

**REVIEW OF THE CODE OF PRACTICE FOR COMPETITION IN THE
PROVISION OF TELECOMMUNICATION SERVICES: REQUEST FOR
COMMENTS REGARDING THE PROPOSED REVISED SECTION NINE OF THE
CODE**

AND

**REQUEST FOR FURTHER COMMENTS REGARDING THE PROPOSED
TELECOMMUNICATION CONSOLIDATION GUIDELINES**

AND

**REQUEST FOR COMMENTS REGARDING THE PROPOSED ADVISORY
GUIDELINES FOR TENDER OFFER PROCESS WHERE THE SINGAPORE CODE
ON TAKE-OVERS AND MERGERS APPLIES**

7 May 2003

1. INTRODUCTION

In this Consultation Document, IDA seeks public comment regarding the proposed:

- (a) replacement of Section Nine of the Code of Practice for Competition in the Provision of Telecommunication Services (“Code”);
- (b) further revisions to IDA’s proposed Consolidation Review Guidelines (“Proposed Telecom Consolidation Guidelines”); and
- (c) issuance of a proposed Advisory Guidelines for Tender Offer Process where the Singapore Code on Take-overs and Mergers Applies (“Proposed Tender Offer Guidelines”).

2. EXPERIENCE UNDER SECTION NINE OF THE CODE

2.1 On 1 April 2000, IDA fully liberalised the Singapore telecommunications market. On 15 September 2000, IDA issued the Code, which sets out various rights and obligations of IDA’s Licensees in a competitive market. Section Nine of the Code provides the procedures and standards that IDA will use when assessing Consolidations involving Facilities-based Licensees (“FBOs”) achieved through Changes in Ownership and Licence Assignments.

2.2 On 16 October 2001, IDA released a Consultation Paper, which sought comments on its Proposed Telecom Consolidation Guidelines. The Consultation Paper requested all comments to be submitted by 30 October 2001. On 19 October 2001, in response to industry requests, IDA extended the consultation period to 13 November 2001. On 12 November 2001, in response to another industry request, IDA further extended the consultation period until 19 November 2001.

- 2.3. Six parties submitted comments regarding the Proposed Telecom Consolidation Guidelines: (a) AT&T Asia/Pacific Group, Ltd.; (b) MobileOne Asia Pte Ltd; (c) Pacific Internet Limited; (d) Rodyk & Davidson; (e) Singapore Telecommunications Limited; and (f) StarHub Pte Ltd. The commenting parties generally supported the economics-based approach proposed by IDA, while proposing a number of possible modifications and clarifications.
- 2.4. While the commenting parties generally supported IDA's proposed approach, most of the commenting parties expressed concern that the Consolidation Application filing requirements were unnecessarily burdensome. Some commenting parties also raised questions regarding the numeric presumptions, the role of efficiency considerations, the procedures for mandatory divestiture, the protection of confidential information, the imposition of a Consolidation Application Processing Fee and the extent to which IDA's Consolidation Review procedures would be transparent. Because of the rapid changes in the Singapore telecommunications market in the past year, IDA deferred the release of the Proposed Telecom Consolidation Guidelines.
- 2.5. IDA has undertaken a comprehensive review of its current regulatory regime applicable to Changes in Ownership and Consolidations. In conducting this review, IDA has considered the comments filed in its previous public consultation and has reviewed its experience to date under Section Nine of the Code. IDA also studied the approaches taken by four benchmark jurisdictions: the United States, the European Union, Hong Kong and Australia. Finally, IDA reviewed the approaches taken by regulatory authorities in the Singapore banking, broadcasting and newspaper and print sectors. IDA's review took into consideration the requirements for public listing on the Singapore Exchange and the requirements under the Singapore Code on Takeovers and Mergers ("Take-over Code").
- 2.6. IDA's experience under Section Nine of the Code suggests that, while the basic framework is sound, there is a need for significant revision regarding the procedures applicable to Changes in Ownership of a Licensee and to the Consolidation Review Procedure. In particular, IDA has identified the following issues, which require refinement of the Code.
 - 2.6.1 The Code was developed to address the Changes in Ownership involving privately owned Licensees. IDA's experience suggests that, especially when Licensees are publicly traded, it is not practical for IDA to pre-approve every change in ownership. In addition, IDA believes that the acquisition of an Ownership Interest in a Licensee resulting in an entity holding an Ownership Interest of less than 12 percent is unlikely to raise competitive or public interest concerns and that IDA's approval should no longer be required.
 - 2.6.2 As originally drafted, the Code addressed Changes in Ownership that result from the negotiation of an agreement between the party seeking to acquire an Ownership Interest and the Licensee. The current regulatory framework needs to be modified to address a number of other types of transactions, such as:
 - (a) a party that seeks 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 that seeks to obtain a Direct Ownership Interest in a Licensee by purchasing the Licensee's publicly traded shares on the open market, whether in individual transactions or through a Tender Offer;
- (c) a party that seeks to obtain an Indirect Ownership Interest in a Licensee through the purchase of shares in a parent company several steps up the "ownership chain"; and
- (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.

