SINGAPORE TELECOMMUNICATIONS LIMITED

RESPONSE TO THE PROPOSED CONSOLIDATION INVOLVING STARHUB PTE LTD AND SINGAPORE CABLE VISION LTD

1. DESCRIPTION OF THE COMMENTING PARTY

1.1 The commenting party is Singapore Telecommunications Ltd (**SingTel**).

1.2 SingTel is licensed to provide telecommunications and postal services in Singapore. SingTel was corporatised on 1 April 1992 and listed on the stock exchange in November 1993.

1.3 SingTel stands as Singapore's leading integrated communications service provider and has invested over S$3 billion in its network infrastructure over the past three years. These initiatives reflect SingTel's commitment to innovation and competition in all its delivery services and platforms.

1.4 SingTel, as a leading provider of telecommunications services and a leading proponent of innovation and competition, has a strong interest in effective pro-competition regulation of Singapore's telecommunications industry.

1.5 On 17 May 2002, StarHub Pte Ltd (**StarHub**) lodged an application for approval of a Consolidation between StarHub and Singapore Cable Vision Ltd (**SCV**) (**Application**). SingTel responds in this submission to the IDA's Consultation Document entitled "*Proposed Consolidation involving StarHub Pte Ltd and Singapore Cable Vision Ltd*" dated 17 May 2002 (**Consultation Paper**).

1.6 This submission is structured as follows:

- section 2 contains an executive summary;
- section 3 briefly outlines the relevant tests to be satisfied by StarHub/SCV for the Proposed Consolidation to proceed;
- section 4 responds to the Application and summarises SingTel's view that StarHub and SCV have not established that the Proposed Consolidation will not unreasonably restrict competition;

- section 5 outlines SingTel's view that the Proposed Consolidation will unreasonably restrict competition; and

- section 6 deals, in the alternative, with the minimum conditions that SingTel believes would be required if the IDA believes that conditions could satisfy its anti-competitive concerns.

2. EXECUTIVE SUMMARY

2.1 SingTel opposes the proposed consolidation involving StarHub and SCV (**Proposed Consolidation**).

2.2 SingTel believes that the IDA should deny the Application in relation to the Proposed Consolidation in accordance with section 9.5.2 of the Code of Practice for Competition in the Provision of Telecommunications Services (**Telecom Competition Code**).

2.3 SingTel submits that StarHub and SCV have not established, which they have the onus of establishing in accordance with section 9.4 of the Telecom Competition Code, that the Proposed Consolidation will not unreasonably restrict competition in relevant markets.

2.4 SingTel believes the Proposed Consolidation is or is likely to unreasonably restrict competition in the markets in which the Merged Entity operates.

2.5 The reasons for SingTel's view are that:

- SCV is currently the monopoly supplier of nationwide subscription television services in Singapore;
- Although SCV's monopoly expires in June 2002, there are currently no means of introducing competition on and from the date of expiry, whether through any or a combination of the following:
  - the granting of additional nationwide subscription television licences;
  - the resale of capacity on the SCV network at the wholesale level to third parties;
  - the resale of the SCV subscription television service to end-users;
  - access to SCV content;
- SCV holds a 53% market share in the broadband service market through its MaxOnLine service;
- The SCV cable modem service is a bottleneck and access to third parties is currently unable to be technically implemented;

- The Proposed Consolidation should be considered to be both a Horizontal Consolidation and a Non-Horizontal Consolidation because:

    - Contrary to the StarHub submission, StarHub and SCV have historically held the position that they are competitors or potential competitors. Therefore, the Proposed Consolidation should be considered to be one between competitors in the same market and hence a Horizontal Consolidation;

    - StarHub and SCV also operate in different markets and hence the Proposed Consolidation should be considered to be a Non-Horizontal Consolidation;

- As a Horizontal Consolidation, the Proposed Consolidation:

    - raises serious competition consequences through the elimination of one strong competitor in the markets in which SCV and StarHub competed or potentially could have competed in;

    - raises the risk of co-ordination between M1 and StarHub Mobile due to SPH's shareholding in both entities;

- As a Non-Horizontal Consolidation, the Merged Entity will be in the unique position of being able to bundle, amongst other services:

    - Fixed telephony services;

    - Mobile telephony services;

    - Subscription television services;

    - Broadband and internet based services;

- No other entity in Singapore will be in a position to do so;

- A Non-Horizontal merger of this type should be prevented because of the risk of anti-competitive pricing, discrimination and cross-subsidisation.

2.6 For these reasons, SingTel submits that the Proposed Consolidation will:

(a) result in a significant and unjustifiable reduction in existing competition in several telecommunications markets within Singapore; and

(b) significantly impede the development of future competition in several telecommunications markets within Singapore.

2.7 In the alternative, if the IDA does not accept SingTel's submission that it should deny the application in full in relation to the Proposed Consolidation, SingTel believes that the IDA should impose conditions to reduce the anti-competitive harm that will or is likely to arise in relation to the Proposed Consolidation in accordance with section 9.5.3 of the Telecom Competition Code.

2.8 SingTel believes that the IDA should further consult in relation to applicable conditions if it is of the view not to deny the Application in its entirety. However, for completeness and in the alternative, SingTel submits that such conditions should include the following:

2.8.1 SCV must allow third parties to resell the SCV subscription television services.

2.8.2 The IDA should not permit the Proposed Consolidation to proceed until the Ministry of Information Technology and the Arts has liberalised the broadcasting sector industry permitting competition in the provision of nationwide subscription television services.

2.8.3 SCV must upgrade its network to enable access to be provided to third parties to supply a cable modem service (including by implementing DOCSIS v.1.1) by no later than 31 December 2002 in accordance with the IDA's Information Paper entitled "Cable Open Access for Internet Access in Singapore, 7 March 2002. For the reasons specified above, the SCV cable modem service is the dominant broadband service in Singapore and the network over which the service is provided is a bottleneck. In the absence of access, SCV will be able to leverage off this bottleneck, reducing competition for the provision of broadband services as well as related telecommunications markets.

2.8.4 SCV and StarHub must be kept structurally separated to ensure that anti-competitive cross subsidies and discrimination do not occur between SCV and StarHub.

2.8.5 Both SCV and StarHub should be required to prepare separate accounts under the IDA's Accounting Separation Guidelines.

2.8.6 SCV and StarHub's licences must not be aligned, as suggested in paragraph 2 of the Application. Alignment of the licences may nullify the benefits of the structural and accounting separation and may allow StarHub and SCV to undertake anti-competitive cross-subsidisation, discrimination and bundling.

2.8.7 SPH should be required to divest its holding in either MobileOne or the Merged Entity because of the potential anti-competitive effect created by SPH's cross-shareholdings in both StarHub Mobile and MobileOne if the merger is allowed to proceed.

2.8.8 The Merged Entity (ie both StarHub and SCV) should be declared dominant without any exemptions.

2.9 SingTel submits that the IDA should consult with other regulators, including the Singapore Broadcasting Authority to ensure that various issues outside IDA's jurisdiction are adequately dealt with in relation to the Proposed Consolidation.

3. CONSOLIDATIONS THAT UNREASONABLY RESTRICT COMPETITION

3.1 Unreasonably restrict competition test

Telecom Competition Code

3.1.1 Section 9.3 of the Telecom Competition Code states that the IDA will determine whether the Proposed Consolidation is likely to unreasonably restrict competition in any market in which the Licensee competes. As specified in section 9.1.2, a Consolidation that may harm competition includes where:

> "*such transactions could create an entity that is not subject to competitive market forces or could facilitate unlawful collusion amongst competing entities*".

