

**STARHUB'S RESPONSE TO IDA'S CONSULTATION PAPER –
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**

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

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

StarHub Pte Ltd (“StarHub”) appreciates the opportunity to comment on the proposals by IDA to:

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

1 Introduction

1.1 This submission by StarHub is in response to IDA’s invitation to comment on its proposals to:

- (a) replace Section Nine of the Code;
- (b) further revise IDA’s Proposed Telecom Consolidation Guidelines; and
- (c) issue a Proposed Tender Offer Guidelines.

1.2 We provide herein our specific comments with respect to the proposed revised Section Nine of the Code.

2 Specific Comments – Proposed Revised Section Nine of the Code

2.1 Sections 9.1.2(e) and 9.3.6.1

In addition to shareholding interest, StarHub submits that IDA should consider that an Acquiring Party has Effective Control of a Licensee if it also has the ability to influence the managerial and operational decisions of a company via appointment to the Board or appointment as Chairman or Chief Executive Officer or other similarly influential positions.

2.2 Section 9.3.3

StarHub is of the view that Section 9.3.3 should not apply to monitoring of changes in Ownership Interest if such changes do not result in any person acquiring an Ownership Interest of 5% or more in the Licensee. This flows from the reasoning that Section 9.3.4.1 provides that a Licensee need not notify IDA of the acquisition of an Ownership Interest in the Licensee if such acquisition results in the holding of an Ownership Interest of less than 5%.

2.3 Sections 9.3.6.5, 9.4.3.1 and 9.4.3.2

Sections 9.3.6.5, 9.4.3.1 and 9.4.3.2 only permit a Licensee to petition IDA for permission to file a separate Consolidation Application if the Licensee believes that the filing of a joint Consolidation Application would be 'unreasonably burdensome or infeasible'. It may be difficult to prove the test of "unreasonably burdensome or infeasible". Therefore, StarHub proposes that Sections 9.3.6.5, 9.4.3.1 and 9.4.3.2 be amended to expressly permit a Licensee to file a separate Consolidation Application on the grounds that the Acquiring Party refuses to cooperate with the Licensee in filing a joint Consolidation Application.

2.4 Section 9.4.4(a)

StarHub submits that this section should be amended to also permit the Licensee to demonstrate the criteria set out in either Section 9.4.4(a)(i) or 9.4.4(a)(ii).

2.5 Sections 9.5.1.2 and 9.5.1.3

Sections 9.5.1.2 and 9.5.1.3 should be amended to recognise the situation whereby the Licensee and the Acquiring Party file separate Consolidation Applications. In such situation and if the Licensee is not a party to the agreements, the Licensee should only be required to submit copies of the agreements which are in its possession, control or custody. Otherwise, the Licensee cannot comply with Sections 9.5.1.2 and 9.5.1.3 if the Acquiring Party refuses to provide copies of the agreements to the Licensee.

2.6 Section 9.6.1

As currently drafted, a third party would only be able to comment on a Request or Consolidation Application if IDA decides to seek public consultation on the same. In the event that IDA decides not to consult the public on a proposed Consolidation, interested third parties who may be adversely affected and have valuable industry insight may be precluded from commenting on the proposed Consolidation.

StarHub proposes that IDA consider allowing interested parties to comment on a proposed Consolidation even if it does not intend to seek public consultation on the matter. Such interested parties would have to show that they are likely to be adversely affected by the proposed Consolidation. Alternatively, IDA could consider providing that it has the right to seek selected industry comments at any time in the course of its consideration of the Request or Consolidation Application.

2.7 Section 9.6.3.2

StarHub proposes that IDA amend Section 9.6.3.2 to permit the Applicant to "make an effort in good faith to locate and produce all requested documents in its possession, control or custody".

2.8 Section 9.6.3.3

In relation to this proposed clause, IDA will appreciate that a Licensee cannot compel its shareholder to attend the interview if the shareholder is unwilling to do so. Therefore, StarHub proposes that Clause 9.6.3.3 be amended such that if IDA requests to interview a shareholder of a Licensee, the Licensee will use reasonable efforts to request the shareholder to attend the interview.

2.9 Section 9.6.4

StarHub is concerned with the proposal that in the event IDA rejects a request for confidential treatment, IDA would return the information to the sender and would assess the Request or Consolidation Application only on the information that was retained. StarHub submits that regardless of whether IDA takes the view that the information provided is confidential or not, IDA should take into consideration the information provided by the Licensee, Applicant or

other party in relation to the Request or Consolidation Application in its assessment of the same.

Mergers and acquisitions are decisions of major impact on a company and could be critical to a company's commercial viability in some cases. It is therefore necessary to ensure that decisions on consolidation are assessed based on the merits of such intended course of action, rather than on procedural concerns such as whether IDA should consider the information received in relation to a Request or Consolidation Application in its assessment of the same, in light of a disagreement with the sender on whether the information should be treated as confidential. Accordingly, StarHub requests for IDA's favourable consideration with respect to our proposal that IDA should consider all the information received in relation to a Request or Consolidation Application, notwithstanding that the parties might disagree on how the information should be classified.

2.10 Section 9.9.1(b)

StarHub proposes that IDA subject Section 9.9.1(b) (Acquisition of Indirect Ownership Interest) to the additional requirement that "IDA subsequently determines that the Acquiring Party's acquisition of this Indirect Ownership Interest is likely to unreasonably restrict competition or harm the public interest", prior to a decision by IDA to undertake any or all of the actions stated in Sections 9.9.1(b)(i) to 9.9.1(b)(iv). Section 9.1.1(a) (Acquisition of Direct Ownership Interest) is subject to the said additional requirement, and StarHub is of the view that such requirement should similarly apply to an acquisition of Indirect Ownership Interest.

3 Conclusion

3.1 We thank IDA for providing an opportunity for interested parties to comment on its proposals to:

- (a) replace Section Nine of the Code of Practice for Competition in the Provision of Telecommunication Services ("Code");
- (b) further revise IDA's proposed Consolidation Review Guidelines ("Proposed Telecom Consolidation Guidelines"); and
- (c) issue a proposed Advisory Guidelines for Tender Offer Process where the Singapore Code on Take-overs and Mergers Applies ("Proposed Tender Offer Guidelines").

3.2 We hope that our comments are helpful and would be happy to lend further assistance if required.