2.6.3 In addition, IDA recognises that it is necessary to increase IDA's enforcement powers to allow IDA to order divestitures and other remedial actions in cases in which a party has acquired an Ownership Interest in a Licensee without obtaining IDA's prior approval.

2.6.4 Finally, IDA believes that it is necessary to broaden the current framework for reviewing Changes in Ownership and Consolidations, which now applies only to FBOs, to include transactions involving certain Services-based Operators ("SBOs") that could raise competition concerns, such as those involving SBOs that are significant participants in highly concentrated markets.

2.7 In developing the proposals set forth in the Consultation Document, IDA is mindful of the fact that it is a sectoral regulator, whose primary authority is to oversee its Licensees. At the same time, however, the Code provides that IDA will act as a competition authority for the Singapore telecommunication market. In order to effectively prevent transactions that are likely to unreasonably restrict competition in the Singapore telecommunication market, IDA must take actions that may affect the rights and obligations of non-Licensees. To the extent feasible, however, IDA has sought to continue to place primary reliance on its authority to regulate its Licensees as a means of addressing anti-competitive transactions.

3. OVER-VIEW OF PROPOSED REVISED SECTION NINE OF THE CODE

In order to better reflect the current conditions in the Singapore telecommunication market, IDA proposes to revise Section Nine of the Code ("Revised Section Nine"). A copy of the proposed Revised Section Nine is attached. The most significant features of the proposed Revised Section Nine are described below.

3.1 Application to Certain Services-based Licensee

3.1.1 The proposed Revised Section Nine would apply to all FBOs and to any SBO that IDA designates as a Designated Telecommunication Licensee. IDA would designate an SBO as a Designated Telecommunication Licensee if the SBO has a market share of at least 10 percent in any market in which IDA has licensed it to provide service, and if the three largest participants in that market collectively have a market share in excess of 75 percent.

This approach is intended to allow IDA to review transactions that are most likely to raise competitive concerns.

3.2 Acquisition of Ownership Interests

- 3.2.1 The proposed Revised Section Nine would clarify the procedures to be followed by a party that acquires either a Direct or Indirect Ownership Interest in a Licensee (“Acquiring Party”) resulting in the Acquiring Party holding specified thresholds of Ownership Interest. An Acquiring Party’s Direct Ownership Interest in a Licensee will equal the percentage of the Licensee’s voting shares in which the Acquiring Party has a legal or equitable ownership interest. 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 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 Indirect Ownership Interest in the voting shares of the Licensee.

3.3 Acquisition of an Ownership Interest Resulting in the Holding of an Ownership Interest in the Licensee of Less than 5 Percent

- 3.3.1 The acquisition of an Ownership Interest in a Licensee resulting in an Acquiring Party holding of an Ownership Interest of less than 5 percent would neither need to be disclosed to, nor approved by, IDA. IDA believes that the holding of an Ownership Interest below 5 percent is so unlikely to raise competitive or other regulatory concerns that there does not appear to be a need to continue to impose any regulatory obligation.

