Comments

On

IDA Consultation Paper

First Triennial Review Of The Code Of Practice For Competition In The Provision Of Telecommunication Services

Pacific Internet Limited

Pacific Internet Limited
89 Science Park Drive
#02-05/06 The Rutherford
Singapore 118261
Tel: 6872 0322
Fax: 6872 5912

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

1 Introduction

Pacific Internet Limited (PacNet) provides Internet access service in Singapore, Hong Kong, the Philippines, Australia, India, Australia, Thailand and Malaysia. In Singapore, PacNet holds a Facilities-Based Operator licence granted by the IDA. We welcome the opportunity to provide our inputs to the IDA's first triennial review of the Code of Practice for Competition in the provision of telecommunication services.

2 Summary

2.1 PacNet welcomes IDA's proposed policy to seek to strike a balance between providing the economic incentives to build facilities and permitting services-based competition to take place for the benefit of consumers. The Singapore telecommunication market is limited in terms of size and depth. It is unlikely that more than two or three network operators will be able to earn a reasonable return on their investments in the Singapore market. In this regard, facilities-based competition may not completely take off in Singapore. Services-based competition, on the basis of facilitating competing service providers' access to the infrastructure of network owners on fair, reasonable and effective terms, is also a more effective means of facilitating competition in Singapore and would result in a more efficient allocation of resources.

2.2 The proposed policy to strike a balance between facilities-based competition and services-based competition will be more effective if supported by appropriate regulatory tools. In this regard, we are of the view that the voluntary wholesale service scheme proposed in Code (2004) may not provide appropriate support to IDA's objective to facilitate services-based competition where there are market or technological impediments. Dominant Licensees naturally have little incentive to offer a wholesale service to competing service providers, as evident from the experience in the last three years. Also, Dominant Licensees possess significantly stronger bargaining power in any negotiations on the terms of the voluntary wholesale service, to the disadvantage of competing service providers. We propose that the voluntary wholesale service scheme should be replaced by a requirement for Dominant Licensees to make available all retail services for wholesale to competing service providers at regulated prices.

2.3 The effectiveness of policy principles and regulatory tools set down by IDA to facilitate competition is dependent on the robustness of the enforcement framework and dispute resolution process. In this regard, we would like to request IDA to reconsider its proposal to place primary reliance on private negotiations between the market players. In any commercial negotiations with a Dominant Licensee, the competing servicing providers are at a natural disadvantage compared to the Dominant Licensee due to the

unlevel playing field. Without timely intervention from the regulator, commercial negotiations between competing service providers and the Dominant Licensee generally do not result in satisfactory outcome for the competing service provider, resulting in delays in service rollout by competing service providers. In addition, we are also concerned that additional requirements imposed on the process for seeking enforcement against a Dominant Licensee for breach of Code (2004) will render it more difficult for Licensees to successfully file an enforcement complaint.

2.4 Our detailed comments on the proposed Code (2004) are set out below.

COMMENTS ON SPECIFIC SECTIONS OF THE PROPOSED CODE (2004)

3 Proposed Section 1 – Introduction

3.1 Proposed Sub-section 1.5.1 – Reliance on Market Forces

At three years of market liberalisation, the Singapore telecommunications market is still at an early stage of development of competition compared to earlier adopters of market liberalisation like the United States and Hong Kong. In several markets or market segments where the incumbent teleco still maintains significant control of the critical upstream telecommunications infrastructure in Singapore, such as the upstream ADSL network or local leased circuits, it is clearly not appropriate for the regulator to place primary reliance on private negotiations and industry-regulation. The incumbent telco naturally has no incentive to commercially negotiate with competing service providers. Without appropriate intervention from the regulator, experience shows that the terms and conditions including the pricing for accessing upstream telecommunications infrastructure would be highly onerous, if access is available at all. As a result, competing service providers either have to refrain from taking the service or do so at unfavourable high pricing and terms. Consumers ultimately suffer from the lack of innovative products, choice and high pricing of telecommunication services.

