

## **CONSULTATION DOCUMENT**

### **SECOND PUBLIC CONSULTATION ON THE FIRST TRIENNIAL REVIEW OF THE CODE OF PRACTICE FOR COMPETITION IN THE PROVISION OF TELECOMMUNICATION SERVICES**

**11 May 2004**

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## **SECOND PUBLIC CONSULTATION ON THE FIRST TRIENNIAL REVIEW OF THE CODE OF PRACTICE FOR COMPETITION IN THE PROVISION OF TELECOMMUNICATION SERVICES**

### **A. INTRODUCTION**

1. On 7 October 2003, IDA initiated the first triennial review of the Code of Practice for Competition in the Provision of Telecommunication Services ("Code") with the release of a proposed revised version of the Code ("initial proposed Code 2004") for public consultation.
2. On the same date, IDA conducted a Regulatory Workshop to enable industry participants and other interested parties to have a dialogue on key market and regulatory trends in the telecommunication industry. Speakers from Analysys Consulting Ltd, Squire, Sanders & Dempsey and the Ministry of Trade and Industry were invited to share their views on key market and regulatory trends and developments. IDA also delivered a presentation describing the key differences between the current Code and the initial proposed Code 2004, and explained the reasons behind these proposed changes. The Regulatory Workshop was attended by more than 200 industry participants.
3. IDA requested interested parties to submit their written comments on the initial proposed Code 2004 by 5 December 2003.

### **B. OVERVIEW OF COMMENTS RECEIVED**

4. At the close of the public consultation, IDA received 12 submissions from Licensees, academics and end-users; namely Cable & Wireless, Macquarie, Pacific Internet, Reach, Telstra, StarHub Group, Singapore Telecommunications Ltd ("SingTel"), British Telecom, MobileOne Ltd, Courdert Brothers (a joint submission from MCI, AT&T, Macquarie, Reach and Cable and Wireless), Associate Professor Burton Ong and Mr Bryan Tan. IDA would like to thank the commenters for their inputs.
5. The comments addressed a wide spectrum of issues. Some commenters addressed specific issues, such as the standard for classifying a Licensee as a Dominant Licensee, the provisions and pricing methodology for wholesale services, tariff filing and publication requirements and Reference Interconnection Offer ("RIO") requirements. Other commenters addressed broader issues, such as IDA's policy principles and approaches, the level of transparency of IDA's decisions and IDA's enforcement practices and powers. While a Dominant Licensee called for less regulation, many Non-dominant Licensees called for more proactive

responses and regulatory intervention by IDA to further enhance competition.

6. Following the close of the consultation period, IDA began an intensive review process. In the course of this process, IDA gave extensive consideration to the views and proposals contained in each of the submissions. Taking into consideration IDA's policy objectives, as well as the views from the commenters, IDA has proposed some revisions to the initial proposed Code 2004. In view of some commenters' requests for a second round of public consultation, IDA is releasing the revised version of the proposed Code 2004 ("revised proposed Code 2004") for public comments.
7. The sections below summarise IDA's proposed position on the key issues raised in the public consultation and explain the rationale behind IDA's proposals.

**C. PROPOSED POSITION ON KEY ISSUES IN REVISED PROPOSED CODE 2004**

**8. PROPOSED SECTION 1**

Regulatory Principles

- 8.1 The revised proposed Code 2004 provides that, while IDA seeks to foster facilities-based competition ("FBC") in order to achieve long-term sustainable competition, IDA intends to strike a balance between providing economic incentives for the incumbent and new entrants to build/upgrade infrastructure and enabling services-based competition ("SBC").
- 8.2 While most of the commenters agreed with this approach, one commented that IDA appeared to have adopted the approach of "*indefinite facilitation of SBC*," at the expense of FBC and recommended that IDA "*only permit SBC in the short term where there were technological or market impediments*".
- 8.3 IDA does not propose to change its policy approach of encouraging FBC. IDA believes that this approach remains the best means of achieving sustainable competition in the long-term and enhancing competition along the service value chain. However, where there are technological, market or other impediments that would hamper competing Licensees' ability to build facilities – whether in the short-term or for the foreseeable future – IDA will seek to strike a balance between providing economic incentives to build facilities and permitting SBC to take place for the benefit of consumers.

### Transparency of IDA's Decision-making Process

- 8.4 Many commenters called for IDA to be more transparent and open in its decision-making process. Some commenters requested that IDA expressly commit to seek public comments before modifying any provision in the Code, and to issue preliminary decisions before they are finalised.
- 8.5 Since the full liberalisation of the telecommunication industry in April 2000, IDA has taken steps to put in place a more transparent regulatory regime. IDA has sought public and industry input on important decisions, and has explained the rationale behind taking the decisions. IDA has also made decisions public by publishing summaries of its decisions on its website. Today, IDA is one of the most transparent regulatory agencies in Singapore. The International Telecommunications Union<sup>1</sup> has also noted that IDA's practices are generally in line with international practices. While IDA will continue to strive for greater levels of regulatory transparency, IDA is also mindful of the need to balance the benefits of transparency against the need for administrative efficiency and the protection of legitimate confidential information.
- 8.6 Given these considerations, IDA proposes to take additional steps to increase transparency in its decisions. As a start, IDA proposes to seek public comments when making any modification to the Code and allowing adequate time for public comment prior to adopting any modification of the Code or to granting exemptions from the Code provisions (see proposed Sub-sections 1.6 and 1.7.1).
- 8.7 IDA also proposes to release preliminary decisions on material policy or regulatory issues, where appropriate, for public comments or for comments by affected parties before finalising its decisions. The kinds of issues for which IDA would provide preliminary decisions include decisions on dominance classification, exemptions from Code requirements, and decisions on dispute resolution. However, it would not be practical for IDA to issue preliminary decisions for every decision under the Code. For example, providing a preliminary decision would serve no useful purpose in the case of decisions regarding breach of Code requirements where all affected parties have been given opportunities to explain their position before IDA makes its determination. IDA will also ensure that the rationale behind each decision is clearly explained.
- 8.8 In addition to the above, IDA also proposes to issue guidelines, where appropriate, to clarify the procedures and standards that it will use to implement the revised proposed Code 2004 (see proposed Sub-section 1.5.6). For example, IDA has issued a set of proposed guidelines for

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<sup>1</sup> Source: "A Case Study on Singapore's 'Converged' Regulatory Agency" issued by the International Telecommunication Union in 2001.

reviewing consolidations in the telecommunication markets. Moving forward, IDA will also consider issuing guidelines on IDA's assessment framework for Dominant Licensees seeking exemptions from obligations under the Code, Dominant and Non-dominant Licensee reclassification, and IDA's assessment criteria for anti-competitive behaviour and agreements that IDA deems to unreasonably restrict competition. If IDA does so, IDA will seek public comments on these and other guidelines before they are finalised.

