Explanatory Memorandum

1. This explanatory memorandum explains IDA's position:

   (a) in response to the general points raised by Singapore Telecommunications Limited ("SingTel") in its submissions; and

   (b) IDA's requirements in relation to service migration, reservation of capacity and service activation timeframes.

A. RESPONSE TO GENERAL POINTS

Section 1: Comparison with Retail Terms

2. SingTel submitted that IDA "has been highly selective in its criticism that SingTel must not impose requirements for wholesale LLCs under the RIO that are generally worse off compared to SingTel's retail offering".

3. IDA assures SingTel that its concerns are unfounded. In reviewing SingTel's proposed terms and conditions for its mandated wholesale LLC service, IDA's basis of review is to ensure that these terms and conditions are fair, reasonable and non-discriminatory. In this respect, as a starting basis, IDA would compare these proposed terms and conditions with SingTel's retail LLC offering. The rationale for this approach has been clearly explained in Annex 1 of IDA's 23 August 2004 Direction ("Direction"). The purpose of mandating a wholesale LLC service is to enable competing licensees to acquire LLCs from SingTel at wholesale terms that will enable these licensees to then effectively compete with SingTel in their retail provisioning of many dependent services to customers.

4. However, this is not to say that IDA will accept a proposed wholesale term as fair, reasonable and non-discriminatory, based on the sole criteria that such wholesale term is "no worse off" as compared to the retail term. For example, IDA may require specific amendments to be made to the proposed wholesale term to ensure that its policy intent is met.

5. Therefore, where IDA assesses that a certain wholesale term proposed by SingTel is unfair or unreasonable, IDA has required SingTel to modify such a provision. In most cases, IDA has only required SingTel to modify a wholesale term so that it is "no worse off" than retail. In other cases, either because of the differences in the retail and wholesale provisioning, or as necessitated by IDA's policy requirements, IDA has required modification to ensure that the wholesale term is fair and reasonable. In addition, IDA has only required SingTel to delete a proposed wholesale term after IDA has arrived at a considered view that such a term is unjustified or

unnecessary in relation to the provision of wholesale LLCs. Even then, IDA has in these cases provided SingTel with an opportunity to provide justification for the retention of such a provision.

Section 2: Unsubstantiated Requirements for Amendment

6. SingTel submitted that "in several places, IDA has required SingTel to change terms and conditions [in the RIO] that have been in place since 2001 and which have not caused any difficulties whatsoever for Requesting Licensees."

7. At the outset, IDA would reiterate its position that, notwithstanding any approval by IDA of any of the provisions in SingTel's Reference Interconnection Offer ("RIO"), IDA may from time to time review these provisions to ensure that they remain relevant to the industry's requirements and continue to further IDA's policy objectives. For example, IDA may undertake such a review arising from feedback received from the industry or in connection with any RIO proceeding.

8. Contrary to SingTel's assertion, IDA has received substantial feedback from the industry on some of these provisions (including those received in the course of the RIO consultation exercise held in July 2003). However, IDA has decided not to require SingTel to modify some of these provisions in the RIO at this time. Instead, as part of the comprehensive RIO review exercise to be held upon conclusion of the first triennial review of the Telecom Competition Code ("Code"), IDA will review these provisions and allow the industry an opportunity to provide updated feedback.

9. In addition, SingTel also submitted that IDA's requirement to assimilate Schedule 8B and its proposed Schedule 8E will produce no benefit for Requesting Licensees. In this respect, IDA has already provided SingTel with the reasons for its conclusion that the two Schedules must be merged (please see paragraph 5 of Annex 1 of the Direction). On the other hand, SingTel did not provide any explanation or justification other than a statement that merging the two Schedules "will produce no benefit for Requesting Licensees".

Section 3: Incorrect Interpretation of the Code

10. SingTel stated that IDA's requirement that "SingTel must enable Requesting Licensees to migrate the provision of circuits from an existing LLCs agreement to the RIO" is "based on IDA's Explanatory Memorandum to the LLC Decision". In this regard, SingTel also stated that "there is no provision in the Code that requires SingTel to devise and implement service migration for LLCs from existing agreements to the RIO".

