

**REPUBLIC OF SINGAPORE
INFO-COMMUNICATIONS DEVELOPMENT AUTHORITY
OF SINGAPORE**

**ADVISORY GUIDELINES GOVERNING THE TELECOMMUNICATIONS
CONSOLIDATION REVIEW PROCESS**

DATE OF ISSUE: _____

- 1. INTRODUCTION**
 - 1.1 Definitions**
 - 1.2 IDA’s Authority to Review and Approve Consolidations Involving Licensees**
 - 1.3 Legal Effect of These Guidelines**
 - 1.4 Right to Approve, Deny, or Condition Consolidation Applications Based on Non-competition-related Factors**
 - 1.5 Modification of These Guidelines**
 - 1.6 Effective Date of These Guidelines**
 - 1.7 Short Title**

- 2. CONSOLIDATION REVIEW PRINCIPLES**
 - 2.1 Promotion and Preservation of Competition**
 - 2.2 Competitive Concerns Raised by Consolidations**
 - 2.2.1 Horizontal Consolidations**
 - 2.2.1.1 Creation, Preservation or Enhancement of Unilateral Market Power**
 - 2.2.1.2 Facilitation of Concerted Anti-competitive Conduct**
 - 2.2.2 Non-Horizontal Consolidations**
 - 2.2.2.1 Elimination of a Potential Competitor**
 - 2.2.2.2 Foreclosure or Discriminatory Access to “Upstream” Inputs or “Downstream” Facilities**
 - 2.2.2.3 Market Distortion**
 - 2.3 Goal of Consolidation Review**
 - 2.3.1 Prevent Anti-competitive Consolidations**
 - 2.3.2 Allow Consolidations Subject to Conditions**
 - 2.3.3 Allow Consolidations Without Conditions**
 - 2.4 Compliance with the Telecom Competition Code Regulatory Principles**

- 3. CONSOLIDATION APPLICATION**
 - 3.1 Application for Approval of a Consolidation**
 - 3.1.1 Parties that Must Submit a Consolidation Application**
 - 3.1.2 Transactions that Constitutes a Consolidation**
 - 3.1.2.1 Transactions Involving Acquisition of an Ownership Interest**
 - 3.1.2.2 Transactions Involving the Acquisition of a Licensee’s Business as a Going Concern**
 - 3.1.3 Timing of the Consolidation Application**

- 3.1.3.1 Consolidations Via Privately Negotiated Agreements to Which the Licensee is a Party**
- 3.1.3.2 Consolidations by Other Means**
- 3.1.4 Situations in Which a Consolidation Application Need Not be Submitted**
 - 3.1.4.1 Changes in Ownership That Do Not Result in a Consolidation**
 - 3.1.4.2 Pro Forma Licence Assignment**
- 3.2 Minimum Information Requirements**
 - 3.2.1 Long Form Consolidation Application Procedure**
 - 3.2.1.1 Long Form Consolidation Application**
 - 3.2.1.2 Consolidation Agreement**
 - 3.2.1.3 Ancillary Agreements**
 - 3.2.1.4 Description, Competitive Impact and Public Interest Statement**
 - 3.2.1.5 Supporting Documentation**
 - 3.2.1.6 Proposed Conditions to Address Competitive Concerns**
 - 3.2.2 Short Form Consolidation Application Procedure**
 - 3.2.2.1 Situations in Which a Short Form Consolidation Application May be Submitted**
 - 3.2.2.2 Short Form Consolidation Application**
 - 3.2.2.3 Abbreviated Description, Competitive Impact and Public Interest Statement**
- 3.3 Consolidation Application Processing Fee**
- 3.4 IDA Preliminary Review of Consolidation Application**
 - 3.4.1 Acceptance of Complete Consolidation Application**
 - 3.4.2 Incomplete Consolidation Application Will Not be Processed**
- 3.5 Exemption from Submission Obligations**
- 3.6 Duty to Update Pending Consolidation Application to Reflect Material Changes**
- 3.7 Statement that Consolidation Agreement is Subject to IDA Approval**
- 3.8 Informal Guidance Prior to Submitting Consolidation Application**
 - 3.8.1 Procedures for Requesting Informal Guidance**
 - 3.8.2 Limitations**
 - 3.8.2.1 Inability to Provide Informal Guidance Absent Adequate Information**
 - 3.8.2.2 Informal Guidance Does Not Bind IDA**
- 4. CONSOLIDATION REVIEW PERIOD**
 - 4.1 Consolidation Review Period Does Not Begin Until Receipt of Complete Consolidation Application**
 - 4.2 Length of Consolidation Review Period**
 - 4.3 Suspension of Consolidation Review Period Due to Failure to Adequately Respond to Supplemental Information Requests**
- 5. INFORMATION GATHERING AND CONFIDENTIALITY**
 - 5.1 Requests for Supplemental Information From Applicants**
 - 5.1.1 Requests for Response to Specific Questions**
 - 5.1.2 Requests for Documents**
 - 5.1.3 Interviews**
 - 5.1.4 Inspection Requests**
 - 5.1.5 Requests for Reconsideration**

- 5.1.6 **Consequences for Failure to Comply With Information Requests**
- 5.2 **Procedures for Obtaining Information from Other Parties**
 - 5.2.1 **Public Consultations**
 - 5.2.2 **Private Consultations**
- 5.3 **Co-operation with Foreign Government Authorities**
- 5.4 **Confidentiality**
 - 5.4.1 **Procedures for Requesting Confidential Treatment**
 - 5.4.2 **Standards Governing Grant of Confidential Treatment**
 - 5.4.3 **Restriction on the Use of Confidential Information**
 - 5.4.4 **Notification of Rejection of Confidential Treatment**
- 6. **ANALYTICAL FRAMEWORK**
 - 6.1 **General Approach**
 - 6.1.1 **The “Unreasonably Restrict” Standard**
 - 6.1.2 **Assessment of an Applicant’s Competitive Significance**
 - 6.2 **Horizontal Consolidations**
 - 6.2.1 **Market Share Assessment**
 - 6.2.1.1 **Determining the Relevant Markets**
 - 6.2.1.1.1 **Service or Product Markets**
 - 6.2.1.1.2 **Geographic Markets**
 - 6.2.1.2 **Determining Market Participants**
 - 6.2.1.3 **Determining Market Shares**
 - 6.2.2 **Assessing the Risk of Anti-competitive Impact**
 - 6.2.2.1 **Factors Likely to Increase the Risk of Unilateral Anti-competitive Conduct**
 - 6.2.2.2 **Factors Likely to Increase the Risk of Concerted Anti-competitive Action**
 - 6.2.2.3 **Elimination of a Significant Market Participant**
 - 6.2.3 **Other Relevant Factors**
 - 6.3 **Non-Horizontal Consolidations**
 - 6.3.1 **Determination of Market Power and Market Concentration**
 - 6.3.2 **Determining the Likelihood of Anti-competitive Effects**
 - 6.3.2.1 **Elimination of a Potential Future Competitor**
 - 6.3.2.2 **Foreclosure/Increased Need for Dual-Level Entry by Future Competitors**
 - 6.3.2.3 **Market Distortion**
 - 6.4 **Consideration Applicable to All Consolidations**
 - 6.4.1 **Likelihood and Adequacy of New or Expanded Entry**
 - 6.4.2 **Efficiencies**
 - 6.4.3 **Failing Undertakings and Failing Divisions**
 - 6.4.3.1 **Failing Undertaking**
 - 6.4.3.2 **Failing Division**
 - 6.4.4 **Other Relevant Factors**
 - 6.4.5 **Other Public Interest Considerations**
- 7. **SPECIAL SITUATIONS**
 - 7.1 **Consolidations with Entities that have Market Power in Markets Not Subject to IDA Regulation**
 - 7.2 **Consolidations in Which the Applicants have Common Ownership Prior to the Consolidation**