- 8.9 Some industry participants asked for IDA to make regulatory decisions more quickly. IDA will endeavour to do so. However, IDA notes that today the decision-making time taken by IDA for investigating alleged violations of the Code, for resolution of interconnection related disputes, and for reviewing requests for exemption of Dominant Licensee obligations, is generally in line with those taken by overseas regulators. Industry participants must also bear in mind that IDA can only begin to consider a specific matter after IDA receives full and complete information from Licensees. Where information submitted to IDA is incomplete, and where IDA needs to seek further clarification in order to complete its assessment, IDA proposes not to "start the clock" until it has received the necessary information. Where preliminary decisions are issued and issues are complex, IDA may require a longer period of time to ensure that it takes into consideration all relevant issues before these decisions can be finalised.

#### Telecommunication Industry Body

- 8.10 One commenter requested that IDA retain the reference to the telecommunication industry body contained in the current version of the Code. IDA has concluded that the current operator-led working groups are effective in addressing technical and operational problems and are achieving IDA's policy objective of facilitating industry self-regulation. Therefore, IDA believes it is appropriate to eliminate the reference to a specific telecommunication industry body. IDA will continue to rely on industry-led working groups to address operational and technical issues, but IDA remains open to initiatives from industry participants if they believe that the formation of an industry body would better serve their needs.

#### Consistency with Other Competition Codes

- 8.11 One commenter highlighted that the codes issued by the Media Development Authority ("MDA") and IDA, should impose consistent obligations on Dominant Licensees in light of the convergent nature of the telecommunication and broadcasting industries. This would prevent

potential overlap, inconsistency and “forum shopping” by operators regulated by both Authorities.

- 8.12 The respective functions and duties of IDA and MDA are set out in the IDA Act and MDA Act. For instance, IDA regulates the operation of telecommunication networks and the provision of telecommunication services in Singapore, while MDA regulates broadcasting services and their content. IDA recognises, however, that certain infrastructure that it regulates is used for the provision of broadcasting services, and that certain Licensees are regulated by both Authorities. Therefore, IDA has taken into consideration provisions in the Market Conduct Code issued by MDA and has assessed the relevance of those provisions for application in the telecommunication sector. Notwithstanding the technological convergence between the two sectors, the concerns and issues in broadcasting and telecommunication are not identical, and there is still a need for both market and policy differences to be considered when developing the codes for the two sectors. Regulators in different countries are grappling with the challenge of convergence, and the best approach at this stage is to ensure that there is co-ordination and consultation between the regulators, as is the case of Singapore, where IDA and MDA are both under the Ministry of Information, Communications and the Arts. IDA will continue to co-ordinate with MDA to minimise any inconsistency in the regulatory framework and deter inappropriate “forum shopping”.

## **9. PROPOSED SECTION 2**

### Dominance Definition

- 9.1 In the initial proposed Code 2004, IDA proposed to refine the existing standard for dominant classification to provide that a Licensee would be classified as dominant if it **either**: (i) exercises operational control over facilities used for the provision of telecommunication services that are sufficiently costly or difficult to replicate in that market; **or** (ii) has the ability to exercise Significant Market Power (“SMP”) in the provision of telecommunication services in Singapore. This provision retains the “licensed entity” approach contained in the current version of the Code. Under this approach, if a Licensee is classified as a Dominant Licensee, it must comply with the special requirements applicable to Dominant Licensees when providing any telecommunication service pursuant to its licence.
- 9.2 Many commenters called for greater transparency and clarity in IDA’s criteria for assessing dominance and exemption requests. Some commenters stated that the initial proposed Code 2004 did not adequately reflect the competitive state of the Singapore market and called for IDA to conduct a more rigorous, economic analysis of the level of competition in

Singapore's telecommunication market. One commenter was concerned that the continued use of the "licensed entity" approach in IDA's dominance definition and classification could result in over-reaching and disproportionate regulation. Thus, commenters requested IDA to consider aligning its approach with the European Union's Guidelines for Market Analysis and Significant Market Power (the "EU Guidelines"). Under this approach, the regulatory authority first defines each relevant market and then determines whether a licensee has SMP in each market. The regulatory authority may only impose ex ante economic regulation in those markets in which the licensee has SMP. Commenters opined that the EU's market-by-market approach was preferable because it is based on competition law principles rather than "regulatory jurisprudence" and, therefore, would be fairer and more transparent. Some commenters also suggested that in defining dominance, IDA should adopt the EU approach of presuming market power for any Licensee holding market share in excess of 40 – 50 percent in any market.

- 9.3 IDA adopted the "licensed entity" approach when it fully liberalised the telecommunication market in 2000. This was a reasonable and practical approach, which recognised that, as a result of its historic monopoly position, at the start of the liberalisation process, the incumbent operator would likely be dominant in all the market segments. IDA notes that similar approaches were taken in the US, many EU countries and Hong Kong when these countries first liberalised their telecommunication sector.
- 9.4 At the start of the current Code review, IDA considered whether it was appropriate for IDA to replace the "licensed entity" approach with a market-by-market approach. However, IDA decided that it would be premature to do so. Based on IDA's preliminary assessment of how competition has developed in the Singapore telecommunication market in the last 4 years, IDA believes that adopting a market-by-market approach at this juncture would likely yield similar results to preserving the "licensed entity" approach.
- 9.5 From IDA's preliminary assessment, IDA believes that while competition has taken root in some segments of the Singapore telecommunication market, there are significant variations from one segment to another (see **Annex 1** for a brief overview of IDA's preliminary study). IDA recognises that certain markets require more time for competition to develop fully, given that the Singapore telecommunication market has only been fully liberalised for 4 years, which is a very short time compared to the EU and the US, whose markets have been opened for more than 10 years and 20 years respectively. IDA also notes that, even in the EU, the market-by-market approach is still in the early stages of implementation – which has proven to be a more difficult and lengthy process than initially expected. Because competition is less uniformly developed in Singapore than in

some other jurisdictions, it would be prudent to retain the current entity-based approach, while continuing to consider whether to move to a market-by-market approach after competition has developed further.

