



# Review of SingTel's Reference Interconnection Offer (RIO)

*Submission by Telstra Singapore Pte Limited to the  
Info-communications Development Authority of Singapore*

5 May 2005

Contact Details: Allan R. Griffin  
Telstra Singapore Pte. Ltd.  
23 Church Street, #11-03  
Capital Square  
SINGAPORE 049481  
Tel: (65) 6438 7911  
Fax: (65) 6438 7912  
[allan.r.griffin@team.telstra.com](mailto:allan.r.griffin@team.telstra.com)

## EXECUTIVE SUMMARY

Telstra welcomes the current review by the Info-communications Development Authority of Singapore ("IDA") of the Reference Interconnection Offer ("RIO") promulgated by Singapore Telecommunications Ltd ("SingTel").

The RIO is one of the most important *ex ante* regulatory instruments in the Singapore telecommunications regulatory framework. An effective RIO is critical to the development of effective and sustainable competition in telecommunications markets. By governing the terms of interconnection and wholesale supply, the terms and conditions of the RIO are determinative of the intensity and effectiveness of downstream retail competition.

### General comments

Telstra supports the directions given by IDA to SingTel dated 21 February 2005 and believes they reflect an important positive step by IDA to address industry concerns. However, Telstra has three key reservations with the current review:

- First, it is unclear whether IDA's directions of 21 February 2005 were intended to reflect the outcome of IDA's review of the RIO in July 2003. Telstra had understood that the previous review had been postponed and would be subsumed into the current review. Telstra therefore requests that IDA take into consideration the July 2003 submissions as part of this review.
- Second, SingTel appears to have made a series of unilateral amendments that favour itself; and has again incorporated amendments first proposed by SingTel in its July 2003 submission notwithstanding that these were not mentioned within IDA's directions.
- Third, Telstra notes that under Article 12.5.5(b) of the Code SingTel is only permitted to "*submit to IDA for approval the proposed modifications to the RIO to conform to the requirements of this Code*". RIO amendments proposed by SingTel which have no Code-conformance basis do not comply with Article 12.5.5(b) and Telstra questions the basis upon which they are being considered by IDA. If Article 12.5.5(b) is to be given effect then either amendments that have no Code-conformance basis should be disregarded or SingTel should resubmit a RIO that complies with the Article.

### Specific comments

Telstra has confined its specific comments to the 10 most important issues that Telstra has identified with the SingTel RIO:

1. Pricing transparency: Telstra welcomes IDA's decision to require publication of pricing. However, consistent with international best practice, IDA should ensure that its review of SingTel's pricing is similarly transparent and subject to full industry consultation and international benchmarking.
2. Cost shifting: SingTel has proposed a range of amendments to the RIO which seek to shift costs onto other Licensees, thereby reducing SingTel costs while artificially inflating the costs of its competitors. All such cost-shifting should be rejected.

3. Discretion: SingTel has expanded its significant residual discretions, providing greater scope for it to exercise those discretions to delay, impede and deny service to Licensees. All residual SingTel discretion should be carefully circumscribed.
4. Service Level Guarantees: SingTel was expressly directed by IDA to improve its SLGs "*to the extent they can be reasonably improved*", including "*better service quality, better standards, shorter timeframes and/or more appropriate levels of compensation and remedies*". Telstra believes this has not occurred. Service level guarantees should be enforceable, otherwise they are rendered meaningless.
5. Non-discrimination: SingTel should be subject to stricter and more meaningful non-discrimination obligations that can be easily applied and enforced. SingTel's provisioning timeframes should be subjected to strict non-discrimination obligations, to prevent SingTel providing more favourable timeframes to its own retail operations.
6. Provisioning: SingTel was expressly directed by IDA to "*streamline all ordering and provisioning processes*". Telstra believes this has not yet properly occurred.
7. Term: SingTel's continued use of an expiry date of 28 September 2006 may raise issues. The RIO should remain in place for as long as required by the Code or until terminated by the Licensee by giving notice to SingTel. Similarly, SingTel's procedure for an "interim RIO" could be better documented in the SingTel RIO, requiring a Licensee to have specific contractual rights of termination by notice.
8. Reciprocity: Telstra is opposed to the RIO having reciprocal application as this is inconsistent with international practice and the terms of the Code. However, if the RIO does have limited reciprocal application, it is important that all clauses in the RIO have reciprocal application as SingTel may be the acquirer (e.g., SingTel, as acquirer, should be required to pay charges, provide insurance and provide security).
9. Insurance and security: SingTel's RIO should contain more reasonable insurance and security requirements that are less likely to artificially increase the cost of market entry. Telstra queries whether SingTel has not gone far enough to address IDA's express direction that "*the amount of insurance... must be proportionate to SingTel's risk exposure*".
10. Enforcement: Dominant Licensees are incentivised to retain their market power in downstream markets. IDA should remain vigilant and willing to intervene to promote competition and protect the interests of Singapore consumers.

Telstra has also identified several instances where the drafting of the SingTel RIO is ambiguous and has suggested amendments to increase certainty and reduce the scope for ambiguity in SingTel's favour.