3.4 Acquisition of an Ownership Interest Resulting in the Holding of an Ownership Interest in the Licensee of At Least 5 Percent, But Less Than 12 Percent

- 3.4.1 Licensees would be required to *notify* IDA within two working days after becoming aware of any acquisition (direct or indirect) of an Ownership Interest that results in an Acquiring Party holding an Ownership Interest in the Licensee of at least 5 percent, but less than 12 percent.
- 3.4.2 The 5 percent threshold level is based on the concept of a “substantial shareholder” in Section 81 of the Companies Act (Cap. 50). The 12 percent threshold is consistent with the threshold levels adopted in the Banking Act (Cap. 19) and the Newspaper & Printing Presses Act (Cap. 206), where the Minister’s prior approval for any ownership change at or above that level is required. IDA believes these thresholds are appropriate for the telecommunications sector. As the acquisition of an Ownership Interest that results in an Acquiring Party holding an Ownership Interest in the Licensee of at least 5 percent, but less than 12 percent, is unlikely to raise competition concerns, IDA believes that its approval should no longer be required. However, IDA believes that post-acquisition notification is appropriate because the holding of an Ownership Interest of 5 percent or more could be the “first step” in an Acquiring Party’s effort to acquire a more significant Ownership Interest that may ultimately raise anti-competition or public interest concerns. This post-acquisition notification approach is especially suitable for publicly listed companies, where it is not practical

for Licensees to seek IDA's prior approval for each acquisition involving the purchase of publicly traded shares that results in a change in Ownership Interest.

- 3.4.3 To further reduce unnecessary regulatory burden on Licensees, once a Licensee has notified IDA that an Acquiring Party has acquired an Ownership Interest that results in an Ownership Interest in the Licensee of 5 percent or more, generally no further notification would be required for subsequent changes in the Acquiring Party's Ownership Interest as long as the Acquiring Party's Ownership Interest in the Licensee remains below 12 percent.

3.5 Acquisition of an Ownership Interest Resulting in the Holding of an Ownership Interest in the Licensee of At Least 12 Percent, But Less Than 30 Percent

- 3.5.1 Licensees would be required to seek IDA's *prior approval* for any acquisition of an Ownership Interest that results in an Acquiring Party holding an Ownership Interest in the Licensee of at least 12 percent but less than 30 percent. The 30 percent threshold level is consistent with the Take-over Code, which defines this as the level at which a shareholder will be presumed to have "effective control" of an entity ("Effective Control").
- 3.5.2 As under the present regulatory regime, for acquisitions via privately negotiated agreements to which the Licensee is a party, Licensees would be required to seek IDA's approval 30 days prior to the completion of the acquisition of the Ownership Interest by the Acquiring Party pursuant to that agreement.
- 3.5.3 The proposed Revised Section Nine also sets out procedures in those circumstances in which a party acquires an Ownership Interest in a transaction that does not involve entering into an agreement with the Licensee – such as a purchase of the Licensee's or its upstream parent's shares on the open market or the conclusion of an agreement with a Licensee's upstream parent.
- 3.5.4 The proposed Revised Section Nine seeks to encourage the Acquiring Party to inform the Licensee in advance of any acquisition of an Ownership Interest that results in the Acquiring Party holding an Ownership Interest in the Licensee of at least 12 percent but less than 30 percent. This approach would allow the Acquiring Party to obtain IDA's prior written approval before proceeding, thereby eliminating the risk that IDA will disapprove the transaction and order divestiture or impose some other form of safeguards. Once notified, the Licensee would be required to file a Request for approval of the acquisition of the Ownership Interest within 5 working days of receiving the notification. IDA would allow the Acquiring Party to provide information to IDA separately in cases where the Acquiring Party does not wish to divulge commercially sensitive information to the Licensee.
- 3.5.5 At the same time, however, the proposed Revised Section Nine would recognise the fact that, in some cases, an Acquiring Party may not notify the Licensee in advance. In that case, within 5 working days of being notified by the Acquiring Party of the share purchase, or otherwise becoming aware of the acquisition, the Licensee would be required to submit a Request for approval to IDA.
- 3.5.6 In the case where the Acquiring Party proposes to acquire a Direct Ownership Interest in a Licensee by way of a Tender Offer that would result in the Acquiring Party

holding an Ownership Interest of at least 12 percent, but less than 30 percent, the Licensee would be required to file a Request for approval of the acquisition of the Direct Ownership Interest with IDA, and obtain IDA's written approval before the Acquiring Party makes the Tender Offer. In addition, the Licensee and the Acquiring Party must comply with the specific procedures contained in the Proposed Tender Offer Guidelines.

