COMMENTS ON THE IDA'S CONSULTATION RE:

REQUEST BY SINGAPORE TELECOMMUNICATIONS LIMITED FOR EXEMPTION FROM DOMINANT LICENSEE OBLIGATIONS WITH RESPECT TO THE INTERNATIONAL TELEPHONE SERVICES MARKET PURSUANT TO SUBSECTION 2.6.1 OF THE CODE OF PRACTICE FOR COMPETITION IN THE PROVISION OF TELECOMMUNICATION SERVICES

MCI WorldCom Asia Pte Ltd ("MCI") offers these comments in response to the Public Consultation initiated at the request of Singapore Telecommunications Limited ("SingTel") for exemption from its dominant licensee obligations with respect to the International Telephone Service market.

For the reasons set forth below, MCI believes it would be inappropriate for iDA to reclassify Singtel as a non-dominant carrier in the provisions of international telephony services at this early stage of competition being introduced into the Singapore marketplace. SingTel's continued dominance of telephony access (in local fixed lines and international facilities) gives it bottleneck control of those essential facilities required to provide international telephony services. As the incumbent provider of international services, SingTel has established bilateral arrangements with carriers on all traffic routes. SingTel's own statistics conclusively demonstrate that competitors have, thus far, only been marginally successful in attracting customers away from SingTel. These meager gains would be stalled and reversed should the iDA agree to SingTel's request to be reclassified as non-dominant in the provision of international telephony services.

MCI is of the view that the licensing conditions currently imposed on SingTel as a condition of its license and the Code of Practice should continue to apply fully. The conditions have been effective in facilitating a nascent level of competition on routes where SingTel, in the absence of dominant carrier regulation, could have prevented entry or substantially restricted other operator's opportunities to compete by undercutting prices and utilizing commercial information in a way as to damage or even eliminate any competition on those routes. MCI urges the iDA to draw upon the experience of other regulators in keeping *ex ante* regulation in place on the incumbent carrier where it continues to exercise significant market power.

Argument

SingTel Continues to Exercise Control Over Essential Facilities

SingTel's continued dominance of the local access market in Singapore represents bottleneck control of essential facilities and provides competitive advantages for leveraging its significant market power into the international market. SingTel's vertically integrated structure means that it is an active player in a number of linked relevant markets involved in the provision of international services, such as:

- The provision of access lines to customers;

- The provision of wholesale conveyance services to other operators;
- The provision of retail services to end-users;
- The provision of wholesale international services to other operators; and,
- The provision of retail international services to end-users.

The possibility that SingTel will be able to exert market power through the linkage of between domestic and external markets is crucial. For example, SingTel could bundle its international retail services with its local retail services or with its access products. SingTel can also provide wholesale services to its retail business on preferential rates to other operators.

SingTel has asked the IDA to take consideration how other regulators have addressed the adjacent market issue. For example, the European Union's new regulatory framework expressly notes that:

> Where an undertaking has significant market power on a specific market, it may also be deemed to have significant market power on a closely related market, where the links between the two markets are such as to allow market power held in one market to be leveraged into other markets, thereby strengthening the market power of the undertaking.[1]

The intent of this article is to deal with the risk that, amongst other things, dominance in the domestic connectivity market can be leveraged into the international markets. The European Commission has defined the relevant market to be: market for services to end-users (retail markets), and markets for the inputs which are necessary for operators to provide services and products to end users (wholesale markets).[2]

SingTel has sought to deflect any attention that may be directed towards is control of bottleneck facilities by suggesting that the regulatory framework be removed so that it may recapture its competitiveness in the international telephone services market. None of the evidence presented in the SingTel's petition suggests that it is at a competitive disadvantage.

Commonsense regulation of bottleneck facilities leads to robust competition. A new entrant provider that offers its customers the service of carrying traffic within Singapore or across the world needs to access SingTel's local access network to originate and terminate that call whether the traffic is voice traffic, data traffic, or traffic over the world wide web; whether it be packetized using Internet protocol or channelized using a traditional voice protocol; or whether the IP conversion occurs in the network (as in

[1] Commission Guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services. Doc. 2002/ C 165/03.

[2] European Commission, Commission Recommendation on Relevant Products and Services within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services ,C (2003)497, 11/02/2003, p.3

phone-to-phone IP voice applications or in the user's computer (as in computer-to-computer IP voice applications). Should iDA accede to SingTel's request to be reclassified as non-dominant, it would permit SingTel to continue and extend its dominance onto the downstream markets that were becoming competitive. Consumers (Singapore residents and businesses) will see price and service competition stall and likely reverse.

