

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
GLOBAL CROSSING LTD.)	
(Debtor-in-Possession),)	
)	
Transferor,)	IB Docket No. 02-286
)	
and)	
)	
GC ACQUISITION LIMITED,)	
)	
Transferee,)	
)	
Application for Consent to Transfer)	
Control and Petition for Declaratory Ruling)	

**CONSOLIDATED RESPONSE OF GLOBAL CROSSING LTD. AND
GC ACQUISITION LIMITED TO COMMENTS ON THIRD AMENDMENT**

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SUMMARY

Global Crossing Ltd. and GC Acquisition Limited (together, “Applicants”) submit this Consolidated Response to the submissions made by IDT Corporation, American Communications Network, Inc., and others in response to Applicants’ Third Amendment.

This Consolidated Response, together with Applicants’ prior submissions in this proceeding, demonstrate that the Amended Transaction, including the proposed investment by Singapore Technologies Telemedia Pte Ltd (“ST Telemedia”), is in the public interest under Sections 214 and 310(b)(4) of the Communications Act of 1934, as amended. Applicants show that, pursuant to the Communications Act, the Commission’s rules, and well-established Commission precedent, ST Telemedia’s proposed indirect investment in common carrier wireless licensees is properly analyzed pursuant to Section 310(b)(4) rather than Section 310(a). Moreover, ST Telemedia, a company with its principal place of business in Singapore, a World Trade Organization Member country, is entitled to the benefit of the presumption in the *Foreign Participation Order* that its proposed investment is in the public interest.

In contrast, the commenters have failed to show that the Amended Transaction poses any threat to competition in the relevant U.S. markets, much less the very high risk to competition that is required to rebut the presumption in favor of ST Telemedia’s proposed investment. Contrary to the claims of the commenters, the Amended Transaction will not result in any significant consolidation of market power in any relevant U.S. market. The commenters’ claims that the Amended Transaction will result in anticompetitive consolidation in telecommunications markets in Southeast Asia are both irrelevant to the Commission’s analysis and factually flawed. Finally, Applicants show that the Singapore Government’s indirect ownership of ST Telemedia will not have any adverse effect on competition in the U.S. telecommunications market.

The commenters also have failed to demonstrate that the Amended Transaction raises national security or law enforcement issues that are not subject to the jurisdiction and review of the Executive Branch. In any event, both Applicants and the Department of Justice (together with the Federal Bureau of Investigation) have asked the Commission to defer its ruling until any such issues are resolved.

Applicants also demonstrate that their request that GC Acquisition Limited be allowed to have up to an additional 25% foreign ownership beyond ST Telemedia's ownership is consistent with Commission precedent.

For these reasons, and as explained more fully in the Consolidated Response, Applicants submit that the Amended Transaction is in the public interest and request that the Application be granted expeditiously.

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**CONSOLIDATED RESPONSE OF GLOBAL CROSSING LTD. AND
GC ACQUISITION LIMITED TO COMMENTS ON THIRD AMENDMENT**

Global Crossing Limited (“GCL”) and GC Acquisition Limited (“New GX” and, together with GCL, “Applicants”), by their undersigned counsel, and in accordance with the Commission’s May 16, 2003 Public Notice,¹ submit this Consolidated Response to the submissions made by IDT Corporation (“IDT”) and American Communications Network, Inc. (“ACN”) in the above-referenced proceeding.²

¹ *In re Global Crossing Ltd.*, IB Docket 02-286, Public Notice (May 16, 2003).

² *In re Global Crossing Ltd.*, IB Docket 02-286, Petition to Dismiss or Deny and Opposition to Petition for Declaratory Ruling (June 16, 2003) (“IDT Pet.”); *In re Global Crossing Ltd.*, IB Docket 02-286, Objection to Amended Applications and Petition for Declaratory Ruling (June 16, 2003) (“ACN Obj.”). The numerous submissions of CommAxxess, Inc. (f/k/a GlobalAxxess, Inc.) and various individual commenters raise issues related to the conduct of GCL’s bankruptcy process. Those issues are properly directed to the Bankruptcy Court, and Applicants do not respond to them in this submission. See *Jackson Cellular Telephone Co., Inc. and Jackson Cellular Partnership*, 5 FCC Rcd 96 (1990) (“The Commission has consistently refused to allow aggrieved minority owners to prevent the assignment of facilities based on grounds of an alleged breach of fiduciary duty or monetary harm.”); *In re Application of Robert J. Kile*, 3 F.C.C.R. 1087 (1988) (stating that “minority owners cannot prevent the transfer of control of facilities on the basis that the transfer will cause them monetary harm. This is a matter for a

Applicants have amply demonstrated that the Amended Transaction, and specifically the proposed investment by Singapore Technologies Telemedia Pte Ltd (“ST Telemedia”), is in the public interest under Sections 214 and 310(b)(4) of the Communications Act of 1934, as amended.³ This Consolidated Response and the comments submitted by the Organization for International Investment (“OFII”) provide additional support for that conclusion. IDT’s and ACN’s comments, in contrast, do no more than ask the Commission to revisit well-established U.S. Government and FCC policy promoting investment in the telecommunications sector from other World Trade Organization (“WTO”) Member countries. Moreover, the comments completely fail to demonstrate that ST Telemedia’s proposed investment presents a risk to competition in the U.S. telecommunications market or that it raises national security or law enforcement concerns.⁴ The commenters therefore fail to rebut the presumption in favor of ST Telemedia’s investment.⁵