- 8. DISPOSITION OF CONSOLIDATION APPLICATIONS**
- 8.1 Approval of the Consolidation Application**
- 8.2 Denial of the Consolidation Application**
- 8.3 Approval of the Consolidation Application Subject to Conditions**
- 8.3.1 Structural Conditions**
- 8.3.1.1 Voluntary Partial Divestiture of Assets to an Acceptable Purchaser**
- 8.3.1.1.1 Minimum Requirements**
- 8.3.1.1.2 Timing and Procedures**
- 8.3.1.1.3 IDA's Right to Approve Proposed Purchaser**
- 8.3.1.2 Structural Separation**
- 8.3.2 Behavioural Safeguards**
- 8.3.2.1 Accounting Separation**
- 8.3.2.2 Non-discrimination Requirements**
- 8.3.2.3 Limitations on Joint Directors or Managers**
- 8.3.2.4 Limitations on Information Sharing**
- 8.3.2.5 Termination or Modification of Restrictive Existing Agreements**
- 8.3.2.6 Other Behavioural Safeguards**
- 8.4 Notification by IDA**
- 8.5 Notification by Applicants of Acceptance or Rejection of Conditions**
- 8.6 Sanctions for Post-Consolidation Failure of an Applicant to Comply with Conditions**
- 8.7 Special Procedures Applicable to Consolidations Entered Into Without IDA's Prior Written Approval**
- 8.7.1 Mandatory Divestiture of a Direct Ownership Interest**
- 8.7.2 Elimination of an Indirect Ownership Interest**
- 9. TRANSPARENCY**
- 9.1 Public Notification at the Start of the Consolidation Review Period**
- 9.2 IDA Solicitation of Public Comments**
- 9.3 Publication of Decisions**

10. APPEAL

ANNEXES

ANNEX 1: Long Form Consolidation Application

ANNEX 2: Short Form Consolidation Application

**REPUBLIC OF SINGAPORE
INFO-COMMUNICATIONS DEVELOPMENT AUTHORITY
OF SINGAPORE**

**ADVISORY GUIDELINES GOVERNING THE TELECOMMUNICATIONS
CONSOLIDATION REVIEW PROCESS**

[DATE OF ISSUE]

The Info-Communications Development Authority of Singapore hereby issues these Advisory Guidelines pursuant to Section [28(1)] of the Telecommunications Act (Cap. 323) (“Act”):

1. INTRODUCTION

This Section defines terms used in these Guidelines, sets out IDA’s legal authority to review Consolidations, specifies the legal effect of these Guidelines, reserves certain rights and provides the Effective Date and Short Title of these Guidelines.

1.1 Definitions

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

- (a) “Acquiring Party” includes an individual, association or legal entity that acquires a Ownership Interest in a Licensee, or otherwise engages in any transaction which results in a Consolidation with a Licensee.
- (b) An “Affiliate” of a Licensee or Acquiring Party means an entity:
 - (i) that has an attributable interest in any Licensee or Acquiring Party of 5 percent or more (parent); or
 - (ii) in which a Licensee or Acquiring Party has an attributable interest of 5 percent or more (subsidiary); or
 - (iii) in which a any parent of the Licensee or Acquiring Party has an attributable interest of 5 percent or more (sibling).

In determining an Applicant’s attributable interest, IDA will use the “sum-the-percentages” methodology. This methodology will be applied successively at each level of the “ownership chain”. For example, if an Applicant has legal or beneficial ownership of 100 percent of the voting shares of Entity A, and Entity A has legal or beneficial ownership of 50 percent of the voting shares of Entity B, and Entity B has legal or beneficial ownership of 50 percent of the voting shares of Entity C, then the Applicant will be deemed to have a 25 percent attributable interest in Entity C. In this case, Entity C will be deemed to be an “Affiliate” of the Applicant.

- (c) “Applicant” means a Licensee and an Acquiring Party (whether or not a Licensee) that has filed a Consolidation Application with IDA.
- (d) “Code” or “Telecom Competition Code” means the Code of Practice for Competition in the Provision of Telecommunication Services, issued by IDA.
- (e) “Conditions” means those obligations, specified in Sub-section [9.7.3] of the Code and Sub-section [8.3] of these Guidelines, that IDA may require the Applicants to agree to as a pre-requisite for IDA’s approval of their Consolidation.
- (f) “Consolidation” means a merger, asset acquisition or any other transaction that results in previously separate economic entities becoming a single economic entity. This may occur where, an Acquiring Party:
 - (i) obtains Effective Control over a Licensee; or
 - (ii) acquires the business of a Licensee as a going concern.
- (g) “Consolidation Agreement” means a valid, legal and binding agreement that, save for approval by IDA and satisfaction of Conditions imposed by IDA, would result in a Consolidation.
- (h) “Consolidation Application” means the application (including all supporting information and documents) that the Applicants must submit to obtain IDA’s prior written approval for the Consolidation.
- (i) “Consolidation Review” means IDA’s review of a Consolidation Application to assess the likely impact of the Consolidation on competition in the Singapore telecommunication market.
- (j) “Consolidation Review Period” means the period, specified in Section [4] of these Guidelines, during which IDA reviews a Consolidation Application.
- (k) “Consolidation Application Processing Fee” means the fee specified in Sub-section [3.3] of these Guidelines.
- (l) “Effective Control” means the ability to cause an entity to take, or prevent an entity from taking, a decision regarding the management and major operating decisions of the entity. IDA will presume that an Acquiring Party that holds an Ownership Interest of at least 30 percent in a Licensee has the ability to exercise Effective Control of the Licensee.
- (m) “Effective Date” means the date of issue of these Guidelines.
- (n) “Guidelines” or “Telecom Consolidation Guidelines” means the Advisory Guidelines Governing the Telecommunications Consolidation Review Process.
- (o) “Horizontal Consolidation” means a Consolidation involving two or more entities that are current competing providers of the same telecommunication services or telecommunication services that are reasonable substitutes.

- (p) “IDA” means the Info-communications Development Authority of Singapore.
- (q) “Licence” means a licence issued by IDA pursuant to Section 5 of the Act.
- (r) “Licence Assignment” means a transaction that results in a Licensee assigning, transferring, subletting or otherwise disposing its rights, duties, liabilities, obligations and privileges under its Licence to any other entity.
- (s) “Licensee” means a telecommunications licensee declared by IDA to be a designated telecommunications licensee.
- (t) “Long Form Consolidation Application” means the application form set out in Annex [1] of these Guidelines.
- (u) “Market Power” means the ability to unilaterally restrict output, raise prices, reduce quality or otherwise act independently of competitive market forces.
- (v) “Minimum Information Requirements” means the requirements specified in Sub-sections [3.2.1] to [3.2.2.3] of these Guidelines.
- (w) “Non-Horizontal Consolidation” means a Consolidation that involves two or more entities that are not current competitors. This includes a Vertical Consolidation.
- (x) “Ownership Interest” means an Acquiring Party’s Direct Ownership Interest or Indirect Ownership Interest in a Licensee.
- (y) “Post-Consolidation Entity” means the economic entity that will be created as a result of IDA’s approval of the Consolidation Application. A Post-Consolidation Entity includes the legal entity that will acquire the Ownership Interest in the Licensee, or to which the Licence will be assigned, or which acquires the business of a Licensee as a going concern, as well as any entity that will have Effective Control over that entity, or over which that entity will have Effective Control, or which will be subject to Effective Control by an entity that has Effective Control over that entity.
- (z) “Short Form Consolidation Application” means the application form set out in Annex [2] of these Guidelines.
- (aa) “Telecommunications” or “telecommunications” shall have the same meaning as in the Act.
- (bb) “Tender Offer” means an offer made to the public to acquire some or all of the shares of any Licensee whose shares are traded on a securities exchange.
- (cc) “Vertical Consolidation” means a Consolidation that involves two or more entities at different levels in the supply chain, such as a Facilities-based Licensee and a reseller that sells that Licensee’s services.

