

**INFO-COMMUNICATIONS DEVELOPMENT AUTHORITY  
OF SINGAPORE**

**TELECOMMUNICATIONS ACT**

**(CHAPTER 323)**

**ADVISORY GUIDELINES GOVERNING CONSOLIDATION REVIEW AND  
TENDER OFFER PROCESS  
UNDER SECTION 10 OF THE CODE OF PRACTICE FOR COMPETITION  
IN THE PROVISION OF TELECOMMUNICATION SERVICES 2010**

**DATE OF ISSUE: [●] 2011**

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**[●] 2011**

The Info-Communications Development Authority of Singapore (“IDA”), pursuant to Section 28 of the Telecommunications Act (Cap. 323) (“Act”), hereby issues these Advisory Guidelines Governing Consolidation Review and Tender Offer Process under Section 10 of the Code of Practice for Competition in the Provision of Telecommunication Services 2010 (“Code”).

**PART I – INTRODUCTION**

**1. INTRODUCTION**

This Section defines terms used in these Guidelines, specifies the legal effect of these Guidelines, reserves certain rights and provides the Effective Date and Short Title of these Guidelines.

**1.1 Definitions**

Unless otherwise defined in these Guidelines, capitalised terms used in these Guidelines have the same meaning as in the Code.

When used in these Guidelines, the following terms will have the meanings specified in this Sub-section:

- (a) “Consolidation Agreement” means a valid, legal and binding agreement that, save for approval by IDA and satisfaction of Conditions imposed by IDA, would result in a Consolidation;
- (b) “Consolidation Review” means IDA’s review of a Consolidation Application to assess the likely impact of the Consolidation on competition in the Singapore telecommunication market;
- (c) “Consolidation Review Period” means the period, specified in Section 5 of these Guidelines, during which IDA reviews a Consolidation Application;
- (d) “Consolidation Application Processing Fee” means the fee specified in Subsection 3.3 of these Guidelines;
- (e) “Effective Date” means the date of issue of these Guidelines;

- (f) “Guidelines” or “Telecom Consolidation and Tender Offer Guidelines” means these Advisory Guidelines Governing Consolidation Review and Tender Offer Process;
- (g) “Horizontal Consolidation” means a Consolidation involving two or more entities that are current competing providers of the same Services or Services that are reasonable substitutes;
- (h) “Licence” means a licence issued by IDA pursuant to Section 5 of the Act;
- (i) “Licensee” means a Facilities-based Licensee or a Services-based Licensee that IDA has declared to be a Designated Telecommunication Licensee pursuant to Section 32A(1) of the Act;
- (j) “Long Form Consolidation Application” means the application form set out in Annex 1 of these Guidelines;
- (k) “Minimum Information Requirements” means the requirements specified in Sub-sections 3.2.1 through 3.2.2.3 of these Guidelines;
- (l) “Non-horizontal Consolidation” means a Consolidation that involves two or more entities that are not current competitors. This includes a Vertical Consolidation;
- (m) “Offer” refers to an offer made pursuant to Rules 14, 15 or 16 of the Take-over Code;
- (n) “Post-Consolidation Entity” means the economic entity that will be created as a result of a Consolidation;
- (o) “Short Form Consolidation Application” means the application form set out in Annex 2 of these Guidelines;
- (p) “Take-over Code” means the Singapore Code on Take-overs and Mergers;
- (q) “Telecommunications” or “telecommunications” shall have the same meaning as defined in the Act; and
- (r) “Vertical Consolidation” means a Consolidation that involves two or more entities at different levels in the supply chain, such as a Facilities-based Licensee and a reseller that sells that Licensee’s services.

## **1.2 Legal Effect of These Guidelines**

The provisions contained in these Guidelines are advisory; they do not impose any binding legal obligations on IDA or any private party. Rather, these Guidelines are intended to clarify the procedures that IDA will generally use, and the standards that IDA

will generally apply in implementing the Consolidation Review and Tender Offer provisions contained in Section 10 of the Code. In order to provide a single document addressing all issues relevant to the Consolidation Review and Tender Offer process, certain provisions of the Code have been summarised or repeated in these Guidelines. In the case of any conflict between the Code and these Guidelines, the terms of the Code will prevail.

### **1.3 Right to Approve, Deny or Condition Consolidation Applications Based on Non-competition-related Factors**

In assessing any Consolidation Application, IDA will seek to determine whether the Consolidation would substantially lessen competition in the Singapore telecommunication market. However, IDA reserves the right to approve, deny or condition its approval of a Consolidation where IDA concludes that such action is in the public interest.

### **1.4 Modification of These Guidelines**

IDA will periodically review these Guidelines and, based on experience and changing market conditions, will make any appropriate modifications. IDA will generally seek public comments as part of the review process, and will notify the public of any such modifications.

### **1.5 Effective Date of These Guidelines**

These Guidelines will take effect on the date of issue of these Guidelines.

### **1.6 Short Title**

These Guidelines may be referred to as the “Telecom Consolidation and Tender Offer Guidelines”.

## **PART II – GENERAL APPLICATION**

### **2. CLARIFICATION OF EFFECTIVE CONTROL, ACQUIRING PARTY AND ASSOCIATES**

This Section clarifies the concept of Effective Control set out in Sub-section 10.1.3(a) of the Code, provides illustrations on when a “person” will be considered an Acquiring Party for purposes of seeking IDA’s approval and explains the scope of IDA’s approval in a situation involving Associates.

#### **2.1 Presumption of Effective Control**

Sub-section 10.1.3(a) of the Code provides that IDA will presume that any person who holds 30% or more of the Voting Shares/Units/Equity Interest or is in a position to control 30% or more of the Voting Power in an entity will be able to exercise effective control over that entity.

For this purpose, Sub-section 10.1.3(c) further provides that:

“Where a person holds 30% or more of the Voting Shares/Units/Equity Interest or is in a position to control 30% or more of the Voting Power in entity A, in the situation where entity A is in the position to control X% of Voting Power in another entity B, that person will be presumed to control that same X% of Voting Power in entity B.

In addition, where a person holds 30% or more of the Voting Shares/Units/Equity Interest or is in a position to control 30% or more of the Voting Power in entity A, in the situation where IDA has presumed entity A to be able to exercise effective control over another entity B, that person will be presumed to be able to exercise effective control over B.”

The following examples illustrate the application of Sub-section 10.1.3(c):

Illustration 1: If entity A is in a position to control 12% of the Voting Shares/Voting Power in a Licensee, and entity B holds 30% or more of the Voting Shares/Units/Equity Interest or is in a position to control 30% of the Voting Power in entity A, IDA will presume that entity B is in a position to control 12% of the Voting Power in the Licensee.

Illustration 2: If entity A is in a position to control 30% of the Voting Shares/Voting Power in a Licensee, and entity B holds 30% or more of the Voting Shares/Units/Equity Interest or is a position to control 30% of the Voting Power in entity A, IDA will presume that entity B has Effective Control over the Licensee.

Illustration 3: Parent Company A has two wholly-owned subsidiaries – Company B and Company C. Company B currently holds 10% Voting Shares in a Licensee, while Company C holds another 10% Voting Shares in the same Licensee. Due to Company

A's effective control over Company B and Company C, IDA will presume that Company A is in a position to control 20% of the Voting Power in the Licensee.

## **2.2 Duty to Seek IDA's Approval for Consolidation**

Sub-sections 10.3.1.1 and 10.4.1.1 of the Code impose an obligation on every Acquiring Party, the Licensee and Trustee Manager/trustee (as the case may be) to seek IDA's approval for Consolidation.

The following illustrations explain when a "person" will be considered an Acquiring Party and therefore have to seek IDA's approval for Consolidation. In addition, these illustrations also explain to whom IDA's approval (if granted) will cover, in a situation involving Associates.

### **Illustration 1:**

Parent Company A has 2 wholly-owned subsidiaries – Company B and Company C. Company B currently holds 28% Voting Shares in a Licensee. Company C does not hold any Voting Shares or Voting Power in the Licensee. Company A currently has 28% Voting Power in the Licensee (due to Company B's holding of 28% Voting Shares in the Licensee).

Company C now acquires 2% Voting Shares in the Licensee. This results in Company A acquiring an additional 2% Voting Power in the Licensee for a total of 30% Voting Power.

As a result of this transaction:

- Company A has acquired additional 2% Voting Power in the Licensee, for a total 30% Voting Power;
- Company B has not acquired any additional Voting Power or Voting Shares in the Licensee; and
- Company C has acquired 2% Voting Shares (and Voting Power) in the Licensee.

Company A and Company C would therefore be Acquiring Parties, and together with the Licensee would be required to jointly file a Consolidation Application under Sub-section 10.3.6 of the Code. As Company B has not acquired any additional Voting Power or Voting Shares in the Licensee, it is not an Acquiring Party and is not required to be a party to the joint filing.

In the event IDA grants approval for the Consolidation Application, IDA's approval will apply to Company A, Company B and Company C, since Company A, Company B and Company C are Associates who have each become a 30% Controller as a result of this transaction.



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Illustration 2:

Parent Company A has 2 wholly-owned subsidiaries – Company B and Company C. Company B currently holds 28% Units in a Designated Business Trust. Company C does not hold any Units or Voting Power in the Designated Business Trust. Company A currently has 28% Voting Power in the Designated Business Trust (due to Company B's holding of 28% Units in the Designated Business Trust).

Company C now acquires 2% Units in the Designated Business Trust. This results in Company A acquiring an additional 2% Voting Power in the Designated Business Trust for a total of 30% Voting Power.

As a result of this transaction:

- Company A has acquired additional 2% Voting Power in the Designated Business Trust, for a total 30% Voting Power;
- Company B has not acquired any additional Voting Power or Units in the Designated Business Trust; and
- Company C has acquired 2% Units (and Voting Power) in the Designated Business Trust.

Company A and Company C would therefore be Acquiring Parties in this transaction, and together with the Trustee-Manager of the Designated Business Trust and the Licensee, would be required to jointly file a Consolidation Application under Sub-section 10.4.6 of the Code. As Company B has not acquired any additional Voting Power or Voting Shares in the Licensee, it is not an Acquiring Party in this transaction and is not required to be a party to the joint filing.

In the event IDA grants approval for the Consolidation Application, IDA's approval will apply to Company A, Company B and Company C, since Company A, Company B and Company C are Associates who have each become a 30% Controller as a result of this transaction.

Illustration 3:

Parent Company A has 2 wholly-owned subsidiaries – Company B and Company C. Company B currently holds 28% Equity Interest in a Designated Trust. Company C does not hold any Equity Interest or Voting Power in the Designated Trust. Company A currently has 28% Voting Power in the Designated Trust (due to Company B's holding of 28% Equity Interest in the Designated Trust).

Company C now acquires 2% Equity Interest in the Designated Trust. This results in Company A acquiring an additional 2% Voting Power in the Designated Trust for a total of 30% Voting Power.

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As a result of this transaction:

- Company A has acquired additional 2% Voting Power in the Designated Trust, for a total 30% Voting Power;
- Company B has not acquired any additional Voting Power or Equity Interest in the Designated Trust; and
- Company C has acquired 2% Equity Interest (and Voting Power) in the Designated Trust.

Company A and Company C would therefore be Acquiring Parties in this transaction, and together with the trustee of the Designated Trust and the Licensee, would be required to jointly file a Consolidation Application under Sub-section 10.4.6 of the Code. As Company B has not acquired any additional Voting Power or Voting Shares in the Licensee, it is not an Acquiring Party in this transaction and is not required to be a party to the joint filing.

In the event IDA grants approval for the Consolidation Application, IDA's approval will apply to Company A, Company B and Company C, since Company A, Company B and Company C are Associates who have each become a 30% Controller as a result of this transaction.