Telstra would be glad to discuss this submission with IDA, or provide further information, as necessary.

Telstra Singapore Pte Ltd

5 May 2005

# 1 GENERAL COMMENTS

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## 1.1 Statement of Interest

Telstra Singapore Pte. Ltd (“Telstra”) holds an Individual Services-Based Operator (SBO) Licence No 64387911.

Telstra Singapore Pte. Ltd. is wholly owned by Telstra Holdings Pty Limited, and is ultimately wholly owned by Telstra Corporation Limited, Australia’s leading telecommunications and information services company.

In preparing this submission, Telstra Singapore Pte Ltd has drawn upon the regulatory experience of its parent company, Telstra Corporation Limited, which has operations in Australia, New Zealand, the Asia-Pacific region, and Europe, and has extensive interaction with regulators in those jurisdictions.

Telstra has not yet executed a SingTel RIO, but may do so in the future as telecommunications regulation in Singapore becomes more conducive to further investment. As Telstra has not yet executed a SingTel RIO, Telstra is reliant on the submissions of other market entrants to identify specific issues with the RIO that have arisen in practice. IDA should therefore view this submission by Telstra as supportive of the submissions made by other market entrants in relation to the particular concerns identified in relation to the practical operation of the RIO. In several instances, Telstra has cross-referenced key submissions from Licensees in the July 2003 review

## 1.2 General comments

Telstra welcomes the current review by IDA of the SingTel RIO.

The RIO is one of the most important *ex ante* regulatory instruments in the Singapore telecommunications regulatory framework. The Code and the RIO recognise that SingTel, as a Dominant Licensee, lacks the economic and commercial incentives necessary to enter voluntarily into interconnection agreements in a timely manner. Accordingly, the RIO gives effect to the internationally-endorsed principle of asymmetric telecommunications regulation.

As recognised by the Singapore Government’s obligations under the WTO Regulatory Reference Paper, an effective RIO is critical to the development of effective and sustainable competition in Singapore’s telecommunications markets. By governing the terms of interconnection and wholesale supply, the terms and conditions of the RIO are determinative of, and have a direct causal impact upon, the intensity and effectiveness of downstream retail competition.

As IDA commented in its 2003 consultation paper, the RIO is intended to promote effective, efficient and timely network interconnection and the supply of critical wholesale services. The RIO is intended to ensure that SingTel will supply interconnection-related services and wholesale services on reasonable terms and conditions, and with reasonable pricing, to Licensees. By doing so, those Licensees will be in a position to effectively compete with SingTel in downstream retail markets, promoting economic efficiency, stimulating investment and benefiting Singapore consumers. In turn, this will increase Singapore’s attractiveness as a regional business centre and will increase Singapore’s international competitiveness.

Telstra also agrees with the earlier submissions made to IDA in July 2003 that it is critically important to the continued evolution of competition in Singapore's telecommunications markets that IDA takes every opportunity to refine the RIO in light of industry experience. Similarly, IDA should intervene decisively in any interconnection and wholesale services disputes to protect and promote the interests of market entrants, such as Telstra, against SingTel as the dominant incumbent.

Telstra agrees with the view that the RIO should be viewed as a document which evolves, under IDA's close oversight, to address and resolve particular concerns with SingTel's conduct in relation to network interconnection and the supply of wholesale services.

## **2 RESERVATIONS REGARDING THE CURRENT REVIEW**

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Telstra is highly supportive of the directions given by IDA to SingTel dated 21 February 2005 and believes they reflect an important positive step by IDA to refine the RIO to address industry concerns. However, Telstra has three key reservations regarding the current review.

### **2.1 The July 2003 submissions need to be considered**

First, it is unclear whether IDA's directions of 21 February 2005 were intended to reflect the outcome of IDA's review of the SingTel RIO in July 2003. As such, Telstra is unclear whether IDA has already given consideration to the detailed submissions made by Licensees in July 2003 - or whether IDA intends to take these previous submissions into consideration as part of the current review.

IDA does not appear to have mentioned the July 2003 submissions in its Consultation Paper, so Telstra is not clear of the status of the previous review.

Telstra had understood that the previous review had been postponed and thus would be subsumed into the current review. IDA also expressly stated in its formal "Notice on the Review of SingTel's Interconnection Offer" that:

*"Having carefully considered these comments, IDA believes it will better serve the industry's interest if the current review of SingTel's RIO is completed after IDA concludes the first triennial review of the Code."*

Telstra therefore requests that IDA take into consideration the previous July 2003 submissions as part of this 2005 review.

## 2.2 SingTel has made self-serving amendments

Second, Telstra is concerned about the limited effect given to the spirit and intent of IDA's directions of 21 February 2005, with SingTel appearing to adopt a minimalist interpretation of IDA's directions. Particularly, SingTel has proposed a series of unilateral RIO amendments that are favourable to itself at the expense of other Licensees.

