

ANNEX 1: M1'S COMMENTS ON IDA'S REVIEW OF THE CODE OF PRACTICE FOR COMPETITION IN THE PROVISION OF TELECOMMUNICATION SERVICES ("CODE"): REQUEST FOR COMMENTS REGARDING THE PROPOSED REVISED SECTION NINE OF THE CODE ("REVISED SECTION NINE")

Section	Description	Comments
General Comments	Licence Conditions	As the current licence conditions differ from the requirements set out in the Revised Section Nine, IDA would need to modify the individual licences issued to Facilities-Based Operators ("FBO") and Services-Based Operators ("SBO") who are Designated Telecommunication Licensees.
General Comments	Approval of Changes in Ownership Interests	<p>For greater clarity and to reduce unnecessary burden on Licensees, M1 proposes the following amendments:</p> <p><u>Section 9.3.5.1</u> "...Unless requested by IDA, the Licensee need not provide further notification of any changes in that Acquiring Party's Ownership Interest..."</p> <p><u>Section 9.3.6</u> "... an Acquiring Party that has been granted written approval by IDA ... may subsequently effect a change to its Ownership Interests in the Licensee...In these cases, the Licensee shall notify IDA of further acquisitions of Ownership Interest ..."</p> <p>M1 also requests IDA to clarify whether, after approval has been granted for acquiring at least 30% Ownership Interest in a Licensee, would Licensee still be required to notify or seek IDA's approval for subsequent acquisitions of shares. The proposed revised Section Nine is currently silent on the position.</p>
General Comments	Changes in the percentage level of Ownership Interest:	As specified in the Companies Act ¹ , Substantial shareholders would only notify the company for changes in ownership in threshold bands of 1% . IDA should mirror this provision in the regulatory framework to avoid any confusion in the notification or approval process.
9.1.2(b)(iii) – Definition of "Affiliate – Sibling"	"which is a subsidiary of any Parent of the Licensee or Acquiring Party ("Sibling")"	The definition should be amended as follow for clarity and consistency: "in which any Parent of the Licensee or Acquiring Party has an attributable interest of 5 percent or more ("Sibling")."
9.1.2(c) – Definition of "Applicant"	"means a Licensee and an Acquiring Party (whether or not a Licensee) that has filed a Consolidation Application with IDA."	<p>Since IDA allows the Consolidation Application to be filed separately, IDA should amend the definition as follow: "means a Licensee or an Acquiring Party...."</p> <p>Also ensure identical definition in Telecom Consolidation Guidelines.</p>

¹ The Companies Act, Section 83.

Section	Description	Comments
9.1.2(g) – Definition of “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 Telecommunication Act.”	The definition should be amended as follow: “means a Facilities-based Licensee or a Service-based Licensee that IDA has declared....”
9.1.2 (i) – Definition of “Ownership Interest”	The definitions of “Direct Ownership Interest” and “Indirect Ownership Interest” do not correspond with the definitions of “interest” and “deemed interest” under Section 7 of the Companies Act.	Shareholders notify companies of changes in ownership interest according to the terms set out in the Companies Act. As such, M1 recommends that IDA use the same definition for “interest” and “deemed interest” under the Companies Act to avoid any confusion. Furthermore, this definition has less anti-competition implications and would be consistent with other Acts ^{2,3} .
9.3.5 / 9.3.5.1 / 9.3.6.3.2 / 9.4.3.2	In these sections, IDA made reference to instances when the Licensee “becomes aware” that an Acquiring Party has acquired Ownership Interest and stated the required action to be taken from the point of the Licensee becoming aware.	To avoid confusion of when the notification/approval process should start, M1 proposes the following amendment: Replace “becomes aware” and “becoming aware” with “ <u>is notified by the Acquiring Party</u> ” and “ <u>is being notified by the Acquiring Party</u> ”. This is also the practice of how a listed company would know that acquisition in its share has taken place.
9.3.6.3.1 / 9.3.6.3.2	Under these scenarios described by IDA, the Licensee must file a Request for approval within 5 working days of receiving the notification or becoming aware of the acquisition of the Ownership Interest.	M1 would like to highlight that 5 working days is insufficient considering the amount and type of information requested by IDA. M1 proposes that IDA revise the period for filing to 10 working days.
9.5.1.5	Supporting Documentation	Subsection a) should be amended as follow: “a copy of the Applicants’ <u>most recent</u> annual reports or audited financial statements;” For subsection b), M1 requests that IDA clarify what constitutes a business plan and how would the previous years’ plans assist IDA in its assessment. M1 believes that the audited financial statements as required under subsection a) should suffice. M1 views that the reports required under subsection c) are excessive and amounts to a due diligence exercise. Instead, IDA should request for a report prepared by Applicants describing the proposed Consolidation and the proposed operations of the Post-Consolidation Entity.

² The *Banking Act*, Section 12, Subsection 4.

³ The *Newspaper and Printing Presses Act*, Section 15B, Subsection 4.

