

# TELECOMMUNICATION ACT AMENDMENT BILL CONSULTATION DOCUMENT

## INTRODUCTION

1. The Info-communications Development Authority of Singapore (“IDA”) was formed on 1 December 1999 through the merger of the then Telecommunication Authority of Singapore (“TAS”) and National Computer Board pursuant to the enactment of the: (a) Info-communications Development Authority of Singapore Act (“IDA Act”); (b) Telecommunications Act (“TA”); and (c) Postal Services Act. The provisions of the TA were mainly derived from the repealed TAS Act, which was enacted on 1 April 1992. The TA mainly governs the regulation of the telecommunication industry in Singapore. It provides amongst others, for the IDA to grant licences, issue directions and codes of practice and standards of performance in connection with the operation of telecommunication systems and provision of services and the conduct of licensees in the provision of such service. It also empowers the IDA to take enforcement action for any breach of such licences, directions and codes of practice and standards of performance and for any offence committed under the TA.
2. The TA was last reviewed in 1998/1999. Since then, the telecommunication market has been fully liberalised on 1 April 2000. Today, there are a large variety of operators offering a wide range of telecommunication services, albeit in varying degrees to the different market segments. The TA in its current form needs to be updated to adequately address the issues arising in an increasingly competitive multi-operator, multi-network marketplace. The Ministry of Information, Communications and the Arts (“MITA”), together with the IDA has reviewed the TA to ensure that the TA remains relevant and continue to meet our policy objectives of ensuring fair, effective and sustainable competition and maximising the benefits to the economy.
3. MITA would like to invite comments from the public on the draft of the Telecommunications Act Amendment Bill (“draft Bill”). This Consultation Document describes the draft Bill, highlights the significant changes that MITA proposes to make and specifies the procedures and timeframes for filing public comments in relation to the draft Bill.

## KEY ISSUES FOR REVIEW & PROPOSED REVISIONS

4. The focus of the TA review is to identify the gaps in the provisions of the TA which need to be plugged and areas where provisions need to be updated to take into account new market conditions and realities (see **Annex 1** for the draft Bill).

## **PROPOSED PART II OF DRAFT BILL – EXCLUSIVE PRIVILEGE AND LICENSING, ETC., OF TELECOMMUNICATION SYSTEMS**

### **Power to grant spectrum rights**

5. Presently, Sections 5, 7 and 8 of the TA provides the IDA with the powers to grant, modify and suspend or cancel licences. For the issuance of spectrum rights, the IDA currently grants, varies, resumes, suspends or cancels such rights pursuant to Part III (Spectrum Rights) of the Telecommunications (Radio-Communication) Regulations 2001 (“Regulations”). For consistency, MITA proposes to make a consequential amendment to the TA and include the powers for the IDA to grant, vary, suspend or cancel spectrum rights (see proposed Section 5A).

### **Suspension or cancellation of licence**

6. Currently, Section 8 of the TA details the conditions for which the IDA is empowered to suspend or cancel a licence granted under Section 5 of the TA or any regulations made under the TA. MITA has identified other cases that are currently not within the scope of the current Section 8 that may require the IDA to suspend or cancel a licence, or reduce a licence period. These include cases whereby: (i) a licensee has gone into liquidation (other than for the purpose of amalgamation or reconstruction); (ii) a licensee is no longer in a position to comply with the TA or the terms and conditions of its licence, and (iii) public interest requires the suspension or cancellation of the licence. Hence, MITA proposes to empower the IDA to suspend or cancel a licence, or reduce the licence period in the above cases (see proposed Section 8(2A)).

## **PROPOSED PART III OF DRAFT BILL – ERECTION, MAINTENANCE AND REPAIR OF TELECOMMUNICATION INSTALLATIONS**

### **Removal or alteration of installation or plant for telecommunications**

7. Section 17 today provides for the payment of costs/compensation to public telecommunication licensees (“PTL”) where the owner or occupier of the building or land requires the removal or alteration of telecommunication installations or plants. MITA proposes to streamline the provisions for Section 17 and omit the role of the IDA as the adjudicator of disputes for such cases. MITA also proposes not to allow for compensation of PTLs for relocation of installations or plants in a building/land that is used to serve other buildings/land belonging to different owners (See proposed Section 17).

## **Provision of space and facilities, or installation, plant or system by direction of Authority**

8. There may be cases where it is necessary that space and facilities in certain buildings is used to install telecommunications equipment to serve both that building, and other buildings. In such cases, MITA proposes to give the IDA the power to direct developers or owners of that building to provide space and facilities for such purposes (see proposed Section 21 (1A)). As a safeguard, the IDA will limit the amount of space that may be used to serve other buildings so as not to impose excessively onerous obligations on developers and building owners.