Illustration 4:

Parent Company A has 2 wholly-owned subsidiaries – Company B and Company C. Company B currently holds 28% Voting Shares in a Licensee. Company C does not hold any Voting Shares or Voting Power in the Licensee. Company A currently has 28% Voting Power in the Licensee (due to Company B's holding of 28% Voting Shares in the Licensee).

Company A now acquires 2% Voting Shares in the Licensee. This results in Company A acquiring an additional 2% Voting Power in the Licensee for a total of 30% Voting Power.

As a result of this transaction:

- Company A has acquired additional 2% Voting Power in the Licensee, for a total 30% Voting Power;
- Company B has not acquired any additional Voting Shares or Voting Power in the Licensee; and
- Company C has not acquired any Voting Shares or Voting Power in the Licensee.

Company A would therefore be an Acquiring Party, and together with the Licensee would be required to jointly file a Consolidation Application under Sub-section 10.3.6 of the Code. As both Company B and Company C have not acquired any additional Voting Power or Voting Shares in the Licensee, they are not Acquiring Parties and are not required to be parties to the joint filing.

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In the event IDA grants approval for the Consolidation Application, IDA's approval will apply to Company A, Company B and Company C, since Company A, Company B and Company C are Associates who have each become a 30% Controller as a result of this transaction.

## **PART III – CONSOLIDATION**

### **3. CONSOLIDATION APPLICATION**

This Section describes the application procedures that entities required to file a Consolidation Application must follow. This Section also describes the procedure by which an individual or entity that is considering entering into a Consolidation may ask IDA to provide informal guidance prior to the time at which a Consolidation Application must be submitted.

#### **3.1 Application for Approval of a Consolidation**

Any entity that has entered into a transaction that results in a Consolidation must submit a Consolidation Application to IDA and obtain IDA's written approval for the Consolidation.

##### **3.1.1 Parties that Must Submit a Consolidation Application and Separate Filing of Information and Consolidation Application**

The Consolidation Application must be submitted jointly by the Acquiring Party, the Licensee and Trustee-Manager/trustee that is the subject of the Consolidation. However, where any party to a joint Consolidation Application does not want to disclose confidential, commercially sensitive or proprietary information to the other parties, the Applicants may choose to provide this information separately.

In addition, in any case in which a Consolidation Application is submitted pursuant to Sub-section 10.3.6 of the Code (in the case of a Licensee) or Sub-section 10.4.6 of the Code (in the case of a Designated Business Trust or Designated Trust) and:

- (a) the Acquiring Party reasonably believes that the Licensee and/or Trustee-Manager/trustee is likely to be opposed to the Consolidation;
- (b) any party reasonably believes that the filing of a joint Consolidation Application would be unreasonably burdensome or infeasible; or
- (c) any party can demonstrate that the other party or parties has or have refused to cooperate with it to file a joint Consolidation Application,

that party may petition IDA for permission to file a separate Consolidation Application and IDA will inform all parties of its decision. Where IDA grants permission, all parties must file a separate Consolidation Application.

### **3.1.2 Transactions that Constitute a Consolidation**

A Consolidation may, but need not, result in the dissolution of an existing legal entity, the creation of a new legal entity or the assignment of the Licensee's Licence to another legal entity. Consolidations may occur as a result of a variety of transactions. For example:

- (a) a party may seek to obtain Voting Shares/Units/Equity Interests or Voting Power in a Licensee, Designated Business Trust or Designated Trust by entering into an agreement with one of more of the Licensee's shareholders, unitholders of the Designated Business Trust or holders of equity interests in the Designated Trust;
- (b) a party may seek to obtain Voting Shares/Units/Equity Interests or Voting Power in a Licensee, Designated Business Trust or Designated Trust by purchasing the Licensee's shares, units in the Designated Business Trust or equity interests in the Designated Trust on the open market – either through individual transactions or pursuant to a Tender Offer;
- (c) a party may seek to obtain an indirect interest in Voting Shares/Units/Equity Interests or indirect Voting Power in a Licensee, Designated Business Trust or Designated Trust through the purchase of shares, units or equity interests in a parent company several steps up the ownership chain;
- (d) a party may engage in a transaction, such as an asset acquisition, that has the same economic impact as a Consolidation achieved through the acquisition of the Licensee's Voting Shares, Units in the Designated Business Trust or Equity Interests in the Designated Trust; or
- (e) a party may acquire Voting Shares/Units/Equity Interests or Voting Power in a Licensee, Designated Business Trust or Designated Trust as a result of a Licensee, Trustee-Manager or trustee engaging in a Share Buyback, Unit Buyback or Equity Interest Buyback.

#### **3.1.2.1 Transactions Involving Acquisition of Voting Shares/Units/Equity Interests or Voting Power**

The acquisition of Voting Shares/Units/Equity Interests or Voting Power in a Licensee, Designated Business Trust or Designated Trust which results in the Acquiring Party holding Voting Shares/Units/Equity Interests or Voting Power of 30% or more constitutes a Consolidation. This presumption may be rebutted by evidence of the degree of control that the Acquiring Party would be able to exercise. For example, if an entity that seeks to acquire an Ownership Interest in a Licensee which results in that entity holding an Ownership Interest of less than 30% has the right to appoint a majority of the Licensee's Board or to veto certain management and major operating decisions of the Licensee, IDA may find that the proposed transaction will constitute a Consolidation.

### **3.1.2.2 Transactions Involving the Obtaining of Effective Control over a Licensee, Designated Business Trust or Designated Trust**

A transaction in which the Acquiring Party obtains the ability to exercise Effective Control over a Licensee, Designated Business Trust or Designated Trust also constitutes a Consolidation. For example, if an entity that seeks to acquire Voting Shares/Units/Equity Interests or Voting Power in a Licensee, Designated Business Trust or Designated Trust which results in that entity holding Voting Shares/Units/Equity Interests or Voting Power of less than 30%, but having the right to appoint a majority of the Board of the Licensee or Trustee-Manager/trustee or to veto certain management and major operating decisions of the Licensee, Designated Business Trust or Designated Trust, the proposed transaction will constitute a Consolidation.

### **3.1.2.3 Transactions Involving the Acquisition of the Business of a Licensee, Designated Business Trust or Designated Trust as a Going Concern**

A transaction in which the Acquiring Party acquires the business of a Licensee, Designated Business Trust or Designated Trust as a going concern also constitutes a Consolidation, even if the Acquiring Party does not acquire the Voting Shares of the Licensee, Units of the Designated Business Trust or Equity Interests of the Designated Trust. IDA will find that an Acquiring Party has acquired the business of a Licensee, Designated Business Trust or Designated Trust as a “going concern” where the Acquiring Party: acquires all or substantially all of the assets of the Licensee, Designated Business Trust or Designated Trust; and/or enters into an agreement pursuant to which it acquires the right to provide service to, and receive compensation from, the substantial majority of the Licensee’s End Users.

### **3.1.3 Situations in Which a Consolidation Application Need Not be Submitted**

A Consolidation Application need not be submitted where the transaction does not constitute a Consolidation. However, in such cases, the Licensee and Trustee-Manager/trustee may have to comply with other filing requirements. For example, if the transaction constitutes an acquisition of Voting Shares/Units/Equity Interests or Voting Power in a Licensee, Designated Business Trust or Designated Trust that results in the Acquiring Party holding Voting Shares/Units/Equity Interests or Voting Power of at least 12%, the Licensee, Trustee-Manager/trustee and the Acquiring Party must comply with the procedures, specified in Sub-sections 10.3.5 and 10.4.5 of the Code, and submit a Request to obtain IDA’s prior approval. If the transaction involves a Licence Assignment, the Licensee must comply with the provisions in its Licence to seek IDA’s approval.

In such cases, when making any required filing, the Licensee and Trustee-Manager/trustee should include a clear statement indicating the basis on which it believes that the proposed transaction would not constitute a Consolidation. IDA reserves the right to require the Licensee and Trustee-Manager/trustee to submit a Consolidation Application if IDA determines that the proposed transaction may constitute a

Consolidation. In such cases, the Consolidation Review Period will begin on the day on which IDA receives a complete Consolidation Application.

### **3.1.3.1 Prescribed Transactions that Do Not Require Consolidation Approval**

As provided for in the [Telecommunications (Prescribed Transactions) Order 2010], the following transactions as prescribed by the Minister in the Order do not require Consolidation approval by IDA. However, the Licensee and Trustee-Manager/trustee must notify IDA within 7 days after first becoming aware of any such transaction being carried out.

An acquisition of Voting Shares/Units/Equity Interests or Voting Power in a Licensee, Designated Business Trust or Designated Trust is a prescribed transaction under the Order if:

- (a) it results in the transfer of Voting Shares in a Licensee –
  - (i) from any person to a corporation, any shares in which are owned or any Voting Power in which is controlled by that person, without any change in the percentage of Voting Power in the Licensee controlled by that person; or
  - (ii) from a corporation to any shareholder of the corporation, without any change in the percentage of Voting Power in the Licensee controlled by that shareholder; or
  - (iii) from a corporation to its wholly owned subsidiary, or to a corporation from its wholly owned subsidiary, whether or not the subsidiary is a direct subsidiary of the corporation; or
  - (iv) from one corporation, any shares in which are owned or any Voting Power in which is controlled by any person, to another corporation, any shares in which are owned or any Voting Power in which is controlled by that person, without any change in the percentage of Voting Power in the Licensee controlled by that person; or
- (b) it does not change the percentage of the Voting Power in the Licensee controlled by every person who controlled any Voting Power in the Licensee immediately before the transaction; or
- (c) it results in the transfer of Units in a Designated Business Trust –
  - (i) from any person to a corporation, any shares in which are owned or any Voting Power in which is controlled by that person, without any change in the percentage of Voting Power in the Designated Business Trust controlled by that person; or

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- (ii) from a corporation to any shareholder of the corporation, without any change in the percentage of Voting Power in the Designated Business Trust controlled by that shareholder; or
  - (iii) from a corporation to its wholly owned subsidiary, or to a corporation from its wholly owned subsidiary, whether or not the subsidiary is a direct subsidiary of the corporation; or
  - (iv) from one corporation, any shares in which are owned or any Voting Power in which is controlled by any person, to another corporation, any shares in which are owned or any Voting Power in which is controlled by that person, without any change in the percentage of Voting Power in the Designated Business Trust controlled by that person; or
- (d) it does not change the percentage of the Voting Power in the Designated Business Trust controlled by every person who controlled any Voting Power in the Designated Business Trust immediately before the transaction; or
- (e) it results in the transfer of Equity Interests in a Designated Trust –
- (i) from any person to a corporation, any shares in which are owned or any Voting Power in which is controlled by that person, without any change in the percentage of Voting Power in the Designated Trust controlled by that person; or
  - (ii) from a corporation to any shareholder of the corporation, without any change in the percentage of Voting Power in the Designated Trust controlled by that shareholder; or
  - (iii) from a corporation to its wholly owned subsidiary, or to a corporation from its wholly owned subsidiary, whether or not the subsidiary is a direct subsidiary of the corporation; or
  - (iv) from one corporation, any shares in which are owned or any Voting Power in which is controlled by any person, to another corporation, any shares in which are owned or any Voting Power in which is controlled by that person, without any change in the percentage of Voting Power in the Designated Trust controlled by that person; or
- (f) it does not change the percentage of the Voting Power in the Designated Trust controlled by every person who controlled any Voting Power in the Designated Trust immediately before the transaction.

The above transactions would be deemed to have constituted a pro forma change.



## **3.2 Minimum Information Requirements**

Any Consolidation Application submitted to IDA must comply with the Minimum Information Requirements specified in Sub-sections 3.2.1 to 3.2.2.3 of these Guidelines. Applicants must follow the Long Form Consolidation Application procedure, unless they are eligible to use the Short Form Consolidation Application procedure. Pursuant to Sub-section 1.7(a) of the Code, Applicants may also request an exemption from any requirements contained in these Sub-sections.