3.2 Proposed Sub-section 1.5.2 (e) – Promotion of Effective and Sustainable Competition

We propose to modify Sub-section 1.5.2(e) as follows:-

"ensuring that there is inter-operability and, where necessary, reasonable and effective access to networks to prevent impediments to effective competition and market growth."

The modification is to help ensure, among other things, that network owners design access to their network in an effective manner so that competinge service providers can connect to the network operator's network in a most effective manner and not have to bear additional charges caused by inefficient connectivity design. For example, access to

the network should allow for (i) high bandwidth transmission in the first instance so that competing service providers do not need to incur unnecessary costs to purchase several low bandwidth transmission pipes and (ii) connection to the network must be done in the most direct manner possible.

3.3 Proposed Sub-section 1.5.3 – Promotion of Facilities-Based Competition

We are encouraged by IDA's recognition of the need to strike a balance between providing economic incentives to build facilities and permitting services-based competition, and not focus solely on facilities-based competition as the only means to bring about more competition in the Singapore telecommunication market. Unlike the United States or other overseas jurisdictions which have adopted facilities-based competition as the primary driver of competition in their telecommunications market, Singapore is a very small country with limited market depth. It is highly unlikely that more than two or three network operators can earn a reasonable return on their investments in network infrastructure given the lack of economies of scale in a small city-state like Singapore. Furthermore, it is highly inefficient for the country to duplicate the network of incumbent telcos where the incumbent telco already has existing network connectivity to that customer premise. Resources would be better allocated and utilised if the incumbent telco is required to lease their network connectivity to competing service providers on reasonable and effective terms, on a services-based competition basis.

3.4 Proposed Sub-section 1.5.4 – Proportionate Regulation

Where the upstream broadband network is concerned, it is difficult for competing service providers to duplicate the network of the incumbent quickly, if at all. Ex-ante regulation will be required for many years to come. We urge the regulator to exercise extra vigilance over this market to ensure that the upstream broadband network continues to be opened for access by downstream resellers and that the existing terms of access including pricing will be improved.

3.5 Proposed Sub-section 1.5.5 – Technological Neutrality

The fundamental principle of fair and equal access to bottleneck infrastructure should apply regardless of the platform.

3.6 Proposed Sub-section 1.5.6 - Transparent and Reasonable Decision Making

In providing opportunity for public comments on material issues, IDA should allow for sufficient time for the public and industry to respond to the public consultation.

3.7 Proposed Sub-section 1.5.7 – Avoidance of Unnecessary Delay

Time is of essence in the fiercely competitive telecommunications market. Delays in rolling out a service have serious impact on market share. It is critical that IDA make all decisions under Code (2004) within the specified timeframe and as quickly as possible.

3.8 Proposed Sub-section 1.5.9 – Consultation with Other Regulatory Authorities

It would be beneficial if IDA could consult with relevant regulatory agencies overseas to learn from their experience and adopt similar regulatory best practices, where appropriate.

3.9 Proposed Sub-section 1.6.1 – Regulatory Review

The regulatory review should also allow for additional provisions to be added in Code (2004) in cases where competition has in fact reduced significantly in spite of efforts to bring about more competition in the telecommunication market in Singapore.

3.10 Proposed Sub-section 1.6.2 – Petitions for Elimination or Modification of Provisions of the Code

See comment on Sub-section 1.6.1.

3.11 Proposed Sub-section1.6.3 – Right to Modify

There should be a process to seek the public's comments, where appropriate, when IDA decides to amend Code (2004) on its own initiative.

3.12 Proposed Sub-section 1.7.1 - Right to Grant Exemptions

Prior to the grant of exemption, the public's comments should be sought where the exemption from specific provisions of Code (2004) would have material impact on competition. IDA should provide the public with the basis for the exemption and an assessment of the exemption on competition in the telecommunication market when seeking public comments. In addition, the public and/or industry should be given appropriate notice of any impending exemption from Code (2004) granted to a licensee to facilitate business planning by potentially affected parties.