3.1.2 The IDA's draft "Advisory Guidelines Governing Applications for Licence Assignments or Changes in Ownership of a Licensee in connection with a Proposed Consolidation" (**draft Guidelines**) state that (at paragraph 6.2.1):

> *"The 'unreasonably restrict' standard is a flexible one. In general, however, IDA will only find that a proposed Consolidation unreasonably restricts competition where the Consolidation would be likely either to:*
>
> *(a) result in a significant and unjustifiable reduction in existing competition in any telecommunications market within Singapore; or*
>
> *(b) significantly impede the development of future competition in any telecommunications market within Singapore."*

"Likely" impact on competition

3.1.3 Importantly, the test includes whether the conduct is "likely" to unreasonably restrict competition. "Likely" clearly requires a judgment of the future impact of the Consolidation on competition in a range of markets.

3.1.4 SingTel submits that the IDA should be cautious in approving Consolidations that may have a long term impact on competition in emerging markets.

"Unreasonable" not equivalent to substantial

3.1.5 This standard is different than that articulated in other jurisdictions, for example: the inclusion in the Australian Trade Practices Act of the requirement that the merger must have the effect, or likely effect, of *substantially lessening* competition in a market and in the United States where the test of "likely substantially to lessen competition is used".

3.1.6 SingTel agrees that, in relation to this Proposed Consolidation, the IDA should take a flexible view of the "unreasonably restrict competition" test. In emerging markets, in particular, regulators around the world have warned against taking an inflexible approach to merger analysis in a convergent environment.

Any market

3.1.7 The test in section 9.3 of the Telecom Competition Code includes an impact on competition "in any market in which the Licensee competes". Accordingly, the IDA's analysis is not limited to the impact on a single market but may look at the impact across a range of markets to ascertain whether the Consolidation is likely to "unreasonably restrict competition".

3.1.8 The IDA is also not limited to analysing the market in which one of the parties to the Consolidation may have market power (ie the IDA is not limited to analysing the impact on competition in the subscription television market where SCV clearly has market power).

3.1.9 In particular, when a Consolidation involves a non-horizontal element as this one does, the IDA should take care to ensure that a party to the Consolidation is not able to use its market power in one market following the Consolidation to unreasonably restrict competition in other markets (eg through anti-competitive pricing, discrimination, cross-subsidisation).

Onus on StarHub and SCV

3.1.10 Finally, it is important to note that StarHub and SCV have the onus in establishing that the Proposed Consolidation will not "unreasonably restrict competition". Section 9.4 of the Telecom Competition Code states that the Licensee(s) must:

> *"demonstrat[e] that the proposed Consolidation will not unreasonably restrict competition….The Licensee bears the burden of providing information that will*

enable IDA to assess the likely competitive impact of the proposed Consolidation."

3.1.11 SingTel strongly submits that neither SCV nor StarHub have overcome the onus which they bear. As discussed in section 4 of this submission, SingTel analyses StarHub's submission which contains many significant inconsistencies within the submission itself and when compared with prior public statements. Section 5 sets out SingTel's submission on the substantive points required to be satisfied in the Code.

4. STARHUB AND SCV HAVE NOT OVERCOME ONUS

4.1 Summary

4.1.1 StarHub and SCV have not established that the Proposed Consolidation will not unreasonably restrict competition.

4.1.2 As stated in section 3 of this submission, SCV and StarHub bear this onus. They have not overcome this onus because :

- Their definition of markets is inconsistent and inadequate, together with the analysis of the impact of the Proposed Consolidation on the relevant markets;
- StarHub and SCV's statements that they are not, and are not likely to be, competitive with each other is false and inconsistent with previous public statements made by them;
- StarHub and SCV's statements that neither of them have market power and that consequently the Proposed Consolidation would have no anti-competitive effect is incorrect;
- StarHub and SCV have not provided any evidence of the tangible nature of the benefits of the Proposed Consolidation, nor when they are likely to be delivered or how. Further, the benefits stated by StarHub and SCV are almost all related to their own operations and not benefits to consumers.

4.1.3 Given these inadequacies in the Application as described further below, SingTel submits that neither StarHub nor SCV have established that the Proposed Consolidation will not unreasonably restrict competition. On the basis of that Application, SingTel submits that the IDA should deny the Proposed Consolidation. Further efforts by StarHub or SCV to justify the Proposed Consolidation should be subject to public consultation.

4.2 Inconsistent and inadequate market definition and effects

4.2.1 StarHub and SCV's Application contains an inconsistent definition of markets. Market definition is required by the Telecom Competition Code in section 9.4.

4.2.2 In section 5 of the Application, StarHub/SCV appear to be attempting to define the markets by reference to the two services nominated in that section (ie PBTS and broadband services). If this is an attempt to define markets, they are inadequate and too broad.

4.2.3 They are also inconsistent with the listed product markets in section 10 of the Application. SingTel broadly agrees with the more realistic market definitions specified in this section 10, however these are quite different to those specified in section 5 of the Application.

4.2.4 In addition, the markets defined in section 10 of the Application are difficult to understand. Market definition has four dimensions:

- Product dimension;
- Functional dimension (ie wholesale/retail);
- Geographic dimension;
- Temporal dimension.

4.2.5 The column entitled "Geographic Market" in section 10 of the Application is defective. It does not attempt to define a geographic market. It refers interchangeably to "Corporate", "Retail" and "Residential". A geographic market is a geographical location. The relevant geographic market in Singapore is the national market of Singapore. A geographic market is not a user segment (ie it is not corporate/residential). User segments may constitute different product markets (eg residential fixed voice market; business fixed voice market) or they may be different user segments of the same product market (ie residential and business user segments of the one fixed voice market).

4.2.6 Further, "retail" is a functional dimension not a geographic dimension. There is only one attempt by StarHub and SCV to define the functional dimension in relation to the International Calling market and they make no attempt to define the temporal dimension of the relevant markets.

4.2.7 Finally, there is no discussion in the Application of the cross-market impact of the Proposed Consolidation. StarHub and SCV describe, inaccurately in SingTel's view (see section 4.3 below), that they are not competitors with each other in the same market. However, they do not discuss the non-horizontal impact of the Consolidation.

4.2.8 Of concern to SingTel is that StarHub and SCV foreshadow that:

- they propose to "package" (ie bundle) services after the Consolidation (section 7(b) of the Application); and
- they may seek alignment of their licences to reflect operational synergies arising from the Proposed Consolidation (section 2 of the Application).

4.2.9 SingTel has concerns about the nature and impact of this bundling activity, together with the likelihood of anti-competitive discrimination and cross-subsidisation. StarHub and SCV's failure to address the cross-market impact of the Proposed Consolidation means that they have failed to address a core concern of the Proposed Consolidation. In fact, the Application raises, rather than addresses, cross-market issues through the statements referred to above.

4.2.10 SingTel's view of the relevant markets is set out in section 5, together with the impact of the Proposed Consolidation on competition. However, SingTel submits that the Application is defective by failing to adequately define the markets in which StarHub and SCV currently operate. It is also inadequate because it fails to describe the effect of cross-market issues following the Proposed Consolidation.