Terms used but not otherwise defined in these Guidelines shall bear the same meanings as defined in the Act or the Code.

1.2 IDA's Authority to Review and Approve Consolidations Involving Licensees

IDA's authority to review and approve Consolidations involving Licensees is set out in Section [XX] of the Act. Pursuant to the Act, IDA's approval must be obtained in connection with any Consolidation, whether effected through:

- (a) the acquisition of an Ownership Interest in a Licensee that would result in an Acquiring Party holding an Ownership Interest of at least 30 percent in the Licensee;
- (b) the acquisition of the ability to exercise Effective Control of a Licensee without the acquisition of an Ownership Interest of at least 30 percent in a Licensee; or
- (c) the acquisition of the business of a Licensee as a going concern.

1.3 Legal Effect of These Guidelines

The provisions contained in these Guidelines are advisory; and they do not impose any binding legal obligations on IDA or any private party. Rather, these Guidelines are intended to clarify the procedures that IDA will generally use, and the standards that IDA will generally apply, in exercising any powers within its purview and in particular, in implementing the Consolidation Review provisions contained in Section Nine of the Code. In order to provide a single document addressing all issues relevant to the Consolidation Review process, certain provisions of the Code have been summarised or repeated in these Guidelines. In the case of any conflict between the Code and these Guidelines, the terms of the Code will prevail.

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

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

1.5 Modification of These Guidelines

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

1.6 Effective Date of These Guidelines

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

1.7 Short Title

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

2. CONSOLIDATION REVIEW PRINCIPLES

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

2.1 Promotion and Preservation of Competition

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

2.2 Competitive Concerns Raised by Consolidations

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

2.2.1 Horizontal Consolidations

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

2.2.1.1 Creation, Preservation or Enhancement of Unilateral Market Power

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

2.2.1.2 Facilitation of Concerted Anti-competitive Conduct

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

2.2.2 Non-Horizontal Consolidations

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

Horizontal Consolidations can have an adverse competitive effect where at least one of the entities has Market Power or participates in a concentrated market with few other competitors. There are several ways in which this can occur:

2.2.2.1 Elimination of a Potential Competitor

A Non-Horizontal Consolidation can eliminate the possibility that, in future, one of the parties will enter, as a competitor, a telecommunication market in which the other party currently participates. This can raise significant concerns in recently liberalised telecommunication markets that have few current competitors. The ability of current telecommunication market participants to restrict output or raise prices will be constrained by the existence of an entity that, although not currently in the telecommunication market, would actually respond (or which current telecommunication market participants believe would respond) to an anti-competitive restriction in output or increase in price by entering the telecommunication market. A Non-Horizontal Consolidation may eliminate that constraint and reduce the chances of establishing actual competition in future.

2.2.2.2 Foreclosure or Discriminatory Access to “Upstream” Inputs or “Downstream” Facilities

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

2.2.2.3 Market Distortion

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

2.3 Goal of Consolidation Review

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

2.3.1 Prevent Anti-competitive Consolidations

IDA will generally prevent the consummation of a Consolidation where the transaction would be likely to unreasonably restrict competition and where the anti-competitive harm cannot be adequately remedied through the imposition of narrowly tailored structural or behavioural Conditions. As regulation generally is a poor substitute for the operation of a competitive telecommunication market, preventing such a Consolidation is superior to approving the Consolidation and imposing pervasive regulation or allowing the Consolidation to go forward and, if anti-competitive conduct occurs, subsequently requiring the transaction to be unwound.

2.3.2 Allow Consolidations Subject to Conditions

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

2.3.3 Allow Consolidations Without Conditions

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

2.4 Compliance with the Telecom Competition Code Regulatory Principles

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

3. CONSOLIDATION APPLICATION

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

3.1 Application for Approval of a Consolidation

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

3.1.1 Parties that Must Submit a Consolidation Application

The Consolidation Application must be submitted jointly by the Acquiring Party and the Licensee that is the subject of the Consolidation. Collectively these parties are referred to as the Applicants. However, Applicants may choose to submit proprietary or commercially sensitive information separately. In addition, in any case in which the Acquiring Party reasonably believes that the Licensee is likely to be opposed to the Consolidation, or either Party reasonably believes that the filing of a joint Consolidation Application would be unreasonably burdensome or infeasible, the Party may petition IDA for permission to file a separate Consolidation Application and IDA will inform both Parties of its decision. Where

IDA grants permission, both Parties must file a separate Consolidation Application. These requirements are applicable to Consolidations in which the subject of the Consolidation is either a Facilities-based Licensee or a Services-based Licensee that IDA has classified as a Designated Telecommunications Licensee, pursuant to Section [XX] of the Act.

3.1.2 Transactions that Constitutes a Consolidation

A “Consolidation” means a merger, asset acquisition or any other transaction that results in previously separate economic entities becoming a single economic entity. This may occur where an Acquiring Party either obtains Effective Control over a Licensee or acquires the business of a Licensee as a going concern. A Consolidation may, but need not, result in the dissolution of an existing legal entity, the creation of a new legal entity or the assignment of the Licensee’s Licence to another legal entity. Consolidations may occur as a result of a variety of transactions. For example:

- (a) a party may seek to obtain a Direct Ownership Interest in a Licensee by entering into an agreement with one or more of the Licensee’s shareholders;
- (b) a party may seek to obtain a Direct Ownership Interest in a Licensee by purchasing the Licensee’s shares on the open market – either through individual transactions or pursuant to a Tender Offer;
- (c) a party may seek to obtain an Indirect Ownership Interest in a Licensee through the purchase of shares in a parent company several steps up the ownership chain; or
- (d) a party that engages in a transaction, such as an asset acquisition, that has the same economic impact as a Consolidation achieved through the acquisition of the Licensee’s shares.

3.1.2.1 Transactions Involving Acquisition of an Ownership Interest

IDA will presume that the acquisition of an Ownership Interest in a Licensee which results in the Acquiring Party holding an Ownership Interest of 30 percent or more would constitute a Consolidation. This presumption may be rebutted by evidence of the degree of control that the acquiring party would be able to exercise. For example, if an entity that seeks to acquire an Ownership Interest in a Licensee which results in that entity holding an Ownership Interest of less than 30 percent, has the right to appoint a majority of the Licensee’s Board or to veto certain management and major operating decisions of the Licensee, IDA may find that the proposed transaction will constitute a Consolidation. Conversely, if an entity seeks to acquire an Ownership Interest in a Licensee that results in that entity holding an Ownership Interest of more than 30 percent solely as a passive investment (i.e., an investment that does not result in any management control), IDA may not find that the proposed acquisition will constitute a Consolidation.

