

CHANGES IN OWNERSHIP AND CONSOLIDATIONS INVOLVING DESIGNATED TELECOMMUNICATION LICENSEES

9.1 Introduction

9.1.1 Application

This Section applies to:

- (a) Facilities-based Licensees and Services-based Licensees that IDA has declared to be a Designated Telecommunication Licensee pursuant to Section [XX] of the Telecommunications Act; and
- (b) any Acquiring Party (whether licensed or non-licensed) that engages in a transaction that results in a Consolidation with a Designated Telecommunication Licensee.

9.1.2 Definitions

As used in this Section:

- (a) “Acquiring Party” includes an individual, association or legal entity that acquires an Ownership Interest in a Licensee, or otherwise engages in any transaction that 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”);
 - (ii) in which a Licensee or Acquiring Party has an attributable interest of 5 percent or more (“Subsidiary”); or
 - (iii) which is a subsidiary of any Parent of the Licensee or Acquiring Party (“Sibling”).

In determining a Licensee’s or Acquiring Party’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 Acquiring Party 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 Acquiring Party 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 Acquiring Party.

- (c) “Applicant” means a Licensee and an Acquiring Party (whether or not a Licensee) that has filed a Consolidation Application with IDA.
- (d) “Conditions” means those obligations that IDA may require the Applicants to agree to as a pre-requisite for IDA’s approval of their Request or Consolidation Application.
- (e) “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.
- (f) “Effective Control” means the ability to cause the Licensee to take, or prevent the Licensee from taking, a decision regarding the management and major operating decisions of the Licensee. 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.
- (g) “Licensee” means a Facilities-based Licensee and certain Services-based Licensees that IDA has declared to be a Designated Telecommunication Licensee pursuant to Section [XX] of the Telecommunications Act.
- (h) “Open Market Transaction” means the purchase of shares traded on a securities exchange, whether located in Singapore or elsewhere and includes the acquisition of shares by means of a Tender Offer.
- (i) “Ownership Interest” means an Acquiring Party’s Direct Ownership Interest or Indirect Ownership Interest in a Licensee, but does not include any acquisition of Ownership Interest that is exempted pursuant to subsection [9.3.2] of this Code:
 - (i) 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.
 - (ii) 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) has legal or beneficial ownership of 100 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, and Entity C has legal or beneficial ownership of 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.

- (j) “Request” means any application for approval submitted pursuant to subsection [9.3.6.2], [9.3.6.3.1], or [9.3.6.3.2] of this Code.
- (k) “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.

9.1.3 Over-view

In many cases, parties seek to acquire an Ownership Interest in a Licensee, even if that Ownership Interest would not result in the Acquiring Party being able to exercise Effective Control over the Licensee. In some cases, the Acquiring Party may seek to acquire a sufficiently significant Ownership Interest, or engage in other transactions, that result in the Licensee ceasing to operate as a separate economic entity. In many cases, such transactions can have pro-competitive effects, such as creating economies of scale and scope. In other cases, however, such transactions may harm competition. For example, such transactions could create an entity that is not subject to competitive market forces or could facilitate unlawful collusion amongst competing Licensees.

This Section:

- (a) establishes the criteria and procedure for designating certain Services-based operators as Designated Telecommunication Licensees;
- (b) describes a Licensee’s obligation to notify, and/or seek written approval from, IDA in connection with the acquisition of an Ownership Interest in the Licensee that would result in an entity holding an Ownership Interest in the Licensee of at least 5 percent;
- (c) describes a Licensee and an Acquiring Party’s obligation to seek IDA’s written approval in connection with a transaction that results in a Consolidation; and
- (d) describes the means by which IDA can obtain information from a Licensee and/or an Acquiring Party, the Conditions that IDA may impose and the circumstances under which IDA may order divestiture of the voting shares in the Licensee.

9.1.4 Consolidation Review Guidelines and Tender Offer Guidelines

IDA has adopted, and may periodically revise, the Consolidation Review Guidelines and the Tender Offer Guidelines. The Consolidation Review Guidelines and the Tender Offer Guidelines are advisory in nature. The Consolidation Review Guidelines will further elaborate the procedures and

standards that IDA will apply in conducting a Consolidation Review. The Tender Offer Guidelines will specify the procedures that an Acquiring Party must observe before making a Tender Offer where the Singapore Code on Take-overs and Mergers apply.

9.2 Designation of Licensees

Pursuant to Section [XX] of the Telecommunications Act, IDA will designate all Facilities-based Licensees and certain Services-based Licensees as Designated Telecommunication Licensees.

9.2.1 Criteria for Designation

IDA will designate a Services-based Licensee as a Designated Telecommunication Licensee, in those cases in which IDA determines that the Services-based Licensee is a significant participant in a concentrated market.

IDA will presume that a Services-based Licensee is a significant participant in a concentrated market if the Licensee has a market share of at least 10 percent in the market for any service which IDA has licensed it to provide, and if the 3 largest participants in that market collectively have a market share in excess of 75 percent.