4.3 StarHub and SCV are likely to be competitive with each other

4.3.1 SingTel does not agree with statements made in the Application that StarHub and SCV are not currently competitive nor are they likely to be competitive with each other (see sections 4 and 8 of the Application). These assertions are contrary to public statements made by SCV and StarHub as outlined below:

(a) On or around 28 January 2000 upon the announcement of further market liberalisation in Singapore, SCV's President Mr Yong is reported in The Straits Times as saying:

> *"We are very excited about the liberalisation. This change is creating huge opportunities for us and we are moving into overdrive to take advantage of them. We will have voice, video and data all delivered over the same cable and on one bill."*
>
> *"SCV is in a fantastic position to take advantage of this deregulation. We have the infrastructure in place, the government has given us the opportunity to offer to provide new telephony services …"*

(b) On or around 13 June 2000, the Straits Times carried an article about the fact that SCV had secured Singapore's third public telephony licence, thus "ending the duopoly of SingTel and StarHub". At that time, StarHub's CEO and SCV's President are reported in The Straits Times as follows:

> "*Residential customers will get another choice of fixed-line infrastructure -- this element of choice has always been what StarHub supports*" (Terry Clontz)
>
> "*Mr Yong said the new status was an important and timely one for his company. This is because SCV is gearing up to launch its third service -- cable telephony -- over its broadband network by the second quarter of next year*."

4.3.2 At the time these comments were made, StarHub had a licence obligation to provide telephony to the residential market (as stated in paragraph 4(c) of the Application). Based on this licence obligation, StarHub and SCV cannot argue that "neither party had plans at that time [ie prior to the merger discussions] to encroach on the other's market". The IDA should also reject the assertion that "prior to the initiation of merger discussions, neither StarHub nor SCV had considered each other to be current or potential future competitors".

4.3.3 Further, it is not possible to distinguish cable telephony and telephony provided over the PSTN. Cable telephony competes with PSTN telephony on price and, as discussed further below, both products form part of the same fixed telephony market.

4.3.4 Having regard to these comments, SingTel submits that StarHub and SCV are incorrect to now submit that they are or were operating in different markets. SingTel submits that the IDA should be concerned where inconsistent statements are made in the Application compared with public statements made by the parties prior to the Application.

4.3.5 Prima facie, such inconsistencies should raise competition concerns because of the fundamental nature of this evidence. Further, such inconsistencies raise questions about the evidence supporting the Application and, in particular, the ability of that evidence to satisfy the onus imposed on StarHub and SCV.

4.4 Flawed Competitive Impact Analysis

4.4.1 SingTel submits that the competitive impact analysis in section 5 of the Application is flawed. The conclusion that the merger will not result in market concentration or consolidation is based on an incorrect determination of the definition of the relevant markets which will be affected by the Proposed Consolidation.

4.4.2 StarHub and SCV assert that subscription television services form part of the market for broadband services. This assertion is erroneous. Broadband Internet access is not a substitute for subscription television services. There is universal recognition that subscription television services comprise a single market. As detailed in **Annexure 2**, regulatory authorities have thoroughly examined this question on numerous occasions and have consistently concluded that a subscription television services market (or pay TV or cable TV market) is separate and distinct from wider market definitions. Further, the current broadcasting regulatory regime prohibits Broadband ISPs from delivering live and scheduled programming to their customers (whether chargeable or non-chargeable).

4.4.3 The Application concludes that if the Merged Entity were to increase prices, consumers will switch to substitutable products and restrictions on market entry will not change. As the market for subscription television services is separate to the market for broadband services, neither is a substitute for the other. In particular, StarHub and SCV state that "firms currently in the market can increase output to meet the demand of customers who churn". As SCV has a monopoly on the supply of nationwide subscription television services in Singapore and no means of introducing competition currently exist, there is not (and will not be) any opportunity for other firms to compete in the market for subscription television services if prices were to increase.

4.4.4 Even if StarHub and SCV's Application is based on a notion that cable TV services form part of the broadband services market because the latter delivers digital interactive services, this analysis has been discredited internationally. As determined by the EC in the BskyB/KirchPayTV merger case (see Annexure 2), the demand for, characteristics of and intended use of these different services places them in distinct markets.

4.4.5 There is no basis for an assertion that because consumers can switch between cable TV and broadband services, the two are close substitutes and therefore form part of the same market. Availability and convenience alone does not make them substitutable and switching costs between the two are high. Cable TV services and broadband services have substantially different attributes.

4.5 Proposed benefits of the Consolidation

4.5.1 SingTel submits that StarHub and SCV's attempt at describing the benefits of the Consolidation are inadequate to overcome the onus of proof imposed on them. The benefits specified by StarHub and SCV are almost all benefits internalised to the Merged Entity (ie increased efficiencies; competitive advantage etc) which StarHub and SCV promise, but may not deliver, benefits to consumers.

4.5.2 SingTel does not disagree that the achievement of efficiencies can be important to consumers in the long term because such efficiencies may drive lower prices, broader product offerings etc.

4.5.3 However, it is important to note that proposed efficiencies can also raise barriers to entry. Each of the benefits described in section 7 of the Application has the effect, in SingTel's submission, of raising barriers to entry. The IDA should be wary of allowing the Proposed Consolidation to proceed where the stated benefits have a significant impact on the barriers to entry. This is particularly the case when the Merged Entity will also be the sole beneficiary of important artificial or regulatory barriers such as the current monopoly held by SCV over nationwide subscription television services in Singapore. The "merging" of regulatory barriers to entry together with economic barriers to entry is a potentially dangerous combination.

4.5.4 To elaborate in relation to the proposed benefits by StarHub and SCV, the benefits specified in paragraphs 7(a), (d), and (e) of the Application all relate to increased internal efficiencies of the Merged Entity (ie economies of scale and scope; synergies; and increased efficiencies respectively). Scale and scope economies are barriers to entry of themselves and the creation of them may raise additional barriers to entry:

> "*Economies of scale and scope, both plant and multi-plant, may inhibit entry depending on expected post-entry-practices, which in turn will depend on factors such as the minimum efficient scale of entry, cost penalties associated with sub-optimal plant utilisation, price elasticity of demand and market growth*.[1]"

[1] Australian Competition & Consumer Commission, Merger Guidelines at paragraph 5.113

4.5.5 The benefit specified in paragraph 7(b) of the Application will allow the Merged Entity to bundle services with SCV's monopoly subscription television service. The Merged Entity will be in the unique position of being able to do so, and as explained further in section 5.7 regarding Non-Horizontal Mergers, the dangers associated with this benefit include:

- Anti-competitive cross-subsidisation;
- Anti-competitive discrimination;
- Anti- competitive pricing.

4.5.6 Finally, the benefits cited by StarHub and SCV are unsupported by evidence about how they may be implemented or what consumers may derive from them. It cannot be pre-supposed that consumers will derive benefit from the efficiencies specified in the Application. It is just as easy (if not easier) to pre-suppose that the Merged Entity's shareholders will retain the benefit of these efficiencies.

4.5.7 As the Department of Justice (United States) warns in its Horizontal Merger Guidelines:

> "*Efficiencies are difficult to verify and quantify, in part because much of the information relating to efficiencies is uniquely in the possession of the merging firms. Moreover, efficiencies projected reasonably and in good faith by the merging firms may not be realized. Therefore, the merging firms must substantiate efficiency claims so that the Agency can verify by reasonable means the likelihood and magnitude of each asserted efficiency, how and when each would be achieved (and any costs of doing so), how each would enhance the merged firm's ability and incentive to compete, and why each would be merger-specific. Efficiency claims will not be considered if they are vague or speculative or otherwise cannot be verified by reasonable means*."[2]

4.5.8 The benefits claimed by StarHub and SCV are unsupported with evidence, they are vague, speculative and unverifiable. In the absence of evidence to establish that consumers will benefit from the Proposed Consolidation, SingTel submits that the onus of establishing that the Proposed Consolidation does not unreasonably restrict competition has not been made out by StarHub or SCV.

