ANNEX 1: M1'S COMMENTS ON IDA'S CONSULTATION ON FIRST TRIENNIAL REVIEW OF THE CODE OF PRACTICE FOR COMPETITION IN THE PROVISION OF TELECOMMUNICATION SERVICES

Section	Description	Comments
1.9 (a)	Definition of Affiliate	In our response to IDA's consultation on Telecom Consolidations, M1 had proposed that IDA amend the threshold level set for Affiliates from 5% to 12% to reduce regulatory burden on Licensee/Applicants for their obligations under the Consolidations Section of the Code. This is consistent with IDA's comment that an entity holding an ownership interest of less than 12% is unlikely to raise competitive or public interest concerns. For consistency, the same "Affiliate" definition should apply throughout the Code and we propose the same amendment here.
1.9 (p)	Definition of Significant Market Power	Please refer to our comments in the main paper. We suggest that the definition be refined as follows: "… the ability**, whether individually or jointly with others,** to unilaterally restrict output…"
2.2 (b)	Initial Classification of Licensees "…a Licensee classified as dominant will be subject to Dominant Licensee obligations for all facilities that it operates, and for all services that it provides, pursuant to its licence."	M1 highlights that it is possible to exercise/extend market power or control without the need to operate facilities eg: contractual third party services. Hence, the word "operates" is too limited and we propose IDA replace it with "**controls**" as per existing Y2000 Code (refer current s2.2.1), which is in line with international practices, egs: Oftel[1]/ERG[2] One criteria for assessing dominance is the "**Control** of infrastructure not easily duplicated" FCC[3] "**Control** of the essential facility…" The World Bank Group[4] "**Control** of essential facilities" "**Control** of access to end-users"

[1] Oftel, *Oftel's market review guidelines: criteria for the assessment of significant market power*, 5 Aug 2002.

[2] European Regulators Group*, ERG Working paper on the SMP concept for the new regulatory framework*, May 2003.

[3] FCC, *Federal Court's 7th Circuit in the US*, MCI (1983).

[4] The World Bank Group, *Telecommunications Regulation Handbook – Competition Policy*, Nov 2000.

Section	Description	Comments
2.2.1 (a)	"it is licensed to operate facilities used for the provision of …"	Please refer to comments for 2.2(b) and replace "is licensed to operate" with "**controls**". Otherwise, the new section would be narrower than the existing s2.2.1(a).
2.4	Asset Transfers "A Dominant Licensee may not…by transferring ownership or operational control to another entity of facilities…to provide telecommunication services in Singapore."	Again, the clause has been drafted more restrictively than the current s2.4 which may undermine the policy intent of the clause. M1 proposes the removal of the word "**operational**" (refer our comments for 2.2(b)) and the deletion of the superfluous words "**in Singapore**" (which may be construed to mean that the Dominant Licensee is permitted to transfer ownership or control of the facilities to another entity outside Singapore).
2.6.2	Ability of Licensee to Exercise Significant Market Power	In line with our comments in the main paper and for s1.9(p) above, we propose that the factors listed for determining Significant Market Power be drafted less restrictively to include entities that the Licensee can exercise joint or collective dominance with. We therefore propose the following amendments: "A party seeking to demonstrate .... should submit verifiable data regarding the Licensee's ability**, whether individually or jointly with others,** to exercise Significant Market Power This should generally include, without limitation: (a) the relevant market(s) for the telecommunication services that the Licensee **and any relevant entities** provides; (b) ... (c) the Licensee's **and any relevant entities'** market share; (d) ... (e) … (f) … increase by the Licensee **or any relevant entities**; and …" Alternatively, the reference to "relevant entities" could be more specific to eg. "Affiliates effectively controlled by the Licensee", i.e. an Affiliate over which the Licensee has the ability to cause it to take, or prevent it from taking, a decision regarding its management and major operating decisions or vice versa (suggested definition from new s9.2).
3.2.4.2 (d)	"where the End User is a corporation, proceedings are taken for the winding up of the End User."	M1 proposes that IDA removes this clause as it is not practical and would subject Licensees to unnecessary credit risks and unrecoverable losses if service suspension and termination can only take place when proceedings are taken for the winding up.

