



SUBMISSION FOR THE CONSULTATION PAPER

ON

**A CONVERGED COMPETITION CODE FOR THE MEDIA AND
TELECOMMUNICATION MARKETS**

To:

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Liberty Wireless Pte. Ltd. (“LW”) / Circles.Life (“CL”) thanks the IMDA for inviting us to comment on the proposed Converged Code.

For brevity, we have quoted specific questions we wish to respond to; CL has no views at this time on the questions omitted.

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1. SUMMARY OF MAJOR POINTS

PART II: MARKET OVERVIEW & CONVERGENCE

- 1.1. CL welcomes the future of competition in our industry, and looks forward to the Converged Code as a timely opportunity to safeguard and promote innovative, vibrant markets for the ultimate benefit of End Users.
- 1.2. In addition to the macro trends driving the future state of competition in the industry, CL believes it is critical that the Converged Code considers the significant changes that have occurred in the local telecommunication market since the original drafting of the TCC.

PART III: REGULATORY PRINCIPLES

- 1.3. CL agrees that the regulatory principles in the TCC and MMCC should be harmonised. We emphasise the importance of promoting effective and sustainable competition, and non-discriminatory network access (on the levels of price and other dimensions), and look forward to further clarity for all industry players on when IMDA would see itself intervening in the interest of the public to be necessary.
- 1.4. CL is of the view that regulatory intervention in the form of mandated MVNO access to 5G spectrum is necessary to facilitate services-based competition, and elaborates further under Part X of our response.
- 1.5. CL also strongly asserts that IMDA should consider extending the fixed broadband NBN model to mobile networks to provide mandated and regulated wholesale mobile wireless access on a fair, reasonable and non-discriminatory basis on a cost-plus model, to ensure equal access to wholesale mobile services, and promote competition. We hold that this would be particularly critical for realising consumer benefits with the impending 5G network rollout.

PART IV: DOMINANCE CLASSIFICATION AND DUTIES OF DOMINANT ENTITIES

- 1.6. CL accepts the approach proposed by IMDA toward the determination of Dominant Entities.
- 1.7. While CL agrees that the proposed quantitative threshold may be appropriate for the initial presumption of SMP, we believe that additional clarity is required on how SMP will be evaluated and determined—both in the context of classifying an entity as a dominant one, and in the context of establishing an Abuse of a Dominant Position.
- 1.8. On the ‘market-by-market’ determination of dominance for telecommunication licensees in respect of new markets, CL highlights that there is a potential for Dominant Licensees to leverage their dominance or SMP in existing markets to obtain a competitive advantage in new markets.
- 1.9. Accordingly, we reiterate that establishing a clearer set of criteria on determining SMP is ultimately key to evaluating the risk of an Abuse of a Dominant Position (by Dominant or Non-Dominant Entities alike) in each market effectively.
- 1.10. CL agrees with the duties that should apply to Dominant Entities in the telecommunication industry. As put forth earlier, we emphasise that the application of these duties hinges heavily on the clarity with what will be considered by the IMDA to be SMP.

PART V: ANTI-COMPETITIVE CONDUCT

- 1.11. CL supports the application of the effects-based test of the TCC on discrimination of service under the Converged Code, and believes IMDA should codify certain obligations as an express requirement to provide clarity on what constitutes anti-competitive discrimination.
- 1.12. CL submits that the standard must be raised and that these obligations need to be codified as an express requirement that licencees (namely MNOs and any other licensee that serves as a supplier) must comply with, failing which IMDA should be prepared to undertake prompt enforcement action.
- (a) upstream supplier must provide network access at just and reasonable prices, terms and conditions;
 - (b) upstream supplier must not engage in unreasonable discriminatory traffic management practices in all respects;
 - (c) upstream supplier must provide network access to the downstream licensee on the same timescales and terms and conditions (including price and service levels) that it provides to itself; and
 - (d) upstream supplier must provide the same quality of service and coverage to downstream subscribers that the upstream supplier provides itself and its own customers,
 - (e) upstream supplier must not impose any condition in its agreement that adversely impacts the business responsibilities of the downstream licensee.
- 1.13. CL agrees with IMDA that the “pass-on” criterion is consistent with the EC and Singapore’s general competition law, and not necessary for the reasons given.