### **3.2.1 Long Form Consolidation Application Procedure**

Applicants required to submit a Long Form Consolidation Application must provide the information specified in Sub-sections 3.2.1.1 to 3.2.1.5 of these Guidelines.

#### **3.2.1.1 Long Form Consolidation Application**

Applicants must complete and submit the Long Form Consolidation Application in the application form set out in Annex 1 of these Guidelines.

#### **3.2.1.2 Consolidation Agreement and Ancillary Agreements**

Applicants must submit:

- (a) a copy of the Consolidation Agreement, including any appendices, side letters and supporting documents; and
- (b) copies of all agreements that, while not directly addressing the Consolidation, are an integral part of the transaction (such as covenants not to compete or licensing agreements) or that are necessary or useful for IDA to fully assess the likely competitive impact of the Consolidation.

Provided, however, that in any case in which the Licensee, Designated Business Trust or Designated Trust is not a party to the Consolidation Agreement or any other agreement as specified in Sub-section 3.2.1.2(b) of these Guidelines, the Acquiring Party shall provide these materials directly to IDA.

#### **3.2.1.3 Description, Competitive Impact and Public Interest Statement**

Applicants must submit a statement that provides a clear, accurate and comprehensive description of the Consolidation, a good faith assessment of the likely impact of the Consolidation on competition in the Singapore telecommunication market and a discussion of why approval of the Consolidation would serve the public interest (the “Statement”). The competitive assessment should generally include information regarding: (a) the telecommunication markets in which the Applicants and their Affiliates participate; (b) the market participants; (c) the estimated market shares of the participants and the level of concentration in those markets; (d) the structure of the market (and the

extent to which it facilitates unilateral anticompetitive conduct or concerted action by multiple participants); (e) the likelihood that output would be increased (either by existing market participants or new entrants) in response to a significant and non-transitory price increase; (f) the likelihood of End Users switching to a competing service provider in response to a significant and non-transitory price increase; and (g) any efficiency that would likely result from the Consolidation. Applicants should make reasonable and diligent efforts to collect and provide the necessary information. Applicants should assume that IDA will release this document to the public. If the Statement contains proprietary or commercially sensitive information, the Applicants should put such information in a separate appendix. Requests for confidential treatment are further addressed in Sub-section 11.7 of the Code.

#### **3.2.1.4 Supporting Documentation**

Applicants should submit a copy of any supporting documents that would assist IDA in assessing the likely competitive effect of the Consolidation. At the minimum, this must include: (a) a copy of the Applicants' current annual reports or audited financial statements; (b) a copy of the Applicants' business plans for the current and immediately previous years; (c) a copy of the trust deed of the Designated Business Trust or Designated Trust where relevant; (d) a copy of all reports, studies or analyses prepared for the shareholders, Unitholders or holders of Equity Interests, beneficiaries of a trust, directors, or executive officers of the Applicants assessing the proposed Consolidation and describing the proposed operation of the Post-Consolidation Entity; and (d) a chart indicating the relationship between each Applicant and its respective Associates and Affiliates and their relevant Voting Shares/Units/Equity Interests or Voting Power. Applicants should indicate any situation in which the Voting Shares/Units/Equity Interests or Voting Power grants the holder thereof a special or preferential right, and any pending changes in the ownership structure of any of the Applicants in addition to the change that is the subject of their Consolidation Application.

#### **3.2.1.5 Proposed Conditions to Address Competitive Concerns**

Applicants must indicate whether they wish to propose any possible Conditions for IDA's consideration (such as partial divestiture or the imposition of behavioural safeguards) that could reduce any potential adverse competitive impact of the Consolidation. If Applicants choose to propose such Conditions, they should provide a complete description of the proposed Conditions and an assessment of why such Conditions would be adequate to address any competitive concerns that might arise from the Consolidation.

#### **3.2.2 Short Form Consolidation Application Procedure**

Where a Consolidation meets any of the requirements set out in Sub-section 3.2.2.1 of these Guidelines, the Applicants must follow the procedures for submitting the Short Form Consolidation Application. IDA will generally grant approval for any Consolidation Application that is eligible for such procedures without significant review.

### **3.2.2.1 Situations in Which a Short Form Consolidation Application May be Submitted**

Applicants required to submit a Consolidation Application may use the Short Form Consolidation Application procedure if either: (a) the Consolidation is a Horizontal Consolidation which will not result in the Post-Consolidation Entity having more than a 15% share in the telecommunication market in Singapore; or (b) the Consolidation is a Non-horizontal Consolidation in which none of the Applicants has more than a 25% share of any telecommunication market, whether in Singapore or elsewhere, in which it participates.

### **3.2.2.2 Short Form Consolidation Application**

Applicants using the Short Form Consolidation Application procedure must complete and submit the Short Form Consolidation Application using the application form set out in Annex 2 of these Guidelines.

### **3.2.2.3 Abbreviated Description, Competitive Impact and Public Interest Statement**

Applicants using the Short Form Consolidation Application procedure must submit an abbreviated statement that accurately describes the Consolidation, a good faith description of the basis on which the Applicants believe that the Consolidation does not raise significant competitive issues, and a brief discussion of why approval of the Consolidation would serve the public interest (the “Abbreviated Statement”). The competitive assessment should generally include information regarding: (a) a chart indicating the relationship between each Applicant and its respective Associates and Affiliates and their relevant Voting Shares/Units/Equity Interests or Voting Power; (b) a copy of the trust deed of the Designated Business Trust or Designated Trust where relevant; (c) the telecommunication markets in which the Applicants and their Affiliates participate; (d) the market participants; and (e) the estimated market shares of the participants and the level of concentration in those markets. Applicants should indicate any situation in which the Voting Shares/Units/Equity Interests or Voting Power grants the holder thereof a special or preferential right, and any pending changes in the ownership structure of any of the Applicants in addition to the change that is the subject of their Consolidation Application. Applicants should also include any additional relevant information that demonstrates that the Consolidation would not be likely to substantially lessen competition and would serve the public interest. Applicants should make reasonable and diligent efforts to collect and provide the necessary information. Applicants should assume that IDA will release the Abbreviated Statement to the public. If the Abbreviated Statement contains proprietary or commercially sensitive information, the Applicants should put such information in a separate appendix. Requests for confidential treatment are further addressed in Sub-section 11.7 of the Code.

### **3.3 Consolidation Application Processing Fee**

Each Long Form Consolidation Application must be accompanied by payment of a sum of S\$10,000. Each Short Form Consolidation Application must be accompanied by payment of a sum of S\$2,500. Applicants may make such payment to IDA by way of money orders, postal orders, banker's orders, Interbank GIRO, cheques or telegraphic transfer. All bank charges associated with such payment shall be borne by the Applicants.

### **3.4 IDA's Preliminary Review of Consolidation Application**

IDA will generally complete a preliminary review of the Consolidation Application within 5 working days of receiving the Consolidation Application. The sole purpose of the preliminary review is to determine whether the Applicants have satisfied the Minimum Information Requirements.

#### **3.4.1 Acceptance of Complete Consolidation Application**

If, at the conclusion of its preliminary review, IDA determines that the Consolidation Application fully satisfies the Minimum Information Requirements, IDA will notify the Applicants, in writing, that it has accepted the Consolidation Application for processing. If IDA makes such a determination, the Consolidation Review Period will be deemed to have begun on the day on which IDA received the Consolidation Application. This determination does not preclude IDA from subsequently requesting the Applicants to provide supplemental information.

#### **3.4.2 Incomplete Consolidation Application Will Not be Processed**

IDA will decline to process any Consolidation Application that does not satisfy the Minimum Information Requirements. This includes any situation in which the Applicants have improperly submitted a Short Form Consolidation Application when a Long Form Consolidation Application should have been submitted. If IDA makes such a determination, it will inform the Applicants as to the additional information that they must submit.

### **3.5 Exemption from Submission Obligations**

Any Applicant may request IDA to exempt it from any or all of the requirements contained in Sub-sections 3.1 to 3.2.2.3 of these Guidelines. Such exemption will only be granted if the Applicant makes a specific and compelling submission that: (a) compliance with the specific requirement or requirements is not possible; (b) would be unreasonably burdensome; or (c) is not necessary to ensure that a Consolidation would not substantially lessen competition in the Singapore telecommunication market. An exemption request should be submitted prior to the date on which the Applicants submit the Consolidation Application. IDA will generally make publicly available relevant information on any exemption granted, with an explanation of the justification for granting the exemption.

### **3.6 Duty to Update Pending Consolidation Application to Reflect Material Changes**

During the period between the day on which the Applicants submit the Consolidation Application and the day on which IDA issues its decision to approve or deny the Consolidation Application, or approve the Consolidation Application subject to Conditions, the Applicants must promptly inform IDA, in writing, of any new or different fact or matter that is reasonably likely to have a material impact on IDA's consideration of the Consolidation Application. In the event that IDA determines that the Applicants' subsequent submission has substantially altered the terms of the Consolidation, IDA may require the Applicants to withdraw the pending Consolidation Application and submit a new Consolidation Application. Applicants will not be entitled to a refund of the Consolidation Application Processing Fee and will be required to pay an additional Consolidation Application Processing Fee at the time it submits the new Consolidation Application.

### **3.7 Statement that Consolidation Agreement is Subject to IDA's Approval**

Every Consolidation Agreement must include language expressly stating that the Consolidation is subject to IDA's approval and that the Consolidation will not be consummated unless and until such time as IDA grants its written approval. The Acquiring Party, Licensee and Trustee-Manager/trustee must include similar language in any public statement regarding the Consolidation.

### **3.8 Informal Guidance Prior to Submitting Consolidation Application**

Any Applicant considering entering into a Consolidation may ask IDA to provide informal guidance prior to the time at which a Consolidation Application must be submitted. This may include guidance regarding the likelihood that IDA will approve, deny or approve the Consolidation Application subject to Conditions. However, the informal guidance process cannot substitute for a full review following submission of a complete Consolidation Application.

#### **3.8.1 Procedures for Requesting Informal Guidance**

Any Applicant that seeks informal guidance should submit a written request, containing all relevant available information regarding the proposed Consolidation and its likely impact on competition in the Singapore telecommunication market. The Applicant should also indicate any specific issues on which it seeks guidance. IDA will treat all information submitted as confidential. In addition, IDA will not disclose the fact that the Applicant has requested for informal guidance, and will treat any guidance provided as confidential, unless the Applicant receiving the guidance consents to such disclosure by IDA or chooses to publicly disclose this information.

### **3.8.2 Limitations**

IDA will provide informal guidance at its discretion. Any informal guidance provided is subject to the following limitations:

#### **3.8.2.1 Inability to Provide Informal Guidance Absent Adequate Information**

Assessing whether a proposed Consolidation is likely to substantially lessen competition is often a fact-specific process. At a minimum, this requires a clear understanding of the likely structure of the proposed Consolidation as well as basic information regarding market structure and participants. IDA will not provide informal guidance in any case in which an individual or entity fails to provide sufficient information. In some cases, assessing the competitive impact of a proposed Consolidation requires significantly more information – including information within the possession of suppliers, competitors and customers. The informal guidance process is not an appropriate means to conduct a detailed review. In such cases, IDA will not express a view regarding its likely disposition of a Consolidation Application. IDA may, however, provide preliminary views regarding some of the issues that it anticipates will be relevant to its review.

#### **3.8.2.2 Informal Guidance Does Not Bind IDA**

Recognising the importance of minimising regulatory uncertainty, IDA will attempt to provide reliable informal guidance. However, the provision of informal guidance does not preclude IDA, following a complete review of a Consolidation Application, from taking actions that are inconsistent with the views contained in the informal guidance. This is especially likely where the Consolidation Review reveals additional or different information from that on which IDA relied in providing the informal guidance or where legal requirements, regulatory policies, market conditions or other relevant factors have changed since the date on which IDA provided the informal guidance.

