25 September 2013

Ms Aileen Chia
Deputy-Director General (Telecoms & Post)
Infocomm Development Authority of Singapore
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By Email: IDA_Consultation@ida.gov.sg

Dear Ms Chia,

CONSULTATION PAPER ISSUED BY THE INFO-COMMUNICATIONS DEVELOPMENT AUTHORITY ("AUTHORITY") OF SINGAPORE

LONG FORM CONSOLIDATION APPLICATION SUBMITTED BY OPENNET PTE LTD ("OPENNET"), NETLINK TRUST, CITYNET INFRASTRUCTURE MANAGEMENT PTE LTD ("CITYNET") AND SINGAPORE TELECOMMUNICATIONS LTD ("SINGTEL")

1. The Asia Pacific Carriers' Coalition, M1 Limited, MyRepublic Pte Ltd, Nucleus Connect Pte Ltd, StarHub Ltd, SuperInternet Access Pte Ltd, and ViewQwest Pte Ltd (the "**Operators**") hereby jointly submit this response to the Authority's public consultation.

2. We believe that the approval of the proposed consolidation application would have a significant negative impact on the Next-Generation Broadband Network ("**Next-Gen NBN**") and its strategic objectives, on customers, and on competition in the Singapore telecommunications market.

3. For reasons stated in this response, the Authority should <u>**not**</u> approve the consolidation. Further and/or in the alternative, in the event the Authority decides to approve the consolidation, it must impose stringent Conditions on SingTel, OpenNet and CityNet, to safeguard the public interest. The Authority must also establish significantly improved Quality of Service ("**QoS**") and performance guarantees, to ensure that customers benefit and competition is not substantially lessened.

The Next-Gen NBN – the objective and vision of the Next NGN has yet to be realised more than 3-years after OpenNet's service launch

4. The Next-Gen NBN was intended to represent an alternative and ubiquitous fibre network, which would allow open access to all industry players. The Next-Gen NBN would serve as a "*critical national enabler to spur the development of new knowledge-based sectors*", and "*catalyse development and deployment of innovative interactive digital services to homes, schools and business*".[1] To this end, the Government provided OpenNet with up to S$750 million in Government grants to support its rollout of the Next-Gen NBN.

5. Unfortunately, 3-years after the launch of the Next-Gen NBN, this vision has yet to be realised. The key inhibitors of the Next-Gen NBN's potential, are – regretfully –

a. ***The Maximum Quota scheme:*** as submitted by the OpenNet consortium (in which SingTel had a 30% share) in its bid proposal for the Network Company contract. Based on the Maximum Quota scheme that was put forth, it would take at least 8-years before all the households in Singapore could be connected to the Next-Gen NBN; and

b. ***OpenNet's service delivery standards:*** in its public statements, OpenNet has admitted that the cause of its problems is its poor working relationship with its Key Sub-contractor ("**KSC**"), SingTel.[2] [3]

6. In recent months, there have been numerous forum page letters criticising OpenNet's service standards. These complaints relate to how customers are being subjected to unexplained delays, multiple missed appointments, and ultimately having to wait months for a "*beleaguered*" OpenNet to deliver its services.[4] [5] [6] [7] [8] [9] Such complaints represent a fraction of the negative feedback directed towards OpenNet, which the Operators have experienced. In many cases, the Retail Service Providers ("**RSPs**") have no option but to apologise to customers for OpenNet's delays, and potentially compensate customers for delays caused by OpenNet, without meaningful recourse back to OpenNet.

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[1] http://www.ida.gov.sg/Infocomm-Landscape/Infrastructure/Wired

[2] Reference "OpenNet's Initial Rollout of Singapore's Nationwide Fibre Network Close to Completion", released on 8-May 2012 Link: http://www.opennet.com.sg/press/opennet%E2%80%99s-initial-rollout-of-singapore%E2%80%99s-nationwide-fibre-network-close-to-completion/

[3] "Open season at OpenNet as it blames SingTel for NBN delay" – Business Times, 9-May 2012.

[4] "OpenNet set for sale in proposed S$126m deal" – TODAY, 23-August 2013.

[5] "Left in the lurch by OpenNet despite penalties" – TODAY, 2-July 2013.

[6] "Sole provider of fibre network = Inefficient?" – TODAY, 10-July 2013.

[7] "Telcos, regulator being dragged down by OpenNet" – TODAY, 13-August 2013.

[8] "Are there broadband delivery standards for service providers" – The Straits Times, 29-August 2013.

[9] "Fibre broadband installation stalled" – The Straits Times, 29-August 2013.

7. Regretfully, the problems faced by customers and their RSPs, particularly in the Non-Residential segment are **substantial**. Our statistics show that OpenNet is currently failing to provision its services on the dates it had promised in up to **90%** of cases for Non-Residential segment. Unexplained delays of 6-months or longer are commonplace, and OpenNet's service standards appear to be worsening instead of improving. The Authority has stated publicly that progress in the Non-Residential segment was not "*going as fast as it would have liked*".[10]

8. As noted in the Straits Times article of 9-September 2013, "*SingTel … competes with OpenNet in wiring up commercial buildings, and then selling broadband access to businesses over its own fibre-optic network*".[11] Under the current relationship between SingTel and OpenNet, there is already a conflict of interest between the two parties. SingTel's role as OpenNet's largest shareholder, and as its KSC, is in clear and direct conflict with SingTel's role as the incumbent service provider. Market evidence based on the above statistics for the Non-Residential segment of the market clearly reflects this. This is further supported by one of OpenNet's own shareholders, Axia Net Media, in its complaint to the Authority and statements to the media in early 2012, noting that"

> "*SingTel should not have been awarded the key subscontractor agreement … as SingTel, being a major Internet Service Provider … is not a neutral party*", and that "*SingTel has also installed its own fibre optic cables in commercial buildings, making it a direct competitor to OpenNet*".[12]

The consolidation application does not address the key issues currently faced by the industry

9. Against this backdrop, the current proposed consolidation application involves the consolidation of three Dominant Licensees: SingTel, OpenNet and CityNet. Given the unresolved and escalating problems operators face with OpenNet, it is unclear how this consolidation could reasonably improve the current situation.

10. Specifically, we have the following concerns:

   a. Firstly, the consolidation would have a negative impact on the competitive landscape of the Singapore telecoms market, and would further entrench SingTel's dominance. To summarise, SingTel, the incumbent operator and Dominant Licensee, will purchase via its 100%-owned associate (NetLink Trust)[13] a 100% beneficial ownership in OpenNet, which is also a Dominant Licensee. OpenNet's assets would then be legally-owned, and operated by CityNet, a third Dominant Licensee.

   The Authority's original goal for the Next-Gen NBN was to promote competition in the market. We do not believe that this can be achieved through

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[10] "S'pore enterprise fibre uptake not 'as fast' as hoped – ZDNET, 12-April 2013.

[11] "OpenNet sale raises fear of conflict of interest" – The Straits Times, 9-September 2013.

[12] "OpenNet shareholder lodges complaint against SingTel" – AsiaOne, 16 Mar 2012.

[13] Reference page 104, Note (2) of SingTel's 2013 Annual Report.

the consolidation of three Dominant Licensees who, jointly, own the **only** nationwide fibre broadband networks and underlying infrastructure assets in Singapore.

As recently noted by one customer, this consolidation would result in: "*SingTel's monopoly over Singapore's fibre broadband network*"[14];

b. Secondly, we must respectfully dismiss any suggestion that CityNet will be a "neutral" or "independent" entity that will serve the best interests of the industry.

As noted in the Straits Times of 9-September 2013, "*NetLink Trust's trustee-manager **<u>CityNet is bound by law to serve only the interest of the trust's unit-holder, SingTel</u>***" (emphasis added).

CityNet is under no statutory or contractual obligation to act in the interests of the industry. On the contrary, under the Business Trust Act ("**Act**"), CityNet (including its board members) is obliged to put SingTel's interests ahead of its own. It is likely that CityNet would have to consider SingTel's wider interests "*as a whole*", and not just SingTel's interest in the NetLink Trust.[15] If the consolidation is approved, CityNet must thus consider, at all times, SingTel's best interests, while providing services to SingTel's direct competitors. Like any business, it is natural that SingTel's best interests would be to reduce the conflict of interests and competition to itself in the market, so that it can continue to be the dominant player in the fixed-line and related markets.

Today, the industry is already being crippled by OpenNet's less than satisfactory deployment of fibre and the extremely slow process of SingTel transferring its underlying passive infrastructure assets to CityNet. As the Authority does not appear to set any performance criteria for the transfer of assets, the process is extremely slow and severely impacts other operators' deployment plans for self-provisioning of fibre. In several cases, CityNet has informed operators that it is unable to provide access or any information on the respective underlying passive infrastructure assets as these have yet to be transferred to CityNet. Operators would have no other choice but to delay their deployment plans. Some delays took up to 9-months due to the slow progress in the transfer of assets and relevant information.

Hence, we have grave concerns with the proposed consolidation and there is no guarantee that the consolidation will realistically alleviate the current unsatisfactory state of affairs.

Furthermore, we note that SingTel's divestment of NetLink Trust is also extended from 2014 to 2018. This would result in SingTel being able to expand and exert control over CityNet (and hence the dark fibre layer of the Next-Gen NBN) for the next 5-years, further entrenching SingTel's incumbent position.

[14] "Questions over OpenNet sale" – Straits Times Forum, 3 September 2013.

[15] Under the existing Trust Deed, in conducting its business, CityNet must act *"in the best interests of the Holders* [SingTel] *as a whole."*

The above is against the basic tenets of what the Government has set out to do in Y2007 and negates the Government efforts in bringing about a competitive and vibrant broadband market via an **alternate** network:

Basic Tenets of the Next-Gen NBN	**Government Efforts to regulate the Next-Gen NBN**	**Results of Consolidation Application**
Alternate ubiquitous network	• The Government recognised that it is difficult to achieve facilities-based competition in the fixed-line market and took the approach to fund S$750m into the roll-out of an alternative, ubiquitous nationwide infrastructure.	• SingTel has monopoly over Singapore's ubiquitous fibre broadband network • SingTel retains monopoly over its ubiquitous fixed network. • SingTel retains monopoly over the ubiquitous underlying infrastructure assets such as the ducts, manholes and exchange buildings needed for any operator for deployment. • SingTel further entrenches its dominance in the fixed-line related markets with **monopoly** over **all** of Singapore's ubiquitous networks.
No Effective Control	• The Authority has stated that it: "*will presume that any person who holds 30% or more of the Voting Shares/Units/Equity Interest … in an entity will be able to exercise effective control over that entity*". • As a result, SingTel had less than 30% share in OpenNet.	• SingTel has 100% beneficial ownership of OpenNet. • CityNet has a legal obligation to always put the SingTel, the unitholder's interests first.
Structural Separation	• The Authority accepted the OpenNet consortium's (where SingTel had 30% share) proposal to create a fourth layer "AssetCo" that was meant to be an "*independent and separately managed company*". • SingTel was committed to reduce its stake in the AssetCo by Apr 2014.	• The fourth layer of an independent and separately managed company is now removed • Instead of fulfilling its commitment, SingTel's divestment is now extended from 2014 to 2018.

c. Thirdly, there are no guarantees that OpenNet's service standards will improve as a result of the consolidation. As one customer puts it: "*Given the public need for this infrastructure, no one operator should have sole control over it. Otherwise where's the impetus to provide a good product and service*".[16]

While SingTel has committed to remove itself as the KSC of OpenNet, there are no safeguards in place to prevent CityNet from simply re-appointing SingTel as its sole or major contractor. There is zero appreciable difference in such a scenario, from the current state of affairs. As highlighted above, CityNet is obliged to take into consideration SingTel's best interests, and it would arguably be in SingTel's wider best interests for it to continue to act as the sole or major contractor for the Next-Gen NBN, with no improvements in performance;

d. Fourthly, there are no guarantees that the public and the industry will benefit from the proposed consolidation in practical terms. If the Authority is now to consider the proposed consolidation favourably, then Conditions (with strict Performance Guarantees) must be imposed on the AssetCo, beyond rhetoric on integration benefits. Specifically, cost effectiveness and efficiency from streamlining of operations must result in substantial improvements in the ease of access and timeframe taken for provisioning of services, substantially lowering of prices across all services to the industry, and substantial improvement in QoS, etc;

e. Fifthly, there are valid concerns with the financial implications of this deal. In a letter to the TODAY newspaper[17], a reader noted that: "[a]*fter receiving up to S$750 million in government funding, OpenNet is now to be sold to SingTel's NetLink Trust for S$126 million … It seems as if either OpenNet has lost up to S$624 million in only a few years or that SingTel might land a windfall in the form of a massive discount*". The reader then opined that "[i]*f the Government approves this deal, it should ensure transparency and explain why OpenNet is worth so little despite receiving a big grant*".

