

**NETLINK MANAGEMENT PTE. LTD.
(AS TRUSTEE OF NETLINK TRUST)**

**SUBMISSION TO
THE INFO-COMMUNICATIONS MEDIA DEVELOPMENT AUTHORITY**

IN RESPONSE TO

**PUBLIC CONSULTATION ON A CONVERGED COMPETITION CODE FOR
THE MEDIA AND TELECOMMUNICATION MARKETS**

DATE OF SUBMISSION: 15 MAY 2019

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STATEMENT OF INTEREST

- I. NetLink Trust (managed by NetLink Management Pte. Ltd. as its trustee) ("**NetLink Trust**") designs, builds, owns and operates the passive fibre network infrastructure (comprising ducts, manholes, fibre cables and central offices) of Singapore's Next Generation Nationwide Broadband Network ("**NGNBN**").
- II. NetLink Trust's nationwide network is the foundation of the NGNBN, over which ultra-high-speed Internet access is delivered throughout Singapore and its connected islands. The principal services offered by NetLink Trust are: (i) fibre connectivity to residential homes and non-residential premises; (ii) fibre connectivity to non-building address points; (iii) segment fibre connections; and (iv) non-fibre ancillary services (e.g. co-location of telecommunication equipment in central offices).
- III. NetLink Trust holds a Licence to Provide Facilities-based Operations granted by the Info-communications Media Development Authority ("**IMDA**") on 22 September 2011 pursuant to Section 5 of the Telecommunications Act (Chapter 323). NetLink Trust is designated as a Public Telecommunication Licensee pursuant to Section 6 of the Telecommunications Act (Chapter 323).
- IV. As a Dominant Licensee, NetLink Trust offers its services to all Requesting Licensees on terms and conditions that are non-discriminatory and in compliance with the Code of Practice for Next Generation Nationwide Broadband Network NetCo Interconnection ("**NetCo Code**") and Code of Practice for Competition in the Provision of Telecommunication Services ("**TCC**").

GENERAL COMMENTS

1. NetLink Trust welcomes this opportunity to provide our views and comments on IMDA's proposed Converged Competition Code for the Media and Telecommunication Markets ("**Converged Code**").
2. NetLink Trust has reviewed IMDA's broad policy proposals as detailed in the Consultation Document, which IMDA is proposing to adopt in the Converged Code. In general, NetLink Trust agrees with IMDA that where provisions in the TCC and the Code of Practice for Market Conduct in the Provision of Media Services ("**MMCC**") are substantively similar in effect, IMDA should seek to harmonise and align the drafting of these provisions in the Converged Code. Where there are provisions that are found in only one code and not the other, NetLink Trust further agrees that IMDA should, where appropriate, extend these provisions to the other market, or remove the provisions if they are no longer relevant.
3. The successful rollout and implementation of the NGNBN has enabled the development of a vibrant and highly competitive retail telecommunication market. Equal and non-discriminatory access to wholesale inputs on the NGNBN has allowed new entrants to compete effectively in the retail broadband Internet access market. Given the nationwide availability and pervasive reach of the NGNBN, and clear evidence of effective services-based competition (at the retail level) that builds upon Effective Open Access entrenched in Layer 1 of the NGNBN, it is no longer necessary for IMDA to retain the regulatory principle on Promotion of Facilities-based Competition for the telecommunication market in the Converged Code. Neither is there a need for IMDA to encourage parallel build of fibre network infrastructure in Singapore.
4. To ensure efficient use of land resources and minimise service disruptions and inconvenience to End Users and the public, the space and facilities that building developers and owners provide pursuant to their obligations under the Code of Practice for Info-communication Facilities in Buildings ("**COPIF**") should be made available for use by telecommunication and media licensees to serve external properties, at no cost to the licensees. IMDA should adopt a 'first come, first served' basis in according priority to the use of COPIF space and facilities in a development by telecommunication and media licensees, regardless of whether the relevant space and facilities are used for the provision of telecommunication and/or media services to serve the needs of that development, or the needs of external properties that are connected to the development.
5. Building lead-in ducts and lead-in manholes are Essential Support Facilities ("**ESF**") and are used by FBO licensees to connect their telecommunication networks to individual buildings and developments. Access to these "bottleneck" building lead-in facilities is important to ensure fair and efficient competition. StarHub Ltd and StarHub Cable Vision Ltd (collectively, "**StarHub**") should be required to develop a reference interconnection offer for the shared use of their building lead-in ducts and lead-in manholes with other FBO licensees.

