

SINGAPORE TELECOMMUNICATIONS LIMITED

SUBMISSION TO IDA ON SECOND PUBLIC CONSULTATION ON THE FIRST TRIENNIAL REVIEW OF THE CODE OF PRACTICE FOR COMPETITION IN THE PROVISION OF TELECOMMUNICATION SERVICES

1. SUMMARY OF MAJOR POINTS

1.1 In this submission, SingTel provides further comments on this Second Public Consultation on the First Triennial Review of the Code of Practice for Competition in the Provision of Telecommunications Services (**Second Draft Code**). SingTel welcomes this opportunity to provide additional comments on the Second Draft Code.

1.2 SingTel's major comments on the Second Draft Code are as follows:

- to avoid any potential prejudicial effect, public disclosure of enforcement proceedings should only occur after a decision has been made by the IDA;
- including a preliminary decision consultation step in all cases;
- including statements in the code about co-ordination and consistency of decision making with other regulators and codes;
- refining the application of dominance to entities providing certain identified services, in line with the IDA's earlier policy approach;
- including an avenue of appeal to an independent appellate body, similar to the appellate body referred to in the Competition Bill;
- enhancing the dominance criteria to include important factors such as price reductions;
- applying the tariffing obligation to standard services only or, at a minimum, removing the references to tariffing of promotional services;
- retaining the test for the tariffing of voluntary wholesale services on a just and reasonable basis;
- not pre-empting the pricing approach applicable to Mandatory Wholesale Services and so removing the pricing approach from Appendix 1 to the Second Draft Code;

- further reviewing and refining IRS and ESFs by eliminating unnecessary regulation due to lack of use or the availability of competitive alternatives. In particular, co-location at radio tower and tower site, sale of internal wiring, licensing of lead-in ducts, access to building, MDF and cable risers and in-building cabling should be removed from designation;
 - correcting two fundamental flaws in the existing interconnection framework in relation to reciprocal interconnect and interconnect model for internet dial-up traffic;
 - not including a private right of action for damages in the case of breach of the Code provisions; and
 - not publishing IRS and Mandatory Wholesale Services prices. The current practice of publication to FBOs and SBOs serves the necessary purpose.
- 1.3 SingTel also refers the IDA to its previous submission on the First Public Consultation on the First Triennial Review of the Code of Practice for Competition in the Provision of Telecommunication Services (**First Draft Code**).

Transparency of decision making

- 1.4 SingTel welcomes the IDA's initiatives as foreshadowed by the new Code, including the additional guidance on specific issues identified in the Second Draft Code. SingTel would however caution the IDA about its proposal to make public any enforcement action taken pursuant to the Code.
- 1.5 SingTel is not concerned that legitimate enforcement proceedings are made public, subject to suitable protections concerning, for example, confidentiality. However, SingTel is concerned to ensure that enforcement action only becomes public once the complainant, the recipient and the IDA have had an ability to assess the arguments and the IDA has made its decision in relation to the enforcement proceeding and all avenues of appeal have been exhausted. It could be highly prejudicial, where a complaint is made against a person, for that complaint to be made public as soon as it is received by IDA, without the person against whom it is made having had an opportunity to respond. The complaint may be without merit, and should not be made public until there has been an opportunity for reply, the IDA has made its decision and all avenues of appeal have been exhausted. If complaints are made public at an earlier stage, the opportunity arises for competitors with weak cases to abuse the enforcement process by using the pressure of publicity as a tactic. In recent years, it is notable that the media has been used in an improper attempt to influence public opinion and regulatory decision-making.

- 1.6 Therefore, SingTel supports making enforcement proceedings public only once the IDA has decided to uphold the complaint.

Preliminary decisions

- 1.7 SingTel does not agree with the IDA's view that the issuing of preliminary decisions may not be necessary in some cases. Contrary to the IDA's suggestion, the issuing of preliminary decisions does more than simply provide another opportunity for the parties to re-state their cases. It gives the parties the opportunity to provide the IDA with specific comments on the implications of the proposed decision. The IDA may not be fully aware of the implications or the practicality of its proposed decision unless the parties are able to comment on the decision at a preliminary stage.
- 1.8 SingTel requests the IDA to reconsider its position on preliminary decisions and to issue them in all cases.

Consistency with other Codes

- 1.9 SingTel welcomes the IDA's comments regarding co-ordination and consultation with other regulators. SingTel believes, however, that the IDA's comments in paragraph 8.12 of the Consultation Document should be included in section 1.5.9 of the Second Draft Code. In particular, SingTel believes that it is important to ensure that the IDA co-ordinates with the MDA "to minimise any inconsistency in the regulatory framework and deter inappropriate 'forum shopping', and that these words should be included in section 1.5.9. It is important that industry participants are aware of this important policy approach of the IDA in the Second Draft Code.

Dominance Definition

- 1.10 The IDA has not taken this opportunity to further refine the dominance test, to take a market-by-market approach rather than an entity-based approach. SingTel believes that the dominance test in the Second Draft Code provides for unnecessary and over-reaching regulation and will result in market distortion. SingTel respects the IDA's request not to repeat arguments made in the first round of consultations
- 1.11 Nevertheless, SingTel believes that if the "entity" based dominance test is to be used, it could be further refined by applying the test only to those 'dominant entities' when they are providing services where market power exists. SingTel notes that this was the approach taken by the IDA in the first draft of the Code in 2000 and was advocated by its advisers at the time (see further below for further details). Such an approach would refine the over-reaching form of regulation under the Second Draft Code and provide a greater

degree of certainty than the current approach of deregulating markets through the exemption process.

- 1.12 SingTel submits that the Second Draft Code should be refined accordingly.
- 1.13 SingTel also refutes the IDA's suggestion that the LLC market is not competitive, as indicated in Annex 1 to the Consultation Document. As the IDA is aware, SingTel disputes the IDA's decision in this regard and a decision is pending on SingTel's appeal. The IDA should not pre-empt a decision by the inclusion of prejudicial information in Annex 1. SingTel submits that, in the final document that is issued, the IDA should acknowledge that the IDA's view about LLCs is in dispute and pending an appellate decision.