While the Authority and CityNet have provided responses to this letter, we believe that it is necessary for the Authority to provide further clarity on the financial implications of this deal, given the significant amount of Government funding that has already been granted to OpenNet, and the strategic importance of the success of the Next-Gen NBN to the telecoms industry;

f. Sixthly, there are serious concerns that the rights of third-parties (including the Authority and Requesting Licensees ("**RLs**")) would be prejudiced and compromised vis-à-vis their dealings with CityNet. Unsecured third-party creditors (i.e., the Authority and OpCos) when contracting or dealing with CityNet, may face difficulties in having a claim to NetLink Trust's assets if CityNet is unable to satisfy the debts or other liabilities owing to such third-party creditors; and

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[16] "Questions over OpenNet sale" – Straits Times Forum, 3 September 2013.

[17] "Unanswered questions about OpenNet sale"- TODAY, 11-September 2013.

g. Finally, there has been an unfortunate lack of transparency surrounding this deal. SingTel, OpenNet and CityNet have failed to provide any specifics on the proposed consolidation. Despite the implications to the industry and public consumers, the proposed new Trust Deed of NetLink Trust has not been made available as part of the consultation. The lack of transparency on the new Trust Deed as well as the information submitted e.g., market information etc. in the consolidation application, has meant that the public and the industry are unable to consider and provide a fully-informed and comprehensive response to the Authority's public consultation.

Proposed Conditions

11. We urge the Authority to seriously consider our grave and pressing concerns over the proposed consolidation, and refuse the consolidation. Notwithstanding the above, should the Authority choose to approve this consolidation, we would respectfully request that the Authority implement all necessary Conditions, to ensure that all customers can benefit from the deal, that competition in the market is preserved and enhanced, and that the Next-Gen NBN can finally realise its full potential. We propose that, to the extent practicable, these Conditions be imposed on – and agreed to by – CityNet/OpenNet/SingTel, as the case may be, as condition precedents to the Authority's approval of the consolidation.

12. In particular, we propose the following:

a. The new Network Company ("**new NetCo**") must **guarantee** improvements in its service delivery performance, ease of access to services and pricing levels. Any failures to comply with these guarantees must result in meaningful spelt-out service level guarantees ("**SLGs**") (and punitive action being taken against the new NetCo), to incent the right behaviour. The existing loopholes, which currently allow OpenNet to delay service offerings under a wide variety of circumstances, must be closed.[18] Specifically:

i. the new NetCo to clearly provide a plan of enhanced and concrete proposals to speed up efficient fibre rollouts to homes;

ii. This plan must be publicly consulted on, and approved by the Authority within certain timeframes. The approved plan must be adhered to strictly and actively enforced by the Authority; and

iii. The current OpenNet Interconnection Offer ("**ICO**") and CityNet Reference Access Offer ("**RAO**") must be amended within a specified timeframe with a view to significantly improve the SLGs of the new NetCo, with a meaningful increase in the penalties payable to RSPs if such SLGs are not adhered to. There should be no exclusions in such amended ICOs/RAOs for breaches in SLGs, and accordingly, RSPs should be able to claim losses and indemnities from the new NetCo for such breaches. This is pertinent as RSPs face significant complaints and threats of claims from customers for such failures.

[18] Currently, the Operators can face prolonged delays in the activation of services due to reasons such as "spring-boarding", "BM issues", "pipe choked", and OpenNet having installed insufficient network capacity.

The above are to ensure that all customers and respective stakeholders will truly benefit from the Next-Gen NBN, regardless of the problems that the new NetCo (or its KSC) claim to face when delivering its services;

b. Steps must be put in place to ensure that the CityNet management, employees, and Board of Directors truly act in the best interests of the public, and not just in SingTel's commercial interests. This measure is needed to ensure that SingTel's interests (as the sole beneficiary) do not override the social and benefits that the Next-Gen NBN can deliver to all customers;

c. Steps must also be put in place to expedite and guarantee the complete transfer of the underlying infrastructure assets from SingTel to CityNet by April 2014, if not earlier. There should be:

   i. a clear, detailed list of underlying infrastructure assets to be transferred;
   ii. a plan (to be approved by the Authority) of enhanced and concrete proposals to speed up the transfer of assets;
   iii. clear timeframes set for monitoring and tracking the progress of transfer; and
   iv. penalties payable by SingTel if the originally set timelines are delayed;

d. SingTel must be required, by way of reinforced or additional undertakings, to sell-down its stake in OpenNet/CityNet by the originally set timeline of April 2014, if not earlier. The only true safeguard of CityNet's independence, is removing its obligation to serve SingTel as the sole/majority unitholder of the NetLink Trust, failing which there would be a clear conflict between CityNet's statutory duties under the Act (and likewise the Trust Deed) and the regulatory expectations required;

e. Steps must be put in place to ensure that the rights of third-parties who deal with CityNet are not prejudiced or compromised if CityNet is unable to satisfy the debts or other liabilities owing to such third-parties;

f. To address the issue of transparency, the Authority must make clear what relationships will exist between SingTel, OpenNet and CityNet, and ensure that all arrangements with SingTel under which SingTel could exert influence or control over the new NetCo are removed;

g. The new NetCo must be a standalone neutral entity, independent of SingTel's influence in every way. In this regard, CityNet must not be allowed to re-appoint SingTel as its KSC, or to contract to give significant contracts back to SingTel. SingTel must also transfer all the assets and resources necessary to manage the network infrastructure to CityNet, to remove any reliance it may have on SingTel. Further, the existing Trust Deed must be amended accordingly and the necessary licence conditions must be imposed by the Authority, in order to ensure the independence and neutrality of the new NetCo; and

h. Finally, in light of the profound importance of the NBN to the people and economy of Singapore, the Authority should lead the establishment of an "NBN

Task Force". Effective NBN oversight is necessary to give the Government, public and industry the assurance that recent media coverage indicates is urgently required. The role of the NBN Task Force would be to oversee the implementation of the consolidation; to confirm that effective safeguards are being applied or propose modifications to safeguards; and to monitor the post-consolidation performance of NetLink Trust, SingTel, OpenNet, CityNet, the new NetCo, and significant NBN contractors. The NBN Task Force must comprise representatives of the Authority, the Ministry, the industry and the public. It must report publicly its findings and recommendations.

13. In light of the above, we believe it would be in order for the Authority to impose a significant Performance Guarantee on SingTel (and/or on any other relevant parties) to ensure compliance with the relevant undertakings.

Conclusion

14. This letter serves as an executive summary of our submission. Our detailed analysis and comments can be found in the attached paper. We trust that this joint letter demonstrates the industry's grave concerns over the proposed consolidation, and its commitment to seeing the Next-Gen NBN succeed.

15. We are grateful for the Authority's consideration of our comments, and we would request the opportunity to meet with the Authority to discuss our comments further.

For and behalf of
Asia Pacific Carriers Coalition

Mr Simon Smith
President APCC Board
Director of Regulatory Affairs, PacNet Global (Singapore) Pte Ltd

For and behalf of
M1 Limited

Mrs Chan Sock Leng
Director
Human Resource & Regulatory

For and behalf of
MyRepublic Pte Ltd

Mr Greg Mittman
Vice-President

For and behalf of
Nucleus Connect Pte Ltd

Mr Ronald Lim
Head (Regulatory)

For and behalf of
StarHub Ltd

Mr Tim Goodchild
Head (Government & Strategic Affairs)

For and behalf of
SuperInternet Access Pte Ltd

Mr Benjamin T.P. Tan
Managing Director

For and behalf of
ViewQwest Pte Ltd

Mr Chris Williams
Chief Operating Officer

DETAILED RESPONSE TO THE PUBLIC CONSULTATION ON THE LONG FORM CONSOLIDATION APPLICATION SUBMITTED BY OPENNET, NETLINK TRUST, CITYNET AND SINGTEL

1. The structure of our response is as follows:

   a. An overview of the Next-Gen NBN, and its strategic importance to the telecoms landscape in Singapore;

   b. A summary of OpenNet's current performance statistics;

   c. The Operator's concerns over how the proposed consolidation application will affect the Next-Gen NBN; and

   d. The proposed safeguards that the Authority should implement should it decide to approve the consolidation.

Overview

2. Today, 13-years after the telecoms market was fully liberalised, SingTel continues to be the dominant player in the majority of the fixed-line telecoms markets in Singapore. These markets include:

   a. Fixed-line telephony services;
   b. Local-leased circuits ("**LLC**") services;
   c. Local managed data services;
   d. Dark fibre services; and
   e. All other markets where the Authority has not explicitly exempted SingTel from its Dominant Licensee obligations.[19]

3. This is because SingTel's ubiquitous fixed-line network infrastructure, inherited from the Singapore Government since privatisation from a state-owned enterprise, remains a strategic barrier to entry for competitors.

4. As recently as 2009, the Authority confirmed SingTel's dominant status in the fixed-line telecoms markets. It noted that SingTel had market shares of up to 90% in some markets, with its closest competitors holding significantly lower market shares.[20] The assessment by the Authority is in stark contrast to the claims made by SingTel in its consolidation application, which suggest that there are high levels of competition in the market.

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[19] To be clear, SingTel has only been exempted from its dominant licensee obligations in a limited number of markets, primarily for its provisioning of international telecoms services. More information on these markets can be found here: http://www.ida.gov.sg/Policies-and-Regulations/Industry-and-Licensees/Competition-Management/Exemption-from-Dominant-Licensee-Obligations-in-the-Telecom-Competition-Code.

[20] Reference, the Authority's decision on SingTel's exemption request for the Business and Government Customer Segment and Individual Markets, which can be found here: http://www.ida.gov.sg/policies-and-regulations/consultation-papers-and-decisions/completed/SingTels-Exemption-Request-for-the-Business-and-Government-Customer-Segment-and-Individual-Markets.

5. Up until 2013, SingTel was the **only** operator with a nationwide fixed-line telecoms network and underlying infrastructure. In the Non-Residential segment of the market, SingTel was the **only** operator who could reasonably serve all customers, in all locations in Singapore. While other operators do have their own fixed-line telecoms infrastructure, these are typically limited in nature, scale, and coverage; and are typically concentrated in high-density commercial areas, such as the Central Business District ("**CBD**").

6. In its decision of 2009, the Authority made clear that: "[w]*hile some LLC End Users in the CBD have a choice of more than one operator,* ***End Users outside the CBD must rely almost exclusively on SingTel*** *for LLCs ... even within the CBD, SingTel's market share remains very high, and barriers to entry are significant ...* ***many End Users located in the CBD – such as small businesses and those located in shophouses and low-rise buildings – must still rely exclusively on SingTel*** *for LLCs*" (emphasis added). In explaining SingTel's market power, the Authority had acknowledged that there were high barriers of entry into the fixed-line market, noting that: "[t]*he significant upfront cost required to deploy infrastructure, a ubiquitous network and the economies of scale and scope of the incumbent, and the inertia of existing End Users to switch appear to have deterred investments in local fixed line telecommunication services*".

Strategic Importance of the Next-Gen NBN

7. To introduce competition into the fixed-line telecoms market (particularly the Non-Residential market), it was therefore necessary for the Government to intervene. The Government recognised that it is difficult or infeasible to achieve facilities-based competition in the fixed-line market, and took the approach that it would fund (S$750m) into the roll-out of an alternative, competing nationwide infrastructure. The introduction of the Next-Gen NBN was to provide a nationwide, ultra high-speed broadband network, connecting "*all homes, schools and businesses, including those in the HDB* heartlands *and in private developments*".[21] The goal was to "*ready Singapore for an infocomm-enabled future*", and to serve as a "*strategic enabler that will transform the way we work, live, learn and play*".[22]

8. The Next-Gen NBN would therefore address the problem of a lack of competition to SingTel's nationwide network, and allow entry by multiple operators into both the Residential and Non-Residential fixed-line segments.

9. The Operators firmly believe that the Government's promotion and investment in an alternate, ubiquitous network, coupled with strong open access requirements will ultimately result in a "level playing field", and is the long-term, sustainable solution to promote competition in the fixed-line telecoms markets in Singapore and benefit those customers dependent on domestic leased circuits and connectivity.