PART VI: CONSUMER PROTECTION

- 1.14. CL agrees that IMDA’s proposals, as presented, will advance the interests of consumers without adding unreasonable burdens on industry, and has no further comments to add at this time.

PART VII: MERGERS AND ACQUISITIONS

- 1.15. CL has no comments on the proposals in this section at this time.

PART VIII: RESOURCE SHARING

- 1.16. CL has no comments on the proposals in this section at this time.

PART IX: PUBLIC INTEREST OBLIGATIONS

- 1.17. CL has no comments on the proposals in this section at this time.

PART X: TELECOMMUNICATION INTERCONNECTION

- 1.18. CL reiterates that the extension of the fixed broadband NBN to providing mandated and regulated wholesale mobile wireless access on a cost-plus model, and on a fair, reasonable and non-discriminatory basis is an essential step towards promoting competition on the basis of innovation and enhanced consumer experiences for mobile services.
- 1.19. CL also submits that the allocation of the 5G spectrum on a fair, reasonable and non-discriminatory basis should be conditional upon the provision of full MVNO access to the 5G spectrum by the successful party.

PART XI: ADMINISTRATIVE AND ENFORCEMENT PROCEDURES

1.20. CL supports the proposals in this section.

PART XII: COMPETITION IN A DIGITAL ECONOMY

1.21. CL agrees with the observations made by IMDA—and believes that despite its new challenges, the digital economy holds great potential for driving unprecedented levels of value creation for consumers and the market. We hold that these trends are part of the first step in a broader shift towards tapping into the full potential of digital services, and that the shift towards digital platform business models will last in the long term.

2. STATEMENT OF INTEREST

2.1. CL was founded on the premise of delivering empowerment to our customers and driving innovation in digital services. We have consistently been a firm advocate for vibrant markets as the primary driver of the creation of benefits for consumers.

2.2. As a driver of change in the telecommunication industry and the market leader on customer experience and product and service innovation, CL welcomes this consultation on the Converged Code. We view this as a timely opportunity to strengthen the regulatory framework for the future of competition in a digital economy, to ensure that competition in the telecommunication market is vigorous but fair—to the eventual benefit of end-users.

2.3. Accordingly, even as we agree with many of the observations and proposals that IMDA has made in this consultation, we offer our perspective as an innovative industry player and from our journey in Singapore on how the Converged Code should not just combine elements of both the TCC and MMCC, but enhance them to result in streamlined, yet stringent protections that protect market innovators while reducing regulatory burdens on industry and IMDA alike.

3. SPECIFIC COMMENTS

PART II: MARKET OVERVIEW & CONVERGENCE

Question 2.1: IMDA invites views and comments on the observed trends and developments in the telecommunication and media industries, as set out in Part II of the consultation document.

- 3.1. CL agrees with IMDA’s identification of the five macro trends that will materially impact competition in both the media and telecommunication markets, and its analysis of their market impact. As a driver of innovation in the telecommunication market, CL welcomes the future of competition in our industry. We believe that healthy and fair competition is essential to innovation in products, services, and consumer experiences, and therefore value the Converged Code as a timely opportunity to safeguard and promote innovative, vibrant markets for the ultimate benefit of End Users.
- 3.2. In particular, CL shares IMDA’s observations on the benefits brought to consumers of IP-based services by the deployment of the NBN, and the broader rise of OTT media services. We note that the shift from infrastructure towards these services as the main driver of domestic and global sector growth has also corresponded with a shift away from facilities-based competition in our market.
- 3.3. In addition to the macro trends driving the future state of competition in the industry, CL believes it is critical that the Converged Code considers the significant changes that have occurred in the local telecommunication market since the original drafting of the TCC.