Appeal process

- 1.14 In SingTel's submission on the First Draft Code, SingTel submitted that the appellate process under the Code should be changed to provide for an appeal to an independent third party. SingTel believes that this appellate process could be accommodated by the Act.
- 1.15 SingTel does not otherwise re-iterate its reasons for including an independent appellate process. However, SingTel observes that since submissions on the First Draft Code were finalised, the draft Competition Bill has been released. The draft Competition Bill provides for a Competition Board of Appeals to hear appeals from decisions of the Competition Commission.
- 1.16 Section 27(4) of the Telecommunications Act provides a right of appeal to the Minister against a direction given by the Authority, and states that an appeal must be brought within 14 days of the direction being served. An independent third party review process could be accommodated within the existing legislative framework, if IDA were to refrain from issuing a direction until the independent third party had considered the submission of an aggrieved party. This would allow for an appeal to be brought to the Minister, if necessary, within the prescribed 14 day period. Such an approach would be consistent with a 'de novo' review of the IDA's decision whereby the appellate body would 'sit in the shoes' of the IDA to revisit the IDA's decision.
- 1.17 SingTel considers that the substance, as well as the perception, of an independent appellate process is important to uphold the rigour of the regulatory process under the Second Draft Code and that such a process should be included in the final draft.

Exemption criteria

- 1.18 In subsections 2.6.1 and 2.6.2 of the Second Draft Code, the IDA states the criteria by which a party seeking to demonstrate that a Licensee should or should not be considered dominant.
- 1.19 SingTel has not commented on these subsections previously but believes that there are a number of important competitive elements that have been omitted from the criteria in these sections.
- 1.20 In particular, the important issue of price decreases (or changes) has been omitted from the list in section 2.6.2. SingTel believes that the most important evidence of the competitive conditions of any market is price decreases in the market over time. Price decreases are an important indicator of competition and are the most important element of competition to which consumers in Singapore are responsive. This criteria should be included as the first element in section 2.6.2. Further, evidence of the dynamic characteristics of the market should also be included.
- 1.21 Further, with regard to section 2.6.1(b), SingTel believes that the ability of a new entrant to earn a fair rate of return on its investment in the facilities should be incorporated as the relevant factor in place of the mere fact that entry may be costly. Entry is never cost-less so the cost of entry, of itself, is not as relevant as the ability for a new entrant to obtain a return on its investment.

Wholesale pricing framework

- 1.22 While SingTel believes, as stated in our previous submission, that the wholesale services market could be further liberalised, SingTel supports the amendments and clarifications made by the IDA in relation to the wholesale pricing framework set out in section 4 of the Second Draft Code.
- 1.23 In particular, SingTel believes that there is more than adequate protection of competition through the wholesale pricing framework in section 4 and the provisions in section 8 of the Second Draft Code. The specification of a pricing principle applicable to voluntary wholesale services is unnecessary. SingTel supports the removal of a mandatory “retail minus” pricing approach to voluntary wholesale services. This approach is clearly inappropriate in relation to services which have no “retail” equivalent regime. It would also seriously undermine incentives to provide voluntary wholesale services on a commercially legitimate, alternative pricing basis.

- 1.24 In relation to Mandatory Wholesale Services, SingTel makes the observation that for 18 months after the Code came into effect in 2000/1, there were two mandated wholesale services. These services were phased out as the Singapore telecommunications sector was liberalised. SingTel strongly considers that it would be a backward step for liberalisation in the sector for the IDA to re-regulate any mandatory wholesale services. The regulatory protections provided in the Second Draft Code provide ample scope for the development of competition in relation to wholesale services.
- 1.25 SingTel also does not support the specification of pricing approaches in Appendix 1 of the Second Draft Code. Consistent with SingTel's view of the wholesale market, SingTel does not believe that pricing regulation (particularly cost based pricing) is warranted. SingTel believes that the IDA should encourage commercial offerings of wholesale services. The IDA's pricing approach effectively threatens operators with a particular pricing approach applicable to wholesale services which is unhelpful when those operators are considering formulating commercial offerings for those or other wholesale services.
- 1.26 For the same reasons that the IDA removed the "retail minus" pricing approach to voluntary services, the specification of this approach is also unnecessary. SingTel therefore believes that the IDA's pricing approach of Wholesale Mandated Services should be removed. If the IDA wished to consider a pricing approach at the wholesale level, it should only do so on a case-by-case basis when examining particular services for regulation. To do otherwise dangerously pre-empts regulation in the wholesale sector.

Tariffing of standard services

- 1.27 SingTel believes that the IDA is moving in the right direction by making the disclosure of tariffs for approved telecommunications services conditional upon a request from interested parties, rather than imposing excessive and unnecessary publication requirements. SingTel however comments further in relation the publication requirement below.
- 1.28 SingTel also believes that the maintenance of the tariffing system to all End User telecommunication services is over-reaching and will damage innovation and competition in the telecommunications sector. As stated in our previous submission, SingTel submits that the tariffing requirement should be limited to "standard" telecommunication services only. The tariffing requirement actually dampens competition by delaying or inhibiting new and innovative services investment and developments. Further, tariffing is contrary to the demand characteristics of some markets – for example, business and government customers require packaged or customised telecommunications services and offerings not the standard tariffed service or offer.

- 1.29 SingTel requests the IDA to re-consider its views in this area. Alternatively, SingTel believes that “promotional services” should be removed from section 4.4.1(a). By tariffing promotional services, competitors are more likely to be “competition followers” of SingTel’s promotions rather than “competition setters”. SingTel believes that the IDA could remove regulation in this area without the prospect of competitive damage but with the prospect of enhanced competition. Naturally, the disclosure provisions in section 3.2.2 of the Second Draft Code would continue to apply to promotional services.
- 1.30 Further tariff relaxation could be considered over the life of the Second Draft Code.