Despite the decline in retail prices for international telephony services, SingTel retains significant market share and power

SingTel asserts that the significant decline in the retail prices for international telephone calls offers conclusive evidence that vigorous competition exists in this market causing an erosion in SingTel's market share.[3] MCI believes that the data suggests a different conclusion. SingTel's own data shows that it has managed to hold onto a significant share of the international telephone market. During this period, SingTel has lost only 17% of the market, in total, to all of its competitors combined.[4] Most regulators in developed countries would consider SingTel's market share of 83% (as measured by its own statistics[5]) to be significant, thus triggering the continued requirement of *ex ante* regulation.

SingTel cites the competitive pricing pressure for international services as causing its share of revenue from international services to decline from 41.6 % of total revenues in 1997/98 to 22% in March 2002.[6] This trend is likely to continue because of a number of macro and micro trends cited in *Telegeography 2003's* Overview of International Call Revenues and Revenue Trends[7] provide a ready explanation of why international revenues have been declining over the past decade. *Telegeography* characterizes the international voice market to be a "stagnant to declining sector" but, nonetheless, a global market still worth $60 billion a year.[8]

In an unpublished study, the OECD reaches many of the same conclusions as *Telegeography*, notably that liberalization brings tremendous benefits to users through price reductions in the retail prices of international calls.[9] *Telegeography*'s short answer for this phenomenon is that "international call prices are increasingly cost-based and

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[3] IDA, Singtel Request for exemption, International Telephone Services, 10 April 2003, p. 11. ("SingTel International Request")
[4] IDA, List of Licensees as at 15 March 2003.
[5] SingTel Telecommunications Ltd and Subsidiary Companies: Management Discussion and Analysis of unaudited financial conditions and results of operations for the nine-months ended 31 December 2002. Market share is based on SingTel's total outgoing international (including Malaysia) and transit minutes over the industry minutes published by the iDA.
[6] SingTel International Request at ¶5.26
[7] *Telegeography 2003, Global Traffic Statistics & Commentary*, pgs. 23-42.
[8] *Id*. p.42
[9] OECD, Working Party on International Calling Prices in OECD Countries, DSTI/ICCP/TISP (2003)2 p 31. This study has been authorized for public release. The OECD study notes that the average standard rate for international calls within the OECD member countries had declined from US$1.24 in 1993 to US0.54 in 2003.

costs are falling. Where monopoly power is a thing of the pasts, carriers can no longer maintain artificially high call prices."[10]

An area of special attention for IDA is to ensure that SingTel is not able to exercise its market power to impose a price squeeze on its competitors.[11] MCI has pointed out to the IDA that the high costs of accessing the last mile in Singapore and the detrimental impact that this has on a competitive carrier's ability to serve the international telephony services market. Removal of the present checks would leave no controls on preventing SingTel from structuring its pricing to "squeeze out" other operators and foreclose competition. Such pricing practices, in the absent of adequate regulation, will harm other operators, their prospective customers and long-term competition. New operators will ultimately exit the market resulting in the price and quality of service reverting to monopoly levels.

SingTel is Still Dominant Despite Low Entry Barriers and Large Number of Competitors

SingTel has been very selective in offering the IDA examples of the various tests used by regulators in other countries to determine whether there was "effective competition" in certain markets to reclassify a carrier as non-dominant.[12] To correct the record, the Federal Communications Commission reclassified AT&T as non-dominant in the provision of international voice services in 1994 only when AT&T's share of that market had declined to 59%.[13] In addition to considering AT&T's loss of market share below 60%, the FCC based their decision on other key considerations such as its loss of local bottleneck facilities as a result of the divestiture (AT&T does NOT control a local access in the U.S, that was left to the Regional Bell Companies at divestiture) and the maturity of MCI and Sprint as nationwide competitors.

Similarly, under the European Commission's (EC) directives for the telecommunications sectors, a carrier with a market share in excess of 50% is considered to have significant market power ("SMP").[14] Under the Revised Voice Telephone Directive (RVTD), the EC requires that any operator having been declared SMP to be subject to certain obligations not imposed on other carriers such as publication of its prices, no special concessions as to granting undue preference and discrimination, and a prohibition on pricing below cost.

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[10] *Telegeography 2003*, p. 37

[11] A "price squeeze" is an anticompetitive practice that a vertically integrated firm with significant market power could conduct when it provides a key input for its competitors

[12] SingTel, pgs. 4 and 5.

[13] FCC, Motion of AT&T Corp. to Declared Non-Dominant for International Services, Order, 11 FCC 17963 (1996) (AT&T International Non-Dominance Order), at ¶ 37 The FCC found that AT&T share for the provision of IMTS had declined from 98.5 percent in 1985 to 72.7 percent in 1991 to 55.2 percent in 1996.

[14] European Commission, Determination of Organisations with Significant Market Power (SMP), Implementation of the ONP Directives, March 1999, p. 2

OFTA, in Hong Kong, follows similar guidelines with a market test that presumes a carrier is dominant when it has market share of 50 percent or above.[15] Any carrier with a market share of less than 50 percent is considered to be non-dominant.