9.2.2 Procedures for Designation

Prior to designating any Services-based Licensee as a Designated Telecommunication Licensee, IDA will provide the Services-based Licensee with written notice regarding the basis on which IDA proposes to designate it as a Designated Telecommunication Licensee. The Services-based Licensee will have 30 days from the date of IDA's written notice to submit a written representation to IDA with supporting evidence as to why IDA should not make such a designation. Where appropriate, IDA may request the Services-based Licensee to submit additional information. Within 30 days of receiving all the necessary information, IDA will notify the Services-based Licensee of its determination. If IDA determines to designate the Services-based Licensee as a Designated Telecommunication Licensee, IDA's determination will become effective upon publication of the designation in the *Gazette*. A Designated Telecommunication Licensee may petition IDA, at any time, for removal of its designated status. The Licensee must provide information demonstrating that it no longer meets the criteria specified in subsection [9.2.1] of this Code.

9.3 Duty of Licensees in Connection With Licence Assignments and Acquisitions of an Ownership Interest

All Licensees must comply with the following provisions in connection with a Licence Assignment or acquisitions of an Ownership Interest in a Licensee.

9.3.1 General Duty

Every Licensee must:

- (a) notify IDA in connection with the acquisition of an Ownership Interest in the Licensee that would result in the Acquiring Party holding an Ownership Interest in the Licensee of at least 5 percent; and
- (b) seek IDA's approval in connection with:
 - (i) the assignment, transfer, subletting, or any disposal of its rights, duties, liabilities, obligations and privileges under its licence ("Licence Assignment"); or
 - (ii) the acquisition of an Ownership Interest in the Licensee that would result in the Acquiring Party holding an Ownership Interest in the Licensee of 12 percent or more.

9.3.2 Exemption from Duty to Notify and/or Obtain Approval

Notwithstanding the above, an Acquiring Party and/or a Licensee need not provide any notification, Request or file a Consolidation Application in any case in which the Acquiring Party acquires an Ownership Interest in the Licensee or enters into a transaction that results in a Consolidation in its capacity as:

- (a) an underwriter or sub-underwriter, whose ordinary business includes the underwriting of securities, in relation to a public offering of shares in a Licensee;
- (b) a party whose ordinary business includes the lending of money if the Acquiring Party holds the Ownership Interest only as security in connection with a loan;
- (c) a liquidator, Official Receiver, Official Assignee and Public Trustee; or
- (d) any other category of persons that may be declared by IDA by notification in the *Gazette*.

In any case in which the Ownership Interest in, or the right to operate the business of the Licensee held by an Acquiring Party in one of the capacities specified in this subsection is subsequently acquired by another Acquiring Party which does not fall within any of the capacities specified in this subsection, the Licensee and/or the other Acquiring Party must comply with the provisions of Section 9 of this Code.

9.3.3 General Duty to Monitor

Every Licensee must adopt effective, on-going procedures for monitoring changes in Ownership Interests in the Licensee. Licensees must comply with this obligation regardless of whether the changes in Ownership Interests in the Licensee are effected through:

- (a) an agreement with the Licensee;
- (b) an agreement with an entity that has a Direct Ownership Interest in a Licensee;
- (c) an agreement with an entity that has an Indirect Ownership Interest in a Licensee;
- (d) an Open Market Transaction that results in the acquisition of shares in a Licensee, by an entity that has a Direct Ownership Interest in a Licensee or an entity that has an Indirect Ownership Interest in a Licensee; or
- (e) any other transaction.

9.3.4 Procedures in Connection with the Acquisition of an Ownership Interest in a Licensee Resulting in the Holding of an Ownership Interest in the Licensee of Less Than 5 Percent

The following provisions apply in any case in which an Acquiring Party acquires an Ownership Interest in a Licensee, whether by a series of transactions over a period of time or not, that would result in the Acquiring Party holding an Ownership Interest in the Licensee of less than 5 percent.

9.3.4.1 No Duty to Notify

A Licensee need not notify IDA of the acquisition of an Ownership Interest in the Licensee that would result in the Acquiring Party holding an Ownership Interest in the Licensee of less than 5 percent.

9.3.4.2 Presumption

IDA will presume that an Acquiring Party that holds an Ownership Interest in a Licensee of less than 5 percent does not have the ability to use that Ownership Interest in a manner that would unreasonably restrict competition or in a manner that is contrary to public interest.

9.3.5 Procedures in Connection with the Acquisition of an Ownership Interest in a Licensee Resulting in the Holding of an Ownership Interest in the Licensee of At Least 5 Percent, But Less Than 12 Percent

A Licensee must comply with the following procedures in any case in which the Licensee becomes aware that an Acquiring Party has acquired an

Ownership Interest in the Licensee, whether by a series of transactions over a period of time or not, that results in the Acquiring Party holding an Ownership Interest in the Licensee of at least 5 percent, but less than 12 percent.

9.3.5.1 Duty to Notify IDA

Within 2 working days of becoming aware that an Acquiring Party has acquired an Ownership Interest resulting in the Acquiring Party holding an Ownership Interest in the Licensee of at least 5 percent, but less than 12 percent, the Licensee must provide written notification to IDA. The notification must include the name (and, if known, the address and contact information) of the Acquiring Party, the percentage of the Ownership Interest that the Acquiring Party owned prior to the acquisition, and the percentage of the Ownership Interest that the Acquiring Party has acquired. Unless requested by IDA, the Licensee need not provide further notification of any increase in that Acquiring Party's Ownership Interest, provided that the Acquiring Party's Ownership Interest in the Licensee does not equal or exceed 12 percent.