SingTel also appears to have submitted a RIO that incorporates amendments that SingTel had proposed for IDA's consideration in SingTel's earlier submission to the July 2003 review, notwithstanding that these were not mentioned within IDA's directions of 21 February 2005 or otherwise authorised or endorsed by IDA.

## 2.3 The effect of Article 12.5.5(b) of the Code

Third, Telstra notes that under Article 12.5.5(b) of the Code SingTel is only permitted to "*submit to IDA for approval the proposed modifications to the RIO to conform to the requirements of this Code*". RIO amendments proposed by SingTel which have no Code-conformance basis do not comply with Article 12.5.5(b) and Telstra questions the basis upon which they are being considered by IDA. If Article 12.5.5(b) is to be given effect then either amendments that have no Code-conformance basis should be disregarded or SingTel should resubmit a RIO that complies with the Article.

# 3 PRICING TRANSPARENCY

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Telstra welcomes IDA's decision to promote increased transparency of interconnection and wholesale pricing. Telstra believes this is a very positive development and congratulates IDA in relation to this issue.

As IDA will be aware, insufficient transparency of pricing had previously attracted significant international criticism. The publication of RIO pricing goes a long way towards addressing such criticism. International investors will receive a clear message that IDA and the Singapore Government are serious about introducing sustainable competition into the Singapore's telecommunications markets with a view to reducing costs for consumers and businesses located in Singapore.

## 3.1 Price review should be transparent

However, consistent with international best practice, Telstra recommends that IDA ensure that its review of SingTel's pricing is similarly transparent and subject to full industry consultation and international benchmarking:

- As well as RIO charges being made publicly available, SingTel should identify the manner in which those charges were derived with regard to the mandatory pricing methodology set out in the Code.
- IDA should also provide greater detail, by way of public guidelines, in relation to the manner in which it intends to apply the mandatory pricing methodology set out in the Code. IDA could easily develop guidelines based on other precedent guidelines used by other telecommunications regulators around the world.

In this manner, Licensees will have a proper opportunity to make informed submissions to IDA on the appropriate level of the RIO charges. IDA will be able to use those industry submissions as a means to independently verify the accuracy of costing information provided by SingTel. In turn, this will increase the accuracy of IDA's regulatory decisions while increasing regulatory efficiency and reducing IDA's assessment costs, allowing IDA to achieve its objectives in a less burdensome manner.

Telstra also notes that it should be relatively straightforward to address concerns regarding confidentiality in relation to pricing reviews. In other jurisdictions, industry consultation is frequently undertaken in relation to non-confidential aspects of interconnection pricing, such as underlying modelling assumptions (e.g., appropriate Weighted Average Cost of Capital), cost ranges (e.g., benchmarked equipment prices), treatment of costs (e.g., allocation of common costs), and aspects of calculation methodologies (e.g., depreciation profiles). To the extent aspects of pricing are confidential, such confidential aspects may be subject to review and input by independent external advisors, funded by Licensees, subject to strict confidentiality undertakings. Analysis of particularly difficult issues may also be outsourced by the regulator to independent expert consultants on a confidential basis.

### 3.2 Current RIO pricing appears to unduly favour SingTel

Based on Telstra's experience, telecommunications costing issues are extremely complex and subject to a range of important assumptions that may have a very significant impact on the end result. The Australian Competition and Consumer Commission ("ACCC") has often taken many months to verify the accuracy of Telstra's interconnect and wholesale pricing, including in light of detailed submissions by competitors such as SingTel Optus.

Telstra is concerned that IDA has not received a balanced view from the industry on the complex assumptions it has employed in Singapore, but has been forced to rely solely on information received from SingTel. As an incumbent, SingTel has a vested interest in providing information to IDA that best suits SingTel's commercial interests.

Telstra also notes that SingTel's current interconnect and wholesale pricing under the RIO generally appears excessive relative to international benchmarks. Telstra is not clear as to the extent to which IDA has compared the RIO pricing with international benchmarks to assess the reasonableness of SingTel's claims during pricing reviews, but suggests that such benchmarking be routinely undertaken.

Telstra notes that greater transparency of regulatory decisions would also be consistent with the Singapore Government's international obligations under the Singapore-Australia Free Trade Agreement ("SAFTA"). Article 4.1 of Chapter 10 of SAFTA, for example, relevantly provides as follows:

*"The Parties shall apply the measures referred to in Article 2.1 in a transparent manner, which:*

- (a) provides suppliers of public telecommunications networks or services of the other Party who are likely to be affected by regulatory decisions with a fair and reasonable opportunity to obtain sufficient information to enable them to form informed views on proposed regulatory decisions and to provide these views to regulators;*

- (b) *requires regulators to take into account views provided by such suppliers pursuant to Article 4.1(a); and*
- (c) *ensures that regulators make available to such suppliers their regulatory decisions and an explanation of their reasons for those regulatory decisions."*

## 4 COST SHIFTING

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SingTel has proposed a range of amendments to the RIO which seek to shift costs onto other Licensees, thereby reducing SingTel costs while artificially inflating the costs of its competitors. Telstra submits that all such cost-shifting should be rejected.