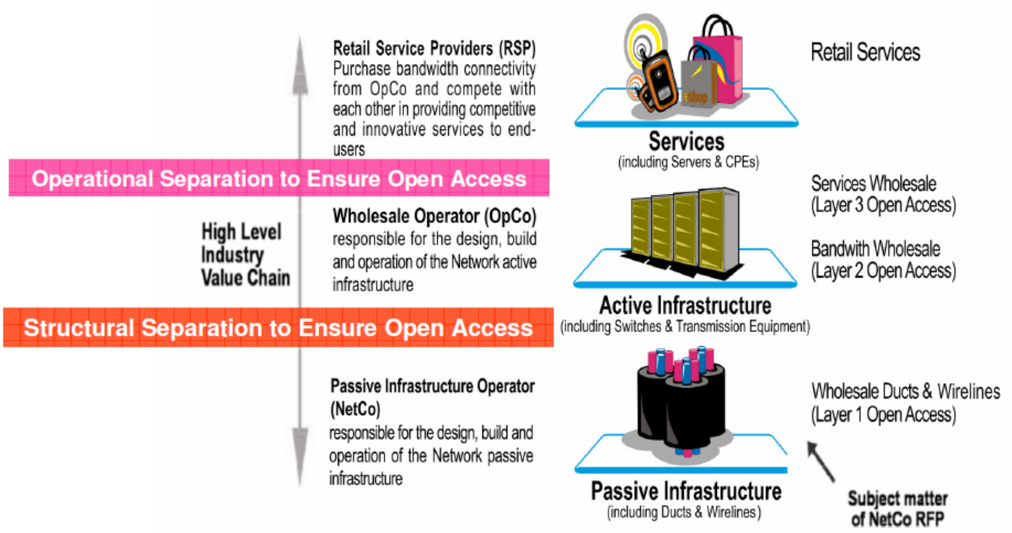
Open Access Structure

10. To ensure a competitive retail broadband services market, the Government had set-out to ensure that the network would be "*open-access and carrier-neutral ... open to all service*

[21] From then-Minister for Information, Communications and the Arts, Dr Lee Boon Yang, in his address to parliament on 3-March 2006.

[22] From the June 2008 Fact Sheet: Updates to the Next Generation National Infocomm Infrastructure.

providers so that they can reach out to connected customers". This would then "*lower the entry barrier for service providers and costs to consumers*". [23] To this end, the Authority had proposed a three-layer structure for the Next-Gen NBN:



Source: The Authority's Media Briefing – Next Generation National Broadband Network for Singapore, on 11-December 2007

11. In particular, the NetCo was meant to be a standalone entity, under "**Structural Separation**", and "**No Effective Control**" from any other telecoms operator in Singapore.

Award of NetCo contract to OpenNet

12. When the OpenNet consortium was awarded the NetCo contract in 2008, SingTel had a 30% share in OpenNet, and would act as its KSC. The Authority also accepted the proposal to create a fourth layer in the market, an "AssetCo", into which SingTel would spin-off its existing assets (like ducts and manholes) needed to support OpenNet's rollout. In announcing its decision, the Government noted that AssetCo was meant to be an "*independent and separately managed company*", and SingTel was "*committed to reduce its stake in the AssetCo* [by April 2014]".[24]

13. To ensure that OpenNet provided a high level of service standards to customers, it is subject to a variety of regulatory obligations, including QoS standards to ensure timely delivery of its services. OpenNet had also committed to comply with a Universal Service Obligation ("**USO**") by 1-January 2013.

14. Taken together, these measures were meant to ensure that all Singaporeans could reap the benefits of the Next-Gen NBN, in as short a timeframe as possible. By 1-January 2013, the goal would be to have in-place a nationwide fixed-line telecoms network, able to provide high quality and competitive service offerings, and which would act as an alternative to

[23] From then-Minister for Information, Communications and the Arts, Dr Lee Boon Yang, in his address to parliament on 3-March 2006.

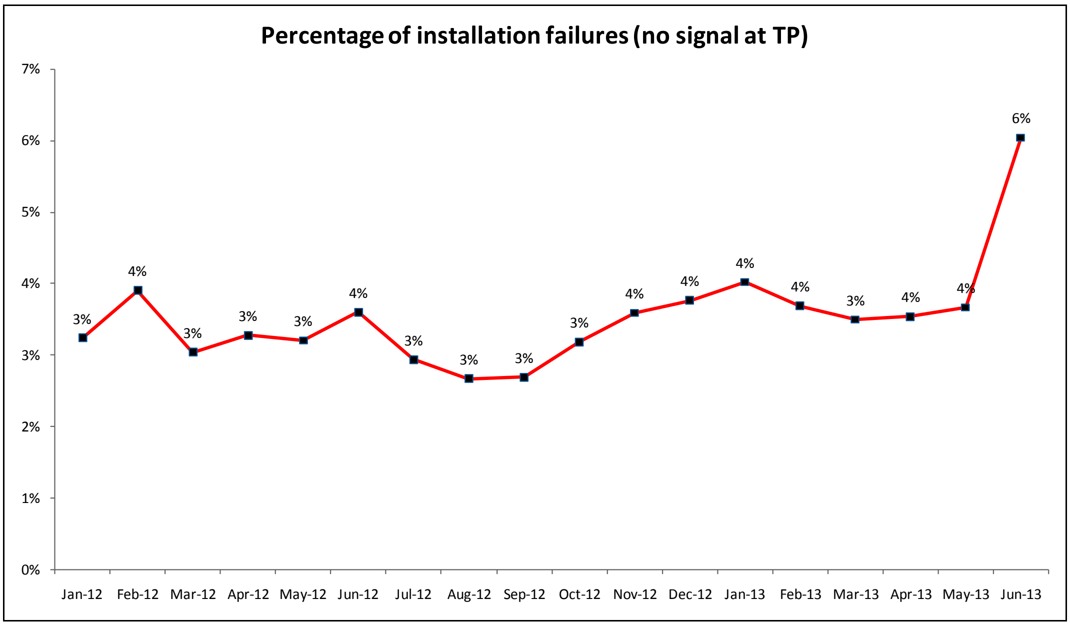
[24] From then-Minister for Information, Communications and the Arts, Dr Lee Boon Yang, in his speech on the "Award of Network Company for Next Generation National Broadband Network" on 26-September 2008.

SingTel's legacy nationwide fixed line network. By April 2014, SingTel was to have sold down its stake in AssetCo to less than 25%.

OpenNet's Current Service Delivery Standards

15. Today, more than 3-years after OpenNet began offering service, the public has yet to see the full potential of the Next-Gen NBN being realised. As highlighted in our cover letter, customers continue to face a host of problems with OpenNet. The extent of network coverage achieved by OpenNet as highlighted in paragraph 28 of the consultation paper does not accurately reflect the true reality of OpenNet's poor service delivery performance in both the Residential and Non-Residential markets.

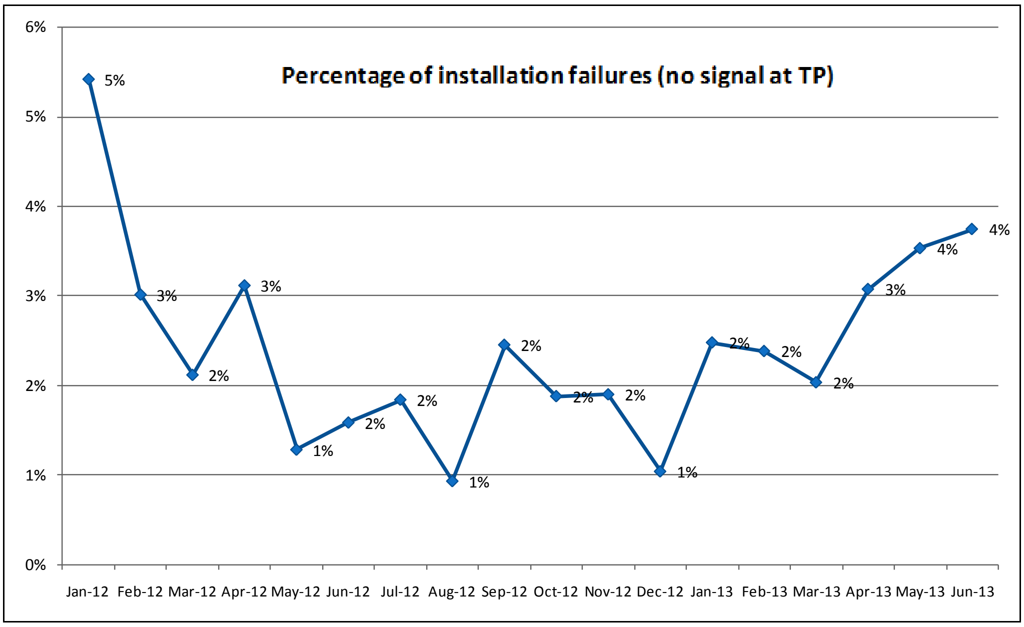
16. For example, our statistics[25] show that, in up to 6% of Residential service installations, OpenNet is failing to ensure that its service is provisioned in a working condition.



Source: Nucleus Connect Pte Ltd[26]

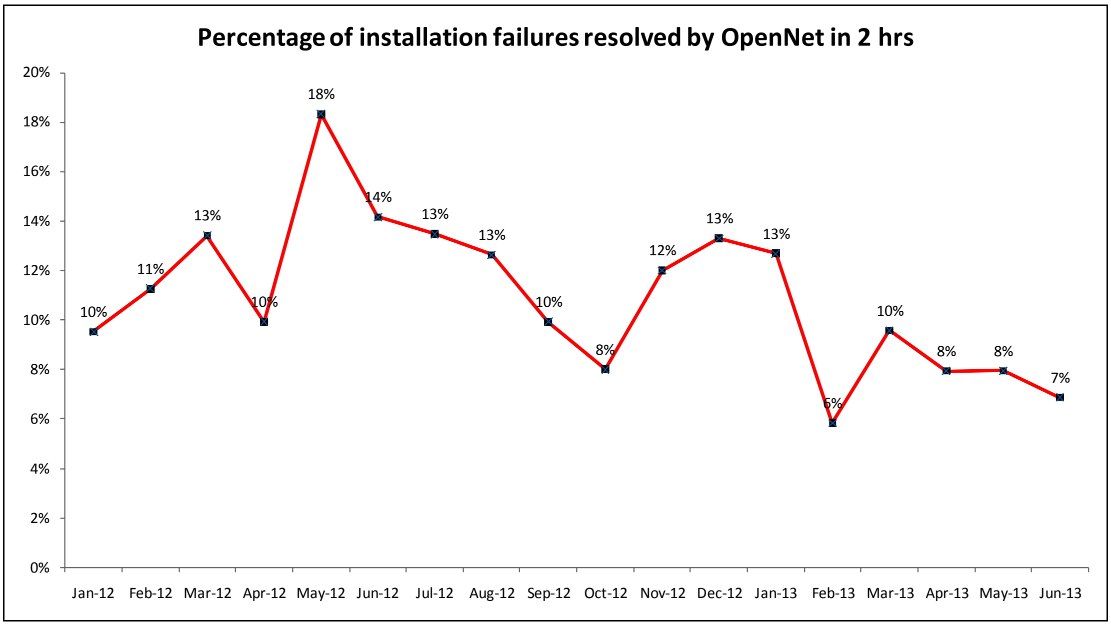
[25] The statistics in this section are correct as at August 2013.

[26] TP refers to Termination Point, i.e., the connection point in the customer's premise.



Source: M1 Limited

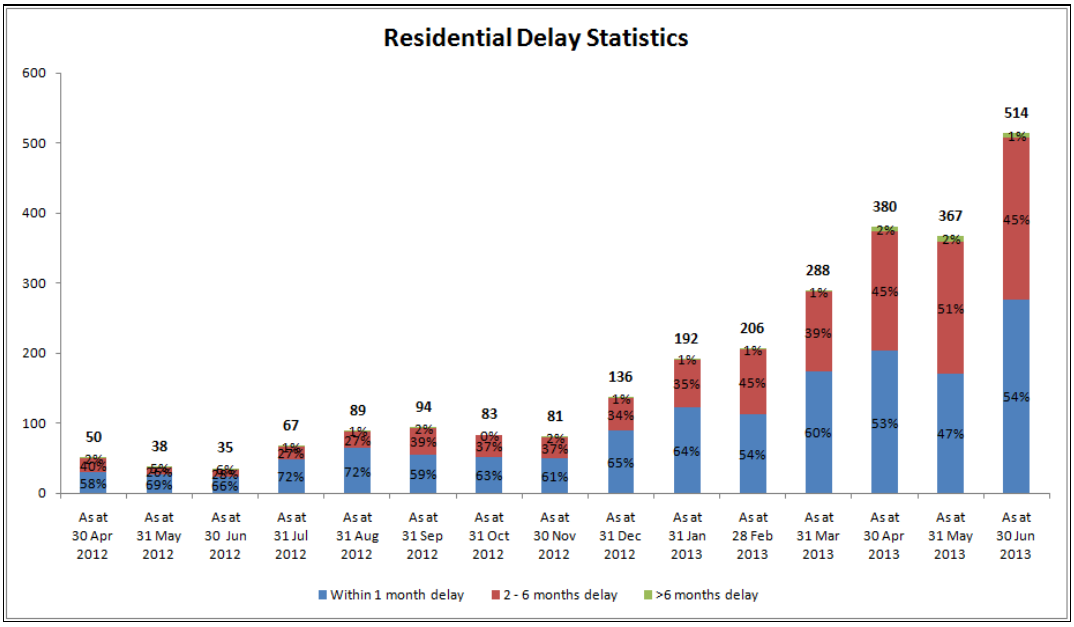
17. Whenever a fault occurs, OpenNet also fails to remedy the fault in a timely manner. In up to 90% of cases, OpenNet does not resolve the issue within 2-hours, the duration set by the Authority for OpenNet to do so. This causes significant frustration for our customers, and generates a lack of trust in the Next-Gen NBN.