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6. In adopting the Market-by-Market approach for its assessment of market dominance and other competition-related issues, IMDA may come across markets that consist of participants with vastly different set-up and/or structure (e.g. wholesale-only passive network infrastructure provider competing with vertically-integrated network operators that offer full end-to-end solutions). For such cases, market-specific analysis will be required to calibrate the appropriate regulatory measures to address specific competition issues unique to these markets.
7. To further enhance the clarity and transparency of IMDA's approach towards regulatory review of tariff filings by Dominant Licensees, NetLink Trust recommends that IMDA adopts a set of pre-defined criteria for its evaluation of requests for withdrawal of tariff from Dominant Licensees.
8. NetLink Trust's specific comments on IMDA's policy proposals for the Converged Code are detailed in the following sections.

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.**

NetLink Trust is supportive of IMDA's proposal to merge the common regulatory principles of the TCC and MMCC. NetLink Trust notes that the regulatory principles governing the TCC and MMCC are substantively similar, and that it is not necessary to maintain two separate sets of regulatory principles for each market under the Converged Code. This will ensure a consistent regulatory framework across both the telecommunication and media markets under the Converged Code.

Promotion of Facilities-based Competition for Telecommunication Market

As IMDA noted in its Consultation Document, the development of a nationwide fibre network infrastructure, through the implementation of the NGNBN initiated by the then Information Communications Development Authority of Singapore ("IDA"), has been instrumental in enabling the migration of residential Internet access, fixed-line telephone and Pay TV services from legacy copper-based Digital Subscriber Line ("DSL") and coaxial cable network infrastructure to the NGNBN.

Through structural separation put in place by IDA at the foundational NetCo layer of the NGNBN industry structure, the NGNBN incorporates and entrenches Effective Open Access¹. Relevant interconnection principles based on Effective Open Access, aimed at creating an information communications ecosystem that assures open and non-discriminatory access by all qualified persons, have been adopted and implemented by IMDA. These regulatory measures by IMDA have been key and instrumental to the development of a vibrant and competitive fibre broadband market.

As acknowledged by IMDA, equal access to wholesale inputs on the NGNBN has allowed new entrants to compete effectively in the broadband Internet access market. This has resulted in the gradual commoditisation of high-bandwidth fixed-line broadband Internet access services, and in turn has driven the need for service providers to differentiate themselves and provide value to customers in other ways, including service bundling.

To date, there are more than 25 licensees offering retail broadband services to End Users over the NGNBN infrastructure. This is clear evidence of the significant progress that had been achieved through IMDA's deliberate policy decision to introduce competition at the retail level

¹ Speech by Dr Lee Boon Yang, Minister for Information, Communications and the Arts, at media briefing for award of Next Generation National Broadband Network NetCo Request-For-Proposal, 26 September 2008:
<http://www.nas.gov.sg/archivesonline/speeches/view-html?filename=20080926987.htm>

with the implementation of the NGNBN, and the effectiveness of services-based competition at the retail level. It is therefore appropriate and timely for IMDA to review the relevance of the regulatory principle on Promotion of Facilities-based Competition for the telecommunication market.

NetLink Trust submits that it is no longer necessary for IMDA to encourage the Promotion of Facilities-based Competition for the telecommunication market for the reasons cited above. Instead, given the highly competitive retail telecommunication market, IMDA should consider a shift of emphasis to promote services-based competition at the retail level, built upon Effective Open Access entrenched in the passive infrastructure layer of the NGNBN.

In NetLink Trust's view, a continuation of the regulatory principle on Promotion of Facilities-based Competition will lead to: (i) inefficient and costly replication of fibre network infrastructure across the nation; (ii) traffic disruptions (including slower vehicular speed) to road users, pedestrians and businesses due to roadworks by telecommunication licensees and their contractors when laying their ducts and cables underground; and/or (iii) congestion at lampposts, bus stops and other street furniture. Considering the nationwide availability and pervasive reach of the NGNBN, NetLink Trust submits that facilities-based competition is no longer necessary and counter-productive, as such a policy stance will reduce productive efficiency and lead to inefficient use of existing network infrastructure. Consequently, the loss in productive efficiency will translate to a higher cost structure and feed through to higher prices for End Users.

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.

