

## **CONSULTATION DOCUMENT**

### **FIRST TRIENNIAL REVIEW OF THE CODE OF PRACTICE FOR COMPETITION IN THE PROVISION OF TELECOMMUNICATION SERVICES**

**7 October 2003**

#### **1. INTRODUCTION**

- 1.1 Singapore fully liberalised its telecommunications market on 1 April 2000. IDA formulated and released the Code of Practice for Competition in the Provision of Telecommunication Services (“the Code”), after extensive consultation with the industry. Effective on 29 September 2000, the Code sets out IDA’s regulatory principles and approach toward competition regulation. The Code also establishes a clear and robust regulatory framework to help foster competition in a fully liberalised telecommunication market in Singapore. To ensure that the Code remains relevant and effective, Section 1.5 of the Code provides that IDA will review the Code at least once every 3 years and as part of that process, IDA will provide an opportunity for public comment. IDA has commenced an internal review of the Code since early 2003.
- 1.2 Although the Singapore market has been fully liberalised for a shorter period of time compared with other jurisdictions such as the European Union (“EU”), the United States (“US”) and Australia, both consumers and businesses have benefited from the introduction of competition over the last three 3 years. More than 400 new operators have entered the market providing a wide range of new and innovative services at competitive prices. However, IDA recognises that competition has not developed evenly in all sectors of the telecommunication market. Some sectors experience higher levels of competition, while others have less. We believe that our experience is no different from experiences of more mature markets in the EU and US, which liberalised their telecommunication markets in the 1990s and 1980s respectively.
- 1.3 IDA believes that its regulatory approach going forward should remain guided by the five key principles IDA adopted 3 years ago: (a) reliance on market forces with proportionate regulation; (b) regulation for effective and sustainable competition; (c) minimum rules for consumer protection; (d) technology neutrality; and (e) efficient, transparent and reasoned decision-making.

- 1.4 The Code therefore provides that, to the extent that a market is competitive, IDA will rely primarily on market forces and industry self-regulation, subject to minimum regulatory requirements designed to protect consumers and to prevent anti-competitive conduct. At the same time, the Code recognises that, to the extent that a market is not yet competitive, *ex ante* regulatory intervention is likely to remain necessary. IDA will continue to promote and maintain effective competition.
- 1.5 The Code also strikes a careful balance between facilities-based and services-based competition. IDA believes that, in the long-term, facilities-based competition will provide the most significant consumer benefits, whilst allowing for a significant reduction in regulatory intervention. In the short-to-intermediate term, however, services-based competition can play an important role in facilitating new entry and increasing consumer choice. Therefore, IDA will strike a balance between providing the economic incentive to build and/or upgrade infrastructure by the incumbent and new entrants, and permitting services-based competition to take place.
- 1.6 Based on our experience and feedback from industry players over the last 3 years, the Code has proven to be largely useful in meeting the objectives for which it was designed. The Code has been particularly useful in three areas: a) ensuring that licensees comply with the minimum rules put in place to protect consumers' interest in a competitive market; (b) facilitating entry by new players, including ease of interconnection with other operators; and (c) ensuring that players do not engage in unfair practices when competing for customers. However, taking into account market developments over the last 3 years, there are also some areas where the Code can be improved upon. Specifically: (a) areas where regulatory requirements need to be removed or relaxed; (b) areas where modifications and refinements are needed; and (c) areas where requirements are needed to enhance competition. IDA has also identified a number of regulatory requirements that are no longer necessary and, therefore, should be modified or eliminated. In addition, IDA has identified a number of provisions in the Code that can be made clearer.
- 1.7 The new edition of the Code would, upon becoming effective, supersede the current edition of the Code. This Consultation Document describes the proposed Code (2004), highlights the most significant changes that IDA proposes to make, and specifies the procedures and timeframes for filing public comments in relation to the proposed Code (2004).
- 1.8 IDA recognises that certain proposed changes will require legislative amendments. In preparing the proposed revisions, IDA has assumed that any necessary legislative amendments will be made in time for the issuance of the Code (2004). In addition, as Singapore has committed to enact a general competition law by 2005, IDA will take steps to align our Code (2004) with the general competition law when it is finalised and effective.