5. THE PROPOSED CONSOLIDATION WILL UNREASONABLY RESTRICT COMPETITION

5.1 Introduction

5.1.1 SingTel believes that StarHub and SCV have the onus of establishing that the Proposed Consolidation will not unreasonably restrict competition and that StarHub and SCV have not satisfied this onus. However, irrespective of StarHub and SCV's responsibilities and arguments, SingTel submits that the Proposed Consolidation will unreasonably restrict competition for the reasons outlined in this section 5.

5.1.2 In this section 5, we address the requirements of the Telecom Competition Code (including addressing the Guidelines) and we respond to the questions raised by the IDA in the Consultation Paper. This section 5 is structured accordingly:

- section 5.2 summarises SingTel's view of market definition (see also Annexures 1 and 2);
- section 5.3 summarises SingTel's view about SCV's market power;
- section 5.4 characterises the Proposed Consolidation as a Horizontal and Non-Horizontal Consolidation;
- section 5.5 explains SingTel's concerns about the Proposed Consolidation as a Horizontal Consolidation. We respond to the IDA's question in section 3.2.4 of the Consultation Paper;
- section 5.6 explains SingTel's concerns about the Proposed Consolidation as a Non-Horizontal Consolidation. We respond to the IDA's questions in sections 3.2.1, 3.2.2, 3.2.3 and 3.2.5 in this section;
- section 5.7 details other additional factors identified by SingTel and responds to section 3.2.6 of the Consultation Paper;
- section 5.8 details other significant anti-competitive effects identified by SingTel and responds to section 3.2.7 of the Consultation Paper.

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[2] Revised Section 4 Horizontal Merger Guidelines Issued by the US Department of Justice and the Federal Trade Commission, April 8, 1997.

5.2 Summary of market definitions, market participants and market shares

5.2.1 In section 4 we addressed the inconsistencies and inadequacies of the proposed market definitions in the Application. In summary, SingTel:

- rejects the possible suggestion that there are only two relevant communications markets in Singapore (namely PBTS and broadband services) as suggested in section 5 of the Application; and

- broadly supports the product market definitions contained in section 10 of the Application.

5.2.2 SingTel also broadly agrees with the market shares specified in the Application except that SingTel believes that SCV's market share in relation to the provision of broadband services through the MaxOnline service is around 53%, not 50% as specified in the Application.

5.3 Market power

5.3.1 Based on the above information, SingTel submits that SCV (or its shareholders) has market power in the following markets:

- the subscription television market in Singapore;

- the broadband services market in Singapore; and

- the print media in Singapore

5.3.2 SCV is currently classified as dominant under the Telecom Competition Code. It is dominant, in SingTel's submission, in relation to the subscription television market because of its monopoly in the provision of nationwide subscription television services in Singapore. Furthermore, SCV does not offer resale of SCV subscription television services.

5.3.3 It is dominant, in SingTel's submission, in relation the broadband services market because:

- SCV holds a 53% market share in the broadband service market through its MaxOnLine service; and

- access to the SCV cable modem service to third parties is currently unable to be technically implemented.

5.3.4 SCV's shareholder SPH is dominant in relation to the print media because of its ownership and control of the dominant newspaper, The Straits Times.

5.3.5 Section 6.3.1 of the Guidelines also provides certain initial presumptions about a person's market power. Each of the factors specified in section 6.3.1 is relevant to a determination of SCV's market power in the subscription television market, the broadband services market and the print media as follows:

Indicia of SCV's market power	**Subscription television**	**Broadband services**	**Print media (through SPH)**
Currently classified as dominant	✔	✔	-
Government granted exclusive rights or control over bottleneck facilities	✔ (through Government granted monopoly)	✔ (through control of bottleneck facility)	✔ (through control of bottleneck facility)
Market share > 35%	✔	✔	✔
Other factors present	✔ (eg no resale permitted)	✔ (eg technical incapability of network)	✔ (eg control of content for internet access)

5.3.6 SingTel therefore rejects StarHub and SCV's assertion in paragraph 5 of its Application that neither StarHub nor SCV have market power in any relevant markets. As also discussed in section 4, SingTel also rejects the assertions in paragraph 5 of its Application about the Merged Entity's inability to increase price. In the markets in which SCV has market power:

(a) firms cannot increase output to meet demand because they are either not licensed to provide that output or there is no third party access currently to the cable modem network;

(b) the Proposed Consolidation will raise barriers to entry and prevent entry by new entrants;

(c) consumers will not be able to easily switch products where there is no licensed alternative or where there is no third party access to the cable modem network.

5.4 Characterisation of the Consolidation – Horizontal and Non-Horizontal

5.4.1 SingTel submits that the Proposed Consolidation should be characterised as both a Horizontal and a non-Horizontal Consolidation. There is no doubt that this Consolidation involves non-Horizontal aspects where StarHub and SCV currently operate in separate markets. For the reasons outlined in section 5.5 below, the Proposed Consolidation should also be examined as a Horizontal Consolidation.

5.5 Proposed Consolidation as an Anti-Competitive Horizontal Consolidation

5.5.1 SingTel believes that the Proposed Consolidation involves a Horizontal element because both SCV and StarHub compete or potentially compete in the markets for fixed telephony, broadband services and, through SPH, mobile services. SingTel is of this view because:

StarHub holds a Public Telecommunications Licence. It has licence obligations to roll-out a nationwide network.	SCV holds a Public Telecommunications Licence. It has a network serving residential areas and is currently serving corporate end-users in Singapore
StarHub currently provides a broadband service	SCV provides a broadband service to business and residential users in Singapore
StarHub currently serves the residential and business market for internet and broadband services	SCV has announced plans to upgrade its network to provide IP telephony to end users in Singapore. IP telephony is, in SingTel's view substitutable for PSTN telephony based on price substitutability
StarHub currently operates a mobile business through StarHub Mobile	SPH, a shareholder in SCV, currently holds a 35% shareholding in MobileOne

5.5.2 The following table summarises the overlapping areas of competition or potential competition between StarHub and SCV:

Market	StarHub presence	SCV presence
Fixed telephony services	✓ (business) ✓ (residential through licence obligation)	✓ (business through VOIP potential) ✓ (residential through VOIP potential)
Broadband services	✓ (business) ✓ (potential residential)	✓ (business) ✓ (residential)
Mobile services	✓ (StarHub Mobile)	✓ (SPH holding in M1)

5.5.3 SingTel does not agree with StarHub and SCV's statements that they are not current or potential future competitors with each other. SingTel believes that the increased concentration in the relevant markets in which StarHub and SingTel previously competed raises competition issues that the IDA should examine.

5.5.4 SingTel believes that the SPH cross-shareholding in both the Merged Entity and MobileOne warrants attention in relation to the mobiles market. There is no evidence provided in the Application about the level of control that SPH will have in the Merged Entity nor the level of control that SPH has in MobileOne ("**M1**") (although it must be substantial with the 35% shareholding).