9.3.5.2 Presumption

IDA will presume that an Acquiring Party that holds an Ownership Interest in the Licensee of at least 5 percent, but less than 12 percent, is not likely to have the ability to use that Ownership Interest in a manner that would unreasonably restrict competition or in a manner that would be contrary to public interest.

9.3.6 Procedures in Connection with the Acquisition of an Ownership Interest in a Licensee Resulting in the Holding of an Ownership Interest in the Licensee of At Least 12 Percent, But Less Than 30 Percent

A Licensee must comply with the following procedures in any case in which a Party proposes to acquire, or has acquired, an Ownership Interest in the Licensee, whether by a series of transactions over a period of time or not, that would result in the Acquiring Party holding an Ownership Interest in the Licensee of at least 12 percent, but less than 30 percent.

For the avoidance of doubt, an Acquiring Party that has been granted written approval by IDA pursuant to this subsection may subsequently acquire further Ownership Interests in the Licensee without obtaining further written approval from IDA provided that the Acquiring Party's Ownership Interest in the Licensee remains less than 30 percent. In these cases, the Licensee shall notify IDA of further acquisitions of Ownership Interest in the manner as provided for in subsection [9.3.5.1] of this Code.

9.3.6.1 Presumption

IDA will presume that an Acquiring Party that holds an Ownership Interest in a Licensee of at least 12 percent, but less than 30 percent, does not have the ability to exercise Effective Control over that Licensee. Therefore, IDA will presume that an acquisition of an Ownership Interest that results in the

Acquiring Party holding an Ownership Interest in a Licensee of at least 12 percent, but less than 30 percent, would not constitute a Consolidation. However, IDA recognises that an Acquiring Party that holds an Ownership Interest in this range may have the ability to use that Ownership Interest in a manner that would unreasonably restrict competition or in a manner that is contrary to public interest. For example, a Licensee that has an Ownership Interest of at least 12 percent, but less than 30 percent in each of 2 competing Licensees could use its joint ownership to facilitate anti-competitive coordination between the 2 Licensees.

9.3.6.2 Acquisition of Ownership Interest Via Privately Negotiated Agreements to Which the Licensee is a Party

A Licensee that has entered into a privately negotiated agreement that allows an Acquiring Party to acquire an Ownership Interest in the Licensee that would result in the Acquiring Party holding an Ownership Interest in the Licensee of at least 12 percent, but less than 30 percent, must request for IDA's written approval, after it has entered into the agreement, but 30 days before completion of the acquisition of the Ownership Interest by the Acquiring Party pursuant to that agreement. The agreement must provide that IDA's prior written approval must be obtained before the Acquiring Party can acquire the Ownership Interest. The Request must contain all information reasonably necessary for IDA to determine the likely impact of the acquisition on competition and the public interest, which must include:

- (a) the name, address and contact information of the Acquiring Party;
- (b) the percentage of Ownership Interest that the Acquiring Party:
 - (i) holds (if any) prior to the proposed acquisition; and
 - (ii) proposes to acquire;
- (c) any special or preferential rights granted to the Acquiring Party;
- (d) any anticipated significant changes in management or operations of the Licensee; and
- (e) the names of all Affiliates of the Licensee and the Acquiring Party.

Where the Acquiring Party does not want to provide confidential, commercially sensitive or proprietary information to the Licensee, the Acquiring Party may provide this information to IDA directly. IDA may request for additional information from the Licensee, if necessary. IDA will make a determination within 30 days of receiving all requested information. In exceptional cases, IDA will extend the review period and will provide the public with an opportunity to comment on the acquisition. IDA may approve the Request, reject the Request, or may approve the Request subject to the imposition of safeguards, as provided for in subsections [9.7.3]–[9.7.3.5] of this Code.

9.3.6.3 Acquisition of Ownership Interest by Other Means

In some cases, an Acquiring Party may acquire an Ownership Interest that would result in the Acquiring Party holding an Ownership Interest in the Licensee of at least 12 percent, but less than 30 percent, by means other than entering into a privately negotiated agreement to which the Licensee is a party. This may occur when:

- (a) an Acquiring Party acquires a Direct Ownership Interest in a Licensee by:
 - (i) entering into a privately negotiated agreement with an entity that has a Direct Ownership Interest in a Licensee;
 - (ii) purchasing shares of the Licensee in an Open Market Transaction; or
- (b) an Acquiring Party acquires an Indirect Ownership Interest in a Licensee by:
 - (i) entering into a privately negotiated agreement with an entity that has an Indirect Ownership Interest in a Licensee; or
 - (ii) purchasing shares in an entity that has an Indirect Ownership Interest in a Licensee in an Open Market Transaction.