NetLink Trust supports IMDA's proposal to extend the standard for dominance classification under the TCC to the media industry. Specifically, in addition to the ability to exercise Significant Market Power ("**SMP**"), an entity in the media industry that *"operates facilities used for provision of 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 media market in Singapore by an efficient competitor"*, should also be classified as a Dominant Entity. The assessment of barriers to market entry is a widely accepted practice in the analysis of market dominance and has continued to play an important role in a wide variety of competition matters².

NetLink Trust agrees that extending the proposed standards to the media industry would allow for better alignment across the telecommunication and media markets in the assessment and classification of Dominant Entities under the Converged Code.

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

NetLink Trust is supportive of IMDA's proposal to adopt a common SMP Presumption Threshold under the Converged Code. A proposed unified threshold of 50% would appear to be a logical midpoint percentage converging across the two industries (from the current SMP Presumption Thresholds of 40% and 60% for the telecommunication and media industries, respectively).

As noted by IMDA, the current 40% threshold for the telecommunication industry appears to be comparatively lower than the 50-60% adopted by other competition regulatory agencies such as the European Commission ("**EU**"), the US Federal Trade Commission, and the Competition and Consumer Commission of Singapore ("**CCCS**"). NetLink Trust agrees with IMDA that a higher SMP Presumption Threshold for the telecommunication industry is appropriate in light of the significant progress that has been made in enabling more competition in key retail telecommunication markets (for example, in the fixed broadband market).

However, while the SMP Presumption Threshold remains relevant in providing guidance on assessment of market power and dominance, NetLink Trust agrees that it should not be the only determining factor. Historically, market share thresholds were applied as a presumptive test in assessing significant market power. Over the years, regulators in some countries (such as those in New Zealand and Hong Kong) have moved away from this presumptive test to a broader test whereby market share is only one of the criteria for assessing significant market power. As noted by IMDA, there is currently no 'standard' percentage market share figure for SMP Presumption

² <https://www.oecd.org/competition/mergers/37921908.pdf>

Thresholds internationally. Therefore, the SMP Presumption Threshold should only be used as an initial presumption of market power.

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.**

NetLink Trust supports IMDA's proposal to adopt the Market-by-Market approach for the dominance classification of a telecommunication licensee in new markets.

Currently, under the TCC (which sets out the Licensed Entity approach), a Dominant Licensee is assumed to be dominant in all telecommunication markets that it participates in. As IMDA noted in its Consultation Document, a continuation of the Licensed Entity approach may result in over-regulation of the telecommunication industry, where an operator may be incorrectly classified as a Dominant Entity for a particular market when there is in fact effective competition in that market.

In view of the significant progress achieved in attaining the current level of competition in the telecommunication markets (in particular the fixed broadband market with the implementation of the NGNBN), NetLink Trust agrees with IMDA that it is timely to review the relevance of the Licensed Entity approach. NetLink Trust agrees that based on the current market conditions, it is no longer appropriate nor necessary to presume that a Dominant Licensee would automatically be dominant in all markets that it participates in, i.e. no longer appropriate to apply the Licensed Entity approach. Replacing the Licensed Entity approach with the Market-by-Market approach would allow for a fairer and more targeted assessment of the state of competition in each telecommunication market, and the appropriate regulatory approach to adopt for each market.

NetLink Trust is supportive of IMDA's proposal to require Dominant Entities to demonstrate whether the new service that they introduce fall within the market(s) in which they are dominant.

With the proposed adoption of the Market-by-Market approach, NetLink Trust believes that it is timely and appropriate for IMDA to review and update its Advisory Guidelines Governing Petitions for Reclassification and Requests for Exemption under Sub-sections 2.3 and 2.5 of the TCC ("**Advisory Guidelines**").

According to the Advisory Guidelines, IMDA will define the relevant service market based on a "demand substitutability" approach by applying the Small but Significant Non-Transitory Increase in Price ("**SSNIP**") test. In NetLink Trust's view, the SSNIP test may not provide an accurate market definition as it relies on assumed consumer behaviour and conduct in response to a price increase by a hypothetical monopoly operator, and there is a lack of market data to test the

reasonableness of such assumption. In addition, the SSNIP test focuses only on the price dimensions of competition, which may lead to an overly narrow market definition.

As acknowledged by IMDA in Section 12 of the Consultation Document, dimensions of competition may increasingly shift away from price to other non-price dimensions. As such, new frameworks such as the application of a Small but Significant Non-Transitory Decline in Quality (“SSNDQ”) test may be required to define relevant markets where the SSNIP test may not provide an accurate market definition. That said, NetLink Trust notes that quality is a difficult concept to measure, and cannot always be quantified, unlike prices. Therefore, SSNIP and SSNDQ may serve as complementary guidelines for a high-level overview of the market. To define a market more accurately, these tests must be complemented with market-specific analysis.

