



**Submission to the IMDA on**  
**A Converged Competition Code for the Media**  
**and Telecommunications Markets**

**by the**  
**Asia Pacific Carriers' Coalition**  
(Incorporated in the Republic of Singapore)

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**Asia Pacific Carriers' Coalition**  
**c/o Rajah & Tann Singapore LLP**  
9 Battery Road #25-01 Singapore 049910  
T: +65 6535 3600  
F: +65 6225 0747  
Email: [secretary@asiapacificcarriers.org](mailto:secretary@asiapacificcarriers.org)

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## SUMMARY OF MAJOR POINTS

The APCC is pleased to have the opportunity to comment on the IMDA's proposals in respect of a Converged Competition Code for the telecommunications and media industries. The APCC welcomes the IMDA's initial consideration of the regulatory implications of macro trends connected with digitalisation and supports a continuing focus on this challenging subject.

The APCC appreciates IMDA for conducting a multi-stakeholder consultation process in the development of this important legislation in its efforts to promote competition, enhance consumer protection and improve regulatory clarity to incentivize the development of new and innovative services, through the development of the proposed Converged Code. While we applaud the objective to ensure a consistent regulatory framework is applied the market, we respectfully offer our recommendations to ensure that the Converged Code effectively achieves these aims, particularly in the important provisions concerning differentiated offerings of enterprise vs consumer services and competition in the digital economy.

The Consultation Paper is largely devoted (in Parts II to XI) to aligning the provisions of the Telecommunications Competition Code and those of the Media Market Conduct Code. The APCC sees merit in this and broadly supports the development of the proposed Converged Code, subject to the preservation of distinct rules for telecommunications and media where that is justified by the different characteristics or requirements of those industries.

The Consultation Paper also includes some initial consideration (in Part XII and Annex A) of the regulatory implications of macro trends connected with digitalisation. The APCC supports the IMDA's focus on this challenging area and submits that this should be the subject of continuing attention.

The APCC notes several areas in which further work will be required, including in relation to OTT services, any access obligation on SBOs, replacement of SS7 by IP interconnection, and future digital economy regulation.

## STATEMENT OF INTEREST

The Asia Pacific Carriers' Coalition (**APCC**) is an industry association of global and regional telecommunications carriers operating in the Asia Pacific region, formed to work with governments, National Regulatory Authorities and users, to advocate open market policies and best practice regulatory frameworks to promote competition and efficient investment in telecommunications markets.

The APCC does not request confidential treatment of any part of this Submission.

## COMMENTS ON CONSULTATION PAPER

The APCC is grateful for the opportunity to provide its comments (**Submission**) to the IMDA's public consultation on "A Converged Competition Code for the Media and Telecommunications Markets" (**Consultation Paper**).

The following comments respond to each chapter of the Consultation Paper, in turn. (Paragraph numbers refer to the Consultation Paper.)

### Comments on Part II: Market Overview and Convergence

- 2.20:** The APCC agrees that "...current Dominant Licensee obligations on Singtel's fixed-line telephony services will continue to be relevant." Notwithstanding technical and market developments, Singtel remains very much the dominant operator in Singapore and its Dominant Licensee obligations remain essential to a competitive fixed-line telephony marketplace. Therefore there is a need for periodic review and regulatory oversight to ensure the market remains competitive.
- 2.26:** The APCC supports the IMDA's view that the International Business Connectivity Markets (for International Private Leased Circuits (**IPLC**) and International Managed Data Services (**IMDS**)) are sufficiently competitive that the current regulatory approach can be maintained, whereby *ex ante* dominant licensee obligations are not applied in these markets. We submit, however, that IMDA should review the regulatory and compliance reporting obligations for Facility Based Operators to ensure the framework remains remain "light touch" and does not stifle innovation and investment by imposing unnecessary compliance costs on operators. This is especially relevant for service providers catering to enterprise customers, as opposed to consumer customers who have different product requirements and therefore different reporting requirements.
- 2.32:** The APCC supports the IMDA's desire to prepare for the "fundamental shift in competitive dynamics in the next few years brought about by the macro trends that are affecting the telecommunications and media industries" but has reservations as to whether the proposals described in Parts III to XI of the Consultation Paper should be regarded as "prepar[ing] for the shift". The proposals represent, for the most part, a workable approach to the consolidation of the TCC and the MMCC. That appears a practical step. Attuning regulation to the fundamental shifts brought about by macro trends is a larger and considerably more challenging undertaking, in the APCC's view. The APCC welcomes the IMDA's recognition that fundamental shifts in competitive dynamics are occurring, and welcomes the IMDA's initial thoughts on those matters, but submits that a larger project with more extensive consultation will be required to make progress toward a next generation of regulation.