PART III: REGULATORY PRINCIPLES

Question 3.1: IMDA invites views and comments on the following proposals:

- a) *to merge the common regulatory principles of the TCC and MMCC; and*
- b) *to retain the regulatory principle on Promotion of Facilities-based Competition for the telecommunication market only.*

- 3.4. CL agrees that the regulatory principles in the TCC and MMCC are worthy and should be retained, and further agree that they should be harmonised, given their similarity. In particular, we are strongly aligned with IMDA on our firm belief in the principles of the Promotion of Effective and Sustainable Competition and Non-discrimination. We maintain that network access at just and reasonable prices and equivalent T&Cs (including price, service levels, and coverage) drive the creation of benefits for both consumers and the market. We also look forward to further clarity for all industry players on when IMDA would see itself intervening in the interest of the public to be necessary.
- 3.5. We caution that the promotion of facilities-based competition—if that implies the construction of seemingly redundant passive infrastructure—is becoming more irrelevant in the present state of market competition in the telecommunication industry, given the availability of the NBN network elements and the wider shift towards OTT services.
- 3.6. Within the mobile market, IMDA has expressly recognised the importance of services-based competition in its recent Second Public Consultation on 5G Mobile Services and Networks (“**5G Consultation Paper**”), where IMDA stated that “[facilities-based competition] will need to be complemented by services-based competition to bring about greater choice and service innovation. This is especially so where there are market constraints, such as spectrum resources, thus limiting the number of operators and networks that the market can accommodate... IMDA will also encourage network sharing amongst Mobile Network Operators

("MNOs") and facilitate services-based competition." In this regard, LW is of the view that mandated MVNO access to 5G spectrum is necessary to facilitate services-based competition. This will be further elaborated under Part X of our response.

3.7. Therefore, we have no comment at this time on whether the regulatory principle on the Promotion of Facilities-based Competition should be extended to the media market, so long as the application of the principle continues to allow services to flourish in a services-dominated marketplace.

3.8. Finally, CL strongly asserts that IMDA should consider extending the fixed broadband NBN model to provide mandated and regulated wholesale mobile wireless access on a cost-plus model; by which we mean that all MNOs should be equally obliged to provide wholesale access to all MVNOs at regulated prices, terms and conditions which allow fair, reasonable, non-discriminatory access at the same level that other MNOs would enjoy. The impending nationwide rollout of 5G mobile networks presents a critical opportunity to effect this change, ensuring equal access to wholesale mobile services, and promoting competition on the basis of innovation and enhanced consumer satisfaction. We also note that several wholesale mobile networks exist in important jurisdictions worldwide; one was launched last year with the expectation that it will greatly stimulate mobile broadband take-up.

PART IV: DOMINANCE CLASSIFICATION AND DUTIES OF DOMINANT ENTITIES

Question 4:1: IMDA invites views and comments on the proposed standards for dominance classification under the Converged Code. Dominant Entities are entities that either:

- c) operate facilities used for provision of telecommunication and/or media services that are sufficiently costly or difficult to replicate such that requiring new entrants to do so would create a significant barrier to rapid and successful entry into the telecommunication and/or media market in Singapore by an efficient competitor; or*
- d) have the ability to exercise SMP in any market in which it provides services pursuant to its telecommunication or media licence.*

3.9. CL accepts this approach toward the determination of Dominant Entities. As stated in Section 4.22., we note that the designation of "Dominant Entities" in the Converged Code should be structured by IMDA with the intent to capture entities which may not be captured by a definition of Dominance (i.e. Section 2 of the TCC) but also are protected from competitive market forces and can exercise significant market power (SMP), and thus still be subject to additional ex ante and ex post regulation in order to ensure effective competition and market efficiencies.

Question 4:2: IMDA invites views and comments on the appropriate level for the SMP Presumption Threshold.

3.10. While CL agrees that a quantitative threshold, as proposed, may be appropriate for the initial presumption of SMP, we firmly believe that, given the development of competition (as IMDA has noted in Section 4.9.), additional clarity is required on how SMP will be evaluated and determined—both in the context of classifying an entity as a dominant one, and in the context of establishing an Abuse of a Dominant Position—to provide the industry with more certainty, beyond the SMP Presumption Threshold and examples of 'sufficient evidence' cited by IMDA in Section 4.12.