In short, the record is clear that ST Telemedia’s proposed investment, from a company based in Singapore, one of the United States’ staunchest allies and largest trading partners in

private cause of action and generally does not fall within the jurisdiction of this Commission.”). Applicants also address the request of XO Communications, Inc. (“XO”) that the Commission suspend its examination of the Amended Transaction while the Committee on Foreign Investment in the United States (“CFIUS”) is conducting its review of national security and law enforcement issues. *In re Global Crossing Ltd.*, IB Docket 02-286, Letter from B. Oliver and D. Kinkoph, XO Communications, Inc., to M. Dortch, Secretary, FCC (June 12, 2003) (“XO Ltr.”).

³ 47 U.S.C. §§ 214 and 310(b)(4).

⁴ The Commission also should be aware of the unstated motives behind IDT’s and ACN’s comments. IDT attempted to submit an untimely bid to purchase GCL out of bankruptcy. In furtherance of its bid, IDT is attempting to use the Commission’s process to undermine the Amended Transaction. ACN’s motivation is equally self-serving. GCL holds a small amount of ACN preferred stock, and ACN has been attempting for some time to repurchase the shares at a price substantially below market value. ACN’s thinly-veiled motive is evident in its request that the Commission prevent New GX from exercising any of GCL’s rights as a holder of ACN preferred stock.

⁵ ACN again claims that Applicants have failed to provide proper anti-drug certifications. The certifications submitted by Applicants are in accordance with the plain language of 47 C.F.R. § 1.2002 and are consistent with the certifications submitted in similar proceedings and routinely accepted by the Commission in both paper and electronic filings.

Asia, is in the U.S. public interest. Accordingly, Applicants request prompt approval of the Application.

I. ST TELEMEDIA’S PROPOSED INVESTMENT IS PRESUMPTIVELY IN THE PUBLIC INTEREST⁶

A. Section 310(a) Is Not Applicable To The Amended Transaction

Several of the commenters ask the Commission to examine the Amended Transaction under Section 310(a) of the Act.⁷ Consistent with the Act and long-standing Commission precedent, the Commission should refuse to do so. By its terms, Section 310(a) only prohibits FCC common carrier radio licenses from being “held by any foreign government or the representative thereof.”⁸ The FCC common carrier radio licenses at issue here are held by U.S. subsidiaries of GCL and will be held by the same companies (as subsidiaries of New GX) following consummation of the Amended Transaction. Those companies are clearly not foreign governments and are not “representatives” of a foreign government.⁹ Therefore, Section 310(a) is not applicable to the Amended Transaction on its face.¹⁰

Moreover, the Commission has previously analyzed and rejected the interpretation of Section 310 that is advanced by the commenters. In the *DT Order*, the Commission undertook an exhaustive analysis of Section 310, its legislative history, and U.S. Government policy toward foreign ownership in the telecommunications sector. After doing so, the Commission concluded

⁶ ST Telemedia’s legal, financial, technical, or managerial qualifications to hold a majority interest in New GX are a matter of record in this proceeding and have not been challenged by the commenters. *See, e.g.*, Application at 11-13; Third Amendment at 5-10.

⁷ IDT Pet. at 10-16; ACN Obj. at 5-7; Letter from Senators Conrad Burns and Ernest F. Hollings to Chairman Michael Powell (May 15, 2003).

⁸ 47 U.S.C. § 310(a).

⁹ *In re VoiceStream Wireless Corporation, Powertel, Inc., and Deutsche Telekom AG*, 16 FCC Rcd 9779 (2001) (“*DT Order*”) at ¶ 47 and n. 144.

¹⁰ In addition, Commission licenses will not be held by an “alien or [its] representative” or a “corporation organized under the laws of any foreign government” as a result of the Amended Transaction and the Amended Transaction does not involve direct investment by an alien, foreign

that indirect foreign ownership like that proposed by ST Telemedia is “outside the scope of Section 310(a).”¹¹ While IDT asserts that the Commission’s conclusions in the *DT Order* and the cases that followed it were wrong, IDT does not advance any arguments that were not thoroughly considered, and rejected, by the Commission.¹² Accordingly, the Commission should deny IDT’s invitation to waste the Commission’s valuable time and resources by revisiting this issue.

B. Section 310(b)(4) Permits Unlimited Indirect Foreign Ownership of U.S. Common Carrier Radio Licensees

Contrary to the suggestions of IDT and ACN, the transfer of control of GCL’s subsidiaries that hold common carrier radio licenses is properly governed by the public interest standard of Section 310(b)(4). That section provides that indirect foreign ownership of common carrier radio licensees that exceeds the 25% benchmark is permissible unless the Commission determines that such ownership is contrary to the public interest.¹³ Further, the Commission concluded in the *Foreign Participation Order* that the public interest would be served by adopting an open entry standard for investment from persons based in WTO Member countries.¹⁴ That conclusion led the Commission to replace its previous “effective competitive opportunities” test with a rebuttable presumption that investment from WTO Members raised no competitive

government, foreign corporation, or their representatives. Therefore, 47 U.S.C. §§ 310(b)(1)-(3) are not applicable.