## **2. PROPOSED SECTION ONE**

- 2.1 Section 1 of the proposed Code (2004) retains most of the material in Section 1 of the current edition of the Code. In particular, this Section specifies the goals and legal effect of the Code, lists the regulatory principles, contains provisions for the revision of the Code, reserves IDA's right to modify the Code and grant exemptions, contains rules of construction and specifies the Effective Date of the Code.
- 2.2 IDA proposes to make several organisational changes to Section 1 in order to increase clarity. In particular, IDA proposes to separate the regulatory principles from the procedures that will be used to implement the Code. IDA proposes to move the administrative procedures regarding review of IDA's decisions to Section 11 of the proposed Code (2004).
- 2.3 IDA proposes to add a provision (See proposed Sub-section 1.5.9) that indicates that, where appropriate, it will consult with other regulatory authorities. This would be especially appropriate where more than one regulatory authority has jurisdiction over the same Licensee.
- 2.4 Finally, IDA proposes to eliminate the reference to the telecommunications industry body contained in the current edition of the Code. Rather than establishing a single body, IDA has established industry-led working groups to address individual issues.

## **3. PROPOSED SECTION TWO**

- 3.1 Like Section 2 of the current edition of the Code, Section 2 of the proposed Code (2004) contains the standards and procedures for classifying and reclassifying Licensees as Dominant or Non-dominant, and for exempting a Dominant Licensee from any of the special regulatory requirements to which they are subject.
- 3.2 Regulatory authorities around the world such as those in the EU, US, Australia and Hong Kong have recognised the benefits of distinguishing between Dominant and Non-dominant Licensees. To the extent that Licensees are subject to competitive market forces, the imposition of significant *ex ante* regulation imposes unnecessary costs. However, because certain Licensees are not subject to competitive market forces, regulation is necessary to promote competition and prevent anti-competitive conduct. The "Dominant Licensee" classification does not indicate a finding that a Licensee has acted anti-competitively; it merely indicates the need for separate regulatory obligations in order to compensate for the fact that Dominant Licensees are not subject to competitive market forces.
- 3.3 The obligations imposed on Licensees classified as Dominant should be no broader than necessary, given the lack of effective competition. As competition

develops, such “asymmetrical” regulation should be decreased and, to the extent feasible, ultimately eliminated.

- 3.4 IDA recognises that a Licensee’s large market share, by itself, does not demonstrate that the Licensee is dominant. Rather, it is necessary to assess a range of factors – including whether the Licensee controls “bottleneck” facilities and the cost of entry – in order to determine whether a Licensee is subject to effective competition.
- 3.5 IDA proposes to modify the criteria for classifying a Licensee as a Dominant Licensee. Under the current Code, IDA can only classify a Licensee as a Dominant Licensee if the Licensee controls “last mile” telecommunication facilities that provide a direct connection to End Users. While this is a practical way of defining market power at the point of liberalisation, a better approach would be to determine a licensee’s market power on the basis of the economic consequences of such power. This is also in line with practices adopted in overseas jurisdictions such as the EU, US, Hong Kong and the WTO. IDA therefore proposes to refine our “dominance” definition so that a licensee will be subject to more regulatory oversight if it either: (a) is licensed to operate costly-to-replicate telecommunication facilities that are necessary to provide competitive telecommunication services; or (b) has significant market power (the ability to raises prices, restrict output, reduce quality or otherwise act independently of market forces) in the provision of telecommunication services (See proposed Sub-section 2.2.1.).
- 3.6 IDA further proposes to clarify that the Code uses a “licensed entity” approach. Under this approach, a Licensee that is classified as Dominant must comply with the requirements applicable to Dominant Licensees when it provides any service pursuant to that licence, unless exempted by IDA. However, the fact that a Licensee is classified as Dominant in connection with one licence does not mean that the Licensee’s parents, subsidiaries or affiliates are classified as Dominant as a result of their affiliation with (or even effective control by) the Dominant Licensee.
- 3.7 IDA also proposes to reorganise this Section for clarity. Specifically, IDA proposes to make clear (in proposed Sub-sections 2.6.1 through 2.6.2) that the same evidence that is relevant to the proper classification of a Licensee is also relevant to consideration of any request to exempt a Licensee from any regulatory requirement applicable to Dominant Licensees.