Market-specific analysis is particularly relevant to assessment of dominance and competition-related issues in markets that comprise participants with vastly different set-up and/or structure. As an illustration, NetLink Trust operates only in the NetCo layer (i.e. Layer 1) of the NGNBN industry structure and offers lease of wholesale dark fibre connections to Requesting Licensees and Retail Services Providers (“RSPs”) on terms and conditions that are non-discriminatory and regulated by IMDA.

In the non-residential telecommunication market, RSPs which are vertically-integrated telecommunication licensees have the option to choose to use their own fibre network or the NGNBN for the retail services that they provide to End Users. In comparison, as the appointed NetCo for the NGNBN, NetLink Trust does not operate at the retail level (i.e. Layer 3) and has to fulfil all service requests from Requesting Licensees and RSPs at regulated prices and without preference or discrimination. This has resulted in instances whereby the NGNBN becomes the default network that RSPs choose to use when fulfilling service requests to places that are more costly to roll out fibre to³, leading to an unequal playing field whereby vertically-integrated RSPs gain a competitive cost advantage over NetLink Trust by only using the latter’s fibre network for customer segments that are more costly to provide services to (and hence raising the cost structure of NetLink Trust’s non-residential services). Adopting a Market-by-Market approach for dominance reclassification would necessarily have to incorporate an assessment of this unique characteristic of the non-residential telecommunication market and its effects on fair competition in that market.

Question 4:5: IMDA invites views and comments on the proposal to shift to a notification and publication regime for most retail tariffs (other than for withdrawal of such tariffs), while retaining the approval regime for wholesale, resale and certain retail tariffs.

IMDA has proposed that a Dominant Licensee is only required to: (a) notify IMDA on new retail tariffs offered to End Users, modifications to approved tariffs of existing retail services, and on

³ Retail Service Providers (“RSPs”) are only required to pay NetLink Trust a standard network installation charge regulated by IMDA for each service request, even though NetLink Trust may incur a higher cost to roll out fibre to a location in fulfilling RSP’s service request.

offerings of customised or promotional schemes on these services (“**Info-tariffs**”); (b) publish the Info-tariffs; and (c) seek IMDA’s approval to withdraw any of the existing retail tariffs.

NetLink Trust agrees with IMDA’s proposal. In our view, the proposed removal of the requirement for Dominant Licensees to obtain IMDA’s approval prior to them offering a new retail service is a timely recognition of the significant progress that has been made in attaining the current state of competition in key retail telecommunication markets (in particular the fixed broadband market with the implementation of the NGNBN). The proposed notification and publication regime in respect of Info-tariffs (other than for withdrawal of such tariffs) is consistent with IMDA’s broader, calibrated approach to provide greater flexibility and certainty for Dominant Licensees to innovate and offer new services, potentially bringing about greater benefits for consumers.

Under the Converged Code, IMDA has proposed to continue to monitor the wholesale and resale tariffs provided by Dominant Licensees as they operate facilitates that are sufficiently costly or difficult to replicate which other licensees may rely on to provide downstream services.

The TCC currently requires Dominant Licensees to file a tariff with IMDA and obtain IMDA’s written approval prior to offering, or modifying the terms of, any service that IMDA directs a Dominant Licensee to offer pursuant to a tariff. NetLink Trust would like to propose a review of this requirement.

NetLink Trust is of the view that where IMDA directs the provision of a service or tariff by its licensee, the licensee is already under a regulatory requirement to comply with IMDA’s specific direction. Under such circumstance, the licensee is obliged to respond to IMDA’s direction in a manner that complies with IMDA’s specific requirements, for example the specific terms and conditions as set out in IMDA’s direction. As a general rule, licensees would not file a tariff that deviates from IMDA’s direction unless there are strong justifications to do so.

NetLink Trust would therefore like to propose that where IMDA directs a Dominant Licensee to provide a service pursuant to a tariff, the tariff should be classified as an Info-tariff in view that IMDA would already have prescribed the specific requirements, and relevant key terms and conditions, for such tariff in its direction. Accordingly, the procedures as set forth in the Converged Code for Info-tariffs would apply to these IMDA-directed tariffs.