Question 4:3: IMDA invites views and comments on the proposed changes to the dominance regime for the telecommunication and media industries, specifically;

- a) to adopt the Market-by-Market approach for the dominance classification of a telecommunication licensee in new markets; and*
- b) to require Dominant Persons to demonstrate whether the new service(s) they introduce fall within the market(s) in which they are dominant.*

3.11. CL notes that IMDA is proposing to shift to a ‘market-by-market’ determination of dominance for telecommunication licensees in respect of new markets whereby Dominant Licensees will not be presumed to be dominant for new services in new markets. We highlight that there is a potential for Dominant Licensees to leverage their dominance or SMP in existing markets to obtain a competitive advantage in new markets – we would recommend that IMDA be particularly cautious before assuming a laissez-faire approach for new or emerging markets.

3.12. Accordingly, we reiterate that establishing a clearer set of criteria on determining SMP is ultimately key to evaluating the risk of an Abuse of a Dominant Position (by Dominant or Non-Dominant Entities alike)—and the appropriate application of regulatory protections to entities which can control, disrupt, restrain or damage the vibrancy of markets—in each market effectively.

Question 4:4: IMDA invites views and comments on the application of the ex-ante Dominant Entity duties across both telecommunication and media industries.

3.13. CL agrees with the duties that should apply to Dominant Entities in the telecommunication industry. As put forth earlier, we emphasise that the application of these duties hinges heavily on the clarity with what will be considered by the IMDA to be SMP. This is key to ensure that entities which are dominant (either via their operation of facilities that are sufficiently costly or difficult to replicate, or their ability to exercise SMP in a market) are held to the duty of providing service at just and reasonable prices, terms and conditions, given that it has been identified that the features and structure of the market are such that the market over time will not trend towards effective competition unless there are ex ante market protections.

PART V: ANTI-COMPETITIVE CONDUCT

Question 5:1: IMDA invites views and comments on the proposal to adopt the effects-based test of the TCC for the ex post provision on discrimination of service under the Converged Code.

3.14. CL supports the application of the effects-based test of the TCC on discrimination of service under the Converged Code, we believe IMDA should codify certain obligations as an express requirement to provide clarity on what constitutes anti-competitive discrimination.

3.15. Building on the definition offered in Section 5.13. on discrimination of access, CL submits that any attempt by a licensee to provide a lower quality wholesale offering (e.g., poorer quality of service or traffic management techniques that affect the downstream licensee but not the upstream supplier’s retail offering) would put the downstream licensee at a severe disadvantage and prevent it from being able to compete effectively with the upstream supplier at the retail level. This is consistent with the position under the TCC that the degradation of service and availability or quality constitutes a prohibited practice, mostly because it is an unfair method of competition. Indeed, it would be an improper practice for the upstream supplier to seek to obtain a

competitive advantage for itself in the Singapore mobile market vis-à-vis the MVNOs, for reasons unrelated to the availability, price or quality of the service offered by the MNO.

3.16. Accordingly, CL submits that the standard must be raised (although some of the following have already been previously provided as a negotiating principle, as published in IMDA's Public Consultation Decision, dated 18 February 2016 on the "Proposed Framework for the Allocation of Spectrum for International Mobile Telecommunications ("IMT") and IMT-Advanced Services and for the Enhancement of Competition in the Mobile Market") and the obligations need to be codified as an express requirement that licencees (namely MNOs and any other licensee that serves as a supplier) must comply with, failing which IMDA should be prepared to undertake prompt enforcement action:

- (a) upstream supplier must provide network access at just and reasonable prices, terms and conditions;
- (b) upstream supplier must not engage in unreasonable discriminatory traffic management practices in all respects;
- (c) upstream supplier must provide network access to the downstream licensee on the same timescales and terms and conditions (including price and service levels) that it provides to itself; and
- (d) upstream supplier must provide the same quality of service and coverage to downstream subscribers that the upstream supplier provides itself and its own customers,
- (e) upstream supplier must not impose any condition in its agreement that adversely impacts the business responsibilities of the downstream licensee.

where "the same" means exactly the same subject only to:

- (i) trivial differences; and
- (ii) such other difference as may be agreed by the IMDA in writing from time to time.

3.17. CL shares IMDA's view that it is relevant to include provisions in the Converged Code to address the abuse of collective dominance.