In such cases, either of the following procedures will apply:

9.3.6.3.1 Scenario One: Provision of Advance Notice by An Acquiring Party

The Acquiring Party may provide the Licensee with advance notice that it has entered into an agreement which would allow the Acquiring Party to acquire an Ownership Interest in the Licensee resulting in the Acquiring Party holding an Ownership Interest of at least 12 percent, but less than 30 percent. Where the Licensee receives such advance notice, the Licensee must file a Request for approval within 5 working days of receiving the notification.

In the case of a Tender Offer, the Acquiring Party and the Licensee must comply with the requirements specified in subsection [9.8] of this Code. In any case, the Licensee's Request must contain the information specified in subsection [9.3.6.2] of this Code. Where the Acquiring Party does not want to provide confidential, commercially sensitive or proprietary information to the Licensee, the Acquiring Party may provide this information to IDA directly. IDA may request additional information from the Licensee, if necessary. IDA will make a determination within 30 days of receiving all requested information. IDA may approve the Request, reject the Request, or may approve the Request subject to the imposition of safeguards, as provided for in subsections [9.7.3–9.7.3.5] of this Code.

9.3.6.3.2 Scenario Two: Acquisition Without Provision of Advance Notice by An Acquiring Party

If the Acquiring Party does not provide the Licensee with advance notice of its intent to acquire an Ownership Interest in the Licensee that would result in the Acquiring Party holding an Ownership Interest in the Licensee of at least 12 percent, but less than 30 percent, then, the Licensee must submit to IDA a Request for approval within 5 working days from the day on which the Licensee becomes aware of the acquisition of the Ownership Interest. The Request must contain the information specified in subsection [9.3.6.2] of this Code. Where the Acquiring Party does not want to provide confidential, commercially sensitive or proprietary information to the Licensee, the Acquiring Party may provide that information directly to IDA. IDA may request additional information from the Licensee, if necessary. IDA will make a determination within 30 days of receiving all requested information. IDA may approve the Request, reject the Request, or may approve the Request subject to the imposition of safeguards, as provided for in subsections [9.7.3]–[9.7.3.5] of this Code. If IDA rejects the Request, IDA may require divestiture or take other actions set out in subsection [9.9] of this Code.

9.3.6.4 Standard for Approval of a Request to Acquire an Ownership Interest Resulting in the Holding of an Ownership Interest in the Licensee of At Least 12 Percent But Less Than 30 Percent

IDA will not approve a Request to acquire an Ownership Interest that would result in the Acquiring Party holding an Ownership Interest in the Licensee of at least 12 percent but less than 30 percent where IDA determines that the acquisition is likely to unreasonably restrict competition in any telecommunication market within Singapore or harm the public interest.

9.3.6.5 Acquisition of an Ownership Interest in a Licensee Resulting in the Holding of an Ownership Interest in the Licensee of At Least 12 Percent, But Less Than 30 Percent, with Effective Control

Notwithstanding the provisions of subsections [9.3.6]–[9.3.6.3.2] of this Code, in any case in which an Acquiring Party seeks to acquire (or has acquired) an Ownership Interest that would result in the Acquiring Party holding an Ownership Interest in the Licensee of at least 12 percent, but less than 30 percent, and as a result, would be able (or is able) to exercise Effective Control over a Licensee, the Licensee and the Acquiring Party must jointly file a Consolidation Application. This may occur, for example, where an Acquiring Party would have the right to appoint a majority of the Licensee's Board of Directors or to veto certain management and major operating decisions of the Licensee. Where either party does not want to disclose confidential, commercially sensitive or proprietary information to the other party, the party may provide this information to IDA directly. However, 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. Both Parties must comply with the provisions contained in subsection [9.5]–[9.5.3] of this Code. If the Acquiring Party acquires the Ownership Interest prior to such time, if ever, as IDA provides written approval, IDA may require divestiture or take other actions set out in subsection [9.9] of this Code.

For the avoidance of doubt, an Acquiring Party that has been granted written approval by IDA pursuant to this subsection may subsequently acquire further Ownership Interests in the Licensee without obtaining further written approval from IDA. In these cases, the Licensee shall notify IDA of further acquisitions of Ownership Interest in the manner as provided for in subsection [9.3.5.1].

9.4 Procedures in Connection with a Consolidation

Except as provided in subsection [9.4.4] of this Code, the following procedures apply to any Consolidation involving a Licensee.

9.4.1 IDA’s Right to Approve All Consolidations

- (a) IDA’s approval must be obtained in connection with any Consolidation, whether effected through:
 - (i) the acquisition of an Ownership Interest in a Licensee, whether by a series of transactions over a period of time or not, that would result in the Acquiring Party holding an Ownership Interest in the Licensee of at least 30 percent;
 - (ii) the acquisition of the ability to exercise Effective Control of a Licensee with the acquisition of an Ownership Interest in the Licensee, that would result in the Acquiring Party holding an Ownership Interest of at least 12 percent, but less than 30 percent; or
 - (iii) the acquisition of the business of a Licensee as a going concern.
- (b) IDA will find that an Acquiring Party has acquired the business of a Licensee as a “going concern” where the Acquiring Party:
 - (i) acquires all or substantially all of the assets of the Licensee; and/or
 - (ii) 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.
- (c) A Consolidation may, but need not, result in the dissolution of an existing legal entity, the creation of a new legal entity or a Licence Assignment.