Section	Description	Comments
3.2.4.3	Service Suspension Without Immediate Termination	Similar to 3.2.4.2 (d), this clause should be removed. A declared bankrupt or an insolvent corporation would not be able to furnish any security deposits or adequate assurances. Service termination should be allowed if there are reasonable grounds to believe that bankruptcy or insolvency would take place.
3.2.4.5 (a) (ii)	Service Suspension or Termination for Other Reasons "A Non-dominant Licensee must notify IDA within 7 days if it adopts any provisions …."	There would be a list of other valid reasons that warrants a Licensee to suspend or terminate the service. If such reasons were already included in Licensee's General Terms and Conditions/EUSA approved by IDA, the clause would be unnecessary and burdensome to daily operations. M1 suggests the waiver of item (ii) for other reasons covered in Licensee's General Terms and Conditions/EUSA.
3.2.6	Duty to Prevent Unauthorised Use of End User Service Information (EUSI) "Licensees must prevent the unauthorised use of End User Service Information ("EUSI")"	It is not practical or possible for Licensees to prevent the unauthorised use of EUSI as an absolute obligation. Licensees can only use their reasonable endeavours to protect the EUSI against unauthorised use. Hence, M1 recommends that IDA revert to the existing Y2000 Code that states that: **Duty to Protect End User Service Information** "Licensees **have a duty to** protect the End User Service Information ("EUSI"). "
3.2.6.2 (iv)	Prohibition on Unauthorised Use "providing assistance to law enforcement or other government agencies"	For clarity and the avoidance of doubt, M1 proposes the following amendment: "providing assistance to law enforcement, **judicial** or other government agencies"
3.2.6.3 (b)	Joint Marketing "a Dominant Licensee that allows any Affiliate…to competing Licensees on non-discriminatory prices, terms and conditions."	To ensure that Dominant Licensees do not impose onerous terms on other Licensees (which they can impose on their own Affiliates to satisfy the "non-discriminatory" requirement but without enforcing them), M1 proposes the following amendment: "a Dominant Licensee that allows any Affiliate…to competing Licensees on **just, reasonable and** non-discriminatory prices, terms and conditions."

Section	Description	Comments
3.2.7 (a)	Service Quality Information Disclosure Requirements "Licensees must make publicly available….and a statement as to <u>whether or not</u> the Licensee has met all applicable IDA quality of service standards."	M1 views that a statement of "whether or not" (i.e. "Yes/No") is insufficient to provide public understanding of the service quality standards of Licensees. Hence, we submit that the existing wording in Y2000 Code, s3.2.1 be retained, viz: "Licensees must make publicly available….and a statement as to **<u>the extent to which</u>** the Licensee has met all applicable IDA quality of service standards."
3.3.1	Billing Period "The End User Service Agreement must specify the billing period in which the Licensee will send out invoices.…" "The End User Service Agreement also must commit the Licensee to provide clear and accurate invoices."	Licensees usually have several billing cycles or periods to facilitate management of daily operations. It is impractical to specify all the billing periods or cycles in the EUSA. This clause also limits Licensee's flexibility in catering to different requirements of customers. Hence, M1 submits that IDA reverts to the existing clause in Section 3.2.2.2 of Y2000 Code as it is more relevant and practical. IDA should clarify what 'clear and accurate invoices" entail. M1 suggests the removal of this requirement as it does not provide any value for practical application.
3.3.2	Prices, Terms and Conditions on Which Service Will be Provided "The End User Service Agreement must clearly and comprehensively specify the prices, terms and conditions on which the Licensee will provide its service. …"	M1 believes that the current publication of prices, term and conditions on websites, posters or brochures suffice and is more practical for daily operations. As IDA is aware, the telecommunications market is very dynamic. There will be frequent changes in prices, terms or conditions to maintain competitiveness or to adjust to market developments. It is thus impractical and burdensome to insist that prices, terms and conditions were comprehensively specified in EUSA. In any case, consumers are protected with advance disclosure of such information under the Consumer Protection (Fair Trading) Act. Hence, M1 proposes the removal of this requirement that does not provide any additional value.