¹¹ *DT Order* at ¶ 44. See also *In re Applications of XO Communications, Inc.*, 17 FCC Rcd 19212 (2002) (“*XO Order*”) at ¶ 17; *In re Vodaphone Americas Asia Inc. and Globalstar Corporation*, 17 FCC Rcd 12849 (2002) (“*Vodaphone Order*”) at ¶ 21 n. 58; *In re Lockheed Martin Global Telecommunications, Comsat Corporation, and Telenor Satellite Mobile Services*, 16 FCC Rcd 22897 (2001) (“*Telenor Order*”) at ¶ 21; *In re General Electric Capital Corporation and SES Global, S.A.*, 16 FCC Rcd 17575 (2001) (“*SES Global Order*”) at ¶ 20.

¹² IDT Pet. at 10-15.

¹³ 47 U.S.C. § 310(b)(4).

¹⁴ See *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, 12 FCC Rcd 23,891 (1997) (“*Foreign Participation Order*”) at ¶¶ 11, 13, 50; *Vodaphone Order* at ¶ 22; *Telenor Order* at ¶ 24; *SES Global Order* at ¶ 25.

concerns and was in the public interest under Section 310(b)(4).¹⁵ Pursuant to that standard, the Commission has repeatedly permitted up to 100% indirect foreign ownership of common carrier radio licensees.¹⁶

As a company based in Singapore, a WTO Member, ST Telemedia is entitled to the benefit of the presumption contained in the *Foreign Participation Order*.¹⁷ ST Telemedia's indirect ownership by the Singapore Government does not change its entitlement to that presumption. In 1997, the Commission authorized indirect investment from Telecom Finland Ltd., an indirect wholly-owned subsidiary of the Government of Finland, pursuant to section 310(b)(4).¹⁸ In doing so, the Commission stated that "because the same language in Section 310(b)(4) applies to both aliens and foreign governments, indirect foreign government control through an intervening corporation is permissible."¹⁹ In the wake of the WTO Agreement on Basic Telecommunications Agreement and the *Foreign Participation Order*, the Commission has repeatedly emphasized that section 310(b)(4) "treats foreign individuals, corporations, and

¹⁵ *Foreign Participation Order* at ¶¶ 11, 13, 50.

¹⁶ *XO Order* at ¶ 41 (authorizing up to 80% indirect foreign ownership); *Vodafone Order* at ¶ 51 (approving up to 100% indirect foreign ownership); *Telenor Order* at ¶¶ 35-36 (authorizing up to 100% indirect foreign government ownership); *SES Global Order* at ¶¶ 41-42 (authorizing 100% indirect foreign ownership); *In re Space Station System Licensee, Inc., Iridium Constellation, LLC, Motorola Satellite Communications, Inc.*, 17 FCC Rcd 2271 (2002) (acquisition of Iridium satellite system resulting in indirect foreign ownership by Australian, Brazilian, German and Saudi Arabian companies); *In re Vodafone Airtouch, PLC and Bell Atlantic Corporation*, 15 FCC Rcd 16514 (2000) (approving 65.1% indirect investment); *In re Motient Services Inc., TMI Communications Company, LP, and Mobile Satellite Ventures*, 16 FCC Rcd 20469 (2001) (approving approximately 45% indirect foreign ownership. See also *Petition of Cable & Wireless, Inc.*, 10 FCC Rcd 13177, 13178-79 (1995) (noting, prior to the United States' implementation of its WTO commitments, that "Section 310(b)(4) does not limit the amount of alien interests").

¹⁷ Applicants have previously demonstrated that Singapore is ST Telemedia's principal place of business. Application, at 17-18. In addition, in the Third Amendment, Applicants established that ST Telemedia's direct and indirect parent companies – Singapore Technologies Pte Ltd ("Singapore Technologies") and Temasek Holding [Private] Limited ("Temasek") – have their principal places of business in Singapore. Temasek is wholly owned by the Minister of Finance (Incorporated) of the Government of Singapore, which is also a Singapore person. Third Amendment at 7 n. 12.

¹⁸ *In re Telecom Finland, Ltd.*, 12 FCC Rcd 17648 (IB 1997).

¹⁹ *Id.* at ¶ 9.

governments in the same manner.”²⁰ The commenters provide no convincing reason why the Commission should reconsider that position. Therefore, the Commission should conclude that ST Telemedia’s proposed indirect ownership of New GX’s common carrier wireless licensees is presumptively in the public interest.

C. ST Telemedia’s Proposed Investment Is Consistent With U.S. Trade Policy

In addition to being consistent with the Communications Act, unambiguous Commission rules, and well-established precedent, Commission approval of ST Telemedia’s proposed investment is consistent with U.S. WTO commitments and will advance U.S. trade policy. As stated by the OFII, the Commission’s established policy regarding foreign investment in telecommunications was critical to the successful conclusion of the WTO Agreement on Basic Telecommunications.²¹ Backtracking on the U.S. open entry standard in the telecommunications sector now would violate U.S. WTO commitments, irreparably damage U.S. credibility and leadership in trade matters, and “cripple U.S. trade policy.”²²

Moreover, Singapore is one of the United States’ largest trading partners and a strategic ally in Asia. In recognition of the long-standing relationship between the U.S. and Singapore, on May 6, 2003, President Bush and Singapore Prime Minister Goh Chok Tong signed the landmark U.S.-Singapore Free Trade Agreement (“FTA”), the United States’ first free trade agreement with an Asian country. The intent of the FTA is to further liberalize trade between the U.S. and Singapore, including in the telecommunications services sector. Rejecting ST Telemedia’s proposed investment so soon after the FTA was signed would send a troubling signal about the United States’ commitment to its international trade agreements and would weaken the ability of

²⁰ *DT Order* at ¶¶ 45; *Telenor Order* at ¶ 30; *SES Global Order* at ¶¶ 25-30.

