the quantitative data relied on by IDA (aggregated to protect confidentiality);

- the sensitivity analysis and other methods applied to ensure reliability of the data;

- the methods of calculation employed to determine market shares and to reach other material conclusions; and

- the analytic methods and reasoning applied (e.g. how "self-provided backhaul" and "third party backhaul" capacity figures were factored into market analysis).

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4.2 The disclosure of the above information should enable the public generally, and interested parties in particular, to have confidence in the correctness of these important determinations.

ASIA PACIFIC CARRIERS' COALITION
Singapore, 23 September 2008