Question 5:2: IMDA invites views and comments in relation to the EEO test benchmark to be adopted for price squeezes and the proposal not to include a "pass-on" criterion.

3.18. CL agrees with IMDA that the "pass-on" criterion is consistent with the EC and Singapore's general competition law, and not necessary for the reasons given.

Question 5:3: IMDA invites views and comments on the proposed cost standard / standards for the telecommunication and media markets and the application of the predatory pricing provision to Dominant Entities.

Question 5:4: IMDA invites views and comments on the extension of the cross-subsidisation provision to the media industry.

Question 5:5: IMDA invites views and comments on the extension of the predatory network alteration provision to the media industry.

- 3.19. For clarity, CL notes—as alluded to in Section 5.27.—that predatory network alternation can affect the competitiveness of interconnected Licensees in broader ways other than cost (for example, by lowering the competitor’s quality of service).

Question 5:8: IMDA invites views and comments on the proposal to adopt the “object or effect” approach for the general prohibition of anti-competitive agreements.

Question 5:9: IMDA invites views and comments on the proposed revisions to the anti-competitive agreements, namely:

- a) rename the list of prohibited anti-competitive agreements as “by object” agreements; and*
- b) respective amendments to the specific anti-competitive agreements.*

- 3.20. CL agrees with the changes proposed above by IMDA. We are in particular alignment with IMDA’s concern that the foreclosure of access to an input that would prevent, restrict or distort competition must be considered for the telecommunication industry, and that care must be taken where exclusive dealings may constitute an abuse of dominant position.

PART VI: CONSUMER PROTECTION

- 3.21. CL agrees that IMDA’s proposals, as presented, will advance the interests of consumers without adding unreasonable burdens on industry, and has no further comments to add at this time.

PART VII: MERGERS AND ACQUISITIONS

- 3.22. CL has no comments on the proposals in this section at this time.

PART VIII: RESOURCE SHARING

- 3.23. CL has no comments on the proposals in this section at this time.

PART IX: PUBLIC INTEREST OBLIGATIONS

- 3.24. CL has no comments on the proposals in this section at this time.

PART X: TELECOMMUNICATION INTERCONNECTION

- 3.25. CL agrees with the proposals put forth by IMDA.

- 3.26. As mentioned in our response above, we reiterate that the extension of the fixed broadband NBN to providing mandated and regulated wholesale mobile wireless access on a cost-plus model is an essential step towards promoting competition on the basis of innovation and enhanced consumer experiences for mobile services. To that end, as indicated earlier, CL submits that the allocation of the 5G spectrum should be conditional upon the provision of full **MVNO** access to the 5G spectrum by the successful party. This is briefly highlighted here, in advance of a more detailed definition of ‘full MVNO access’, to follow in our response to the 5G Consultation Paper.

- 3.27. In particular, LW submits that IMDA should make the award of the 5G spectrum conditional upon the provision of full MVNO access to the 5G networks on a fair, reasonable and non-discriminatory basis. While IMDA’s recent 5G Consultation Paper listed the commitment to provide wholesale arrangements to any requesting MNO or MVNO (“**Wholesale Arrangements**”) as an evaluation criterion, LW is of the view that is

insufficient. Moreover, LW notes that the Wholesale Arrangements criterion in Table 6 of the 5G Consultation Paper was not attributed a percentage, thus suggesting that this is not a “must-have”, but rather only a “good-to-have”.

- 3.28. CL also submits that extending the current NBN to provide mobile wireless access will also pave the way for the benefit of End Users as Singapore transitions towards 5G.

PART XI: ADMINISTRATIVE AND ENFORCEMENT PROCEDURES

- 3.29. To ensure disputes are handled with full transparency and expedience in the best interests of IMDA, the industry, and consumers alike, CL proposes that IMDA impose timelines upon itself to respond at every stage of the proposed dispute resolution process.

- 3.30. CL supports the extension of Informal Guidance provisions to the telecommunication market, as well as IMDA’s proposal on structural separation.

PART XII: COMPETITION IN A DIGITAL ECONOMY

Question 12:1: Do the above observations about business models and market changes resonate with your experiences in the digital economy? Do you think that these business models are here to stay or are these developments likely to only remain in the short to medium term?