- 9.6 The Code contains a procedure by which a Dominant Licensee may obtain exemption from the requirements applicable to Dominant Licensees in any market in which the Dominant Licensee can demonstrate that competition has developed to a point at which such regulation is no longer necessary. Pursuant to this procedure, IDA has granted SingTel a limited exemption for services within the International Telephone Services markets. This procedure ensures that the Code's "licensed entity" approach does not result in unnecessary regulation.
- 9.7 IDA agrees that it is appropriate, for the purposes of reviewing any exemption from Dominant Licensee obligations or reclassification of Licensees, to presume that the applicant has market power if it has more than a 40 percent share in any telecommunication market<sup>2</sup>. However, such a presumption is only the first step in the analysis. In order to make a realistic assessment of the need for heightened regulatory intervention, IDA will consider other market characteristics, such as level of market concentration, barriers to entry into the market and pricing trends.
- 9.8 One commenter also suggested that IDA retain the "control" test in the current Code – under which a Licensee can be classified as dominant if it "controls" costly-to-replicate facilities used to provide telecommunication services – rather than basing dominance on whether a Licensee "operates" such facilities. IDA has considered the suggestion, but has concluded that the term "operates" better reflects IDA's policy intent. IDA has previously determined that, in applying the dominance test, it should consider whether a Licensee has *operational control* of the facilities that are costly or difficult to replicate. IDA has not classified a Licensee as dominant by reason only that it has "legal control" or "effective control" over costly-to-replicate facilities, because this would result in imposition of unnecessary regulatory requirements on a Licensee that would otherwise be classified as Non-dominant, based solely on the Licensee's ownership interest in a Dominant Licensee.

#### Classification and Exemption of Licensees

- 9.9 Some commenters claimed that IDA does not provide sufficient clarity regarding the means by which it evaluates exemption requests by Dominant Licensees. As mentioned above, IDA will consider issuing a set of advisory guidelines regarding the assessment criteria for exemptions

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<sup>2</sup> In IDA's decision on SingTel's request for exemption from Dominant Licensee obligations in relation to the International Telephony Services market dated 12 November 2003, IDA adopted a similar presumption of 40 percent share.



and reclassification of Dominant and Non-dominant Licensees. IDA will seek public comments on any such guidelines before they are finalised. Moving forward, IDA also proposes to provide fuller details in its explanation on such decisions as part of IDA's efforts towards more regulatory transparency. IDA will also provide an opportunity for further industry comments before finalising its decision.

- 9.10 In the revised proposed Code 2004, IDA has also clarified the applicable procedures where a Dominant Licensee wants to transfer the ownership or operational control of its facilities or its business as a going concern (see proposed Sub-section 2.4). IDA proposes that, in such cases, the Dominant Licensee be required to obtain IDA's approval for the transfer. IDA may subject its grant of approval to conditions (including reclassifying the transferee Licensee as a Dominant Licensee where the criteria for dominant classification are satisfied). Where the Dominant Licensee fails to obtain IDA's approval prior to effecting the transfer, in addition to any enforcement action that IDA may take, post-transfer, IDA proposes to require the transferee Licensee to comply with the special provisions applicable to Dominant Licensees in relation to the transferred facilities and business.

#### Issue of Joint Dominance

- 9.11 Some commenters suggested that, consistent with the approach used in the EU Guidelines, IDA should assess the presence of joint dominance. IDA has considered this suggestion and has decided against introducing such a concept in the revised proposed Code 2004. Concerted action by Licensees, whether express or tacit, is addressed elsewhere in the revised proposed Code 2004 (see proposed Section 9).

#### Exemption for StarHub Cable Vision ("SCV")

- 9.12 One commenter suggested that the exemption granted by IDA to SCV, which is a Dominant Licensee, from the obligations to unbundle its cable network and allow interconnection should be eliminated. IDA has considered the suggestion. However, IDA continues to believe that cable network unbundling remains impractical and premature, and therefore IDA proposes to continue to maintain the exemption under the revised proposed Code 2004.

### **10. PROPOSED SECTION 3**

#### Extent of IDA's Role in Consumer Protection

- 10.1 Several commenters expressed concern that IDA's proposal to limit its role in consumer-related issues would leave end-users without an

adequate means to protect their interests. Other commenters, however, have asked IDA to further reduce regulation in this area.

- 10.2 IDA has reviewed the suggestions and believes that end-users have become more knowledgeable regarding telecommunication products and services since the market was first liberalised in April 2000. Also, end-users now have multiple avenues to seek redress, such as through the Consumers Association of Singapore (“CASE”), the Small Claims Tribunal and under the recently enacted Consumer Protection (Fair Trading) Act. IDA therefore believes that it should scale-back its enforcement role in this area and, instead, focus more of its regulatory resources in facilitating reasonable access to information that will enable end-users to make informed choices.
- 10.3 In the initial proposed Code 2004, IDA proposed to divide Licensees’ consumer protection obligations into two separate categories. The first category (contained in proposed Sub-sections 3.2 through 3.2.7) specified Licensees’ general consumer protection obligations. The second category (contained in proposed Sub-sections 3.3 through 3.3.7) specified provisions that Licensees must include in their End User Service Agreements. IDA proposed that, if a Licensee contravenes any of its general obligations, IDA would be able to take enforcement action. In contrast, if a Licensee breaches 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 believes this approach is appropriate because the end-user may avail himself to remedies contained in the End User Service Agreement for breach of its terms, IDA will not take enforcement action for every violation of the provisions contained in the proposed Sub-sections 3.3 through 3.3.7 of the revised proposed Code 2004. Instead, IDA proposes to only treat a Licensee’s failure to fulfil these obligations as a contravention if it is wilful, reckless, or repeated.
- 10.4 IDA also proposes to simplify the provisions for terminating or suspending End User Service Agreements. IDA seeks to allow greater flexibility for operators, while ensuring that end-users are adequately protected. The revised proposed Code 2004 therefore would allow a Licensee to terminate or suspend a service for any reason (save for the limited circumstances specified), provided it gives the end-user prior notice and an opportunity to remedy the breach. The revised proposed Code 2004 also specifies the limited circumstances under which a Licensee could terminate or suspend service to an end-user without prior notice (see proposed Sub-sections 3.2.4 through 3.2.4.3).

### Joint Marketing

- 10.5 One commenter suggested that IDA delete the proposed Sub-section 3.2.6.3(b) in the initial proposed Code 2004, which provided that if a Dominant Licensee allows any affiliate to include promotional or other material in any mass mailing, the Dominant Licensee must make this opportunity available to competing Licensees on non-discriminatory prices, terms and conditions. IDA agrees with this suggestion. IDA recognises that this may enable the Dominant Licensee to provide some advantage to its competitive affiliates. However, competing Licensees can send their promotional or other marketing materials directly to the end-users by using services of private delivery agents or any postal service operators licensed by IDA, and need not rely on the Dominant Licensee to do so. On balance, IDA is of the view that any such advantage is not likely to be significant and will be outweighed by the significant burden of requiring the Dominant Licensee to provide access to its mailings.