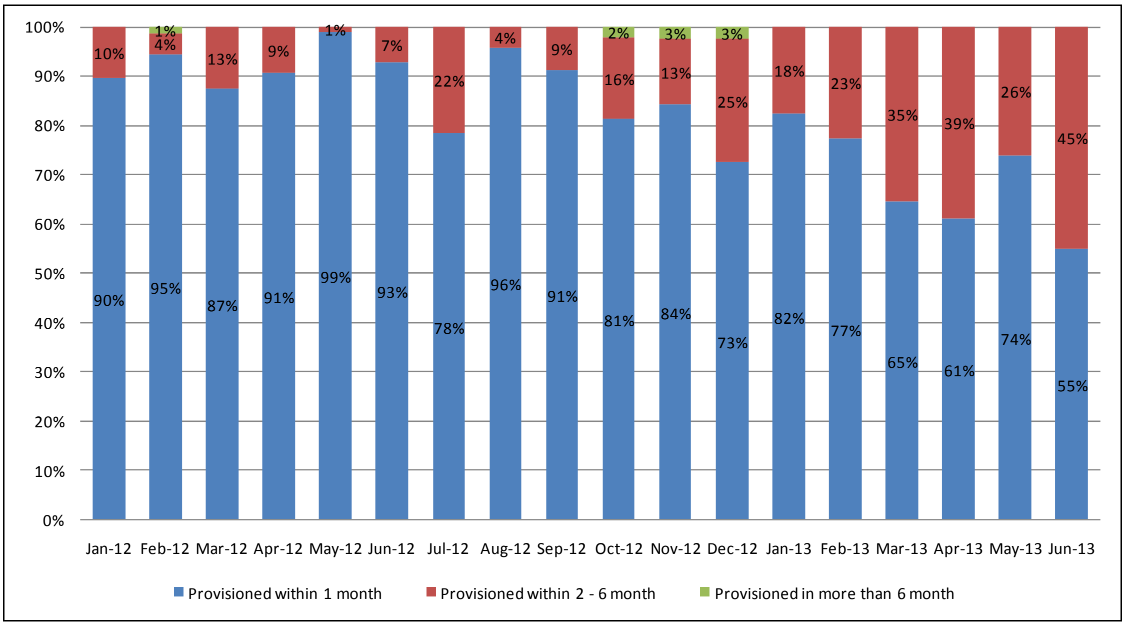
Source: Nucleus Connect Pte Ltd

18. Unfortunately, delayed orders are also commonplace, and some Residential customers must wait 2 – 6 months for OpenNet to resolve the problem. Regretfully, the number of delayed cases, and the length of delays appear to be increasing over time. The Operators have no control over these delays, and very little visibility as to what is actually causing them. It is therefore very difficult for the Operators to provide useful information to customers caught by these problems.

19. We would respectfully note that OpenNet's current service delivery standards have fallen short of expectations, and continue to do so, notwithstanding any directions or sanctions imposed by the Authority to-date to cajole better performance. Such directions or sanctions have therefore failed to completely address the less-than-satisfactory state of affairs under the Next-Gen NBN today.



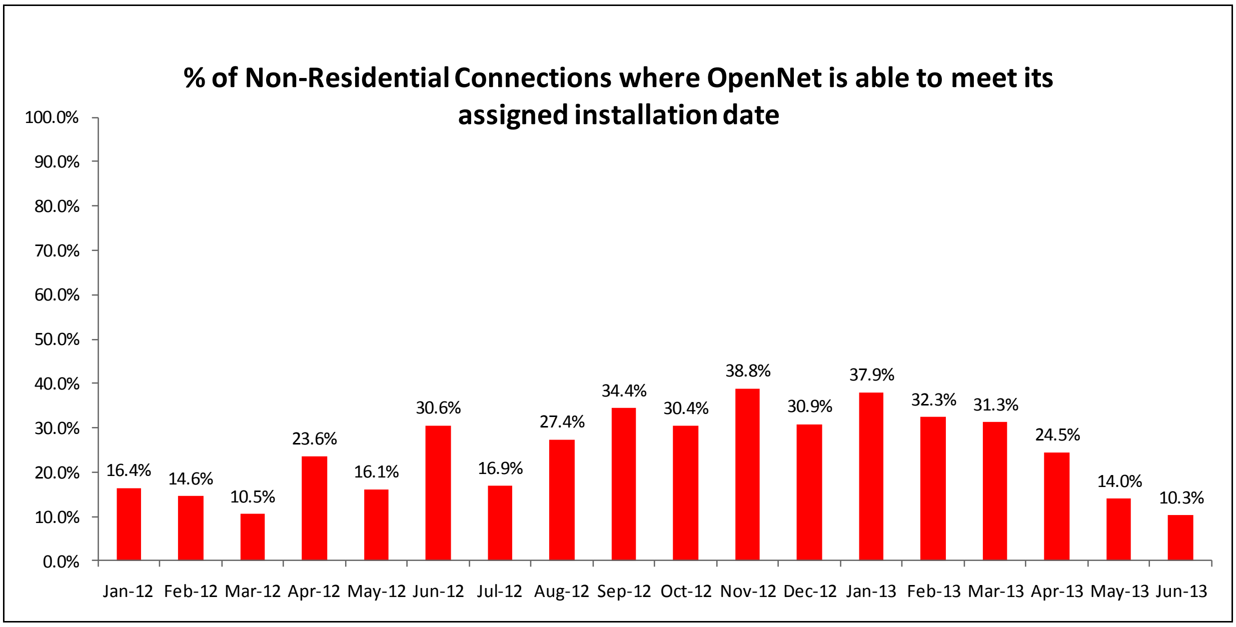
Source: Nucleus Connect Pte Ltd



Source: M1 Limited

20. Notwithstanding the above, we acknowledge that the entry of the Next-Gen NBN has fostered some competition in the Residential segment of the market, leading to increased service variety and reduced prices. We also note that SingTel takes service from OpenNet for this segment of the market. This is in contrast to the Non-Residential segment, for which SingTel primarily relies on its own network. OpenNet’s delivery standards in this segment are significantly below expectations.

21. In the Non-Residential segment, OpenNet fails to deliver its services by the request-for-service date in up to 89% of cases. Unfortunately, instead of getting better over time, our statistics suggest that OpenNet's provisioning standards are declining.



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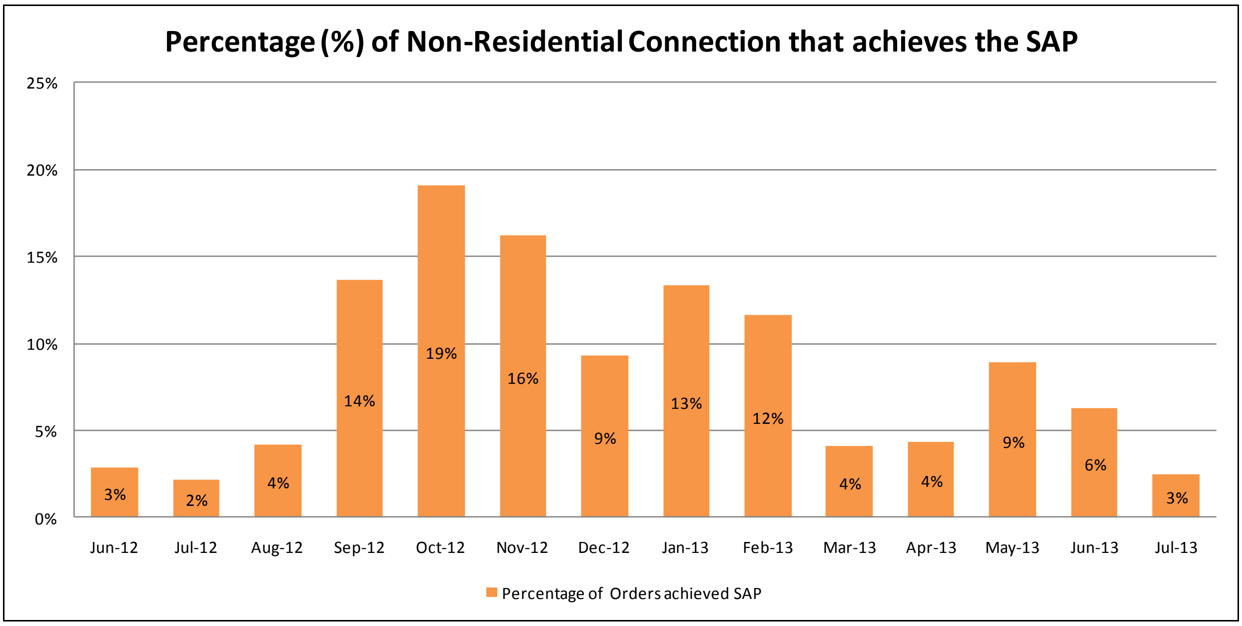
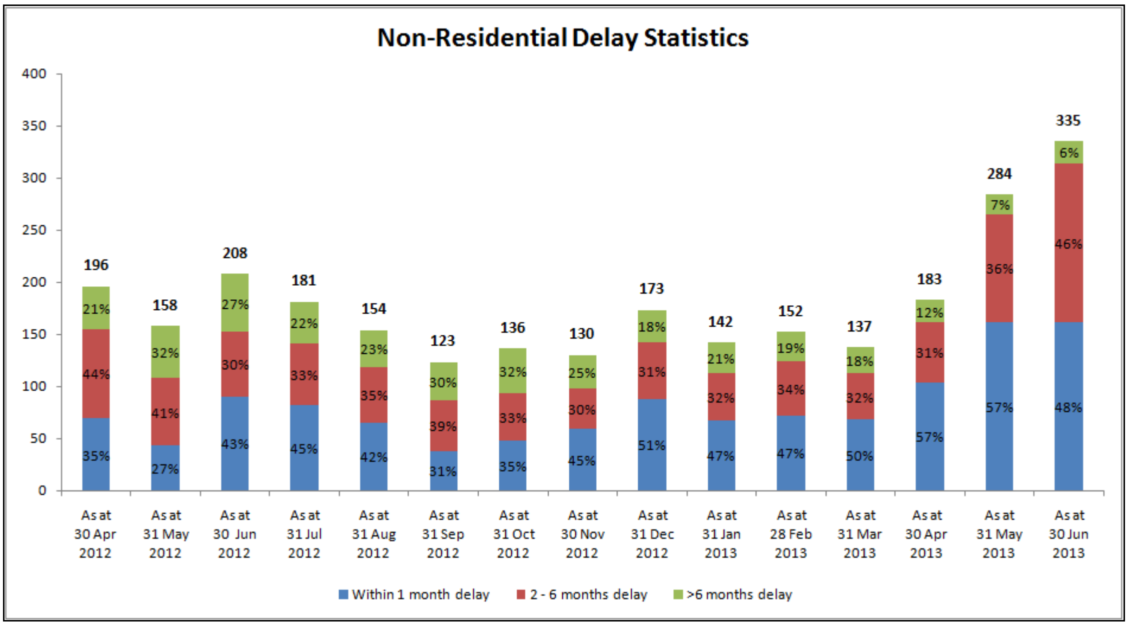


Source: M1 Limited

22. When Non-Residential customers do face delays with their OpenNet orders, the typical waiting time is in excess of 2-months. Delays of 6-months or more are also common.



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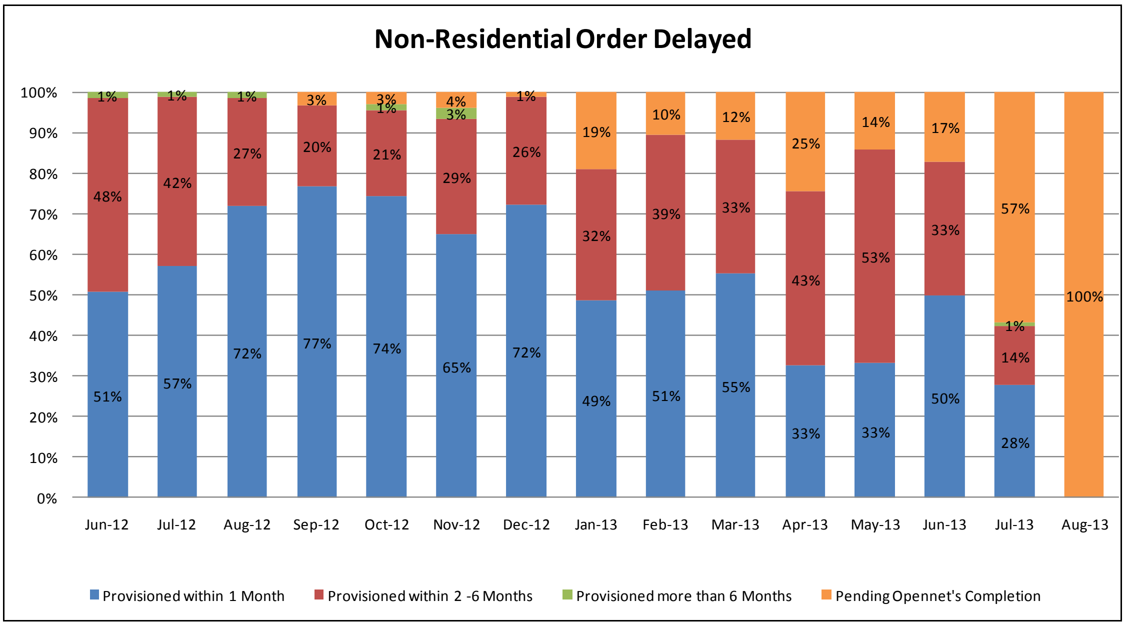

Source: M1 Limited

23. Regretfully, customers are hesitant to sign-up for Next-Gen NBN services, because OpenNet is likely to fail to deliver the service in any timely manner. OpenNet's problems with orders encourage customers to continue taking service from SingTel, further entrenching its market power.