²¹ Comments of the Organization for International Investment (June 16, 2003) (“OFII Comments”) at 2, 4.

²² OFII Comments at 3-4.

the U.S. to negotiate future agreements to open foreign telecommunications markets to U.S. investors.

II. COMMENTERS FAIL TO REBUT THE PRESUMPTION IN FAVOR OF ST TELEMEDIA'S PROPOSED INVESTMENT

This presumption of open entry established by the *Foreign Participation Order* can only be rebutted if a transaction presents a very high risk of competitive harm to the U.S. market or if the Executive Branch raises national security or law enforcement concerns.²³ The commenters fail to demonstrate that ST Telemedia's proposed investment poses any threat to competition in the U.S. telecommunications market – much less a very high risk – and any national security or law enforcement issues are being addressed by Applicants and the Executive Branch through the CFIUS process.

A. ST Telemedia's Proposed Investment Will Not Result In Any Consolidation Of The U.S. Telecommunications Market

The proposed investment by ST Telemedia poses no threat to competition in the United States, much less the “very high risk to competition” that is required to rebut the open entry standard established by the *Foreign Participation Order*. As the Commission has stated, “[a]nticompetitive activity can succeed only if the market that is the object of such activity is susceptible to the consolidation and maintenance of market power.”²⁴ The U.S. markets in which GCL participates are highly competitive. Moreover, GCL's subsidiaries are competitive providers that do not have market power in any U.S. telecommunications market. The consummation of the Amended Transaction will not change that situation. As Applicants have previously advised the Commission, ST Telemedia provides telecommunications services in the United States through its indirect subsidiary, StarHub, Inc. StarHub, Inc. holds an international

²³ *Foreign Participation Order* at ¶¶ 47, 52.

²⁴ *Telenor Order* at ¶ 33.

Section 214 authorization, which it uses to provide resale-based wholesale services between the United States and Singapore.²⁵ Accordingly, the consummation of the Amended Transaction will not result in any consolidation of network assets in the United States or of the U.S. interstate telecommunications market. At most, the Amended Transaction will result in a negligible increase in ST Telemedia's already small share of the U.S. wholesale market between the U.S. and Singapore. Moreover, Applicants' agreement to accept dominant treatment on the U.S.-Singapore route would negate any potential risk to competition.²⁶ Therefore, ST Telemedia's proposed investment in New GX will have little or no effect on the U.S. telecommunications market, and it certainly does not present a very high risk to competition.²⁷

B. IDT's Focus On The Purported Effects Of The Amended Transaction On Competition In Asia Is Not Relevant To The Commission's Analysis

Recognizing that it cannot demonstrate any impact on competition in the U.S. telecommunications market, IDT instead argues that the consolidation of GCL's purported Asian assets with those of ST Telemedia would harm "world telecommunications markets." Specifically, IDT claims that the Amended Transaction would result in the consolidation of control of transmission capacity in Southeast Asian markets in the hands of entities controlled by the Singapore Government.²⁸

IDT's focus on the purported impact of the Amended Transaction on Southeast Asian telecommunications markets is improper. As the Commission has stated, its public interest analysis focuses on the potential effects of a proposed transaction on the U.S.

²⁵ Application at 12.

²⁶ Application at 25; First Amendment at 3.

²⁷ IDT argues that the Commission should consider the effect of the transfer of the assets and operations of Global Marine Systems as part of the Amended Transaction. IDT Pet. at 33. As IDT itself admits, those assets and operations are not regulated by the Commission. *Id.* Therefore, they are not relevant to the Commission's analysis. IDT also has failed to explain how the transfer of GMS and its unregulated assets would affect competition in the U.S. telecommunications market.

²⁸ IDT Pet. at 21 *et seq.*

telecommunications market.²⁹ Thus, any purported impact of the Amended Transaction on competition in Southeast Asia is irrelevant to the Commission's analysis.

IDT's arguments also are premised on erroneous and misleading facts. IDT's claim that the Amended Transaction will result in horizontal consolidation is contradicted by one simple fact: GCL no longer owns any cable systems or cable capacity in the Asia-Pacific region or that connect the U.S. and Asia. While IDT claims that GCL has a controlling interest in five trans-Pacific cable systems, only one – the Japan-U.S. Cable – was ever built.³⁰ Moreover, GCL's small indirect interest in that system was sold in connection with the reorganization of Asia Global Crossing Ltd. ("AGCL"). The only other Asia-Pacific cable systems in which GCL had an interest (but which are not listed by IDT) were the Pacific Crossing 1 ("PC-1") and East Asia Crossing ("EAC") cable systems. PC-1 is owned by PC Landing Corp. and its affiliates, which are in the process of selling the cable system and related assets to Pivotal Telecom. EAC, which was owned by AGCL and its subsidiaries, was sold to Asia Netcom Corporation in March 2003. Consequently, the Amended Transaction will not result in any consolidation of cable capacity in the Asia-Pacific region or on any U.S.-Asia route.