11. IDA's position is that these statements made by SingTel are irrelevant. As a regulatory framework, the Code will only specify the key requirements relating to full and tail circuits that SingTel must comply in offering mandated wholesale services. It is neither appropriate nor a practice for IDA to specify in the Code every implementation requirement relating to IDA's decision to mandate wholesale services and Interconnection Related Services ("IRS"). Instead, in the exercise of its functions and powers under the Info-communications Development Authority of Singapore Act (Chapter 137A) and the Telecommunications Act (Chapter 323)("Telecom Act"), IDA may from time to time issue directions to address and resolve implementation issues that subsequently arise. Nothing in the Code restricts IDA's exercise of its statutory functions and powers in issuing directions to its licensees to ensure that its policy requirements are fully met. In doing so, IDA will ensure that its directions are consistent with the provisions of the Code.

12. As SingTel has rightly pointed out, when IDA issued the LLC Decision to SingTel on 16 December 2003, IDA had stated clearly that should "any FBO Licensee wishes to terminate its existing LLC service contract with SingTel, pay any applicable premature termination liability and migrate the provision of the existing circuits to the RIO, SingTel must ensure that there is no service disruption to these circuits during the migration process."[1] Hence, SingTel ought to be fully aware of IDA's implementation requirements on service migration. Following from the LLC Decision, IDA issued the Direction to SingTel on 23 August 2004 to implement the LLC Decision, wherein IDA directed SingTel to provide for an orderly and efficient service migration process. In the circumstances, it is irrelevant whether or not the Code provided for service migration, given that IDA has issued a direction requiring SingTel to do so.

13. IDA also rejects SingTel's assertions that IDA's "[direction] is inconsistent with sections 4.5 and 5.4 of the Code". SingTel did not provide any reason to support its assertions beyond stating that "those sections confirm the validity of existing agreements and the option of interconnection pursuant to individualised agreements". IDA will clarify that subsection 4.5 relates only to the validity of agreements entered into "*prior to the effective date of this Code*" (i.e. 29 September 2000) and it only applies to agreements for "physically connecting telecommunication networks, exchanging telecommunication traffic and/or providing related services". Clearly, subsection 4.5 has no application to retail agreements for the provision of LLCs. On the other hand, subsection 5.4 provides as one of the options for entering into an interconnection agreement with the Dominant Licensee, the ability of the Requesting Licensee to opt into any existing Interconnection Agreement concluded with the Dominant Licensee. In this respect, IDA fails to see the relevance of subsection 5.4 to this issue.

[1] Please see paragraph 21 of the Explanatory Memorandum to IDA's 16 December 2003 Decision.

B. SERVICE MIGRATION, RESERVATION OF CAPACITY AND SERVICE ACTIVATION TIMEFRAMES

Section 4: Service Migration

14. With reference to paragraph 4 of Annex 1 of the Direction, IDA required SingTel to propose for incorporation into its RIO, provisions to enable service migration. At a minimum, IDA directed SingTel to address "service migration" under the following circumstances:

    (a) de-activation of a mandated wholesale full circuit and activation of corresponding tail circuits(s), where the tail circuit(s) are obtained under the RIO as a mandated wholesale service within the availability period;
    (b) de-activation of a mandated wholesale full circuit and activation of corresponding tail circuit(s), where the tail circuit(s) are obtained under the RIO as an IRS upon the expiry of the availability period; and
    (c) transition of tail circuit(s) obtained under the RIO as a mandated wholesale service to that of an IRS, upon the expiry of the availability period of the mandated wholesale service for LLCs.

15. In relation to service migration from a mandated wholesale full circuit to a mandated wholesale tail circuit, SingTel has submitted that this can only be processed on a "cease and provide" basis, as patching and configuration works are required. This involves the Requesting Licensee submitting an application to deactivate the mandated wholesale full circuit under Schedule 7A and a further application for activation of a mandated wholesale tail circuit under Schedule 7B. IDA accepts SingTel's reasoning to apply such a process to enable service migration for mandated wholesale full circuit to a mandated wholesale tail circuit. IDA's assessment is that the Requesting Licensee ought to be in a position to manage such service migration to minimise service disruption to its own End Users. IDA expects SingTel to cooperate to a reasonable extent to minimize service disruption to End Users. Notwithstanding, should Requesting Licensees encounter any difficulty in the implementation of such a process for service migration, IDA may subsequently direct SingTel to incorporate specific provisions into its RIO to resolve any such difficulty.