This presumption applies to the acquisition of both Direct and Indirect Ownership Interests in a Licensee. IDA will determine the size of an Acquiring Party’s Ownership Interest using the following approach:

- (a) An Acquiring Party's Direct Ownership Interest in a Licensee will be equal to the percentage of the Licensee's voting shares in which the Acquiring Party has a legal or equitable ownership interest.
- (b) An Acquiring Party's Indirect Ownership Interest in a Licensee will be determined using the "sum-the-percentages" methodology. This methodology will be applied successively at each level of the "ownership chain". Thus, if Entity A (the Acquiring Party) owns 100 percent of the voting shares of Entity B, and Entity B owns 50 percent of the voting shares of Entity C, and Entity C owns 50 percent of the voting shares of a Licensee, then Entity A will be deemed to have a 25 percent Ownership Interest in the voting shares of the Licensee.

3.1.2.2 Transactions Involving the Acquisition of a Licensee's Business as a Going Concern

A transaction in which the Acquiring Party acquires a Licensee's business as a going concern also constitutes a Consolidation, even if the Acquiring Party does not acquire the Licensee's shares. IDA will find that an Acquiring Party has acquired the business of a Licensee as a "going concern" where the Acquiring Party: acquires all or substantially all of the assets of the Licensee; and/or enters into an agreement pursuant to which it acquires the right to provide service to, and receive compensation from, the substantial majority of the Licensee's End-Users.

3.1.3 Timing of the Consolidation Application

Applicants must submit a Consolidation Application to IDA within the following time frames:

3.1.3.1 Consolidations Via Privately Negotiated Agreements to Which the Licensee is Party

In the case of a Consolidation via a privately negotiated agreement to which the Licensee is a party, the Applicants must submit the Consolidation Application not prior to, but within 30 days after the day on which they enter into a valid, legal and binding agreement that, save for approval by IDA and satisfaction of conditions imposed by IDA, would result in a Consolidation, i.e. Consolidation Agreement.

3.1.3.2 Consolidations by Other Means

In the case of a Consolidation by means other than a privately negotiated agreement to which the Licensee is a party:

- (a) if the Acquiring Party provides advance notice to the Licensee that it intends to enter into a Consolidation, the parties must submit the Consolidation Application within 30 days from the day on which the Acquiring Party provides the notification to the Licensee;
- (b) if the Acquiring Party does not provide advance notice to the Licensee that it intends to enter into a Consolidation, the parties must submit the Consolidation Application, within 30 days of the day on which the Licensee becomes aware of the acquisition of the Ownership Interest by the Acquiring Party.

The Licensee must file the Application regardless of whether or not it favours the Consolidation. However, in such cases, the parties may request IDA's permission to file separate Consolidation Applications and IDA will inform both Parties of its decision. Where IDA grants permission, both Parties must file a separate Consolidation Application.

3.1.4 Situations in Which a Consolidation Application Need Not be Submitted

A Consolidation Application need not be submitted where the transaction does not constitute a Consolidation. However, if the transaction constitutes an acquisition of an Ownership Interest in a Licensee that results in the Acquiring Party holding an Ownership Interest of at least 12 percent, the Licensee must comply with the procedures, specified in Sub-section [9.3.6] of the Code. If the Consolidation constitutes a Licence Assignment, the Licensee must comply with the provisions in its Licence. In such cases, when making any required filing, the Licensee should include a clear statement indicating the basis on which it believes that the proposed transaction would not constitute a Consolidation. IDA reserves the right to require the Licensee to submit a Consolidation Application if IDA determines that the proposed transaction may constitute a Consolidation. In such cases, the Consolidation Review Period will begin on the day on which IDA receives a complete Consolidation Application. The following situations do not constitute Consolidations:

3.1.4.1 Changes in Ownership That Do Not Result in a Consolidation

An acquisition of an Ownership Interest, regardless of the size, does not constitute a Consolidation where an individual or entity acquires an Ownership Interest in a Licensee, but does not obtain Effective Control of the Licensee.

3.1.4.2 Pro Forma Licence Assignment

A "pro forma" Licence Assignment does not constitute a Consolidation. IDA will deem a Licence Assignment to be pro forma when it is undertaken in order to effect an internal corporate reorganisation and does not result in a substantial change in the ultimate owners of a Licensee. For example, if a Licensee is currently owned by Corporation One which, in turn, is owned 60 percent by Party A and 40 percent by Party B, and the parties seek to assign that Licensee's Licence to Corporation Two, which is also owned, in substantially the same proportions, by Party A and Party B, IDA would find the proposed assignment to be pro forma, in which case no Consolidation Application need be submitted.

3.2 Minimum Information Requirements

Any Consolidation Application submitted to IDA must comply with the Minimum Information Requirements specified in Sub-sections [3.2.1] to [3.2.2.3] of these Guidelines. Applicants must follow the Long Form Consolidation Application procedure, unless they are eligible to use the Short Form Consolidation Application procedure. Pursuant to Section [1.6.1] of the Code, Applicants may also request an exemption from any requirements contained in these Sub-sections.

3.2.1 Long Form Consolidation Application Procedure

Applicants required to submit a Long Form Consolidation Application must provide the information specified in Sub-sections [3.2.1.1] to [3.2.1.6] of these Guidelines.

3.2.1.1 Long Form Consolidation Application

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

3.2.1.2 Consolidation Agreement

Applicants must submit a copy of the Consolidation Agreement, including any appendices, side letters and supporting documents.

3.2.1.3 Ancillary Agreements

Applicants must submit copies of any agreements that, while not directly addressing the Consolidation, are an integral part of the transaction (such as covenants not to compete or licensing agreements) or that are necessary or useful for IDA to fully assess the likely competitive impact of the Consolidation.

3.2.1.4 Description, Competitive Impact and Public Interest Statement

Applicants must submit a statement that provides a clear, accurate and comprehensive description of the Consolidation, a good faith assessment of the likely impact of the Consolidation on competition in the Singapore telecommunication market and a discussion of why approval of the Consolidation would serve the public interest (the “Statement”). The competitive assessment should generally include information regarding: (a) the telecommunication markets in which the Applicants and their Affiliates participate; (b) the market participants; (c) the estimated market shares of the participants and the level of concentration in those markets; (d) the structure of the market (and the extent to which it facilitates unilateral anti-competitive conduct or concerted action by multiple participants); (e) the likelihood that output would be increased (either by existing market participants or new entrants) in response to a significant and non-transitory price increase; (f) the likelihood of End-Users switching in response to a significant and non-transitory price increase; and (g) any efficiency that would likely result from the Consolidation. Applicants should make reasonable and diligent efforts to collect and provide the necessary information. Applicants should assume that IDA will release this document to the public. If the Statement contains proprietary or commercially sensitive information, the Applicants should put such information in a separate appendix. (Requests for confidential treatment are further addressed in Section Five of these Guidelines.)