9.4.2 Consolidations Via Privately Negotiated Agreements to Which the Licensee is a Party

In any case in which a Licensee that has entered into a privately negotiated agreement that results in a Consolidation with the Licensee, the Licensee and the Acquiring Party must jointly submit a Consolidation Application to IDA not prior to, but within 30 days after, the day on which they enter into a Consolidation Agreement. Where either party does not want to disclose confidential, commercially sensitive or proprietary information to the other party, the party may provide this information to IDA directly. The Consolidation Agreement must provide that IDA's prior written approval has to be obtained before the acquisition of the Ownership Interest, or the completion of any other transaction that would constitute a Consolidation, by the Acquiring Party. Both parties must comply with the provisions contained in subsection [9.5]–[9.5.3] of this Code. The Licensee must not allow the acquisition of the Ownership Interest, or the completion of the transaction, until such time, as ever, as IDA provides its written approval.

9.4.3 Consolidations By Other Means

In some cases, an Acquiring Party may enter into an agreement that results in a Consolidation by means other than entering into a privately negotiated agreement to which the Licensee is a Party. This may occur when:

- (a) an Acquiring Party acquires a Direct Ownership Interest in a Licensee by:
 - (i) entering into a privately negotiated agreement with an entity that has a Direct Ownership Interest in a Licensee;
 - (ii) purchasing shares of the Licensee in an Open Market Transaction; or
- (b) an Acquiring Party acquires an Indirect Ownership Interest in a Licensee by:
 - (i) entering into a privately negotiated agreement with an entity that has an Indirect Ownership Interest in a Licensee; or
 - (ii) purchasing shares in an entity that has an Indirect Ownership Interest in a Licensee in an Open Market Transaction.

In such cases, either of the following procedures shall apply:

9.4.3.1 Scenario One: Provision of Advance Notice by An Acquiring Party

The Acquiring Party may provide the Licensee with advance notice that it has entered into an agreement which would allow the Acquiring Party to acquire an Ownership Interest in the Licensee resulting in the Acquiring Party holding an Ownership Interest of at least 30 percent. The Licensee and the Acquiring

Party must jointly file a Consolidation Application within 30 days from the day on which the Acquiring Party provides the notification to the Licensee. Where either party does not want to disclose confidential, commercially sensitive or proprietary information to the other party, the party may provide this information to IDA directly.

In the case of a Tender Offer, the Acquiring Party and the Licensee must comply with the requirements specified in subsection [9.8] of this Code. However, in any case in which the Acquiring Party reasonably believes that the Licensee is likely to be opposed to the Consolidation, or where 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. Both parties must comply with the provisions contained in subsection [9.5]–[9.5.3] of this Code. If the Acquiring Party acquires the Ownership Interest prior to such time, if ever, as IDA provides written approval, IDA may require divestiture or take other actions set out in subsection [9.9] of this Code.

9.4.3.2 Scenario Two: Acquisition Without Provision of Advanced Notice by An Acquiring Party

If the Acquiring Party does not provide the Licensee with advance notice of its intent to acquire an Ownership Interest in the Licensee that would result in the Acquiring Party holding an Ownership Interest in the Licensee of at least 30 percent, then, within 2 working days of becoming aware that the Acquiring Party has acquired the Ownership Interest, the Licensee must notify the Acquiring Party regarding its obligation to file a Consolidation Application. The Licensee and the Acquiring Party must jointly file a 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. Where either party does not want to disclose confidential, commercially sensitive or proprietary information to the other party, the party may provide this information to IDA directly. However, 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. Both parties must comply with the provisions contained in subsection [9.5]–[9.5.3] of this Code. If IDA rejects the Consolidation Application, IDA may require divestiture or take other actions set out in subsection [9.9] of this Code.

9.4.4 Situations in Which a Consolidation Application Need Not be Filed

- (a) IDA will not find that a transaction constitutes a Consolidation in any case in which the Acquiring Party demonstrates that:

- (i) it cannot exercise Effective Control over the Licensee; or
 - (ii) the acquisition was a pro forma change (i.e., a change undertaken in order to effect an internal corporate reorganisation and does not result in a substantial change in the ultimate owners of a Licensee).
- (b) In such cases, the Licensee and the Acquiring Party need not file a Consolidation Application. Instead:
- (i) If the transaction constitutes an acquisition of an Ownership Interest in the Licensee, the Licensee must comply with the procedures specified in subsection [9.3.6.2] of this Code.
 - (ii) If the transaction constitutes a License Assignment, the Licensee must comply with the applicable provisions in its license.

9.4.5 Standard For Approval of A Consolidation Application

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 the public interest. IDA will provide further guidance regarding the means by which it makes this assessment in its telecommunications consolidation guidelines.

9.5 Procedures for Review of All Consolidations

The following procedures are applicable in any case in which, pursuant to subsections [9.3.6.5]–[9.4.3.2] of this Code, a Consolidation Application must be filed.

9.5.1 Long Form Consolidation Application Procedure

Except as provided in subsection [9.5.2.1] of this Code, Applicants required to submit a Consolidation Application must follow the procedure for submitting the Long Form Consolidation Application and must provide the information specified in subsections [9.5.1.1]–[9.5.1.5] of this Code.