## **PROPOSED PART IV OF DRAFT BILL – CODES OF PRACTICE & DIRECTIONS**

### **Codes of practice and standards of performance**

9. The current Section 26 of the TA is the section pursuant to which all codes of practice are to be issued (see definition of “code of practice” under Section 2). Given market developments over the last 4 years since the telecommunications sector was fully liberalised, MITA proposes to revise Section 26(1) to expand the scope of matters for which IDA may issue a code of practice. These include matters relating to: (i) the acquisitions or consolidations involving a telecommunication licensee and any other person (whether a telecommunication licensee or otherwise); and (ii) the provision of space and facilities within or on a building or land and access thereto for the operation of any installation or plant used for telecommunications. For (ii), MITA proposes to make it an offence for any failure to comply with a mandatory provision in such a code of practice. (See proposed Section 26 (8)).
10. The IDA today has powers under Section 22 to direct a telecommunication licensee to co-ordinate and co-operate with any other person in the use or sharing of telecommunication installations, plants and systems. However, the penalty for non-compliance of such a direction is an offence. MITA notes that telecommunication systems may be used for purposes other than telecommunications, such as for the provision of broadcasting services and that the IDA may, in some instances, need to direct its licensees in the use or sharing of installations, plants and systems for the provision of broadcasting services. Therefore, MITA proposes to include in Section 27 the powers for the IDA to direct a telecommunication licensee to co-ordinate and co-operate with any other person in the use or sharing of telecommunication installations, plants and systems for the provision of broadcasting services (See proposed Section 27).

**PROPOSED PART VA AND PART OF DRAFT BILL AND NEW SECTION 69B – CONTROL OVER DESIGNATED TELECOMMUNICATION LICENSEES AND POWER OF THE MINISTER TO ISSUE A WRITTEN ORDER WITH RESPECT TO ACQUISITION OF ASSETS ETC. OF A TELECOMMUNICATION LICENSEE**

11. Consolidation provisions in the Code of Practice for Competition in the Provision of Telecommunication Services (“Code”) were developed to address the Changes in Ownership involving privately owned Licensees. IDA has proposed revisions to Section 9 of the Code for changes in ownership and consolidations involving designated telecommunication licensees. IDA has issued the proposed framework for public consultation and the consultation paper is found at the IDA website at [www.ida.gov.sg/Policy and Regulation/Second Public Consultation on Telecom Consolidation Guidelines and Proposed Amendments to Section 9 of the Code](http://www.ida.gov.sg/Policy%20and%20Regulation/Second%20Public%20Consultation%20on%20Telecom%20Consolidation%20Guidelines%20and%20Proposed%20Amendments%20to%20Section%209%20of%20the%20Code).
12. MITA also proposes to make changes to the TA on control over designated telecommunication licensees. The key changes in the Draft Bill include provisions to: (i) give the Minister and IDA powers to institute disenfranchise mechanisms if ownership changes of designated licensees raise regulatory or national interest concerns; (ii) include a notification threshold at 5%, and approval thresholds at 12% and 30% where designated licensees are required to notify, or seek IDA’s prior written approval for ownership changes; (iii) require designated licensees to seek IDA’s approval for the appointment of key management positions and give IDA the power to obtain information on whether a shareholder holds any share in the licensee as a beneficial owner or trustee; (iv) apply such provisions to designated telecommunication licensees as specified in the *Gazette*, which may include Facilities Based Operators and Service Based Operators; and (v) provide 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.
13. The changes to the TA will give effect to the revised Consolidation framework in the Code. The proposed PART VA and Section 69B provisions have been drafted in cognizance of the Banking Act, Companies Act and the Financial Advisers Act.

**PROPOSED PART VI OF DRAFT BILL – OFFENCES AND PENALTIES, PART VIII – ENFORCEMENT POWERS AND PROCEDURES, AND OTHER PENALTIES**

14. The penalty and enforcement framework under the TA is an important limb of the overall telecommunications regulatory regime which serves to deter

anti-competitive behavior and ensure that licensees comply with their licence conditions and codes of practices and directions issued by the IDA. To ensure the effectiveness of the penalty and enforcement framework in the TA, MITA is proposing various amendments to refine and tighten the framework, as well as to align the penalty framework with similar local legislation.