### Comments on Part III: Regulatory Principles

- 3.2:** The Consultation Paper proposes to “harmonize the regulatory principles of the TCC and MMCC by merging” most provisions, “given that they are substantively similar in effect.” The APCC has no objection to this approach. It is desirable, in the APCC’s view, that the underlying principles on which the regulator acts should be consistent across both industries, though there are areas in which regulatory practice must necessarily differ between the different industries.
- 3.3:** The APCC fully supports the proposition that “IMDA will continue to rely on market forces, private negotiations and industry self-regulation, to the extent possible, before exercising IMDA’s regulatory powers in instances of market failures.” This is an internationally proven and accepted principle of modern regulation and should, the APCC submits, be a cornerstone of a forward-looking regulatory philosophy.
- 3.6:** The APCC is not opposed to the proposal “...to ensure that the principle of Technology Neutrality is maintained...” but notes that this “principle” has seldom, if ever, provided genuine guidance to regulatory decision-making. This is demonstrated by the IMDA’s own qualification that: “[t]hat said ... the application of this principle may result initially in the imposition of different regulatory obligations on service providers that use different platforms.” The phenomenon of “convergence” has not proved to be so strong that regulation can truly be “neutral” between technologies. The APCC submits that it would be better if IMDA were to unpack the stock phrase “technology neutrality” and explain the circumstances in which different technologies should be treated alike and the circumstances in which similar technologies should be treated differently.
- 3.7-10:** The APCC strongly endorses the IMDA’s commitments to be “be open, transparent and reasoned” in its decisions; to make decisions and issue directions within specified timeframes; “to treat similarly situated licensees and persons on an equivalent basis”; and to consult with other regulatory authorities.

### Comments on Part IV: Dominance Classification and Duties

- 4.11:** The APCC does not support the proposed increase in the market share threshold for a presumption of significant market power (**SMP**) in telecommunications from 40% to 50%. The Consultation Paper does not establish grounds for the change and does not assess the impact such a change would have had in the context of other SMP decisions. While it might be convenient to adopt a compromise SMP threshold of 50% as a mid-point between the current telecommunications threshold of 40% and the media threshold of 60%, that should not be done unless supported by analysis that shows the new threshold would operate in both industries as a genuine indicator for the existence of SMP. It might well be that different thresholds should continue to apply in each industry, in light of the different purposes that an SMP assessment serves in each of them. In the APCC’s submission, the market share threshold for a presumption of significant market power (**SMP**) in telecommunications should remain at 40%.

unless and until there is evidence that a different threshold would provide a more reliable indication of SMP.

- 4.13: The APCC supports the extension to telecommunications of the market-by-market approach to dominance classification, provided that existing Dominant Licensees remain so classified until they prove their non-dominance in specific markets.
- 4.22: The APCC agrees that Dominant Entities must continue to be subject to additional regulatory requirements, including specific duties imposed on an *ex ante* basis.
- 4.37: The APCC supports the proposal "...to modify the current tariff-filing review regime imposed on Dominant Licensees to focus more on wholesale and resale tariffs offered to other telecommunications licensees, and less on retail tariffs offered to End Users."
- 4.42: The APCC agrees with the IMDA that "...there continues to be a need to monitor the wholesale and resale tariffs provided by Dominant Licensees..." as they operate facilities that are sufficiently costly or difficult to replicate by other licenses. This will ensure non-discriminatory and equal access to bottleneck facilities, promoting healthy competition in the market.

#### Comments on Part V: Anti-Competitive Conduct

- 5.2: The APCC has no objection to "merging provisions that are substantively similar in effect and drafting" but cautions that "competition" rules in the media industry have traditionally been associated with some non-efficiency goals, such as media plurality. Some divergence in rules may therefore continue to be appropriate.
- 5.7: The APCC questions the mingling of the concepts of "dominance" and "substantial market power", e.g. in TCC subsection 8.2. The APCC submits it is unhelpful to employ mixed terminologies in this way: the relevant threshold should either be dominance or SMP and the two should not be conflated.
- 5.13: In relation to "discrimination," the APCC does not support applying to media the "effects" test from the TCC. Rather, the MMCC test of discrimination "without objective justification" should be applied to telecommunications. In this setting, the conduct itself should constitute the infringement, without the need to prove the "effects" it leads to, which are likely to manifest only *when harm is actually caused* to affected operators, end-users and the market.
- 5.21: The APCC considers that "...limit[ing] the application of the provision prohibiting predatory pricing only to telecommunications licensees and RPs who have SMP" would be consistent with economic doctrine and supports this proposal.