#### **4. PROPOSED SECTION THREE**

- 4.1 Section 3 of the current edition of the Code addresses the duties of Licensees to their End Users. This Section currently is divided into two parts. Sub-sections 3.2 through 3.2.7 of the Code currently address the obligations of all Licensees. Sub-sections 3.3 through 3.3.5 of the Code currently impose obligations on

Dominant Licensees – such as the duty to provide service on a just, reasonable and non-discriminatory basis and the procedures governing the tariffing of retail services.

- 4.2 By contrast, Section 3 of the proposed Code (2004) would be limited to “consumer protection” obligations applicable to all Licensees. Provisions applicable to Dominant Licensees’ provision of service (including the tariffing regime) will be contained in Section 4 of the proposed Code (2004). IDA also proposes to cease applying these obligations to Telecommunication Equipment Dealers. The requirements in this Section were designed to address potential abuses by telecommunication service providers; and they have little relevance to the equipment market.
- 4.3 IDA proposes to limit the “consumer protection” obligations to minimal requirements to ensure fair competition in the telecommunication sector. This is in view that there are other avenues which are better able to safeguard consumer interests, such as through the proposed Fair Trading Act (Consumer) and other industry bodies. In light of this, IDA will strive for industry self-regulation or co-regulation by facilitating reasonable access to information by consumers to make informed choices.
- 4.4 In order to increase clarity, IDA proposes to divide Licensees’ consumer protection obligations into two separate categories. The first category (contained in proposed Sub-sections 3.2 through 3.2.7) would specify Licensees’ general consumer protection obligations. The second category (contained in proposed Sub-sections 3.3 through 3.3.7) would specify those provisions that Licensees must include in their End User Service Agreements. In the event a Licensee contravenes any of its general obligations, IDA would be able to take enforcement actions pursuant to Section 11 of the proposed Code (2004). By contrast, if a Licensee contravened any provision in its End User Service Agreement, the End User would be able to seek a remedy through voluntary negotiation, arbitration or any appropriate judicial procedure. IDA would retain the ability to take enforcement action against the Licensee in any case in which the Licensee intentionally, recklessly or repeatedly fails to fulfil these contractual obligations.
- 4.5 IDA also proposes to simplify the rules governing Licensees’ use of End User Subscriber Information (“EUSI”). While IDA proposes to continue to require that Licensees obtain prior approval before using an End User’s EUSI, IDA will not specify any particular means by which a Licensee must obtain consent, provided that the Licensee includes clear and minimally burdensome procedures by which an End User can subsequently withdraw that consent.
- 4.6 IDA proposes to revise the provisions governing challenges to a Licensee’s invoice. As under the current edition of the Code, End Users would be able to withhold any charges that are reasonably in dispute. If the End User paid the charge, however, he or she would have one year in which to file a challenge. (See

Proposed Sub-section 3.3.4.) This is consistent with the timeframe in the proposed Fair Trading Act.