IDT's attempt to demonstrate competitive harm in vertical markets also fails because IDT wrongly attributes to ST Telemedia the facilities and activities of Singapore Telecommunications Limited ("SingTel"), the incumbent telephone company in Singapore. Despite the ultimate common ownership of the two companies by the Singapore Government, ST Telemedia has only an arm's length relationship with SingTel, and the companies are in fact fierce competitors in the telecommunications market. Each company establishes and pursues its business plan and objectives independently. The two companies do not share common offices, facilities,

²⁹ *Foreign Participation Order* at ¶¶ 13-14; *XO Order* at ¶¶ 33-34; *DT Order* at ¶ 78. *See also Telenor Order* at ¶¶ 37-41.

³⁰ IDT Pet. at 23 and Attachment A.

management, or personnel. The only commercial arrangements between the two companies and their subsidiaries are standard agreements such as those involving interconnection, access to facilities, and similar matters, which are entered into on an arm's length basis. In short, despite their status as "affiliates" under the Commission's rules, ST Telemedia and SingTel are very much separate companies.

Moreover, ST Telemedia's Singapore subsidiaries, including StarHub Pte Ltd ("StarHub"), are new entrants to the highly-competitive Singapore telecommunications market. StarHub and SingTel compete aggressively in the competitive Singapore telecommunications market. In fact, there are currently several disputes before the Infocomm Development Authority of Singapore (the "IDA"), Singapore's independent telecommunications regulator, between SingTel and StarHub pending resolution. Furthermore, SingTel recently filed a lawsuit against StarHub Cable Vision, a wholly-owned subsidiary of StarHub, with the High Court in Singapore over a dispute on the commercial agreement entered into between the two companies. Contrary to IDT's claims, ST Telemedia does not condone or acquiesce in anticompetitive behavior by SingTel, but rather is a strong advocate against such behavior. StarHub, for example, has taken a prominent role in pushing the IDA to implement pro-competitive policies in the communications sector and to limit anticompetitive conduct by SingTel. StarHub is currently part of a group of Singapore carriers that has asked the Singapore regulator to require SingTel to offer local leased circuits as a mandatory wholesale service.³¹ In the same vein, StarHub vigorously opposed a recent petition from SingTel that asked the IDA to treat SingTel

³¹ On May 30, 2003, the IDA issued a Consultation Paper entitled "Designation of Singapore Telecommunications Limited's Local Leased Circuits as Mandatory Wholesale Service. See www.ida.gov.sg. This belies IDT's claim that the IDA and the Singapore Government have been passive in response to allegations of anticompetitive behavior by SingTel.

as non-dominant in the international telephone services market.³² Thus, IDT's claims that ST Telemedia and SingTel are essentially one and the same or that SingTel's actions can be attributed to ST Telemedia are not borne out by the facts. For the same reason, IDT's assertion that the Amended Transaction will result in vertical consolidation fails.

C. The Singapore Government's Indirect Ownership of ST Telemedia Does Not Pose A Risk To Competition

In evaluating whether proposed foreign investment is in the public interest, the Commission has stated that the existence and degree of control by a foreign government is relevant to the extent that the government ownership confers unique financial advantages or otherwise creates a high risk to competition in the United States.³³ In this case, contrary to the assertions of the commenters, the facts demonstrate that the Singapore Government does not confer financial or other advantages on ST Telemedia. Further, the Singapore Government's indirect ownership of ST Telemedia would not result in a high risk to competition in the U.S. telecommunications market.

The Singapore Government does not influence ST Telemedia's commercial policy and will not influence the commercial policy of New GX and its subsidiaries that hold FCC licenses. ST Telemedia is not an agency or branch of the Singapore Government. The Singapore Government does not have the right to consent to or veto the decisions of the company and does not hold a so-called "golden share" in ST Telemedia. The Government of Singapore neither nominates nor appoints members to ST Telemedia's Board of Directors or the Boards of Directors of ST Telemedia's subsidiaries. In summary, ST Telemedia functions as a competitive, commercial enterprise that is motivated by the desire to maximize profits.

³² See, e.g., Audrey Tan, *9 Telcos Slam SingTel's Freer Pricing Bid*, The Straits Times, May 13, 2003, at A16 (attached as Exhibit A).

³³ *DT Order* at ¶¶ 56-59; *Telenor Order* at ¶ 28.

In addition to the Singapore Government's lack of influence over the management and operations of ST Telemedia, the government does not provide subsidies or grants to ST Telemedia. Rather, ST Telemedia finances its investment activities through traditional commercial means. Thus, the Singapore Government does not confer any financial advantages on ST Telemedia, improve ST Telemedia's access to capital, or reduce ST Telemedia's cost of capital.³⁴ Further, in contrast to government-owned corporations in many other countries, ST Telemedia's workforce, and its subsidiaries' workforces, are not (and never were) civil servants.³⁵

Even if there were a valid basis for concluding that the Singapore Government exerts day-to-day control over ST Telemedia – which there is not – there are a number of other factors that would obviate any resulting risk to competition. First, ST Telemedia's operating subsidiaries in Singapore, like other Singapore telecommunications providers, are subject to the independent regulatory oversight of the IDA.³⁶ The IDA has taken an active role in promoting competition in Singapore; as an example, the IDA proactively monitors and addresses potential anticompetitive behavior by SingTel, contrary to IDT's claims. Since the introduction of full competition in Singapore (two years ahead of schedule), the IDA has issued over 600 licenses for the provision of facilities-based and services-based telecommunications. Among the licensees are numerous wholly-owned subsidiaries of U.S. telecommunications carriers.