- 5.24:** The APCC supports the proposal to apply the Average Incremental Cost standard to predatory pricing assessments but submits that “the flexibility to consider other cost standards” will result in uncertainty for licensees unless the IMDA also states the circumstances in which it will depart from AIC and the alternative standard(s) that it will then apply.
- 5.30:** The proposal to prohibit “unreasonable bundling” might have merit but the APCC submits that the proposal has not been sufficiently explained in the Consultation Paper. For meaningful consultation to occur, the APCC submits that the elements of the proposed infringement must be properly articulated, with hypotheticals to illustrate its intended operation.
- 5.38:** The APCC supports adopting the test of “object or effect” for anti-competitive agreements in the proposed Converged Code.
- 5.43:** The APCC supports extension of the access foreclosure rule to the telecommunications industry.

#### **Comments on Part VI: Consumer Protection**

- 6.6:** The APCC supports the proposed exclusion of Resellers from being protected under the Consumer Protection Provisions of the Converged Code.

The APCC supports the proposed application of certain of the Consumer Protection Provisions in the proposed Converged Code to both residential and business End Users, provided that “business” End Users are defined to limit that class to small and micro-enterprises or small and medium-sized enterprises. The APCC does not consider that any useful purpose would be served by extending consumer safeguards to large businesses.

The APCC submits that the potential application of Consumer Protection Provisions to OTT services should be the subject of further consultation.

- 6.8:** The APCC supports the IMDA's proposal to "retain its light-touch approach to the OTT media landscape", which will provide flexibility for OTT providers to innovate and compete to the benefit of consumers. In particular, the APCC recommends that existing telecommunications regulations should be reviewed to remove unnecessary barriers to innovation in service offerings, by simplification of regulation and a light-touch framework to innovate and compete to the benefit of the consumers.
- 6.48:** The APCC does not support the extension of the prohibition on mid-contract detrimental changes, beyond the Key Telecommunications Licensees to all Licensees.



The IMDA has not established that such conduct has ever been engaged in by licensees other than Key Telecommunications Licensees. The APCC submits that the competitive market adequately disciplines non-Key Telecommunications Licensees from engaging in such conduct.

- 6.60:** The APCC supports the proposal to remove the current TCC service quality information disclosure requirements.

### **Comments on Part VII: Mergers and Acquisitions**

- 7.15:** The APCC supports increasing the “Long Form” threshold from 15% to 30% for the telecommunications industry.

### **Comments on Part VIII: Resource Sharing**

- 8.10:** The APCC does not agree that “the sharing of infrastructure by SBOs may also be essential for public interest.” The Singaporean framework for regulation of the telecommunications industry is premised on a fundamental distinction between facilities-based and services-based operators. The APCC submits that the potential application of sharing obligations is an important consideration in operators’ decisions as to how they will participate in the market. To extend the Resource Sharing Provisions to SBOs would entail a fundamental change in the ground-rules upon which many existing businesses have based their investment and operational decisions. Such a proposal for fundamental change is not supported by evidence or analysis. The APCC submits that the line between SBO and FBO rights and obligations must not be moved without thorough investigation, consultation, and consideration of the impacts it would have on investment and operations in Singapore.

### **Comments on Part IX: Public Interest Obligations**

- 9.1:** The APCC has no objection to retaining Public Interest Obligations specific to the media industry only, under the proposed Converged Code.

### **Comments on Part X: Telecommunications Interconnection**

- 10.7:** The APCC has no objection to removal of the “Services With No Takeup” from the Schedule of IRS and MWS.

- 10.13:** The APCC agrees with IMDA that “...mandating a Dominant Licensee to offer physical and logical interconnection continues to be critical for the purpose of any-to-any connectivity...”. Mandated interconnection is essential to ensure equal access to

bottleneck facilities, on a competitive basis. With the migration of legacy networks to IP based networks, the APCC submits that the IMDA should consider policy and regulation to ensure that essential support services and network services are offered on a competitive basis also.