In addition, NetLink Trust would like to propose that IMDA adopts a set of consistent criteria for its evaluation of requests for withdrawal of tariff from Dominant Licensees. In NetLink Trust’s view, a set of clear and consistent evaluation criteria for tariff withdrawal requests would provide regulatory certainty and clarity to all stakeholders. It would provide guidance to Dominant Licensees on the criteria that IMDA would apply in evaluating their request to withdraw an existing tariff. The clarity and transparency of IMDA’s evaluation criteria availed through such a process would further enhance stakeholders’ confidence in the regulatory review of tariff filings by Dominant Licensees. End Users and wholesale customers would be assured that the telecommunication services that they rely upon for their personal and business needs are subject to regulatory oversight by IMDA, and that the associated tariffs could be withdrawn by Dominant Licensees only upon them meeting a set of pre-defined criteria.

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NetLink Trust proposes the following criteria to be adopted by IMDA for its evaluation of requests from Dominant Licensees for withdrawal of their existing tariffs (both retail and wholesale):

- (a) There has been no take-up of the tariff over a period of at least two years from the date of IMDA's approval of the same; and
- (b) The underlying service of the tariff does not relate to the provision of access to an Essential Support Facility as defined under the TCC.

PART VI: CONSUMER PROTECTION

Question 6:5: IMDA seeks views and comments on the proposal to:

- (a) **merge the disclosure requirements and extend the Critical Information Summary (“CIS”) requirement to all Licensees; and**
- (b) **reduce the timeframe from 14 days to 5 working days for Regulated Persons to provide End Users with the CIS and contracts, and extend this requirement to the telecommunication markets.**

NetLink Trust supports IMDA’s proposal to limit the application of the CIS requirement to fixed term contracts that are longer than one month, such as 12-month and 24-month contracts, and for residential End Users only.

NetLink Trust agrees with IMDA’s view that as residential End Users who sign up for longer contracts would need to pay ETC to terminate their contracts before the expiry of the minimum service period, therefore this group of End Users ought to be adequately informed of the terms and conditions before entering the contract. In addition, business End Users tend to be more savvy and are typically in a better position to negotiate the terms and conditions of their contractual agreement; hence their exclusion from the application of the CIS requirement.

PART VIII: RESOURCE SHARING

Question 8:2: IMDA invites views and comments on the proposed licensees for which the Resource Sharing Provisions apply.

NetLink Trust agrees with IMDA that the present restriction (under the TCC) to apply the infrastructure sharing obligation to FBO licensees only no longer meets industry and market needs and should be removed.

Increasingly, SBO licensees are deploying their own infrastructure in a localised setting (e.g. in-building cabling and/or associated facilities). NetLink Trust supports IMDA's proposal to extend the Resource Sharing Provisions applicable to telecommunication licensees to include all SBO licensees under the Converged Code, such that any infrastructure that is owned by an SBO licensee and which fulfils the criteria for designation as a Critical Support Infrastructure would be subject to the infrastructure sharing requirement under the Converged Code.

Question 8:3: IMDA invites views and comments on the proposed criteria in the determination of both Essential Resource and Critical Support Infrastructure.

NetLink Trust agrees with IMDA's proposal to apply the same set of criteria, as set out under paragraphs 8.12 and 8.13 of the Consultation Document, in determining whether an infrastructure or Media Resource should be designated as a Critical Support Infrastructure or Essential Resource.

NetLink Trust would like to raise a related point with regards to IMDA's proposal. Under the Converged Code, IMDA will require the sharing of both infrastructure (for telecommunication licensees) and/or Media Resource (for media licensees) if it is in the public interest to do so. NetLink Trust agrees that IMDA's proposal will ensure the efficient use of resources.

Similarly, the space and facilities that building developers and owners provide pursuant to their obligations under COPIF are important resources which telecommunication licensees rely on for their deployment of network infrastructure and services. Currently, fixed-line network operators use the COPIF space and facilities provided by a building developer/owner to provide services to the residents and/or tenants of the development. They may also use the COPIF space and facilities to provide services to a cluster of external properties in the vicinity of that development. This hub-and-spoke network topology, whereby telecommunication licensees designate a development as a hub and in turn connect that development (or hub) to surrounding properties, ensures an outcome that is cost-effective and least disruptive to the public. It avoids the costly and highly disruptive alternative whereby telecommunication licensees establish a direct connection between their central office (or exchange building) and every new development – which will lead to higher network rollout costs and more frequent disruptions to road users, pedestrians and businesses, since telecommunication licensees will have to lay new underground ducts and install new cables directly from their central office to each new

development individually. More road opening/digging will be required under this alternative, which will result in traffic disruptions and loss of productive efficiency of the populace.