## **11. PROPOSED SECTION 4**

### Wholesale Pricing Framework

- 11.1 The initial proposed Code 2004 provided that wholesale services that a Dominant Licensee voluntarily chooses to offer (“wholesale services”) would have to be offered at “retail-minus avoidable cost” prices. IDA also proposed that it be able to require Dominant Licensees to provide certain wholesales services (“mandated wholesale services”) and that IDA could further require the Dominant Licensee to offer these mandated wholesale services at “retail-minus” prices.
- 11.2 One commenter strongly opposed IDA’s proposal to require that wholesale services be offered by Dominant Licensees at “retail-minus avoidable cost” prices. The commenter argued that continued price control regulation inhibits investment in new services and that it would be better for IDA to allow market forces to set prices. In contrast, many other operators felt that IDA should go further by requiring that wholesale services be provided at cost-based prices. Some commenters also called for greater specificity and clarity, regardless of which pricing methodology is adopted.
- 11.3 IDA’s initial proposal was made in order to reduce the ability of a Dominant Licensee to engage in a “price squeeze”. This can occur where the Dominant Licensee sets the price of a wholesale “input” service at such a high level that an efficient non-affiliated Licensee cannot use the “input” to provide a competitive downstream service. IDA recognises that there is no one single approach in regulating wholesale services in overseas jurisdictions. For example, in the US, the FCC requires the

incumbent local telephone companies to allow competing local telephone companies to purchase *any* retail local telecommunication services at “retail minus avoided costs” levels, which the FCC estimated would generally be 17 percent to 25 percent below retail rates. In contrast, the UK’s telecommunications regulator, OFTEL (now known as OFCOM), generally requires that BT’s wholesale prices to be “cost-oriented” and only allows use of “retail-minus avoidable cost” methodology in special situations – such as where the incumbent proposes to offer an innovative service, which involves a greater degree of commercial risk.

- 11.4 Based on the public comments, as well as IDA’s commitment to proportionate regulation, IDA proposes to require that wholesale services be offered at just, reasonable and non-discriminatory prices. Dominant Licensees would continue to be required to file tariffs with IDA for review. IDA believes that the revised pricing arrangement would provide Dominant Licensees with sufficient flexibility to develop wholesale services voluntarily to meet market demand, provide checks against anti-competitive pricing behaviours and allow IDA to impose ex ante regulation where necessary. IDA believes that the requirement that wholesale services be just, reasonable and non-discriminatory, together with the proposed Sub-section 8.2.1.2 which prohibits price squeezes, will help IDA minimise the possibility of Dominant Licensees engaging in price squeezes.
- 11.5 The revised proposed Code 2004 also would allow IDA to determine those circumstances in which, in order to facilitate effective competition, Dominant Licensees must be required to offer a service on a wholesale basis. In such cases, Dominant Licensees would be required to price these mandated wholesale services using the methodology specified by IDA, which will either be at cost-oriented or retail-minus levels. IDA will allow for public consultation before finalising its decision and will provide the rationale behind adopting the appropriate pricing methodology (see proposed Sub-section 6.3.4).

#### Pricing Transparency

- 11.6 The majority of the commenters welcomed IDA’s proposed requirement for Dominant Licensees to disclose, by publishing in a form available to the public, any tariff for any telecommunication service approved by IDA. Some commenters requested IDA to specify a publication format, timeframe, and medium, and to require Dominant Licensees to publish all terms and conditions regarding their service offerings. In contrast, other commenters suggested that the publication requirement be limited to standard offerings, and should not apply to competitive and new services, so as to discourage shadow pricing and not dull innovation.

- 11.7 IDA has concluded that greater transparency of pricing information would help facilitate competition, protect consumers and facilitate effective price regulation. However, IDA also recognises that excessive or unnecessary publication requirements could stifle the Dominant Licensees' incentive to innovate. Striking a balance between these considerations, IDA proposes to require that, at a minimum, Dominant Licensees must publish (and make publicly available) prices, discount structures and service termination terms to any interested parties. Although IDA does not believe that Dominant Licensees should be required to publish its tariffs on its website, as suggested by some commenters, IDA proposes to require Dominant Licensees to make available copies of the approved tariffs upon request by interested parties within a reasonable time.

#### Resale Requirements

- 11.8 IDA has proposed that the Dominant Licensee be required to allow any Licensee to purchase any tariffed telecommunication service that the Dominant Licensee makes available to an end-user on the same prices, terms and conditions that the Dominant Licensee makes such service available to end-users. The Dominant Licensee would not be permitted to prevent the Licensee from reselling the service or using the service as an input for its provision of telecommunication services to other Licensees or end-users. One commenter asked that this duty be limited to markets that are not competitive and that Non-dominant Licensees not be allowed to resell the retail services in competition with the Dominant Licensee. Other commenters, however, asked that the resale services be priced on a retail-minus basis or at "the same or better-than-retail" prices. One commenter asked that resellers be allowed to disclose that they are reselling the Dominant Licensee's service; another asked that the Dominant Licensee remove all resale restrictions upon request.
- 11.9 IDA believes that Dominant Licensees should not be allowed to restrict resale. Experience in other jurisdictions demonstrates that requiring a Dominant Licensee to allow resale is an effective way to deter price discrimination. If a Dominant Licensee offers significant discounts only to high-volume retail customers, a competing Licensee can purchase the retail service in similar large volumes to enjoy similar discounts and resell it to smaller users, thereby passing on the discount.
- 11.10 IDA believes that there is a distinction between resale and wholesale services. In a resale scenario, a competing Licensee is buying a Dominant Licensee's *retail* service and reselling the service to its retail customers (either "as is" or as an input into a value-added service). As described above, eliminating restrictions on resale is an effective means to prevent discrimination. In contrast, in a wholesale situation, a Dominant Licensee could be offering a service that is specifically designed for other

Licensees. The Dominant Licensee may avoid retail-related costs – such as marketing and “customer care”. Because Dominant Licensees are under no general obligation to provide wholesale services to other Licensees, IDA believes that only minimal price regulation of voluntary wholesale services is appropriate. Specifically, IDA proposes that the Dominant Licensee only ensures that the prices are just, reasonable and non-discriminatory. Indeed, excessive regulation could deter Dominant Licensees from offering wholesale services on a voluntary basis. However, where IDA requires a Dominant Licensee to offer a mandatory wholesale service, IDA has concluded that this is necessary to facilitate “downstream” competition. In this circumstance, IDA believes that it is appropriate to ensure that the service is priced at a level that will enable other Licensees to make full use of the offering to facilitate competition. Therefore, IDA proposes to impose a greater degree of price regulation on such offerings.