Telstra has identified the most blatant example of cost-shifting by SingTel below, but notes that this example is by no means exhaustive. Such cost-shifting appears to be a recurrent theme in relation to SingTel's historic and current drafting of the RIO. Telstra notes that such cost-shifting has been repeatedly identified by other Licensees in the July 2003 submissions.

### 4.1 Clause 5.2 (Charges) of main body

Telstra notes that SingTel's redrafting of clause 5.2 removes the previous requirement in the RIO that SingTel was required to seek IDA approval before recovering additional costs from Licensees. As a result, the substantial discretion given to SingTel in the remainder of clause 5.2 is effectively unfettered.

Rather, the new drafting of clause 5.2 gives SingTel a very broad unilateral discretion to:

- incur additional unlimited and unspecified costs beyond those documented in the RIO, and then recover those costs from Licensees; and
- amend existing charges and impose new charges, and then recover those charges from Licensees.

Telstra submits that such broad discretion is unacceptable to Licensees. As a matter of commercial principle and regulatory common sense, Licensees need to have contractual certainty in relation to the charges they will pay SingTel. Licensees should not be subject to potentially unlimited and indeterminate liability to SingTel in relation to RIO costs and charges. IDA has a duty to protect the interests of Licensees in relation to this issue, consistent with the intent of the Code.

Rather, SingTel should be expected to set charges that cover its relevant costs, as determined by IDA by applying the pricing methodology set out in the Code. IDA should not permit SingTel an additional broad discretion to recover additional costs and charges that have not been screened by IDA, or to double-recover costs that may already be covered by existing pricing. In effect, SingTel's drafting provides a basis for SingTel to circumvent IDA-determined pricing and the procedure carefully set out in the Code.

While SingTel claims that the words "*in accordance with the relevant Schedule*" qualify the application of clause 5.2, the relevant Schedules provide very significant discretion to SingTel and clearly do not provide adequate protection to Licensees. If anything, the reference to the

Schedules in clause 5.2 further increases the scope of the broad discretion that SingTel has provided to itself on this issue.

## 5 DISCRETION

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SingTel has expanded its already significant residual discretion, providing greater scope for it to exercise those discretions to delay, impede and deny service to Licensees. All residual SingTel discretion should be carefully circumscribed.

Telstra refers IDA to the July 2003 submissions by industry participants on the SingTel RIO which identified such issues in considerable detail. StarHub, for example, identified and addressed these issues at length in paragraphs 3.2, 3.3, 3.8, 4.8, 4.11 to 4.13, 4.27 to 4.29, 4.34, 8.3 to 8.7, 8.20, 9.2, 13.4, 13.15 to 13.17, 13.27 to 13.28, 13.42, 13.51, and 17.2 to 17.3 of its July 2003 submission.

Notwithstanding these previous concerns, SingTel seems to have taken it upon itself to further increase the level of discretion it has given itself in the most recent draft.

Telstra suggests that IDA should assume, based on historical experience, that any residual discretion in the SingTel RIO can potentially be exercised in a manner favourable to SingTel and detriment to the interests of other Licensees. In this manner, any residual discretion should be viewed as artificially slanting the competitive environment in SingTel's favour, contrary to the intent behind the RIO.

### 5.1 SingTel's subjective discretion

In particular, Telstra submits that the current drafting of the SingTel RIO continues to leave too many aspects of RIO decision-making to SingTel's subjective discretion, rather than providing for objective standards. In this manner, SingTel has considerable scope to make decisions that adversely affect Licensees and that favour SingTel. In many instances, the grounds for the exercise of SingTel's decisions are not circumscribed and there is insufficient transparency under the RIO in relation to the basis for SingTel's decisions.

Importantly, Telstra notes IDA's previous comments in page 1 of Schedule A (General Concerns) of IDA's directions to SingTel of 13 December 2000 in relation IDA's original review of the SingTel RIO ("**December 2000 Directions**"). In the December 2000 Directions, IDA commented:

*"The proposed RIO leaves too many aspects of the Licensees' relationship to SingTel's discretion, rather than providing objective standards. The RIO must contain a "comprehensive and complete" statement of the proposed agreement between the Licensees (Section 5.3.2). The proposed RIO repeatedly seeks to vest SingTel with the discretion to impose additional requirements that it deems necessary (such as requiring the Requesting Licensee to provide additional information) or take actions based on its unilateral determination (such as refusing to provide service if SingTel is "not satisfied" with information provided by the Requesting Licensee). Whilst IDA does not expect SingTel to anticipate every possible situation, SingTel must revise the proposed RIO so that, to the maximum extent possible, it contains reasonable and objective standards that will provide the basis for SingTel's decision-making".*

Telstra submits that, notwithstanding the December 2000 Directions, there are still numerous instances in the SingTel RIO where the RIO does not contain reasonable and objective standards that will provide the basis for SingTel decision-making. IDA should take the opportunity to address these instances in the current review.