3.13 Proposed Sub-section 1.7.2 – Right to Waive or Suspend Code Provisions Where Necessary in the Public Interest

The announcement of any waiver or suspension of any provision of Code (2004) should be accompanied by a detailed explanation of the basis of the waiver or suspension and an assessment of the impact of the waiver on competition in the telecommunications market. The public and/or industry should be given due notice of the waiver or suspension, where possible to facilitate business planning by potentially affected parties.

4 Proposed Section 2 – Classification of Licensees

4.1 Proposed Sub-section 2.5.2 – IDA Review

Sufficient time should be given to the public to respond to an IDA consultation paper on exemption from special Dominant Licensee provisions. In its decision document, IDA should set out clearly the basis for its decision and provide a detailed assessment of the impact of its decision on competition in the relevant markets or market segments.

Where IDA decides not to seek public comments, IDA should notify the public and/or industry that an application has been made for exemption from special Dominant Licensee provisions to facilitate business planning by potentially affected parties.

4.2 Proposed Sub-section 2.6.2 – Ability of Competitors to Replicate Facilities

Data on the estimated time necessary for effective deployment of the facility or facilities in question should also be provided to IDA.

5 Proposed Section 3 – Duty of Licensees to their End Users

5.1 Proposed Sub-section 3.2.4.4 – Service Termination Due to a Licensee's Discontinuance of Operations or Specific Services

A Dominant Licensee should be required to obtain IDA's approval before it discontinues a specific telecommunication service. Where there is no equivalent substitute with similar functionality at similar cost in the market, the Dominant Licensee should not be allowed to discontinue the service, as End-Users would be left without an alternative.

Besides giving End-Users the option to transition services to another Licensee specified by the terminating Licensee or another Licensee specified by the end users, the Licensee should also provide End-Users with the option to transition service to a comparable service offered by the Licensee itself.

5.2 Proposed Sub-section 3.3.4 – Procedures to Contest Charges

In relation to the right of End Users to dispute charges under the proposed sub-section 3.3.4, from our experience, we have encountered on numerous occasions End Users who may have taken advantage of this right to dispute to avoid making payment of their bills. In a typical scenario, an End User would allege that he did not use the service at the time stated in the bill. We would then advise the End User to make police report if he suspects that there was unauthorised use. Investigations by the police sometimes take a long time and in the meantime, the amount outstanding (which can be substantial) is left unpaid. We have encountered instances where investigations were still being carried out months after the report was made.

6 Proposed Section 4 – Duty of Dominant Licensees to Provide Telecommunication Services on Just, Reasonable and Non-Discriminatory Terms

6.1 Proposed Sub-section 4.2.1.3 – Duty to Provide Unbundled Telecommunication Services

We propose to amend Sub-section 4.2.1.3 as follows, which is self-explanatory:-

"…. Specifically, the Dominant Licensee must not require a Customer that wants to purchase a specific Tariffed Telecommunication Service to also purchase any other telecommunication service or non-telecommunication service or equipment <u>from the Dominant Licensee or its Affiliate</u>, as a condition for purchasing that telecommunication service….."

6.2 Proposed Sub-section 4.3 – Voluntary Wholesale Services

A Dominant Licensee clearly has no incentive to offer any of its telecommunication services on a wholesale basis to competing service providers. Our experience since market liberalization shows that the regulator's voluntary wholesale service policy significantly affects the ability of competing service provider to compete as they could not gain access to the Dominant Licensee's network in a timely manner and on reasonable prices, terms and conditions, if at all. Often, the pricing, terms and conditions of voluntary wholesale services impose onerous financial burden on the competing service providers. There is little room for the regulator to intervene as these services are provided on a voluntary basis. Often, in such cases, the competing service provider is urged to build their own facilities in place of leasing the Dominant Licensee's network. However, with the uncertainty associated with the continued existence of the incumbent's Exchanges, it is unjustifiable to expect the competing service provider to put in place their own facilities. We are of the view that Singapore telecommunication market is still at a very early stage of market liberalization and it is inappropriate at this stage to allow

the Dominant Licensee to offer their telecommunication services on a voluntary wholesale basis.