#### Pricing and Costing Benchmarks

- 11.11 Several commenters proposed that IDA adopt a more precise standard than “marginal cost” in order to determine whether a Dominant Licensee’s proposed prices are adequate (see initial proposed Sub-section 4.4.3.1(a)) and for assessing predatory pricing (see initial proposed Sub-section 8.2.1.1). One commenter suggested using “long-run incremental cost” while another suggested using “average variable cost” instead.
- 11.12 IDA reviewed the suggestions and agreed that there is a need for greater specificity. IDA adopted the costing methodology of long-run average incremental cost (“LRAIC”) for determining the prices of interconnection related services to be offered by the Dominant Licensee under the Reference Interconnection Offer (“RIO”). LRAIC is designed to replicate the prices that would exist in a hypothetical efficient network in order to facilitate new entry. In contrast, in the cases of determining adequacy of retail rates and predatory pricing, IDA believes that it is more appropriate to use average variable cost as the standard. There is broad consensus among economists and regulatory authorities that average variable cost is an effective proxy for marginal cost. By setting a clear price “floor,” this standard should prevent Dominant Licensees from setting prices at levels that deter competition, while limiting the risk that IDA will deter pro-competitive price cutting.

## **12. PROPOSED SECTION 5**

- 12.1 IDA has reviewed the comments on proposed Section 5 and does not propose to make any substantive changes.

### **13. PROPOSED SECTION 6**

#### RIO Review Timeframes

- 13.1 The initial proposed Code 2004 proposed to increase the total RIO review timeframe from a total of 75 days to 150 days. Some commenters asked that the timeframe be reduced. Based on IDA's experience in developing the existing SingTel RIO, the timeframes in the existing Code are not sufficient to enable the development, review, public comments and approval of new RIOs. IDA is of the view that a timeframe of 150 days would allow more time for public consultation and comprehensive review of a Dominant Licensee's proposed RIO.

#### Separate Publication of IRS and Mandated Wholesale Services

- 13.2 IDA proposes to separately publish the list and detailed requirements (including prices, terms and conditions) of the Interconnection Related Services and Mandated Wholesale Services that must be offered by a Dominant Licensee under its RIO ("IRS/Mandated Wholesale Services List"). This will allow for greater flexibility in modifying the IRS/Mandated Wholesale Services List, should this be necessary. IDA will seek public comments prior to any modification of the IRS/Mandated Wholesale Services List (see proposed Sub-section 6.3.2). Together with the revised proposed Code 2004 issued for public consultation, IDA has issued the proposed IRS/Mandated Wholesale Services List for public comments. Please see "Schedule of Interconnection Related Services and Mandated Wholesale Services that must be offered by a Dominant Licensee under the RIO".
- 13.3 IDA seeks to provide its licensees with certainty in relation to the interconnection regime. However, if IDA determines that it is no longer necessary for a Dominant Licensee to provide a specific IRS or Mandated Wholesale Service, IDA will remove that IRS or Mandated Wholesale Service from the IRS/Mandated Wholesale Services List. Conversely, if IDA determines that additional services must be added to the list, IDA will do so.
- 13.4 Commenters have asked that various IRS be removed, retained or added. The key requests include: (a) removing masts, poles and cable chambers as IRS; (b) removing co-location space at rooftop and MDF in buildings owned or controlled by Dominant Licensees; (c) retaining co-location at satellite earth stations; (d) retaining line-sharing as an Unbundled Network Element ("UNE"); (e) retaining obligation to construct new loops; (f) reducing the 24-month period permitted for Dominant Licensees to reserve co-location space for their own projected use; and (g) allowing

third party connection and access to submarine cable capacity at submarine cable landing stations.

13.5 IDA has reviewed the list of IRS and the requests from commenters. IDA proposes to make the following changes:

- (a) Remove poles, masts and cable chambers from IRS. The provision of poles, masts and cable chambers is no longer necessary by Dominant Licensees. To date, no competing operator has requested access to masts, poles, and cable chambers. Moreover, IDA understands that the Dominant Licensee, SingTel, which has been required to provide these IRS, does not install masts and poles because its cables are laid underground. For cable chambers, IDA understands that the physical conditions in the chambers are not suitable for access and co-location.
- (b) Retain co-location space at rooftop and MDF in buildings owned or controlled by Dominant Licensees. This obligation is necessary to give competing facilities-based operators alternatives to laying underground cables in order to access SingTel's exchanges.
- (c) Remove co-location at satellite earth stations. To-date, no Licensee has requested or acquired co-location space in satellite earth stations. Commenters have also not provided any compelling reason why co-location space at satellite earth stations needs to be retained to facilitate competition.
- (d) Remove line-sharing as an UNE. To-date, no Licensee has used line-sharing to provide DSL access services. IDA believes that Requesting Licensees can provide DSL by taking unbundled local loops ("ULLs"). However, IDA recognises that there has been little take-up of ULLs under the RIO. IDA is concerned that this may be due to lack of readily accessible network information regarding the ULLs. IDA therefore proposes to remove line-sharing as an UNE, but to require a Dominant Licensee to provide more information on the availability of IRS where applicable. This includes the details on the address and serving area of each exchange and the availability and quality of copper loops (see proposed Sub-section 6.3.3.3 (g)).
- (e) Remove the obligation to construct new loops. IDA believes that, while a Dominant Licensee should continue to be required to provide access to its existing loop plant, it should not be made to construct additional local loops solely for the benefit of its competitors. This change should create added incentives for new entrants to deploy facilities.
- (f) Retain the permission for Dominant Licensees to reserve co-location space for their own projected use, but remove the specification of the



length of the reservation period. IDA believes that the length of the permitted period of reservation of co-location space (and other IRS) is a matter that would be more appropriately addressed in the review of the RIO.

- (g) Review third party connection and access to submarine cable capacity at submarine cable landing stations separately. In view of the potential significant impact of this request on the industry, IDA will assess the request separately from the triennial Code review and, if appropriate, will allow for public comments.

- 13.6 One commenter proposed that Non-dominant Licensees be required to provide IRS on a “reciprocal basis”. IDA does not agree. Under the Code, IDA has required Dominant Licensees to offer to other Licensees IRS that are necessary for the provision of competing telecommunication services. Because Dominant Licensees lack economic incentives to reach a negotiated agreement with other licensees, IDA has specified the prices, terms and conditions on which the Dominant Licensee must make IRS available to other licensees. In contrast, it is not necessary to require Non-dominant Licensees to provide IRS in order to enable the Dominant Licensee to provide telecommunication services. To the extent a Non-dominant Licensee chooses to provide such service on a wholesale basis, market forces will ensure that it does so on commercially reasonable terms.

#### **14. PROPOSED SECTION 7**

- 14.1 IDA has reviewed the comments on proposed Section 7 and does not propose to make any substantive changes to the provisions governing infrastructure sharing.