9.5.1.1 Long Form Consolidation Application

Applicants must complete and submit the Long Form Consolidation Application adopted by IDA.

9.5.1.2 Consolidation Agreement

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

9.5.1.3 Ancillary Agreements

Applicants must submit copies of all 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.

9.5.1.4 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 on the Consolidation on competition in the Singapore telecommunication market and a discussion of why approval of the Consolidation would serve the public interest (“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.

9.5.1.5 Supporting Documentation

Applicants should submit a copy of any supporting document 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 previous two years;
- (c) a copy of all reports, studies or analyses prepared for the shareholders, directors, or executive officers of the Applicants assessing the proposed Consolidation and describing the proposed operation of the economic Party that will be created as a result of IDA’s approval of the Consolidation Application (“Post-Consolidation Entity”); 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 change in the ownership structure of any of the Applicants in addition to the change that is the subject of their Consolidation Application.

9.5.1.6 Proposed Conditions to Address Competitive Concerns

Applicants must indicate whether they wish to propose any possible conditions for IDA's consideration (such as partial divestiture or the imposition of behavioural safeguards) that could reduce any potential adverse competitive impact of the Consolidation. If the 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 concern that might arise from the Consolidation.

9.5.2 Short Form Consolidation Application Procedure

Where a Consolidation has met any of the requirements set out in subsection [9.5.2.1] of this Code, the Applicants must follow the procedures for submitting the Short Form Consolidation Application.

9.5.2.1 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:

- (a) the Consolidation is a Horizontal Consolidation which will not result in the Post-Consolidation Entity having more than a 15 percent share in the Singapore telecommunication market; 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 in Singapore or elsewhere, in which it participates.

As used in this subsection:

- (a) "Horizontal Consolidation" means a Consolidation involving 2 or more entities that are current competing providers of the same telecommunication services or telecommunication services that are reasonable substitutes; and
- (b) "Non-Horizontal Consolidation" means a Consolidation that involves 2 or more entities that are not current competitors.

9.5.2.2 Short Form Consolidation Application

Applicants using the Short Form Consolidation Application procedure must complete and submit the Short Form Consolidation Application adopted by IDA.

9.5.2.3 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 the approval of the Consolidation would serve the public interest (“Abbreviated Statement”). The competitive assessment generally should 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.

9.5.3 Consolidation Application Processing Fee

Each Long Form Consolidation Application and each Short Form Consolidation Application must be accompanied by payment of a Consolidation Application Fee, in an amount to be specified by IDA.

9.5.4 Consolidation Review Period

The following provisions govern the length of the Consolidation Review Period.

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

The Consolidation Review Period will be deemed to have begun on the day on which the Applicants first satisfied the applicable requirements specified in either subsection [9.5.1] or [9.5.2] of this Code.

9.5.4.2 Length of Consolidation Review Period

IDA will ordinarily complete its Consolidation Review within 30 days after the start of the Consolidation Review Period. IDA will seek to give expedited consideration to requests made in connection with Consolidations to be achieved through Open Market Transactions. 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.

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

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.

9.6 Information Gathering Procedures Applicable to Requests and Applications

The following provisions apply to the gathering of information in connection with IDA's review of any Request to acquire an Ownership Interest that would result in the Acquiring Party holding an Ownership Interest in the Licensee of at least 12 percent or any Consolidation Application.

9.6.1 Public Consultation

Where appropriate, IDA will provide the public with an opportunity to comment regarding a Request to acquire an Ownership Interest that would result in the Acquiring Party holding an Ownership Interest in the Licensee of at least 12 percent or a Consolidation Application. In those cases in which IDA seeks public comment in connection with a Consolidation, it will release the non-confidential portions of the Statement or Abbreviated Statement submitted by the Applicants. 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.

9.6.2 Duty to Update Pending Requests for Approval of Consolidation Applications to Reflect Material Changes

During the period between the day on which a Licensee submits a Request, or the Applicants submit a Consolidation Application, and the day on which IDA issues its decision to approve, subject to Conditions or deny the Request or Consolidation Application, the Licensee or 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 Request or Consolidation Application.

9.6.3 Requests for Supplemental Information From Licensees or Applicants

Where necessary to assess the Request or Consolidation Application, IDA will request the Licensee or any of the Applicants to provide information in addition to that contained in the Request or Consolidation Application.

9.6.3.1 Requests for Response to Specific Questions

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

9.6.3.2 Requests for Documents

IDA may request the Licensee or 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 in a form acceptable to IDA, certifying that it has satisfied this obligation. The Applicant may either produce the original documents or certified true copies of such documents.

9.6.3.3 Interviews

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

9.6.3.4 Inspection requests

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

9.6.3.5 Request for Reconsideration

A Licensee or 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 scope of the information request. The Licensee or 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 Licensee's or Applicant's objection and, where feasible, propose alternative means by which IDA can obtain the information necessary to assess the competitive impact of the Consolidation. In any case in which an Applicant submits a reconsideration request, IDA will deem the Consolidation Review Period to have been 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 the day on which the requested information is submitted to IDA.