Section	Description	Comments
3.3.2 (a)	Prices, Terms and Conditions on Which Service Will be Provided "the End User provides prior written approval; or"	It is impractical, burdensome and highly inconvenient to End Users to require them to always give their consent in written form, particularly for Location-Based Services (LBS). The principle is that consent is required, but how it is obtained (whether express or implied) should not be circumscribed and flexibility should be given to Licensees on how to tailor the consent procedure according to the circumstance, especially if LBS is to be developed. M1 recommends the following amendment: "the End User provides prior **consent**; or"
3.3.4 (a) (iii)	Procedures to Contest Charges "if the End User ultimately is found…The rate of interest must be set at a commercially reasonable amount, which must be specified in the End User Service Agreement."	The "Rate of interest" fluctuates according to market conditions. Thus, it is impractical to specify this in the EUSA. M1 requests that IDA amends as follow: "if the End User ultimately is found…**The rate of interest must be set at a commercially reasonable amount, which will be specified in advance by the Licensee.**"
3.3.4 (b) (i)	Procedures to Contest Charges "an End User that pays an invoice…will have 1 year (starting from the date on which the payment became due) to do so;"	All companies use invoice dates/number for referencing purposes and it would be reflected clearly at the header of invoice. In contrast, the payment due date may not be specified on invoices eg: payment is due 30 days from the date of invoice. Hence, for clarity and ease of retrieval/reference by both End User and Licensees, M1 submits the following amendment: "an End User that pays an invoice…will have 1 year (starting from the **invoice date**) to do so;"
3.3.4 (b) (ii)	Procedures to Contest Charges "an End User that purchases a pre-paid service…to do so; and"	Due to the high transferability and turnover rate in pre-paid market, it is impractical to implement this clause. M1 requests that this clause be removed.

Section	Description	Comments
3.3.5	Private Dispute Resolution "The End User Service Agreement must provide that if the parties are unable to resolve any dispute, they may…"	End users are already protected with such options under the Consumer Protection (Fair Trading) Act. M1 views that there is no value in including such provisions in the EUSA and this clause should be removed. Both parties should strive to resolve any disputes and end users should not be encouraged to be unnecessary litigious. IDA should be mindful of the outcome of unnecessary legal proceedings that will project a negative image of Singapore's Telecommunications industry and affect investments.
3.3.7 (a)	Use of End User Service Information "The End User Service Agreement must…unless the End User has provided authorisation,…"	Please refer to our comments for section 3.3.2 (a). For consistency, we propose the following amendment: "The End User Service Agreement must…unless the End User has provided **consent**,…"
3.3.7 (b) (ii)	Use of End User Service Information "the additional purpose for which, if granted consent, the Licensee may use the EUSI; and"	It is impractical and redundant to specify the comprehensive list of all purposes. M1 views that such provisions would only confuse the end users and 3.3.7 (b) (ii) should be deleted.
4.2.1.3	Duty to Provide Unbundled Telecommunication Services "…Specifically, the Dominant Licensee must not require…any other telecommunication service or non-telecommunication service or equipment, as a condition for purchasing that telecommunication service…"	For clarity and coverage of all anti-competitive bundling, M1 proposes the following amendments: "…Specifically, the Dominant Licensee must not require…any other telecommunication service or non-telecommunication service or **value-added service or** equipment, as a condition for purchasing that telecommunication service…" Please also refer to our comments in the main paper.
4.2.2.2	Duty to Allow Resale of End User Telecommunication Services	In addition to 4.2.2.2 (b), Licensees should also be given the discretion to disclose and accurately reflect that it is using the Dominant Licensee's telecommunication services. For transparency to end users, M1 recommends the following inclusion: **(c) "A Dominant Licensee must allow a Licensee that resells its Tariffed Telecommunication Services to disclose that it is reselling the Dominant Licensee's telecommunication services"**.

Section	Description	Comments
4.2.2.3	Duty to Allow Sales Agency "If a Dominant Licensee provides a commission or fee to any other Licensee… " "…the same opportunity to any other Licensee on the same prices, terms and conditions."	There may be other forms of consideration besides a commission or fee. For completeness, please amend as follow: "If a Dominant Licensee provides a commission or fee **or other consideration** to any other Licensee… " Please refer to our comments in 3.2.6.3 (b). To prevent Dominant Licensees from circumventing the purpose of the section, please amend to: "…the same opportunity to any other Licensee on the same **just and reasonable** prices, terms and conditions."
4.3	Voluntary Wholesale Services (a) "must offer, unless otherwise approved by IDA…at "retail minus" prices; "	To ensure that the wholesale prices offered by Dominant Licensees are reasonable and non-discriminatory, IDA should check that these prices are lower than the retail prices available in the market, ie. P > A P: Retail price of the service A: Wholesale prices by Dominant Licensees Besides prices, the Dominant Licensee can render the policy of this clause otiose by simply imposing highly discriminatory or onerous non-price terms that no commercial entity can accept. Please insert the following: (a) "must offer, unless otherwise approved by IDA… prices **and on non-discriminatory, just and reasonable terms and conditions**;" Please also refer to our comments in 4.2.2.2 and include the following sub-section: **(e) "must allow the Licensee to disclose that it is using the Dominant Licensee's wholesale telecommunication services."**
4.4.3.1	Review Criteria "…IDA will also seek to determine whether the proposed prices, terms and conditions are not discriminatory by comparing…"	Please refer to our comments in 3.2.6.3 (b) and insert as follow: "…IDA will also seek to determine whether the proposed prices, terms and conditions are **just, reasonable and** not discriminatory by comparing…"