##### Review Timeframe

- 14.2 Some commenters asked for the 30-day timeframe contained in the current version of the Code for negotiation and conclusion of a Sharing Agreement (whether voluntary or pursuant to a requirement by IDA that the infrastructure in question must be shared) to be retained. IDA believes that the current 30-day timeframe in the current version of the Code is insufficient for the negotiation and conclusion of a Sharing Agreement, especially if complex contractual and technical issues are involved. IDA therefore proposes to extend to 60-days the timeframe for Licensees to negotiate Sharing Agreements before IDA will accept any request to resolve disputes between Licensees arising from: (a) any Sharing Request (see proposed Sub-section 7.4.2); or (b) Licensees’ failure to voluntarily reach a Sharing Agreement regarding infrastructure that IDA has required to be shared (see proposed Sub-section 7.6.2).

## **15. PROPOSED SECTION 8**

### Alignment with General Competition Law

- 15.1 In view of the Ministry of Trade and Industry's ("MTI") upcoming Competition Bill, which is expected to be enacted by 2005, one commenter suggested that the existing Sections 8-10 of the Code should be phased out in 2005. IDA does not agree. MTI issued a consultation paper on the draft Competition Bill on 12 April 2004 and proposed that the telecommunication sector, together with other identified sectors, be carved out of the Competition Bill for the time being. Therefore, the provisions in the revised proposed Code 2004 on unfair methods of competition, agreements involving Licensees that unreasonably restrict competition and changes in ownership and consolidations will continue to be necessary to ensure effective and fair competition in the telecommunication sector. As noted in MTI's consultation paper, the telecommunication sector carve out will be reviewed in 2006-2007, during the second triennial review of the Code. In the meantime, IDA will co-ordinate with MTI to ensure that the provisions under the Competition Bill and the Code are aligned, as far as practicable, considering the differences in the policy objectives to be achieved under the Code (which addresses a broader range of sectoral policy goals) and the Competition Bill (which focuses exclusively on preventing anti-competitive conduct).

### Guidelines on Unfair Methods of Competition

- 15.2 Many Licensees requested that IDA issues further guidelines on IDA's assessment criteria for anti-competitive behaviour and agreements that IDA deems to unreasonably restrict competition. IDA will consider developing such guidelines and will seek public comments before finalising the same.

### Concept of "Unreasonable" Restriction of Competition

- 15.3 One commenter suggested that IDA replace the concept of "unreasonably restrict competition" with "substantially lessen competition". IDA does not believe this would be advisable. The "substantially restricting competition" standard is a difficult standard to meet. This standard is appropriate in the case of consolidation review. Because many consolidations provide pro-competitive benefits, and because consolidation review of necessity requires IDA to make a predictive judgment as to the proposed transaction's likely competitive effects, IDA should only preclude the consolidation in the event that it determines a proposed consolidation would be likely to "substantially" restrict competition. In contrast, in the case of agreements involving one or more Licensees, IDA believes that the somewhat more flexible "unreasonably restrict competition" standard is

more appropriate. For example, certain agreements – such as price fixing agreements – are so unlikely to provide any competitive benefit that they are deemed “unreasonable” and, are therefore prohibited, even if there is no evidence that they have (or are likely to) substantially reduce competition.

#### Specific Provisions on Unfair Methods of Competition

- 15.4 Some commenters asked for greater clarity regarding the pricing methodology to be used to determine whether prices are predatory. In particular, some commenters suggested that IDA replace the use of “marginal cost” with “average variable” or “long-run incremental cost”. As explained in paragraph 11.12 of this Explanatory Memorandum, IDA proposes to replace the use of “marginal cost” with “average variable cost” (see proposed Sub-section 8.2.1.1). Under this approach, IDA would not find that a Dominant Licensee has engaged in predatory pricing practices if it is found to be selling its service at a price greater than average variable cost. This approach would ensure that IDA’s rules properly distinguish between predatory pricing and pro-competitive price competition, which can benefit end-users.
- 15.5 Some commenters requested that Sub-section 7.2.1.2 of the current Code, which addresses price squeezes, be retained in its entirety. IDA has not made any substantive change in this provision. Rather, for clarity, IDA has split Sub-section 7.2.1.2 of the current Code into proposed Sub-sections 8.2.1.2 and 8.3(b)(i) of the revised proposed Code 2004. This first Sub-section addresses predatory pricing by a Dominant Licensee. The second Sub-section addresses situations in which a Non-dominant Licensee that is affiliated with an entity that has market power benefits from anti-competitive conduct by that entity.
- 15.6 One commenter proposed that IDA retain the prohibition against the receipt of cross-subsidisation and that it should not be limited to cases where predatory pricing is possible. Proposed Sub-section 8.3(b)(ii) is intended to address the situation in which a Non-dominant Licensee receives a cross-subsidy from an affiliate that has market power. In general, a Non-dominant Licensee may price its services at whatever level it wishes. IDA sees no reason to adopt a different standard where the Non-dominant Licensee is being cross-subsidised by an affiliate, unless the price is predatory. Doing so would deprive consumers of the benefits of legitimate price competition.
- 15.7 Pursuant to proposed Sub-section 8.2.2.1, IDA will find that a Dominant Licensee has engaged in discrimination only if it provides its affiliate with access to infrastructure, systems, services, or information, that as a practical matter, are necessary for non-affiliated Licensees to provide

telecommunication services on prices, terms or conditions more favourable than the prices, terms and conditions on which the Dominant Licensee provides the infrastructure, systems and services or information to non-affiliated licensee. Some commenters believe this restriction is too narrow, and that IDA should prohibit a Dominant Licensee from engaging in any type of discrimination. IDA does not agree. Rather, IDA believes that a vertically integrated firm – even one with market power – is entitled to derive some benefits from the efficiencies that result from vertical integration. Therefore, IDA believes that a Dominant Licensee does not always have to treat non-affiliated entities in the identical manner that it treats its affiliates. For example, a Dominant Licensee may share space in its administrative office with an affiliate without having to offer the same opportunity to its non-affiliated competitors. At the same time, however, IDA believes that a Dominant Licensee should not be permitted to discriminate in favour of its affiliates in the provision of those inputs that are necessary for the provision of competing telecommunication services.

- 15.8 IDA initially proposed to delete provisions in the current Code governing false and misleading claims. Several commenters expressed concerns with this proposal. In particular, the comments expressed concern that the Consumer Protection (Fair Trading) Act may not provide adequate protection for businesses against such conduct. IDA has reviewed the comments, but continues to believe that it should no longer seek to resolve disputes regarding false and misleading claims. IDA believes that both businesses and consumers have adequate alternative means to resolve these disputes, such as through consumer and trade associations, standards bodies and legal redress through the Courts. IDA will also consider working with the Advertising Standards of Singapore (“ASAS”) in its review of any complaints against false and misleading claims in the telecommunication sector. In many other jurisdictions (for example, the UK), these issues are addressed by consumer protection agencies, rather than the telecommunication regulatory authority.

