

Comments

On

IDA Consultation Paper

**Second Public Consultation On The First Triennial Review Of
The Code Of Practice For Competition In The Provision Of
Telecommunication Services**

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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

1 Introduction

1.1 Pacific Internet Limited provides Internet access service in Singapore, Hong Kong, the Philippines, Australia, India, Australia, Thailand and Malaysia. In Singapore, the company holds a Services-Based Operator (Individual) Licence granted by IDA.

1.2 Pacific Internet Corporation Private Limited is a wholly owned subsidiary of Pacific Internet Limited and holds a Facilities-Based Operator licence granted by the IDA.

1.3 We welcome the opportunity to provide inputs to the second public consultation on IDA's first triennial review of the Code of Practice for Competition in the provision of telecommunication services (Code) before the Code review is finalised.

2 Summary

2.1 We welcome IDA's adoption of comments from the industry in the first round of consultation in relation to increasing transparency in its decision making process, providing more information on the availability of IRS and shortening the dispute resolution process, among other things. These measures will help to better facilitate the development of competition in the Singapore telecommunication market.

2.2 As mentioned in the first public consultation, PacNet supports 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. In view of the limited size and depth of the Singapore telecommunication market, we believe that services-based competition, on the basis of facilitating competing service providers' access to the infrastructure of network owners on fair, reasonable and effective terms, would be an effective and realistic means of facilitating competition in Singapore and should be encouraged alongside with facilities-based competition.

2.3 We are of the view that the wholesale service scheme as described in the revised proposed Code 2004 will not provide sufficient support to IDA's objective of facilitating facilities-based competition and permitting services-based competition where there are market or technological impediments. Where facilities-based competition is concerned, the ability to lease the Dominant Licensee's services on a wholesale basis in the initial years is critical as it helps competing service providers to build economies of scale and hence reduce the subsequent risk of investing in facilities. Where services-based competition is concerned, the ability to lease the Dominant Licensee's services will help services-based competition to flourish. The proposed wholesale service scheme

gives the Dominant Licensee the discretion to offer a wholesale service. However, Dominant Licensees naturally have little incentive to offer a wholesale service to competing service providers, as evident from the experience in the last three-four years. Also, Dominant Licensees possess significantly stronger bargaining power in any negotiations on the terms of the wholesale service, to the strong disadvantage of competing service providers. In addition, the Mandated Wholesale Service scheme under the RIO is likely to be limited in scope as it is not envisaged that IDA will mandate many wholesale services. We reiterate our request 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.

2.4 We would also like to reiterate our request to IDA to include disputes beyond those relating to interconnection agreements and sharing agreements in the dispute resolution process. In any commercial negotiation with a Dominant Licensee, the competing servicing provider is at a natural disadvantage compared to the Dominant Licensee. Without timely intervention from the regulator, commercial negotiations between competing service providers and the Dominant Licensee generally do not result in satisfactory outcomes for the competing service provider, which hampers the development of competition.

2.5 Our detailed comments on the revised proposed Code 2004 are set out below.

COMMENTS ON SPECIFIC SECTIONS OF THE REVISED PROPOSED CODE 2004

3 Proposed Section 1 – Introduction

3.1 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. Given the lack of economies of scale in a small city-state like Singapore, it is highly unlikely that more than two or three network operators can earn a reasonable return on their investments in network infrastructure. Under these circumstances, services-based competition, rather than facilities-based competition, is more likely to result in better allocation of resources. However, for services-based competition to flourish, service operators need to be able to obtain wholesale services from the Dominant Licensee on reasonable prices and terms and also be able to avail themselves to a dispute resolution process which involves IDA and covers matters beyond interconnection and infrastructure sharing. We are of the view that the revised proposed Code 2004 needs to be strongly reinforced in these two areas. We will elaborate on these points in later sections of our response.

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

We strongly support IDA's proposal to release preliminary decisions on material policy or regulatory issues, where appropriate, for public comments or for comments by affected parties before finalizing its decisions. This will provide the public with an opportunity to present their views before IDA finalises its decisions. We are of the view that a preliminary decision regarding breach of Code requirements is also necessary if a Dominant Licensee is involved. This is because Non-Dominant Licensees often suffer from such great information disadvantage relative to a Dominant Licensee that they may only be able to perceive the complete picture of the enforcement case when a preliminary decision is issued. Therefore, the Non-Dominant licensee should be given an opportunity to provide their views on a preliminary decision prior to the finalisation of the decision.

We welcome IDA's decision to issue guidelines clarifying the procedures and standards that it will use to implement the Code. We would urge the IDA to issue the proposed 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 for public comments as soon as possible.

3.3 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 been reduced significantly in spite of efforts to bring about more competition in the telecommunication market in Singapore.

3.4 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 or suspension on the development of competition in the telecommunications market. The public and/or industry should be given sufficient 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 2.4(a)(i)

Where appropriate, the transferee should be subject to accounting separation regulations.