Scope of IRS and ESFs

- 1.31 SingTel welcomes the IDA’s review of the list of IRS. SingTel supports the removal of unnecessary regulation of services and facilities which are either not used or which have no legitimate basis for regulation for other reasons (such as the availability of commercial alternatives).
- 1.32 SingTel disagrees with the IDA’s view that co-location at rooftops should be retained. It is not necessary to designate this service as an alternative to undergrounding. The fact that the IDA acknowledges the existence of alternatives is a justification for the removal of regulation. Furthermore, there is much roof space commercially available as alternatives to roof space controlled by telecommunications operators. The deployment of 3 mobile networks with nationwide coverage is proof of availability of alternative roof space. SingTel requests the IDA to reconsider.
- 1.33 There are a number of IRS and ESFs which the IDA has not addressed in its review and SingTel reiterates the following:
- (a) co-location at radio tower and tower site has never been used and should be removed from designation;
 - (b) sale of internal wiring has never been used and should be removed from designation;
 - (c) licensing of lead-in ducts has never been used and there are competitive offerings available. This service should be removed from designation;
 - (d) access to building MDF and cable risers are covered by the COPIF and should be removed from designation;
 - (e) in-building cabling should not be designated as Critical Support Infrastructure because it removes the incentive to build new important infrastructure such as broadband cabling.

- 1.34 SingTel supports a qualitative, speedy review of access to submarine cable capacity. SingTel strongly believes that there are many commercially available alternatives to SingTel's landing stations. Consistent with the IDA's consideration of other services which have been removed from the list, this service should also be removed. As the IDA is also aware, SingTel has made a number of submissions designed to promote and encourage investment in submarine cable systems in Singapore. SingTel has submitted that an FBO should only be permitted to acquire connection services to submarine cable systems in which it has ownership or it has IRU capacity. SingTel will make further submissions on this issue during the IDA's review on submarine cable issues.

Private rights of action

- 1.35 SingTel will not support a private right of action. SingTel has objected to the provision of third party damages in the draft Competition Bill also. However, the way in which the telecommunications industry is regulated actually provides more reasons for not allowing private rights of action for damages following an enforcement action.
- 1.36 The Singapore Government has recognised the continued need for sector-specific regulation in the telecommunications sector. The IDA is responsible for detecting and enforcing this sector specific regulation. Private rights of action will dilute the IDA's autonomy, independence and authority to unilaterally take enforcement action where it sees fit. Third parties will pressure the IDA to take enforcement action not as a means of stopping contravening conduct but as a means of supporting spurious and numerous damages claims. Further, the Singapore regulatory system will move to a highly litigious situation where third parties seek damages from the Courts as a consequence of enforcement proceedings.
- 1.37 SingTel predicts that if a private right of action is permitted, the IDA will be inundated with enforcement action so that private parties can seek compensation from SingTel for their bad business decisions. Private rights of action will be used as a means of transferring money from SingTel to its competitors for no good reason. SingTel does not support this approach and will vigorously oppose the inclusion of this right in the Code (irrespective of whether it is retained in the Competition Bill).
- 1.38 Enforcement proceedings should remain the sole domain of the IDA. The IDA's autonomy and independence should not be compromised by pressures from third parties who seek enforcement for financial gain. The focus on enforcement should be on identifying and stopping contravening conduct which is the subject of a legitimate complaint. Enforcement should not be about the transfer of money from SingTel to its competitors.

Publication of IRS prices

- 1.39 The IDA has indicated in section 20.1 of the Consultation Document that it proposes to publish the prices of the IRS and Mandated Wholesale Services. As the IDA is aware, FBOs and SBOs have access to prices today. SingTel believes the publication of such prices does not enhance transparency. Rather, it provides an opportunity for market arbitrage and cannibalisation where entrants enter the market based on anomalies in IRS and wholesale pricing that may arise from time to time. Such anomalies arise due to the high degree of regulation of the sector and the regulatory lag between the setting of prices and the review of these prices. SingTel does not believe that any change in the current practice, of transparency of IRS prices to legitimate FBOs and SBOs who need to know this information, is warranted. In the alternative, only those essential IRS (such as origination and termination services) should be published.

Internet Interconnect dial-up model

- 1.40 SingTel notes that the IDA has not commented further on the internet interconnect dial-up model nor addressed this issue in the Second Draft Code. As outlined further below, SingTel believes that the IDA should indicate the interconnect model for internet dial-up traffic in the Second Draft Code. As SingTel has previously submitted, SingTel believes that the current interconnect model is flawed and that it should be replaced with a transit model. A transit model is consistent with IDA's previous reasoning and indeed the IDA has acknowledged that a transit charge "could better reflect the actual costs incurred for terminating such calls" and that such a model provided "minimal transition issues". SingTel urges the IDA to reconsider the current model and include the transit model for internet dial-up traffic into the Second Draft Code.

Equivalence of treatment

- 1.41 SingTel also notes that the IDA has not mentioned in the Second Draft Code or the Consultation Document, SingTel's views regarding equivalence of treatment. SingTel submits that the IDA should ensure that Singapore based operators are afforded equal treatment in foreign markets comparable to that which foreign operators are granted in Singapore. Only when such equivalent treatment is provided should licences be granted to foreign operators. SingTel also notes below the views expressed recently by the United States Supreme Court about the ability of foreign applicants obtaining damages in the United States under anti-trust laws in the United States.

2. STATEMENT OF INTEREST

2.1 SingTel is licensed to provide telecommunications services in Singapore. It was corporatised on 1 April 1992. SingTel is committed to the provision of state-of-the-art telecommunications technologies and services in Singapore. SingTel has a comprehensive portfolio of services that includes voice and data services over fixed, wireless and Internet platforms. SingTel services both corporate and residential customers and is committed to bring the best of global communications to its customers in the Asia Pacific and beyond.

2.2 As a leading provider of telecommunications services and a leading proponent of innovation and competition, SingTel has a strong interest in effective pro-competition regulation of Singapore's telecommunications industry.

3. SPECIFIC COMMENTS

3.1 In section 1, SingTel sets out our main comments on the Second Draft Code, in addition to the earlier comments made in our previous submission on the First Draft Code. In this section, SingTel comments on the Second Draft Code on a section-by-section basis having regard to the abovementioned main comments and other more minor comments on the drafting of the Second Draft Code.

