



COMMENTS TO IDA'S PUBLIC CONSULTATION ON INDUSTRY STRUCTURE FOR NEXT GENERATION ACCESS NETWORKS

BT welcomes the opportunity to contribute to the consultation regarding industry structure for Next Generation Access Networks. The general structure of BT's response is as follows: first we comment on the body of the text, using IDA numbering, as set out below, followed by our response to the specific three questions raised.

1. PART I: POLICY OBJECTIVE AND REGULATORY FRAMEWORK

BT agrees that the telecommunications sector is an important driver of the economy and a strategic enabler underpinning the competitiveness of the larger economy.

Ensuring that Singapore has a globally competitive telecommunications market, with many players offering a wide range of innovative, high quality and cost effective services to consumers and businesses should be the main driver of the Government and IDA activities. Therefore, promoting effective and sustainable competition for the telecommunications sector is the key responsibility of the IDA.

BT would also comment that although Singapore benefits from one of the most effective regulatory regimes in the Asia Pacific region, BT remains very concerned about how effectively SingTel is regulated in Singapore. Under the Code of Practice for Competition in the Provision of Telecommunication Services (Telecom Competition Code), licensees classified as Dominant Licensees are subject to more stringent regulations. These include the regulation of tariffs, the requirement to seek IDA's prior approval for new tariffs, the requirement to offer Interconnection-Related Services and Mandated Wholesale Services under regulated prices, terms and conditions, and the requirement to offer access to unbundled network elements at cost-based prices. However, the failure of new entrants to take advantage of services under the existing Reference Interconnection Offer (RIO) demonstrates issues with the suitability of SingTel's wholesale services. Further, BT would highlight the recent request by SingTel for an exemption in the business markets which BT opposes as being premature given the limited state of competition. The removal of regulation in the markets requested by SingTel would be particularly concerning given the lack of redress to a general competition law.

PART II: FUTURE INDUSTRY LANDSCAPE

Telecoms operators internationally are beginning to upgrade their legacy networks or deploy new high speed access networks, using Fibre-to-the-Cabinet/Building/Home or alternative infrastructure of similar capabilities. However, we note that the case for investment in new access networks is extremely fragile and often unproven as the demand for services above those that can be delivered over legacy copper remains untested.

Whilst it is often argued that 25Mbit/s broadband to the home is not adequate (which is typically the highest speed that can be obtained over copper), there is very little evidence that consumers are prepared to pay an appropriate price for such services. This brings into question the extent to which consumers would be prepared to pay for speeds and services that can be provided by new access networks.



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However, BT does recognise that demographics do play an important aspect in the economics of new access networks. Areas with high population density and multi-dweller units, such as Singapore, are more suited to such investment and could potentially make the business case stronger.

Thus whilst we agree that these next generation access networks with extensive coverage will be a strategic enabler for Singapore to exploit new economic opportunities in this digital age, and are likely to deliver productivity gains and new possibilities for living, working and learning, there are a number of challenges which will remain.

We note and agree with the IDA that a competitive and vibrant market will also foster innovation in the infocomm services market and will further promote Singapore as a creative and innovative economy. BT recognises that this is a key driver for the Government to catalyse the deployment of a Next Generation National Broadband Network (NGNBN) with pervasive coverage and capable of providing bandwidth of 1Gbps and above to end-users. BT does not believe however that market forces alone will enable consumers and businesses to benefit from competitive and affordable pricing in an NGN environment. Appropriate price and non-price regulation of bottleneck next generation access services that provides an appropriate wholesale platform to enable competition will be the key to delivering the benefits envisioned by the Singapore Government.

BT would stress that in order for the Singapore NGNBN to catalyse the development of a vibrant and competitive infocomm industry, regulated non-discriminatory access to the network is critical. Only if competing telecom operators are able to obtain access to the network at reasonable prices, on a non-discriminatory basis, will they be able to offer competitive and innovative services to end-users. However, both price and non-price access conditions to the network must be considered and all players must have and be seen to have access to bottleneck services and on an "equivalence of input" (EOI) basis.

The inclusion of structural separation and operational separation in the tender for the NGNBN would appear to demonstrate the Government's commitment to ensure effective open access to facilitate competition in the downstream market.

BT has on previous occasions set out our comments on the NGNBN structure to the IDA and therefore, will not comment in detail on those issues here and will instead focus on the general issue of having separation as a tool for ensuring effective regulation in Singapore.

BT would agree that the fundamental basis for imposing separation on upstream operators is to ensure that downstream operators are able to compete on a level playing field. Structural and operational separations are not new concepts in the regulation of the telecommunications sector. Traditional regulation has relied on behavioural safeguards, such as the regulation of the prices, terms and conditions of "bottleneck" elements or services offered by dominant licensees or operators with significant market power, and prohibitions on anti-competitive conduct like price squeeze to guard against a vertically integrated operator pricing its upstream product excessively.