## **5. PROPOSED SECTION FOUR**

- 5.1 IDA proposes to create a single section, Section 4 of the proposed Code (2004), setting out Dominant Licensees' obligation to provide services, to both End Users and other Licensees, on just, reasonable and non-discriminatory prices, terms and conditions. This Section would combine provisions contained in Sections 3 and 5 of the current edition of the Code.
- 5.2 IDA proposes to specify the obligations that Dominant Licensees have in connection with the provision of telecommunication services to either End Users or other Licensees. (See proposed Sub-sections 4.2.1 through 4.2.1.3.) IDA also proposes to clarify certain additional duties that Dominant Licensees have when they provide End User telecommunication services. (See Proposed Sub-sections 4.2.2 through 4.2.2.3.) In particular, a Dominant Licensee would not be allowed to prevent another Licensee from reselling any service that the Dominant Licensee provides to End Users. Also, the Dominant Licensee would not be allowed to restrict other Licensees from purchasing telecommunication services on substantially the same prices, terms and conditions as End Users and using the telecommunication service as an input into a value-added service. Upon request, the Dominant Licensee would have to make reasonable modifications to the service to accommodate the Licensee purchasing the service.
- 5.3 IDA does not propose to require a Dominant Licensee to offer, on a wholesale basis, all telecommunication services that it makes available to End Users. To the extent that a Dominant Licensee voluntarily chooses to offer a wholesale service, however, IDA proposes to require that the Dominant Licensee do so at "retail-minus" prices. Under this approach, a Dominant Licensee's wholesale charge would have to reflect the avoided costs (such as marketing) resulting from providing the service on a wholesale basis. The Dominant Licensee would also be prohibited from restricting a Licensee that purchases its wholesale services from using that service as an "input" into that Licensee's service. (See proposed Sub-section 4.3.)
- 5.4 IDA also proposes to adopt a series of provisions regarding the tariff filing and review process. (See proposed Sub-sections 4.4 through 4.4.3.2.) These provisions would make clear that a Dominant Licensee must file a tariff for retail services (including resale), wholesale services that Dominant Licences voluntarily offer, and any other telecommunication services specified by IDA. Section 4 would further clarify the information that Dominant Licensees must include in their tariff filings, and the tariff review process. (See proposed Sub-sections 4.4.2 through 4.4.3.2.) As is the case under the current edition of the Code, in the case of retail tariffs, IDA would continue to rely primarily on a "benchmark" approach, which compares the Dominant Licensee's proposed charges to those in other

jurisdictions. However, for those services that have widespread public impact, IDA also would be able to consider other relevant public interest factors.

- 5.5 On the issue of publication of tariffs, IDA acknowledges that greater transparency of pricing information will help market players make more accurate business decisions and better understand the market to provide feedback to IDA in performing price and conduct regulation. However, IDA is keenly aware that onerous transparency obligations that entail the public disclosure of sensitive price and strategic information to competitors can restrict the dominant licensees' flexibility and incentive to price-compete. Striking a balance between these competing needs, IDA proposes to adopt the approach of requiring the Dominant Licensee to disclose, by publishing in a form available to the public, any tariff for any telecommunication service approved by IDA. The information must at the minimum, include prices (including any discount structures), service suspension and termination, and service availability and eligibility requirements. (See proposed Sub-section 4.5.)
- 5.6 IDA also proposes to clarify the relationship between a Dominant Licensee's tariffs and its customer agreements. A Dominant Licensee may not depart from the prices, terms and conditions specified in its effective tariff. A Dominant Licensee that enters into an agreement on terms that differ from those in its effective tariff may be subject to enforcement action. The Dominant Licensee must amend its agreement to comply with the prices, terms and conditions in its effective tariff. (See proposed Sub-section 4.6.) IDA proposes to retain the current provisions that allow IDA (either on its own initiative or at the request of an interested party) to review, and require modification of, a Dominant Licensee's effective tariffs.

## **6. PROPOSED SECTION FIVE**

- 6.1 Section 4 of the current edition of the Code governs the cooperative duties of all Licensees to promote competition. IDA proposes to incorporate these duties, without substantial change, into Section 5 of the proposed Code (2004).
- 6.2 As under the current Code, Non-dominant Licensees would have wide latitude to enter into an Interconnection Agreement on any mutually acceptable terms. Section 5 would expressly state the minimum terms, designed to implement Minimum Interconnection Duties that must be included in an Interconnection Agreement between Non-dominant Licensees. (See proposed Sub-sections 5.4 through 5.4.8.) This small number of Minimum Interconnection Duties represents those aspects of an Interconnection Agreement that are so critical that IDA has determined they must be included in all Interconnection Agreements. Therefore, IDA further proposes to require that all Interconnection Agreements contain a provision requiring that the Licensees will modify the agreement in the event that IDA modifies the Code to include additional Minimum Interconnection Duties. (See proposed Sub-section 5.4.7.)