## 5.2 Termination and suspension rights

Importantly, notwithstanding previous instructions by IDA to qualify SingTel's discretion regarding termination and suspension, SingTel still retains considerable discretion in relation to termination of licences provided under certain Schedules to the RIO. Such licences are critical to the ongoing supply of services by Licensees and are fundamental to their retail business operations.

Telstra submits that all such rights of termination and suspension should be subject to prior IDA approval, consistent with the intent behind Article 5.4.6 of the Code (Duty to Obtain IDA Approval for Suspension or Termination) and Article 6.3.5 of the Code (Modification and Duration of RIO Agreement). Any SingTel subjective discretion in relation to rights of termination and suspension should be removed or appropriately circumscribed.

Furthermore, Telstra submits that certain rights of termination and suspension are not necessary and should be deleted. Other rights of termination and suspension should be subject to a "cure period" to provide a sufficient chance for any breach to be rectified (e.g., clause 13.1(g) of main body).

## 6 SERVICE LEVEL GUARANTEES

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SingTel was expressly directed by IDA in the 21 February 2005 directions to improve its Service Level Guarantees (SLGs) *"to the extent they can be reasonably improved"*, including *"better service quality, better standards, shorter timeframes and/or more appropriate levels of compensation and remedies"*. Telstra believes this has not occurred.

Telstra submits that SLGs should be enforceable, otherwise they are rendered meaningless.

Telstra notes that any improvement in service levels in the RIO will flow through to Singapore consumers in the form of improved responsiveness of Licensees and improved quality of service. By tightening the obligations on SingTel, IDA has the ability to improve the level of service that will ultimately be provided to Singapore consumers, thereby achieving IDA's regulatory objectives.

### 6.1 Service levels should apply to fault identification and rectification

Telstra has not identified SLGs fully addressing fault identification and rectification issues in the SingTel RIO. Telstra believes such SLGs are important and should be included.

In many other jurisdictions, including Australia, the incumbent has committed to the identification and rectification of faults within pre-determined time frames. Licensees can acquire a higher level of service for fault identification and rectification by paying additional charges, guaranteeing more responsive fault identification and rectification on demand for

those downstream end users where fault-free service is critical. In circumstances where the incumbent does not meet the fault identification rectification time frames, the incumbent must credit the Licensee with a rebate that can, in turn, be passed to end customers.

Alternatively, the concept of an "outage period" is utilised. If the outage period exceeds a pre-determined aggregate amount of time for a service in any given calendar month, the Licensee is entitled to a rebate on the monthly charges for that service in that month. Again, such service levels and compensation can be passed to end consumers.

Importantly, Telstra also notes that Licensees must comply with quality of service standards in relation to consumers under Article 3.2.1 of the Code. However, Licensees are heavily dependent upon SingTel for such compliance. At the very least, SingTel should be required to provide a level of service at the wholesale level that enables Licensees to meet their quality of service obligations to consumers at the retail level. If a Licensee is placed in breach of its quality of service obligations due to the fault of SingTel, it should be SingTel that is ultimately held responsible.

## 6.2 Improved service levels should apply to ordering and provisioning

Telstra also submits that there is very considerable further scope for improvement to the Service Level Guarantees (SLG) in relation to service provisioning. SingTel's proposed amendments do not give full effect to IDA's direction that such SLGs must be improved "*to the extent they can be reasonably improved*", including "*better service quality, better standards, shorter timeframes and/or more appropriate levels of compensation and remedies*

StarHub, for example, identified and addressed these issues at length in paragraphs 4.15, 4.16, 4.22, 4.34, 5.3, 5.4, 8.2, 8.6 to 8.12, 9.3 to 9.4, 10.3, 11.3 to 11.5, 12.3 to 12.6, 12.8, 13.3, 13.5 to 13.14, 13.18 to 13.24, 13.26 to 13.34, 13.45 to 13.49, 13.56, 14.5 to 14.6, 15.4 to 15.9, 17.4 to 17.7, 17.11, 19.2 and 21.1 to 21.10 of its July 2003 submission.

At present, there are few instances under the RIO where SingTel provides any meaningful rebate or credit if it fails to meet an SLG. In many cases, the level of any compensation indicated by SingTel would not cover the direct loss the Licensee would suffer as a result of SingTel's failure to meet the SLG.

Telstra believes that Singapore will fall below world standards should it not require SingTel to properly apply meaningful SLGs. Telstra trusts that IDA will give full effect to its directions to SingTel of 21 February 2005 in order to address this issue.

For this reason, Telstra urges IDA to adopt a tough line with SingTel on these SLG issues. IDA should carefully scrutinise the extent to which SingTel has actually endeavoured to improve its SLGs "*to the extent they can be reasonably improved*" as directed by IDA. IDA should require SingTel to provide a full explanation to justify why it has not improved its SLGs to the extent it could have improved them. At present, Telstra does not believe that SingTel's proposed amendments to the SLGs go far enough in terms of achieving "*better service quality, better standards, shorter timeframes and/or more appropriate levels of compensation and remedies*".

## 7 NON-DISCRIMINATION

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SingTel should be subject to stricter and more meaningful non-discrimination obligations that can be easily applied and enforced.

