

Comments

On

IDA Consultation Paper

**Proposed Consolidation Involving StarHub Pte Ltd and
Singapore Cable Vision Ltd**

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Pacific Internet Limited (“PacNet”) is an Internet service provider providing Internet access and related valued-added services. PacNet is a Facilities-based Operator Licensee and its shares are listed on the NASDAQ in the United States.

1. Introduction and Summary

Our comments on the consultation paper focus on the impact of the proposed consolidation involving StarHub and SCV on the broadband Internet access market in Singapore, while recognising that the proposed consolidation will have significant implications on the telecommunications sector in Singapore as a whole.

It is our view that the proposed consolidation has major implications on competition in the broadband Internet access market in Singapore. Specifically, our discussion focuses on the likely competitive effects of the proposed consolidation, the proposed pro-competition conditions to be imposed on the merged entity and our views on SCV’s designation as a Dominant Licensee:-

Likely Competitive Effects

- Elimination of potential future competition between StarHub Internet and SCV
- Elimination of a significant broadband Internet access market player if the merged entity consolidates the existing Internet access service providers in the group under a single arm
- Increased risk of the merged entity and/or its subsidiaries engaging in anti-competitive actions in the broadband Internet access service market and the telecommunications market in Singapore in general
- Increased risk of concerted anti-competitive behaviour amongst existing Licensees in the wholesale broadband Internet access market

Pro-Competitive Conditions to be Imposed

- Open access to the SCV’s cable modem network by 2002
- Separate accounting of the merged entity’s revenues from providing wholesale broadband Internet access services over the cable modem network when cable is opened for access
- Separation of SCV’s broadband Internet access service from SCV’s cable network operations when cable is opened for access

SCV’s Desingation as a Dominant Licensee

- Current temporary exemptions from the Telecom Competition Code to be lifted as SCV will yield significant market power after the consolidation
- The merged entity StarHub to be classified as a Dominant Licensee in respect of its ownership of the cable modem network

2. Competitive Effects of the Proposed Consolidation

2.1 Possible Elimination of Actual or Potential Future Competition Between StarHub and SCV

The proposed consolidation between StarHub and SCV effectively precludes potential future competition between StarHub Internet and SCV in the market for broadband Internet access service. Although StarHub Internet and SCV currently operates in different segments of the market for broadband Internet access service (corporate and residential respectively), one cannot preclude the possibility that StarHub Internet may compete with SCV in the residential broadband Internet access service market in the future, given that it is an attractive market, had StarHub and SCV remain separate companies. As it does not make sense for subsidiaries to compete, the proposed consolidation effectively eliminates potential future competition between StarHub Internet and SCV in the broadband Internet access market.

2.2 Possible Elimination of a Significant Market Participant

It is possible that merged entity may consolidate the existing Internet access services offered by StarHub Internet and SCV under one entity, i.e. either StarHub Internet or SCV or another entity. Point 5 of the Description, Competition Impact & Public Interest Statement merely states that it is **likely** that StarHub and SCV will continue to offer the products that they are currently offering. Hence, there is no firm commitment that StarHub Internet and SCV will continue to offer the existing Internet access service. If the merged entity consolidates the Internet access service under one roof, there would effectively be one less significant ISP in Singapore.

2.3 Possible Anti-Competitive Conduct by StarHub or SCV

The merged entity will control the cable modem network, whose present owner SCV is currently classified as a Dominant Licensee. The merged entity will also control about 50% of the residential broadband market and 18% of the leased lines market, based on the information in the table in point 10 of the Description, Competition Impact and Public Interest Statement. The merged entity is likely to capture an even greater share of the broadband Internet access market, given its likely enhanced market power after the merger. In addition, the proposed consolidation will create a vertically integrated entity in the broadband Internet access market as SCV, the upstream cable modem platform owner, will be affiliated with StarHub Internet, the downstream Internet service provider. The merged entity including SCV will therefore have substantial market power in the broadband Internet access market.

The market power of the merged entity and its subsidiaries plus the concentrated nature of the market structure after the proposed consolidation will enhance the ability and incentive for SCV and StarHub to act anti-competitively in the broadband Internet access market and the telecommunication market in Singapore generally.

Broadband Internet Access Market

When cable modem platform is opened for access, non-affiliated resellers of cable modem will be concerned that they will be buying wholesale broadband internet access service over the cable modem network from an entity which is also retailing the broadband access service using the cable modem network (assuming that SCV continues to be a broadband Internet access service provider) and whose affiliated company, StarHub Internet, may be likely to resell this service. The SCV and the StarHub Internet affiliation gives rise to the

possibility that the upstream company will give preferred treatment to its downstream affiliate, resulting in anti-competitive practices like pricing abuses, e.g. price squeezes, discrimination and cross-subsidisation, among other things, thus putting other competitors of the downstream company at a competitive disadvantage.

With the proposed consolidation, StarHub, who is an upstream bandwidth provider, will be affiliated with the downstream Internet access service provider SCV (assuming that SCV continues to provide broadband Internet access service). This relationship gives rise to the possibility that the downstream Internet access service provider SCV may be able to enjoy favourable terms including cross-subsidisation from the upstream bandwidth provider and hence enjoy competitive advantage when competing with other ISPs.