#### Other Related Matters

- 15.9 IDA notes that several commenters raised matters relating to the accounting separation framework and a request that the framework be made a requirement under the Code. While IDA will separately examine the specific suggestions made under the accounting separation framework, IDA notes that it is a licence requirement for Licensees to comply with IDA’s accounting separation framework. Therefore, there is no need for the framework to be reiterated in the Code.

## 16. PROPOSED SECTION 9

- 16.1 IDA has reviewed the comments on the proposed Section 9 and does not propose to make any substantive change to the provisions governing agreements that unreasonably restrict competition.
- 16.2 IDA proposes to clarify the definitions used in this proposed Section. In particular, IDA proposes to revise the definition of the term “Competing Licensees” (see proposed Sub-section 9.3) to make clear that it refers to Licensees that provide, or have the potential to provide, competing telecommunication services. IDA also proposes to clarify that Exclusive Dealing agreements constitute a contravention of the Code only when they are likely to unreasonably restrict competition (see proposed Sub-section 9.5.2.3).

## 17. PROPOSED SECTION 10

- 17.1 IDA has incorporated the proposed Section 10 on “Changes In Ownership and Consolidations” in the revised proposed Code 2004 ***for the purposes of completeness only***. As IDA has previously conducted two rounds of public consultations on these issues, IDA ***will not*** accept any further comment on these provisions/issues.

## 18. PROPOSED SECTION 11

### Role of IDA for Conciliation of Dispute

- 18.1 Several commenters asked IDA to provide conciliation on any Code-related matter. The commenters also asked that IDA provide conciliation if either party to a dispute requested it, instead of only providing conciliation where both parties jointly make a request. IDA does not think this would be appropriate. Conciliation (otherwise referred to as mediation) is a process by which parties to a dispute request a third party (the conciliator) to assist them in their attempt to reach a voluntary settlement of their dispute. The conciliator typically has no power to impose a decision on the parties. This is the type of dispute resolution process envisaged under the proposed Sub-section 11.2, where IDA's role, as expressly stated in the proposed Sub-section 11.2.2, is only to assist the parties to reach a mutually acceptable solution. Because of the voluntary nature of the conciliation process, IDA believes that it would only be effective for IDA to provide conciliation if both parties agree that IDA should do so. Moreover, IDA believes that it would not be appropriate to provide conciliation for all Code-related matters because many negotiations address pure commercial matters. Such expansive scope of the regulatory role would not be consistent with IDA's commitment to place primary reliance on private negotiations and industry self-regulation,

where feasible. Moreover, because conciliation is potentially time-consuming, IDA believes this assistance should only be available to resolve the most significant types of disputes. Therefore, IDA proposes to provide conciliation only in connection with the following events: (a) negotiation of a voluntary Individualised Interconnection Agreement; (b) Licensees' implementation of an Interconnection Agreement; and (c) Licensee's infrastructure Sharing Request.

#### Private Rights of Action

- 18.2 Several commenters suggested that IDA introduce private rights of action (i.e., the ability to seek money damages to compensate for an injury resulting from a Licensee's contravention of the Code). IDA notes that MTI's draft Competition Bill proposes to allow parties who have suffered a loss or damage arising from prohibited anti-competitive activities to take civil action to seek compensation. Should this proposition eventually be incorporated into the Competition Act, IDA will review the Code and assess whether such compensation arrangement would be appropriate in the telecommunication sector. Should IDA choose to do so, it will seek public comments before making any changes to the Code.

#### Enforcement Procedures

- 18.3 Some commenters requested that IDA clarify how it intends to exercise its discretion in deciding whether to take enforcement action, particularly the circumstances under which IDA would defer the consideration for a request for enforcement. In addition, comments were received suggesting that when IDA exercises such discretion, it must notify the affected parties and provide reasons for doing so.
- 18.4 Like any enforcement authority, IDA must set priorities. IDA will give priority to those matters that it considers to be the most significant – such as matters that have an impact on a large number of Licensees or end-users, matters that involve serious allegations of misconduct, and matters that raise important policy issues. At the same time, IDA will not expend resources to address enforcement requests where the allegations are plainly without merit, frivolous, or unsubstantiated. IDA has proposed to specify the bases on which it may reject requests for enforcement (see proposed Sub-section 11.4.1.2.)
- 18.5 IDA assures the industry that, in most cases, IDA will act upon enforcement requests by either accepting or rejecting the requests under proposed Sub-section 11.4.1.2(a). However, in certain exceptional cases, IDA must have the ability to defer consideration of enforcement requests. For example, the parties to a dispute that is submitted to IDA for resolution may at the same time also request for enforcement action in relation to the

same dispute. Where this is the case, IDA may resolve the dispute and defer consideration of the enforcement request until the outcome of the dispute resolution proceeding. Where IDA decides to defer consideration for enforcement request, IDA will notify the requesting party and provide reasons for doing so.

### Penalties

- 18.6 Some commenters suggested that IDA increase the current maximum financial penalty of S\$1 million per contravention in order to deter anti-competitive conduct. IDA has seriously considered this suggestion, but proposes to retain the current limit. IDA believes that the imposition of financial penalty is only one avenue to deter anti-competitive conduct. The current S\$1 million maximum is also adopted in other local legislation, such as the MDA Act and Rapid Transit Systems Act. In addition, other tools that are available in cases where Licensees have contravened the Code include the issuance of directions, which may require the Licensee to cease and desist activities found in breach of the Code and to take corrective actions to comply with the Code.

### Reconsideration Process

- 18.7 IDA has considered the commenters' views on the process by which IDA's regulatory decisions can be reviewed and appealed. Some commenters preferred the sequential approach, where parties could only appeal an IDA decision to the Minister after having sought IDA's reconsideration. Others supported the concurrent approach, where parties could either seek IDA's reconsideration or appeal to the Minister. A few commenters suggested that IDA's reconsideration process be removed altogether and that all decisions be directly raised to the Minister or an independent third party.
- 18.8 In line with Singapore's commitment under various free-trade agreements (e.g., USSFTA), and to ensure efficient use of regulatory resources, IDA proposes to adopt the sequential approach. Under this approach, a party that is adversely affected by an IDA decision may, within 14 days, seek reconsideration from IDA. Should a party not be satisfied with IDA's reconsideration decision, only then can it appeal to the Minister under the Telecommunications Act (see proposed Sub-section 11.9.4).
- 18.9 IDA continues to believe that, if a party chooses to seek reconsideration, the party should not be allowed to present any new facts or new arguments if the party: (a) could have presented the facts, or raised the arguments before IDA rendered its initial decision; and (b) cannot demonstrate that it had good cause for failing to do so (see proposed Sub-section 11.9.2). This approach would ensure that parties make every effort to present their best and most complete arguments in their initial

submission to IDA, thereby increasing the likelihood that IDA can resolve the matter in the initial proceeding.