<u>OpenNet's Universal Service Obligation</u>

24. It is also important to address suggestions that OpenNet's USO took effect on 1 January 2013. In its consultation paper, the Authority stated that the USO "*requires OpenNet to provide the Mandated Services to **<u>all Physical Addresses</u>**, upon the request of any Requesting Licensee, and all other locations as may be reasonably requested*"(emphasis added). However, as at 1-January 2013, OpenNet could not provide services to all addresses in Singapore, due to rollout delays.

25. Based on information provided to us, we understand that OpenNet only managed to comply with its USO on 1-July 2013, 6-months after its original committed date. To the best of our knowledge, this means that OpenNet may be in breach of its USO obligation for at least 6-months. OpenNet's failures to meet the USO have resulted in considerable customer dissatisfaction, clearly evidenced by the frequent complaint letters to the media.

Exemptions for OpenNet

26. We believe that our statistics accurately reflect the reality of the actual customer experience. Unfortunately, OpenNet is allowed a wide range of exemptions from its regulatory obligations. For example:

a. OpenNet frequently cites "spring-boarding" as a reason for its failure to provision orders on time. This issue arises because OpenNet chooses to build its network to the main distribution frame room of a central building and to then "spring-board" from that location to adjacent buildings. However, should the building manager in the central building refuse OpenNet's ongoing access, customer orders for the adjacent buildings can be delayed (indefinitely).

   The Operators still have orders from **2012** which are still pending OpenNet's resolution of its "spring-boarding" problems. This cannot be an acceptable timeline for delivery of services over a publicly-funded network. Customers cannot be made to wait indefinitely due to OpenNet and its KSC's failures. The existing exemption for "spring-boarding" as a reason to excuse delay should be removed;

b. OpenNet has also quoted "insufficient capacity" as a factor when it fails to provision its services on-time. OpenNet does not provide further details on why and where it needs to install additional capacity. However, OpenNet is taking up to 2-months (sometimes longer) to resolve the problem.[27] Again, this excuse can no longer be justified, and must be removed; and

c. OpenNet continues to face problems meeting demand for orders, most recently blaming "*exceptionally high demand*" for its failures.[28] [29] This demand appears to occur **every** quarter, each time there is an IT fair, and operators roll-out promotional offerings. Some 3-years after commencing operation, it is unclear how OpenNet can continue to use this as an excuse. Unfortunately, such delays may be deemed acceptable by the Authority as the high demand falls outside OpenNet's stipulated quota. We submit that this should be revisited, with the objective of improving customer delivery and experience.

27. These problems are further compounded by OpenNet's reluctance to provide regular updates, or even estimates on when its services can actually be delivered. This lack of transparency by OpenNet puts RSPs in an untenable position, as they are held accountable by

[27] "Left in the lurch by OpenNet despite penalties" – TODAY, 2-July 2013.

[28] "Record demand for fibre connections exceeded capacity"- TODAY, 16-July 2013

[29] "Fibre broadband installation capacity increase" – The Straits Times, 31-August 2013.

their customers, yet cannot provide them with any good explanation for OpenNet's (ongoing) delays.

28. We are unaware of any penalty being imposed on OpenNet for its failure to meet QoS standards.[30] Further, the rebate mechanism in OpenNet's ICO with its associated maximum ceilings has proven to be woefully inadequate in incentivising OpenNet's behaviour as the penalties fall far short of anything punitive. This is an area that clearly requires greater accountability and transparency, particularly if the ownership of OpenNet may be consolidated, where SingTel becomes OpenNet's sole beneficiary. We strongly believe that 3-years after OpenNet's launch, the Authority must tighten the regulatory obligations and conditions, and their enforcement, on OpenNet. This should unequivocally be the case, as the Authority's directions or sanctions on OpenNet to-date have failed to completely address the less-than-satisfactory state of affairs under the Next-Gen NBN.

29. OpenNet should be made to provision circuits within the Service Activation Periods mandated by the Authority, without exemptions or excuses. It must be remembered that **OpenNet is a natural monopoly, controlling a bottleneck facility that cannot be economically or structurally duplicated**.

Concerns with the proposed consolidation application

30. Set against this backdrop, the Operators are deeply concerned that the proposed consolidation could either prolong, or worsen the current situation. We are also concerned that the proposed consolidation could reverse the Authority's efforts to ensure open access to the Next-Gen NBN.

31. The parties to this transaction, SingTel, OpenNet and CityNet are all deeply involved in the Next-Gen NBN. The current state of the Next-Gen NBN (particularly in the Non-Residential segment) is caused by OpenNet's standards of delivery and the Maximum Quota scheme, as submitted by the OpenNet consortium (in which SingTel had a 30% share) in its bid proposal for the NetCo contract. Based on what was put forth, it would take at least 8-years before all households in Singapore could be connected to the Next-Gen NBN. While the Authority has directed changes to improve the Maximum Quota scheme, OpenNet's service delivery standards remain less than satisfactory despite the respective regulatory standards or measures. OpenNet has stated that these shortfalls in standards are attributable to SingTel's role as OpenNet's KSC. It is unclear how a consolidation of control amongst these three parties would improve the current situation.

(A) Consolidation of the ownership and control of Underlying Assets and 'Primary Assets'

32. Paragraph 14 of Authority's consultation states the following:

"*As part of the OpenNet proposal, SingTel had committed to transfer the ownership and control of the relevant ducts, manholes and COs that are used to support the*

[30] We note that on 3 previous occasions, on August 2013, May 2013 and May 2012, the Authority waived any applicable penalties for OpenNet's failures to meet its QoS standards on installation-related faults. The Authority has yet to publish statistics on OpenNet's QoS standards for timeframe in provisioning end-user connection services

*deployment of the NGNBN infrastructure by OpenNet (the "**Underlying Assets**") to an independent neutral party, called the AssetCo. SingTel had also committed to reducing its stake in AssetCo by April 2014 …to satisfy the structural separation requirement, which is one of the key regulatory requirements of the NetCo RFP. Taking into account the commitments and undertakings as set out above, IDA had accepted the OpenNet consortium proposal. SingTel subsequently established the NetLink Trust ... for the purposes of forming the AssetCo.*"

33. The effect of the consolidation would now mean that ***both*** the Underlying Assets (owned by SingTel), and the fibre network assets and business (owned by OpenNet) and to which funding of S$750 million was received ("**Primary Assets**") would now be transferred to the AssetCo (sole unitholder: SingTel), as opposed to just the Underlying Assets being transferred to the AssetCo and the Primary Assets remaining with the OpenNet (30%: SingTel).

34. The question is, if such intention had been made known earlier, would the Authority have accepted the OpenNet consortium's proposal? If the answer is no, then there must be compelling reasons that have arisen post-NetCo award, that should make the Authority consider differently.

35. In addition, the Operators also wish to highlight that they are impacted by the extremely slow process of SingTel transferring its underlying passive infrastructure assets to CityNet. As the Authority does not appear to set any performance criteria for the transfer of assets, the slow process severely impacts other operators' deployment plans for self-provisioning of fibre. There is no visibility on the list of assets or when this list of assets would be transferred to CityNet. As a result, CityNet often cannot provide the necessary information on duct availability and capacity needed, citing that the assets have yet to be transferred. Operators would then have no other choice but to delay their deployment plans and some of these delays could be up to 9-months due to the slow progress in transferring of assets.

36. It should also be noted that currently, neither the SingTel Reference Interconnect Offer ("**RIO**") nor CityNet's RAO cater for access to buildings or premises within a compound consisting of multiple sections of ducts and manholes leading to the buildings or premises.

37. This includes many buildings/premises such as the Singapore Changi Airport, restricted areas or installations e.g. MINDEF camps, and university campuses where multiple buildings are located within a large compound. In order to access such buildings/premises, licensees would need access to all the associated facilities e.g. ducts and manholes etc. in all the multiple sections that could amount to several kilometers leading to the buildings/premises. Such access is important to ensure fair and efficient competition, particularly since there are constraints in granting further trenching works in such compounds e.g., aircraft runways, MINDEF compounds etc., due to national and security reasons. However, due to the slow transfer of assets to CityNet, operators again have no other options but only to delay their deployment plans for such buildings or premises.

(B) Substantial lessening of competition and entrenchment of SingTel's incumbent position

38. As we earlier highlighted, this deal involves three Dominant Licensees: (1) the incumbent operator – SingTel; (2) OpenNet, the only other operator with a nationwide fixed-line telecoms network; and (3) CityNet, which owns a nationwide network of telecoms infrastructure, comprising ducts, manholes and various exchange buildings. These facts alone should give the Authority cause for concern over the negative competitive impact of the proposed consolidation.

39. We would urge the Authority to carefully review SingTel's claims of competition in the fixed-line markets in Singapore. As highlighted above, apart from the entry of OpenNet into the market, SingTel's network was the sole option for many customers in Singapore. Allowing SingTel to become the 100% beneficial owner of OpenNet would only entrench SingTel's significant market power in the fixed-line telecoms markets.

40. Whilst there are restrictions requiring the NetCo not to discriminate in favour of any entity, and the Authority may act against overtly discriminatory behaviour, this is not the only way that full control over the new NetCo could benefit SingTel. A continuance of OpenNet's shortfalls in delivery standards for the Non-Residential segment alone, would be sufficient to incentivise customers to continue with SingTel's services, thereby further reinforcing SingTel's market power in the Non-Residential segment. The same would be expected for the rest of the fibre broadband market and/or fixed related markets.

41. As SingTel typically relies on its own network to serve customers, it would be to SingTel's benefit if the new NetCo is unable to deliver satisfactory services to all its customers in a non-discriminatory fashion. This fundamental commercial conflict in interest has to be squarely addressed.

(C) The deal is against the basic tenets of "Structural Separation" and "No Effective Control"

42. SingTel, CityNet and OpenNet have claimed that the post-consolidation NetLink Trust would be "*managed by a neutral independent Trustee-Manager, CityNet*". We would respectfully disagree with this statement.

43. We note the following comments expressed in the Edge Singapore:

> "*Rob Bratby, managing partner at Olswang Asia, a law firm that specialises in telecommunications and technology issues, says that* ***there are valid reasons to be concerned about the proposed deal****. "Singapore has imposed various regulatory obligations that seek to constrain the* ability *of SingTel to effectively influence the conduct of NetLink Trust.* ***However, whilst it retains economic ownership … it retains the incentive to discriminate****" … "Market experience to date, such as late installations, would suggest that there are still some deficiencies in the regulatory regime that need to be addressed.*"" (emphasis added).[31]

[31] "As IDA evaluates OpenNet proposal, the UK's experience may offer some helpful ideas" – the Edge Singapore, 9-September 2013.

44. This is supported by Section 10 of the Act which states that: "[t]*he trustee manager of a registered business trust shall … **act in the best interests of all the unitholders** of the registered business trust as a whole; and … **give priority to the interests of all the unitholders** of the registered business trust as a whole over its own interests **in the event of a conflict between the interests of all the unitholders as a whole and its own interests**" (emphasis added). We would add that under Section 10(5) of the Act, a failure on the part of CityNet to take into account SingTel's interest may render it liable to SingTel as the sole unitholder of the trust for civil remedies. Such breach also imposes criminal liability on CityNet for a fine of up to S$100,000 upon conviction. Taking into account such statutory duties and sanctions imposed on CityNet under the Act, the potential for conflicts of interest is significant.

45. Further, the provisions of the existing Trust Deed deter CityNet from acting against SingTel's interests. For example, CityNet's remuneration and the variation thereof are subject to SingTel's approval.[32] SingTel is also entitled to approve the removal of the trustee manager and its replacement on every third anniversary.[33] The existing Trust Deed also provides that if CityNet commits a material breach of the Trust Deed (which potentially could include a scenario whereby CityNet fails to act in SingTel's best interests), then CityNet will be financially penalised as its annual remuneration will be adjusted downwards in accordance with the formula set out in the Trust Deed.[34] There is little or no incentive for CityNet to act in the best interests of the industry if doing so may conflict with the business and/or commercial interests of SingTel.