In particular, SingTel's provisioning timeframes should be subjected to strict non-discrimination obligations to prevent SingTel providing more favourable timeframes to its own retail operations (shorter than RIO timeframes) while providing unfavourable timeframes to Licensees (maximum RIO timeframes).

### 7.1 Existing non-discrimination obligations are difficult to enforce

Telstra recognises that both the Code and the RIO require SingTel to act in a non-discriminatory manner. However, notwithstanding the existence of these obligations, it is very difficult for Licensees to obtain evidence of discriminatory provisioning sufficient to lodge a formal complaint with IDA.

In other jurisdictions, including Australia, the various non-discrimination obligations are coupled with formal record-keeping rules that are intended to provide a flow of information to the regulator and/or industry participants that can be used as a basis for monitoring and potential enforcement action. To diminish the danger of discriminatory provisioning, Telstra believes it is important to incorporate mechanisms within the RIO that will provide greater transparency in relation to SingTel's own internal ordering and provisioning mechanisms so that a comparison can be easily made against ordering and provisioning under the RIO.

Alternatively, the time frames set out in the SingTel RIO should be tightened so that they are consistent with the time frames that SingTel currently uses to provision services to its own retail operations. If the timing requirements for wholesale provisioning under the RIO are no longer in duration than SingTel's existing timing for retail provisioning, then SingTel will have a reduced contractual ability to provision services in a discriminatory manner.

Telstra also notes that in its own standard interconnect agreements in Australia, Telstra is required to abide by a strict "queuing policy" which ensures that all orders are prioritised and provisioned on a transparent and non-discriminatory basis. Telstra therefore does not have the ability to schedule fulfilment of an order placed by Telstra's retail operations above an order placed by another Licensee. Telstra suggests that IDA require SingTel to also adopt a transparent and non-discriminatory queuing policy in relation to the fulfilment of orders.

### 7.2 Existing non-discrimination obligations should be tightened

Telstra further submits that there is scope to tighten the existing non-discrimination obligations so that they will be easier to apply in practice.

For example, in relation to clause 11.1(b), the word "manner" does not appear to address timeframes. However, timeframes are critical to fault repair given that faults result in service outages of a particular duration. Accordingly, Telstra submits that the words "*and the same timeframe*" should be inserted after the word "manner" to ensure the provision of Interconnection Related Services and Mandatory Wholesale Services on a non-discriminatory basis in accordance with Article 6.3.3.1 of the Code.

Telstra also submits that IDA should expand the nature of the non-discrimination obligations imposed on SingTel to better give effect to Article 6.3.3.1 of the Code. In Australia, Telstra is subject to strict "standard access obligations" under section 152AR of the Trade Practices Act 1974 which contain more sophisticated and detailed non-discrimination obligations in favour of Telstra's wholesale customers. Under the standard access obligations, Telstra (as access provider) must relevantly:

*"take all reasonable steps to ensure that the technical and operational quality of the active declared service supplied to the service provider is equivalent to that which the access provider provides to itself"*

*"take all reasonable steps to ensure that the service provider receives, in relation to the active declared service supplied to the service provider, fault detection, handling and rectification of a technical and operational quality and timing that is equivalent to that which the access provider provides to itself".*

## 8 PROVISIONING

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SingTel was expressly directed by IDA to "*streamline all ordering and provisioning processes*". However, Telstra believes this has not yet properly occurred.

Again, rather than identify in detail the relevant ordering and provisioning process and the manner in which they could be streamlined, Telstra requests that IDA refer to the July 2003 submissions by Licensees on these issues. StarHub, for example, identified and addressed these issues at length in paragraphs 3.9, 4.4, 4.9, 4.34, 5.3, 7.1, 8.2, 8.9, 9.4, 11.3, 11.5, 12.3 to 12.5, 12.8, 13.3, 13.5 to 13.6, 13.8, 13.13 to 13.22, 13.45 to 13.50, 14.5, 15.8, 17.4, 17.7. and 17.11 of its July 2003 submission.

## 9 TERM

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SingTel's continued use of an expiry date of 28 September 2006 may raise issues. The RIO should remain in place for as long as required by the Code or until terminated by the Licensee by giving notice to SingTel.

Similarly, SingTel's procedure for an "interim RIO" could be better documented in the SingTel RIO, requiring a Licensee to have specific contractual rights of termination by notice.

### 9.1 Expiry of the RIO is now governed by Articles 6.2.1 and 6.3.5(a) of the Code

Telstra suggests that SingTel's incorporation of an expiry date of 28 September 2006 into the RIO may not properly reflect the new wording of Article 6.3.5(a) of the Code. As a result, the SingTel RIO may be inconsistent with the Code.

Article 6.3.5(a) of the Code cross-references Article 6.2.1 of the Code which identifies that IDA will Gazette the relevant three year periods that SingTel must offer the RIO.

Telstra submits that the RIO could be amended by SingTel so that the expiry date of 28 September 2006 is alternatively expressed as:

"28 September 2006 or such longer period as SingTel is required to offer the RIO to the Licensee under sub-section 6.2.1 of the *Code of Practice in the Provision of Telecommunications Services 2005*."