We strongly urge the IDA to mandate all telecommunication services of the Dominant Licensee to be offered on a mandated wholesale service basis. The advantages of adopting a mandated wholesale service policy include avoiding delays in the formulation of an acceptable set of prices, terms and conditions and reducing significantly uncertainties in the telecommunication market in relation to whether competing service providers would be able to gain access to the incumbent's telecommunication services.

In regard to proposed Sub-section 4.3(a), the methodology for the setting of "retail minus" prices should be clearly set out in Code (2004) to increase the transparency of the price setting process. This will help increase the confidence of market participants and lead to increased participation in the market. Among other things, our experience has shown that the selection of an appropriate "retail" component for the "retail minus" is a key determinant of the reasonableness of the "retail minus" prices. If the list price of a retail service is selected instead of the discounted retail price in the market, the "retail minus" arrived at will be higher than otherwise and would not be an appropriate price, thus distorting market signals. Also, there should be a process to review the relevance of the "retail minus" price annually and make the necessary adjustments as retail prices may fluctuate from time to time.

6.3 Proposed Sub-section 4.4.1 – Services for Which A Dominant Licensee Must File Tariffs

For those telecommunication services which the Dominant Licensee is required to file a tariff at the request of an End User, another Licensee or IDA, the Dominant Licensee must be required to file the tariff within a reasonable time frame, say between two weeks to one month, depending on the level of complexity involved. This will avoid unnecessary delays in getting the service to the market to the detriment of consumers and other Licensees.

6.4 Proposed Sub-section 4.4.2.1 - Tariff Filing and Review

We wish to highlight that in the review of a Dominant Licensee's tariff, it is critical that IDA review all the prices, terms and conditions filed and not just the key prices, terms and conditions as the devil is in the details. Often, provisions falling outside the key prices, terms and conditions could be onerous and could constitute a major deterrent in the take up of the telecommunication service tariffed.

6.5 Proposed Sub-section 4.4.3.1 – Review Criteria

We propose the following amendment to proposed Sub-section 4.4.3.1(a):-

"…. To assess whether the proposed prices are excessive, IDA will determine whether the prices are competitive with those in a "basket" of jurisdictions, including neighbouring countries, newly industrialised countries, telecommunication markets which have been liberalised, and major financial markets…."

In regard to Sub-section 4.4.3.1(c), please see comments on proposed Sub-section 4.3(a) relating to methodology for determining "retail minus" prices.

6.6 Proposed Sub-section 4.4.3.2 – Review Procedures

In regard to Sub-section 4.4.3.2(e), we support the proposed policy of allowing the tariff to go into effect and to make retroactive adjustment to the tariff later if necessary, as experience has shown that the impasse over the terms of the tariffs are costly to competing service providers in terms of slower time to market and loss of market share.

6.7 Proposed Sub-section 4.5 – Duty to Publish Tariffs

The Dominant Licensee should make available the approved tariffs on the website of the company. It is onerous for other Licensees to have to contact the Dominant Licensee daily to check if there are any new approved tariffs.

The minimum information to be made available should also include the minimum contract period and the renewal terms as these are key factors in determining whether a tariff is commercially acceptable.

6.8 Proposed Sub-section 4.6 – Duty to Provide Service Consistent with Effective Tariffs

We proposed to make the following amendments to proposed Sub-section 4.6(b)(ii):-

"direct the Dominant Licensee to amend its agreement to comply with the prices, terms and conditions in its effective tariff without service disruption; and/or"

We proposed to make the following amendments to proposed Sub-section 4.6(b)(ii):-

"direct the Dominant Licensee to file a new tariff embodying the terms of the agreement without service disruption."

6.9 Proposed Sub-section 4.7 – Review of Effective Tariffs

To provide certainty to market participants, the time frame in which IDA will complete its review of the petitions to IDA to review a tariff should be clearly stated in Code (2004). We propose that IDA should complete such a review within a month of receiving the petition. In addition, if after a review of a tariff at the request of Licensees, IDA believes that the tariff remains just, reasonable and non-discriminatory, IDA should provide sufficient details in its response to the petition the reason supporting its conclusion.