- 3.5.7 Again, to further reduce unnecessary regulatory burden on Licensees, once a Licensee has obtained IDA's written approval for an acquisition of an Ownership Interest that results in an Ownership Interest in the Licensee of at least 12 percent, but less than 30 percent, no further approval would be required for subsequent changes in the Acquiring Party's Ownership Interest as long as the Acquiring Party's Ownership Interest in the Licensee remains below 30 percent. Instead, the Licensee will merely have to notify IDA of such subsequent changes.

3.6 Consolidations

- 3.6.1 As under the present Code, the proposed Revised Section Nine would require IDA's approval in connection with all Consolidations.

- 3.6.2 Unlike the current Code, however, the proposed Revised Section Nine would expressly recognise that a Consolidation can occur in a number of different ways, including:

- (a) the acquisition of the ability to exercise Effective Control of a Licensee;
- (b) the acquisition of the ability to exercise Effective Control of a Licensee with the acquisition of an Ownership Interest that would result in an Acquiring Party holding an Ownership Interest of at least 12 percent, but less than 30 percent in a Licensee; and
- (c) the acquisition of the business of a Licensee as a going concern.

IDA will presume that the holding of an Ownership Interest of 30 percent in a Licensee provides Effective Control. This, however, would only be a presumption. In some cases, an entity may have an Ownership Interest of less than 30 percent, but still be able to exercise Effective Control. This could occur, for example, where a party would have the special rights to appoint a majority of the Licensee's Board of Directors or to veto certain management and major operating decisions of the Licensee. Conversely, a party may have an Ownership Interest of more than 30 percent, but not have Effective Control. This could occur, for example, where a party obtained an Ownership Interest solely as a passive investment.

- 3.6.3 Under the current Code, only the Licensee must file a Consolidation Application. However, the proposed Revised Section Nine requires the Licensee and the Acquiring Party to jointly file the Application (collectively, the Licensee and the Acquiring Party are referred to as the "Applicants".) This approach is consistent with practices in overseas jurisdictions such as the US and EU, as well IDA's existing licensing approach under which potential market entrants must submit information to IDA for review before IDA grants the licence. This process is intended to provide IDA with more comprehensive and reliable information. It also enables IDA, if necessary, to

craft an effective remedy that will address any competitive concerns resulting from an otherwise permissible Consolidation. If the Acquiring Party does not wish to do so, IDA will not approve the proposed transaction.

- 3.6.4 The proposed Revised Section Nine contains additional provisions to deal with Consolidations achieved through transactions other than privately negotiated agreements to which the Licensee is a party. This may occur, for example, where an Acquiring Party enters into an agreement with an entity that is a shareholder in the Licensee. In such cases, the Acquiring Party may provide the Licensee with advance notice that it has entered into an agreement that, upon completion, will result in the Acquiring Party acquiring an Ownership Interest resulting in the Acquiring Party holding an Ownership Interest in the Licensee of at least 30 percent. If the Acquiring Party does so, then the Licensee and the Acquiring Party must file a Consolidation Application within 30 days from the day on which the Acquiring Party provides the notification to the Licensee.
- 3.6.5 Here again, however, the proposed Revised Section Nine recognises the fact that, in some cases, an Acquiring Party may choose not to notify the Licensee in advance. In that case, within 2 working days of becoming aware of the acquisition, the Licensee would be required to notify the Acquiring Party of its obligation to file a Consolidation Application; the Applicants would have to file a Consolidation Application within 30 days from the day on which the Licensee becomes aware of the acquisition of the Ownership Interest by the Acquiring Party.
- 3.6.6 In the case where the Acquiring Party proposes to acquire a Direct Ownership Interest in a Licensee by way of a Tender Offer that would result in the Acquiring Party holding an Ownership Interest of:
- (a) at least 12 percent, but less than 30 percent, and such acquisition amounts to a Consolidation; or
 - (b) at least 30 percent,

the Acquiring Party and the Licensee must file a Consolidation Application with IDA and obtain IDA's written approval before the Acquiring Party makes the Tender Offer. In addition, the Licensee and the Acquiring Party must comply with the specific procedures contained in the Proposed Tender Offer Guidelines.