- 6.3 IDA also proposes to clarify that, in the event of a dispute regarding an Interconnection Agreement that does not involve a Dominant Licensee, the parties will be responsible for resolving the dispute. IDA would not intervene in those commercial arrangements. However, to the extent the dispute turns on an interpretation of the Telecommunications Act or the Code, the Licensees would be able to ask IDA for guidance. (See proposed Sub-section 5.5.2.)
- 6.4 IDA further proposes to clarify the procedures governing modification, suspension or termination of Interconnection Agreements that do not involve a Dominant Licensee. As is the case under the current edition of the Code, the parties would only be required to notify IDA of any mutually agreed upon modification, suspension or termination. IDA would continue to have the ability to reject such modifications, if they were inconsistent with the Minimum Interconnection Duties. IDA's prior approval would continue to be required for unilateral suspension or termination. This will reduce the possibility of service disruption to End Users. (See proposed Sub-section 5.6.2.)
- 6.5 IDA proposes to retain, in the Code (2004), the current list of other duties specified in the current edition of the Code – such as the duty to disclose interfaces, facilitate changes in service providers, and reject various discriminatory preferences. (See proposed Sub-section 5.7 through 5.7.6.) It is important to retain such duties in order to ensure that operators continue to cooperate to ensure an integrated “network or networks” that can provide seamless any-to-any connectivity.

## **7. PROPOSED SECTION SIX**

- 7.1 Section 5 of the current edition of the Code governs interconnection with a Dominant Licensee and related matters. IDA proposes to address these issues in Section 6 of the proposed Code (2004).
- 7.2 IDA believes it would be desirable to simplify the applicable provisions in Section 5 of the current edition of the Code. In particular, IDA believes that only the Dominant Licensee's basic obligations should be described in the proposed Section 6, with details regarding interconnection pricing and the Dominant Licensee's Reference Interconnection Offer (“RIO”) elaborated in the appendices.
- 7.3 IDA proposes to begin the Section by setting out the 3 different options for entering into an Interconnection Agreement with a Dominant Licensee: (a) by accepting the RIO (see proposed Sub-section 6.2.1); (b) by “opting in” to an existing Interconnection Agreement with the Dominant Licensee (see proposed Sub-section 6.2.2); or (c) by negotiating an Individualised Interconnection Agreement (See proposed Sub-section 6.2.3).
- 7.4 IDA proposes to next set forth the Dominant Licensee's obligation to develop a RIO. This includes: (a) the requirement that the RIO be clear, complete and



- modular (See proposed Sub-section 6.3.2); (b) the specific Interconnection Related Services (“IRS”) and Mandated Wholesale Services that must be offered under the RIO (See proposed Sub-sections 6.3.3.1 through 6.3.3.5); (c) other terms that must be included in the RIO (See proposed Sub-sections 6.3.4.1 through 6.3.4.2); (d) the pricing standards that the Dominant Licensee must use for IRS and Mandated Wholesale Services (See proposed Sub-section 6.3.5); and (e) the requirements regarding the Model Confidentiality Agreement (See proposed Sub-section 6.3.8). Experience has demonstrated the importance of a thorough review of any proposed RIO, including an adequate period for public consultation.
- 7.5 The RIO would be in effect for a period of 3 years. IDA may extend that period for another 3 years. Generally, any Interconnection Agreement arrived at by accepting the RIO will be effective until the end of the period that the Dominant Licensee is required to offer the RIO. This approach will provide business certainty to all Licensees.
- 7.6 In addition, the proposed Section 6 sets out the procedures for entering into an Individualised Interconnection Agreement. (See proposed Sub-sections 6.4 through 6.4.3.3). Such agreements may be arrived at voluntarily or, where voluntary negotiations are not successful, by asking IDA to conduct dispute resolution. IDA proposes to adopt uniform procedures for all dispute resolutions; these procedures are specified in proposed Section 11 and will be supplemented by a set of advisory guidelines on dispute resolution to be issued by IDA. A Dominant Licensee must offer to provide all IRS and Mandated Wholesale Services to a Requesting Licensee that seeks to enter into an Individualised Interconnection Agreement. The parties may agree, however, that the Dominant Licensee will provide these services on different prices, terms and conditions than those specified in the RIO.
- 7.7 Finally, IDA proposes to make clear that all Interconnection Agreements with a Dominant Licensee must be published (See proposed Sub-section 6.5). This will enable similarly situated Licensees to “opt-in” to the agreement, whilst deterring discrimination. IDA also proposes to make clear that, if the parties to an Interconnection Agreement with a Dominant Licensee have a dispute, either party may seek IDA dispute resolution. IDA would have discretion as to whether to intervene in such disputes. Whilst regulatory intervention may be necessary in some cases, Licensees should seek to resolve disputes through commercial negotiations, whenever feasible. (See proposed Sub-section 6.6).
- 8. PROPOSED SECTION SEVEN**
- 8.1 Section 6 of the current edition of the Code governs the situation in which a Licensee is required to share infrastructure. IDA proposes to incorporate most of current Section 6 into Section 7 of the proposed Code (2004).