7 Proposed Section 6 – Interconnection with Dominant Licensees

The RIO is a key vehicle for the regulator to facilitate the development of competition in the telecommunication market. Our experience in the past three years indicates that the effectiveness of the RIO has been significantly reduced due to the absence of a number of key provisions in Code (2004).

Firstly, Code (2004) currently does not require SingTel to seek IDA's approval before making modifications to their network which would affect the availability of an IRS offered under Code (2004). As such, it is not certain if an IRS is available though it is offered under the RIO.

Secondly, there are no requirements to notify Requesting Licensees in advance that an IRS will no longer be available due to the network modifications by SingTel. Without advance notification, Requesting Licensees will not be able plan their business effectively, which is a strong disincentive to investments.

Thirdly, there are no regulations powering IDA to audit SingTel's claims that an IRS is unavailable due to the allowed reasons stated in the RIO agreement. As such, Requesting Licensee has no means of verifying SingTel's claims unless besides activating a dispute resolution process, which is a potentially long drawn process.

To address the above, firstly, it is necessary to empower IDA under Code (2004) to require SingTel to seek IDA's approval before it makes any changes to their network which will affect the ability of any IRS. Before IDA makes its decision, the public should be provided with an opportunity to provide their views on how the network change will impact the development of competition in the Singapore telecommunication market. Secondly, Code (2004) must require SingTel to notify Requesting Licensees 6 months in advance of any changes to the availability of IRS. Thirdly, Code (2004) should provide a process for IDA to audit SingTel's claims regarding the availability of an IRS.

Our response to IDA's consultation on the review of the RIO dated 15 Jul 2003 sets out the details of our concerns on the RIO.

7.1 Proposed Sub-section 6.2.1 – Option 1: Interconnection Pursuant to an Approved Reference Interconnection Offer

It appears that the RIO will only be extended a single 3-year period. We strongly appeal the regulator to review this decision. The RIO should be keep afoot as long as competition has not sufficiently developed in the Singapore telecommunication market. The decision whether or not to extend the RIO should be made based on a comprehensive study of the state of competition in the telecommunication market and after seeking the public's comments. The Singapore telecommunication market was liberalised in 2000, which coincided with the global downturn in the telecommunications sector and economy. In the past three years, the global telecommunications sector and the global economy were in depressed conditions, resulting in lack of investments and activities in telecommunication sector worldwide including Singapore. The development of competition in the Singapore telecommunication market slowed significantly due to lack of investments and new market entrants. With the global economy barely recovering from the downturn, and the many political and economic uncertainties which may extend the downturn further, it is highly unlikely that in the next 3 years, there will be significant investments in telecommunication infrastructure in Singapore which will offer End Users or Licensees competitive alternatives to the incumbent's network. It is not appropriate to extend the RIO for only another 3-year period if it is not foreseen that competition would have been sufficiently developed in another 3 years.

7.2 Proposed Sub-section 6.3.2 – RIO Must be Clear, Complete and Modular

The existing RIO Agreement currently is lacking where completeness is concerned. Specifically, the RIO does not provide a mechanism for notifying Requesting Licensees in the event that an IRS is no longer available due to network changes by SingTel. As a result, a Requesting Licensee who have co-located equipment at a certain SingTel Exchange, not knowing that the UNE service which it intends to access at the SingTel Exchange is no longer available due to network changes by SingTel, would have wasted the investment. More importantly, the uncertainty associated with the existence of an IRS disincentives the take up of IRS, thereby defeating the purpose of mandating SingTel to offer IRS under the RIO framework. Since the RIO is a key means for competing service providers to obtain an IRS to provide a competing telecommunication service so as to help kick start competition, the ineffectiveness of the RIO due to incompleteness of information would significantly slow down the development of competition in the Singapore market.