We believe that the IDA should take note that regulators elsewhere (Hong Kong, Europe, the U.S.) would likely conclude that SingTel's 83% percent of the international telephony market does not qualify SingTel for non-dominant treatment.

Separate Country Markets are Distinctive on Both the Demand and Supply Side

SingTel argues that a "route-by-route" classification of the ITS market would be an unnecessarily complex exercise of regulatory oversight."[16] Regulators elsewhere have taken a different view and continue to apply market tests on a route-by-route basis of review of both the demand and supply side since subsidization between different country markets is not generally possible.[17]

Many regulators still consider that a route-by-route analysis is required to determine whether there is "effective competition." The European Commission still requires a route-by-route analysis while acknowledging that hubbing may alter this over time. OFTEL in the United Kingdom has taken the approach that each route constitutes a separate relevant market even though hubbing and refiling may mean a wider geographic market is appropriate in the future.[18]

OFTA in Hong Kong has classified individual countries on the basis of whether there is effective competition at the foreign end. Category A routes are those which OFTA considers to offer genuine competition at the wholesale external gateway level. Category B routes are those reliant on a single external gateway in Hong Kong. Within Category B, some routes are classified as "Category B Routes on the Observation List, representing potentially competitive routes" which are subject to fast-track review for reclassification as Category A when effective price competition is firmly established.[19] Even though OFTA has agreed to reclassify the vast majority of routes out of Hong Kong to be Category A, they still consider a route-by-route assessment to be more appropriate and prudent than a collective approach.[20]

The Federal Communications Commission continues to view individual countries as separate markets for purposes of implementing its regulations.[21] The Commission

[15] OFTA, Application for a Declaration of Non-Dominance in the Retail External Call Services Market for all the Dominant Routes by PCCW-HKT Ltd. On Behalf of PCCW-HKT Telephone Ltd., 8 Oct 2002.
[16] SingTel International Request at ¶ 4.14.
[17] OFTEL, Guidelines on Market Influence Determination, March 2000 at Annex B, para. B.2.
[18] OFTEL, Statement: Competition in International Markets, March 2002, at ¶2.18
[19] See Local Access Charge and Modified Delivery Fee Arrangements, Statement of the Telecommunications Authority, Hong Kong (25 November 1998).
[20] OFTA, Statement of the Telecommunications Authority, Application for Reclassification of All the Category B and Category B Observation List Routes as Category B, 30 December 2002, ¶ 14.
[21] See FCC Lists of Foreign Telecommunications Carriers that are Presumed to Possess Market Power in Foreign Telecommunications Market, DA-03-456 released February 19, 2003. Available at:

presumes that a foreign carrier does not possess market power on the foreign end of a U.S. international route if it possesses less than 50 percent market share in each of three relevant foreign product markets: international transport facilities, including cable landing station access and backhaul facilities; intercity facilities and services; and local access facilities and services on the foreign end.[22]

SingTel's Equity Investment Raise Competitive Concerns

SingTel's international strategy includes investing in carriers in nearby regional markets, such as Australia, India, Indonesia, the Philippines, Thailand, and Belgium. Collectively, the five regional markets represent approximately nearly 18% of Singapore outbound international according to data published in *Telegeography 2003*.[23] IDA should determine whether SingTel's alliance partners have market power at the foreign end of the international route and the appropriateness of regulatory measures to prevent anti-competitive practices.

The FCC has noted that equity arrangements raise more potential for anticompetitive concerns than non-equity arrangements because "a foreign carrier with equity in a carrier is more likely to have an incentive to discriminate in the provision of service to a carrier's competitor because it would share any increased profits earned by the carrier."[24] For international services, the concerns include SingTel's alliance partners (a) offering a reduction in the accounting rate which is not available to SingTel's competitors; and/or (b) refusing to offer SingTel's competitors the lower accounting rate on the same effective date.

MCI submits that the regulatory conditions set forth in SingTel's license and Code of Practice have served as restraints on SingTel's ability to act in anti-competitive manner. These restraints must be kept in place until there is effective competition in the ITS market.

Conclusion

As we have pointed out throughout our submission, MCI consider it premature for IDA to reclassify SingTel as non-dominant in the provision of ITS. To make such a determination before full and effective competition has emerged in the Singapore marketplace could seriously erode the advances made so far.

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http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-03-456A1.doc>

[22] FCC, 1998 Biennial Regulatory Review – Reform of the International Settlements Policy and Associated Filing Requirements, IB Docket No. 98-148 and CC Docket 90-337, Report and Order on Reconsideration, 14 FCC Rcd 7963 (1999), ISP Reform Order.
[23] *Telegeography 2003*, p.213.
[24] See Foreign Participation Order, 12 FCC Rcd at 239922