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iDA
SINGAPORE

16 January 2007

Gloria Blue,
Executive Secretary,
Trade Policy Staff Committee,

Attn: Section 1377 Comments,
Office of the United States Trade Representative,
1724 F Street,
NW., Washington, DC 20508.

Via Electronic Transmission: *FR0502@ustr.eop.gov.*

SECTION 1377 REVIEW OF TELECOMMUNICATIONS TRADE AGREEMENTS, 2007

1. The Office of the United States Trade Representative (USTR) has requested for comments concerning telecommunication trade agreements as part of its annual review of U.S. telecommunications trade agreements pursuant to Section 1377 of the Omnibus Trade and Competitiveness Act of 1988 (the 1377 report).

2. Additionally, the United States Council for International Business (USCIB) has submitted comments on US Trade Agreements, including comments on Singapore's telecommunications regulatory regime.

3. We thank the USTR for taking into account the Info-communications Development Authority of Singapore's (IDA) representations in 2006 about the need for greater clarity and transparency in the Section 1377 Comment Process, by posting the comments on the review process for reply comments. We are pleased to present the IDA's response to the USCIB's comments.

<u>Provision of Local Leased Circuits (LLC)</u>

4. The USCIB has indicated that local leased lines continues to be a major concern for US Operators in Singapore, and alleged that "regulations continue to deny (i) the supply of local leased circuits at tandem-switching centers; (ii) the availability of high capacity aggregation options; and (iii) the provisioning of tie cables for cross connections within reasonable time frames."

5. Contrary to USCIB's claims, there are no specific regulations in place today which deny the provision of the said services. Rather, there are no

compelling reasons which justify the mandatory provision of such services, which IDA will now further elaborate. For issue (i), IDA, following a public consultation in 2003, assessed that only the last mile of the LLCs, i.e., tail LLCs, constitutes a bottleneck facility; tail LLCs were thus designated as an Interconnection Related Service to be offered at cost-based prices. For the trunk portions of the LLCs, IDA has determined that it is technically and/or economically feasible to replicate that infrastructure. Since trunk LLCs are not bottleneck facilities, IDA finds no compelling reason to require LLCs to be offered at the tandem level. IDA also notes that tandem access would be of relevance in instances where the large geographic size of a market, such as the US, could impede, delay, or make impractical for competing operators in deploying their own trunk facilities. This concern cannot be said for a city-state like Singapore given its high density of buildings and small geographical size.

6. For issue (ii), IDA has explained in its 23 June 2006 reconsideration decision to a US Operator's reconsideration request on 25 April 2006, that there were no compelling reasons to impose such requirements under the Reference Interconnection Offer (RIO), since the resources the incumbent operator would have to expend (and which would be recoverable from competing operators) to provide high speed aggregation would be similar, if not equivalent, to the resources the competing operators would have had to expend themselves. As such, competing operators should be indifferent whether such high speed aggregation activities are undertaken by themselves or by the incumbent operator.

7. For issue (iii), IDA notes that the matter had previously been raised by a US Operator as a reconsideration request in 2006. IDA had given due consideration to the issue earlier when it was first publicly consulted on in 2005. Furthermore, the US Operator did not comply with the regulatory process when it filed its reconsideration request. IDA will therefore not pursue the matter further.

8. With regard to the issue of SingTel's announcement of its plans to consolidate its exchanges, IDA would like to point out that should SingTel wish to decommission any of its exchanges, SingTel is required under its RIO to provide a notification at least 6 months prior to such decommissioning. Any such notification would be made public. This notification period is no different from many other benchmark jurisdictions' practice, including the US. To date, IDA has not received any such notification from SingTel.

9. On the issue of duct access, as in our response to the USTR for the Section 1377 Review in 2006, IDA reiterates that no US company has made a formal

request for access to SingTel's ducts, even when access to such ducts was mandated by IDA to be provided at cost-based rates from 2000-2002. Neither has a US company informed IDA that it has a problem with access to SingTel's ducts. In any case, IDA has conducted an extensive review on the matter previously and concluded that ducts, with the exception of lead-in ducts, are not bottleneck facilities. Unlike "last-mile" facilities, inter-exchange ducts can be reasonably replicated for the deployment of one's network, and IDA notes that many facilities-based operators including US Operators in Singapore have done so. As the USTR may be aware, IDA's policy objective is to achieve long-term sustainable and effective competition in the telecommunications market through facilities-based competition. IDA will only intervene to regulate facilities that are considered bottleneck facilities, which are network portions that are not feasible to replicate, or for which there are no feasible alternatives available.

<u>Competition law and regulation in the telecommunications sector</u>

10. Competition in the telecom sector is regulated under the Telecom Competition Code ("Code"). The formulation of the Code in 2000, the subsequent triennial review of the Code, and the Code's revision which became effective in 2005 were conducted through a transparent and rigorous process, including multiple public consultation phases and industry fora for the industry to participate in the formulation of the Code. The comments of telecom licensees - including US operators in Singapore, and other members of the public that participated in the consultations were carefully considered by IDA when finalising the Code.

11. The scope of the Code is comprehensive, comprising both ex ante and ex post regulatory provisions. The ex-post competition prohibitions in the Code were developed based on competition law principles, similar to the provisions in the Competition Act and address the abuse of a dominant position and anti-competitive agreements by licensees that restrict competition in the telecom sector. Conduct like predatory pricing by a dominant licensee, or price fixing and market allocation agreements between competing licensees are prohibited. This has also been explained clearly and publicly when IDA issued the revised Code in 2005.

12. It is incorrect for the USCIB to say that that there is no right of judicial review because it is not provided for in the Code. Under Singapore law, the Singapore High Court exercises an inherent supervisory jurisdiction over the decisions of bodies charged with the performance of public acts and duties. Hence, any aggrieved party may apply to the High Court for judicial review.

13. We hope the above clarifies IDA's regulatory framework and its application, as well as how the framework serves Singapore's objective of facilitating competitive telecommunication markets. We ask for the 1377 Report to accurately reflect Singapore's position on the matters discussed.

Sincerely,

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