16. In relation to service migration from mandated wholesale circuits to IRS tail circuits, SingTel has undertaken to provide detailed procedures to address service migration when it submits its proposed RIO modification for inclusion of IRS tail circuits. After careful consideration, IDA accepts SingTel's undertaking. IDA accepts that these service migration procedures would not come into operation until the expiry of the Central FLLC/TLLC Term, at the earliest. In addition, such an approach will permit

IDA to provide for an additional opportunity for industry consultation on the detailed service migration procedures to be proposed by SingTel.

Section 5: Reservation of Capacity

17. SingTel has proposed that, in assessing the availability of mandated wholesale circuits, SingTel should be allowed to have regard to its reasonably anticipated requirements for provision to itself and its customers, as well as for operations and maintenance purposes. SingTel submitted that making service availability subject to reasonably anticipated requirements is a feature of many other aspects of the RIO. In addition, SingTel submitted that such reservation of capacity is not inconsistent with the principle of non-discrimination in the Code and is a feature of regulatory best practice.

18. After careful consideration, IDA maintains its position that SingTel may not reserve capacity. IDA recognises that ordinarily, as the owner of the infrastructure, SingTel should have the ability to reserve future capacity requirements for itself. However, in the case of mandated wholesale circuits, IDA considers such a provision to be wholly incompatible with the overriding policy objective of achieving effective competition in retail LLC provisioning.

19. Firstly, Requesting Licensees must have the ability to acquire mandated wholesale LLCs from SingTel for the purpose of providing a competing service to End Users. In this respect, to promote effective competition, it is necessary to ensure that the criteria for the supply of available LLCs to competing Requesting Licensees is on a non-discriminatory basis as compared to SingTel's own allocation to itself. Allowing SingTel to reserve capacity for its own use impedes the objective of fostering effective competition.

20. Secondly, IDA recognised in its LLC Decision that Requesting Licensees would not have sufficient incentive or degree of certainty to build their trunk networks unless they are able to compete effectively to acquire customer base, thereby justifying their significant investments in network roll-out. In this respect, if SingTel should be allowed to reserve capacity, especially in the CBD and other high usage areas where SingTel may forecast a higher capacity usage, Requesting Licensees will be restrained from competing effectively because of unavailability of circuits that have been reserved by SingTel.

21. Thirdly, IDA also took into consideration the fact that the mandated wholesale LLC service is only available for a limited period of two years (in the case of LLCs in the Central Zone, 18 months). IDA's assessment is that this prescribed period already takes into account the balance between

setting the timeframe necessary to allow effective competition to take place and SingTel's interest as the owner of the infrastructure.

22. Finally, IDA also rejects SingTel's assertion that reservation of capacity is a feature of regulatory best practice. In this respect, IDA notes that the reference interconnection offers adopted in certain benchmark jurisdictions do not provide for reservation of capacity for LLCs. Ultimately, IDA's decision must take into consideration the policy objective of the LLC Decision and the requirements of the industry in Singapore.

23. Balancing all of these considerations, and taking into account SingTel's representations, IDA's assessment is that any reservation of capacity by SingTel will materially undermine the effectiveness of the LLC Decision.

Section 6: Service Activation Timeframes

24. In the Direction, IDA concluded that the ordering, provisioning, project study and delivery procedures contained in SingTel's proposed Schedules 7A and 7B do not give effect to IDA's policy intent and must be significantly improved. Hence, IDA required SingTel to propose a streamlined process for IDA's consideration.