3.2.1.5 Supporting Documentation

Applicants should submit a copy of any supporting documents that would assist IDA in assessing the likely competitive effect of the Consolidation. At the minimum, this must include: (a) a copy of the Applicants’ current annual reports or audited financial statements; (b) a copy of the Applicants’ business plans for the current and two previous years; (c) a copy of any reports, studies or analyses prepared for the shareholders, directors, or executive officers of the Applicants assessing the Consolidation and describing the proposed operation of the Post-Consolidation Entity that will be created as a result of the Consolidation; and (d) a

chart indicating the relationship between each Applicant and its Affiliates and the relevant Ownership Interests. Applicants should indicate any situation in which the Ownership Interest grants the holder thereof a special or preferential right, and any pending changes in the ownership structure of any of the Applicants in addition to the change that is the subject of their Consolidation Application.

3.2.1.6 Proposed Conditions to Address Competitive Concerns

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

3.2.2 Short Form Consolidation Application Procedure

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

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

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

3.2.2.2 Short Form Consolidation Application

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

3.2.2.3 Abbreviated Description, Competitive Impact and Public Interest Statement

Applicants using the Short Form Consolidation Application procedure must submit an abbreviated statement that provides a clear, accurate and comprehensive description of the Consolidation, a good faith description of the basis on which the Applicants believe that the Consolidation does not raise significant competitive issues, and a brief discussion of why approval of the Consolidation would serve the public interest (the “Abbreviated Statement”). The competitive assessment should generally include information regarding: (a) the telecommunication markets in which the Applicants and their Affiliates participate; (b) the market participants; and (c) the estimated market shares of the participants and the level of

concentration in those markets. Applicants should include any additional relevant information that demonstrates that the Consolidation would not be likely to unreasonably restrict competition and would serve the public interest. Applicants should make reasonable and diligent efforts to collect and provide the necessary information. Applicants should assume that IDA will release the Abbreviated Statement to the public. If the Abbreviated Statement contains proprietary or commercially sensitive information, the Applicants should put such information in a separate appendix. (Requests for confidential treatment are further addressed in Section Five of these Guidelines.)

3.3 Consolidation Application Processing Fee

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

3.4 IDA Preliminary Review of Consolidation Application

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

3.4.1 Acceptance of Complete Consolidation Application

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

3.4.2 Incomplete Consolidation Application Will Not be Processed

IDA will decline to process any Consolidation Application that does not satisfy the Minimum Information Requirements. This includes any situation in which the Applicants have improperly submitted a Short Form Consolidation Application when a Long Form Consolidation Application should have been submitted. If IDA makes such a determination, it will inform the Applicants as to the additional information that they must submit. The Consolidation Review Period will not begin until IDA determines that the Applicants have fully satisfied the Minimum Information Requirements or been granted an exemption.

3.5 Exemption from Submission Obligations

Any Applicant may request that IDA exempts it from any or all of the requirements contained in Sub-sections [3.1] to [3.3] of these Guidelines. Such exemption will only be granted if the Applicant makes a specific and compelling submission that: (a) compliance with the specific requirement or requirements is not possible; (b) would be unreasonably burdensome; or (c) is

not necessary to ensure that a Consolidation would not unreasonably restrict competition in the Singapore telecommunication market. An exemption request should be submitted prior to the date on which the Applicants submit the Consolidation Application. IDA will generally make publicly available relevant information on any exemption granted, with an explanation of the justification for granting the exemption.

3.6 Duty to Update Pending Consolidation Application to Reflect Material Changes

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

3.7 Statement that Consolidation Agreement is Subject to IDA Approval

Any Licensee that enters into a Consolidation Agreement must include language in the Consolidation Agreement expressly stating that the Consolidation is subject to IDA's approval and that the Consolidation will not be consummated unless and until such time as IDA grants its written approval. The Licensee must include similar language in any public statement regarding the Consolidation.

3.8 Informal Guidance Prior to Submitting Consolidation Application

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

3.8.1 Procedures for Requesting Informal Guidance

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

3.8.2 Limitations

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

3.8.2.1 Inability to Provide Informal Guidance Absent Adequate Information

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

3.8.2.2 Informal Guidance Does Not Bind IDA

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

4. CONSOLIDATION REVIEW PERIOD

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

4.1 Consolidation Review Period Does Not Begin Until Receipt of Complete Consolidation Application

IDA will inform the Applicants when their Consolidation Application has satisfied the Minimum Information Requirements specified in Sub-section [3.2] of these Guidelines after conducting the preliminary review described in Sub-section [3.4] of these Guidelines. The Consolidation Review Period will be deemed to have begun on the day on which the Applicants first satisfied the Minimum Information Requirements specified in Sub-section [3.2] of these Guidelines. For example, if the Applicants submit the minimum required information on 1 July, and IDA informs the Applicants on 5 July that their Consolidation Application is complete, the Consolidation Review Period will be deemed to have begun on 1

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

4.2 Length of Consolidation Review Period

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

4.3 Suspension of Consolidation Review Period Due to Failure to Adequately Respond to Supplemental Information Requests

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

5. INFORMATION GATHERING AND CONFIDENTIALITY

In order to assess the likely competitive effect of a Consolidation, IDA will often need to obtain information (in addition to that provided with the Consolidation Application) from the Applicants and other parties regarding the conditions in the relevant markets. At the same time, IDA recognizes that the Applicants and other entities have legitimate interests in avoiding public disclosure of proprietary or commercially sensitive information. This Section describes the information gathering and confidentiality procedures that IDA will generally use in conducting a Consolidation Review.

5.1 Requests for Supplemental Information From Applicants

Where necessary to assess the likely competitive impact of a Consolidation or where appropriate, IDA pursuant to Section Nine of the Code, will request any of the Applicants to provide information in addition to that contained in their Consolidation Application.

5.1.1 Requests for Response to Specific Questions

IDA may submit written questions to any of the Applicants. To the extent that the Applicant possesses (or through reasonable diligence can obtain) information that would enable it to respond, it must provide responsive, accurate and complete written answers. At the time it submits its answers, each Applicant must submit a statement certifying that it has satisfied this obligation.

5.1.2 Requests for Documents

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

5.1.3 Interviews

IDA may request shareholders, officers or employees of any of the Applicants to participate in an interview. Following the interview, IDA may require any of the Applicants to provide written answers to specific questions.

5.1.4 Inspection Requests

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

5.1.5 Requests for Reconsideration

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

5.1.6 Consequences for Failure to Comply With Information Requests

An Applicant's failure to respond accurately and completely within a reasonable period of time, can provide a basis for IDA to deny the Consolidation Application. In addition, if IDA concludes that a Licensee has provided inaccurate, incomplete or misleading responses, documents or information, it may treat the action as a contravention of Sub-section [9.6.5] of the Code and impose appropriate sanctions.

5.2 Procedures for Obtaining Information from Other Parties

In some cases, IDA may find it useful to obtain information from suppliers, competitors or customers of any of the Applicants, as well as other interested parties. There are several means by which IDA will do so including:

5.2.1 Public Consultations

Where appropriate, IDA will provide the public with an opportunity to comment regarding a Consolidation. The procedures governing public consultations are contained in Sub-section [9.2] of these Guidelines.

5.2.2 Private Consultations

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

5.3 Co-operation with Foreign Government Authorities

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

5.4 Confidentiality

While IDA is committed to conducting Consolidation Reviews in a transparent manner, IDA will take appropriate action to prevent the disclosure of commercially sensitive or proprietary information which has been submitted pursuant to Sub-section [9.6.4] of the Code.