In NetLink Trust's view, the use of COPIF space and facilities in a development as a hub for network deployment to a cluster of external properties is akin to resource sharing. As explained in the preceding paragraph, such hub-and-spoke network topology results in a more efficient cost structure and less disruptive rollout to the public. End Users benefit from such sharing of COPIF space and facilities (i.e. whereby telecommunication licensees deploy their network infrastructure and services following a hub-and-spoke topology) as the cost efficiencies feed through to lower prices for them. There is also less public inconvenience to road users, pedestrians and businesses, since road opening/digging is kept to a minimum.

Notably, the hub-and-spoke network topology is widely employed by telecommunication network operators in rolling out large-scale nationwide fixed-line networks due to its efficient design. This design approach is particularly relevant and beneficial to Singapore given that land is scarce in Singapore. The efficient design of the hub-and-spoke topology ultimately translates to a lower and more optimal cost structure for the provision of telecommunication services in Singapore, thereby benefitting all End Users.

Unfortunately, despite the clear benefits of the hub-and-spoke topology for nationwide fixed-line network rollout, the current approach adopted under COPIF⁴ does not offer telecommunication licensees any comfort or certainty that they would not be forced to relocate their network out of a development that has been designated as a hub to connect to external properties (for example, when building developer or owner revokes an earlier agreement that allowed the telecommunication licensee to extend its network to external properties), after they have put in place the necessary installation, plant and/or system to set up the hub in that development. In this regard, paragraph 17.4.2 of COPIF currently states:

“In the event that the installation, plant or system deployed by a licensee to serve the external properties impedes or causes obstruction to any future deployment of installation, plant or system by other licensees to serve the needs of the development for fixed telecommunication services, the licensee shall –

- (a) remove its installation, plant or system at its own costs and reinstate as far as reasonably practicable to their original condition the relevant space and facilities which were used; or*
- (b) pay for the costs of any additional space and facilities required to accommodate such future deployment needs where it is feasible for such additional space and facilities to be provided.”*

NetLink Trust respectfully submits that it is unfair and unreasonable to require telecommunication licensees to remove their installation, plant or system from a development where they have already established their network presence in the development, and where there are existing 'live' connections and data traffic that traverse through the hub established in that development.

⁴ Chapter 17 of the 2018 version of the Code of Practice for Info-communication Facilities in Buildings (“COPIF”)

Clearly, such a requirement will result in service disruptions to End Users who reside in the external properties that are already connected to the hub. There is also no certainty that the affected telecommunication licensee will be able to successfully migrate the affected 'live' connections and End Users to a different hub in another development, or that the building management or owner of the new development where the relocated hub is located will not subsequently require the telecommunication licensee to relocate its network out of that development. Absent regulatory intervention by IMDA, this vicious cycle of telecommunication licensees having to relocate their installation, plant and/or system out of developments that are established as hubs (i.e. in a hub-and-spoke network topology) repeats itself to the detriment of End Users, as they will not only be adversely impacted through the service disruptions that they would have to bear with during relocation of networks by telecommunication licensees – ultimately telecommunication licensees will have no other alternative but to pass on the high costs of relocating their hubs to other developments to End Users.

In consideration of the above, NetLink Trust respectfully requests IMDA to mandate the provision of COPIF space and facilities by building developers and owners at no cost to telecommunication and media licensees, for their deployment of network infrastructure and services to external properties outside of the developments where the COPIF space and facilities are located. NetLink Trust further requests IMDA to adopt a 'first come, first served' basis in according priority to the use of COPIF space and facilities in a development by telecommunication and media licensees, regardless of whether the relevant space and facilities are used for the provision of telecommunication and/or media services to serve the needs of that development, or external properties that are connected to the development. In this regard, NetLink Trust is prepared to work with IMDA to put in place a framework to manage and monitor the allocation and use of COPIF space and facilities for serving both the development and its external properties.

Accordingly, NetLink Trust requests that IMDA amend the relevant provisions in the Telecommunications Act (Chapter 323) and the 2018 version of the Code of Practice for Information Communication Facilities in Buildings to mandate the use of COPIF space and facilities by telecommunication and media licensees to serve external properties at no cost to the licensees, and to adopt a 'first come, first served' basis in according priority to the use of COPIF space and facilities by telecommunication and media licensees.