- 10.24:** The APCC agrees that “regulation of the [origination, transit and termination] O/T/T services is still necessary”, including price regulation on the dominant licensee, through its reference interconnect offer (RIO). IMDA might also consider a periodic review of the associated cost related to offering services such as the Fixed Number Portability (FNP) charge paid by operators, to ensure they remain competitive and cost oriented.
- 10.31:** The APCC agrees with IMDA that “...a Dominant Licensee should continue to offer [Essential Support Facilities] in its reference interconnection offer to facilitate entry and competition by entrants whilst encouraging infrastructure investment.” Regulated access to co-location and lead-in ducts and manholes is fundamental to entry, efficient investment decisions, and facilities-based competition in Singapore, the APCC submits.
- 10.35:** The APCC agrees that Dominant Licensees should continue to be required to provide connection services as an IRS. The APCC further submits that the IMDA should consider reviewing the existing regulatory framework to allow recovery of costs incurred by a FBO to implement a diversion at the request of a third party. Such diversion works are labour-intensive and entail significant cost being incurred by the FBO, which should be borne by the requester to ensure fairness, transparency and allocation of costs where they properly lie.
- 10.43:** The APCC agrees that “...it is timely to consider interconnection at the IP-level to be the new default, replacing the existing SS7 signalling” but that consideration of this change should be undertaken separately from the present consultation, involving as it does complex technical issues that have commercial implications. The APCC further submits that, in light of the migration of legacy networks to IP based networks, the IMDA should consider policy to ensure essential support services and network services are offered on a competitive basis.
- 10.54:** The Consultation Paper indicates that “IMDA is of the view that having one default pricing methodology may not suffice for all instances where price determination is required.” The APCC accepts the logic of this proposition but is concerned that having alternative pricing methodologies available to select between may be prone to undermine certainty and regulatory predictability. The APCC considers that having two or more pricing methodologies will only be appropriate where the criteria determining which methodology will apply are clear and specific and set in advance of any pricing proceeding. Para 10.54 makes an initial effort in this direction. The APCC submits that the criteria must be set out in detail; the IMDA must adhere to procedural justice in

respect of the initial issue of determination of methodology; and the IMDA must bear the onus of justifying its choice of methodology.

### **Comments on Part XI: Administrative and Enforcement Procedures**

**11.10:** The APCC supports the proposal to extend the "informal guidance" provisions of the MMCC to apply to the telecommunications industry.

**11.12:** The APCC supports the proposal to remove IMDA's power to require structural separation of a Regulated Person and to vest that power in the Minister instead. The APCC submits that the Minister should only be able to exercise such power if doing so is in the public interest; existing and available regulatory measures are insufficient to promote competition; and the IMDA has inquired into and reported in favour of structural separation.

### **Comments on Part XII: Competition in a Digital Economy**

**12.3:** The APCC strongly agrees that "digitalisation will alter market dynamics and change business models" affecting how businesses compete, which "may in turn call for updates to competition policy". The APCC welcomes the IMDA's efforts to make a start on identifying the nature of the "macro trends" and their possible implications for regulation. This is an important but difficult task. The APCC considers it important to embark on this work but suggests that Part XII makes only an initial foray into this complicated area. As such, it sits uneasily with the proposals for consolidation of the TCC with the MMCC. It does not yield conclusions firm enough to inform new rules under the proposed Converged Code, and should not be expected to do so.

The APCC has, like the IMDA, made some initial efforts to consider the implications of digitalisation for future regulation.<sup>1</sup> We support the continuation of those efforts by the IMDA. The APCC submits that the IMDA should clarify that Part XII represents only the beginning of a continuing undertaking rather than an exercise completed for the purposes of the proposed Converged Code.

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<sup>1</sup> See, e.g., Asia Pacific Carriers' Coalition and Asia Cloud Computing Association "Report on Cloud Data Regulations: A contribution on how to reduce the compliancy costs of Cross-Border Data Transfers" (2014).

## **CONCLUSION**

The APCC broadly supports the development of the proposed Converged Code, subject to the preservation of distinct rules for telecommunications and media where that is justified by the different characteristics or requirements of those industries. For example, consumer services have different characteristics and requirements when compared with enterprise services, hence a “one size fits all” approach is unlikely to be beneficial for healthy competition and consumer interests.

The APCC welcomes the IMDA’s initial consideration of the regulatory implications of macro trends connected with digitalisation and supports a continuing focus on this challenging subject.

In the interests of accessibility, the APCC has endeavoured to keep this Submission brief. The APCC would be pleased to provide more detailed comments or to engage further with the IMDA on the issues raised in this Submission.

**Respectfully submitted by:**

**ASIA PACIFIC CARRIERS’ COALITION**