Second, StarHub (and many of ST Telemedia's other subsidiaries) has significant investment from non-Singapore companies, including NTT, British Telecom, and others. Various of ST Telemedia's affiliates, including Indosat, are also publicly traded companies. The

³⁴ *Telenor Order* at ¶¶ 30-31; *SES Global Order* at ¶ 36.

³⁵ *Telenor Order* at ¶ 30 n. 99.

³⁶ *DT Order* at ¶¶ 66-70 (noting importance of independent regulator but finding no impact on U.S. markets).

interests of those outside investors would limit the ability of the Singapore Government to require ST Telemedia to engage in anticompetitive behavior even if the government had the ability and were inclined to do so.

Third, the Singapore Government recently stated its intention to privatize ST Telemedia. In a side letter to the U.S.-Singapore FTA, the Singapore Government affirmed that it would establish plans to divest its majority share in ST Telemedia. While no timeline has been set for divestment, the Singapore Government recognized in the side letter the interest of the United States Government in seeing the divestment completed as soon as feasible.³⁷ Moreover, divestment is consistent with the Singapore Government's policy to dilute its stakes in the companies in which it invests in a way that will support the continued growth of those companies and encourage competition and additional investment in the Singapore market.

Finally, there are a number of other safeguards against any potential threat to competition. In the *SES Global Order*, the Commission concluded that Luxembourg's WTO commitments, the Commission's regulatory safeguards, and antitrust law would be sufficient to offset any competitive concerns raised by the Government of Luxembourg's presumed control over SES Global.³⁸ Here, too, any theoretical danger to competition posed by the Singapore Government's ownership of ST Telemedia can be satisfactorily addressed by Singapore's WTO commitments, the Commission's regulatory safeguards (including Applicants' acceptance of dominant treatment on the U.S.-Singapore and U.S.-Indonesia routes), and U.S. antitrust law.³⁹

³⁷ U.S.-Singapore Free Trade Agreement, Side Letter on Divestment Issues (May 6, 2003), available at <http://www.ustr.gov/new/fta/Singapore/final/09%20disinvest%20gy.PDF>.

³⁸ *SES Global Order* at ¶ 35. See also *Telenor Order* at ¶¶ 28, 33.

³⁹ In its comments, IDT, citing Singaporean news sources, implies that ST Telemedia acted improperly with respect to its recent investment in Indosat. Not surprisingly, IDT failed to note that, in the five months since those press reports were released, no evidence of any improper acts has been produced. ST Telemedia also has strongly denied any wrongdoing. See Indosat Deal Was Above Board: ST Telemedia, *The Straits Times* (Singapore), Jan. 31, 2003 (copy attached as Exhibit B). IDT's repetition of these unsubstantiated claims and its failure to disclose all pertinent facts demonstrates that

Given these safeguards, it is highly unlikely that Singapore, a country of 4 million people, could impede competition in the expansive U.S. telecommunications market.

III. THE FCC AND CFIUS PROCESSES CAN PROCEED IN PARALLEL

Some commenters assert that the Amended Transaction raises national security and law enforcement issues that must be addressed before the Commission can begin to review the transaction.⁴⁰ That assertion is a transparent attempt by the commenters to delay the Commission's review of the Amended Transaction. The commenters offer no legitimate reason why the public interest would be served by the Commission deferring its examination of the Amended Transaction while CFIUS conducts its review. The Commission has established procedures for reviewing transactions that may raise national security concerns whereby all agencies work concurrently to expeditiously review pending applications. Those procedures have worked in the past and there is no reason to depart from them in this proceeding.

The Applicants have been working closely with the Commission, CFIUS, and CFIUS's constituent agencies with respect to national security and law enforcement matters, and Applicants are hopeful that they will promptly receive approval for this transaction from the Executive Branch. Moreover, as is typical in transactions involving foreign investment in FCC licensees, the Department of Justice and Federal Bureau of Investigation (together, the "DOJ") have filed a Motion for Continued Deferral in this proceeding asking the Commission to defer dispositive action on the Application until CFIUS review was complete.⁴¹ Indeed, Applicants acknowledged the jurisdiction of the Executive Branch over national security and law enforcement matters in the Application, and Applicants therefore requested that dispositive

IDT's only goal is to impugn ST Telemedia's reputation and distract the Commission from the weakness of IDT's arguments.

⁴⁰ See, e.g., XO Ltr. at 3; IDT Pet. at 32.

⁴¹ *In re Global Crossing Ltd., et al.*, IB Docket 02-286, Motion for Continued Deferral (Oct. 21, 2002)

action by the FCC be deferred until the completion of the Executive Branch process.⁴² If XO and IDT are asking the Commission merely to defer a final decision on the Application until the completion of the CFIUS process, their request is redundant. However, to the extent the commenters request that the Commission change its long-standing procedures and postpone its review of the other public interest factors, the Commission should deny their request. Instead, the Commission should continue its review of the Amended Transaction so that the Commission is prepared to issue an order promptly after the Executive Agencies complete their examination of national security and law enforcement matters and the DOJ withdraws its Motion for Continued Deferral.