25. After a careful assessment, IDA's conclusion is that the revised procedures contained in Schedules 7A and 7B of SingTel's Revised Proposed RIO Modification still fail to give effect to IDA's policy intent and are clearly unacceptable[2]. For most of these provisions, SingTel did not propose any revision to streamline the process. In cases where there were revisions, either these were not significant or they did not satisfy IDA's requirements. Briefly, SingTel's proposed procedures in Schedule 7A involve the following key steps[3]:

    (a) Under clause 2.2, the Requesting Licensee must submit an FLLC service activation request ("FLAR") no less than 20 Business Days for regular provisioning and no less than 8 Business Days for express provisioning, prior to the requested date of service activation. However, there is no corresponding commitment by SingTel to meet these timeframes and the requested date of service activation.

    (b) Under clause 2.3, SingTel will acknowledge receipt of the FLAR by the next working day. In doing so, SingTel will indicate to the Requesting Licensee the date on which SingTel will begin to

[2] Please refer to Annex 1 of IDA's 23 August 2004 Direction.
[3] The procedures for ordering, provisioning, project study and delivery in Schedule 7A are materially similar to Schedule 7B.

process the FLAR ("Processing Date"). However, SingTel did not commit to any timeframe by which it will process the FLAR.

(c) Under clause 3.1, SingTel will perform a Project Study within 10 Business Days after the Processing Date. Similarly, SingTel did not commit to any timeframe by which it will complete the Project Study.

(d) Under clause 3.3, when SingTel completes the Project Study, SingTel will notify the Requesting Licensee whether it accepts or rejects the FLAR. Where SingTel accepts the FLAR, it will provide an estimated ready for service date. However, clause 3.5 clarifies that the ready for service date is only an estimate and SingTel has no obligation to ensure that the service will be activated by the requested time. Instead, if SingTel becomes aware that there may be a delay, SingTel's only obligation is to inform the Requesting Licensee as soon as practicable of such delay and when the service is likely to become available.

(e) In relation to the service level guarantees ("SLG") under clause 1.8, SingTel is only liable under the SLG if the delay is caused solely by SingTel. Moreover, given that SingTel has not committed to any timeframe for service activation under clause 3.5, the Requesting Licensee has neither assurance nor certainty as to when this will actually take place.

26. Given that SingTel's proposed provisions fail to give effect to IDA's policy intent and are clearly unacceptable, IDA has directed SingTel to adopt specific drafting language to provide for the following process:

(a) In the case of regular provisioning, clause 2.2 requires the Requesting Licensee to submit a FLAR to SingTel no less than 15 Business Days prior to the requested date of service activation. In this respect, clause 3.1 imposes a corresponding obligation on SingTel to ensure that it activates service no later than 15 Business Days from the FLAR submission date.

(b) Under clause 2.3, SingTel must acknowledge receipt of the FLAR by the next working day.

(c) Under clause 3.1, SingTel must complete the Project Study and notify the Requesting Licensee of its acceptance or rejection of the FLAR, no later than 10 Business Days from the FLAR submission date. Where SingTel accepts the FLAR, SingTel must activate service no later than 15 Business Days from the FLAR submission date.

(d) In the case of express provisioning, clause 4A applies. SingTel must promptly and in good faith discuss with the Requesting Licensee its requirements for express provisioning. If SingTel accepts the request for express provisioning, SingTel must activate service within 3 Business Days.

(e) Notwithstanding that there is an obligation imposed on SingTel to activate service within the specified timeframes, in cases where delays occur because of events outside SingTel's reasonable control, SingTel will not incur liability under clauses 1.7 and 1.8.

27. IDA considers the above process reasonable and necessary. As SingTel must commit to a specified timeframe for service activation, Requesting Licensees will have sufficient certainty in managing their commercial operations. The specified timeframes also ensure that Requesting Licensees are able to acquire wholesale LLCs from SingTel on terms that enable them to compete effectively against SingTel. In addition, these timeframes will not impose any unreasonable burden on SingTel. Firstly, IDA notes that these timeframes are consistent with SingTel's current retail provisioning timeframes. Secondly, SingTel is not liable for any delays in meeting these timeframes where the delays are beyond its reasonable control. Ultimately, the above process will ensure that IDA's policy intent is met.