Section 1.5.6 – Transparent and Reasoned Decision Making

3.2 In sections 1.4 to 1.6 above, SingTel noted its support for the transparency of enforcement decisions. In order to clarify this aspect, SingTel suggests that the sixth sentence of section 1.5.6 of the Second Draft Code is amended as follows:

“Subject to appropriate restrictions, once IDA has made a final decision in any enforcement action, IDA will generally also make public its decision in any such enforcement action taken pursuant to the Code.”

Section 1.5.6 – Preliminary decision making

3.3 As discussed in sections 1.7 and 1.8 above, SingTel strongly believes that the issue of preliminary decisions has additional important utility in addition to the utility of the IDA obtaining comments during the consultative phase. SingTel suggests that the second sentence of section 1.5.6 of the Second Draft Code is amended as follows:

“IDA will provide an opportunity for public comment in connection with material issues, including on preliminary decisions that IDA proposes to make.”

Section 1.5.9 – Consultation with other regulatory authorities

- 3.4 As specifically foreshadowed in section 1.9 above, SingTel believes that the IDA’s stated intentions in relation to consistency of decision making with other regulators should be included in the Second Draft Code for completeness and additional guidance. SingTel suggests that section 1.5.9 of the Second Draft code is amended as follows:

“IDA, where feasible and appropriate, will consult with other regulatory authorities in Singapore in order to minimise any inconsistency with the regulatory frameworks of other regulatory authorities, to deter inappropriate ‘forum shopping’ and to facilitate the development of a consistent regulatory policy that promotes fair and effective competition and serves the public interest.”

Section 2.2 – Initial classification of Licensees

- 3.5 As stated in sections 1.10 to 1.13 above, SingTel considers that the test in section 2.2.1 of the Second Draft Code regarding dominant licensees provides for unnecessary and over-reaching regulation and will result in market distortion. However, SingTel respects the IDA’s request not to repeat arguments made in the first round of consultations.
- 3.6 As a transition to a market-by-market approach, SingTel believes that the “entity” based dominance test could be further refined by only applying the test to those dominant entities when providing certain services in respect of which market power exists. For example, in the first draft of the Code in 2000, the IDA adopted the following services based approach to regulation:

Section 2.2.3 - Service Specific Determinations

The classification process will be applied on a service-specific basis. As a result, some Licensees may be classified as dominant for certain services and non-dominant for other services. As discussed further in Section 7 of this Code, IDA will apply appropriate requirements to prevent Dominant Licensees from using their economic position in non-competitive markets to harm competition in currently competitive adjacent markets.

“Section 2.3 – Initial Designation of Dominant Licensees

The following Licensees hereby are classified as dominant: Singapore Telecommunications Ltd (but only in the provision of domestic exchange line, xDSL, domestic leased circuits and international leased circuits); Singapore CableVision Ltd (but only in the provision of cable modem service); and I-Net Singapore Pte Ltd (but only in the provision of ATM backbone network service.

3.7 At the time, IDA's advisors described the rationale for the classification of Licensees on a service-by-service basis as:

- “- minimises market distortion;
- targets administrative resources;
- consistent with international “best practices.”

3.8 By specifying the services in which market power exists, the IDA retains the certainty that the IDA appears to have as its objective. Market participants, both dominant and non-dominant Licensees, will also be provided with certainty about the scope of the additional regulation required in respect of those services where a dominant operator exists.

3.9 SingTel believes that this transitional step to limit dominance regulation to certain specific services to be determined by the IDA would also bring Singapore's telecommunications regulation into greater alignment with current world's best regulatory practice.

3.10 There are two ways to implement this suggestion. First, the services could be identified in the Code (or an Annex thereto), with the possibility of further deregulation through the exemption process. Alternatively, the IDA could provide itself with the flexibility to further investigate such services, as the IDA proposed in the first draft of the Code in 2000, and to target regulation to the specific services which a licensee provides, some time in the future. This could be accommodated through the following straightforward amendments to section 2.2(b) of the Second Draft Code:

“The classification will be applied on a “licensed entity” basis. Thus, absent an exemption, a Licensee classified as dominant will be subject to Dominant Licensee obligations for:

- (a) all facilities that it operates, and for all services that it provides, pursuant to its licence; or
- (b) those facilities and services that the IDA may specify. The IDA will seek public comment before specifying which facilities and services a Licensee is to be considered dominant in respect of.”

Section 2.3 – Guidelines for reclassification

- 3.11 In paragraph 8.8 of the IDA’s Consultation Document, the IDA refers to it issuing guidelines on the reclassification of Licensees. However, a reference to these guidelines has not been included in section 2.3 of the Second Draft Code. SingTel supports the provision of additional guidance in this regard and we suggest that the IDA includes a reference to such guidelines in a new section 2.3(e).

Section 2.5 - Exemption for SCV

- 3.12 SingTel does not support the basis for the rejection of SingTel’s submission that SCV should not be exempted from dominant licensee regulation under the Code (2004). In particular, SingTel does not agree with the IDA’s view that cable network unbundling remains impractical and premature. SingTel is unsure whether the IDA is relying more heavily on the impracticality or the premature nature of the cable network unbundling as they are completely separate issues.
- 3.13 So far as practicality is concerned, SingTel has provided extensive information to the IDA which has not been responded to by the IDA in any detail. So far as premature nature of cable network unbundling is concerned, SingTel believes regulation of this service is actually overdue, not premature. SingTel believes that the lack of access to the cable network served to discourage potential new entrants in the Pay TV market. SingTel is prepared to provide IDA with a detailed submission on the practical and feasible means of opening SCV’s cable network for telephony, cable modem and broadcasting
- 3.14 SingTel has clearly expressed its view, supported by the tender process for the second pay television licence, that the current regulation of pay television services in Singapore is inhibiting potential competition. Cable network unbundling is one regulatory initiative which could stimulate competition. The SCV network is clearly a bottleneck, particularly as the lack of unbundling (amongst other things) has had such a dampening effect on the allocation of a second licence and hence further competition. Unbundling will unlock the market in relation to the provision of cable-based products (such as pay television, broadband and cable telephony). SingTel submits that the IDA should re-consider its view and, if necessary, conduct a transparent and detailed public consultation in relation to this issue.