- 3.6.7 Again, to further reduce unnecessary regulatory burden on Licensees, once a Licensee has obtained IDA's written approval for an acquisition of an Ownership Interest that results in an Ownership Interest in the Licensee of at least 12 percent, but less than 30 percent, and such acquisition amounts to a Consolidation, no further approval would be required for subsequent changes in the Acquiring Party's Ownership Interest. Instead, the Licensee will merely have to notify IDA of such subsequent changes.

3.7 Consolidation Review Procedures

- 3.7.1 The proposed Revised Section Nine contains a number of new procedures, designed to clarify the Consolidation Review process, while making it more efficient and effective.

3.7.2 Based on suggestions made during the previous public consultation regarding the Telecom Consolidation Guidelines, IDA has adopted a “two-track” procedure to be used in those cases in which a Consolidation Application must be filed. The proposed Revised Section Nine provides that Applicants must follow the Long Form Consolidation Application procedure, unless they are eligible to use the Short Form Consolidation Application procedure. The Short Form procedure is a streamlined procedure, intended to be less burdensome for Applicants. Applicants required to submit a Consolidation Application may use the Short Form Consolidation Application procedure if either:

- (a) the proposed Consolidation is a Horizontal Consolidation (*i.e.*, a Consolidation between direct competitors) 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 proposed 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.

Such transactions are less likely to raise competitive concerns and, therefore, should be subject to less stringent application requirements.

3.7.3 As under the current Code, the proposed Revised Section Nine provides that IDA will ordinarily complete its Consolidation Review within 30 days after the start of the Consolidation Review Period, but may extend this period by up to 90 days, subject to a maximum of 120 days, in any case in which IDA determines that a Consolidation Application raises novel or complex issues. However, the proposed Revised Section Nine clarifies that IDA will deem the Consolidation Review Period to have begun on the day on which the Applicants have provided all required information – and that IDA may suspend the running of time in any review period in any case in which the Applicants do not provide any supplemental information that IDA requires.

3.8 Procedures Applicable to All Transaction for Which IDA Approval is Required

3.8.1 The proposed Revised Section Nine contains several provisions that are applicable to the acquisition of an Ownership Interest resulting in an Acquiring Party holding an Ownership Interest in the Licensee of at least 12 percent and any Consolidation. These provisions expand on those contained in the current Code, and include some material that IDA initially planned to include only in the Guidelines.

3.8.2 The proposed Revised Section Nine describes a variety of means by which IDA can obtain information necessary to assess a Request to acquire an Ownership Interest resulting in an Acquiring Party holding an Ownership Interest in the Licensee of at least 12 percent or a Consolidation Application. These include: requests for supplemental information; requests for responses to specific questions; requests for documents; interviews; and inspections. The proposed Revised Section Nine allows a Licensee or Applicant that believes that any information request by IDA is unnecessary or overly broad to submit a written request to IDA to reconsider or narrow the scope of the information request. Parties may also request confidential treatment of information submitted to IDA. However, the party must demonstrate, with reasonable specificity, that the information for which it seeks confidential

treatment is either proprietary, contains commercially sensitive information, or that disclosure would otherwise have a material adverse impact on the party.