IV. APPLICANTS SHOULD BE ALLOWED ADDITIONAL INDIRECT FOREIGN OWNERSHIP OF UP TO 25%

ACN urges the Commission to reject Applicants' request to have indirect foreign ownership of up to 25% above that made by ST Telemedia without requesting further Commission approval. Applicants' request is entirely consistent with Commission precedent and should be granted.

As Applicants have previously advised the Commission, pre-petition creditors of GCL and its debtor subsidiaries (the "Creditors") will receive equity in New GX in the aggregate amount of 38.5% in connection with the Amended Transaction. While the Creditors are primarily U.S. persons, a number of them have their principal places of business in other WTO Member countries. In addition, it is possible that one or more of the U.S. Creditors (or, after consummation of the Amended Transaction, one of New GX's U.S. shareholders) will sell its interest to a foreign person. Applicants' request is intended to account for these possibilities.

Applicants' request is a common one; in fact, the Commission encourages such requests to avoid requiring licensees to file applications for small non-controlling changes in their foreign

⁴² Application at 20-21.

ownership.⁴³ Moreover, Section 310(b)(4) does not limit non-controlling investments below 25% to WTO Members. Accordingly, there is no basis for ACN's request that the Commission do so in this case. Therefore, the Commission should follow its existing precedent and grant New GX the flexibility to accept additional foreign ownership up to 25%.⁴⁴

V. CONCLUSION

For the above reasons, Applicants request that the Commission continue its examination of the Amended Transaction and be prepared to grant the Application promptly following the conclusion of CFIUS's review of any national security and law enforcement issues.

Respectfully submitted,



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Counsel to Global Crossing Ltd. and
GC Acquisition Limited

Dated: June 26, 2003

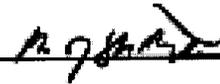
⁴³ See *Foreign Participation Order* at ¶ 114; *Vodafone Order* at ¶ 52; *SES Global Order* at ¶ 42; *Telenor Order* at ¶ 36.

⁴⁴ ACN's claim that Applicants' request is a cover for intended investment from Hutchison Telecommunications Limited ("Hutchison Telecom") is unfounded. Applicants' request was contained in the Application to which Hutchison was a party. Application at 26. Moreover, as Applicants advised the Commission on May 23, 2003, Hutchison is not a party to the Amended Transaction and will have no interest in New GX following consummation of the transaction. *In re Global Crossing Ltd., et al.*, IB Docket 02-286, Letter from Paul O. Gagnier, Counsel for Applicants, to Marlene H. Dortch, Secretary FCC (May 23, 2003).

CERTIFICATION

On behalf of Global Crossing Ltd., I hereby certify under penalty of perjury that the statements in the foregoing Consolidated Response of Global Crossing Ltd. and GC Acquisition Limited to Comments on Third Amendment are true, complete, and correct to the best of my knowledge, information and belief.

SIGNATURE: _____



NAME:

Michael J. Shortley, III

TITLE:

General Counsel - North America

DATE:

June 26, 2003

CERTIFICATION

On behalf of GC Acquisition Limited, on whose behalf I am authorized to sign this Certification, I hereby certify under penalty of perjury that the statements in the foregoing Consolidated Response of Global Crossing Ltd. and GC Acquisition Limited to Comments on Third Amendment are true, complete, and correct to the best of my knowledge, information and belief.

SIGNATURE: _____

NAME: Michael J. Shortley, III

DATE: June 26, 2003

CERTIFICATION

On behalf of Singapore Technologies Telemedia Pte Ltd, I hereby certify under penalty of perjury under the laws of the United States of America that the statements in the foregoing Consolidated Response of Global Crossing Ltd. and GC Acquisition Limited to Comments on Third Amendment with respect to ST Telemedia and its affiliates and subsidiaries are true, complete, and correct to the best of my knowledge, information and belief.

SIGNATURE: _____



NAME: Pek Siok Lan

TITLE: Senior Vice President – General Counsel

DATE: June 26, 2003

Title : 9 Telcos Slam SingTel's Freer Pricing Bid
Medium : The Straits Times
Date : 13 May 2003
Section : Money
Page : A16
Size : 3col x 15cm & 4col x 11.5cm

9 telcos slam SingTel's freer pricing bid

Domestic and foreign players give IDA feedback after telecom giant seeks exemption from international call rules

By AUDREY TAN

NINE telecom companies have written to the Information Development Authority of Singapore (IDA) to "blast SingTel's attempt to insist its hands over pricing and marketing international calls. Warning of predatory behaviour and price squeezes if SingTel was to succeed, the telcos said that smaller rivals may be driven out of the market. Investment in Singapore's telecom industry may drop and consumers will ultimately suffer, they said.

This latest spat comes on the heels of a complaint to IDA last year made by five overseas telcos, about the price of local leased circuits in Singapore, largely controlled by SingTel.

And SingTel is also embroiled in a dispute with StarHub over access to its manholes and ducts for cable television connections. The nine telcos were responding to the IDA's call for feedback after SingTel applied to be exempted from its obligation as a dominant player in the international telephone services

(ITS) market.