9.6.4 Request for Confidential Treatment

A Licensee, Applicant, or other party may request that information submitted be treated as confidential. IDA will grant a request for confidential treatment

if the party that submitted the information 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 party. 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. In any case in which IDA returns the information:

- (a) If the information was voluntarily provided, IDA will not take into consideration this information and will assess the Request or Consolidation Application only on the information that was retained.
- (b) 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:
 - (i) withdraw the Request or Application; or
 - (ii) resubmit the required information on a non-confidential basis.

9.6.5 Duty to Provide Responsive, Complete and Accurate Information

All information submitted to IDA by a Licensee or Applicant in connection with a Request or Consolidation Application must be responsive, complete and accurate. IDA may take appropriate enforcement action against any party that contravenes this provision.

9.7 Actions by IDA in Connection with Requests and Applications

In any case in which:

- (a) a Licensee files a Request for approval of the acquisition of an Ownership Interest that would result in the Acquiring Party holding an Ownership Interest in the Licensee of at least 12 percent, but less than 30 percent; or
 - (b) a Licensee and an Acquiring Party file a Consolidation Application,
- IDA will take one of the following actions, as appropriate.

9.7.1 Approval of Request and Consolidation Applications

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

9.7.2 Denial of Requests and Consolidation Applications

- (a) IDA may deny the Request or Consolidation Application. If IDA does so, IDA will provide a written statement of the reasons for its denial.
- (b) In those cases in which a:
 - (i) a Licensee has filed a Request in connection with the acquisition of an Ownership Interest that would result in the

Acquiring Party holding an Ownership Interest in the Licensee of at least 12 percent, but less than 30 percent; and

- (ii) IDA concludes that the transaction constitutes a Consolidation,

IDA will deny the Request and will direct the Licensee and the Acquiring Party to submit a Consolidation Application within 30 days after the date on which the Request is denied.

9.7.3 Approval of Requests and Consolidation Application, Subject to Conditions

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

9.7.3.1 Non-discrimination Requirements

As a condition of its approval of the Request or Consolidation Application, IDA may require the Licensee to agree that it will, or the Applicants to agree that the Post-Consolidation Entity will:

- (a) provide access to infrastructure, information or services to other Licensees, other entities or End-Users on a non-discriminatory basis; or
- (b) reject any preferential access to infrastructure, information or services from any specified entity.

IDA may also require the Licensee to agree that it will, or Applicants to agree that the Post-Consolidation Entity will, contract for independent audits to confirm compliance or to periodically self-certify its compliance.

9.7.3.2 Accounting Separation

As a condition of its approval of a Request or a Consolidation Application, IDA may require the Licensee to agree that it will, or 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 require a Licensee to agree that it will, or Applicants to agree that the Post-Consolidation Entity will, contract for independent audits to confirm compliance or to periodically self-certify its compliance.

9.7.3.3 Structural Separation

As a condition of its approval of a Request or Consolidation Application, IDA may require the Licensee to agree that it will, or 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 accounts, separate facilities, separate officers, separate personnel, separate credit lines, and other appropriate forms of separation.

9.7.3.4 Voluntary Partial Divestiture of Assets to an Acceptable Purchaser

As a condition of its approval of a Request or Consolidation Application, IDA may require any of the Applicants to agree to divest certain assets to an acceptable purchaser, in an arm's length transaction. 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.

9.7.3.5 Other Pro-competitive Conditions

IDA may impose other Conditions on approval of a Request or Consolidation Application that are designed to increase competition. These include Conditions designed to increase entry into telecommunication markets that are not yet fully competitive.

9.8 Special Provisions Applicable to Tender Offers

- (a) In the case where an 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 of:
 - (i) at least 12 percent but less than 30 percent, and the proposed acquisition does not constitute a Consolidation, the Acquiring Party must notify the Licensee that it proposes to acquire a Direct Ownership Interest in the Licensee by a Tender Offer. The Licensee must file a Request for approval with IDA in accordance with the process specified in [subsection 9.3.6.3.1] of this Code and obtain IDA's written approval before the Acquiring Party makes the Tender Offer;
 - (ii) at least 12 percent but less than 30 percent, and such acquisition amounts to a Consolidation, the Acquiring Party must notify the Licensee that it proposes to acquire a Direct Ownership Interest in the Licensee by a Tender Offer and that the acquisition amounts to a Consolidation. The Acquiring Party and the Licensee must jointly file a Consolidation Application with IDA in accordance with the process specified in [subsection 9.4.3.1] of this Code and obtain IDA's prior written approval before the Acquiring Party makes the Tender Offer; or
 - (iii) more than 30 percent, the Acquiring Party must notify the Licensee that it proposes to acquire a Direct Ownership Interest in the Licensee by a Tender Offer and that the acquisition amounts to a Consolidation. The Acquiring Party and the

Licensee must jointly file a Consolidation Application with IDA in accordance with the process specified in [subsection 9.4.3.1] of this Code and obtain IDA's written approval before the Acquiring Party makes the Tender Offer.