Section 2.6.1 – Ability of Competitors to Replicate Facilities

- 3.15 SingTel supports the provision of additional guidance in section 2.6 about the reclassification process. SingTel believes that the factors in section 2.6.1 should provide

a more balanced picture of the need for continuing regulation in relation to a particular facility.

- 3.16 In particular, section 2.6.1(b) refers to the cost to a new entrant to deploy facilities. However, new entry is never cost-less, so cost itself is not a particularly relevant factor. The IDA has recognised this with respect to the designation of certain infrastructure sharing stating that it would not deem infrastructure CSI solely on the basis that it would reduce costs or increase the speed of deployment. The ability of a new entrant to obtain a fair return on its investment (irrespective of the cost) is a far more important indicator. Thus, even if the cost of entry is high, if the new entrant could obtain a high return in relation to that facility, then regulation should be relaxed. SingTel suggests replacing this paragraph with:

“the ability of a new entrant to obtain a fair rate of return on the deployment of facilities that perform a comparable function”

Section 2.6.2 – Ability of Licensee to Exercise Significant Market Power

- 3.17 SingTel submits that there are a number of important factors that need to be included in section 2.6.2 to, again, provide a more balanced picture of the need for continuing regulation in a particular market.
- 3.18 Most importantly, the criteria do not, at present, refer to price decreases or price changes. Price increases can be a manifestation of the exercise of market power as indicated in section 2.6.2(f). Similarly, price decreases are a strong indicator of a competitive market. Changes in price should be, in SingTel’s view, the most important element considered by the IDA in section 2.6.2. However, there is no reference to price competition in this section at present.
- 3.19 SingTel considers that a new paragraph (a) should be included in section 2.6.2 which provides as follows:

“price competition in the relevant market(s) for the telecommunications services, including historic price trends”

- 3.20 Furthermore, in telecommunications markets, the dynamic characteristics of the market are most important. Dynamic characteristics of the market refer to the growth, innovation and product differentiation in the market. These characteristics are important considerations because they impact on whether market power could be interrupted through dynamic changes in the market. This is a particularly important feature of

telecommunications, where new products and highly differentiated features and pricing plans are used as a competitive differentiator.

- 3.21 SingTel considers that a new paragraph (b) should be included in section 2.6.2 which allows evidence to be provided concerning these dynamic characteristics, as follows:

“the dynamic characteristics of the market, such as market growth, innovation and product differentiation.”

Sections 3.2 and 3.3 – Tariffing

- 3.22 SingTel supports IDA’s proposal to simplify provisions for terminating or suspending End User Service Agreements. However, SingTel submits that the Second Draft Code should extend this principle to the following:

- Section 3.2.4.1(b) still requires licensees to provide prior notice to the End User and an opportunity for the End User to provide security or other assurances. However, this requirement should not apply if the End User has been declared a bankrupt or is a corporation that has entered into compromises or arrangements with creditors, receivers trustees or judicial managers because it is the official assignee or liquidator (not the End User) that will control the End User’s expenditure. The End User may not even have the legal entitlement to make payment for the services being received. This section 3.2.4.1(b) should be deleted and an exemption for bankrupts and insolvent companies be included in section 3.2.4.2.
- Section 3.2.4.2 should also be expanded to include reasonable rights of suspension and termination without prior notice if:
 - there was a failure, interruption or other disruption to services in the licensee’s telecommunications network or systems – due to the impracticality of giving widespread notice in these circumstances;
 - the End User has materially breached the agreement and/or used the services in contravention of the agreement with the relevant licensee – to allow the licensee to minimise its damage;
 - the End User has attempted to induce or reward staff of the licensee in connection with the provision of a service – to allow the licensee to appropriately manage fraud and attempted fraud.

- Section 3.2.4.4 should be amended so that End Users are given more flexibility. This section effectively requires a Licensee to offer the service of another Licensee. This option should be left to the discretion of the End User. SingTel submits that the third sentence of this section should be replaced with the following:

“Where feasible, this may include providing the End User with feasible options or alternatives that may be available from the terminating licensee.”

- In addition, where a terminating licensee is able to offer a feasible option or alternative, there is no necessity to allocate a proportionate share of the advance payment for refund to the End-User since the End-User is able to continue with his service using another option or alternative.
- Section 3.3.7 should allow more flexible notification options and, similar to other amendments made to the Second Draft Code by the IDA regarding publication, only be required if requested by an End User. The need to specify the information in section 3.3.7 in End User Agreements is cumbersome and does not provide for more flexible options as determined by the Licensee or as requested by the End User from time to time. It should be sufficient that:
 - the Licensee specifies the general usage of End User Service Information in End User Agreements; and
 - an End User may withdraw or grant consent in the way or manner as the Licensee specifies from time to time .

Section 4.3 - Wholesale pricing framework

- 3.23 As discussed in sections 1.22 to 1.26 above, SingTel supports the amendments and clarifications made by the IDA in relation to the wholesale pricing framework set out in section 4 of the Second Draft Code. SingTel also believes that there is more than adequate protection of competition through the wholesale pricing framework in section 4 and the provisions in section 8 of the Second Draft Code. The specification of a pricing principle applicable to voluntary wholesale services is not always relevant and is unnecessary. In many cases, it would actually deter product innovation by deterring the introduction of voluntary wholesale products. SingTel therefore supports revised section 4.3.
- 3.24 SingTel does not otherwise repeat its comments about the removal of additional elements of the wholesale services framework which SingTel believes undermine competition.

SingTel does, however, comment further below in relation to Mandated Wholesale Services.