## **4. CONSOLIDATION REVIEW PRINCIPLES**

This Section describes the regulatory principles that will guide IDA's review of the likely impact of a Consolidation on competition in the Singapore telecommunication market.

### **4.1 Promotion and Preservation of Competition**

In competitive markets, voluntary transactions generally result in the production of the optimal quantity of each product, push prices towards cost, and promote the most efficient methods of production. Therefore, IDA will seek to promote and preserve competition in all telecommunication markets subject to its jurisdiction.

## **4.2 Competitive Concerns Raised by Consolidations**

In general, voluntary Consolidations – like other voluntary transactions – result in the most efficient allocation of society’s resources. However, in certain limited cases, Consolidations can have an adverse impact by reducing competition. These concerns are described below.

### **4.2.1 Horizontal Consolidations**

Horizontal Consolidations can adversely affect competition in a number of different ways, including:

#### **4.2.1.1 Creation, Preservation or Enhancement of Significant Market Power**

A Horizontal Consolidation can adversely affect competition by creating, preserving or enhancing a single service provider’s ability to exercise Significant Market Power. Unlike participants in a competitive telecommunication market, an entity with Significant Market Power has the ability to unilaterally restrict output, raise prices, reduce quality or otherwise act, to a significant extent, independently of competitive market forces. In some cases, this can adversely affect competition in “downstream” markets that rely on the entity’s Service as an essential input.

#### **4.2.1.2 Facilitation of Concerted Anti-competitive Conduct**

Horizontal Consolidations can also result in the creation of a telecommunication market in which a small number of entities can reach, and enforce, agreements to collectively restrict output, raise prices, reduce quality or otherwise act independently of competitive market forces. Such agreements can have the same adverse impact as a single entity’s abuse of its Significant Market Power.

### **4.2.2 Non-horizontal Consolidations**

As Non-horizontal Consolidations, by definition, do not involve current competitors, they generally do not restrict competition. On the contrary, such Consolidations often increase efficiency, thereby enabling a Licensee to compete more effectively.

However, Non-horizontal Consolidations can have adverse competitive effects where at least one of the entities has Significant Market Power or participates in a concentrated market with few other competitors. There are several ways in which this can occur:

#### **4.2.2.1 Elimination of a Potential Competitor**

A Non-horizontal Consolidation can eliminate the possibility that, in future, one of the parties will enter, as a competitor, a telecommunication market in which the other party currently participates. This can raise significant concerns in telecommunication markets that have few current competitors. The ability of current telecommunication market

participants to restrict output or raise prices will be constrained by the existence of an entity that, although not currently in the telecommunication market, would actually respond (or which current telecommunication market participants believe would respond) to an anti-competitive restriction in output or increase in price by entering the telecommunication market. A Non-horizontal Consolidation may eliminate that constraint and reduce the chances of establishing actual competition in future.

#### **4.2.2.2 Foreclosure or Discriminatory Access to “Upstream” Inputs or “Downstream” Facilities**

A Non-horizontal Consolidation can restrict competition by limiting the ability of competitors to access an “upstream” input or a “downstream” facility necessary to deliver Services to End Users. This can occur, for example, when an entity that controls an essential “upstream” input, acquires a “downstream” Licensee that relies on that input, and then refuses to provide the input on reasonable and non-discriminatory terms to the “downstream” Licensee’s competitors. At a minimum, this may increase such competitors’ costs and put them at a significant competitive disadvantage. In extreme cases, a Non-horizontal Consolidation can result in such significant foreclosure that it becomes necessary for future entrants to enter both the “upstream” and “downstream” markets at the same time. Given the extra costs and risk of “dual level” entry, Non-horizontal Consolidations reduce the likelihood of future competition in one or both markets.

#### **4.2.2.3 Market Distortion**

A Non-horizontal Consolidation can restrict competition by enabling an entity with Significant Market Power in one market to distort competition in another market. For example, after the Non-horizontal Consolidation, an “upstream” entity that has Significant Market Power in the input telecommunication market could charge above-cost prices in that telecommunication market and use the revenue to enable the “downstream” affiliate to sell Services at below-cost prices.

### **4.3 Goal of Consolidation Review**

The goal of IDA’s Consolidation Review process is to identify those Consolidations that are likely to substantially lessen competition or harm the public interest in the Singapore telecommunication market. Based on its review of a Consolidation, IDA may take one of the following approaches:

#### **4.3.1 Prevent Consolidations that are Anti-competitive or against Public Interest**

IDA will generally prevent the consummation of a Consolidation where the transaction would be likely to substantially lessen competition or it is in the public interest to deny the Consolidation, and where the anticompetitive harm cannot be adequately remedied through the imposition of narrowly tailored structural or behavioural Conditions. As



regulation generally is a poor substitute for the operation of a competitive telecommunication market, preventing such a Consolidation is superior to approving the Consolidation and imposing pervasive regulation or allowing the Consolidation to go forward and, if anticompetitive conduct occurs, subsequently requiring the transaction to be unwound.

#### **4.3.2 Allow Consolidations Subject to Conditions**

IDA will generally allow the consummation of a Consolidation, subject to Conditions, where competitive concerns exist but can be adequately addressed through the imposition of narrowly tailored structural or behavioural Conditions.

#### **4.3.3 Allow Consolidations Without Conditions**

IDA will generally allow the consummation of a Consolidation, without imposition of Conditions, where the Consolidation does not raise any competitive concerns or harm public interest.

#### **4.4 Compliance with the Telecom Competition Code 2010 Regulatory Principles**

IDA will conduct Consolidation Reviews in a manner that is consistent with the regulatory principles contained in the Code – including reliance on market forces, promotion of competition, non-discrimination, proportionate regulation, technological neutrality, avoidance of unnecessary delay, and transparent and reasoned decision making.

### **5. CONSOLIDATION REVIEW PERIOD**

This Section describes the timing of IDA’s Consolidation Review process. IDA recognises that regulatory delay increases business risk and, potentially, can deter Licensees, Designated Business Trusts or Designated Trusts from entering into pro-competitive Consolidations. IDA is committed to reviewing all Consolidation Applications in a timely manner, while giving adequate consideration to all relevant issues.

#### **5.1 Consolidation Review Period Does Not Begin Until Receipt of Complete Consolidation Application**

IDA will inform the Applicants when their Consolidation Application has satisfied the Minimum Information Requirements specified in Sub-section 3.2 of these Guidelines after conducting the preliminary review described in Sub-section 3.4 of these Guidelines. The Consolidation Review Period will be deemed to have begun on the day on which the Applicants first satisfied the Minimum Information Requirements specified in Sub-section 3.2 of these Guidelines. For example, if the Applicants submit the minimum

required information on 1 July, and IDA informs the Applicants on 5 July that their Consolidation Application is complete, the Consolidation Review Period will be deemed to have begun on 1 July. In contrast, if IDA informs the Applicants on 5 July that they must submit additional information, and the Applicants provide the information on 10 July, and IDA informs the Applicants on 15 July that their Consolidation Application is complete, the Consolidation Review Period will be deemed to have begun on 10 July.

## **5.2 Length of Consolidation Review Period**

IDA will ordinarily complete its Consolidation Review within 30 days after the start of the Consolidation Review Period. IDA will seek to give expedited consideration to requests made in connection with Consolidations to be achieved through Open Market Transactions. In any case in which IDA determines that a Consolidation Application raises novel or complex issues, IDA will notify the Applicants that it intends to extend the Consolidation Review Period by up to 90 days, to a maximum of 120 days. IDA will generally seek to provide this notification within 21 days after the start of the Consolidation Review Period. IDA may deem a Consolidation Application to raise novel issues when disposition of the Consolidation Application requires IDA to consider an issue that it has not previously addressed, either in these Guidelines or in a prior Consolidation Review, or for which there is no clearly established international best practice. IDA may deem a Consolidation Application to raise complex issues when disposition of the Consolidation Application requires IDA to obtain significant factual information or resolve difficult legal, factual or policy issues that cannot be adequately resolved within the ordinary 30-day period.

## **5.3 Suspension of Consolidation Review Period Due to Failure to Adequately Respond to Supplemental Information Requests**

During the course of the Consolidation Review Period, IDA may request any of the Applicants to provide supplemental information to assist IDA in assessing the competitive impact of the Consolidation. (Requests for supplemental information are discussed in Section 6 of these Guidelines.) In any case in which IDA requests supplemental information, it will specify a reasonable period of time within which the Applicant(s) are to provide the supplemental information. If the Applicant(s) request additional time to comply with this request, or if they do not provide all supplemental information by the date specified, IDA will deem the Consolidation Review Period to have been suspended until such time as the Applicants provide all specified supplemental information. IDA will inform the Applicants of the specific day on which the Consolidation Review Period has been suspended. Once IDA determines that the Applicants have provided all required supplemental information, the Consolidation Review Period will resume beginning with the day following the day on which IDA made such a determination.

## **6. INFORMATION GATHERING**

In order to assess the likely competitive effect of a Consolidation, IDA will often need to obtain information (in addition to that provided with the Consolidation Application) from the Applicants and other parties regarding the conditions in the relevant markets. This Section describes the information gathering procedures that IDA will generally use in conducting a Consolidation Review.

### **6.1 Requests for Supplemental Information from Applicants**

Where necessary to assess the likely competitive impact of a Consolidation or where appropriate, pursuant to Sub-sections 10.3.6.8, 10.4.6.8 and 11.6 of the Code, IDA will request any of the Applicants to provide information in addition to that contained in their Consolidation Application.

#### **6.1.1 Requests for Response to Specific Questions**

IDA may submit written questions to any of the Applicants. Any Applicant that submits responses to such questions must provide responsive, accurate and complete written answers. At the time it submits its answers, each Applicant must submit a statement certifying that it has satisfied this obligation.

#### **6.1.2 Requests for Documents**

IDA may request any of the Applicants to produce specific documents or all documents that fall within a particular category. Each Applicant must make an effort in good faith to locate and produce all requested documents. At the time it submits the documents, each Applicant must submit a statement certifying that it has satisfied this obligation. The Applicant may either produce the original documents or certified true copies of such documents.

#### **6.1.3 Interviews**

IDA may request shareholders, officers or employees of any of the Applicants to participate in an interview. Following the interview, IDA may request the shareholder, officer or employee who participated in the interview to provide written answers to specific questions. Any shareholder, officer or employee of any Applicant that participates in an interview must provide responsive, accurate and complete information.

#### **6.1.4 Inspection Requests**

IDA may request any of the Applicants to allow it to physically inspect its accounts, documents, records, facilities or operations. IDA will generally provide at least 3 working days' advance notice to such Applicant.

### **6.1.5 Requests for Reconsideration**

An Applicant that believes that any information request by IDA is unnecessary or overly broad may submit a written request to IDA to reconsider or narrow the information request. The Applicant should submit the reconsideration request to IDA within 5 working days of receiving the information request. The reconsideration request should describe, in good faith and with specificity, the basis for the Applicant's objection and, where feasible, propose alternative means by which IDA can obtain the information necessary to assess the competitive impact of the proposed Consolidation. In any case in which an Applicant submits a reconsideration request, IDA will deem the Consolidation Review Period to be suspended on the day on which IDA initially submitted the information request. The Consolidation Review Period will resume either on the day on which IDA grants the reconsideration request or on the day on which the requested information is submitted to IDA.

### **6.1.6 Consequences for Failure to Comply With Information Requests**

An Applicant's failure to respond accurately and completely within a reasonable period of time can provide a basis for IDA to deny the Consolidation Application. In addition, if IDA concludes that a Licensee and/or Trustee-Manager/trustee has provided inaccurate, incomplete or misleading responses, documents or information, it may treat the action as a contravention of Sub-sections 10.3.6.8, 10.4.6.8 and/or 11.6 of the Code, and impose appropriate sanctions.

## **6.2 Procedures for Obtaining Information from Other Parties**

In some cases, IDA may find it useful to obtain information from suppliers, competitors or customers of any of the Applicants, as well as other interested parties.