Section	Description	Comments
9.5.4.2	The possible length of Consolidation Review Period is described as: “.... 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.”	M1 believes that the intention is to provide for extension up to 90 days, and the maximum review period would be 120 days. As such, M1 suggests the following amendment to enhance clarity: “.....IDA will notify the Applicants that it intends to extend the Consolidation Review Period by up to 90 days. <u>The maximum review period would be 120 days.</u> ”
9.6.3.2	The section states that IDA may request the Licensee or any of the Applicants to provide additional documents, which may be categories of documents.	M1 views that Section 9.6.3.2 should state that IDA would provide clear explanation on its rationale and objective for the request of additional information. This would eliminate any unnecessary correspondence regarding the request of additional information.
9.6.3.3	Interviews	As Licensees have limited control over shareholders, they should not be liable for breach of Section 9.6.5 in circumstances whereby shareholders refuse to co-operate or provide complete/accurate information to IDA. Therefore, M1 proposes that the relevant sections be amended to clarify that requests for shareholder interview/responses are not considered part of a Licensee’s or Applicant’s duty in Section 9.6.5.
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...”	M1 believes that Licensee or Applicant should have the option to request for reconsideration of the relevance of certain interviews or inspection requested by IDA. Hence, M1 proposes the following amendment: “A Licensee or Applicant that believes that any information, <u>interview or inspection</u> request by IDA is unnecessary or overly broad may submit a written request to IDA to reconsider or narrow the scope of the information, <u>interview or inspection</u> request...”
9.7.3.1(a)	Non-discrimination Requirements “provide access to infrastructure, ... other entities or End-Users on a non-discriminatory basis;”	To ensure that the Post-Consolidation Entity does not impose onerous terms on other entities or End-Users, M1 proposes the following amendment: “provide access to infrastructure, ... other entities or End-Users on a <u>reasonable and</u> non-discriminatory basis;” This amendment would also be consistent with Section 2.2.2.2 of the Telecom Consolidation Guidelines where IDA specifies the need for ‘reasonable and non-discriminatory’ terms.

Section	Description	Comments
9.9	<p>Mandatory Divestiture of a Direct Ownership Interest or Elimination of an Indirect Ownership Interest</p> <p>IDA stated that: “IDA will direct the Licensee to restrict the exercise of some or all of the voting rights...restrict the payment of any amount (whether by way of dividends or otherwise)...”</p>	<p>M1 expects that IDA would amend the Telecommunications Act to incorporate these powers and would address the conflict between these provisions and Section 64 of the Companies Act.</p> <p>Also, as these are extreme measures requiring the Licensee to take action against its own shareholders, we propose that such powers should reside with the Minister. This would be consistent with the other Acts^{4,5} reference by IDA in this consultation.</p>
9.9.1(b)(i)	<p>Section states that IDA may “request the Acquiring Party to eliminate its Indirect Ownership Interest in the Licensee;”</p>	<p>As it may not be necessary for the Acquiring Party to eliminate all its Indirect Ownership Interest to remove its Effective Control, we suggest the following amendment: “request the Acquiring Party to eliminate some or all of its Indirect Ownership Interest in the Licensee;”.</p>
9.9.3	<p>Opportunity to Respond to IDA’s Direction: “IDA will provide a written notification ... to submit written representations in relating to the proposed direction.”</p>	<p>IDA should make the following amendment: “IDA will provide a written notification ... to submit written representations in relation to the proposed direction.”</p>

ANNEX 2: M1’S RESPONSE TO IDA’S REQUEST FOR COMMENTS REGARDING THE PROPOSED REVISED TELECOMMUNICATION CONSOLIDATION GUIDELINES (“TELECOM CONSOLIDATION GUIDELINES”)

Section	Description	Comments
General Comments	<p><u>Definition of Market Power</u> IDA has defined Market Power as “the ability to unilaterally restrict output, raise prices, reduce quality or otherwise act independently of competitive market forces”</p>	<p>The existing definition does not adequately reflect the meaning of Market Power. It focuses only on certain specific effects of Market Power. M1 suggests that IDA adopt the following definition based on <u>“the ability to act on the market without having to take account of the reaction of its competitors, suppliers or customer⁶;</u> <u>including without limitation</u> the ability to unilaterally restrict output, raise prices, reduce quality, <u>undercut prices on a sustained basis to gain market share, predatory pricing and/or cross-subsidisation</u>.”</p>

⁴ The *Banking Act*, Section 16.

⁵ The *Newspaper and Printing Presses Act*, Section 16.

⁶ European Commission, *Control of Major Cross-border Mergers: Merger Control in the European Union*.