Section 4.4.1(a) – Tariffing of End User Telecommunication Services

- 3.25 SingTel requests the IDA to re-consider its views that all End User telecommunication services should be tariffed. SingTel believes that the application of the tariffing system to all End User telecommunication services is over-reaching and will damage innovation and competition in the telecommunications sector. As stated in our previous submission, SingTel submits that the tariffing requirement should be limited to “standard” telecommunication services only. The tariffing requirement as re-stated in the Second Draft Code actually dampens competition by delaying or inhibiting new and innovative services investment and developments. Further, tariffing is contrary to the demand characteristics of some markets – for example, business and government customers requires packaged or customised telecommunications services and offerings not the standard tariffed service or offer.
- 3.26 At a minimum, SingTel believes that promotional services should be removed from section 4.4.1(a). SingTel submits that the removal of promotional services would fairly reflect that the market in Singapore has become increasingly competitive and that consumers benefit from this competition. There is no competition-related reason why promotional services should be tariffed. Consumers will still be informed of the terms and conditions of the promotion in accordance with section 3.2.2 of the Second Draft Code.
- 3.27 Therefore, SingTel believes that the removal of promotional service tariffing would provide a good regulatory indication to the market and internationally that competition is having beneficial effects and that regulation is moving in step with this competition. Promotional services could be defined as those offerings and pricings available for less than 90 days.

Section 4.4.3.2(c) and (d) – Review of Tariffs

- 3.28 The review procedures for tariffs of a Dominant Licensee should not require an audit or public comments. Market forces should prevail to determine prices. Audits are also irrelevant in assessing the responsiveness of a price to market forces. Further, seeking public comments will only encourage shadow pricing and is inconsistent with the IDA’s position on the publication of tariffs. The IDA should not be encourage conservative price-decision making or mere arbitrage as the principal basis for competition, which these sections encourage.

3.29 SingTel submits that these two paragraphs should be deleted.

Section 4.5 – Duty to publish tariffs

3.30 SingTel welcomes the deregulation of the publication requirements as discussed in section 11.7 of the Consultation Document. The IDA has noted the concerns that excessive or unnecessary publication requirements would stifle the Dominant Licensee's incentive to innovate. Section 4.5 should be amended to reflect the IDA's comments in the Consultation Document, including making the disclosure of tariffs for approved telecommunications services conditional upon a request from interested parties, rather than imposing excessive and unnecessary publication requirements.

3.31 SingTel also submits that the IDA should further deregulate in this area to address the above concerns by, at most, only applying the requirements in section 4.5 to End User tariffs. As specified above, tariffing publication could be limited to standard services only.

3.32 SingTel reiterates its comments in relation to the First Draft Code that section 4.5 should not apply to services provided to business customers due to the competitive nature of this market.

Section 5.4.6 – Duty to Obtain IDA Approval for Suspension or Termination

3.33 SingTel does not agree that unilateral suspension of termination can only occur for repeated failures to make required payments. SingTel is exposed to unfair credit risk as a result of this provision. SingTel seeks an amendment to section 5.4.6(a)(i) that allows SingTel to, at a minimum, suspend new or additional services in the event that the Licensee has defaulted in payment.

Section 5.6.2 – Unilateral Suspension or Termination of Interconnection Agreements

3.34 In addition to the comments in relation to section 5.4.6 above, SingTel does not agree that the IDA's approval should be necessary should a Licensee default in payment or become insolvent. SingTel should be able to preserve its credit arrangements in a reasonable way. Again, at a minimum, SingTel should be entitled to suspend or terminate new and additional services, without the need for the IDA's approval, should the Licensee default in payment or become insolvent.

Section 5.7.3 – Duty to Facilitate Change of Service Providers

- 3.35 Consistent with the IDA’s proposal to remove Line Sharing as an IRS, IDA should remove the words “and to continue to receive service using the same local loop”. As the IDA has stated, it is no longer necessary to regulate the sharing of local loops between service providers and these words should be removed on a consistent basis with the IDA’s decision.

Section 6 - Scope of IRS

- 3.36 As discussed in sections 1.31 to 1.34 above, SingTel welcomes the IDA’s review of the list of IRS and supports the removal of unnecessary regulation of services and facilities which are either not used or which have no legitimate basis for regulation for other reasons (such as the availability of commercial alternatives).

Local loop unbundling and line sharing

- 3.37 SingTel welcomes the removal of the construction of local loops for the reasons previously specified. SingTel also notes OFTA’s recent announcement that it will be progressively rolling back Type II interconnection (which includes local loop unbundling) in Hong Kong. Regulation of Type II interconnection will be withdrawn over a transitional period from buildings connected by at least one alternative access network. This withdrawal of regulation covers 53% of households. Regulation will be continuously rolled back as new entrants build local network which, OFTA predicts, could decrease regulation over time to 20-35% of households¹.
- 3.38 SingTel submits that the IDA should regularly review regulation of specific services just as OFTA has done. SingTel proposed expiry times for IRS in our original submission on the First Draft Code. The benefit of specifying expiry times is that it provides a degree of certainty about the duration of regulation and provides a window for infrastructure build to occur with the benefit of regulation (if required). Alternatively, the IDA should proactively review its regulation of IRS based on market evidence, as OFTA has shown that it does.
- 3.39 In relation to line sharing, SingTel welcomes the removal of regulation of this service. SingTel notes that the IDA’s decision is consistent with the recent decision of the FCC to

¹ See speech by M H Au, Director-General of Telecommunications, Promoting Competition and Encouraging Investment

promote broadband infrastructure and investment by removing regulation of the equivalent service in the United States.²

Other IRS

- 3.40 In relation to other IRS, SingTel disagrees with the IDA's view that co-location at rooftops should be retained. It is not necessary to designate this service as an alternative to undergrounding. The fact that the IDA acknowledges the existence of alternatives is a justification for the removal of regulation. Furthermore, there is much roof space commercially available as alternatives to roof space controlled by telecommunications operators. SingTel requests the IDA to reconsider.
- 3.41 There are a number of IRS and ESFs which the IDA has not addressed in its review and SingTel reiterates the following:
- (a) co-location at radio tower and tower site has never been used and should be removed from designation;
 - (b) sale of internal wiring has never been used and should be removed from designation;
 - (c) licensing of lead-in ducts has never been used and there are competitive offerings available. This service should be removed from designation;
 - (d) access to building MDF and cable risers are covered by the COPIF and should be removed from designation;
 - (e) in-building cabling should not be designated as Critical Support Infrastructure because it removes the incentive to build new important infrastructure such as broadband cabling.
- 3.42 SingTel supports a qualitative, speedy review of access to submarine cable capacity. SingTel strongly believes that there are many commercially available alternatives to SingTel's landing stations. Consistent with the IDA's consideration of other services which have been removed from the list, this service should also be removed. As the IDA is also aware, SingTel has made a number of submissions designed to promote and encourage investment in submarine cable systems in Singapore. SingTel has submitted that an FBO should only be permitted to acquire connection services to submarine cable systems in which it has ownership or it has IRU capacity. SingTel will make further submissions on this issue during the IDA's review on submarine cable issues.