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Beyond such behavioural safeguards, structural safeguards like structural and operational separations help to remove or dilute the commercial incentives and ability of a vertically integrated operator to favour its downstream affiliates and discriminate against competitors that may be reliant on it for an upstream input. However, the detail of any separation is important and the obligations imposed on the operator and the rights conferred on the access seekers as well as the sanctions to enforce them are central and complex.

We agree that especially in the area of non-price terms, vertically integrated operators do not have the right commercial incentives to provide quality wholesale inputs to their competitors, and may act in a manner that disadvantages their competitors with respect to their own downstream businesses or their affiliates. Furthermore, the complexities of service provisioning mean that discriminatory conduct could exist but be difficult to prove, especially in non-price terms.

Whilst the IDA comment that *“Structural separation has thus been discussed as a possible measure, to be applied to existing vertically integrated incumbent or dominant telecommunication operators”*, it is our opinion that structural separation contains many as yet untested regulatory issues. We would contest that only operational separation has had the full rigour of regulatory analysis applied to it at this time.

As set out in the consultation, examples of Operational Separation may be found in the Undertakings given to the Office of Communications (Ofcom) in the UK by British Telecommunication plc in accordance with Section 154 of the UK Enterprise Act, and the Telecommunications (Operational Separation) Determination 2007 made by the Minister of Communications, New Zealand pursuant to Section 69F of the Telecommunications Act 2001. Operational separation has been implemented in these jurisdictions as a measure to ensure EOI in service provisioning, where the incumbent must provide services on the same prices, terms and timeframes, using the same systems and processes, and with the same commercial information made available, for both an operator's downstream business units and its competitors.

We note that with the high cost of the passive infrastructure of the NGNBN, the operator that will control the passive infrastructure of the NGNBN (the “NetCo”) will be classified as a dominant licensee by IDA. We note that it will also be required to be structurally separate from other operators to remove its commercial incentive to act anti-competitively and discriminate against its downstream competitors, and act in favour of its own downstream business divisions or affiliates. With regards to the OpCo, instead of structural separation, the operator that will control the active elements of the NGNBN to provide wholesale services (the “OpCo”) to other service providers is required to be operationally separate (or functionally separate) from other operators, including its own downstream retail business divisions or affiliates. BT would simply highlight that the detail of what is necessary to be addressed to ensure EOI is challenging and complex and it is the details which will determine the ultimate success.



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PART III: STRUCTURAL AND OPERATIONAL SEPARATION IN THE REGULATORY TOOLKIT

We note that apart from the NGNBN, the IDA is considering whether such measures should be considered for other players in the telecommunications industry. We note that the IDA is thus considering whether structural and/or operational separation should be included in the regulatory toolkit for regulating other telecommunications operators, in addition to the existing regulatory measures described at paragraph 4 that IDA can already impose on operators today.

We note that in exploring this possibility, IDA recognises that while facilities-based competition has brought about effective competition for many market segments in Singapore, there are some market segments where facilities-based competition might be lacking and competing operators might be reliant on a vertically integrated operator's input products to compete in the provision of next generation services to end-users.

We agree that such a review is timely, in view of the deployments of next generation access networks and the economic benefits that can be reaped from competitive provisioning of services on next generation networks with extensive coverage.

Furthermore, it is noted that as early as 2003, the ICT Working Group of the Economic Review Committee had asked the Government to explore the possibility of requiring the incumbent network operators to structurally separate their network and services provision, so as to promote services-based competition. While IDA believes that such structural and/or operational separation may be required to catalyse the competitiveness of the infocomm sector and enable competitive provisioning of new and innovative next generation services to residential and business end-users, IDA is cognisant of the need to ensure that the inclusion of structural and operational separation in the regulatory toolkit is necessary and reasonable. IDA thus seeks feedback on the following issues:-

Question 1: IDA seeks views and comments on the scope of separation that may be included in the regulatory toolkit, particularly differentiation in terms of types of operator, network elements, markets, or any other manner of differentiation. For example, should separation be considered for dominant licensees, and/or network elements that are costly and difficult to replicate, in respect of next generation access networks with extensive coverage etc.

Answer 1

Two types of "separation" are generally recognised: (1) functional/operational separation and (2) structural separation.

We note that there may be different conditions and criteria under which structural or operational separation may be imposed. International practices also differ in this respect.