PART X: TELECOMMUNICATION INTERCONNECTION

Question 10:2: IMDA invites views and comments on whether IMDA should continue to require Dominant Licensee to offer the Regulated Services.

While NetLink Trust has no objection to IMDA's proposal to continue to require Dominant Licensees to offer the Regulated Services, NetLink Trust would like to request IMDA to review an anomaly with respect to the licensing of building lead-in ducts (including duct space) and access to lead-in manholes for different groups of FBO licensees.

Building lead-in ducts and lead-in manholes are ESFs and are used by FBO licensees to connect their telecommunication networks to individual buildings and developments. As acknowledged by IMDA in the Consultation Document, access to building lead-in facilities is important to ensure fair and efficient competition.

As building lead-in facilities are pre-installed and put in place by building owners/developers during the construction of their property/development, these lead-in facilities could not be replicated or built after the property/development has been completed. These building lead-in facilities are typically "bottleneck" infrastructure as there are only a limited number of pre-installed lead-in facilities that building owners/developers are required to provide in each property/development, pursuant to their obligations under COPIF. Consequently, access to and shared use of building lead-in ducts and lead-in manholes of Dominant Licensees, which in turn connect to building lead-in facilities provided by building owners/developers pursuant to their obligations under COPIF, are regulated by IMDA and mandated as a Regulated Service by Dominant Licensees under the TCC.

NetLink Trust notes that StarHub Cable Vision Ltd is classified as a Dominant Licensee under the TCC. Both StarHub Ltd and StarHub Cable Vision Ltd (collectively, "**StarHub**") are designated as Public Telecommunication Licensees under the Telecommunications Act (Chapter 323).

As a Public Telecommunication Licensee, StarHub is assigned building lead-in ducts that building owners/developers provide pursuant to their obligations under COPIF. As discussed above, these are ESFs. Building lead-in ducts and lead-in manholes are also designated as Critical Support Infrastructure under Sub-section 7.5.1 of the TCC.

Unlike other Dominant Licensees, StarHub is not required to develop a reference interconnection offer for the shared use of its building lead-in ducts and lead-in manholes. Instead, StarHub is allowed to negotiate a sharing agreement with the requesting FBO licensee following the procedures set out in Sub-section 7.4 of the TCC. In the event that the parties are unable to reach a mutually acceptable sharing agreement, they may request IMDA to resolve the dispute in accordance with the Dispute Resolution Procedure specified under the TCC.

NetLink Trust notes that the absence of a reference interconnection offer from StarHub, for the sharing of its building lead-in ducts and lead-in manholes with other FBO licensees, may not be in alignment with IMDA's objective to promote fair and efficient competition through mandating access to building lead-in facilities. Due to the uncertainty of the lengthy procedures that a

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requesting FBO licensee would have to navigate in order to reach a mutually acceptable sharing agreement with StarHub, FBO licensees may find it more difficult to procure access to and shared use of StarHub's building lead-in ducts and lead-in manholes. In comparison, NetLink Trust and Singapore Telecommunications Limited ("**Singtel**") are currently required by IMDA to develop and publish the Reference Access Offer ("**RAO**") and Reference Interconnection Offer ("**RIO**"), which detail the prices of, and the associated terms and conditions for, the shared use of their building lead-in ducts and lead-in manholes by other FBO licensees. StarHub should not be allowed to adopt a more lengthy and uncertain, and less efficient, procedure for the sharing of its building lead-in ducts and lead-in manholes with other FBO licensees.

NetLink Trust respectfully submits that IMDA should require StarHub to lease out duct space within its building lead-in ducts, and allow sharing of its lead-in manholes, in the same way that IMDA has required NetLink Trust and Singtel to allow shared use of building lead-in ducts and lead-in manholes, pursuant to the terms and conditions stipulated in the RAO and RIO (respectively).

PART XI: ADMINISTRATIVE AND ENFORCEMENT PROCEDURES

Question 11:1: IMDA invites views and comments on the introduction of the reconsideration process to media licensees on IMDA's decisions on matters pertaining to competition and consumer protection.

NetLink Trust supports IMDA's proposal to extend the reconsideration process to media-related decisions on competition and consumer protection matters for the reasons cited in the Consultation Document.

Timeframe for Submission of Reconsideration Request and Appeal

Under Section 11.9.1 of the TCC, a licensee that is aggrieved by IMDA's decision or direction under the TCC, or any person (other than a licensee) that is aggrieved by IMDA's decision or direction made under Section 10 of the TCC, may either: (i) request IMDA to reconsider its decision or direction ("**Reconsideration Request**"); or (ii) appeal to the Minister ("**Appeal**") within 14 days of the receipt of IMDA's decision or direction.