46. Therefore, CityNet is under a legal and enforceable obligation to prioritise SingTel's interests, even ahead of its own interests, and clearly ahead of any interests of customers and the industry at large. SingTel's proposal that the majority of CityNet's board shall be independent is irrelevant in this context, as under Section 11(1) of the Act, those directors would also be under the same legal and statutory obligation to always put SingTel's interests first. Likewise, an 'errant' director would potentially face both civil liabilities and criminal sanctions under Section 11 (5) of the Act, should they fail to put SingTel's interests first. Hence, the ***presence of a majority of independent directors and an independent Chairman*** (under the "No Effective Control" rules) on the Board of the TM ***does not mitigate against the potential of conflicts of interests arising***.

47. This effectively negates the Authority's earlier efforts to impose Structural Separation on the NetCo. The objective of Structural Separation is to "*remove, or dilute, the commercial incentives* and *ability of a vertically integrated operator to favour its downstream affiliates and discriminate against competitors that may be reliant on it for an upstream input*".[35] This objective cannot be met so long as CityNet is legally and statutorily obliged to put SingTel's interests first. This extremely biased position in favour of SingTel is also contractually enshrined in the provisions of the existing Trust Deed:

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[32] See Clause 11.2 of existing Trust Deed.

[33] See Clause 19.4 of existing Trust Deed.

[34] See Schedule 3 of existing Trust Deed.

[35] The Authority's 17-April 2008 Consultation Paper on the Industry Structure for Next Generation Access Networks, link: http://www.ida.gov.sg/Policies-and-Regulations/Consultation-Papers-and-Decisions/Store/Industry-Structure-for-Next-Generation-Access-Networks.

a. CityNet must act "*in the best interests of the Holders* [i.e., SingTel] *as a whole*";

b. CityNet cannot make any "*representations … to the IDA or any other authority*" unless directed by SingTel to do so; and

c. If any material breach occurs in a financial year, SingTel at "*its sole discretion*", can reduce the Annual Management Fee to CityNet.

48. Separately, the Authority has defined "Effective Control" as the "*ability to cause the Designated Telecommunication Licensee* [i.e., OpenNet in this case] *to take, or to refrain from taking, a major decision regarding the management or operations of the Designated Telecommunication Licensee*". The Authority has also stated that it: "*will presume that any person who holds 30% or more of the Voting Shares/Units/Equity Interest … in an entity will be able to exercise effective control over that entity*".

49. SingTel's proposed **100%** share in the units of CityNet/OpenNet, clearly fails the "No Effective Control" test. This problem is exacerbated by SingTel's request to be allowed to continue to be the 100% owner for an extra four years, until 2018.

50. We note the confirmation in Section 12.5.4 of the consolidation application that CityNet and OpenNet would be in breach of their "No Effective Control" requirements as a result of the proposed consolidation. We would go one step further in noting that SingTel would also be in breach of this requirement, by holding 100% of the units in the new NetCo entity. This state of breach should not be allowed to be endured further by customers and the industry until 2018.

Control over business trusts by unitholders

51. Unitholders of a business trust have various powers over how a business trust can operate. For example:

a. Under Section 31 of the Act, SingTel can modify the Trust Deed setting out how CityNet can operate the NetLink Trust. It is unclear to us whether SingTel's limited concessions not to modify the Trust Deed (as per Section 11.1(iii)(2) of the consolidation application), would fully address this concern. There is insufficient clarity and transparency to confirm this point; and

b. Under Section 20 of the Act, SingTel can remove CityNet as the trustee manager of NetLink Trust. While SingTel has committed not to remove CityNet, this commitment is subject to multiple exceptions. Paragraph 11.1(iv) of the consolidation application states that this includes instances where: (i) "*the Trustee Manager undertakes any Authorised Matters without being directed by SingTel or without the approval of SingTe*l"; (ii) "*the Trustee Manager refuses or fails to undertake or perform any of the Authorised Matters where directed to do so by SingTel*; or (iii) "*where the Trustee-Manager refuses or fails to take actions and steps… in accordance with SingTel's directi*ons". It is gravely troubling that the Trust Deed clearly requires the trustee manager to do SingTel's bidding, failing which the trustee manager could be removed.

The fact that SingTel retains the ability to remove CityNet as a trustee manager should give the Authority, the industry and customers cause for concern over the extent of control and influence SingTel can exert over the NetLink Trust, and the trustee manager's decisions.

52. Furthermore, the structure of NetLink Trust appears to be unique amongst business trusts, offering SingTel significantly more powers than the typical unitholder, thereby casting serious doubts about the independence and neutrality of CityNet. For example, we understand that the typical Trust Deed will only set-out generic duties of the trustee manager. However, the Trust Deed constituting NetLink Trust contains various bespoke 'Authorised Matters'/ 'Reserved Matters', setting out the duties owing by CityNet to SingTel.

53. The existing Trust Deed provides that CityNet shall not carry out any 'Reserved Matters' without SingTel's approval.[36] Under the existing Trust Deed, 'Reserved Matters' includes: (a) any proposed change in any Authorised Business of CityNet; (b) any agreement to the terms of or any modification to the terms of the imposition of any condition to any licence required for the Authorised Business; (c) any acquisition of or investment in any undertaking or assets outside the ordinary course of any Authorised Business and/or which (whether in a single transaction or when aggregated with such transactions in the same financial year) exceeds $20M; and (d) the creation of any mortgage, charge or other encumbrance over the trust assets.[37] SingTel's control over the 'Reserved Matters' will interfere with CityNet's independence and neutrality in various manners, including the following:

a. If CityNet is directed by the Authority to provide new services which are currently not provided under its existing ICO in order to improve the performance of the Next-Gen NBN, does this constitute a "proposed change in Authorised Business" which is subject to SingTel's approval? If yes, does this mean that CityNet cannot provide such new services without first obtaining SingTel's approval, notwithstanding that the provision of such new services will be in the interests of the industry?

b. Does this mean that CityNet cannot amend the terms of its licences without first obtaining SingTel's approval?

c. Does this mean that CityNet cannot acquire new network assets exceeding $20M in a financial year to improve its network without first obtaining SingTel's approval?

d. Will this disincentivise CityNet from agreeing to provide to third-party creditors any security over the trust assets in order to mitigate the risks highlighted in paragraphs 79 to 83 below? Will this also make it more difficult for CityNet to secure external financing to improve or enhance the new NetCo network? Typically, banks would require some form of security over the trust assets due to the concerns regarding getting access to the trust assets. However,

[36] See Clause 3.9.1 of the existing Trust Deed.

[37] See Schedule 2 of the existing Trust Deed.

the existing Trust Deed requires the creation of security or encumbrance over the trust assets to be subject to SingTel's approval. Why should SingTel grant approval if the improvement or enhancement would result in greater competition to its businesses?

54. Similarly, the existing Trust Deed also provides that CityNet shall not undertake or perform any 'Authorised Matters' without being directed by SingTel and without SingTel's approval.[38] 'Authorised Matters' includes the making of representations by CityNet to the Authority or any other authority responsible for regulating such licences required for any Authorised Business.[39] It begs the following questions:

a. Why should SingTel be privy to CityNet's dealings with the Authority and other regulatory bodies, thus giving SingTel an unfair advantage over the other players in the industry?

b. Will CityNet be able to comply with and/or implement the Authority's Directions efficiently and/or effectively since CityNet must first obtain SingTel's approval?

55. Failure to comply with these 'Authorised Matters' / 'Reserved Matters' could result in: (a) CityNet being removed as the trustee manager; and/or (b) CityNet breaching its duties as a trustee which could lead to serious adverse implications for third-parties dealing with CityNet (see paragraphs 79 to 83 below). It is to be noted that SingTel has the powers to determine and make commitments on the board composition of CityNet, despite having no shareholdings in the company. These factors potentially suggest a certain degree of apparent control and influence by SingTel over CityNet.

56. Further, as explained above, CityNet's remuneration and the variation thereof are subject to SingTel's approval. SingTel is also entitled to approve the removal of the trustee manager and its replacement on every third anniversary. The existing Trust Deed also provides that if CityNet commits a material breach of the Trust Deed (which potentially could include a scenario whereby CityNet fails to act in SingTel's best interests), then CityNet will be financially penalised as its annual remuneration will be adjusted downwards in accordance with the formula set out in the Trust Deed.

57. We submit that the Authority must carefully consider the relationship between SingTel and CityNet. The Authority should further consider whether, if CityNet complies with its regulatory obligations, but acts against SingTel's interests, this would be considered a material breach of CityNet's obligations as a trustee manager; and whether SingTel would then have the right to terminate CityNet as the trustee manager of NetLink Trust. Further, the Authority should also consider whether CityNet would, in any way, be hampered in performing its regulatory duties, when it is compelled to act in SingTel's best interests under the Act, particularly when a conflict of interest arises. There could be several examples of how such a conflict of interest can potentially affect the implementation of the Next-Gen NBN, even on the working ground level. An example is where CityNet, being required at law to act in SingTel's interests and to therefore enhance returns under the business trust to

[38] See Clause 3.9.2 of the existing Trust Deed.

[39] See Schedule 2 of the existing Trust Deed.

the sole unitholder, is compelled to review and seek increased charges for access to the Next-Gen NBN infrastructure.

58. Although both the CityNet and OpenNet can be "highly regulated", the Authority should consider whether such enhanced regulation and enforcement can ameliorate against the statutory duties imposed on the CityNet and its Board, toward the sole unitholder SingTel, under the business trust. We submit that the answer might technically and practically be in the negative.

Proposed sell-down of units by SingTel extended from 2014 to April 2018

59. The Operators have grave concerns over SingTel's proposal to lengthen the sell-down deadline of NetLink Trust to April 2018, for several reasons.

60. Firstly, this is contrary to the binding commitment that SingTel made when the OpenNet consortium was first awarded the NetCo RFP. The original agreement required SingTel to reduce its stake in NetLink Trust to less than 25% by April 2014. SingTel is now seeking to void that agreement, and ask for four more years to sell-down its stake, even though its stake would balloon to 100% sole control through the proposed consolidation.

61. Secondly, as highlighted above, for so long as SingTel continues to hold significant ownership of NetLink Trust, CityNet will always be under an obligation to put SingTel's interests ahead of any other party. Allowing SingTel 4-years (or more) to control the new NetCo will mean 4 more years of the Next-Gen NBN failing to realise its full potential.

62. In-line with the tenets of Structural Separation and "No Effective Control", SingTel's sell-down must therefore take place as soon as possible. The Authority should not allow any extension to the divestiture timeline.

63. From an operational stand-point, we are also unable to appreciate why SingTel requires 4 more years to complete its sell-down. In July 2011, when SingTel established NetLink Trust, it was reported that NetLink Trust's assets were worth approximately **S$1.89 billion**.[40] Today, OpenNet is being valued at **$136.5 million**, and being sold to CityNet for **S$126 million**. This is less than a tenth of the value of the assets currently held by NetLink Trust. There is no good reason to allow a substantially longer reprieve to SingTel to sell down in the circumstances.

64. In comparing the monetary values of the transactions, it is unclear how SingTel can justify a 4-year extension to the divesture timeline. Given the short timeframe till the original deadline of April 2014, SingTel ought to already be well in the execution of its sell-down of the original units within NetLink Trust, to comply with its existing regulatory obligations.

65. Separately, we submit that any extension of time given to SingTel beyond April 2014 for such divestment only delays the performance and satisfaction of the Authority's Structural Separation requirements under the NetCo RFP, and ***this is not within the publicly stated objectives or key regulatory requirements of the Next-Gen NBN***.

[40] http://www.globaltelecomsbusiness.com/article/2871951/SingTel-to-offload-infrastructure-assets.html

(D) Concerns over claims of benefits

66. In their proposed consolidation application, SingTel, OpenNet and CityNet have claimed that the consolidation will "*enhance efficiencies and hence competition*".

67. The public has already raised doubts about this claim, noting that: "[i]*f OpenNet has not laid a cable correctly at the foot of your high-rise apartment … what can the owner of the ducts holding the cables do?*", and "*issues that are heard more often, like how OpenNet contractors have hooked up cables wrongly or not "turned on" a connection at home … it's uncertain that an integrated, single party can do better than now*".[41]

68. In this regard, we submit that the proposed consolidation has not clearly identified any detailed and improved processes to show that the consolidation will realistically address the current unsatisfactory state of affairs. SingTel, OpenNet and CityNet have not provided any specifics of how they intend to improve OpenNet's current poor service standards. There are no guarantees whatsoever that this consolidation would provide improved service delivery or QoS standards. It is therefore unclear to us how the proposed consolidation would have any benefit to customers, or to competition. Unfortunately, as highlighted above, there may be a significant negative impact on competition, and customers, should the consolidation be approved (given the need for CityNet to act in the best interests of SingTel).