Section	Description	Comments
4.5	Duty to Publish Effective Tariff	M1 recommends that only the standard rates, terms, conditions etc. of respective services be published on the website. It would be impractical to publish all commercially negotiated tariffs.
5.4(b)	Minimum Interconnection Duties "…Where neither of the Licensees is a Dominant Licensee, the Licensees must make the required changes, unless either Licensee determines that it wants to withdraw the Interconnection Agreement."	M1 seeks IDA's clarification on the handling of Interconnection Agreements between Non-Dominant Licensees. A withdrawal of Interconnection Agreement by either Licensee would result in unilateral termination of the Interconnection Agreement. This clause would appear to contradict Section 5.4.6 that forbids the unilateral suspension or termination of Interconnection Agreements.
5.7.4	Duty to Assist in the Provision of Integrated printed Directories and Directory Enquiry Service "A Licensee that provides voice telephony service over a wireline network must exchange…with other wireline Licensees for the purpose of providing an integrated printed	To prevent pricing abuses, IDA should retain the following sentence in the current s4.6.4 of Y2000 Code: "Licensees may impose a one-time, cost-based charge for each listing or update." Furthermore, Yellow Pages, that is sold off by SingTel in 2003 also provides Directory Enquiry Service. It is proposed that IDA capture the new situation concerning providers in the proposed Code so that the policy intent of the clause is preserved. As such, M1 proposes the following changes: "A Licensee that provides voice telephony service over a wireline network **or a directory enquiry service provider** must exchange…with wireline Licensees for the purpose of providing an integrated… **Licensees or the service providers may impose a one-time, cost-based charge for each listing or update.** Licensees receiving this information…"
6.3.1	Duty to Develop a Reference Interconnection Offer	M1 notes that the timeframe for Dominant Licensees develop a Reference Interconnection Offer has been doubled from 30 days to 60 days in the proposed Code. Future development of RIO should be easier since there is already an existing RIO to serve as a useful reference. Hence, the doubling of timeframe would appear to be contradictory to IDA's goal of promoting efficient market conduct. Only if necessary, M1 views that the timeframe should be capped at a maximum of **45 days**.

Section	Description	Comments
6.3.3.3 (i)	Essential Support Facilities "the locations at which physical co-location is available"	IDA has removed "the amount of space available at each location". M1 would like to highlight it is very important to include such information in the RIO. If not, Licensees cannot estimate the amount of space available for equipment for planning and investment purposes. Hence, M1 proposes the reinstatement of the requirement as follows: "the locations at which physical co-location is available **and the amount of space available at each location.**"
6.3.4.1	Absolute Prohibition on Discrimination "A Dominant Licensee must offer to provide….on prices, terms and conditions that are no less favourable than the prices, terms and conditions…"	Please refer to our comments in 3.2.6.3 (b). To prevent Dominant Licensees from circumventing the purpose of the section, please amend to: "A Dominant Licensee must offer to provide….on **just and reasonable** prices, terms and conditions that are no less favourable than the prices, terms and conditions…"
6.3.5	Pricing of Interconnection Related Services and Mandated Wholesale Services	Please refer to our comments in the main paper on: - Adopt "Cost-Plus" Pricing Approach for Mandatory Wholesale Services and - Re-designate Dark Fibre as Mandatory Wholesale Service
7.2	Definition of Sharing "Infrastructure sharing…at cost-based prices, on non-discriminatory terms and conditions."	Please refer to our comments in 3.2.6.3 (b). To prevent Licensees from circumventing the purpose of the section, please amend to: "Infrastructure sharing…at cost-based prices, on non-discriminatory, **just and reasonable** terms and conditions."
7.4.2	Request to IDA to Designate Infrastructure as Infrastructure That Must be Shared "If the Licensees are unable to reach a voluntary Sharing Agreement within 60 days after the Licensee Requesting…"	M1 notes that the timeframe has been doubled from 30 days to 60 days. M1 proposes the timeframe of **15 days** to avoid unnecessary delay for urgent cases and that the maximum timeframe be capped at **45 days**.
7.4.4	Timing of IDA Decision "IDA may request…Within 60 days of receiving…"	M1 suggests that the following amendment that cohere with the spirit of promoting efficiency and avoiding unnecessary delay for urgent cases: "IDA may request…Within **45 days** of receiving…"