5.4.1 Procedures for Requesting Confidential Treatment

An Applicant or any other party submitting information to IDA, whether voluntarily or pursuant to a request from IDA, may request that information submitted be treated as confidential. The party requesting confidential treatment must identify the specific document, portion of document, or other information for which confidential treatment is sought. IDA will generally not accept requests to treat all information submitted as confidential. Any request for confidential treatment must indicate that the request satisfies the standards contained in Sub-section [5.4.2] of these Guidelines. Applicants and other parties should take reasonable measures to minimise the amount of information for which they request confidential treatment.

5.4.2 Standards Governing Grant of Confidential Treatment

IDA will grant a request for confidential treatment if the Applicant or any other party demonstrates, with reasonable specificity, that the information for which it seeks confidential treatment is either proprietary, contains commercially sensitive information (including information that is subject to a pre-existing non-disclosure agreement with a third party), or that disclosure would otherwise have a material adverse impact on the Applicant or relevant party. IDA will consider information to be proprietary if the Applicant or relevant party can demonstrate that it constitutes such party's legally protected intellectual property – such as a patented formula or a trade secret. IDA will consider information to be commercially sensitive if: (a) it is not otherwise available to the public; (b) it describes the disclosing party's business procedures, practices, plans or its assessment of market conditions or similar matters; and (c) there is a reasonable possibility that disclosure would provide a commercial benefit to the party's competitors.

5.4.3 Restriction on the Use of Confidential Information

Subject to any law requiring disclosure of information, if IDA grants a request for confidential treatment, it will: (a) take all reasonable measures to ensure that the information is not disclosed to any third party; and (b) will use the information only for the purpose of conducting the Consolidation Review for which the information was obtained.

5.4.4 Notification of Rejection of Confidential Treatment

If IDA rejects a request for confidential treatment, it will return the information to the sender, with an explanation as to why the request was rejected. If the information was voluntarily provided, IDA will not take this information into consideration and will assess the Consolidation Application only on the information that was retained. If the information was provided by a Licensee or Applicant in order to fulfil a requirement imposed pursuant to this Code, the Licensee or Applicant may either: withdraw the Consolidation Application or resubmit the required information on a non-confidential basis.

6. ANALYTICAL FRAMEWORK

IDA will not approve a Consolidation Application where IDA determines that the Consolidation is likely to unreasonably restrict competition in any telecommunication market within Singapore or harm public interest. In order to identify those Consolidations that are likely to “unreasonably restrict competition” in any Singapore telecommunication market, IDA will apply economic analysis to information regarding the Consolidation and the characteristics of the relevant telecommunication markets. This Section describes the analytical framework that IDA will generally use. This framework distinguishes between Horizontal Consolidations and Non-Horizontal Consolidations. (Some Consolidations may have both horizontal and non-horizontal aspects and where this occurs, IDA will assess each aspect of the Consolidation under the appropriate standard.) IDA may modify this framework in any given Consolidation Review, where necessary to better assess the likely competitive impact of the Consolidation.

6.1 General Approach

6.1.1 The “Unreasonably Restrict” Standard

The “unreasonably restrict” standard is a flexible one. In general, however, IDA will only find that a Consolidation unreasonably restricts competition where the Consolidation would be likely either to: (a) result in a significant and unjustifiable reduction in existing competition in the Singapore telecommunication market; or (b) significantly impede the development of future competition in the Singapore telecommunication market.

6.1.2 Assessment of an Applicant’s Competitive Significance

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

6.2 Horizontal Consolidations

Horizontal Consolidations pose the greatest threat to competition. In carrying out its review, IDA will generally use the methodology described in Sub-sections [6.2.1] to [6.2.3] of these Guidelines.

6.2.1 Market Share Assessment

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

6.2.1.1 Determining the Relevant Markets

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

6.2.1.1.1 Service or Product Markets

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

6.2.1.1.2 Geographic Markets

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

6.2.1.2 Determining Market Participants

For each telecommunication market within Singapore in which any of the Applicants compete, IDA will seek to identify all other entities that participate in that market. IDA will include only those entities that currently provide telecommunication services or products that directly compete against, or are substitutes for, any of the Applicants' telecommunication services or products.

6.2.1.3 Determining Market Shares

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

6.2.2 Assessing the Risk of Anti-competitive Impact

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

6.2.2.1 Factors Likely to Increase the Risk of Unilateral Anti-competitive Conduct

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

following the Consolidation, they sought to switch to alternate suppliers of telecommunication services.

6.2.2.2 Factors Likely to Increase the Risk of Concerted Anti-competitive Action

IDA will also consider the extent to which the structure of the relevant telecommunication market creates a heightened risk that, if the Consolidation Application is approved, competing market participants would be likely to enter into, and maintain, anti-competitive agreements. Some relevant factors that IDA may consider include whether: (a) the market is a concentrated one, in which there are few other significant participants that offer consumers a competitive alternative; (b) information regarding individual telecommunication market participant's price and production decisions is publicly available; (c) there is a low degree of product differentiation; (d) telecommunication market participants typically follow standardised marketing or pricing practices; or (e) there are no "maverick" participants in the telecommunication market that tend to deviate from industry norms.

6.2.2.3 Elimination of a Significant Market Participant

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

6.2.3 Other Relevant Factors

IDA will also consider other relevant factors that may indicate that a proposed Horizontal Consolidation would not be likely to unreasonably restrict competition. Some of these factors are described in Sub-sections [6.4] to [6.4.4] of these Guidelines.

6.3 Non-Horizontal Consolidations

As Non-Horizontal Consolidations can often facilitate competition, IDA will generally seek to deny or Condition its approval of such Consolidations only if there are reasons for IDA to believe that such Consolidations are likely to unreasonably restrict competition.

6.3.1 Determination of Market Power and Market Concentration

In assessing a proposed Non-Horizontal Consolidation, IDA will first seek to determine whether any of the Applicants has Market Power. For purposes of reviewing a proposed Non-Horizontal Consolidation, IDA will make an initial presumption that an Applicant has Market Power if: (a) it is a Dominant Licensee; (b) it enjoys government-granted exclusive rights (such as an exclusive right to provide a service) or has control over "bottleneck" facilities used to provide telecommunication services; or (c) it has more than a 40 percent share in any telecommunication market, wherever located, in which it operates; or (d) other relevant factors indicate that the Applicant has the ability to unilaterally restrict output, raise prices, reduce quality or otherwise act independently of its competitors. IDA will consider any reliable evidence that may rebut this presumption. In seeking to determine market share, or otherwise assessing the impact on competition, IDA will use the basic market definition/market share approach described in Sub-sections [6.2.1] to [6.2.1.3] of these Guidelines.

6.3.2 Determining the Likelihood of Anti-competitive Effects

In those cases in which IDA determines that any of the Applicants has Market Power as described in Sub-section [6.3.1] of these Guidelines, IDA may consider market-specific factors that could increase the likelihood that the Consolidation would unreasonably restrict competition. Some of these factors are described below:

6.3.2.1 Elimination of a Potential Future Competitor

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

6.3.2.2 Foreclosure/Increased Need for Dual-Level Entry by Future Competitors

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

6.3.2.3 Market Distortion

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

6.4 Consideration Applicable to All Consolidations

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

6.4.1 Likelihood and Adequacy of New or Expanded Entry

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

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

6.4.2 Efficiencies

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

6.4.3 Failing Undertakings and Failing Divisions

Finally, IDA will generally approve a Consolidation Application for a Consolidation that would otherwise be found to be likely to unreasonably restrict competition where any of the Applicants is a "Failing Undertaking" Or "Failing Division."