"With almost 80 per cent of the ITS market, SingTel is bound by a Code of Practice, introduced here in September 2000 after market liberalisation, which regulates competition in the telecom industry.

For example, SingTel needs IDA approval before pricing its international services and cannot bundle international calls with other services. But in a submission to IDA on April 1, SingTel argued that the ITS market was already very competitive.

"Full contestability in the ITS market means that end-users enjoy and will continue to benefit from significant and sustained price reductions. Furthermore, low entry barriers for new operators mean that end-users effectively have broad service provider choice

for ITS," it said in its submission.

It also argued that there is a proliferation of competing operators and access techniques including mobile access, calling cards, voice over Internet protocol and call back/call origination services. There is also a variety of substitutes within the ITS product market. International private leased circuits may be provided to large end-users in substitution for on-demand ITS," it argued.

As such, it said it should be freed from its obligations, which are no longer needed to protect end-users or preserve effective competition.

But this drew a chorus of objections from the nine telcos, including local players such as StarHub, M1 and SunPage Communications, as

well as global telcos such as British Telecom, Resch, Cable & Wireless and MCI WorldCom.

Most argued that SingTel has control of the facilities needed to provide international services, since it dominates ownership of local fixed lines and international facilities. With no competition law in Singapore, the Code is the only form of regulatory protection against predatory behaviour, they said.

StarHub, for one, urged IDA to deny SingTel's request outright. StarHub is also extremely concerned that SingTel should make such a request given the clear absence of any legitimate justification," it said.

"SingTel's control of facilities and infrastructure and its incumbent status ensures that

SingTel enjoys the lowest cost among all ITS operators. This means that SingTel has the ability to lower its retail prices to a level that will drive other operators out of the market, and then raise them again subsequently," it said.

Similarly, M1 said that SingTel will be able to use its dominant position to potentially engage in predatory action. This could eventually negate all the benefits of market liberalisation, M1 said.

With the industry liberalisation, there are now over 600 operators here. But Mr Steven Koh, director for research at Standard and Poor's, said: "At the end of the day, market entrants still have to lease from and negotiate with SingTel, which owns most of the infrastructure."

If SingTel has pricing power,

it can price others out of the market since it has reaped most of its investment whereas newer players have not, he said.

SingTel will also be able to bundle international calls with its many other services, using the cross-subsidies to compete against its much smaller rivals, he added.

XA Alliance, a telecom firm which submitted its response to IDA, said: "End-users would ultimately suffer from a lack of options and the telecommunications market would become less competitive. In fact, it would actively discourage investment in the information and communications industry in Singapore as it will be recognised that the incumbent dominant player ultimately controls the market."

This latest spat comes on the heels of a complaint to IDA last year made by five overseas telcos, about the price of local leased circuits in Singapore, largely controlled by SingTel.

EXHIBIT B

9 of 14 DOCUMENTS

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The Straits Times (Singapore)

January 31, 2003 Friday

SECTION: MONEY

LENGTH: 327 words

HEADLINE: Indosat deal was above board: ST Telemedia

BODY:

SINGAPORE Technologies Telemedia (ST Telemedia) yesterday slammed allegations that it paid or offered commissions to any parties in connection with its recent US\$1.2 billion (S\$2.09 billion) acquisition of a 42 per cent stake in Indonesia's No. 2 telecom operator, Indosat.

Its strongly worded statement about the conduct of its affairs in the Indosat deal came just two days after former Indonesian president Abdurrahman Wahid claimed he had evidence which showed that Singapore parties allegedly paid commissions to Indonesian leaders after the deal was concluded.

Apart from Mr Abdurrahman, some Indonesian Members of Parliament and politicians have also alleged in recent weeks that the process of divesting Indosat was not transparent.

'ST Telemedia would like to categorically refute allegations that commissions were offered or made to anyone by ST Telemedia in relation to the Indosat divestment,' ST Telemedia said in a two-page statement yesterday.

The company also defended the transparency of the deal by reiterating that there were 'strict regulations and guidelines' for the Indosat divestment programme which were monitored by the financial and legal advisers of the Indonesian government.

It added that it would abide by Indonesian regulations, and 'the corporate governance framework' set by relevant regulators in countries where it operates.

When contacted, ST Telemedia said it was not currently considering taking legal action against the parties who have hurled allegations against its dealings in the Indosat acquisition.

Despite these allegations, it said it was committed to its investment in Indosat for the long term.

'ST Telemedia is excited about the prospect of helping to build Indosat into a world-class telecommunications operator and will support the business of Indosat to ensure that the business objectives and shareholders' expectations, including the government of Indonesia, are met,' it said.

LOAD-DATE: January 31, 2003

CERTIFICATE OF SERVICE

I, Ivonne Diaz, hereby certify that on this 26th day of June 2003, I caused a true and correct copy of the foregoing Consolidated Response of Global Crossing Ltd. and GC Acquisition Limited to Comments on Third Amendment to be served upon the following parties in the manner indicated:

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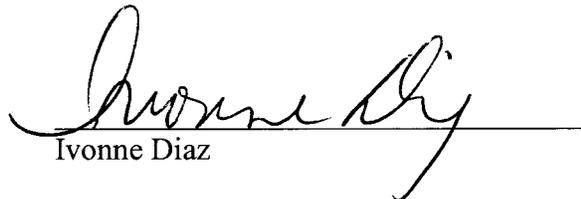
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