² In the matter of the Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers (CC Docket no. 01-338, Report and Order released on August 21 2003)

Section 6 – Reciprocal interconnection obligation

- 3.43 SingTel does not agree with the IDA's view, as expressed in section 13.6 of the Consultation Document that there is no need for a reciprocal interconnection obligation because non-Dominant Licensees will choose to provide interconnection related services on a wholesale basis. SingTel submits that the IDA has overlooked the fact that interconnection is also required for any-to-any connectivity and that all Licensees control connectivity to their end users and are able to exert influence due to the fact that End Users demand any-to-any connectivity. Other Licensees are therefore dependent on each other Licensee in order to offer any-to-any connectivity to their customers.
- 3.44 As the IDA is aware, SingTel and another Licensee have recently been in a dispute where the other Licensees have refused to provide SingTel with the same level of service that SingTel offered under the RIO. Such refusal illustrates that some non-Dominant Licensees are not willing to commercially negotiate reciprocal, fair and just interconnection arrangements.
- 3.45 As shown by existing practices, a non-Dominant Licensee may refuse to offer access to its network and may refuse to offer such access at reasonable wholesale rates. SingTel submits that the IDA should re-consider its views having regard to the any-to-any connectivity requirement, and that all Licensees control connectivity to its end users.

Section 6 - Mandated Wholesale Services

- 3.46 As discussed in section 1.24 above and in our previous submissions, for 18 months after the Code came into effect in 2000/1, there were two mandated wholesale services. These services were phased out as the Singapore telecommunications sector was liberalised. SingTel strongly considers that it would be a backward step for liberalisation in the sector for the IDA to re-regulate any mandatory wholesale services.
- 3.47 As discussed above, SingTel does not believe that the publication of such prices enhances transparency. Rather, it provides an opportunity for market arbitrage and cannibalisation where entrants enter the market based on anomalies in IRS and wholesale pricing that may arise from time to time. Such anomalies arise due to the high degree of regulation of the sector and the regulatory lag between the setting of prices and the review of these prices. SingTel does not believe that any change in the current practice, of transparency of IRS prices to legitimate FBOs and SBOs who need to know this information, is warranted. In the alternative, only those essential IRS (such as origination and termination services) should be published.

Section 6.3.3.3(g) – Additional Required Terms

- 3.48 SingTel could provide the information specified in this paragraph (eg address of each exchange, geographical boundaries of the area served by each exchange etc). However, as this information may change from time to time, SingTel would only generate this information on receipt of a request from a Requesting Licensee. The generation of this information would also require SingTel to incur costs which would also need to be recovered from the Requesting Licensee. SingTel seeks the inclusion of the words “on the request and at the cost of the Requesting Licensee” at the commencement of this paragraph (g).

Section 6.3.5(b)(ii) – Modification and Duration of RIO Agreement

- 3.49 This paragraph should be clarified to include a situation where the IDA approves SingTel’s modification to the RIO. In this case, all existing agreements based on the RIO with other Requesting Licensees should automatically be changed. SingTel suggests the insertion of a sentence at the end of sub-paragraph (ii) as follows:

“For the sake of clarification, an IDA direction under this sub-paragraph includes an approval by the IDA of a change to the RIO sought by the relevant Dominant Licensee.”

Section 6.4.1.3 – Initiation of Negotiations

- 3.50 A Licensee should only be required to negotiate within the timeframes specified in this clause if the Requesting Licensee has executed the Model Confidentiality Agreement or similar agreement. The words “provided that the Requesting Licensee has executed a confidentiality agreement” should be included at the end of this sub-section.

Section 6.4.2.2(b) – IDA Review

- 3.51 The parties, following the rejection of an Individualised Interconnection Agreement should first be given the opportunity to renegotiate the agreement, particularly given that an individualised agreement is a commercially negotiated agreement in the first place. This opportunity should be incorporated into the drafting of this paragraph.

Section 7.5 – Designation by IDA of Infrastructure that must be Shared

- 3.52 For clarification, the reference to “public interest” in section 7.5(a)(ii) should be tied to the definition of public interest in section 7.3.2 of the Code. SingTel suggests the

inclusion of the words “as defined by sub-section 7.3.2 of this Code” at the end of paragraph (ii).

Section 11.4.1.1(a)(iv)

- 3.53 SingTel supports this section but maintains its view that the section should require demonstration of direct injury suffered. There is much time and expense incurred by Licensees to respond to enforcement requests and this needs to be balanced with the quantum of the injury suffered. SingTel regards this as a simple “show cause” measure.

Section 11 – Private rights of action

- 3.54 SingTel strongly objects to the inclusion of private rights of action for the reasons described in detail in sections 1.35 to 1.38 above. SingTel believes that the draft Competition Bill should not provide for private rights of action. Further, even if the Competition Bill did contain such a right, SingTel submits that it would be antithetical to the role of a sector-specific regulator for a private party to have the ability to pressure and influence the sector-specific regulator for the private party’s own competitive advantage.
- 3.55 SingTel also notes the very recent United States Supreme Court decision in *F Hoffmann-LaRoche Ltd v Emparagan SA* (15 June 2004) which prevented foreign companies from seeking damages for anti-trust breaches in the United States for harm suffered outside the United States. SingTel believes that, should private rights of action be permitted, potential foreign investors or international operators operating in other jurisdictions may seek to rely on the right to damages if a private right of action is allowed. However, in the reverse, Singapore companies would not be entitled to damages in the United States. SingTel believes such an arrangement unfairly targets Singapore companies when United States based companies would not be similarly targeted in their jurisdiction.
- 3.56 SingTel believes that, irrespective of the Competition Bill outcome, the IDA should rule out the prospect of private rights of action under the Second Draft Code.
- 3.57 Further, in respect of public disclosure of enforcement proceedings, we refer to our comments in sections 1.4 to 1.6 above. Any public disclosure should only occur after a decision has been made by the IDA.