For the avoidance of doubt, the phrase "making the Tender Offer" shall include the making of any initial public announcement by the Acquiring Party relating to the Tender Offer.

- (b) Where either party does not want to disclose confidential, commercially sensitive or proprietary information to the other party, the party may provide this information to IDA directly.
- (c) In addition to the obligations specified in subsection [9.8(a)] of this Code, the Tender Offer Guidelines will specify the procedures applicable to voluntary offers, mandatory offers and partial offers made pursuant to the Singapore Code on Take-overs and Mergers.
- (d) If the parties fail to obtain IDA's prior written approval in accordance with subsection [9.8(a)] of this Code or in any other case where an Acquiring Party acquires a Direct Ownership Interest in a Licensee that would result in the Acquiring Party holding an Ownership Interest in the Licensee of 12 percent or more pursuant to a Tender Offer without IDA's prior written approval, IDA may require divestiture or take other actions set out in subsection [9.9] of this Code.
- (e) Where it is not possible for the Acquiring Party to comply with the provisions of this subsection [9.8] because doing so would conflict with the rules of the securities exchange on which the Licensee's shares are traded or where the provisions of this subsection [9.8] does not address any specific situations in connection with a Tender Offer, the Acquiring Party must seek IDA's guidance as to the appropriate course of action and procedures.

9.9 Special Provisions Applicable to Acquisitions of Ownership Interests Resulting in the Holding of an Ownership Interest in the Licensee of 12 Percent or more and Consolidations Without IDA's Prior Written Approval

The following provisions are applicable in any case in which an Acquiring Party:

- (a) acquires an Ownership Interest in a Licensee, whether by a series of transactions over a period of time or not, that would result in the Acquiring Party holding an Ownership Interest in the Licensee of 12 percent or more; or
- (b) enters into a transaction that results in a Consolidation, without obtaining IDA's prior written approval.

9.9.1 **Special Procedures Applicable to Acquisition of an Ownership Interest Resulting in the Holding of an Ownership Interest in the Licensee of 12 percent or more Without IDA's Prior Written Approval**

Pursuant to the Telecommunications Act:

- (a) In any case in which an Acquiring Party has acquired a Direct Ownership Interest in a Licensee, whether by a series of transactions over a period of time or not, that would result in the Acquiring Party holding an Ownership Interest in the Licensee of 12 percent or more without obtaining IDA's prior written approval, and IDA subsequently determines that the Acquiring Party's acquisition of this Direct Ownership Interest is likely to unreasonably restrict competition or harm the public interest, IDA may do any or all of the following:
 - (i) direct the Acquiring Party to divest some or all of the voting shares in the Licensee that the Acquiring Party has by reason of its Direct Ownership Interest in the Licensee ("Specified Shares");
 - (ii) direct the Licensee to restrict the exercise of some or all of the voting rights in the Specified Shares;
 - (iii) direct the Licensee to restrict the issue or offer of shares (whether by way of rights, bonus or otherwise) in respect of the Specified Shares, unless IDA expressly permits such issue or offer; and
 - (iv) except in a liquidation of the Licensee, direct the Licensee to restrict the payment of any amount (whether by way of dividends or otherwise) in respect of the Specified Shares unless IDA expressly authorizes such payment subject to such conditions as IDA may specify.
- (b) Where an Acquiring Party has acquired an Indirect Ownership Interest in a Licensee, whether by a series of transactions over a period of time or not, that would result in the Acquiring Party holding an Ownership Interest in the Licensee of 12 percent or more without obtaining IDA's prior written approval, IDA may do any or all of the following:
 - (i) request the Acquiring Party to eliminate its Indirect Ownership Interest in the Licensee;
 - (ii) direct the Licensee to restrict the exercise of some or all of the voting rights in the voting shares in the Licensee that the Acquiring Party has by reason of its Indirect Ownership Interest in the Licensee ("Specified Shares");
 - (iii) direct the Licensee to restrict the issue or offer of shares (whether by way of rights, bonus or otherwise) in respect of the Specified Shares, unless IDA expressly permits such issue or offer;
 - (iv) except in a liquidation of the Licensee, direct the Licensee to restrict the payment of any amount (whether by way of dividends or otherwise) in respect of the Specified Shares unless

IDA expressly authorizes such payment subject to such conditions as IDA may specify; and

- (v) direct the Acquiring Party's Affiliate that holds a Direct Ownership Interest in the Licensee, to divest some or all of the voting shares that it has in the Licensee.

9.9.2 Special Procedures Applicable to Acquisition of a Business of a Licensee as a Going Concern Without Prior IDA Approval

Pursuant to Section [XX] of the Telecommunications Act, in any case in which an Acquiring Party has acquired a business of a Licensee as a going concern without receiving IDA's prior written approval, IDA may direct the Acquiring Party to transfer or dispose of all or any part of the business within such time and subject to such conditions as IDA considers appropriate.

9.9.3 Opportunity to Respond to IDA's Direction

Prior to issuing a direction under the Telecommunications Act for the circumstances stated in either subsection [9.9.1] or [9.9.2] of this Code, IDA will provide a written notification to the entity to which the direction will be addressed to, and will give such person an adequate opportunity to submit written representations in relating to the proposed direction.