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Structural separation or the division and/or divestiture of business divisions is often provided for in competition law as a remedy to rectify anti-competitive conduct like the abuse of a dominant position. In the UK, the Enterprise Act 2002 allows the UK Competition Commission to make an order, which may provide for the division of any business (whether by the sale of any part of the undertaking or assets or otherwise), to remedy, mitigate or prevent the adverse effect of competition, if it has decided on a market investigation reference that there is an adverse effect on competition. BT would highlight at this point, its ongoing concern that the telecommunications market in Singapore is excluded from Singapore's general competition law which provides such a power.

Operational separation is a more recent tool which has been implemented through voluntary undertakings by the incumbent operator, e.g., in the UK, while there have also been instances where operational separation has been required through legislation to promote more competitive service provisioning with EOI being offered for the access network, e.g., in New Zealand. The European Commission has also recommended the introduction of operational separation (or functional separation) as a possible regulatory tool in its Access Directive.

It is BT's view that the ability to impose operational separation of operators where enduring bottlenecks exist is a necessary component in the regulatory toolkit in Singapore.

In determining the specific characteristics of operational separation, it is important to remember the key objective to be achieved, i.e. ensuring EOI between a dominant operator's downstream arm and its competitors to enable competition. Therefore, such operational separation should be at the lowest point in the network (be that fibre, copper, or whatever technology) above which effective competition could take place. One of the key advantages of operational separation over structural separation is that the point of separation can be flexed as competitive trends change and the bottlenecks change.

We have attached at **Appendix A**, links and relevant documentation concerning the operational separation of BT in the UK and the legally binding undertakings that BT has given. In the context of the UK market it was determined to fix the point of separation at the backhaul network so that access and backhaul are included within the functional separate "BT Openreach".

Question 2: IDA recognises that international practices differ in the criteria for imposing structural and/or operational separation, although the policy objective of most jurisdictions when imposing any form of separation is to ensure effective competition in the telecommunication markets. IDA seeks views and comments on the appropriate criteria for the imposition of structural and/or operational separation as a regulatory measure.

Answer 2

As set out below, BT believes that operational separation is a more appropriate remedy. In choosing to implement this model it is important to remember that the core principle that must be achieved in operational separation is to ensure equivalence of access to bottleneck facilities and ensure non-discrimination and cost orientated pricing. This is done by addressing the opportunity and incentive by a vertically integrated operator to discriminate in favour of its downstream arm.



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Question 3: IDA seeks views and comments on the comparative benefits of structural separation vis-à-vis operational separation, in relation to the scope of separation and the criteria for separation for both structural and operational separation, stated in Questions 1 and 2.

Answer 3

BT would submit that operational separation is a more effective way of achieving the objective of ensuring non-discriminatory access to bottlenecks in part because structural separation has associated with it the issue of permanence. Structural separation cannot be easily undone and is not flexible in a changing world where the bottlenecks may change over time. Operational separation, if appropriately implemented and enforced is far more flexible. Furthermore, forced or indeed voluntary structural separation does not necessarily create the right outcome for the market. It is unclear as to why a dominant supplier that supplies a dominant customer would behave any differently from a classic duopoly.

Therefore, BT would believe that operational separation is the most appropriate approach for the market but that it has to be enshrined in the law and has to be supported by transparent detailed undertakings by the dominant firm. Some key principles include:-

1. The point of separation must be at the point above which effective competition could take place. For example, access and backhaul are normally non-replicable in the long term and therefore may be the logical point of separation (Openreach model);
2. The incentives of a vertically integrated operator to discriminate in favour of its downstream operator must be changed; and
3. The bottleneck facilities such as access and backhaul must be effectively regulated ensuring EOI that is demonstrably non-discriminatory in price and non-price terms with world class SLAs that are delivered against and pricing certainty. The separate wholesale business must also be effectively regulated offering world class SLAs that are delivered against and pricing certainty.

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APPENDIX A

1. Undertakings given to Ofcom by BT pursuant to the Enterprise Act 2002
<http://www.ofcom.org.uk/telecoms/btundertakings/btundertakings.pdf>
2. Quarterly Report on Implementation of BT's Undertakings
<http://www.ofcom.org.uk/telecoms/btundertakings/implementation/>
3. Ofcom's Strategic Review of Telecommunications
http://www.ofcom.org.uk/static/telecoms_review/index.htm
4. Impact of the Telecommunications Strategic Review
http://www.ofcom.org.uk/telecoms/btundertakings/tsr_statement/tsr_statement.pdf
5. Strategic Review of Telecommunications: FAQs
http://www.ofcom.org.uk/media/mofaq/telecoms/tsr_faq/
6. Other documents
<http://www.ofcom.org.uk/telecoms/btundertakings/otherdocs/>
7. Useful links
<http://www.ofcom.org.uk/telecoms/btundertakings/links/>