Section 11.9.4 – Appellate process

- 3.58 As described in sections 1.14 to 1.17 above, SingTel believes that the Act and the Code could provide for an independent appellate process. Such a process would effectively sit between the IDA review and the Ministerial appeal. As discussed above, section 27(4) of

the Telecommunications Act could accommodate such an appellate process. Such an independent appellate process is used in the Competition Bill and is of wider application to all sectors.

- 3.59 For the reasons submitted above, SingTel submits that an independent appellate review should be incorporated into the Second Draft Code.

Proportionate sanctions

- 3.60 SingTel submits that section 10.2.3 of the existing Code (2000), which states that any sanction imposed by the IDA will be proportionate to the severity of the contravention, is an important statement of principle, and should be retained.

Section 12.4 – Specific Transitional Rules

- 3.61 The Code (2000) gave licensees 180 days to comply with the Code in relation to making changes to contracts. SingTel submits that the same amount of time should be given in relation to all activities that have to be carried out to ensure compliance with the Code (2004) which gives only 90 days.

Appendix 1, clause 3.2

- 3.62 There may be a Licensee who wishes to provide a service to an end user of the Originating Licensee but does not wish to bill the end user directly (such as toll free numbers). Therefore the second sentence of clause 3.2(a) of Appendix 1 should be removed entirely. The Originating Licensee should always be entitled to compensation of the origination charge when it enables its end user to use a service offered by the terminating Licensee or Service Based Licensee connected to the Terminating Licensee's system, irrespective of the relationship between the end user and its service provider.
- 3.63 In relation to clause 3.2(b), termination charges should only be applicable if and only if the terminating licensee operates a terrestrial local access network and the calls terminate to a physical and a specific customer's location and customer terminal equipment. Otherwise, this principle in clause 3.2(b) creates a scenario for regulatory gaming and over-compensation. The IDA should adjust clause 3.2(b) accordingly.
- 3.64 In relation to clause 3.2(c), SingTel submits that the IDA should include a sub-section to recognise the internet dial-up interconnection model. SingTel does not otherwise reiterate its views in support of a transit model, as previously described to the IDA.

Appendix 1, clause 4

- 3.65 As described above, this clause should be removed in its entirety as it pre-empts regulation of wholesale services which is pre-emptive and may actually lead to incorrect pricing of wholesale services. SingTel supports an approach where the IDA would consider the pricing principles for Mandated Wholesale Services on a case by case basis (at the time of mandating the service with a periodic review, if necessary).

Schedule of IRS/MWS, clause 2.3(b)

- 3.66 Consistent with our submission above, SingTel believes that the IDA should include the internet dial-up interconnection model on a fair and non-discriminatory basis.

Schedule of IRS/MWS, clause 2.4

- 3.67 The conditions in paragraph (a) of clause 2.4 are too vague. Colocation is only provided under the Code for certain purposes associated with the provision or acquisition of UNE and Physical Interconnection, as specified in the existing Code. Colocation is not provided under this clause for a Requesting Licensee to provide its own commercial services, for example. SingTel suggests that the IDA specifically refer to the purpose of colocation under this clause.

Schedule of IRS/MWS, clause 3.2

- 3.68 SingTel has designated 6 interconnect gateway switches to interconnect with Requesting Licensees. This method for interconnection has served the industry well and maintained the integrity of SingTel's network. SingTel believes that the reference to interconnection at "local switches" should be removed. The local switches are not designed to screen out unwanted or harmful signalling messages. It is possible that the operation of the local switch will be interrupted if this occurs. Further, SingTel's local switches are not equipped with call detail records to support inter-operator billing. In summary, interconnection at SingTel local switches is not technically feasible and it should be removed from this clause.

Schedule of IRS/MWS, clause 3.2.5

- 3.69 The word "reasonable" should be included before "forecast traffic flow" in this clause.

Schedule of IRS/MWS, clause 3.2.6

- 3.70 There is no UNE, UNS or ESF accessed at a Fibre distribution frame, therefore this reference should be removed from this clause.

Schedule of IRS/MWS, clause 3.2.7

- 3.71 Again, there is no UNE, UNS or ESF that is accessed at a rooftop. Rooftops are also commercially available, as summarised above. SingTel should not be required to share rooftops for the commercial benefit of other Licensees not related in any way to SingTel's obligations under the Code. All references to access to "rooftops" in the Code and this schedule should be removed.

Schedule of IRS/MWS, clause 3.4.2.1.5

- 3.72 This clause should also limit the resources available at a co-location site, such as a minimum of 13 fused Amps and a maximum of 200 fused Amps, as per the current Code.

Schedule of IRS/MWS, clause 3.4.2.3.1

- 3.73 SingTel's frames, cabinets and network interface devices deployed in a building are not used in connection with the provision of an IRS. It is also not a facility that the Requesting Licensee cannot deploy itself at its own cost. This section should be removed.

Schedule of IRS/MWS, clause 3.5.1 and 3.6.1

- 3.74 SingTel disagrees with the inclusion in clause 3.5.1 and 3.6.1 of the words "at commercially reasonable rates". In SingTel's view, where there are alternative services available, then the rates should not be regulated. Competition will result in the most appropriate price outcome. The inclusion of the above words will facilitate free riding and Requesting Licensees using the regulatory process to derive cheaper rates than they otherwise could legitimately derive through a bona fide commercial negotiation.

4. CONCLUSION

SingTel has confined its comments in this submission to those incremental changes to the Second Draft Code which are required to reflect the current state of competition in the Singapore market and to facilitate greater competition. SingTel has not repeated comments from its previous submissions, but has suggested incremental changes which the IDA should consider in this light.