- 8.2 IDA proposes to eliminate masts, poles and towers from the list of infrastructure that all Licensees currently are required to share. (See proposed Sub-section 7.5.1.) These facilities are not always “bottlenecks” and there is no public interest justification for mandating sharing in all cases. IDA may require a Dominant Licensee to share such facilities pursuant to its RIO.
- 8.3 IDA does not propose to make any other substantive changes to the provisions governing infrastructure sharing. However, based on experience, certain timeframes will be extended.
- 8.4 IDA proposes to make several revisions in order to clarify the existing regime governing infrastructure sharing. In particular, IDA proposes to clarify that it can designate infrastructure as infrastructure that must be shared either on its own initiative or at the request of a Licensee. IDA may do so either if the infrastructure meets the definition of Critical Support Infrastructure or if it is necessary to serve the public interest (for example, where sharing is necessary to promote environmental concerns) (See proposed Sub-section 7.5 (a)). In either case, once any infrastructure has been designated as infrastructure that must be shared, to the extent feasible, the Licensee must make the infrastructure available to all Facilities-based Licensees on cost-based and non-discriminatory terms.

## **9. PROPOSED SECTION EIGHT**

- 9.1 Section 7 of the current edition of the Code addresses unfair methods of competition, which are unilateral actions by a Licensee that impede the operation of a competitive market. IDA proposes to incorporate most of current Section 7 into Section 8 of the proposed Code (2004). IDA proposes to clarify the existing regime, but does not propose to make substantive changes.
- 9.2 IDA also proposes to delete provisions governing false and misleading claims and improper interference with End User or Supplier relationships. IDA believes that these issues are better resolved under the forthcoming Fair Trading Act or through industry self-regulatory bodies. However, IDA proposes to add a new provision (See proposed Sub-section 8.4.2.3) prohibiting a Licensee from using information that it obtains from a second Licensee pursuant to a requirement of the Code to market services to the second Licensee’s customers.

## **10. PROPOSED SECTION NINE**

- 10.1 Section 8 of the current edition of the Code contains provisions regarding agreements that unreasonably restrict competition. IDA proposes to incorporate most of the current Section 8 in Section 9 of the proposed Code (2004). IDA does not propose to make any substantive changes to the provisions governing agreements that unreasonably restrict competition.

- 10.2 IDA proposes to make several revisions in order to clarify the existing regime. In particular, IDA proposes to: make clear the consequences of finding that an agreement contravenes the Code (See proposed Sub-section 9.1.2); and more clearly distinguish between agreements between competing Licensees (horizontal agreements) (see proposed Sub-sections 9.3 through 9.4.3) and agreements between Licensees and other entities (whether licensed or not) that are not direct competitors (see proposed Sub-sections 9.5 through 9.5.2.3). IDA also proposes to make clear which types of agreements are always prohibited (see proposed Sub-sections 9.3.2 through 9.3.2.4) and which types of agreements are prohibited only if IDA makes a specific finding that they are, or are likely to unreasonably restrict competition (See proposed Sub-section 9.3.1 and Sub-sections 9.5.1 through 9.5.2.3). In particular, resale price maintenance agreements will be assessed based on actual or likely competitive effects. (See proposed Sub-section 9.5.2.1.)

## **11. PROPOSED SECTION TEN**

- 11.1 Section 9 of the current edition of the Code contains provisions regarding Changes in Ownership and Consolidations. As IDA has previously held separate public consultation exercises regarding these proposed revisions to the Code, we will not be seeking further comments on these provisions and the revised provisions will be included in Section 10 of the Code (2004).