- 3.8.3 The proposed Revised Section Nine also describes the actions IDA may take. Specifically, IDA may approve the Request or Consolidation Application, reject the Request or Consolidation Application, or Approve the Request or Consolidation Application subject to Conditions. Further, in the case of a Request for a Change in Ownership resulting in an Acquiring Party holding an Ownership Interest in the Licensee of at least 12 percent, but less than 30 percent, which IDA concludes constitutes a Consolidation, IDA may direct the Licensee and the Acquiring Party to file a Consolidation Application. Conditions that IDA may impose include: non-discrimination requirements; accounting separation; structural separation; voluntary partial divestiture or other Conditions that are designed to increase competition. Where IDA imposes Conditions, the Licensee or any of the Applicants will have 14 days from the date of IDA's decision to notify IDA as to whether they accept the Conditions or wish to withdraw their Request or Consolidation Application.
- 3.8.4 The proposed Revised Section Nine also contains provisions that address the situation in which an Acquiring Party acquires a Direct Ownership Interest resulting in the Acquiring Party holding an Ownership Interest in the Licensee of at least 12 percent without obtaining IDA's prior approval. In such cases, IDA's powers will include issuing a direction to:
- (a) require the divestiture of some or all of the voting shares in the Licensee; and
 - (b) require the Licensee to restrict all or any part of the voting rights or dividends rights that the Acquiring Party has by reason of its Ownership Interest in the Licensee.

The proposed Revised Section Nine also contains procedures applicable to situations in which a Party acquires an Indirect Ownership Interest in a Licensee or acquires the business of a Licensee as a "going concern" without obtaining IDA's prior approval.

4. PROPOSED FURTHER REVISION OF THE TELECOM CONSOLIDATION GUIDELINES

- 4.1 Section One of the revised Proposed Telecom Consolidation Guidelines sets out IDA's legal authority to review Consolidations, specifies the legal effect of the Telecom Consolidation Guidelines, reserves certain rights, provides the Effective Date and Short Title of the Guidelines and contains definitions used in the revised Proposed Telecom Consolidation Guidelines.
- 4.2 Section Two of the revised Proposed Telecom Consolidation Guidelines describes the regulatory principles that will guide IDA's review of Consolidation Applications.
- 4.3 Section Three of the revised Proposed Telecom Consolidation Guidelines 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 proposed Consolidation may ask IDA to provide informal guidance prior to the time at which a Consolidation Application must be submitted.

- 4.4 Section Four of the revised Proposed Telecom Consolidation Guidelines describes the timing of IDA's Consolidation Review process. 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, subject to a maximum of 120 days.
- 4.5 Section Five of the revised Proposed Telecom Consolidation Guidelines describes the information gathering and confidentiality procedures that IDA will generally use in conducting a Consolidation Review. 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.
- 4.6 Section Six of the revised Proposed Telecom Consolidation Guidelines describes the analytical framework that IDA will generally use. This framework distinguishes between Horizontal Consolidations, (*i.e.*, a Consolidation involving two or more entities that are current competing providers of the same telecommunication services or telecommunication services that are reasonable substitutes) and Non-Horizontal Consolidation (*i.e.*, a Consolidation that involves two or more entities that are not current competitors). Consistent with international practices, IDA recognizes that Horizontal Consolidations generally raise more serious competitive concerns.
- 4.7 Section Seven of the revised Proposed Telecom Consolidation Guidelines describes the way in which IDA will conduct its Consolidation Review in certain special situations – such as Consolidations involving parties that are not subject to IDA's jurisdiction (such as foreign operators or non-telecommunication companies) and Consolidations involving Licensees that were commonly owned prior to the Consolidation.
- 4.8 Section Eight of the revised Proposed Telecom Consolidation Guidelines describes the three ways in which IDA may dispose of a Consolidation Application: approval of the Application, denial of the Application, and approval of the Application subject to Conditions. Section Eight describes two broad categories of conditions: structural and behavioural safeguards.
- 4.9 Section Nine of the revised Proposed Telecom Consolidation Guidelines describes the procedures that IDA will use to notify and obtain public comments regarding a proposed Consolidation. IDA will notify the public at the time a Consolidation Application is accepted for filing and will provide a second notification, which will describe IDA's disposition of the Application. In appropriate cases, IDA will conduct a public consultation regarding the proposed Consolidation.
- 4.10 Finally, Section Ten of the revised Proposed Telecom Consolidation Guidelines states that 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.
- 4.11 Annex 1 and Annex 2 of the revised Proposed Telecom Consolidation Guidelines contain copies of the Long Form and Short Form Consolidation Applications.