6.4.3.1 Failing Undertaking

A Failing Undertaking is an entity that: (a) is unable to meet its near-term financial obligations; (b) is unlikely to be able to re-organise successfully through an insolvency proceeding; (c) cannot find any reasonable alternative purchaser of its assets; and (d) is likely

to exit the telecommunication market, thereby removing its productive assets, absent the Consolidation. A purchaser will be deemed to be a reasonable alternative purchaser if it is willing to pay a commercially reasonable price for the entity even if that price is lower than the price that the Applicant was prepared to pay.

6.4.3.2 Failing Division

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

6.4.4 Other Relevant Factors

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

6.4.5 Other Public Interest Considerations

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

7. SPECIAL SITUATIONS

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

7.1 Consolidations with Entities that have Market Power in Markets Not Subject to IDA Regulation

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

7.2 Consolidations in Which the Applicants have Common Ownership Prior to the Consolidation

In some cases, prior to a Consolidation, an entity may have an ownership interest in all Applicants in a Consolidation Application. In such cases, IDA will determine whether, prior to the Consolidation, the Applicants acted as a single economic entity. To do so, IDA will assess the extent to which the parent actually controls or co-ordinates the activities of the Applicants. If IDA concludes that the Applicants are already a single economic entity prior to the Consolidation, it will dismiss the Consolidation Application without any further review.

8. DISPOSITION OF CONSOLIDATION APPLICATIONS

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

8.1 Approval of the Consolidation Application

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

8.2 Denial of the Consolidation Application

IDA may deny the Consolidation Application.

8.3 Approval of the Consolidation Application Subject to Conditions

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

8.3.1 Structural Conditions

Structural conditions may involve the divestiture of certain operations of any of the Applicants, or of an entity over which an Applicant has Effective Control, or of an entity that has Effective Control over an Applicant, or of an entity that is subject to Effective Control by an entity that also has Effective Control over an Applicant. Structural conditions can also include requirements that certain operations of the Post-Consolidation Entity be operated at arm's length from other operations.

8.3.1.1 Voluntary Partial Divestiture of Assets to an Acceptable Purchaser

In some cases, a Consolidation may be generally pro-competitive, but may raise a competitive concern in one telecommunication market. For example, Licensee One may participate in Telecommunication Market A, Telecommunication Market B and Telecommunication Market C. Licensee Two may participate in Telecommunication Market C, Telecommunication Market D and Telecommunication Market E. A Consolidation between the two Licensees is unlikely to have any adverse competitive impact on Telecommunication Markets A, B, D and E – but could result in creation of an entity with Market Power in Telecommunication Market C. Sub-section [9.4.5] of the Code provides that IDA will not approve a Consolidation Application for a Consolidation where IDA

determines that the Consolidation is likely to unreasonably restrict competition in the Singapore telecommunication market. As a Condition of approval of the Consolidation Application, IDA may require any of the Applicants to agree that certain assets will be divested to a third party, in an arm's length transaction. In the previous example, requesting the Licensees to voluntarily divest some or all of their operations in Telecommunication Market C to a qualified buyer could allow the Consolidation of Licensee One and Two, while preserving competition in Telecommunication Market C.

8.3.1.1.1 Minimum Requirements

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

8.3.1.1.2 Timing and Procedures

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

8.3.1.1.3 IDA's Right to Approve Proposed Purchaser

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

8.3.1.2 Structural Separation

As a Condition of its approval of the Consolidation Application, IDA may require the Applicants to agree that the Post-Consolidation Entity will conduct certain operations through a structurally separate entity. The separate entity may be required to have separate books of account, separate facilities, separate officers, separate personnel, separate credit lines, and other appropriate forms of separation. Structural separation is often appropriate in Vertical

Consolidations in which one of Applicants has Market Power. Structural separation can allow the Post-Consolidation Entity to achieve certain integration efficiencies, while creating a “self-enforcing” means to reduce the Post-Consolidation Entity’s ability and incentive to engage in, or benefit from, access discrimination and cross-subsidisation.

8.3.2 Behavioural Safeguards

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

8.3.2.1 Accounting Separation

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

8.3.2.2 Non-discrimination Requirements

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

8.3.2.3 Limitations on Joint Directors or Managers

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

8.3.2.4 Limitations on Information Sharing

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

8.3.2.5 Termination or Modification of Restrictive Existing Agreements

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

8.3.2.6 Other Behavioural Safeguards

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

8.4 Notification by IDA

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

8.5 Notification by Applicants of Acceptance or Rejection of Conditions

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

8.6 Sanctions for Post-Consolidation Failure of an Applicant to Comply with Conditions

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

8.7 Special Procedures Applicable to Consolidations Entered Into Without IDA's Prior Written Approval

IDA recognises that, in some cases, an Acquiring Party may enter into a Consolidation without obtaining IDA's prior written approval. As explained above, in such case the parties must file a Consolidation Application within 30 days of the day on which the Licensee becomes aware that the Consolidation has occurred. The Licensee must file the Application regardless of whether or not it favours the Consolidation. However, in such cases, the parties may request IDA's permission to file separate Consolidation Applications and IDA will inform both Parties of its decision. Where IDA grants permission, both Parties must file a separate Consolidation Application. After reviewing the Consolidation Application, IDA

may either approve the Consolidation Application, approve the Consolidation Application subject to Conditions, or reject the Consolidation Application. If IDA rejects the Consolidation Application, it may take a number of actions in order to remedy the situation.

8.7.1 Mandatory Divestiture of a Direct Ownership Interest

In any case in which a party acquires a Direct Ownership Interest in a Licensee that constitutes a Consolidation, and IDA – after providing the Acquiring Party notice and a full opportunity to express its views – determines that allowing the Acquiring Party to retain this Ownership Interest would be likely to unreasonably restrict competition or harm the public interest, IDA will direct the Acquiring Party to divest some or all of the voting shares in the Licensee. IDA generally will allow the Acquiring Party a reasonable period in which to do so. IDA will use the approach described in Sub-section [8.3.1.1] of these Guidelines to assess whether the party to which the divestiture is made is an acceptable party. If the Acquiring Party does not comply with IDA's divestiture order within a reasonable period of time, IDA will direct the Licensee to restrict the exercise of some or all of the voting rights that the Acquiring Party has by reason of its ownership of the voting shares that IDA has directed the Acquiring Party to divest. IDA may also direct the Licensee to restrict the issue or offer of shares, or restrict the payment of any dividends in respect of those voting shares.

8.7.2 Elimination of an Indirect Ownership Interest

In any case in which a party acquires a Indirect Ownership Interest in a Licensee that constitutes a Consolidation, and IDA – after providing the Acquiring Party notice and a full opportunity to express its views – determines that allowing the Acquiring Party to retain this Ownership Interest would be likely to unreasonably restrict competition or harm the public interest, IDA will generally follow the following procedures. IDA will first request the Acquiring Party to eliminate its Indirect Ownership Interest in the Licensee. If the Acquiring Party does not do so within a reasonable period of time, IDA generally will direct the Licensee to restrict the exercise of some or all of the voting rights an Affiliate of the Acquiring Party has in the Licensee by reason of the Affiliate's holding of voting shares in the Licensee that can be attributed to the Acquiring Party. IDA may also direct the Licensee to restrict the issue or offer of shares, or restrict the payment of any dividends in respect of those voting shares.