7.3 Proposed Sub-section 6.3.3 – Services That Must be Offered under RIO

The Dominant Licensee must make available in the RIO all information that is necessary for the Requesting to lease the relevant IRS in an effective and non-onerous manner. As an example, currently, the RIO does not contain information about the addresses of

premises which are served by the unbundled local loops. The lack of such vital information severely hampers the Requesting Licensee's ability to offer a commercial service using IRS as inputs.

7.4 Proposed Sub-section 6.3.3.4 – Unbundled Network Elements and Unbundled Network Services

In regard to proposed Sub-section 6.3.3.4(a), the addresses of premises which are served by the UNE and UNS and the coverage of SingTel Exchange in respect to the UNE and UNS must be clearly provided in the RIO. Without such vital information, the ability of Requesting Licensee to offer commercial service using UNE or UNS would be severely hampered.

7.5 Proposed Sub-section 6.3.3.5 – Mandated Wholesale Services

There should be a requirement to review the prices, terms and conditions of mandated wholesale services annually, taking into account changing market conditions, to ensure that the prices, terms and conditions are just, reasonable and non-discriminatory.

8 Proposed Section 7 – Infrastructure Sharing

8.1 Proposed Sub-section 7.4.2 – Request to IDA to Designate Infrastructure as Infrastructure That Must be Shared

Under the proposed sub-section 7.4.2, IDA's assistance can only be sought after 60 days of unsuccessful negotiations between the Licensee Requesting Sharing and the Licensee that controls the infrastructure. A more expeditious process for raising the issue to IDA for resolution is necessary to avoid delays in service rollout. We propose that if the Licensee Requesting Sharing is not able to obtain in-principle agreement from the Licensee that controls the infrastructure to share the infrastructure within 2 weeks of making the request, the Licensee Requesting Sharing should be able to submit a written request to IDA for assistance. If the Licensees are unable to reach a voluntary Sharing Agreement within 60 Days after the Licensee that controls the infrastructure provides in-principle agreement to share the infrastructure, the Licensee Requesting Sharing should be able to submit a written request to IDA for assistance.

8.2 Proposed Sub-section 7.4.3 – Response by Licensee

Under the proposed sub-section 7.4.3, the Licensee that controls the infrastructure will have 21 days from the date on which the Sharing Request is filed with IDA to submit to IDA a written reply. We are of the view that it is possible for the Licensee that controls the infrastructure to provide a written reply within 7 days as it is familiar with the issue

being raised and would have anticipated that the Licensee Requesting Sharing would raise the issue to IDA.

9 Proposed Sub-Section 8

9.1 Proposed Sub-section 8.2.1.2 – Price Squeezes

In the existing definition of "price squeezes", a Licensee is prohibited from obtaining an input from its upstream affiliate at a price that is so high that efficient non-affiliated Licensees could not profitably sell their end-product if they were required to purchase the input at the same price as the Licensee. It would be more equitable to reinstate this portion of the existing definition of "prices squeezes" in the proposed Code (2004) as the Licensee would have benefited from the "price squeeze" and should be penalized accordingly. The inherent double penalty would be a more effective deterrent against price squeezing behaviour compared to just a single penalty on the upstream entity.

10 Proposed Section 11 – Administrative Procedures

10.1 Proposed Sub-section 11.2.1 – Procedures for Requesting Conciliation

A party should be allowed to on its own submit a request to IDA for conciliation. Typically, the party who owns or control or facility to which the other party in the dispute wishes to gain access has no incentive to bring the matter to IDA for a quick resolution as it is not clearly not in its interest to do. It would be difficult to obtain the co-operation of such a party to submit a joint statement to IDA as required under the draft Sub-section 11.2.1.

The procedures for requesting conciliation under draft Sub-section 11.2.1 are too brief. A more detailed set of procedures setting out the time frame in which how the conciliation would be conducted would greatly help to reduce the uncertainty faced by the Licensees involved in a dispute arising out of the events described in Sub-section 11.2. We propose that an IDA assisted conciliation should reach a solution to the dispute within 30 days.