There are several means by which IDA will do so including:

### **6.2.1 Public Consultations**

Where appropriate, IDA will provide the public with an opportunity to comment regarding a Consolidation. The procedures governing public consultations are contained in Sub-section 10.2 of these Guidelines.

### **6.2.2 Private Consultations**

In those cases in which IDA does not conduct a public consultation, it may nonetheless request for, or accept, comments from individual parties, as appropriate. IDA does not assume any obligation to consider unsolicited comments.

### **6.3 Co-operation with Foreign Government Authorities**

Where appropriate, and consistent with applicable international agreements, IDA will seek to co-operate with foreign government authorities or agencies in gathering relevant information.

### **6.4 Confidentiality**

While IDA is committed to conducting Consolidation Reviews in a transparent manner, IDA will take appropriate action to prevent the disclosure of commercially sensitive or proprietary information which has been submitted pursuant to Sub-section 10.3.6.8 or 10.4.6.8 and Sub-section 11.6 of the Code. Requests for confidential treatment are further addressed in Sub-section 11.7 of the Code.

## **7. ANALYTICAL FRAMEWORK**

IDA will not approve a Consolidation Application where IDA determines that the Consolidation is likely to substantially lessen competition in any telecommunication market within Singapore or harm public interest. In order to identify those Consolidations that are likely to “substantially lessen competition” in any Singapore telecommunication market, IDA will apply economic analysis to information regarding the Consolidation and the characteristics of the relevant telecommunication markets.

This Section describes the analytical framework that IDA will generally use. This framework distinguishes between Horizontal Consolidations and Non-horizontal Consolidations. (Some Consolidations may have both horizontal and non-horizontal aspects and where this occurs, IDA will assess each aspect of the Consolidation under the appropriate standard.) IDA may modify this framework in any given Consolidation Review, where necessary to better assess the likely competitive impact of the Consolidation.

### **7.1 General Approach**

#### **7.1.1 The “Substantial Lessening of Competition” Standard**

IDA will find that a Consolidation substantially lessens competition where the Consolidation would be likely either to: (a) result in a significant reduction in existing competition in the Singapore telecommunication market; or (b) significantly impede the development of future competition in the Singapore telecommunication market.

#### **7.1.2 Assessment of an Applicant’s Competitive Significance**

In assessing an Applicant’s share in a telecommunication market, or otherwise assessing the Applicant’s competitive role, where appropriate, IDA will aggregate the market share of the Applicant and any entity that has Effective Control over the Applicant, or over

which the Applicant has Effective Control, or which is subject to Effective Control by an entity that has Effective Control over the Applicant.

## **7.2 Horizontal Consolidations**

Horizontal Consolidations pose the greatest threat to competition. In carrying out its review, IDA will generally use the methodology described in Sub-sections 7.2.1 to 7.2.3 of these Guidelines.

### **7.2.1 Market Share Assessment**

The starting point for IDA's analysis of any proposed Horizontal Consolidation will be to determine the Applicants' shares in each telecommunication market within Singapore in which they both compete. To do so, IDA will determine the relevant service or product and geographic markets, and will then estimate the Applicants' market shares.

#### **7.2.1.1 Determining the Relevant Markets**

IDA will first determine the relevant telecommunication markets within Singapore in which the Applicants currently compete.

##### **7.2.1.1.1 Service or Product Markets**

The relevant market for a Service or product provided by an Applicant consists of both the specific Service or product provided by the Applicant and any additional Service or product that buyers regard as interchangeable with, or substitutes for, the Applicant's Service or product. To determine which Services or products are in the same service or product market as the Applicant's Services or products, IDA will consider all relevant information. This may include determining which other Services or products have a similar function, characteristic or potential customer base as the Applicant's Services or products. IDA may also consider which other services or products buyers would switch to if the prices charged by the Post-Consolidation Entity for the Services or products increase by a small but significant, non-transitory amount.

##### **7.2.1.1.2 Geographic Markets**

The relevant geographic market for a Service provided by an Applicant consists of the geographic area in which the Applicant (and other entities that provide substitutable Services) provides Services and any additional geographic locations from which buyers would obtain those services if prices increase by a small but significant, non-transitory amount. In general, the relevant market will consist of all locations within Singapore.

#### **7.2.1.2 Determining Market Participants**

For each telecommunication market within Singapore in which any of the Applicants compete, IDA will seek to identify all other entities that participate in that market.

IDA will include only those entities that currently provide Services or products that directly compete against, or are substitutes for, any of the Applicants' Services or products.

### **7.2.1.3 Determining Market Shares**

IDA will next determine the unit of measurement to be used to assess the participants' telecommunication market shares. This may include unit or volume sales, revenues, customer base or capacity. In determining which unit of measurement to use, IDA will consider both the availability of reliable information and the extent to which a given unit of measurement best reflects the actual competitive position of the market participants. Once IDA has determined the unit of measurement, it will assign a market share to each entity that currently participates in the telecommunication market. IDA will then determine the market share of the Post-Consolidation Entity.

### **7.2.2 Assessing the Risk of Anti-competitive Impact**

All things being equal, the larger the market share a Post-Consolidation Entity has, the greater its ability to act anti-competitively. However, determining the Post-Consolidation Entity's market share is only part of IDA's competitive analysis. IDA will consider market-specific factors that could increase or decrease the ability of the Post-Consolidation Entity to act anti-competitively. Some of these factors are described below:

#### **7.2.2.1 Factors Likely to Increase the Risk of Unilateral Anti-competitive Conduct**

IDA will consider the extent to which the structure of the relevant telecommunication market creates a heightened risk that, if the Consolidation Application is approved, the Post-Consolidation Entity will have Significant Market Power. Some relevant factors that IDA may consider include: (a) one of the Applicants is currently classified as a Dominant Licensee in a market in which the proposed Consolidation would increase concentration levels; (b) the Consolidation would result in the Post-Consolidation Entity having a market share in excess of 40% in any telecommunication market within Singapore; (c) prior to the Consolidation, the Applicants offered Services that consumers view as very close substitutes for one another; (d) there are no "strong customers" that would have the ability to resist any effort by the Post-Consolidation Entity to raise prices; or (e) current customers of any of the Applicants would face significant impediment in the event that, following the Consolidation, they sought to switch to alternate suppliers of Services.

#### **7.2.2.2 Factors Likely to Increase the Risk of Concerted Anti-competitive Action**

IDA will also consider the extent to which the structure of the relevant telecommunication market creates a heightened risk that, if the Consolidation Application is approved, competing market participants would be likely to enter into, and maintain, anti-competitive agreements. Some relevant factors that IDA may consider include

whether: (a) the market is a concentrated one, in which there are few other significant participants that offer consumers a competitive alternative; (b) information regarding individual telecommunication market participant's price and production decisions is publicly available; (c) there is a low degree of product differentiation; (d) telecommunication market participants typically follow standardised marketing or pricing practices; or (e) there are no "maverick" participants in the telecommunication market that tend to deviate from industry norms.

### **7.2.2.3 Elimination of a Significant Market Participant**

IDA will also consider whether any of the Applicants which has been a significant source of innovation or price competition, would be eliminated as an independent competitor as a result of the Consolidation.

### **7.2.3 Other Relevant Factors**

IDA will also consider other relevant factors that may indicate that a proposed Horizontal Consolidation would not be likely to substantially lessen competition. Some of these factors are described in Sub-sections 7.4 to 7.4.5 of these Guidelines.

## **7.3 Non-horizontal Consolidations**

As Non-horizontal Consolidations can often facilitate competition, IDA will generally seek to deny or condition its approval of such Consolidations only if IDA concludes, based on the evidence, that such Consolidations are likely to substantially lessen competition.

### **7.3.1 Determination of Significant Market Power and Market Concentration**

In assessing a proposed Non-horizontal Consolidation, IDA will first seek to determine whether any of the Applicants has Significant Market Power. For purposes of reviewing a proposed Non-horizontal Consolidation, IDA will make an initial presumption that an Applicant has Significant Market Power if: (a) it is a Dominant Licensee; (b) it enjoys government-granted exclusive rights (such as an exclusive right to provide a service) or has control over "bottleneck" facilities used to provide Services; or (c) it has more than a 40% share in any telecommunication market, wherever located, in which it operates; or (d) other relevant factors indicate that the Applicant has the ability to unilaterally restrict output, raise prices, reduce quality or otherwise act independently of its competitors. IDA will consider any reliable evidence that may rebut this presumption. In seeking to determine market share, or otherwise assess the impact on competition, IDA will use the basic market definition/market share approach described in Sub-sections 7.2.1 to 7.2.1.3 of these Guidelines.



### **7.3.2 Determining the Likelihood of Anti-competitive Effects**

In those cases in which IDA determines that any of the Applicants has Significant Market Power as described in Sub-section 7.3.1 of these Guidelines, IDA may consider market-specific factors that could increase the likelihood that the Consolidation would substantially lessen competition. Some of these factors are described below:

#### **7.3.2.1 Elimination of a Potential Future Competitor**

IDA will consider whether the Consolidation would be likely to prevent the development of effective competition in any telecommunication market by precluding the future entry of an effective competitor. This may occur where one of the Applicants currently has Significant Market Power in a telecommunication market, or participates in a concentrated telecommunication market, and the other Applicant(s) would be likely to enter that market and become a significant competitor. Such “entry preclusion” is especially likely where: (a) the Consolidation is a Vertical Consolidation; or (b) one of the Applicants is required, pursuant to its Licence, to enter another Applicant’s market within the foreseeable future.

#### **7.3.2.2 Foreclosure/Increased Need for Dual-Level Entry by Future Competitors**

In the case of a Vertical Consolidation, IDA will also consider whether the Consolidation would be likely to substantially lessen competition or prevent the development of effective competition in any telecommunication market by restricting the ability of competitors to obtain or access: (a) an “upstream” input necessary to provide a Service; or (b) a “downstream” facility necessary to deliver a Service to End Users. Such restrictions can increase competitors’ costs and, in extreme cases, require future entrants to simultaneously enter the “upstream” and “downstream” markets. A Vertical Consolidation is likely to result in foreclosure and/or create the need for “dual-level entry” where any of the Applicants has Significant Market Power and the Applicant: (a) controls an “upstream” input that is necessary for the “downstream” Applicant and its competitors to provide Services; or (b) controls “downstream” facilities that are necessary for the “upstream” Applicant and its competitors to deliver Services to End Users and, in either case, is not subject to (i) IDA’s jurisdiction; or (ii) an effective regulatory regime, administered by another government authority, requiring that Applicant to deal with the other Applicant’s competitors in a reasonable and non-discriminatory manner.

#### **7.3.2.3 Market Distortion**

IDA will also consider whether a Consolidation is likely to allow an Applicant with Significant Market Power to distort competition in another Applicant’s market. In making this determination, IDA will give careful consideration to the existence of any regulatory regime, whether administered by IDA or any other government authority, that could reduce the risk of such market distorting conduct. IDA may consult the relevant government authorities or regulatory agencies in making this determination.

## **7.4 Considerations Applicable to All Consolidations**

In the case of both Horizontal and Non-horizontal Consolidations, IDA will also consider additional factors that may indicate that the Consolidation would not be likely to substantially lessen competition. Some of these factors are described below:

### **7.4.1 Likelihood and Adequacy of New or Expanded Entry**

The ability of the Post-Consolidation Entity to reduce output or raise prices, either alone or in conjunction with other current market participants, in the Singapore telecommunication market will be limited if there are other entities that are likely to enter the market or expand existing production within a reasonably short period of time to the extent necessary to offset any reduction in output or increase in price. If IDA determines that timely and sufficient entry or expansion is likely, it will generally approve the Consolidation Application.