69. We believe that the ultimate aim of the Authority must be ensure that the consolidation benefits customers, RSPs and the industry. The Authority should therefore require SingTel, OpenNet and CityNet to provide guaranteed improvements in service delivery or QoS standards. We submit that this is reasonable given that:

a. OpenNet is receiving significant public funds, and – in our view – is failing to meet basic QoS standards;

b. The Next-Gen NGN is a bottleneck facility, that cannot be economically or structurally replicated; and

c. OpenNet, and SingTel as its KSC, has had an extremely poor track record of service delivery in the past 3-years.

70. If the Authority is now prepared to accept the claim that the combination of the AssetCo and NetCo infrastructure will create efficiencies and enhance competition, it is necessary for the Authority to "lock-in" guarantees of improved performance by the new NetCo.

KSC Issues

71. As part of its proposal to improve the operational efficiency of the new NetCo, SingTel is proposing two safeguards:

a. To terminate the existing KSC relationship between SingTel and OpenNet; and

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[41] From a Techgoondu commentary "*OpenNet sale has to satisfy several questions*".

b. To resolve its outstanding disputes with OpenNet. We understand that these would include the various disputes relating to SingTel's role as OpenNet's KSC.

72. We welcome the proposal by SingTel to step-down as OpenNet's KSC. OpenNet has stated publicly that it has had issues with its KSC, and that this, in-turn, has affected the service standards it can provide to customers. Operators such as M1 Limited and StarHub Ltd have previously offered to act as contractors for OpenNet, but these offers were rejected. Potentially, the removal of SingTel as a KSC could result in more suitable and capable candidate(s) being appointed as sub-contractors for the new NetCo.

73. However, while SingTel is terminating its existing KSC arrangements with OpenNet, it is not clear whether CityNet could simply appoint SingTel afresh, as a contractor for all or some of the work following the Authority's approval of the consolidation. Indeed, this outcome may be likely if CityNet determines that such a reappointment is in SingTel's best interests.

74. It is also unclear why SingTel is tying the resolution of its disputes with OpenNet to the Authority's approval of the consolidation application. These are entirely separate matters. We would have thought that, as a major shareholder of OpenNet, SingTel should already have every incentive to resolve its disputes with OpenNet.

(E) Financial Implications

75. Questions have been raised in the media as to whether the proposed consolidation makes financial sense, and whether SingTel will be reaping a financial windfall through the approval of the deal. Todate, SingTel has benefitted from earning revenue as OpenNet's monopoly KSC, monetised its legacy assets by selling off to AssetCo for valuable consideration, and as shareholder to OpenNet.

76. Based on the limited information publicly available, we respectfully note that SingTel appears to stand to gain a substantial windfall if this deal is approved, for the following reasons:

a. It is unclear what has happened to a substantial amount of the Government grants handed over to OpenNet, including how much of it has already been paid to SingTel for its work as the KSC, or to CityNet for providing the underlying physical infrastructure. It is disconcerting that, OpenNet, having spent up to S$750 million in Government grants and whatever additional money was invested by the existing OpenNet shareholders to rollout its network, is now worth a fraction of that sum;

b. Auditors have confirmed that OpenNet's net asset value, as at 31-March 2013 was S$136.5 million. SingTel is proposing to purchase OpenNet at a discounted rate of S$126 million. Such a significant discount suggests that the transaction is a "distressed sale", where OpenNet must be sold at a discount in order to attract buyers;

c. SingTel could avoid having to sell-down its existing units in NetLink Trust by the originally envisaged date of April 2014. Instead, it will be allowed until 2018 to find an opportune time to dispose of its units; and

d. As a characteristic of a business trust, the unitholders are able to obtain cash distributions from the trust so long as there is a certificate of solvency. Unlike typical companies, there is no need for there to be distributable profits first. Therefore, SingTel will be able to obtain significantly more revenue efficiently from OpenNet, if it is folded into NetLink Trust, than if OpenNet remained as a standalone private company.

77. Given the benefits SingTel is receiving from the consolidation, we respectfully submit that it is only reasonable to ensure that the consumers, RSPs, and the industry also enjoy some benefits. Those benefits should be provided by way of improved service delivery and QoS standards. In particular, the existing exemptions from OpenNet's service delivery standards should be immediately removed.

78. While the Authority's position on this matter is that "*the proposed S$126 million transaction price for OpenNet's shares is a commercial decision*"[42], this commercial decision has a major impact on a publicly-funded network, meant to provide social benefits to all Singaporeans. It is therefore important for the Authority to address, in-depth, the questions posed by us, as well as the public.

(F) Risks of Prejudicing Rights of Third-Parties

79. We submit that the business trust vehicle is not the appropriate vehicle for the new NetCo. The nature of the trust structure of NetLink Trust (coupled with the ambiguous drafting of the existing Trust Deed) will prejudice and compromise the rights of third-parties who have no alternative but to deal with it given that NetLink Trust would be the sole passive provider of the Next-Gen NBN in Singapore.

80. Legally, a business trust is not a legal entity; the trustee (i.e., CityNet) is the legal owner of the trust assets. Therefore, CityNet as the trustee manager of NetLink Trust is personally liable for all liabilities incurred in performing the trust, including debts and other liabilities to third-parties. Unsecured third-party creditors do not have a direct claim against the trust assets of NetLink Trust. It is the trustee manager (i.e., CityNet) which is personally liable for debts properly incurred in the administration of the trust. Therefore, the primary claim for third-party creditors is against the trustee manager (i.e., CityNet) personally, not the trust assets. However, this position appears to be in conflict with the provisions of the existing Trust Deed. Clause 2.3.1 of the existing Trust Deed stipulates that "[i]*n engaging in the Authorised Business…the TM shall, save where the TM is fraudulent, in wilful default or in breach of trust or where the TM fails to exercise Due Care…shall incur no personal liability in respect of any liabilities, costs, claims or demands which may arise directly or indirectly from such engaging in the Authorised Business*". Does this mean that CityNet cannot be personally liable to any third–party, e.g., if CityNet is the new NetCo and it breaches its ICO with a third-party RL, CityNet cannot be personally liable to the RL? If that is the intention, then how is the third-party RL able to obtain any redress for the breach?

81. Even if CityNet is personally liable to third-parties in the administration of the trust, risks and problems remain for such third-parties. At law, the trustee manager (i.e., CityNet) has the right of indemnity from the trust assets to satisfy debts and liabilities properly incurred in performing the trust. Problems arise if the trustee manager owns few or no assets

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[42] "Government grant for fibre network helped to lower cost to public" – TODAY, 18-September 2013.

which are available to satisfy the third-party creditors' debts or liabilities. In such an event, the third-parties must look to the trust assets through the legal concept of 'subrogation'. The legal concept of 'subrogation' is the process by which one person (i.e., a third-party creditor) is put in the place of another (i.e., the trustee manager), so that the trustee manager's right of indemnity from trust assets is used to satisfy the third-party creditor's debts. A third-party creditor's subrogation to the trustee manager's right of indemnity is entirely derivative. This means that the third-party creditor cannot be placed in a better position than the trustee manager: if the trustee manager's right of indemnity is impaired, then the third-party creditor's subrogation claim is likewise impaired. There are a number of ways in which the trustee manager's right of indemnity may be impaired: (a) if the trustee manager lacks the capacity or authorisation to enter into the contract with the third-party creditor; or (b) if the trustee manager acts in breach of its fiduciary duties, e.g., it fails to act in the best interests of the unitholder of the trust (i.e., SingTel). The trustee manager's right to indemnity (and the third-party creditor's derivative subrogation right) can also be impaired through cross claims by the unitholder of the trust (i.e., SingTel). The provisions of the Trust Deed expressly contemplate situations whereby the trustee manager's right of indemnity to the trust assets will be impaired.[43] Hence, risks remain for third-party creditors (i.e., RLs and the Authority) contracting or dealing with the trustee manager (i.e., CityNet).

82. These risks cannot be under-estimated or dismissed lightly. What happens if CityNet does not have sufficient assets of its own to satisfy the debts or other liabilities to RLs and its right of indemnity to the trust assets is impaired because CityNet has acted in its breach of its fiduciary duties? What happens if the Authority imposes a financial penalty on CityNet for breaching a Direction and CityNet does not have sufficient assets of its own to pay the fine and its right of indemnity to the trust assets is impaired because it has acted in its breached of its fiduciary duties? The third-party creditors (i.e., RLs and the Authority) will have no recourse to the trust assets. These risks are sufficiently significant to be highlighted as risk factors in the typical initial public offerings ("**IPO**") of business trusts in Singapore. For example:

> "***Third parties may be unable to recover for claims brought against the Trustee-Manager, as the Trustee-Manager is not an entity with significant assets***
>
> Third parties…may in the future have claims against the Trustee-Manager in connection with the carrying on of its duties as trustee-manager of the Trust (including in relation to the Offering and this document).
>
> The Trust Deed provides that the Trustee-Manager is entitled to be indemnified out of Trust Property against any actions, costs, claims, damages, expenses, penalties or demands to which it may be put as the trustee-manager of the Trust unless occasioned by the fraud, wilful default, breach of trust or where the Trustee-Manager fails to exercise Due Care. In the event of any such fraud, wilful default, breach of trust or failure to exercise Due Care, only the assets of the Trustee-Manager itself and not the Trust Property would be available to satisfy a claim."
>
> *See "Risk Factors" section of Asian Pay Television Trust's IPO prospectus*
>
> "***The rights of HPH Trust[44] and the Unitholders to recover claims against the Trustee-Manager are limited***

[43] See Clauses 2.3.1, 5.4 & 14.10 of existing Trust Deed.

The Trust Deed limits the liability of the Trustee-Manager to any matter or thing done or suffered or omitted to be done by them in good faith in the absence of fraud, wilful default, breach of trust or where the Trustee-Manager fails to exercise Due Care (as defined herein). In addition, the Trust Deed provides that the Trustee-Manager is entitled to be indemnified against any actions, costs, claims, damages, expenses or demands to which they may be subject as the trustee-manager of HPH Trust so long as such action, costs, claim, damage, expense or demand is not occasioned by fraud, wilful default, breach of trust or where the Trustee-Manager fails to exercise Due Care. As a result, the rights of HPH Trust and the Unitholders to recover claims against the Trustee-Manager are limited.

Third parties may be unable to recover for claims brought against the Trustee-Manager as the Trustee-Manager is not an entity with significant assets

Third parties, in particular, Unitholders, may in the future have claims against the Trustee-Manager in connection with the carrying on its duties as trustee-manager of HPH Trust (including in relation to the Offering and this document).

Under the terms of the Trust Deed, the Trustee-Manager is indemnified from the Trust Property against any actions, costs, claims, damages, expenses or demands to which it may be put as the trustee-manager of HPH Trust unless occasioned by the fraud, wilful default, breach of trust or where the Trustee-Manager fails to exercise Due Care. In the event of any such fraud, wilful default, breach of trust or failure to exercise Due Care, only the assets of the Trustee-Manager itself and not the Trust Property would be available to satisfy a claim."

See "Risk Factors" section of Hutchison Port Holdings Trust's IPO prospectus

83. Currently, third-party creditors have a direct claim against OpenNet's assets if OpenNet is unable to satisfy their debts or liabilities or is insolvent. If the consolidation is approved, third-party creditors will therefore be in a worse off position. It is therefore manifestly unfair for third-parties (i.e., RLs and the Authority) to bear the consequences of a poor choice of a trustee manager or an insolvent trustee manager by the unitholder of NetLink Trust (i.e., SingTel), particularly given that the consolidation is being contemplated due to OpenNet's poor service delivery issues. It is significant to note that OpenNet and its current shareholders (including SingTel) have similar concerns dealing with a trust. For example, OpenNet's existing ICO stipulates that where the RL is a trustee of a trust, it will be a condition precedent that the RL, the Directors of the RL and the beneficiaries of the trust have entered into a deed of covenant and indemnity in a form satisfactory to OpenNet to assure OpenNet that the RL has the power and authority to enter into the ICO and has an appropriate right of indemnity out of trust assets in respect of its liabilities under the ICO.[45] SingTel's existing RIO also contains a similar requirement.[46] The proposed consolidation must be beneficial to the downstream providers and the industry players and not create more uncertainties or risks for them.

(G) Lack of transparency

84. We are also concerned with the lack of transparency surrounding the terms of the consolidation application. The following matters have either been undisclosed, or are unclear:

[44] Hutchinson Port Holdings Trust.

[45] See clause 3.3 Part 1 Main Body of OpenNet's ICO.