5.5.5 In response to section 3.2.4 of the Consultation Paper, SingTel submits that there is a risk of co-ordination between M1 and StarHub Mobile after the Proposed Consolidation because of SPH's shareholding in both entities. While there is price and product differentiation in the mobiles market at present, SPH's cross shareholding in both M1 and StarHub Mobile gives rise to the substantial risk that M1 and StarHub will be in a position to co-ordinate prices and products after the Proposed Consolidation

5.5.6 SingTel therefore submits that the IDA should not permit the Proposed Consolidation in its present form given the Horizontal nature of the Consolidation, including in relation to the mobile market through SPH's cross-shareholding in StarHub Mobile and M1.

5.6 Proposed Consolidation as an Anti-Competitive Non-Horizontal Consolidation

5.6.1 SingTel strongly submits that the IDA should deny the Application in relation to the Proposed Consolidation because it will give rise to a Non-Horizontal Consolidation which unreasonably restricts competition.

5.6.2 Section 6.3 of the Guidelines sets out in detail the IDA's proposed approach in relation to Non-Horizontal Mergers. Many of the issues that the Guidelines indicate would give rise to concern are present in relation to the Proposed Consolidation.

Elimination of a potential future competitor (section 6.3.3.1 of the Guidelines and section 3.2.1 of the Consultation Paper)

5.6.3 SingTel submits that the Proposed Consolidation will give rise to the elimination of StarHub as a potential competitor to SCV in relation to the fields of current competitive activity as summarised in section 5.6.2 above.

5.6.4 Section 6.3.3.1 sets out examples of where such "entry preclusion" is particularly likely, both of which are present in this case:

(a) *Where the proposed Consolidation is a Vertical Consolidation (sic):* SingTel submits that the Proposed Consolidation is both a Horizontal and non-Horizontal Consolidation; and

(b) *Where one of the Applicants is required pursuant to the terms of a government-granted licence, to enter the other Applicant's market within the foreseeable future:* StarHub is required under the terms of its licence to roll-out voice services to residential users in Singapore. SCV has announced plans to roll-out a VOIP service to residential end users connected to its cable. Such a VOIP service would be substitutable for a voice service offered by StarHub over its network. Accordingly, StarHub is potentially competitive with SCV in the provision of these services and StarHub would be required to enter the market and compete with SCV absent the merger and there is a degree of 'entry preclusion' as a result.

Ability to compete with SingTel (see section 3.2.2 of the Consultation Paper)

5.6.5 SingTel's is concerned that the focus of the IDA's question in paragraph 3.2.2 of the Consultation Paper is on enabling others to compete with SingTel rather than focusing on competition in general in a convergent environment. This requires an analysis of the regulation imposed on SingTel to enable other's to compete with SingTel, against the competitive advantage a highly Merged Entity will have in other markets (eg the subscription television markets).

5.6.6 SingTel is subject to dominant carrier regulation in relation to access to its network to enable third parties to compete with it in a wide range of services. This regulation enables SCV and StarHub to effectively compete with SingTel. SingTel also submits that SCV, with a cable network serving all residential users and access to customer data, has the ability to compete with SingTel in the absence of the regulation.

5.6.7 However, in an increasingly convergent environment, SingTel will be competing with other media competitors particularly in the broadband environment. SingTel will need access to content and the right to provide a broader range of services to compete in an increasingly converging environment.

5.6.8 The following table compares SingTel's obligations to provide a level playing field in relation to telephony, compared with SingTel's rights in a convergent environment.

SingTel obligations in relation to telephony	SingTel rights in a convergent environment
Obligation to interconnect	No right to provide television services (free to air or subscription television)
Obligation to unbundle network (including to provide unbundled local loop and spectrum sharing for others to provide broadband services)	No right to resell SCV's subscription television service
Tariffed a wholesale B-access service to enable others to provide broadband services	No right of access to content held by third parties
	No right to access SCV's network to provide a competitive cable modem service
	No right to provide live or scheduled programming over the internet (chargeable/non-chargeable)

5.6.9 SingTel therefore rejects the argument that the Proposed Consolidation will simply enable the Merged Entity to compete more effectively with SingTel. As stated above, SingTel strongly submits that the Proposed Consolidation is likely to unreasonably restrict competition.

Foreclosure created by the Proposed Consolidation (section 6.3.3.2 of the Guidelines)

5.6.10 SingTel submits that the Proposed Consolidation will entrench the current foreclosure in the provision of subscription television services. StarHub and SCV place considerable emphasis in the Application on the benefit of the Merged Entity being able to bundle services:

> "*more innovative packaging of services provided leading to greater value proposition to consumers*" (paragraph 7(b) of the Application).

5.6.11 We deal with the impact of bundling following the Proposed Consolidation below. Section 6.3.3.2 however raises an important point about the foreclosure created by the Proposed Consolidation. This section provides that a Non-Horizontal Consolidation is likely to result in foreclosure where:

- one of the Applicants has market power (ie SCV in subscription television; broadband services and print);
- that Applicant controls an upstream input that is necessary for downstream competitors to provide a service (ie SingTel and its competitors need a subscription television licence; access to the SCV network; and access to content in order to provide a competitive subscription television service); and
- the Applicant (ie SCV in this respect) is not subject to IDA's jurisdiction or an effective regulatory regime requiring the Applicant to deal with competitors in a reasonable and non-discriminatory way.

5.6.12 Each of these factors is present in this case. Further, the issue is exacerbated by the fact that although SCV's subscription television monopoly expires in June 2002, there are currently no means of introducing competition on and from the expiry date, whether through any or a combination of the following:

- the granting of additional subscription television licences;
- the resale of capacity on the SCV network at the wholesale level to third parties;
- the resale of the SCV subscription television service to end-users;
- access to SCV content.

5.6.13 Further, several of the above factors are also outside the IDA's jurisdiction. Accordingly, SingTel and other potential competitors to the Merged Entity will have no effective means of competing with the Merged Entity in relation to, for example, subscription television services, if the Proposed Consolidation is permitted due to the foreclosure of access to essential upstream inputs necessary to so compete. SingTel therefore submits that the Proposed Consolidation will unreasonably restrict competition and the Application should be denied.

Ability and incentive of the Merged Entity to engage in anti-competitive conduct such as anti-competitive pricing, discrimination or cross-subsidisation (section 3.2.3 of the Proposed Consolidation)

5.6.14 SingTel submits that there is a risk of the Merged Entity engaging in anti-competitive pricing discrimination and cross-subsidisation. This is particularly aggravated by IDA potentially having no jurisdiction to intervene to remedy such conduct. A remedy to such conduct may necessarily involve requiring the Merged Entity to provide access to upstream inputs over which IDA has no jurisdiction. IDA also has no jurisdiction to issue additional or amend existing nationwide subscription broadcasting licences necessary for entities to compete with the Merged Entity.

5.6.15 Irrespective of whether IDA has jurisdiction, the risk remains that the Merged Entity may be able to engage in anti-competitive conduct which will be difficult to detect or stop prior to there being an anti-competitive effect.

5.6.16 As stated above, the Application contains important references to the Merged Entity's ability to bundle services. The Merged Entity will be in the unique position of being able to bundle amongst other services:

- Fixed telephony services;
- Mobile telephony services;
- Subscription television services;
- Broadband and internet based services.

5.6.17 As stated above, SCV currently has market power in the subscription television and broadband services market. There is a risk that through the bundling of services with

SCV's monopoly services (eg subscription television services), the Merged Entity will engage in anti-competitive activity.

5.6.18 Regulators around the world have been concerned where a party is able to supply a bundle of services where one of the services in the bundle cannot be separately purchased (at all or at a price equal or lower than the price of that element in the bundle)[3].