NetLink Trust would like to propose an extension of the submission timeline for the Reconsideration Request and Appeal to within 21 days from the receipt of IMDA's decision or direction. In NetLink Trust's view, the current timeline of 14 days (for submission of the Reconsideration Request or Appeal) does not allow sufficient time for licensees to review the impact of IMDA's decision (or direction) on their business and operations, and to prepare their submission to IMDA or the Minister (as the case may be).

Issues for reconsideration or appeal are often complex or novel (or both). An extended timeline of 21 days will provide licensees with ample time to deliberate on the issues and concerns that arise from IMDA's decision (or direction) and in turn prepare their Reconsideration Request or Appeal. In most cases, this will involve the collation and analysis of supporting data and information, which are time-consuming activities.

Criteria for Considering Request for Stay of Decision or Direction

Sub-section 11.9.4(b) of the TCC states that IMDA generally will take into account the following factors when considering whether to stay the effectiveness of a decision or direction that is pending review:

- (a) merits of the Reconsideration Request or Appeal;
- (b) whether the potential harm to any person outweighs the benefits of allowing the decision to go into effect; and
- (c) public interest.

NetLink Trust submits that IMDA should include the following additional factor in its consideration of whether to stay the effectiveness of a decision or direction:

- (d) whether the implementation of the decision or direction will result in an irreversible impact to the licensee.

In some cases, the implementation of IMDA's decision or direction will require substantial investment by the licensee to alter or modify its network infrastructure, systems and/or business processes. These alterations or modifications could also result in downstream impact to the licensee's wholesale customers' business processes and/or system configurations (and in turn require its customers to implement changes to their own systems). In the event of a reconsideration or appeal decision that is in favour of the licensee, the licensee and/or its customers will be required to incur additional costs to unwind the alterations or modifications that they previously implemented to achieve compliance with IMDA's original decision or direction. NetLink Trust respectfully submits that it would be appropriate of IMDA to take into account the irreversible adverse financial impact to licensees and/or their customers if it were to decline a request for stay of decision or direction (as described above), in its consideration of whether to stay the effectiveness of a decision or direction.

Question 11:2: IMDA invites views and comments on the broad changes to the dispute resolution process under the Converged Code and to set out the detailed dispute resolution procedures in a separate set of guidelines.

NetLink Trust agrees with IMDA's proposal to set out the detailed dispute resolution procedures in a separate set of guidelines as this is consistent with the current approach under the TCC.

Request for Intervention

Under the Converged Code, IMDA has proposed to adopt the TCC approach which sets out a procedure for IMDA to determine if it should intervene to resolve a dispute. NetLink Trust supports IMDA's proposal as it would offer greater procedural clarity to the parties in dispute. Further, in order to afford the Other Party⁵ sufficient time to assess and respond to the Request for Intervention, NetLink Trust would like to propose changing the current timeframe for response (by the Other Party) from five to seven days. The additional two days will address any shortage of time that might arise due to gazetted public holiday(s) falling within the response period, after a Request for Intervention has been filed by the Requesting Party.

Submission of Petition

NetLink Trust is supportive of IMDA's proposal to adopt "days" as opposed to "working days" in the timelines set out in the dispute resolution procedure under the Converged Code, as this will align with the approach adopted under the IMDA Act, Telecommunications Act (Chapter 323) and the TCC and result in less confusion.

⁵ The Other Party refers to the other licensee as identified by the Requesting Party in the Request for Intervention to IMDA.

Under the Converged Code, IMDA has proposed to adopt the MMCC approach whereby IMDA will have the discretion and flexibility to expedite the submission of the Petition. NetLink Trust agrees that there is merit to request the Requesting Party to submit the Petition within a shorter timeframe for matters that have already reached an impasse despite the efforts made by both parties to negotiate in good faith. NetLink Trust therefore supports IMDA's proposed change to expedite the submission of the Petition which would help to shorten the overall timeframe for dispute resolution.

Settlement Conference

Under the Converged Code, IMDA has proposed to adopt the MMCC approach whereby IMDA has the option of setting up a Settlement Conference to resolve a dispute. NetLink Trust welcomes the proposal as it provides an additional avenue for the parties in dispute to resolve their differences through facilitation by IMDA.