- 3.31. CL agrees with the observations made by IMDA—and believe that despite its new challenges, the digital economy holds great potential for driving unprecedented levels of value creation for consumers and the market. We hold that these trends are part of the first step in a broader shift towards tapping into the full potential of digital services, and that the shift towards digital platform business models will last in the long term.

- 3.32. Today’s end users demand more of the services they use: expecting real-time, seamless, and bespoke experiences; as well as total transparency in, and full control over their relationships with their service providers; rather than adjust to the needs of service providers or indeed regulators. We therefore anticipate that competition in the digital era will continue to be focused not just on meeting but anticipating and creating consumer needs. It will be defined by a shift towards digital, service-based platforms and ecosystems; driven by product and service innovation to the ultimate benefit of the end user, and characterised by unprecedented levels of consumer choice—switching quickly and flexibly between digital providers.

Question 12:2: What competition policy and philosophy should sectoral regulators adopt in the digital economy?

Question 12:3: What are some of the key, traditional competition concepts that need to be reviewed and relooked in a digital economy? For example:

- a) Taking account of non-price dimensions in competition assessments;*
- b) Data as an input and qualifying as an essential resource or facility; and*
- c) New bottlenecks that might be pivotal to affording a platform market power;*

- 3.33. Nevertheless, we recognise the competitive risks posed by the trends identified by IMDA, such as growing market concentration across the globe, new expressions of predatory behaviour, and the potential for ‘data network effects’ to drive feedback loops that entrench incumbents in tech platform markets.

- 3.34. It is widely accepted that competition frameworks in the digital world today should focus less on specific revenue metrics, and rather on the value of information. We would emphasise several key tenets for sectoral regulators seeking to ensure innovation and market vibrancy in a digital economy:
- a. Recognize that market power can be amassed by control over information in various forms; e.g. the ability to control access to end users' digital identities, usage habits, and so on.
 - b. Accept that market power can be exercised by possessing a bottleneck public resource and leveraging that back into other entities who rely on that public resource.
 - c. Mix light-touch regulation with significant ex-post to deter those tempted to abuse their position of power in the market, while balancing the need to foster innovation.
- 3.35. We believe that IMDA is on the right course, based on the positions and observations it has prepared and offered, and strongly encourage IMDA to continue evolving its response to global market developments with on the same track. As IMDA evolves the regulatory framework further to adapt to the digital economy, CL urges IMDA to keep in mind the size, potential, and opportunity that the digital markets play and will continue to play in national successes.

Question 12.4: Should competition assessments be overlaid with broader policy considerations in a digital economy? Which policy considerations would be relevant to consider?

- 3.36. CL agrees that competition assessments should be overlaid with broader public policy considerations. We are mindful that markets have many different classes of stakeholders, including the broader public interest. If the commercial interests of one or multiple players are satisfied at the expense of such overriding interests, e.g. potentially impact the long-term evolution of the market by harming innovation for users and in the industry, CL would consider it necessary for a proxy—usually the Authority or regulator—to intervene.

Question 12.5: Should there be early policy or regulatory intervention in data and AI centric business models that lend to significant scale advantages?

Question 12.6: What new capabilities and toolkits would be necessary to assess competition dynamics in markets where data and AI are central?

- 3.37. CL believes that any early policy or regulatory intervention in such business models should issue from a clear set of criteria which empowers regulators to quickly and effectively identify and confront any entity at risk of accruing such various network effects to the point of entrenching a significant scale advantage for the incumbent. The regulator should have established enough of a deterrent to ensure that power is not abused, and that consumer demand remains as the primary growth driver for markets.

4. CONCLUSION

- 4.1. In conclusion, CL welcomes the critical opportunity presented by the Converged Code to ensure that innovation and market vibrancy are protected and encouraged in the face of a digitising economy. We have expressed several key views on how the regulatory framework must be strengthened to ensure that it is empowered to ensure that markets are vigorous, yet fair in the body of this response, as well as in our annex—and we are optimistic that the perspective we offer as a driver of positive change in the telecommunication market will help to inform the creation of a Code which best serves the interests of all: from end users to industry and IMDA itself.