The difficulty with SingTel's reference only to 28 September 2006 is that it necessarily begs the question what happens after 28 September 2006, creating significant uncertainty for Licensees to the extent they wish to enter into long-term contracts with customers that extend beyond 28 September 2006.

The clear intent of the Code is that IDA will extend this date before it is reached. Consistent with this intent, Telstra suggests that the RIO should contain an automatic mechanism to give effect to IDA's date extension once it occurs.

## 9.2 Licensee should have a right to terminate the RIO by giving notice

Telstra also suggests that each Licensee should have an express contractual right to terminate its RIO without cause by giving an appropriate period of notice to SingTel. Such a right to terminate a RIO, for example, may be important in circumstances where the Licensee has been successful in negotiating an individualised interconnection agreement with SingTel and wishes to migrate its operations from the RIO onto that individualised agreement.

Telstra suggests that a right of early termination of a RIO could give effect to Article 6.4.1.6 of the Code (Interim Interconnection Pursuant to the RIO). Article 6.4.1.6 provides:

*"At the time it submits its request, the Requesting Licensee may require the Dominant Licensee to provide interconnection pursuant to the prices, terms and conditions of the RIO, pending the outcome of the requested negotiations. The Licensees must negotiate appropriate arrangements governing the transition from the RIO to the prices, terms and conditions of their Individualised Interconnection Agreement."*

Consistent with this mechanism, Licensees could be given the ability to execute a RIO while negotiation of an individualised interconnection agreement occurs, then terminate that RIO without cause by giving notice once the individualised interconnection agreement has been executed (conditional on termination of the RIO). Similarly, parties that are already signatories to a RIO should have the ability to commence and conclude negotiations with SingTel on an individualised interconnection agreement, then terminate their RIO by giving notice.

Telstra also suggests that SingTel could set out more detail in clause 6.1 of Part A of the RIO (Acceptance of RIO Pending Adoption of Individualised Agreement) the arrangements that would apply to govern the transition from the RIO. Important rights to cover in the RIO could include:

- a right of early termination of a RIO by giving notice without cause, consistent with the comments above;
- confirmation that the Licensee is not required to, for example, remove equipment, terminate services or pay penalties in the context of any migration; and
- a procedure for continuity of service during transition of services from the RIO.

Telstra believes it would assist if such rights were clearly set out in the RIO so as to protect Licensees from unreasonable migration procedures that may be imposed by SingTel, including claims for contractual damages by SingTel or claims that services should be discontinued to allow migration to occur. At present, the absence of migration rights creates a significant disincentive for Licensees to negotiate individualised interconnection agreements with SingTel.

As contemplated Article 6.4.1.6 of the Code, more customised migration arrangements could then be negotiated between the parties on a case by case basis. In this manner, while migration and early termination rights in the RIO are important, they would not need to contain a high level of detail.

## 10 RECIPROCITY

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Telstra is opposed to the RIO having reciprocal application as this is inconsistent with international practice and the terms of the Code.

However, if the RIO does have limited reciprocal application, it is important that all clauses in the RIO have reciprocal application. If the RIO has reciprocal application, then by definition SingTel will also have a role as the acquirer (e.g., SingTel should be required to pay charges, provide insurance and provide security).

### 10.1 RIO should not have reciprocal application

Telstra is particularly concerned by SingTel's inclusion of the following new clause 3.3 into the RIO:

*"To the extent applicable, the Requesting Licensee agrees to supply and SingTel agrees to acquire the IRS listed in clause 2.1 on the prices, terms and conditions set out in this RIO Agreement, and such other services requested under clause 19"*

Telstra believes that the existence of clause 3.3 has the effect of forcing a Licensee to supply services to RIO at the same price and on the same terms and conditions that SingTel supplies services to the Licensee.

However, such an absolute requirement is not always appropriate:

- Different networks may have different cost structures justifying different levels of charges. It is entirely legitimate for different suppliers to have different charges for the same type of service, as is common in most other sectors of the economy.
- The terms and conditions of the RIO have been drafted by SingTel for SingTel and have been heavily customised for SingTel's own network arrangements. SingTel's standard terms and conditions under the RIO may not necessarily be suitable for the operations of another Licensee, who may have developed its own terms and conditions.
- If the model RIO is amended by IDA in relation to the terms and conditions of supply by SingTel, then the terms and conditions of supply by the Licensee (as supplier) are automatically amended. The Licensee therefore has no control over its own terms and

conditions of supply. IDA also has not to date viewed Licensees as potential suppliers under the RIO, so has not consulted with Licensees from a supplier perspective in relation to amendments to the RIO.

Telstra notes that Section 6 of the Code only contemplates that a RIO governs supply of Interconnection Related Services and Mandated Wholesale Services from the Dominant Licensee to the Requesting Licensee. There is no obligation in the Code that the Requesting Licensee should be contractually obliged under the RIO to supply the same services on the same prices and terms and conditions to the Dominant Licensee. Rather, Section 5 of the Code appears to contemplate that such reverse supply would be governed by a different Section 5 interconnection agreement instead.