5.6.19 In Singapore, this risk is heightened because:

- SCV actually has a monopoly over nationwide subscription television services at present, with no likelihood of any competition in the near future;
- SCV does not permit resale of the subscription television service by other operators to end users; and
- the IDA may not have jurisdiction over any anti-competitive bundling involving subscription television services if the Proposed Consolidation is permitted to proceed.

5.6.20 Accordingly, SingTel submits that the proposed activities by the Merged Entity as set out in the Application are likely to be anti-competitive through conduct such as anti-competitive pricing, discrimination or cross-subsidisation. The IDA should deny the Application as a consequence.

Impact on broadband Internet access service market (section 3.2.5 of the Consultation Paper)

5.6.21 SingTel submits that the negative impacts of the Proposed Consolidation on the broadband internet access service market will be:

- foreclosure in other existing and emerging services delivered over the broadband access network, such as internet ready content to the PC;
- a limiting effect on the diversity of content available for delivery;

[3] Australian Competition & Consumer Commission, An information paper on "Anti-competitive conduct in telecommunications markets", August 1999 at page 47

- new and entrenched opportunities for the merged entity to leverage off the bottleneck network, thereby extending its dominance in each of the markets in which it has market power.

5.6.22 These issues arise from the Proposed Consolidation because, if allowed to proceed, the Proposed Consolidation will raise barriers to entry. Further, certain absolute barriers exist, particularly in relation to the broadcasting market as set out further in this submission.

5.7 Additional factors

Efficiencies and other benefits (section 6.4.2 of the Guidelines and section 3.2.6 of the Consultation Paper)

5.7.1 SingTel submits that the efficiencies set out by StarHub and SCV in section 7 of their Application:

- are unsupported by any evidence, are too vague and are unable to be substantiated;
- will not benefit consumers and will only benefit the shareholders of the Merged Entity; and
- give rise to additional anti-competitive concerns.

5.7.2 The IDA suggests in its Guidelines (at section 6.4.2) that it will consider the efficiencies of a Proposed Consolidation "in a close case in which a proposed Consolidation may have some anti-competitive effect". For the reasons expressed above, SingTel does not consider the Proposed Consolidation to be "a close case". SingTel submits that this Proposed Consolidation is anti-competitive and the Application should be denied.

5.7.3 Notwithstanding this view, even if the matter could be considered to be a close case, the onus rests upon StarHub and SCV to establish "with reasonable certainty" that the transaction will "result in significant efficiencies" and that "the Merged Entity is likely to pass on a reasonable portion of these efficiencies to its customers".

5.7.4 The IDA's Guidelines are clearly consistent with the Department of Justice's guidelines referred to above about the consideration of efficiencies. StarHub and SCV have not described with any certainty the benefits that will be derived from the Proposed Consolidation.

5.7.5 Further, there is no evidence presented in the Application which deals with how the benefits will be passed on to consumers. A reasonable conclusion is that there are no such benefits likely to be passed through to consumers and that the benefits will be retained by the shareholders of the Merged Entity.

5.7.6 Finally, most of the benefits described in the Application are internal to the Merged Entity and, in some cases, give rise to additional competition concerns (eg the bundling reference in paragraph 7(b) of the Application).

5.7.7 SingTel submits that even if this Proposed Consolidation were to be considered to be "a close case" there are no evident or likely benefits to consumers of the Proposed Consolidation in its present form.

5.8 Other significant competitive effects

5.8.1 SingTel submits that there are likely to be other significant anti-competitive effects of the Proposed Consolidation. SingTel submits that SCV has market power in several markets which would adversely affect competition if the Proposed Consolidation is permitted to proceed.

5.8.2 This market power is particularly concerning if one considers the Merged Entity and its shareholders interests in virtually all other forms of communication and content based services in Singapore as summarised in the following table:

Market	Merged Entity Presence	How
Fixed telephony and international	Yes	Through SCV and StarHub
Mobile telephony	Yes	Through StarHub Mobile and SPH interest in M1
Internet services	Yes	Through StarHub Internet
Data services	Yes	Through StarHub
Broadband services	Yes	Through StarHub and SCV
Subscription television	Yes	Through SCV

services		
Free-to-air services	Yes	Through SPH and MCS holdings in free-to-air television stations
Print media	Yes	Through SPH ownership of Straits Times

5.8.3 If the Proposed Consolidation proceeds, the Merged Entity and its shareholders will potentially be able to control both the content and the means of its delivery in Singapore. Cross-media control will enable the Merged Entity and its shareholders to maintain a dominant position across a range of markets, thereby inhibiting entry and competition from new players, particularly where there are regulatory barriers to entry in the broadcasting sector through the unavailability of additional broadcasting licences.

5.8.4 Accordingly, SingTel opposes the Proposed Consolidation because it is likely to unreasonably restrict competition across a broad range of markets in which the Merged Entity operates.

6. IMPOSITION OF PRO-COMPETITIVE CONDITIONS

6.1 Introduction

6.1.1 In sections 4 and 5 above, SingTel submits that:

- StarHub and SCV have not established that the Proposed Consolidation would not unreasonably restrict competition; and

- the Proposed Consolidation is likely to unreasonably restrict competition.

6.1.2 In the alternative, if the IDA does not accept SingTel's submission that it should deny the application in full in relation to the Proposed Consolidation, SingTel is strongly of the view that the IDA should impose conditions to reduce the anti-competitive harm that will or is likely to arise in relation to the Proposed Consolidation in accordance with section 9.5.3 of the Telecom Competition Code.

6.1.3 In this section 6, SingTel responds to section 3.2.8 of the Consultation Paper. SingTel believes however that the IDA should further consult in relation to applicable conditions if it is of the view not to deny the Application in its entirety. However, for completeness and in the alternative, SingTel submits that the conditions as described below should be imposed on any approval of the Proposed Consolidation. We respond to section 3.2.9 of the Consultation Paper in the discussion of Condition 8 below.

6.2 Condition 1: Resale of subscription television services

6.2.1 SingTel submits that a condition of any approval of the Proposed Consolidation must be that SCV must allow third parties to resell the SCV subscription television services.

6.2.2 In a convergent environment, access to content will be an important input. At present, SCV has a monopoly over the provision of nationwide subscription television services. Even if additional nationwide subscription television licences are issued, SCV will retain market power in respect of the content available for distributing using a subscription television service for a considerable period of time.

6.3 Condition 2: Greater access to broadcasting market

6.3.1 SingTel submits that the Proposed Consolidation should not be approved until such time as additional nationwide subscription television broadcasting licences are available to third parties. The Ministry of Information Technology and the Arts is considering liberalising the broadcasting sector industry and should permit competition in the provision of nationwide subscription television services following that review.

6.3.2 The issuing of nationwide subscription television licences is an effective way in the long term of addressing concerns about the monopoly effects that SCV has in relation to subscription television in Singapore. In the absence of additional licences, the Merged Entity will be able to leverage its monopoly into existing competitive and emerging markets in a convergent environment.

6.4 Condition 3: Access to SCV cable modem service

6.4.1 SingTel submits that a condition of any approval of the Proposed Consolidation must be that SCV must upgrade its network to enable access to be provided to third parties to supply a cable modem service (including by implementing DOCSIS v.1.1) by no later than 31 December 2002 in accordance with the IDA's Information Paper in relation to cable modem access.

6.4.2 For the reasons specified above, the SCV cable modem service is the dominant broadband service in Singapore and the network over which the service is provided is a bottleneck. In the absence of access, SCV will be able to leverage off this bottleneck, reducing competition for the provision of broadband services as well as related telecommunications markets due to the effect of bundling.