The proposed consolidation also gives rise to the possibility of cross-bundling in the Internet access market. As an illustration, SCV, who is currently a pure broadband Internet access service provider, does not provide email services. As such, SCV subscribers buy email service from other ISPs. With the proposed consolidation, SCV may bundle StarHub Internet's email services with cable broadband Internet access service, thus putting other ISPs at a competitive disadvantage in regard to the provision of email service.

Telecommunications Market in Singapore

The proposed consolidation also gives rise to the possibility of cross-bundling and cross-subsidisation by the StarHub group of companies. Given that affiliate companies in the merged StarHub group offers a whole suite of telecommunications services and products from mobile, IDD calls, Internet access to Cable TV, the number of ways of bundling the products and services and cross-subsidising creatively between the tariffed telecommunications services and products and non-tariffed ones will be almost infinite. This puts competitors of the affiliate companies at great competitive disadvantage.

2.4 Possible Anti-Competitive Concerted Action Among Existing Competing Licensees

As the respective owners of the ADSL network and cable modem network with downstream affiliates providing broadband Internet access service, SingTel and StarHub would be effectively a duopoly in the wholesale broadband Internet access market. Resellers of broadband Internet access service can only obtain the wholesale service from either of these entities, at least until power line communications becomes technically and commercial viable on a large scale. Further, there is market-wide marketing and pricing practices in broadband Internet access service market making tacit agreement on prices possible. There is therefore substantial room for concerted anti-competitive action by the two entities in the form of tacit price fixing or tacit agreement on service level, among other things.

The duopolistic nature of the upstream wholesale broadband Internet access market is likely to curtail entry to the downstream broadband Internet access market as potential new players may be discouraged by the possibility of encountering anti-competitive practices in the upstream market.

3. Pro-Competitive Conditions to be Imposed

As the merged entity will have significant market power in the telecommunications market in Singapore, we strongly urge the regulator to impose pro-competitive conditions as a condition for approval of the proposed consolidation. We strongly suggest that the pro-competitive conditions include the following:-

Open Access

We submit that the regulator should require SCV to commit to provide open access to the cable modem network to competing ISPs by the second half of 2002¹ as scheduled as a condition for approval of the proposed consolidation. With SCV achieving a 50% share of the residential broadband access market in just over 2 years, it is important that cable be opened for access to other ISPs as soon as possible to help other players catch up on SCV's lead in this market.

To ensure that the benefits of open cable access flow to the consumers and the industry as soon as possible, we urge the regulator to take the following steps:-

- To seek public and industry feedback when reviewing the cable wholesale broadband Internet access tariff filing from SCV to ensure fair wholesale pricing of cable open access for broadband Internet access service
- To ensure that there are no undue delays in the opening up of access to the cable modem network. We understand that the cable modem network has been opened for access on a commercial basis in parts of the US². Therefore, technology limitation should not be an impediment to the scheduled open access of the cable modem network to ISPs in the second half of 2002.
- To set more specific milestones for the project to open cable access including the dates for testing of equipment to enhance monitoring of the timeline
- To take the lead in preparing a fair wholesale agreement for broadband Internet access service between SCV and resellers
- To require SCV to provide the same level of service to resellers as that provided to affiliated resellers by making it mandatory to provide service level assurance in its contracts with resellers. This requirement is necessary to ensure that customers of non-affiliated resellers enjoy equal treatment in terms of service levels as those of affiliated resellers.

Accounting Separation

Accounting separation should be applied to revenues which the merged entity receives from providing broadband Internet access service using the cable modem network as the network is not subject to competition. The merged entity should also be required to comply with rules governing allocation of joint costs and transactions between affiliates to deter cross-subsidisation.

Structural Separation

When the cable modem network is opened for access, it will clearly be undesirable for SCV to continue to provide broadband Internet access service and compete with resellers. It will be difficult to ensure that the owner of the cable modem network will give equal treatment to resellers when the owner is also selling the same service. As a condition for approval, we suggest that the regulator should require that a separate entity undertake the retail of SCV's existing broadband Internet access service when the network is opened for access.

¹ IDA information paper dated 7 March 2002 on "Cable Open Access for Internet Access Services in Singapore".

² Ibid

4. SCV's Designation as a Dominant Licensee and its Temporary Exemption from Certain Provisions in the Telecom Competition Code

With the proposed consolidation, we submit that SCV should continue to be designated as a Dominant Licensee. The temporary exemptions from certain of the provisions in the Telecom Competition Code which are applicable to Dominant Licensees should be lifted as SCV will have enhanced market power when it becomes part of a group of companies which has significant market power as a combined entity.

In addition, we submit that given its 100% ownership of SCV, the merged company StarHub should also be designated as a Dominant Licensee in areas when SCV is designated as Dominant Licensee. All provisions relating to SCV as a Dominant Licensee should then apply equally to StarHub.