In seeking to make this determination, IDA will consider whether there has been a history of entry and expansion in the relevant telecommunication market and whether there are impediments to future entry or expansion. Such impediments may include: (a) technical factors (such as the need to use specialised or proprietary technology); (b) access factors (such as the need to obtain access to another entity's infrastructure in order to provide service or to achieve significant economies of scale and scope); (c) financial factors (such as the proportion of the Applicant's costs that are sunk and the scale of the sunk costs associated with the investments required to start up or expand a business); (d) commercial factors (such as high advertising and retail costs or high consumer switching costs); or (e) regulatory factors (such as limitations on the number of licences or on the entities eligible to obtain a licence). IDA will also seek to identify any entity that is committed to enter the market, or expand output, within the foreseeable future. This may include entities that are obligated, pursuant to the terms of the Licences granted by IDA, to do so. IDA will attempt to assess the extent to which such entities are likely to become significant participants in the market.

### **7.4.2 Efficiencies**

In a close case, in which a Consolidation may have some anti-competitive effect, IDA will generally approve the Consolidation Application if it concludes, with reasonable certainty, that: (a) the transaction will result in significant efficiencies, not the result of an anti-competitive reduction in output, that could not have been achieved absent the Consolidation; and (b) the Post-Consolidation Entity is likely to pass on a reasonable portion of these efficiencies to its customers. Given that most Non-horizontal Consolidations increase efficiency, and are less likely to restrict competition, IDA may place more weight on claimed efficiencies when reviewing a proposed Non-horizontal Consolidation than it will in reviewing a proposed Horizontal Consolidation. However, efficiencies rarely, if ever, are likely to provide a basis for IDA to approve a Consolidation that would result in the creation of an entity with a monopoly or near monopoly in the Singapore telecommunication market. IDA is likely to give greater

weight to efficiency claims in cases in which the Applicants commit to making specific price reductions following the Consolidation.

### **7.4.3 Failing Undertakings and Failing Divisions**

Finally, IDA will generally approve a Consolidation Application for a Consolidation that would otherwise be found to be likely to substantially lessen competition where any of the Applicants is a “Failing Undertaking” or seeking to divest a “Failing Division.”

#### **7.4.3.1 Failing Undertaking**

A Failing Undertaking is an entity that: (a) is unable to meet its near-term financial obligations; (b) is unlikely to be able to re-organise successfully through an insolvency proceeding; (c) cannot find any reasonable alternative purchaser of its assets; and (d) is likely to exit the telecommunication market, thereby removing its productive assets, absent the Consolidation. A purchaser will be deemed to be a reasonable alternative purchaser if it is willing to pay a commercially reasonable price for the entity even if that price is lower than the price that the Applicant was prepared to pay.

#### **7.4.3.2 Failing Division**

A Failing Division is a portion of an entity that: (a) viewed on its own, has a sustained negative cash flow; (b) cannot be sold, at a commercially reasonable price, to any other purchaser; and (c) is likely to exit the telecommunication market, thereby removing its productive assets, absent the Consolidation.

### **7.4.4 Other Relevant Factors**

In conducting any Consolidation Review, IDA will consider any other relevant factors, based on reliable information, that will enable it to assess the likely competitive impact of the Consolidation. This may include anticipated changes in the legal or regulatory environment, anticipated introduction of new services or technologies or changing consumption patterns.

### **7.4.5 Other Public Interest Considerations**

Notwithstanding the result of its analysis of the likely competitive impact of a Consolidation, IDA may approve a Consolidation Application, approve the Consolidation Application subject to Conditions or deny the Consolidation Application if IDA concludes that doing so will serve the public interest. In any case in which IDA does so, it will provide an explanation of the basis for its decision.

## **8. SPECIAL SITUATIONS**

This Section describes the way in which IDA will conduct its Consolidation Review in certain special situations.

### **8.1 Consolidations with Entities that have Significant Market Power in Markets Not Subject to IDA Regulation**

IDA recognises that, in some cases, a Consolidation may involve an Applicant that has Significant Market Power in a market that is not subject to IDA regulation, such as a foreign telecommunication operator that has exclusive or special rights in its home country, or a Singapore-based company that does not provide Services. In assessing whether the Consolidation is likely to substantially lessen competition, IDA will give full consideration to the ability of the non-licensed entity to use its market position in a manner that would substantially lessen competition in the telecommunication markets subject to IDA's jurisdiction. IDA will also consider the need for, and likely effectiveness of any Conditions, such as the imposition of structural separation or non-discrimination obligations.

## **9. DISPOSITION OF CONSOLIDATION APPLICATIONS**

This Section describes the three types of actions that IDA may take at the conclusion of a Consolidation Review.

### **9.1 Approval of the Consolidation Application**

IDA may approve the Consolidation Application in full, without Conditions.

### **9.2 Denial of the Consolidation Application**

IDA may deny the Consolidation Application.

### **9.3 Approval of the Consolidation Application Subject to Conditions**

IDA may approve the Consolidation Application, subject to the Applicants' agreement to Conditions designed to reduce any anti-competitive harm or effect. Conditions that IDA may impose include:

#### **9.3.1 Structural Conditions**

Structural conditions may involve the divestiture of certain operations of any of the Applicants, or of an entity over which an Applicant has Effective Control, or of an entity that has Effective Control over an Applicant, or of an entity that is subject to Effective Control by an entity that also has Effective Control over an Applicant.

Structural conditions can also include requirements that certain operations of the Post-Consolidation Entity be operated at arm's length from other operations.

### **9.3.1.1 Structural Separation**

As a Condition of its approval of the Consolidation Application, IDA may require the Applicants to agree that the Post-Consolidation Entity will conduct certain operations through a structurally separate entity. The separate entity may be required to have separate books of accounts, separate facilities, separate offices, separate personnel, separate credit lines, and other appropriate forms of separation. Structural separation is often appropriate in Vertical Consolidations in which one of the Applicants has Significant Market Power. Structural separation can allow the Post-Consolidation Entity to achieve certain integration efficiencies, while creating a “self-enforcing” means to reduce the Post-Consolidation Entity's ability and incentive to engage in, or benefit from, access discrimination and cross-subsidisation.

### **9.3.1.2 Voluntary Partial Divestiture of Assets to an Acceptable Purchaser**

In some cases, a Consolidation may be generally pro-competitive, but may raise a competitive concern in one telecommunication market. For example, Licensee One may participate in Telecommunication Market A, Telecommunication Market B and Telecommunication Market C. Licensee Two may participate in Telecommunication Market C, Telecommunication Market D and Telecommunication Market E. A Consolidation between the two Licensees is unlikely to have any adverse competitive impact on Telecommunication Markets A, B, D and E – but could result in creation of an entity with Significant Market Power in Telecommunication Market C. Sub-sections 10.3.6.7 and 10.4.6.7 of the Code provide that IDA will not approve a Consolidation Application for a Consolidation where IDA determines that the Consolidation is likely to substantially lessen competition in the Singapore telecommunication market. As a Condition of approval of the Consolidation Application, IDA may require any of the Applicants to agree that certain assets will be divested to a third party, in an arm's length transaction. In the previous example, requesting the Licensees to voluntarily divest some or all of their operations in Telecommunication Market C to a qualified buyer could allow the Consolidation of Licensee One and Two, while preserving competition in Telecommunication Market C.

#### **9.3.1.2.1 Minimum Requirements**

In order for a voluntary partial divestiture to constitute an adequate remedy, the Applicants must agree to the following provisions. First, the divestiture must involve the sale of sufficient assets to eliminate the risk that the Consolidation will create, preserve or increase the Post-Consolidation Entity's ability to substantially lessen competition. Second, the divestiture must be made to an entity that, in IDA's reasonable opinion, has the ability and incentive to operate the divested assets as a viable, competitive business.

#### **9.3.1.2.2 Timing and Procedures**

In those cases in which IDA requires the Applicants to agree to the voluntary partial divestiture of assets as a Condition of approval of the Consolidation Application, IDA will generally require the divestiture to be successfully completed within a specified period after the Consolidation date. This period typically will be no more than one year. IDA may condition approval on the Applicants' agreement that: (a) during the period between the Consolidation and the partial divestiture, the operations to be divested will be conducted on a structurally separate basis; and (b) if, at the conclusion of the specified period, the divestiture has not occurred, the Post-Consolidation Entity will appoint an independent consultant at its own expense, satisfactory to IDA, that will have authority to negotiate a sale of the assets.

#### **9.3.1.2.3 IDA's Right to Approve Proposed Purchaser**

In any case in which IDA approves the Consolidation Application subject to the Applicants agreeing to a voluntary partial divestiture, IDA may also reserve the right to approve the proposed buyer of the divested operations. IDA will not approve any proposed buyer that lacks the ability and incentive to operate the divested assets as a viable, competitive business. Rather, the Applicants will be required to demonstrate that the proposed buyer: (a) will operate the divested business independently of the Post-Consolidation Entity; and (b) has adequate experience and funding. In appropriate cases, IDA may require the Applicants to agree, as a Condition of IDA's approval, to appoint an independent consultant, to be funded by the Applicants, to prepare an analysis of the suitability of the proposed buyer. Where the acquisition of the divested Voting Shares/Units/Equity Interests or Voting Power in a Licensee, Designated Business Trust or Designated Trust would itself constitute a Consolidation, the party to which the divestiture is to be made must file a Consolidation Application.

### **9.3.2 Behavioural Safeguards**

Behavioural safeguards are conditions that govern the Post-Consolidation Entity's conduct. Limited behavioural safeguards may be appropriate where a Consolidation is generally pro-competitive, but raises specific competitive concerns that do not warrant either denial of the Consolidation Application or imposition of structural conditions. Examples are specified below:

#### **9.3.2.1 Non-discrimination Requirements**

As a Condition of its approval of the Consolidation Application, IDA may require the Applicants to agree that the Post-Consolidation Entity will either: (a) provide access to infrastructure, information or services to Licensees, other entities or End Users on a reasonable and non-discriminatory basis; or (b) reject any preferential access to infrastructure, information or services from an entity. IDA may also require the Applicants to agree that the Post-Consolidation Entity will contract for independent audits to confirm compliance or to periodically self-certify its compliance.

### **9.3.2.2 Accounting Separation**

As a Condition of its approval of the Consolidation Application, IDA may require the Applicants to agree that the Post-Consolidation Entity will account separately for revenues from operations that are subject to effective competition and operations that are not subject to effective competition, and to comply with rules governing allocation of joint costs and transactions between the competitive and noncompetitive operations, in order to deter cross-subsidisation. IDA may also require the Applicants to agree that the Post-Consolidation Entity will contract for independent audits to confirm compliance or to periodically self-certify its compliance.

### **9.3.2.3 Limitations on Joint Directors or Managers**

A Consolidation may result in the Post-Consolidation Entity having an ownership interest in two or more competing service providers. In this situation, as a Condition of its approval of the Consolidation Application, IDA may require the Applicants to agree that the Post-Consolidation Entity will not permit the same individual to hold a directorship, or serve in an executive management position, in the competing service providers.

### **9.3.2.4 Limitations on Information Sharing**

In a Consolidation that results in two or more competing service providers being under partial or total common ownership, as a Condition of its approval of the Consolidation Application, IDA may require the Applicants to agree that measures will be taken to ensure that the competing service providers neither provide nor receive non-public information from one another, whether directly or indirectly.

### **9.3.2.5 Termination or Modification of Restrictive Existing Agreements**

As a Condition of its approval of the Consolidation Application, IDA may require the Applicants to agree to the termination or modification of any existing agreement that, following the Consolidation, would be likely to substantially lessen competition. For example, IDA could require an Applicant to agree to terminate or modify existing agreements that: (a) impose early termination penalties on customers that seek to switch to rival providers; (b) require any customer to make all or a specified portion of its purchases of specific services from the Applicant; or (c) require any supplier to make all or a specified portion of its sales to the Applicant.