## **12. PROPOSED SECTION ELEVEN**

- 12.1 Section 10 of the current edition of the Code contains a limited number of rules governing enforcement of the Code. IDA proposes to incorporate these provisions into Section 11 of the proposed Code (2004), and to further elaborate the administrative procedures that IDA will use to implement the Code (2004).
- 12.2 IDA will place primary reliance on commercial negotiations for dispute resolution where feasible and will specify the circumstances in which it would provide non-binding conciliation and binding dispute resolution. (See proposed Sub-section 11.2.2.) IDA would provide dispute resolution in disputes that arose as a result of requirements imposed by IDA, e.g., inability of Licensees to enter into Individualised Interconnection Agreements or infrastructure Sharing Agreements. IDA could also provide dispute resolution in cases involving implementation of a Sharing Agreement entered into pursuant to IDA's dispute resolution procedures or an Interconnection Agreement with a Dominant Licensee. (See proposed Sub-section 11.3.) In all other cases, parties would be required to resolve disputes privately. IDA further proposes to issue advisory guidelines setting out comprehensive procedures, standards and timeframes for the conduct of any dispute resolution procedures. For resolution of other non-interconnection related disputes, IDA could, at its discretion, adopt informal resolution processes such as mediation to help parties come to an agreement

- 12.3 IDA proposes to expand the provisions governing Request for Enforcement to incorporate procedures previously specified by IDA in advisory guidelines. IDA proposes that a Licensee or End User that has been injured, or is likely to be injured, as a direct result of the contravention of any provision of the Code by a Licensee is allowed to submit a request asking IDA to take enforcement action against the Licensee that allegedly contravened the Code. If IDA concludes that the Licensee did, in fact, contravene the Code, IDA could impose penalties on that Licensee and could direct the Licensee to alter its conduct on a going-forward basis. (See proposed Sub-section 11.4.1.) As at present, IDA may also bring enforcement action against a Licensee on its own initiative. (See proposed Sub-section 11.4.2.)
- 12.4 IDA also proposes to clarify the process by which its decisions can be reviewed. IDA 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 IDA. Should either party not be satisfied with IDA's reconsideration decision, it can then appeal to the Minister within 7 days. 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, IDA would address the reconsideration request first. The reconsideration decision could then be appealed to the Minister. (See proposed Sub-sections 11.9.3 through 11.9.4.) IDA would like to seek views and comments on the two options, whether the party requesting for reconsideration from IDA should notify all other parties directly involved in the proceeding, and whether the timeframes are reasonable or would a shorter timeframe, e.g., 7 days for requesting reconsideration from IDA, be better. In either option, IDA proposes that parties should not be allowed to raise claims or make arguments for the first time on reconsideration without good cause, if they could have raised the issue before IDA during its initial proceeding (See proposed Sub-section 11.9.2.)
- 12.5 IDA also proposes to specify the various means by which it can gather information – such as requests for responses to specific questions, requests for documents, interviews and inspection. (See proposed Sub-section 11.6.) In addition, IDA proposes to clarify the procedures by which a party may seek confidential treatment of information. Where IDA rejects a request for confidential treatment, the party may either withdraw the request or ask to have the information returned to it, rather than being considered by IDA. (See proposed Sub-section 11.7.)

### **13. PROPOSED SECTION TWELVE**

- 13.1 IDA proposes to add a series of transitional procedures governing the implementation of the revisions that will be adopted pursuant to the First Triennial Review.
- 13.2 Exemptions granted to Dominant Licensees would remain in effect, to the extent the underlying regulatory obligations remain in effect. IDA would publish on the website the specific provisions of the Code (2004) from which Dominant Licensees are exempted. (See Sub-section 12.4.1.) Dominant Licensees would also have 90 days from the effective date of the Code (2004) to come into compliance with the new tariff filing and tariff publication requirements to be adopted as part of the Code (2004). (See proposed Sub-section 12.4.3). In addition, all Licensees would have 90 days from the effective date of the Code to amend its End User Service Agreements to come into compliance with applicable provisions in the Code (2004) (See proposed Sub-section 12.4.2) and 180 days to amend Interconnection Agreements adopted pursuant to the current Code to comply with the Minimum Interconnection Duties (See proposed Sub-section 12.4.4). Finally, the Dominant Licensee would have 30 days to submit to IDA for approval, its proposed modification to its RIO to conform with the requirements of the Code (2004) (See proposed Sub-section 12.4.5).