5. PROPOSED ISSUANCE OF THE OFFER GUIDELINES

- 5.1 In addition to the provisions in the Code relating to acquisitions of Direct Ownership Interests in Licensees by way of Tender Offers, IDA recognised the need to provide additional guidance for entities that wish to make Tender Offers under Section Nine of the Code where the Take-over Code applies.
- 5.2 IDA has, in consultation with the Securities Industry Council, therefore formulated additional procedures that will be applicable to situations where the Acquiring Party proposes to acquire a Direct Ownership Interest in a Licensee by a Tender Offer, which would result in that Acquiring Party holding an Ownership Interest in the Licensee of 12 percent or more. These additional procedures are set out in the Proposed Tender Offer Guidelines.
- 5.3 Section One of the Proposed Tender Offer Guidelines sets out IDA's legal authority to review acquisitions of Ownership Interests in a Licensee, specifies the legal effect of the Proposed Tender Offer Guidelines, and contains definitions used in the Proposed Tender Offer Guidelines.
- 5.4 Section Two of the Proposed Tender Offer Guidelines briefly describes Rules 14, 15, 16 and 22 of the Take-over Code.
- 5.5 Section Three of the Proposed Tender Offer Guidelines sets out the specific procedures that an Acquiring Party must observe before making any initial public announcement of the Tender Offer. The procedures are applicable to partial offers, voluntary offers and mandatory offers that are made pursuant to the Take-over Code.

6. PROPOSED LEGISLATIVE AMENDMENTS

- 6.1 IDA recognises that, in order to effect the proposed revisions to the Code, it will be necessary to adopt certain amendments to the Telecommunications Act. For purposes of this consultation, commenting parties should assume that IDA will be granted all necessary legal authority prior to promulgating the Revised Section Nine.

7. PROCEDURE AND TIMEFRAME FOR SUBMITTING COMMENTS

- 7.1 IDA hereby invites Licensees, End-Users, and any other interested parties to submit comments regarding the proposed Revised Section Nine of the Code, the further revisions to IDA's Proposed Telecom Consolidation Guidelines, and the issuance of the Proposed Tender Offer Guidelines.
- 7.2 Submissions should be organised as follows:
 - (a) cover pages (including the information specified in paragraph 7.3 of this Consultation Document);
 - (b) summary of major points;
 - (c) statement of interest; and

(d) comments.

Supporting material may be placed in an annex.

All submissions should be clearly and concisely written, and should provide a reasoned explanation for any proposed revisions. Where feasible, parties should identify the specific provision of the proposed Revised Section Nine of the Code, Proposed Telecom Consolidation Guidelines, or Proposed Tender Offer Guidelines on which they are commenting. Parties that choose to suggest revisions to any provision of the proposed Revised Section Nine, Proposed Telecom Consolidation Guidelines, or Proposed Tender Offer Guidelines should clearly indicate the way in which their proposal differs from the language prepared by IDA.

- 7.3 All submissions should reach IDA **before 12 noon on 30 May 2003**. Comments must be submitted in both hard and soft copy (preferably Microsoft Word format or equivalent). Parties submitting comments should include their personal/company particulars as well as the correspondence address, contact numbers and email addresses on the cover page of their submissions. All comments should be addressed to:

Aileen Chia
Director (Economic Regulation)
Info-communications Development Authority of Singapore
8 Temasek Boulevard
#14-00 Suntec Tower Three
Singapore 038955
Fax: (65) 6211 2116

AND

Please submit your soft copies to: e-mail: **Yeo_Tiong_Yeow @ida.gov.sg**

- 7.4 IDA reserves the right to make public all or parts of any written submissions and to disclose the identity of the source. Commenting parties may request confidential treatment for any part of the submission that the commenting party believe to be proprietary, confidential or commercially sensitive. Any such information should be clearly marked and placed in a separate annex. If IDA grants confidential treatment, it will consider, but will not publicly disclose, the information. If IDA rejects the request for confidential treatment, it will return the information to the party that submitted it; IDA will not consider such information as part of its review. Parties should limit any request for confidential treatment to the maximum extent possible. IDA will not accept any submission that requests confidential treatment of all, or a substantial part, of the submission.