### **9.3.3 Other Pro-competitive Conditions**

IDA may require the Applicants to agree to other Conditions that are designed to increase competition. These include Conditions designed to increase entry into telecommunication markets that are not yet fully competitive.

#### **9.4 Notification by IDA**

IDA will notify the Applicants, in writing, as to whether their Consolidation Application has been approved, denied or approved subject to Conditions. In any case in which IDA denies or approves a Consolidation Application subject to Conditions, the notification will provide an explanation of the basis on which IDA took this action.

#### **9.5 Notification by Applicants of Acceptance or Rejection of Conditions**

In any case in which IDA approves a Consolidation Application subject to Conditions, the Applicants will have no fewer than 14 days from the date of IDA's decision to notify IDA as to whether they accept the Conditions or wish to withdraw their Consolidation Application.

#### **9.6 Sanctions for Post-Consolidation Failure of an Applicant to Comply with Conditions**

Any failure by an Applicant to comply with a Condition imposed by IDA, and accepted by the Applicants, will constitute a contravention of the Code and may result in IDA taking enforcement action.

### **10. TRANSPARENCY**

Public participation in the Consolidation Review process may assist IDA in developing a better understanding of market conditions and the likely competitive effect of a Consolidation. Therefore, IDA will provide notice and seek public comment where it deems appropriate. This Section describes the means by which IDA will provide notice and seek public comments as part of the Consolidation Review process.

#### **10.1 Public Notification at the Start of the Consolidation Review Period**

IDA will generally notify the public, by means of a notification posted on its website, of each complete Consolidation Application that has been submitted. Notification will be provided on the same date that IDA notifies the Applicants, pursuant to Subsection 3.4.1 of these Guidelines, that the Consolidation Application has been accepted for review.

#### **10.2 IDA's Solicitation of Public Comments**

Where appropriate, IDA will issue a consultation document, which will describe the Consolidation, indicate issues of particular concern, and invite the public to submit written comments. IDA is most likely to seek public comment in those cases in which: (a) a Consolidation Application is submitted using the Long Form Consolidation Application procedure; (b) a Consolidation raises novel or complex issues; (c) a Consolidation involves a Dominant Licensee or another significant market participant; (d) IDA requires additional facts about the telecommunication market conditions or the likely competitive



effect of the Consolidation; or (e) IDA would benefit from public input regarding possible Conditions.

In those cases in which IDA seeks public comment, it will release the non-confidential portions of the Statement or Abbreviated Statement submitted by the Applicants. IDA will generally provide between 7 and 15 days for public comments. Commenting parties should limit their submission to those issues that are directly relevant to the Consolidation Application. Commenting parties should clearly articulate the basis for their views regarding the likely competitive effect of the Consolidation, providing factual support to the extent that it is feasible to do so. Unsupported allegations about the Applicants' prior or likely future conduct are strongly discouraged. Commenting parties should provide a reasoned justification for any conditions that they propose.

IDA will consider all submissions to be public documents, and will make the submissions available on IDA's website. However, a commenting party may seek confidential treatment of specific information that is proprietary or commercially sensitive by submitting a separate confidential appendix, which may be referenced in the text of its comments. Commenting parties may only seek confidential treatment for information that is proprietary or commercially sensitive. IDA will not consider the submissions of any commenting party that seeks unreasonably broad confidential treatment.

IDA will consider all properly and timely submitted comments, submitted pursuant to a consultation document. IDA will generally address the significant points raised by the commenting parties in its decision regarding the Consolidation Application.

### **10.3 Publication of Decisions**

At the conclusion of the Consolidation Review, IDA will issue a decision describing the Consolidation, the action taken by IDA (including the imposition of any Conditions), and the rationale for IDA's actions. IDA will make the decision available on its website.

## **11. RECONSIDERATION OF OR APPEAL AGAINST IDA'S DECISION**

Any person that is aggrieved by a decision rendered by IDA in response to a Consolidation Application may seek reconsideration of IDA's decision, or may appeal to the Minister, pursuant to the procedures specified in Sub-section 11.9 of the Code.

## **PART IV – TENDER OFFER**

### **12. OBTAINING IDA’S WRITTEN APPROVAL FOR TENDER OFFER WHERE THE TAKE-OVER CODE APPLIES**

Part IV of these Guidelines applies to an acquisition of Voting Shares/Units/Equity Interests or Voting Power in a Licensee, Designated Business Trust or Designated Trust by an Acquiring Party in a situation where the Take-over Code is applicable<sup>1</sup>.

#### **12.1 Rule 14 of the Take-over Code: Mandatory Offer**

Rule 14 of the Take-over Code provides that, except with the Security Industry Council’s consent, an Acquiring Party must extend a mandatory offer to the Licensee, Designated Business Trust or Designated Trust if:

- (a) the Acquiring Party, together with parties acting in concert with it, acquire Voting Shares in the Licensee, Units in the Designated Business Trust or Equity Interests in the Designated Trust which carry 30% or more in the voting rights of the Licensee, Designated Business Trust or Designated Trust; or
- (b) the Acquiring Party and parties acting in concert with it hold not less than 30% but not more than 50% of the voting rights of the Licensee, Designated Business Trust or Designated Trust and acquire in any period of 6 months, additional Voting Shares in the Licensee, Units in the Designated Business Trust or Equity Interests in the Designated Trust carrying more than 1% of the voting rights in the Licensee, Designated Business Trust or Designated Trust.

#### **12.2 Rule 15 of the Take-over Code: Voluntary Offer**

Rule 15 of the Take-over Code provides for voluntary offers that will result in the Acquiring Party, together with parties acting in concert with it, holding more than 50% of the voting rights of the Licensee, Designated Business Trust or Designated Trust.

#### **12.3 Rule 16 of the Take-over Code: Partial Offer**

Rule 16 of the Take-over Code provides for partial offers made for Voting Shares in the Licensee, Units in the Designated Business Trust or Equity Interest in the Designated Trust that carry:

- (a) less than 30% of the voting rights of the Licensee, Designated Business Trust or Designated Trust; or

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<sup>1</sup> The Take-over Code applies to all Singapore-incorporated listed companies and other Singapore incorporated public companies with 50 or more shareholders and net tangible assets of S\$5 million or more.

- (b) not less than 30%, but not more than 50%, of the voting rights of the Licensee, Designated Business Trust or Designated Trust; or
- (c) more than 50% of the voting rights of the Licensee, Designated Business Trust or Designated Trust.

#### **12.4 Rule 22 of the Take-over Code: Offer Timetable**

Rule 22 of the Take-over Code sets out the applicable timelines relating to the making of an Offer under the Take-over Code.

### **13. PROCEDURES FOR SEEKING IDA'S WRITTEN APPROVAL**

The Acquiring Party shall observe the following procedures before making any initial public announcement of the Offer.

#### **13.1 Partial Offer of at least 12% but less than 30%**

Where an Acquiring Party intends to make a partial offer for the Voting Shares in a Licensee, Units in a Designated Business Trust or Equity Interests in a Designated Trust that will result in the Acquiring Party holding at least 12% but less than 30% of the voting rights of the Licensee, Designated Business Trust or Designated Trust, and such acquisition does not amount to a Consolidation, the following procedures apply:

- (a) the Acquiring Party shall concurrently:
  - (i) announce a pre-conditional offer (i.e., an announcement that a partial offer will be made and the Offer timetable under Rule 22 of the Take-over Code will apply only after IDA's written approval is obtained); and
  - (ii) notify the Licensee and Trustee-Manager/trustee that it proposes to acquire Voting Shares/Units/Equity Interests or Voting Power in the Licensee, Designated Business Trust or Designated Trust by a partial offer; and
- (b) the Licensee, Trustee-Manager/trustee and the Acquiring Party shall jointly submit a Request for approval to IDA and obtain IDA's written approval before the Acquiring Party makes the partial offer.

Please refer to Sub-sections 10.3.7.1 and 10.4.7.1 of the Code for the process applicable to the submission of the Request for approval to IDA.

### **13.2 Voluntary Offer or Partial Offer which amounts to Consolidation**

Where an Acquiring Party intends to make a voluntary offer or a partial offer for Voting Shares/Units/Equity Interests or Voting Power which amounts to a Consolidation (i.e., including an acquisition of Voting Shares/Units/Equity Interests or Voting Power which would result in the Acquiring Party holding at least 12% but less than 30% of the voting rights of the Licensee, Designated Business Trust or Designated Trust and being able to exercise Effective Control over the Licensee, Designated Business Trust or Designated Trust), the following procedures apply:

- (a) the Acquiring Party shall concurrently:
  - (i) announce a pre-conditional offer (an announcement that a voluntary or partial offer will be made and the Offer timetable under Rule 22 of the Take-over Code will apply only after IDA's written approval is obtained); and
  - (ii) notify the Licensee and Trustee-Manager/trustee that it proposes to acquire Voting Shares/Units/Equity Interests or Voting Power in the Licensee, Designated Business Trust or Designated Trust by a voluntary offer or partial offer (as the case may be) and that the acquisition amounts to a Consolidation; and
- (b) the Licensee, Trustee-Manager/trustee and the Acquiring Party shall jointly file a Consolidation Application with IDA and obtain IDA's written approval before the Acquiring Party makes the voluntary offer or partial offer (as the case may be).

Please refer to Sub-sections 10.3.7.2 and 10.4.7.2 of the Code for the process applicable to the filing of the Consolidation Application to IDA.

### **13.3 Mandatory Offer**

Where an Acquiring Party makes a mandatory offer under Rule 14 as a result of an acquisition of shares carrying the voting rights of a Licensee, Designated Business Trust or Designated Trust, the acquisition of such shares shall be conditional on the Acquiring Party, the Licensee and Trustee-Manager/trustee jointly filing a Consolidation Application with IDA and obtaining IDA's written approval. The acquisition of these shares may be by way of a conditional sale and purchase agreement which specifies the obtaining of IDA's written approval as a condition for completion of the transaction. Alternatively, the transaction may be structured as a put and call option agreement in respect of such shares where the put and/or call options can be exercised only after IDA's written approval is obtained.

#### **13.4 Compliance with Take-over Code**

In addition to complying with the requirements in Section 10 of the Code and as further explained in these Guidelines, the parties must ensure that they also comply with all the applicable requirements of the Take-over Code.

A copy of the Take-over Code is available at the website of the Monetary Authority of Singapore.

**ANNEX 1**

**LONG FORM CONSOLIDATION APPLICATION**

1. List the names and headquarter addresses of the Applicant subject to the Consolidation (*i.e.*, the Licensee, Designated Business Trust or Designated Trust in which the Voting Shares/Units/Equity Interests or Voting Power is being acquired or whose business is being acquired as a going concern). Indicate the names of the Applicants' primary contacts in connection with this Consolidation Application, designations and contact information (mailing address, telephone number, fax number, email address etc.).

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2. List each entity that constitutes an Affiliate of the Applicant identified in response to Question 1 based on the Applicant holding an attributable interest of 5% or more (Subsidiary). For each Affiliate, indicate the Affiliate's principal line of business and the Applicant's percentage Voting Shares/Units/Equity Interests or Voting Power.

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3. List each entity that constitutes an Affiliate of the Applicant identified in response to Question 1 based on the Affiliates holding an attributable interest of 5% or more in the Applicant (Parent). For each Affiliate, indicate the Affiliate's principal line of business and the entity's percentage Voting Shares/Units/Equity Interests or Voting Power in the Licensee, Designated Business Trust or Designated Trust. Also indicate any entity in which that Affiliate holds an attributable interest of 5% or more (Sibling). Indicate any situation in which any Affiliate has special or preferential rights in the Licensee, Designated Business Trust or Designated Trust.

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4. List the name and address of the Applicant (whether or not a current Licensee, Designated Business Trust or Designated Trust) that seeks to obtain Voting Shares/Units/Equity Interests or Voting Power in the Licensee, Designated Business Trust or Designated Trust or acquire the business of the Licensee as a going concern.

