



A Response from the TRPC

by

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To

**THE CONSULTATION PAPER ISSUED BY
THE INFO-COMMUNICATIONS DEVELOPMENT AUTHORITY OF SINGAPORE
INDUSTRY STRUCTURE FOR NEXT GENERATION ACCESS NETWORKS
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Below are our responses to the questions posed by the iDA in the Consultation Paper.

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

Answer to Q1:

- 1.1 Structural separation is undoubtedly one possible answer to the exercise of significant market power (SMP) that arises from either a position of market dominance or from exclusive control over the use of essential network facilities or network bottlenecks. The exercise of SMP is not under all circumstances to be deemed anti-competitive. For example, a natural monopoly may exploit SMP to cross-subsidize certain services, such as the universal service obligation. However, in a market such as Singapore there are likely to be relatively few 'uneconomic' service areas and SMP may indeed exist and be used in an anti-competitive manner. The question then arises, in which markets and whether the same or different regulatory approaches should be considered for different markets. (See answer 2).
- 1.2 In the case of NGN, the main drawback of the structural separations approach is the lack of facilities competition that may result. This is not just a competition issue but also a services issue. For example, company A may choose to build an asynchronous network and company B a synchronous network, each gaining competitive advantage for different market segments. Indeed, by offering a new network configuration, a company may open up or create a market that had previously not existed or gone undetected. For example, a growing amount of Internet traffic is synchronous because new community websites offer opportunities for uploading video and other rich media in parallel with downloading. Would a single network foreclose on one or other of these options? Would a single network place constraints on the networking and line equipment a retail service provider can install? If the answer is 'yes' then structural separation may limit rather than enhance services competition.
- 1.3 Competitive entry is always the preferable solution (if it is a solution) because it stimulates innovation which is the principal driver in a broadband world. Encouraging competitive entry first and foremost involves a liberal licensing regime. Second, it involves minimizing the costs of entry and of exit. This may involve reduced red-tape and lower capital requirements, common ducting policies, lower licensing fees, greater spectrum availability, etc., but it may also involve facilitating innovation. For example, company A may want to market facilities (network connections) at the same time as it markets its services. If company A does not have the right to build its own network, then its marketing strategy may fail as it has to wait for NetCo to build out the network to the new locations. A clash of commercial interests and imperatives would arise between company A and NetCo as NetCo has no immediate incentive to meet company A's marketing approach, priorities and timelines. A better solution therefore would be to

allow company A and company B, etc., to build their own networks, and NetCo build common facilities, such as routing hubs, common network elements where competition overlaps (basically facilities sharing, for example, towers) and networks to under-served areas.

- 1.4 This suggests a more nuanced approach to structural separation may be useful. Separation as a requirement arises where the network facilities are controlled by one company offering both wholesale and retail. In reality, some network facilities may be highly competitive, and others not so, so a regulatory approach that can differentiate is to be preferred, even if it is more complex to operate. By designating which minimum facilities NetCo should build – for example, those that provide network connectivity to geographical areas or to market segments that would not otherwise be serviced – and by allowing service providers to build their own networks when they decide it commercially feasible to do so – as opposed to leasing from NetCo – regulation is less likely to inhibit competition through innovation. To operate such a scheme will require meetings between the competitive service providers and NetCo – facilitated if necessary by iDA – to map out the common network facilities and the timelines. Where company A or company B alone has the intention of investing in network facilities and where NetCo has no immediate priority of investing, then unbundling or at least bit-rate wholesale should be mandatory to ensure open access network facilities island-wide.

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

Answer to Q2:

2.1 Singapore is too small for any part of the island to fall outside effective competitive services. The economics of service provision may include some pockets of uneconomic services, but these pockets are likely to be scattered. That being the likely case, the regulatory issue is likely to be more about markets than geography. [See answer 1 regarding facilities and services competition from a geographic perspective.] Anti-competitive behaviour in the voice telecoms market may be considered a more serious and immediate issue than, say, anti-competitive behaviour in, say, the cable TV/IPTV content market. The TV market is typically one of exclusive contracted deals for certain types of content, deals that have a termination date. The regulatory dividing line in the case of TV is most likely to be where content is of great significance to social inclusion. Social (as well as economic) inclusion also lies at the heart of regulation of telecoms, so for example access to the Internet is seen as essential for the full participation of all citizens. In this regard, while innovation is important, accessibility and affordability are probably higher on the list of regulatory priorities. From a commercial perspective, innovation is more important because it drives the level of actual usage – in this regard, bundled pricing or ‘all you can eat’ recognizes that usage drives the demand for access – so regulation, when concerned with access and affordability, also needs to take into account its impact on innovation by the commercial sector. This returns us to the concerns expressed in Answer 1 above. In short, structural separation should not, if at all possible, foreclose on facilities competition where there is investment seeking to invest.

2.2 Structural separation makes more sense in situations where there is a lack of potential investment in infrastructure, or where the country wishes to avoid duplication because it cannot afford the import prices of equipment and the drainage of foreign exchange. It is not obvious that either is the case in Singapore.

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

Answer to Q3:

- 3.1 The scope of separation should be determined by the limits of the commitments to invest by the service companies in their own infrastructure and by an identification of the core and extension loops of the NGN required. For example, if none of the competing service providers want to invest in Location 1, NetCo should take on that responsibility. If company A commits to undertake that investment alone, then unbundling or bit stream wholesale should be mandatory. If two or more companies undertake that investment, then *ex post* regulation should apply. [*Note: commitment to invest should carry a penalty for failure to invest.*]
- 3.2 Operational uniqueness (innovation) should be encouraged whenever a company sees a commercial advantage. This implies either (a) separate networks, or (b) company A, B, etc should be able to house their own equipment (co-locate) within NetCo facilities (or within each other's facilities in the case of unbundling).
- 3.3 The services concerned all those that necessitate traffic that transits or terminates over the NGN network.

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