For example, if Entity A has a Direct Ownership Interest of 80 percent in a Licensee, and Entity B subsequently acquires 50 percent of the voting shares of Entity A without seeking IDA's prior approval, and IDA subsequently determines that Entity B's acquisition of a 40 percent Indirect Ownership Interest in the Licensee is likely to unreasonably restrict competition, IDA may direct the Licensee to withhold 50 percent of the dividends entitled to Entity A until such time as Entity B eliminates its Indirect Ownership Interest in the Licensee. (IDA reserves the right to vary this percentage.) If the Acquiring Party (Entity B) still fails to eliminate its Indirect Ownership Interest in the Licensee, IDA may subsequently direct the Acquiring Party's Affiliate (Entity A) to divest some or all of the voting shares that it has in the Licensee.

9. TRANSPARENCY

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

9.1 Public Notification at the Start of the Consolidation Review Period

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

9.2 IDA's Solicitation of Public Comments

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

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

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

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

9.3 Publication of Decisions

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

10. APPEAL

Any Applicant that is adversely affected by a decision rendered by IDA in response to a Consolidation Application may ask IDA to reconsider its decision.

ANNEX 1

LONG FORM CONSOLIDATION APPLICATION

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

2. List each entity that constitutes an Affiliate of the Applicant identified in response to Question 1 based on the Applicant holding an attributable interest of 5 percent or more (Subsidiary). For each Affiliate, indicate the Affiliate's principal line of business and the Applicant's percentage ownership interest.

3. List each entity that constitutes an Affiliate of the Applicant identified in response to Question 1 based on the Affiliates holding an attributable interest of 5 percent or more in the Applicant (Parent). For each Affiliate, indicate the Affiliate's principal line of business and the entity's percentage Ownership Interest in the Licensee. Also indicate any entity in which that Affiliate holds an attributable interest of 5 percent or more (Sibling). Indicate any situation in which any Affiliate has special or preferential rights in the Licensee.

- 4. List the name and address of the Applicant (whether or not a current Licensee) that seeks to obtain an Ownership Interest in the Licensee or acquire the business of the Licensee as a going concern. Indicate the name of the Applicant’s primary contact in connection with this Consolidation Application and his or her designation and contact information (mailing address, telephone number, fax number, email address etc.).

- 5. List each entity that constitutes an Affiliate of the Applicant identified in response to Question 4 based on the Applicant holding an attributable interest of 5 percent or more (Subsidiary). For each Affiliate, indicate the Affiliate’s principal line of business and the Applicant’s percentage ownership interest.

- 6. List each entity that constitutes an Affiliate of the Applicant identified in response to Question 4 based on the Affiliates holding an attributable interest of 5 percent or more in the Applicant (Parent). For each Affiliate, indicate the Affiliate’s principal line of business and the entity’s percentage ownership interest in the Licensee. Also indicate any entity in which that Affiliate holds an attributable interest of 5 percent or more (Sibling). Indicate any situation in which any Affiliate has special or preferential rights in the Licensee.

- 7. Description of the Consolidation

Check each of the following that correctly describes the Consolidation (you may check more than one):

___ The Applicant identified in response to Question 4 is seeking to acquire a Direct or Indirect Ownership Interest that would result in the Applicant holding an Ownership Interest of at least 12 percent in the Licensee identified in Response to Question 1.

Specify the percentage of Ownership Interest sought to be acquired: _____

___ The Applicant identified in response to Question 4 is seeking to acquire the business of the Licensee as a going concern.

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

8. Using the methodology described in Sub-sections [6.2.1] to [6.2.1.3] of the Telecom Consolidation Guidelines, identify each telecommunication market within Singapore in which, based on your best estimate, any of the Applicants has a market share of 5 percent or more. For each such telecommunication market, indicate, based on your best available information, the estimated market share of the 5 largest telecommunication market participants (based on revenue, customers, or other appropriate measurement).

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

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

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

___ The Consolidation is a Non-Horizontal Consolidation in which at least one Applicant has more than a 25 percent market share in at least one telecommunication market, whether or not located in Singapore.

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

___ (Y/N)

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

12. Minimum Required Information

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

___ Consolidation Agreement

___ Ancillary Agreements

___ Statement

___ Current annual report or financial statement for each Applicant

___ Business plans for each Applicant for the current and two previous years

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

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

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

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

13. Confidentiality

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

___ (Y/N)

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

14. Certification

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

Signature

Name:
Title:
Company:

Signature

Name:
Title:
Company:

Date Submitted: _____

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

ANNEX 2

SHORT FORM CONSOLIDATION APPLICATION

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

2. List each entity that constitutes an Affiliate of the Applicant identified in response to Question 1 based on the Applicant holding an attributable interest of 5 percent or more (Subsidiary). For each Affiliate, indicate the Affiliate's principal line of business and the Applicant's percentage ownership interest.

3. List each entity that constitutes an Affiliate of the Applicant identified in response to Question 1 based on the Affiliates holding an attributable interest of 5 percent or more in the Applicant (Parent). For each Affiliate, indicate the Affiliate's principal line of business and the entity's percentage Ownership Interest in the Licensee. Also indicate any entity in which that Affiliate holds an attributable interest of 5 percent or more (Sibling). Indicate any situation in which any Affiliate has special or preferential rights in the Licensee.

- 4. List the name and address of the Applicant (whether or not a current Licensee) that seeks to obtain an Ownership Interest in the Licensee or acquire the business of the Licensee as a going concern. Indicate the name of the Applicant’s primary contact in connection with this Consolidation Application and his or her designation and contact information (mailing address, telephone number, fax number, email address etc.).

- 5. List each entity that constitutes an Affiliate of the Applicant identified in response to Question 4 based on the Applicant holding an attributable interest of 5 percent or more (Subsidiary). For each Affiliate, indicate the Affiliate’s principal line of business and the Applicant’s percentage ownership interest.

- 6. List each entity that constitutes an Affiliate of the Applicant identified in response to Question 4 based on the Affiliates holding an attributable interest of 5 percent or more in the Applicant (Parent). For each Affiliate, indicate the Affiliate’s principal line of business and the entity’s percentage ownership interest in the Licensee. Also indicate any entity in which that Affiliate holds an attributable interest of 5 percent or more (Sibling). Indicate any situation in which any Affiliate has special or preferential rights in the Licensee.

- 7. Description of the Consolidation

Check each of the following that correctly describes the Consolidation (you may check more than one):

___ The Applicant identified in response to Question 4 is seeking to acquire a Direct or Indirect Ownership Interest that would result in the Applicant holding an Ownership Interest of at least 12 percent in the Licensee identified in Response to Question 1.

Specify the percentage of Ownership Interest sought to be acquired: _____

___ The Applicant identified in response to Question 4 is seeking to acquire the business of the Licensee as a going concern.

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

8. Using the methodology described in Sub-sections [6.2.1] to [6.2.1.3] of the Telecom Consolidation Guidelines, identify each telecommunication market (including value-added services and equipment) within Singapore in which, based on your best estimate, any of the Applicants has a market share of 5 percent or more. For each such telecommunication market, indicate, based on your best available information, the estimated market share of the 5 largest telecommunication market participants (based on revenue, customers, or other appropriate measurement).

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

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

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

10. Minimum Required Information

Check if you have attached each item listed below:

___ Abbreviated Statement

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

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

11. Confidentiality

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

___ (Y/N)

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

12. Certification

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

Signature

Name:
Title:
Company:

Signature

Name:
Title:
Company:

Date Submitted: _____

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