### **Suspension or cancellation of licence, etc.**

15. The penalty framework consists of two main aspects: (i) administrative penalties for the breach of licence conditions, codes of practices and directions issued by the Authority, and (ii) criminal penalties for offences committed under the TA. MITA is of the view that the existing S\$1 million limit on administrative penalties under the TA (see section 8(1)) is a sufficient deterrent against breaches of licence conditions, codes of practices and directions issued by the IDA. However, MITA is of the view that the current penalty of a fine of S\$10,000, or an imprisonment term not exceeding 3 years, or both for non-compliance with the IDA's written order to comply with the relevant licence condition, code or direction is too low and may not serve as a sufficient deterrent. Hence, MITA proposes an increase in the penalty to S\$100,000, or an imprisonment term not exceeding 3 years, or both (see proposed Section 8(5)).

### **Composition of offences**

16. MITA proposes to increase the maximum composition sum from S\$1,000 to S\$5,000. This will provide more flexibility in enforcement and ensure that the penalty imposed serves as a sufficient deterrent (see proposed Section 64).

### **General criminal penalties**

17. For general criminal penalties, MITA intends to retain the S\$10,000 maximum fine, or imprisonment term not exceeding three years, or both as this has proved to be sufficient for IDA's enforcement purposes. However, to ensure that the financial penalty serves as a sufficient deterrent against cases of continuing offences, MITA proposes to include a further fine of up to S\$1,000 a day for every day that the offender fails to rectify or cease the breach and continues to commit the offence after conviction (see proposed Section 65).

## **PROPOSED PART IX OF DRAFT BILL – GENERAL PROVISIONS**

### **Reconsideration by Authority and Appeal to Minister**

18. In line with Singapore's commitment under various free-trade agreements (e.g., USSFTA), MITA proposes to clarify the process by which regulatory decisions made by the IDA can be reviewed. MITA has considered two options. Under the first option, a party that is adversely affected by an IDA decision may, within 14 days, seek reconsideration from the IDA. Should either party not be satisfied with the IDA's reconsideration decision, it can then appeal to the Minister within 14 days of IDA's decision. Under the second option, a party that is adversely affected by an IDA decision may, within 14 days, *either* seek reconsideration from IDA or appeal the matter directly to the Minister. In such a case, if one party seeks reconsideration and another party appeals, the Minister may decide to abstain from hearing the appeal, in which case, the IDA would address the reconsideration request first. The reconsideration decision could then be appealed to the Minister. To ensure efficient use of regulatory resources, MITA proposes to adopt the first option (see proposed Section 69).
19. For clarity, the draft Bill aggregates all the provisions in the TA that explicitly provide for appeal to the Minister, and stipulates that the appeal to the Minister should be made within 14 days of the Authority's decision or direction.

#### **ALIGNMENT WITH COMPETITION BILL**

20. MITA is cognisant of the feedback received in MTI's first public consultation on the draft Competition Act. MITA is aware of the need for competition provisions in the telecommunications sector to be aligned as far as practicable with the Competition Act, while considering the differences in the policy objectives to be achieved under sectoral legislation and the Competition Act. MITA will work with MTI to review the feedback and make changes to relevant legislation and frameworks, if necessary, at a suitable time.

#### **PROCEDURES AND TIMEFRAME FOR SUBMITTING COMMENTS**

21. Parties that submit comments regarding the issues identified in this Consultation Document, or other provisions in the draft Bill, should organise their submissions as follows: (i) cover page; (ii) table of contents; (iii) summary of major points; (iv) statement of interest; (v) comments; and (vi) conclusion. 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 draft Bill on which they are commenting. In any case in which a party chooses to suggest revisions to the text of the revised draft Bill, the party should clearly indicate the specific changes in language that they propose.

22. All submissions should reach MITA **before 6 August 2004, 5pm**. Comments must be submitted in both hard and soft copy (preferably in Microsoft Word format). 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:

**Mr. Ho Chee Pong**  
**Director (Infocomm & Media Development)**  
**Ministry of Information, Communications and the Arts**  
**140 Hill Street**  
**6<sup>th</sup> Storey MITA Building**  
**Singapore 179369**  
**Fax: (65) 6837 9444**

**AND**

Please submit your soft copies to: e-mail: [koh\\_li-na@mita.gov.sg](mailto:koh_li-na@mita.gov.sg)

23. MITA reserves the right to make public all or parts of any written submission and to disclose the identity of the source. Commenting parties may request confidential treatment for any part of the submission that the commenting party believes to be proprietary, confidential or commercially sensitive. Any such information should be clearly marked and placed in a separate annex. If MITA grants confidential treatment, it will consider, but will not publicly disclose, the information. If MITA rejects the request for confidential treatment, it will return the information to the party that submitted it and will not consider this information as part of its review. As far as possible, parties should limit any request for confidential treatment of information submitted. MITA will not accept any submission that requests confidential treatment of all, or a substantial part, of the submission.
24. MITA will review the comments received and aims to table the Telecommunications (Amendment) Bill in Parliament in second half of 2004.