Indicate the name of the Applicant's primary contact in connection with this Consolidation Application and his or her designation and contact information (mailing address, telephone number, fax number, email address etc.).

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5. List each entity that constitutes an Affiliate of the Applicant identified in response to Question 4 based on the Applicant holding an attributable interest of 5% or more (Subsidiary). For each Affiliate, indicate the Affiliate's principal line of business and the Applicant's percentage Voting Shares/Units/Equity Interests or Voting Power.

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6. List each entity that constitutes an Affiliate of the Applicant identified in response to Question 4 based on the Affiliates holding an attributable interest of 5% or more in the Applicant (Parent). For each Affiliate, indicate the Affiliate's principal line of business and the entity's percentage Voting Shares/Units/Equity Interests or Voting Power in the Licensee, Designated Business Trust or Designated Trust. Also indicate any entity in which that Affiliate holds an attributable interest of 5% or more (Sibling). Indicate any situation in which any Affiliate has special or preferential rights in the Licensee, Designated Business Trust or Designated Trust.

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#### 7. Description of the Consolidation

Check each of the following that correctly describes the Consolidation:

- The Applicant identified in response to Question 4 is seeking to acquire, whether directly or indirectly, Voting Shares/Units/Equity Interests or Voting Power that would result in the Applicant holding Voting Shares/Units/Equity Interests or Voting Power of at least 12% in the Licensee, Designated Business Trust or Designated Trust identified in Response to Question 1.

Specify the percentage of Voting Shares/Units/Equity Interests or Voting Power sought to be acquired:

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\_\_\_ The Applicant identified in response to Question 4 is seeking to acquire the business of the Licensee, Designated Business Trust or Designated Trust as a going concern.

In answering Questions 8 through 10, please aggregate the market share of the Applicant and any entity that has Effective Control over the Applicant, or over which the Applicant has Effective Control, or which is subject to Effective Control by an entity that has Effective Control over the Applicant.

8. Using the methodology described in Sub-sections 7.2.1 to 7.2.1.3 of the Telecom Consolidation and Tender Offer Guidelines, identify each telecommunication market (including value-added services and equipment) within Singapore in which, based on your best estimate, any of the Applicants has a market share of 5% or more. For each such telecommunication market, indicate, based on your best available information, the estimated market share of the 5 largest telecommunication market participants (based on revenue, customers, or other appropriate measurement).

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9. Identify any additional telecommunication market, wherever located, in which any of the Applicants has a market share in excess of 25%.

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\_\_\_\_\_  
\_\_\_\_\_

10. Does the Consolidation satisfy either of the following criteria? (Y/N)

\_\_\_ The Consolidation is a Horizontal Consolidation that will result in a Post-Consolidation Entity with more than a 15% market share in at least one telecommunication market within Singapore.

\_\_\_ The Consolidation is a Non-horizontal Consolidation in which at least one Applicant has more than a 25% market share in at least one telecommunication market, whether or not located in Singapore.



11. Do you wish to propose any Conditions to address possible competitive concerns arising from the Consolidation?

\_\_\_ (Y/N)

If yes, please attach a separate statement describing the proposed Conditions and the means by which they will address any possible competitive concerns.

12. Minimum Required Information

Check if you have attached each item listed below; mark N/A (not applicable) where, to the best of your knowledge, no documents meeting the description exist:

\_\_\_ Consolidation Agreement

\_\_\_ Ancillary Agreements

\_\_\_ Statement

\_\_\_ Current annual report or financial statement for each Applicant

\_\_\_ Business plans for each Applicant for the current and immediately previous years

\_\_\_ All reports, studies or analyses prepared for the shareholders, directors, or executive officers of each Applicant for the purposes of assessing the Consolidation and the proposed operation of the Post-Consolidation Entity

\_\_\_ Trust Deed (where relevant)

\_\_\_ Chart indicating each of the Applicant's Associates and Affiliates and the relevant ownership interests, including any preferential or special rights

\_\_\_ Information about any situation in which the Voting Shares/Units/Equity Interests grant the holder thereof a special or preferential right, and any pending change in the ownership structure of any of the Applicants in addition to the change that is the subject of this application

\_\_\_ Information on any anticipated significant changes in management or operations of the Licensee/Designated Business Trust/Designated Trust

\_\_\_ Consolidation Application Processing Fee (Applicants should make payment to IDA of the sum of S\$10,000 by way of money orders, postal orders, banker's orders, Interbank GIRO, cheques or telegraphic transfer for the amount of S\$10,000. All bank charges associated with such modes of payment shall be borne by the Applicants.

Note: IDA will not process this Consolidation Application unless the Applicants have either provided all required information or have obtained an exemption from IDA in respect of the provision of certain information. (Applicants that have obtained an exemption should attach a copy of the exemption to this Consolidation Application.) IDA reserves the right to request the Applicants to provide additional information, where necessary to assess adequately the competitive impact of the Consolidation.

13. Confidentiality

Have you indicated all material submitted as part of this Consolidation Application that contains information for which you are requesting confidential treatment and the basis on which such treatment is requested?

\_\_\_ (Y/N)

Note: Requests to treat all information as confidential are not acceptable.

14. Certification

The undersigned hereby certify that they have made a diligent effort to fully complete this Consolidation Application and that, to the best of their knowledge, all information contained in this Consolidation Application form and the attachments thereto are current, accurate and complete. The undersigned further certify that they will promptly, fully and accurately respond to any IDA request for supplemental information and that, even in the absence of a request, they will promptly notify IDA of any new or different fact that is reasonably likely to have a material impact on IDA's consideration of this Consolidation Application.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

Name:  
Title:  
Company:

Name:  
Title:  
Company:

Date Submitted: \_\_\_\_\_

Note: All terms used but not otherwise defined in this application form shall bear the same meanings as defined in the Telecom Consolidation and Tender Offer Guidelines.

**ANNEX 2**

**SHORT FORM CONSOLIDATION APPLICATION**

1. List the names and headquarter addresses of the Applicants subject to the Consolidation (*i.e.*, the Licensee in which the Voting Shares/Units/Equity Interests or Voting Power is being acquired or whose business is being acquired as a going concern). Indicate the names of the Applicants' primary contacts in connection with this Consolidation Application, designations and contact information (mailing address, telephone number, fax number, email address etc.).

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2. List each entity that constitutes an Affiliate of the Applicant identified in response to Question 1 based on the Applicant holding an attributable interest of 5% or more (Subsidiary). For each Affiliate, indicate the Affiliate's principal line of business and the Applicant's percentage Voting Shares/Units/Equity Interests or Voting Power.

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3. List each entity that constitutes an Affiliate of the Applicant identified in response to Question 1 based on the Affiliates holding an attributable interest of 5% or more in the Applicant (Parent). For each Affiliate, indicate the Affiliate's principal line of business and the entity's percentage Voting Shares/Units/Equity Interests or Voting Power in the Licensee, Designated Business Trust or Designated Trust. Also indicate any entity in which that Affiliate holds an attributable interest of 5% or more (Sibling). Indicate any situation in which any Affiliate has special or preferential rights in the Licensee, Designated Business Trust or Designated Trust.

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4. List the name and address of the Applicant (whether or not a current Licensee, Designated Business Trust or Designated Trust) that seeks to obtain Voting Shares/Units/Equity Interests or Voting Power in the Licensee, Designated Business Trust or Designated Trust or acquire the business of the Licensee, Designated Business Trust or Designated Trust as a going concern. Indicate the name of the Applicant's primary contact in connection with this Consolidation Application and his or her

designation and contact information (mailing address, telephone number, fax number, email address etc.).

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5. List each entity that constitutes an Affiliate of the Applicant identified in response to Question 4 based on the Applicant holding an attributable interest of 5% or more (Subsidiary). For each Affiliate, indicate the Affiliate's principal line of business and the Applicant's percentage Voting Shares/Units/Equity Interests or Voting Power.

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6. List each entity that constitutes an Affiliate of the Applicant identified in response to Question 4 based on the Affiliates holding an attributable interest of 5% or more in the Applicant (Parent). For each Affiliate, indicate the Affiliate's principal line of business and the entity's percentage Voting Shares/Units/Equity Interests or Voting Power in the Licensee, Designated Business Trust or Designated Trust. Also indicate any entity in which that Affiliate holds an attributable interest of 5% or more (Sibling). Indicate any situation in which any Affiliate has special or preferential rights in the Licensee, Designated Business Trust or Designated Trust.

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#### 7. Description of the Consolidation

Check each of the following that correctly describes the Consolidation:

The Applicant identified in response to Question 4 is seeking to acquire, whether directly or indirectly, Voting Shares/Units/Equity Interests or Voting Power that would result in the Applicant holding Voting Shares/Units/Equity Interests or Voting Power of at least 12% in the Licensee, Designated Business Trust or Designated Trust identified in Response to Question 1.

Specify the percentage of Voting Shares/Units/Equity Interests or Voting Power sought to be acquired:

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\_\_\_ The Applicant identified in response to Question 4 is seeking to acquire the business of the Licensee, Designated Business Trust or Designated Trust as a going concern.

In answering Questions 8 through 10, please also aggregate the market share of the Applicant and any entity that has Effective Control over the Applicant, or over which the Applicant has Effective Control, or which is subject to Effective Control by an entity that has Effective Control over the Applicant.

8. Using the methodology described in Sub-sections 7.2.1 to 7.2.1.3 of the Telecom Consolidation and Tender Offer Guidelines, identify each telecommunication market (including value-added services and equipment) within Singapore in which, based on your best estimate, any of the Applicants has a market share of 5% or more. For each such telecommunication market, indicate, based on your best available information, the estimated market share of the 5 largest telecommunication market participants (based on revenue, customers, or other appropriate measurement).

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9. Does the Consolidation satisfy either of the following criteria? (Y/N)

\_\_\_ The Consolidation is a Horizontal Consolidation that will result in a Post-Consolidation Entity with more than a 15% market share in any telecommunication market within Singapore. If yes, please use the Long Form Consolidation Application.

\_\_\_ The Consolidation is a Non-horizontal Consolidation in which at least one Applicant has more than a 25% market share in at least one telecommunication market, whether or not located in Singapore. If yes, please use the Long Form Consolidation Application.

10. Minimum Required Information

Check if you have attached each item listed below:

\_\_\_ Abbreviated Statement

\_\_\_ Consolidation Application Processing Fee (Applicants should make payment to IDA of the sum of S\$2,500 by way of money orders, postal orders, banker's orders, Interbank GIRO, cheques or telegraphic transfer. All bank charges associated with such payment shall be borne by the Applicants.

Note: IDA will not process this Consolidation Application unless the Applicants have either provided all required information or have obtained an exemption from IDA in

respect of the provision of certain information. (Applicants that have obtained an exemption should attach a copy of the exemption to this Consolidation Application.) IDA reserves the right to request the Applicants to provide additional information, where necessary to assess adequately the competitive impact of the Consolidation.

### 11. Confidentiality

Have you indicated all material submitted as part of this Consolidation Application that contains information for which you are requesting confidential treatment and the basis on which such treatment is requested?

\_\_\_ (Y/N)

Note: Requests to treat all information as confidential are not acceptable.

### 12. Certification

The undersigned hereby certify that they have made a diligent effort to fully complete this Consolidation Application and that, to the best of their knowledge, all information contained in this Consolidation Application form and the attachments thereto are current, accurate and complete. The undersigned further certify that they will promptly, fully and accurately respond to any IDA request for supplemental information and that, even in the absence of a request, they will promptly notify IDA of any new or different fact that is reasonably likely to have a material impact on IDA's consideration of this Consolidation Application.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

Name:  
Title:  
Company:

Name:  
Title:  
Company:

Date Submitted: \_\_\_\_\_

Note: All terms used but not otherwise defined in this application form shall bear the same meanings as defined in the Telecom Consolidation and Tender Offer Guidelines.