[46] See clause 4.3 Part 1 Main Body of SingTel's RIO.

a. The proposed new Trust Deed has not been made public as part of the consultation. As the new Trust Deed would set-out how unitholders are able to influence and exert control over the operations of the trustee manager running the business trust, this is a significant lacuna in the information available to stakeholders;

b. It is unclear what assets are being transferred between SingTel, OpenNet and CityNet, what are the details of the finalised arrangements between the three parties, and importantly to what extent the new NetCo will continue to be dependent on SingTel's manpower or assets;

c. Whether there are any limitations on SingTel loading-up on debt on NetLink Trust's books, in order to justify setting higher charges for CityNet's services; and

d. Whether SingTel could be allowed to influence pricing units at NetLink Trust at exorbitant levels, to prevent sales of its units (thereby allowing SingTel to maintain control past 2018).

85. Given the strategic importance of this proposed transaction on Singapore, the industry and customers, the lack of information on the specifics of this deal are unfortunate. This has resulted in the public, and the industry, being unable to have a proper understanding of the transaction and its true ramifications.

Proposed Conditions

86. We trust we have set out our serious concerns over the proposed consolidation. Allowing SingTel to control 100% of the units in CityNet/ OpenNet would have severe negative ramifications on the Next-Gen NBN and on the public. Accordingly, the consolidation should be refused.

87. In the event the Authority allows the consolidation to proceed notwithstanding our concerns, it would be necessary for the Authority to put in place Conditions to ensure that customers, RSPs and the industry can benefit from this transaction. Currently, the competitive and operational benefits set-out by SingTel/OpenNet/CityNet are clearly not apparent in the consolidation application. Nor is it apparent that any operational efficiency gains would translate to substantial benefits to customers and the industry in practical terms.

88. Hence, the imposition of Conditions (with strict Performance Guarantees) is necessary, beyond any stated rhetoric by SingTel/OpenNet/CityNet on possible integration benefits. Specifically, the streamlining of operations must result in substantial improvements in the ease of access, service provisioning timeframes, lowering of prices across all services to the industry and improvements in QoS standards.

89. We propose the following:

a. The Authority must clarify that the new NetCo will be responsible for continuing to meet all the contractual and/or regulatory obligations of OpenNet to the Authority and to the Qualifying Persons ("**QPs**") and RSPs. This is important as QPs and RSPs need to be clear as to which entity they would be dealing with;

b. The Authority must ensure **<u>guaranteed service provisioning and deliverables</u>** from the new NetCo. These deliverables must result in improved operational efficiency, and potentially also cost savings and price reductions, which could then be passed on to customers.

The Authority must also ensure that the new NetCo cannot rely on existing loopholes and excuses (such as “spring-boarding”, “insufficient capacity”, “exceptionally high demand” and “building management issues”) to justify delaying service delivery to customers.

Any failure by the new NetCo to comply with its guaranteed deliveries must be met with swift and punitive penalties, and the Authority's enforcement should be notched higher. SLGs embedded in the ICO must be revised so that they are meaningful and incent the correct behaviour by the new NetCo. In essence, the NetCo ICO should be reviewed, so that SLGs can be significantly improved and/or enhanced and penalties for breach increased. Such penalties should, where practicable, not be made the sole remedy for delay, in order to enable QPs’ ability to meaningfully claim from the new NetCo compensation or indemnities for continued service lapses. For instance, the limitation of liabilities on the part of the new NetCo under the SLGs (including the maximum cap on the amount of rebates recoverable and the provisions stipulating that the rebates payable would constitute sole and exclusive remedy for breaching the service level guarantees) should be removed in order to act as a strong deterrent against the new NetCo failing to comply with its service delivery standards.

In order to ensure these guarantees are implemented, we propose that the Authority should require:

i. The new NetCo to clearly provide a plan of enhanced and concrete proposals to speed up efficient fibre rollouts to homes;

ii. This plan must be publicly consulted on, and approved by the Authority within specified timeframes. The approved plan must be adhered to strictly and actively enforced by the Authority; and

iii. The current OpenNet ICO and CityNet RAO are to be amended within a defined timeframe with a view to significantly improving the SLGs of the new NetCo, with a meaningful increase in the penalties payable to RSPs if such SLG levels are not adhered to. There should be no exclusions in such amended ICOs for breaches of SLGs, and accordingly, RSPs should be able to claim losses and indemnities from the new NetCo for such breaches. This is pertinent as RSPs face significant complaints and threats of claims from customers for failures currently caused by OpenNet;

c. Steps must be put in place to ensure that the employees, management, and Board of Directors of CityNet and the new NetCo act in the best interests of the public and industry (and not just in SingTel’s interest). For example, the Trust Deed must be amended to ensure that the trustee manager would be able to operate in an independent and neutral manner i.e., ‘Authorised Matters’ and ‘Reserved Matters’ which are subject to SingTel’s influence and/or control must be reduced to the absolute minimum.

Given the significant Government funding being provided to OpenNet, and the strategic importance of open access to the Next Gen-NBN, the Government should appoint the Chairman on the CityNet Board of Directors, who should be independent of the influence of any licensee. This would allow the Government to have direct oversight over how CityNet would operate and manage the business trust, and act as a voice of fairness and reason. We would also propose that the Authority allow the industry to appoint another director of the Board of CityNet.

In terms of management, we would strongly suggest that key management of the new NetCo should not be sourced and must be independent from SingTel. This would avoid any impression that that the new NetCo is a SingTel subsidiary or associate.

At an absolute minimum, operational separation requirements should also be imposed on the new NetCo. It is puzzling and incongruent if the new NetCo (being the sole provider of the passive Next-Gen NBN infrastructure) will be subject to less stringent regulatory oversight than the official appointed Operating Company which is operating in a more competitive landscape.

Further, safeguards must be implemented to ensure that (a) NetLink Trust remains a business trust registered under the Act and (b) no action or step will be taken to de-register it as a business trust under the Act;

d. To ensure the new NetCo complies with the principles of “Structural Separation” and “No Effective Control”, SingTel must be required to sell-down its stake in OpenNet/CityNet by the original timeline of April 2014. This mitigates the unacceptably long period where conflict of interests exists.

To prevent any circumvention of intent for divestment, the Authority must also ensure that SingTel is not allowed to sell the units in CityNet to any SingTel related entities (whether directly or indirectly-owned, e.g., via another subsidiary, associate, partner, business trust, etc).[47]

In our view, the sole mitigation to ameliorate against any conflicts of interest would be for SingTel to divest its 75% interests in the Asset Co ahead of time (i.e., even before April 2014) as a ***Condition*** to the Authority's approval (if any) of the consolidation;

[47] We would note that the existing Trust Deed states that “*nothing in this Deed shall prevent any member of the SingTel Group from becoming the owner of Units and holding, disposing of, or otherwise dealing with, the same*.” This leaves open the possibility that SingTel could choose to sell down its stake in the NetLink Trust by selling that stake to another business trust owned by SingTel.

e. To ensure that third-party creditors' right to claim against NetLink Trust's assets are not prejudiced or compromised, including implementing the following steps:

   i. Steps must be put in place to ensure that all accrued obligations and liabilities of OpenNet will be transferred to and assumed by the new NetCo;

   ii. Steps must be put in place that all title and interests in the assets comprising the NetCo Network (including, without limitation, OpenNet's assets) are transferred, free of any charge, lien or any other encumbrance, to the trustee manager of NetLink Trust;

   iii. Amending the Trust Deed to prevent the exclusion of the trustee manager's personal liability to third-party creditors;

   iv. Amending the Trust Deed to prevent the exclusion of the trustee manager's right to indemnity from NetLink Trust's assets;

   v. Amending the Trust Deed to strengthen third-party creditors' access to the right of indemnity, for instance by providing that third-party creditors can still rely on indemnity from NetLink Trust irrespective of whether the trustee manager acted in breach of trust or its fiduciary duties or fraudulently in incurring the debts or other liabilities; and

   vi. Requiring SingTel and the trustee manager of NetLink Trust to provide a deed of covenant and indemnity to assure third-parties that the trustee manager has the power and authority to enter into the contract or dealing with the trustee manager and has an appropriate right of indemnity out of NetLink Trust's assets in respect of its debts and other liabilities under such contract or dealing;

f. Steps must also be put in place to expedite and guarantee the complete transfer of the underlying infrastructure assets from SingTel to CityNet by Apr 2014, if not earlier. There should be:

   i. a clear, detailed list of underlying infrastructure assets to be transferred;
   ii. a plan (to be approved by the Authority) of enhanced and concrete proposals to speed up the transfer of assets;
   iii. clear timeframes set for monitoring and tracking the progress of transfer; and
   iv. penalties payable by SingTel if the originally set timelines are delayed;

g. To address the issue of transparency, the Authority must make clear what relationships will exist between SingTel, OpenNet and CityNet, and ensure that all arrangements with SingTel under which SingTel could exert influence or control over the new NetCo are removed.

   Firstly, to ensure that the new NetCo can operate its systems and services effectively, independent from any control by SingTel, the Authority must ensure that all necessary physical assets are transferred to the New NetCo. There must be clarity and transparency on how the transfer of assets will be carried out, including what assets will be transferred to the New NetCo. Hence, the detailed implementation plan for transfer of the OpenNet's business, assets and personnel to NetLink Trust must be submitted to the Authority as part of the approval process for the proposed consolidation, and not 3-months after the Authority's approval is given for the proposed consolidation.

Secondly, the Authority must also ensure that SingTel cannot be re-appointed as a contractor of the New NetCo for the contracting assignments. This will avoid the situation occurring today, where OpenNet has been pointing fingers at its KSC for the problems it is facing and averting responsibility. We encourage the Authority to put in place incentives for third-parties, including other licensees, to act as sub-contractors to the AssetCo. In addition, there should be zero barriers of entry for such other contractors;

h. In light of the profound importance of the NBN to the people and economy of Singapore, the Authority should lead the establishment of an NBN Task Force. We strongly believe that effective NBN oversight is necessary to give the Government, public and industry the assurance that recent media coverage indicates is urgently required. The role of the NBN Task Force would be to oversee the implementation of the consolidation; to confirm that effective safeguards are being applied or propose modifications to safeguards; and to monitor the post-consolidation performance of NetLink Trust, SingTel, OpenNet, CityNet, the new NetCo, and significant NBN contractors. The NBN Task Force must comprise representatives of the Authority, the Ministry, the industry and the public. It must report publicly its findings and recommendations; and

i. Finally, in addition to any subsisting deposits or guarantees already imposed on OpenNet under the NetCo contract (which we assume will likewise be imposed on the new NetCo), the Authority should consider imposing a significant performance guarantee to additionally secure OpenNet/CityNet/SingTel's (as the case may be) compliance with the new Conditions to be imposed. This would apply to secure performance of such Conditions which continue post-consolidation, in the event the Authority is minded to allow the consolidation.

Conclusion

90. The Operators have grave concerns over the proposed consolidation application, and how it would: (1) adversely impact competition in the market; and (2) perpetuate or worsen the poor service standards delivered by OpenNet. We also note that there are no guarantees that this deal will bring about any improvements in the service delivery or QoS standards that would benefit customers.

91. Allowing this deal to proceed, in its current proposed form, would have a significant negative impact on customers, who were meant to be the beneficiaries of the Next-Gen NBN. There would also likely be a substantial lessening of competition. The consolidation should therefore be rejected.

92. Notwithstanding these concerns, should the Authority choose to approve the consolidation, we urge it to consider the interest of the public, by putting in place all

necessary Conditions to ensure the performance of the new NetCo, and safeguard a level playing field and competition.

93. Finally, we note paragraph 14 of the Authority's consultation, which states inter alia:

> "*As part of the OpenNet proposal, ST had committed to transfer the ownership and control of the relevant ducts, manholes and COs that are used to support the deployment of the NGNBN infrastructure by OpenNet (the "Underlying Assets") to an independent neutral party, called the AssetCo.* ***ST had also committed to reducing its stake in AssetCo by April 2014 …to satisfy the structural separation requirement, which is one of the key regulatory requirements of the NetCo RFP****. Taking into account the commitments and undertakings as set out above, IDA had accepted the OpenNet consortium proposal. ST subsequently established the NetLink Trust….for the purposes of forming the AssetCo.*"

94. As can be gleaned from the above, SingTel's commitment to reduce its stake in the AssetCo (today NetLink Trust) to which the transfer of the Underlying Assets would be made, by April 2014, was an enforceable promise by SingTel that the Authority took into account in awarding the NetCo contract to the OpenNet consortium. We feel that if the proposed consolidation had been in the picture at such point in time, the Authority's position might well have been different, particularly since what is sought to be transferred by OpenNet to the AssetCo under the consolidation is, this time, potentially Government-funded assets. If that is the case, and taking into account the less-than-satisfactory service standards of OpenNet to-date, we respectfully request the Authority to scrutinise the proposed consolidation. Given our concerns above, the Authority ought not to allow the consolidation unless there are exceptional and publicly justifiable reasons.

95. We thank the Authority for the opportunity to provide our comments on the proposed consolidation application, and we would request the opportunity to discuss this matter further.