6.5 Condition 4: Structural separation

6.5.1 SingTel submits that a condition of any approval of the Proposed Consolidation must be that SCV and StarHub must be kept structurally separated to ensure that anti-competitive cross subsidies and discrimination do not occur between SCV and StarHub.

6.5.2 Structural separation is identifed in section 9.5.3.3 of the Telecom Competition Code as a means of reducing anti-competitive harm. Structural separation in this case will allow the IDA to ensure that all access seekers will be treated on equal terms.

6.6 Condition 5: Accounting separation

6.6.1 Both SCV and StarHub should be required to prepare separate accounts under the IDA's Accounting Separate Guidelines and provide those accounts to the IDA.

6.6.2 Accounting separation is also identified in section 9.5.3.2 of the Telecom Competition Code as a means of reducing anti-competitive harm. The benefit of accounting separation is, as the Code states, to deter cross-subsidisation. Cross-subsidisation has been referred to in this submission as a key concern of this Proposed Consolidation.

6.7 Condition 6: No alignment of licences

6.7.1 SingTel submits that a condition of any approval of the Proposed Consolidation must be that SCV and StarHub's licences must not be aligned, as suggested in paragraph 2 of the StarHub Application.

6.7.2 Alignment of the licences will nullify the benefits of the structural and accounting separation referred to above and will allow StarHub and SCV to undertake anti-competitive cross-subsidisation, discrimination and bundling within the subsidiary itself (rather than across subsidiaries if the licences are not aligned).

6.8 Condition 7: Divestiture by SPH of holding in Merged Entity or MobileOne

6.8.1 SingTel submits that a condition of any approval of the Proposed Consolidation must be that SPH should be required to divest its holding in either MobileOne or the Merged Entity.

6.8.2 Section 9.5.3.4 of the Telecom Competition Code explicitly recognises divestiture as a potential condition of approval of a Proposed Consolidation in order to reduce any anti-competitive harm. If the Proposed Consolidation is allowed to proceed, SPH's cross-shareholdings in both StarHub Mobile and MobileOne have the potential to create an anti-competitive effect through co-ordination of prices and products after the Proposed Consolidation.

6.9 Condition 8: Declare Merged Entity Dominant

6.9.1 In response to paragraph 3.2.9 of the Consultation Paper, SingTel submits that a condition of any approval of the Proposed Consolidation must be that the Merged Entity (ie, StarHub and SCV) should be declared dominant without any exemptions.

6.9.2 SCV is currently declared dominant but is subject to wide ranging exemptions. These exemptions should be removed because it no longer satisfies the exemption test in section 2.6.1 of the Telecom Competition Code. The exemption is only available under that section if the removal of the dominance classification is not necessary to protect end users or promote and preserve effective competition amongst licensees. As set out in this submission, these criteria will no longer be met if the Proposed Consolidation is permitted to proceed.

6.9.3 Further, StarHub (as part of the Merged Entity) should be declared dominant because StarHub may be able to resell SCV services after the Proposed Consolidation. If StarHub is not declared dominant, SCV will be able to avoid its dominant licensee obligations by offering its services through StarHub.

ANNEXURE 1

MARKET DEFINITION AND TELEPHONY MARKETS

1. Importance of Market Definition

1.1 Market definition is important. The IDA notes it is the first step in an analysis of a Consolidation in its draft Guidelines. Market Definition is also important to determine whether a participant has market power. SingTel does not however believe it is necessary for it or the IDA to reach a conclusive view about the different markets. However, it is necessary to address StarHub and SCV's possible assertion with respect to the broader markets referred to in section 5 of the Application.

1.2 Product market definition involves an analysis[4] of:

- Demand side substitution;
- Supply side substitution;
- Potential competition[5].

1.3 A telecommunications market analysis has not been performed in detail in Singapore previously. However, it is indicative to examine how other regulators around the world have determined product markets in the telecommunications industry based on the criteria referred to in section 1.2 of this Annexure.

2. Telephony based markets

2.1 SingTel rejects the proposition that all telephony based markets fall within a broad "PBTS services market" for the following reasons:

- Fixed and mobile markets remain substantially differentiated in terms of the price and features available over each service. While there is an increasing degree of fixed-mobile demand side substitutability, SingTel does not regard it as sufficiently strong at present to warrant a combined market;

[4] European Commission, Notice on the definition of the relevant market for purposes of Community Competition law OJC 372, 9/12/1997

[5] Paragraphs 6.2.1.1.1 and 6.2.1.2 of the IDA's Guidelines are consistent with this approach

- International and local calling markets remain distinct. Price differentiation remains significant between the two services. There is no market evidence of international providers offering an internationally routed service as a substitute for local services. Given the geographically distinct nature of the services, SingTel supports a separate market analysis for each of these services;

- Data and voice are becomingly increasingly integrated and substitutable for one another (eg email, SMS instead of voice). Demand for data services is increasing. However, there remains distinct price differentiation between the two types of services at present which supports two separate markets.

2.2 A broad PBTS market definition is also inconsistent with the market analysis of telephony markets by the European Commission and the Australian Competition & Consumer Commission.

2.3 The European Commission has undertaken a comprehensive market analysis in telecommunications and determined the following[6]:

<table>
<tr><td></td><td colspan="8">European Union</td></tr>
<tr><td></td><td colspan="8">Telecoms Sector</td></tr>
<tr><td>Market</td><td colspan="3">Access</td><td colspan="5">Services</td></tr>
<tr><td>Market</td><td>Fixed</td><td colspan="2">Mobile</td><td colspan="4">Fixed</td><td>Mobile</td></tr>
<tr><td>Market</td><td colspan="3">Infrastructure – sub-markets determined according to substitutability sensitivity on a case by case basis</td><td colspan="4">Domestic, International, Voice & Data</td><td rowspan="5">GSM 900, GSM 1800 & possibly Analogue Platforms</td></tr>
<tr><td>Market</td><td>Wholesale</td><td colspan="2">Retail</td><td colspan="2">Business and Residential Voice</td><td colspan="2">Business Data</td></tr>
<tr><td rowspan="3">Market</td><td rowspan="3">Other Operators</td><td rowspan="3">Business</td><td rowspan="3">Residential</td><td>Connection</td><td>Local Calls</td><td>Rental</td><td>Long Distance Calls</td></tr>
<tr><td colspan="2">Residential</td><td colspan="2">Business</td></tr>
<tr><td>Traditional</td><td>Highspeed</td><td>Large</td><td>Smaller & medium</td></tr>
</table>

6 Commission working document on proposed new regulatory framework for electronic communications networks and services: draft guidelines on market analysis and the calculation of significant market power under Article 14 of the proposed Directive on a common regulatory framework for electronic communications networks and services, COM (2001) 175, 28 March 2001.