Section	Description	Comments
7.5.1 (a)	Designation of Specific Infrastructure ""leaky feeder" cable in train or road tunnels"	In addition to this, M1 suggests that Licensees be given the flexibility to self-provide "leaky feeder" in tunnels. Should Licensees make such investment decisions, it would only benefit consumers with improved quality and coverage at underground tunnels.
7.6.2	Dispute Resolution Procedure "If the Licensees are unable to reach a mutually…within 60 days after…"	Please refer to our comments in 7.4.4 and amend as follow: "If the Licensees are unable to reach a mutually…**within 45 days** after…"
8.2.1.2	Price Squeezes	M1 requests that IDA revert to the original wording used in s7.2.1.2 of Y2000 Code as it more clearly and accurately describes and captures the price squeeze phenomenon.
8.2.2.1	Discrimination "A Dominant Licensee must not…to Licensees that are not Affiliates."	Please refer to our comments in 3.2.6.3 (b). To prevent Dominant Licensees from circumventing the purpose of the section, please amend to: "A Dominant Licensee must not…to Licensees that are not Affiliates**, and the said prices, terms and conditions must be just and reasonable.**"
8.3 (b) (ii)	Anti-competitive Preferences "A Licensee may not accept any cross-subsidisation from an Affiliate…where this would enable the Licensee to engage in predatory pricing, as defined in Sub-section 8.2.1.1 of this Code."	There should be no cross-subsidisation regardless of whether there is predatory pricing. Hence, please amend as follow: "A Licensee may not accept any cross-subsidisation from an Affiliate that has Significant Market Power."
8.3 (b) (iii)	Anti-competitive Preferences "A Licensee that is…on non-discriminatory prices, terms and conditions."	Please refer to our comments in 3.2.6.3 (b). To prevent Licensees from circumventing the purpose of the section, please amend to: "A Licensee that is…on non-discriminatory**, just and reasonable** prices, terms and conditions."
8.4	Unfair Methods of Competition	The provision for False and Misleading Claims under current s7.4.1 of Y2000 Code is still very relevant since such cases were reported as of this year. We urge IDA to retain this clause in the new Code.

Section	Description	Comments
8.4.2.3	Improper Use of Information Regarding a Competing Licensee's Customers "A Licensee that receives…or otherwise interfere in the other Licensee's…"	The last part of this new Section is drafted too vaguely and appears even wider than the current s7.4.4 of Y2000 Code (which has been deleted). M1 suggests the following amendment: "A Licensee that receives…or otherwise **improperly** interfere in the other Licensee's…"
9.5.2.3	Exclusive Dealing "A Licensee must not enter into an agreement in which it agrees to do business with any entity on an exclusive basis, where this unreasonably restricts, or is likely to unreasonably restrict, competition in any telecommunication market in Singapore."	Given that the general condition for agreements that are prohibited (i.e. unreasonably restricts competition) is already captured in s9.5.1 and s9.5.2.3 is intended as an example of such a prohibited agreement, it has to be more specific. Exclusive agreements are common commercial transactions and it is not clear at all from s9.5.2.3 what type is being prohibited or if all exclusive agreements will be up for scrutiny. We would recommend that IDA reverts to the original s8.5.3 of Y2000 Code which is clearer on the type of exclusive agreements that are prohibited.
11.9	Review of IDA's Decisions	Regarding IDA's seeking of views in Paragraph 12.4 of the Consultation Paper, M1 prefers the second option. We are also of the view, that for procedural fairness reasons, it is only right that the party requesting IDA for reconsideration or appealing to the Minister should notify all other parties directly involved in the proceeding at the time of its filing under the new s11.9.1(a). Please therefore include this requirement.
11.9	Timeline for IDA's Decision on Reconsideration	There appears to be no timeline indicated for IDA to give its decision on the reconsideration request. As IDA would already have all the necessary information when it makes the original decision and the raising of any new issues is strictly limited by the new s11.9.2, M1 submits that a provision be included for IDA to issue its Decision on Reconsideration within 30 days of the filing.
12.4.1	Exemptions From Special Provisions Applicable to Dominant Licensees	As there are substantive changes to the definition of "dominance" and these affect the fundamentals of Competition policies, the responsibility of conducting a review to ensure all existing exemptions are in compliance with the new Code should not be completely absolved. We suggest a review by IDA to confirm the exemption status instead of this deeming provision.