Section	Description	Comments
1.1 (x)	Definition of “Ownership Interest”	Please follow the definition in the Revised Section Nine for consistency.
1.1(y)	Definition of “Post-Consolidation Entity” “...as well as any entity that will have Effective Control over that entity, or over which that entity will have Effective Control, or which will be subject to Effective Control by an entity that has Effective Control over that entity”	M1 believes that this definition requires refinement for greater clarity. Repeated references to “that entity” render the definition unclear.
2.2.1.2	IDA described how Horizontal Consolidations could act in an anti-competitive manner.	M1 views that the ability to undercut prices on a sustained basis to gain market share, predatory pricing and/or cross-subsidisation should be considered.
3.1.3.2(a)	Consolidations by Other Means IDA stated that “if the Acquiring Party provides advance notice to the Licensee that it intends to enter into a Consolidation,...”	It is impractical to provide notification or seek approval based on an Acquiring Party’s ‘intention’. Hence, M1 recommends that IDA amend this section to be consistent with Section 9.3.6.3.1 and 9.4.3.1 of the Revised Code as follow: “If the Acquiring Party provides the Licensee with advance notice that it has entered into an agreement which would allow the Acquiring Party to acquire an Ownership Interest...”
3.1.3.2 (b)	“becomes aware” and “becoming aware”	Please refer to our comments for Section 9.3.5/9.3.5.1/9.3.6.3.2/9.4.3.2 in Annex 1.
3.2.1.5	Supporting Documentation	Please refer to our comments for Section 9.5.1.5 in Annex 1.
4.2	Consolidation Review Period	Please refer to our comments for Section 9.5.4.2 in Annex 1.
5.1.2	Request for Documents	Please refer to our comments for Section 9.6.3.2 in Annex 1.
5.1.3	Interviews	Please refer to our comments for Section 9.6.3.3 in Annex 1.
5.1.5	Requests for Reconsideration	Please refer to our comments for Section 9.6.3.5 in Annex 1.
5.4	Confidentiality	According to section 5.2.2 and 5.3, IDA has the power to source for information through private consultations and co-operation with foreign authorities. As the information obtained from these parties can be confidential, Applicants should be given the option to request for confidential treatment according to the standards set out in Section 5.4.2.

Section	Description	Comments
6.2.1.3	Determining Market Shares	As highlighted in our response to the previous consultation, Customer Base should be listed as a form of measurement in determining market shares.
6.2.2.1/6.3.1	Factors Likely to Increase the Risk of Unilateral Anti-competitive Conduct/Determination of Market Power and Market Concentration	M1 reiterates that the ability to undercut prices of competitors on a sustained basis, predatory pricing and/or cross-subsidisation should be included in subsection d).
6.4.3	IDA stated that: “...where any of the Applicants is a ‘Failing Undertaking’ or ‘Failing Division’”.	M1 proposes the following amendment: “...where any of the Applicant is a ‘Failing Undertaking’ or <u>involves</u> a ‘Failing Division’”.
6.4.3.1(c)/6.4.3.2(b)	IDA described the lack of alternative purchaser as one of the test for a Failing Undertaking/Failing Division.	M1 views that this test is not reasonable. An entity can be deemed as ‘Failing’ in all other aspects but could still attract more than one potential purchaser.
8.3.2.2	Non-discriminatory Requirements	Please refer to our comments for Section 9.7.3.1 (a) in Annex 1.
8.7	“becomes aware” and “becoming aware”	Please refer to our comments for Section 9.3.5/9.3.5.1/9.3.6.3.2/9.4.3.2 in Annex 1.
8.7.1/8.7.2	Mandatory Divestiture of a Direct Ownership Interest or Elimination of an Indirect Ownership Interest	Please refer to our comments for Section 9.9 in Annex 1.
9.2	IDA’s solicitation of Public Comments	Section 9.2 should clearly state that the solicitation of Public Comments lies within the Consolidation Review Period in Section 4.2.
10	Appeal	<p>M1 notes that IDA removed the explicit reference to the appeal process available to Applicants under the Telecommunications Act. To provide clarity on the appeal process, this reference should be included.</p> <p>IDA should also clarify that any modified/revised decision following an appeal would be published as per Section 9.3.</p>

ANNEX 3: M1’S RESPONSE TO IDA’S REQUEST FOR COMMENTS REGARDING THE PROPOSED ADVISORY GUIDELINES FOR TENDER OFFER PROCESS WHERE THE SINGAPORE CODE ON TAKE-OVERS AND MERGERS APPLIES (“PROPOSED TENDER OFFER GUIDELINES”)

Section	Description	Comments
1.3	Precedence of Telecom Competition Code over these Guidelines in the event of conflict	Please also clarify which documents will prevail if there is a conflict with the Take-over Code.
3	Procedures for Seeking IDA’s written approval	<p>According to the procedures, IDA’s approval is sought <u>after</u> the announcement of a pre-conditional offer. Such requirement hinders acquisitions as it increases the execution risk of the Offer and lengthens the timeline for the Offer process.</p> <p>As such, IDA should review if the approval could be sought <u>by Acquiring Party before</u> the announcement of the transaction</p>
3.3	Mandatory Offer	M1 would like to highlight this section does not seem to cover the ‘Chain Principle’ stated under Rule 14 of the Take-over Code. IDA should redraft the section to reflect the full spectrum of Rule 14 in the Take-over Code.