

SUMMARY NOTES ON QUESTIONS AND ANSWERS AT IDA'S REGULATORY WORKSHOP ON TELECOM TRENDS AND PROPOSED REVISIONS TO THE TELECOM COMPETITION CODE

Q1. Will IDA mandate a Dominant Licensee to provide all its retail services as wholesale services?

A. The current edition of the Telecom Competition Code requires that Dominant licensees allow the resale of all retail services that it offers. This requirement is retained in the proposed revised Code. However, where dominant licensees choose to offer wholesale services on a voluntary basis, the proposed Code requires that these be offered at “retail-minus avoidable costs” prices. IDA does not propose to mandate Dominant Licensees to provide wholesale service package for all its retail service offerings. This is because such a requirement creates disincentives to Dominant Licensees for providing retail services. IDA intends to only mandate provision of wholesale services where these are essential and critical for infrastructure rollout in Singapore, such as the services currently specified in the Dominant Licensee's Reference Interconnection Offer (“RIO”). This approach is in line with IDA's regulatory principles of reliance on market forces and proportionate regulation. For markets which are effectively competitive, IDA will not impose unnecessary regulations and will rely on market forces and industry self-regulation. However, for markets which are not yet competitive, IDA will intervene to enhance competition. Nevertheless, IDA welcome's the operators' views on IDA's proposal to enhance the competitive process in Singapore.

Q2. Should Private Rights of Action be introduced in the telecommunications sector so that operators can seek compensation for anti-competitive behaviour? This is especially in view that the current administrative penalty (maximum ceiling of \$1 million) in place may not be sufficient to deter contraventions of the Code and operators cannot claim compensation for anti-competitive damages suffered?

While the introduction of private rights of action may be seen as being helpful in promoting a fair and competitive marketplace, experiences in other countries such as the US show that in practice, such a right may not be so straightforward or direct. In the US, the majority of the litigation cases involving competition or anti-trust issues are private (likely from class actions), mainly due to the huge economic incentives such as trebled damages for legal firms to take up such cases. In the UK however, such private litigations are negligible. Singapore, operating under English Law,

will have to determine if private rights should be introduced and whether its design under competition laws should be mainly for deterrent purposes.

Q3. Can IDA explain the rationale for removing the “last-mile” requirement in the definition of Dominant Licensee? Although this proposed revision is in line with practices in the EU and US, is this appropriate for Singapore given the size of our market?

IDA’s current definition of “dominance” was formulated at the start of market liberalisation and was anchored on our belief that in a newly liberalised market, only licensees that had direct “last mile” connection to end-users possess market power that could hamper the development of competition in the market. While this has been a practical way of defining market power, over time, we have learnt that 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 international best practices in the European Union, United Kingdom, Hong Kong and World Trade Organisation. Therefore, IDA has proposed 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.

Q4. Implementation-wise, how will the transition from the current definition of Dominant Licensee to the proposed revision affect current designation of Licensees?

There will be no implementation lag as this revision will not result in a reclassification of any licensees today, i.e., licensees classified as dominant today will continue to be classified as such under the revised Code. These licensees can also continue to seek exemption or re-designation if they can demonstrate that they no longer satisfy the two criteria in certain markets due to the development of competition.

Q5. Wholesale services based on “retail-minus” price do not necessarily enhance competition. How will IDA determine that the wholesale service is appropriately priced?

To ensure more fair and effective competition in the market, dominant licensees must distinguish their retail and wholesale charges. Wholesale charges would have to reflect “avoidable” costs, such as marketing and

advertising cost, as a result from providing the service on a wholesale basis. If there are complaints of such prices being unfair or anti-competitive, IDA may audit the prices on a case-by-case basis. IDA may also consider frameworks adopted by overseas jurisdictions where a certain percentage is adopted a rule-of-thumb.