### **14. PROPOSED APPENDIX 1**

- 14.1 IDA does not propose substantial modification to Appendix 1 in the current edition of the Code, which addresses the pricing methodology that the Dominant Licensee must use for IRS. However, IDA proposes to eliminate unnecessary language in order to focus on the Dominant Licensee's obligations.
- 14.2 Proposed Appendix 1 clarifies that, while the Dominant Licensee generally should use long run incremental cost to set the price of IRS, IDA reserves the right to require the use of other appropriate pricing methodologies, where this may more effectively reflect underlying costs or promote IDA's policy goals. Proposed Appendix 1 also expressly includes the principle of cost causality (see proposed Sub-section 2.3.2 of Appendix 1).

### **15. PROPOSED APPENDIX 2**

- 15.1 IDA proposes to expand Appendix 2 to include all relevant details regarding a Dominant Licensee's obligations to provide IRS and Mandated Wholesale Services, while eliminating certain terms that are no longer necessary. IDA requests comments on the list of IRS and Mandated Wholesale Services specified in the proposed Code (2004). Specifically, should any of the services currently specified be eliminated or modified, and should any additional service be included?

- 15.2 Based on experience, IDA proposes to eliminate the obligation to: (a) provide physical interconnection at signalling transfer points; (b) allow co-location at satellite earth stations; and (c) construct new loops on request. None of these requirements appears necessary. However, IDA will clarify that a Dominant Licensee must allow co-location on roof spaces controlled by the Dominant Licensee.
- 15.3 IDA proposes to clarify that a Dominant Licensee may decline to provide co-location space in any currently unused network location if it can demonstrate that, as a result of its reasonably projected growth, the Dominant Licensee will use that space, within 24 months from the date on which the request for co-location is made, to locate equipment used to provide its own telecommunication service. (See proposed Sub-section 4.2.1.3 of Appendix 2) This is consistent with the current edition of the Code. This provision is intended to allow Dominant Licensees to have the “first claim” on use of their facilities, whilst preventing them from using unsubstantiated claims of further growth as a basis to reject co-location. Parties are specifically requested to comment as to whether 24 months is an appropriate period.
- 15.4 IDA proposes to retain the Dominant Licensee’s obligation to provide “line sharing” as an Unbundled Network Element. (See proposed Sub-section 5.3.3 of Appendix 2). However, IDA specifically requests comment as to whether this requirement is useful to Non-dominant Licensees.

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

- 16.1 Parties that submit comments regarding the issues identified in this Consultation Document should organise their submissions as follows: (a) cover page (including the information specified in paragraph 16.3 of this Consultation Document); (b) table of contents; (c) summary of major points; (d) statement of interest; (e) comments; and (f) 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 proposed Code (2004) on which they are commenting. In any case in which a party chooses to suggest revisions to the text of the proposed Code (2004), the party should clearly indicate the specific changes in language that they propose.
- 16.2 As noted above, IDA recognises that certain provisions will require legislative amendments. Those changes are outside the scope of this proceeding. Any comments regarding this matter will not be considered.
- 16.3 All submissions should reach IDA **before 12 noon on Friday, 5 December 2003**. Comments must be submitted in both hard and soft copy (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. Andrew J. Haire**  
**Senior Director (Policy and Regulation)**  
**Infocomm Development Authority of Singapore**  
**8 Temasek Boulevard**  
**#14-00 Suntec Tower Three**  
**Singapore 038988**  
**Fax: (65) 6211 2116**

**AND**

Please submit your soft copies to: e-mail: [hema\\_ramnani@ida.gov.sg](mailto:hema_ramnani@ida.gov.sg)

- 16.4 IDA 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 IDA grants confidential treatment it will consider, but will not publicly disclose, the information. If IDA rejects the request for confidential treatment, it will return the information to the party that submitted it 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. IDA will not accept any submission that requests confidential treatment of all, or a substantial part, of the submission.
- 16.5 IDA will review the comments received and aims to issue the revised Code by the first half of 2004.

- End -