4.2 Proposed Sub-section 2.6.1 – Ability of Competitors to Replicate Facilities

Information 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 an operation or specific telecommunication service. Where there is no equivalent substitute with similar functionality at similar cost available in the market, the Dominant Licensee should not be allowed to discontinue the service, as End-Users would be left without an alternative.

5.2 Proposed Sub-section 3.2.5 – Prohibition on “Slamming”

We would like to request IDA to consider to exclude the switching of customers from a Licensee to another Licensee arising from corporate structuring from the purview of this provision.

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

6.1 Proposed Sub-section 4.2.2.2 – Duty to Allow Resale of End User Telecommunication Services

In the event that the Licensee and the Dominant Licensee are unable to resolve a dispute arising from the resale of End User Telecommunication Services, the Licensee should be able to refer the dispute to IDA for resolution.

6.2 Proposed Sub-section 4.3 – Wholesale Services

IDA maintains that a Dominant Licensee is not required to offer any telecommunication service on a wholesale basis, unless required by IDA to do so. We strongly urge IDA to review this decision. The availability of wholesale services from the Dominant Licensee would help service providers to gain economies of scale in customer base and hence significantly reduce their risks when they subsequently invest in infrastructure. As such, the availability of wholesale services will to facilitate the entry of more facilities-based operators. In addition, as highlighted earlier in the response, services-based competition

is an equally important means of facilitating competition in the telecommunication market in Singapore and should be encouraged by allowing service providers to lease the infrastructure of the Dominant Licensee on reasonable wholesale terms. We would like to reiterate that 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. For telecommunication markets like Singapore, which are at an early stage of market liberalization, it is necessary to require the Dominant Licensee to offer their telecommunication services on a wholesale basis to facilitate the development of competition.

In view of the above, we strongly urge IDA to mandate all telecommunication services of the Dominant Licensee to be offered on a mandated wholesale service basis. The advantages of adopting a 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.

Separately, in the event that the Licensee and the Dominant Licensee are unable to resolve a dispute arising from the wholesale service, they should be able to refer the dispute to IDA for resolution.

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 have been requested to file a tariff by an End User, another Licensee or IDA, the Dominant Licensee should 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 4.4.3.1 – Review Criteria

We would like to reiterate our request to include “telecommunication markets which have been liberalized” in the “basket” of jurisdictions mentioned in the review criteria.

6.5 Proposed Sub-section 4.5 – Duty to Publish Tariffs

In the absence of the requirement on the Dominant Licensee to publish tariffs on the website of the company, IDA could consider notifying the public via its website that it has approved a tariff so that other Licensees could approach the Dominant Licensee for the approved tariff.

7 Proposed Section 6 – Interconnection with Dominant Licensees

Before IDA removes any IRS or Mandated Wholesale Service from the IRS/Mandated Wholesale Services List, the public's comments should be sought. Competing service providers should have an opportunity to provide their views on the availability of the IRS and Mandated Wholesale Services as they are key inputs to the telecommunication services provided by them.

We strongly support the retaining of co-location space at rooftop and MDF in buildings owned or controlled by the Dominant Licensees. Access to these IRS is critical to the deployment of alternative competitive broadband infrastructure such as wireless broadband network and DSL network based on leasing of copper pairs.

We strongly object to the removal of line sharing as an UNE. The current lack of take up of line-sharing needs to be closely examined to determine if it is due to lack of interest or because there are obstacles preventing the take up of line-sharing. Line-sharing is critical for the provision of DSL access services to residential customers and should be reinstated as a UNE under the RIO.

We would like to request IDA to reconsider the removal of SingTel's obligation to construct new loops. The option of being able to request SingTel to construct new loops would give competing service providers more assurance to invest in the taking up of unbundled local loops and line sharing as any loop availability shortfall could be addressed construction of new loops.

In regard to the specification of the length of reservation period for the co-location space by the Dominant Licensee, we are of the view that the existing length of reservation period of 24 months should be retained. Without a specific length of reservation period clearly stated in the RIO, the Dominant Licensee will be able to reserve the co-location space indefinitely.

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

IDA maintains that IDA assistance can only be sought after 60 days of unsuccessful negotiations between the Licensee Requesting Sharing and the Licensee that controls the infrastructure. Our concern with the current drafting is that it allows the Licensee that controls the infrastructure to not respond at all or engage only in minimal discussions during the 60 days period.

9 Proposed Sub-Section 8

9.1 Proposed Sub-section 8.3(b)(ii)

It appears from the drafting of proposed sub-subsection 8.3(b)(ii) that Non-Dominant licensees can also be deemed to be engaged in predatory pricing. We understand that under the existing Code, only Dominant Licensees can be deemed to be engaged in predatory pricing.

10 Proposed Section 11 – Administrative Procedures

10.1 Proposed Sub-section 11.3(c)

IDA must assist in resolving disputes between a Non-Dominant Licensee and a Dominant Licensee. Without intervention by IDA, the Non-Dominant Licensee will be at a great disadvantage compared to the Dominant Licensee in any commercial negotiation, which is detrimental to the development of competition in the Singapore telecommunication market.