**19. PROPOSED SECTION 12**

- 19.1 IDA proposes to revise the transition provisions regarding the implementation of the requirements applicable to the RIO. Under the revised proposal, following the effective date of Code 2004, SingTel would be required to submit a revised RIO. IDA would then review the proposed RIO and would inform SingTel if further changes are required. Once the revised RIO is allowed to go into effect, it would remain in force for 3 years. This would enable IDA to complete its Second Triennial Review of the Code before SingTel's revised RIO expires.

**20. PROPOSED APPENDIX 1**

Publication of IRS Prices

- 20.1 IDA intends to publish the prices of the IRS and Mandated Wholesale Services after IDA has completed review of the prices, terms and conditions of the RIO. This is consistent with IDA's efforts to attain greater regulatory transparency.

**21. APPENDIX 2 PROPOSED TO BE REMOVED AND REPLACED WITH IRS/MANDATED WHOLESALE SERVICES LIST**

- 21.1 As mentioned in paragraph 13.2 of this Explanatory Memorandum, IDA proposes to remove Appendix 2 from the revised proposed Code 2004. Separately, IDA has issued the "Schedule of Interconnection Related Services and Mandated Wholesale Services that must be offered by a Dominant Licensee under the RIO" together with the revised proposed Code 2004 for public comments. Nonetheless, IDA has reviewed the comments regarding the Appendix 2 issued in the revised proposed Code 2004 released for first round of public consultation. Please refer to paragraph 13.5 of this Explanatory Memorandum for IDA's responses to the comments made.

**22. PROPOSED ADVISORY GUIDELINES FOR DISPUTE RESOLUTION**

- 22.1 In response to comments from some respondents on dispute resolution guidelines, IDA proposes to shorten the dispute resolution process and timeframe by a further 15 days.



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

23. Parties that submit comments regarding the issues identified in this Consultation Document should organise their submissions as follows: (a) cover page; (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 revised proposed Code 2004 on which they are commenting. In any case in which a party chooses to suggest revisions to the text of the revised proposed Code 2004, the party should clearly indicate the specific changes in language that they propose.
24. IDA strongly discourages parties from repeating arguments that have previously been made, and rejected, by IDA. Comments should focus on the specific changes proposed in this round of the consultation.
25. All submissions should reach IDA **before 12 noon on Tuesday, 22 June 2004**. Comments must be submitted in both hard and soft copy (preferably in Microsoft Word format). Parties submitting comments should include their personal/company particulars as well as the correspondence address, contact numbers and email addresses on the cover page of their submissions. All comments should be addressed to:

**Mr. Andrew J. Haire**  
**Senior Director (Policy and Competition Development)**  
**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)

26. 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.

27. IDA will review the comments received and aims to issue the revised Code 2004 by the second half of 2004.

**BRIEF OVERVIEW OF PRELIMINARY STUDY OF  
MARKET DEVELOPMENTS IN THE SINGAPORE  
TELECOMMUNICATION SECTOR**

1. IDA conducted a review of market developments in the Singapore telecommunication sector in mid 2003. The study was to provide IDA with a preliminary assessment of: (a) the nature and extent of competition in selected telecommunication markets; (b) the benefits of competition enjoyed by end-users today; and (c) how the Singapore telecommunication markets compare with telecommunication markets overseas.
2. The objective of the study was to put into perspective, how Singapore has fared after more than 3-4 years of full market liberalisation; help IDA better understand the state of competition in certain market segments; and explore possible policy approaches or refinements to its regulatory framework to enhance competition.
3. As part of the study, IDA also spoke with some industry players for their views on the developments in the Singapore market and obtained market data from them to assist in IDA's study.
4. From the study, IDA believes that Singapore has made good progress in the development of competition in the telecommunication market. Although 3-4 years is a relatively short period of time compared with other jurisdictions such as the European Union ("EU") and the United States ("US"), which liberalised their markets in 1990s and 1980s respectively, both Singapore consumers and businesses have benefited from more than 400 new operators providing a wide range of new and innovative services at competitive prices.
5. IDA assessed the level of competition based on recent market developments by analysing the market structure and degree of concentration, extent of price and service competition, and various market characteristics. IDA believes that there are three main factors that would generally affect the state of competitiveness in the telecommunication sector:
  - (a) Fundamental characteristics of the market. This refers to natural barriers to entry like high sunk costs and economies of scale and scope that render competition difficult to achieve. As a result, the transition from monopoly to effective competition in markets like local call services and local leased circuits ("LLC") is likely to be a difficult one in Singapore;

## Annex 1

- (b) Length of time required for effective competition to take root. For instance, certain market segments such as the retail international telephone services ("ITS") have a large number of service providers. However, more time is needed for consumers to overcome the inertia to switch from the incumbent, and hence for the markets to become fully competitive; and
  - (c) Effectiveness of regulation. While IDA believes that its regulatory regime is largely consistent with international best practices and has fostered the transition from monopoly to competition over the last these 3-4 years, there will be areas where IDA's regulatory measures could be refined to better facilitate competition.
- 6. From IDA's preliminary study, IDA believes that that several markets, such as mobile phone services and wholesale ITS have higher levels of competition. Competition in other markets, such as retail ITS, are developing well with increasing competition. However, markets such as local call services and LLCs have experienced lower levels of competition.
- 7. For the purpose of assessing the relative development of Singapore's telecommunication sector with other countries in the Asia-Pacific region, IDA looked at market developments in countries like Hong Kong, Malaysia, Australia, Japan, South Korea and Taiwan as well as other benchmark jurisdictions such as US and countries in EU.
- 8. In general, IDA believes that Singapore's liberalisation and competition development experience in the telecommunication sector is not significantly different from the experiences of countries that have liberalised their telecommunication markets. For the mobile and ITS markets, Singapore compares very favourably with the other countries in terms of market concentration, prices and breadth of services offered. IDA also believes that its regulatory frameworks are generally in line with international best practices and have struck an appropriate balance between regulatory intervention and reliance on market forces. IDA believes that its efforts to promote facilities-based competition, while at the same time facilitating services-based competition, have fostered the market transition from monopoly to competition.
- 9. The study was a broad overview to aid IDA in its future regulatory policy and framework development work. More study is required for assessing the state of competition in each specific market. Should IDA make any significant change to its policies and frameworks, such as any revision to the Telecom Competition Code, IDA will seek public comments on any proposed revision and explain the rationale behind the proposed change and its decision.