2.4 In Australia, the ACCC has determined the following markets[7]:

<table>
<tr><td></td><th colspan="14">Australia</th></tr>
<tr><td></td><th colspan="14">Telecoms Sector</th></tr>
<tr><th>Market</th><td colspan="13">Fixed</td><td>Mobile</td></tr>
<tr><th>Market</th><td colspan="13">Wholesale & Retail</td><td>Wholesale & Retail</td></tr>
<tr><th>Market</th><td>Customer Access</td><td>Local Telephony</td><td rowspan="6">Long Distance Telephony</td><td colspan="10">High Bandwidth Carriage</td><td>Domestic GSM originating access</td></tr>
<tr><th>Market</th><td colspan="2">Unconditional Local Loop Service</td><td colspan="5">Leased Lines</td><td colspan="5">Switched Services</td><td>Domestic GSM terminating access</td></tr>
<tr><th>Market</th><td colspan="2">Conditioned Local Loop</td><td colspan="10">ISDN</td><td>Domestic AMPS terminating access</td></tr>
<tr><th>Sub-market</th><td colspan="2">Local PSTN Originating Service</td><td colspan="10">Transmission</td><td>AMPS to GSM Diversion Services</td></tr>
<tr><th>Sub-market</th><td colspan="2">Local PSTN Terminating Services</td><td colspan="2">Inter Capital</td><td colspan="2">Regional to capital</td><td colspan="2">Intra - regional</td><td colspan="2">Metropol itan</td><td colspan="2">CBD</td><td rowspan="2">Roaming</td></tr>
<tr><th>Sub-market</th><td colspan="2">Local Carriage Services</td><td colspan="10">DDAS… & a range of partial or unsuitable substitutes, eg: ATM large megabit bearers; broadband applications; HFC; GSM data services; ISDN; xDSL technologies; microwave links; other wireless data; satellite services; fibre optic; frame relay; PSTN originating; and power networks.</td></tr>
</table>

2.5 In the geographic dimension, SingTel supports the general presumption contained in the draft Guidelines that the geographic market is a national Singapore market (see paragraph 6.2.1.1.2 of the Guidelines). Functional telephony related markets are not in issue and we make no comment in this submission about that issue.

2.6 In the absence of evidence to the contrary, SingTel believes that IDA should determine telephony markets broadly in line with these international precedents.

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7 ACCC report on the declaration of an unconditioned local loop service, local PSTN originating and terminating services, and local carriage service under Part XIC of the *Trade Practices Act 1974*, July 1999. ACCC report on competition in data markets, whether to declare certain ISDN services, and whether to amend declarations for the digital data access service and transmission capacity under Part XIC of the *Trade Practices Act 1974,* October 1998. See: Register of Declared Telecommunication Services at <http://www.accc.gov.au/telco/fs-telecom.htm>.

ANNEXURE 2 – CONTENT BASED MARKETS

1. SingTel rejects the proposition that all content based markets fall within a broad "broadband services" market for the following reasons:

- Broadband and dial-up internet services remain price distinct;

- Functionally broadband and dial-up internet remain distinct.

2. Further, SingTel supports the view that in Singapore there is a distinct subscription television services market. As discussed above, subscription television is a functionally discrete service from broadband and internet dial-up services based on the following international precedents:

3. European Commission

3.1 The EC has consistently endorsed the notion of a separate market for pay TV:

> *"Pay TV constitutes a relevant product market that is separate from commercial advertising financed television. The conditions of competition are different for the two types of commercial television."*[8]

3.2 In its decision on the proposed BskyB/KirchPayTV merger, the EC confirmed its view that:

> *"Pay-TV constitutes a relevant product market separate from that for free-to-air or free access television."*[9]

3.3 The EC also further narrowed its definition of relevant markets for emerging services. It maintained a distinction between markets for digital interactive services available via televisions, against those available via personal computers. Applying a demand-substitutability test, the EC held that:

> *"...the differences in the characteristics of interactive services available via television sets and via personal computers lead to the conclusion that they are at this stage separate product markets. A small permanent increase in the price of*

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8 *MSG Media Services case*, 94/922/EC, 9 November 1994.

9 Case No. COMP/JV.37 – *BskyB/KirchPay TV*, 21 March 2000, SG(2000) D/102552 at para 23.

such services available via television is unlikely to be constrained by the existence of services available on personal computers. While television sets are ubiquitous, far fewer households have a personal computer; fewer still have a modem. Moreover, the relatively high cost of personal computers means that the switching costs for end-users would be high".[10]

3.4 The EC also found demand substitution between pay TV services and digital interactive television services to be absent:

> *"…the former being largely entertainment services, the latter being largely transactional or information services…the digital interactive television services market will be complementary to* ***and separate from that for pay-TV****".*[11] (emphasis added).

4. United States

4.1 The Federal Communications Commission (**FCC**) in the US has consistently found that there is a separate product market for "multi-channel video programming services" (**MVPDs**), excluding what may otherwise be considered as a close substitute in the form of free-to-air broadcasters.

4.2 As early as 1994, the FCC determined in its *Annual Assessment of the Status of Competition on the Market for the Delivery of Video Programming* that a distinct pay TV market existed. The FCC found that even the availability of any number of free-to-air options did not constrain cable rates, clearly demonstrating that pay TV has no substitute and comprises a separate market.

4.3 The FCC has continued to recognise that pay TV comprises in own market, recently distinguishing it from a broadband market for Internet access stating that:

> *"In the present regulatory environment, this merger poses a substantial threat to competition in two critical communications markets – the market for broadband Internet access and the market for the distribution of video programming".*[12]

5. Australia

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10 Note 9 at para 38.
11 Note 9 at para 40.
12 FCC, Petition to Deny of Verizon Telephone Companies and Verizon Internet Solutions; Docket No. 02-70, 29 April 2002.

5.1 In 1997 the Australian Competition and Consumer Commission (**ACCC**) rejected the proposed merger of Foxtel and Australis Media on the grounds that it was likely to damage competition in the local telephony and pay TV market. In its analysis, the ACCC took the view that a pay TV market existed which was distinct and separate from wider market definitions.

5.2 The most important consideration for the ACCC was whether free-to-air television was a substitute for pay TV to sufficiently constrain the exercise of market power by pay TV companies. The ACCC answered this question in the negative, drawing on the experience of other regulators and correctly applying the relevant tests for market definition in reaching its view.

5.3 The ACCC correctly defined the market at its narrowest level. Competing market definitions asserted that cinema, video, free-to-air television should be included in the same market as pay TV. The ACCC's analysis found that none of these alternatives were close enough to be substitutes for pay TV.

6. United Kingdom

6.1 The perils of overstating the size of the market has been expressed by the United Kingdom Office of Fair Trading as leading to:

> *"…the relevant market being defined too widely and therefore will result in the systematic understatement of market power…"*

and the need to:

> *…acknowledge that a definition of the relevant market is implicit in most competitive assessments given the need to identify competitors and the nature of barriers to entry. This being the case, an explicit view as to the likely definition or definitions of the relevant market are to be preferred to implicit definitions."*[13]

6.2 Even in the face of convergence, Oftel has concluded that pay TV still comprises its own separate market.[14] This is despite any potential for new technologies to impact on the definition of the pay TV market because the proper application of the market definition

13 Office of Fair Trading, *The role of market definition in monopoly and dominance inquiries, Economic Discussion Paper 2*, July 2001.

14 Oftel, Open access: Delivering effective competition in communications markets, Statement issues by the Director General of Telecommunications, April 2001 at p. 10.

dimensions (product, functional, geographic and temporal) conclude that the separate market still stands:

"…[Convergence] makes the task of defining appropriate markets an increasingly specialised task. Defining the appropriate market is a crucial step in assessing whether there is effective competition, and whether any player has market power…

…market-widening depends on consumers being prepared to switch readily between different technologies, ie the switching costs have to be low."[15]

7. Finally, SingTel submits that it is highly relevant that Singapore Press Holdings, a shareholder of SCV and a proposed shareholder of the Merged Entity is dominant in the print media currently in Singapore and owns and operates the dominant newspaper, the Straits Times. Accordingly, the market for print media in Singapore is relevant to this merger.

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15 Note 14 at p. 12.