10.2 Proposed Sub-section 11.4 – Enforcement Action for Contravention of this Code

We are of the view that the last sentence of Sub-section 11.4 may result in too much uncertainty for the Licensees. Where a request for enforcement action meets the criteria set out in the relevant provisions of Code (2004), Licensees should have the assurance that IDA will conduct an enforcement action. The manner in which IDA would conduct an enforcement action should also be consistent with the goals of Code (2004).

10.3 Proposed Sub-section 11.4.1.3 – Deferment of Consideration for Request for Enforcement

To reduce uncertainty, IDA should set out clearly in Sub-section 11.4.1.3 the circumstances under which it will defer the consideration of a request for enforcement. What are the alternatives available to Licensees who believe that they are aggrieved if IDA decides to defer to consider their request for enforcement? We submit that IDA should consider each request for enforcement to facilitate competition in the telecommunication market.

10.4 Proposed Sub-section 11.5 – Binding Effect of Initial Submissions

Where the responding party in an enforcement or dispute resolution proceeding is a Dominant Licensee, it is unfair to prohibit the Licensee requesting for the relevant proceeding from raising new allegations or new grounds. This is because the Licensee requesting for the relevant proceeding is typically seriously disadvantaged in terms of having complete knowledge of the Dominant Licensee's network or service. As such, as the enforcement or dispute resolution proceeding progresses, the Licensee, especially after going through the response from the Dominant Licensee, may gain new insights into the case. Hence, under such circumstances, it would be fairer if a Licensee could raise new allegations or new grounds as the case progresses.

11 Proposed Appendix 2

The following wordings in sub-section 5.3.5.3 of the existing Code are not included in the proposed Appendix 2:-

"A Dominant Licensee must offer to allow Facilities-based Requesting Licensees to lease, on an unbundled basis, those elements and services of the Dominant Licensee's network (Unbundled Network Elements ("UNEs") and Unbundled Network Services ("UNSs") that are necessary to provide a competing telecommunication service offering. The Facilities-based Requesting Licensee must be allowed to combine the UNEs and UNSs with its own facilities."

These wordings should be retained in the proposed Appendix 2 as they provide the basis upon which the Dominant Licensee is required to provide UNEs and UNSs in the RIO.

11.1 Subsection 4 – Essential Support Facilities

In regard to subsection 4.2, ducts, trenches and conduits, which were included as ESF in the existing Code, have been excluded from the list of ESF in the proposed Appendix 2. We are of the view that these services should remain classified as ESF as competing

service providers are not able to replicate these structures at commercially reasonable rates and in a reasonably short time frame.

11.2 Subsection 5.3.1 – Local Loops – including loop feeder, loop distribution, distribution point, and inside wiring (where applicable)

As mentioned in our response to IDA's consultation paper on the review of the RIO dated 15 Jul 2003, the requirement for the Dominant Licensee to construct new loops on request should remain in Code (2004) and the RIO. Without this option, Requesting Licensing would not be able to provide xDSL services to areas where unbundled local loops are unavailable, and would not be able to utilize their co-located equipment in SingTel Exchanges in the most efficient manner. To increase the desirability of the "SingTel Build" option, the terms and conditions of the SingTel Build option should be improved as proposed in our response to IDA's consultation paper on the review of the RIO dated 15 Jul 2003.

12 Proposed Dispute Resolution Guidelines

12.1 Proposed Sub-section 4.8

We would like to request IDA to complete the dispute resolution proceeding and issue a decision on disputes raised within 30 days instead of 60 days. A quicker resolution of disputes raised will help to reduce delays in service rollouts.

12.2 Proposed Sub-section 6.2(a)

A non-dominant Licensee is often at an information disadvantage in a dispute compared to the Dominant Licensee who owns and operates the network that is in dispute. It is often during the dispute resolution process that the non-dominant Licensee becomes more informed about the Dominant Licensee's network through reading the submissions by the Dominant Licensee to IDA. It would be fairer if the non-dominant Licensee were allowed to raise new issues which it would not have been able to raise without access to the information submitted by the Dominant Licensee during the dispute resolution process.