Telstra submits that SingTel's comment associated with clauses 3.3 to 3.5 of the draft SingTel RIO, in which SingTel attempts to justify reciprocal application of the RIO, is incorrect. Rather, as SingTel itself expressly identifies, IDA has already made a determination on this issue that *"because non-dominant licensees are subject to market forces, IDA will not require them to provide reciprocal interconnection rights to Dominant Licensees"*.

Telstra does not accept SingTel's view that "rights" do not include "terms and conditions". All "terms and conditions" necessarily comprise rights and obligations by definition. Furthermore, an "obligation" and a "right" represent different sides of the same coin.

## 10.2 If RIO does have reciprocal application, the key clauses should be reciprocal

However, if IDA were to reconsider its position and accept SingTel's proposition that a RIO should be given reciprocal application, then there will necessarily be circumstances in which the Licensee is the supplier and SingTel is the acquirer. In this manner, the various clauses in the RIO should properly contemplate these reversed circumstances and ensure that the relevant clauses are given reciprocal application.

IDA previously commented as follows on page 1 of Schedule A to the December 2000 Directions in the context of the more general comment that some rights in the SingTel RIO should be reciprocal to ensure greater balance. This comment has direct application to a situation in which the roles of the parties were reversed so that the Licensee would become the supplier:

*"The proposed RIO frequently provides that SingTel alone will have certain rights, whilst the Requesting Licensee alone will have certain obligations... SingTel must modify the proposed RIO to provide that, where appropriate, both Parties will have mutual rights and obligations."*

Key examples of the need for amendments to be made to ensure the reciprocal application of the RIO if the roles of the parties were reversed would be as follows:

- Part A, Clause 3.2 (SingTel Warranties): SingTel should give the same warranty to a Licensee under clause 3.2 as the Licensee is required to give to the Licensee under clause 3.1(c) of Part A
- Part A, Clause 3.4 (Indemnity): Again, SingTel should give the same indemnity to a Licensee under Part A as the Licensee is required to give to SingTel under clause 3.4 of Part A.

- Clause 5 (Charges) and clause 6 (Payment): Obviously if SingTel is provided with a right to acquire services from a Licensee under the RIO, then SingTel should have an obligation to pay charges for those services. Clauses 5 and 6 would therefore need to be given reciprocal application.
- Clause 21 (Insurance) and clause 22 (Security): Again, SingTel should provide the same insurance and security to the Licensee under clauses 21 and 22 as the Licensee is required to give to SingTel under clauses 21 and 22.
- Clause 24.3 (Customer Relationship) and 25.3 (Representations and Communications): Again, in both cases these clauses would need to be redrafted to have reciprocal application.

## 11 INSURANCE AND SECURITY

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SingTel's RIO should contain more reasonable insurance and security requirements that are less likely to artificially increase the cost of market entry.

Telstra queries whether SingTel has yet gone far enough to address IDA's express direction that *"the amount of insurance... must be proportionate to SingTel's risk exposure"*.

Telstra suggests that IDA undertakes more detailed industry consultation on the issue of the appropriate level of insurance and security, including with regard to typical supply arrangements in other industries.

Telstra also notes that due to a typographical error, the current drafting of clause 6.6 is unintentionally confusing and should be reworded. The amount of the banker's guarantee should be subject to the same cap as applied to the security deposit. This could be achieved by redrafting clause 6.6 as follows:

*"...The Requesting Licensee must provide SingTel with either:*

*(a) a banker's guarantee in the form of Attachment C from a bank reasonably acceptable to SingTel; or*

*(b) a security deposit,*

*for the amount of:*

*(c) S\$20,000; or*

*(d) 2.5 times the amount of the Charges...[etc]...that are payable by the Requesting Licensee,*

*whichever is the greater.*

As with all other instances where SingTel has sought to impose conditions on access to its network and services, Telstra submits that IDA should carefully scrutinise the reasonableness

and need for such conditions. Such an approach would be consistent, for example, with the Singapore Government's obligations to the Australian Government under the Singapore-Australia Free Trade Agreement ("SAFTA"). Article 3.5 of Chapter 10 of SAFTA provides as follows:

*"Each Party shall ensure that no condition is imposed on access to and use of public telecommunications networks or services other than as necessary:*

- (a) to safeguard the public service responsibilities of suppliers of public telecommunications networks or services, in particular their ability to make their networks or services available to the public generally; or*
- (b) to protect the technical integrity of public telecommunications networks or services."*

## **12 ENFORCEMENT**

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Telstra notes that SingTel has every incentive to push the parameters of acceptable conduct in order to retain its substantial market power in downstream markets. Telstra wishes to express its confidence that IDA will remain vigilant and willing to intervene to promote competition and protect the interests of Singapore consumers.

Telstra would be glad to discuss this submission with IDA, or provide further information, as necessary.

Telstra Singapore Pte Ltd

5 May 2005