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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**

**Submission by the StarHub Group to the Info-communications  
Development Authority of Singapore**

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## A. EXECUTIVE SUMMARY

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StarHub generally supports the amendments proposed in the 2<sup>nd</sup> Draft of the proposed Code. It is our belief that the proposed amendments, together with the Telecommunications Act, will provide the Singapore telecommunications sector with a framework within which competition can be further developed and enhanced.

StarHub appreciates the fact that IDA has adopted many of the comments provided by the public and industry players. StarHub particularly welcomes IDA's recognition of the need for greater transparency. The latest draft of the proposed Code demonstrates that IDA is willing to create a more transparent decision-making environment, and will provide an opportunity for the public and industry to feedback on key issues.

However, there is scope for further improvements to the proposed Code. These improvements can be summarized as follows :

- *Greater transparency in the tariffs of Dominant Licensees* – StarHub proposes that Dominant Licensees be required to publish their IDA-approved tariffs on their websites. The published information should include: a service description; the tariffs for each service; the applicable discounts; and the key contractual terms and conditions. IDA should also set strict timeframes for the publication of this information.
- *Telecommunications Licensees should come under the jurisdiction of the Competition Act and Competition Commission after a 12-month transition period* - As stated in StarHub's response to MTI's consultation on the Draft Competition Bill, StarHub proposes that the exclusion of the telecommunications sector from the Competition Bill should be removed after a 12-month transitional period. Responsibility for "ex post" regulation should lie with the proposed Competition Commission, while "ex ante" regulation should continue to be administered by IDA. The Code would have to be reviewed to ensure that the transmission is smooth.
- *If the telecommunications sector is still excluded from the Competition Bill, then the Code and the Telecommunications Act should be aligned with the provisions of the Competition Bill* - StarHub considers that there must be greater alignment between the Code, the Telecommunications Act, and the generic competition law, particularly in regard to financial penalties, private rights of enforcement, and appeal rights.

- *Guidelines for the implementation of the Code should be issued at the same time (or as soon as practicable) as the Code* – StarHub welcomes IDA’s proposal to issue guidelines on key areas of the Code. These guidelines will be a critical adjunct to the Code, and will provide greater clarity to the implementation of the Code. As such, it is important that these guidelines are issued either at the same time as, or soon after, the issuance of the Code.
- *Closer regulation required for Wholesale Services* – In regulating Wholesale Services, IDA must take into account both price and non-price issues in evaluating whether the tariffs filed by Dominant Licensees are “just, reasonable and non-discriminatory”.
- *Financial penalties should be aligned with the Competition Bill* – Financial penalties have been used in many regimes as an effective deterrent against anti-competitive behaviour. There is a general industry consensus that the anti-competitive safeguards in the telecommunications sector should be no weaker than those in the rest of the economy. Therefore, the financial penalties stipulated in the Code and the Telecommunications Act should be aligned with those in the Competition Bill. The Code should provide for a review to be conducted upon the enactment of the Competition Act, to ensure proper alignment with the generic competition regime.
- *Timeframes for re-consideration and appeals must be stipulated in the Code* – IDA’s proposed re-consideration and appeals process could be used by parties to impose additional delays on the implementation of key decisions. Therefore IDA must stipulate (and follow) strict timeframes for all steps of the reconsideration process.

## **B. STATEMENT OF INTEREST**

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- 1.1 StarHub Pte Ltd is a Facilities Based Operator (“FBO”) in Singapore, having been awarded a licence to provide public basic telecommunication services (“PBTS”) by the Telecommunications Authority of Singapore (“TAS”) (the predecessor to IDA) on 5 May 1998.
- 1.2 StarHub Mobile Pte Ltd is a wholly-owned subsidiary of StarHub Pte Ltd. StarHub Mobile Pte Ltd was issued a licence to provide public cellular mobile telephone services (“PCMTS”) by the TAS on 5 May 1998. StarHub launched its commercial PBTS and PCMTS services on 1 April 2000.
- 1.3 StarHub acquired CyberWay (now StarHub Internet Pte Ltd) for the provision of Public Internet Access Services in Singapore on 21 January 1999. In July 2002, StarHub completed a merger with Singapore Cable Vision to form StarHub Cable Vision Ltd (“SCV”). SCV holds a FBO licence and offers broadband and cable TV services.
- 1.4 This submission represents the views of the StarHub group of companies, namely, StarHub Pte Ltd, StarHub Mobile Pte Ltd, StarHub Internet Pte Ltd and StarHub Cable Vision Ltd.

## C. DETAILED COMMENTS

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### Section 1 Introduction

StarHub welcomes IDA's decision to increase the transparency in its decision-making, and to seek public comment on key issues and policies. This is a positive step, enabling the industry and the public to work with IDA to promote competition and to develop the telecommunications sector in Singapore.

StarHub agrees that, despite the rapid development of competition in some services, the telecommunications sector (as a whole) is far from competitive and is largely dominated by a single Dominant Licensee. As such, IDA's continued involvement in dispute resolution and the regulation on Dominant Licensees is critical.

#### Section 1.5.1 Telecommunications Industry Body

In order to promote transparency, and to encourage industry participation in policy development, StarHub supports the retention in the existing Code of the reference to the telecommunication industry body. We would note that: (i) there is an important need for close communication between the industry and IDA; and (ii) the working groups referred in IDA's consultation paper do not fulfill this role as they have not met since June 2002. StarHub would oppose deleting the reference to the telecommunication industry body.

#### Section 1.5.6 Transparent and Reasoned Decision-Making

In Section 1.5.6 of the proposed Code, IDA states that it will *"issue guidelines, where appropriate, clarifying the procedures and standards that it will use to implement the Code"*. StarHub submits that it is imperative that such guidelines be issued together with the Code, or at least as soon as practicable. Such guidelines will form an intrinsic part of the Code and will therefore provide Licensees with greater certainty to make business decisions.

StarHub would also strongly recommend that IDA follows the guidelines it sets. We note that in the IDA's draft guidelines on dispute resolution it is stated that: *"IDA may, in its discretion, determine not to apply the Guidelines"*. StarHub would respectfully suggest that if IDA introduces guidelines, and then fails to follow them, this could create significant uncertainty in the sector.

IDA states in its consultation document that it will *"ensure that the rationale behind each decision is clearly explained"*. StarHub would note that the "Regulatory Decisions" published on IDA's website are often very brief, and sometimes fail to set out the behaviour that led to the complaint. StarHub would encourage IDA,

in publishing its decisions, to provide a full and clear statement of the decision and the logic behind it.

StarHub also believes that any guidelines issued by IDA should be circulated for public comment, prior to implementation or change.

## **Section 2                      Classification of Licensees**

### Section 2.5.1                      Request for Exemption

StarHub strongly supports the proposal to issue a set of advisory guidelines for assessing criteria for exemptions and reclassifications of Dominant and Non-dominant Licensees. The lack of clear guidelines on this matter is currently causing uncertainty and could potentially cause disputes to arise. StarHub would encourage IDA to release these guidelines *prior* to granting any further Dominance exemptions.

### Section 2.6.2                      Ability of a Licensee to Exercise Significant Market Power

StarHub notes IDA's position, that it will presume that a party has market power if it has more than a 40 percent market share in any telecommunications market. To prevent any future confusion or argument over this point, StarHub would encourage IDA to amend the Code to include an explicit reference to the 40 percent market share leading to a rebuttable presumption of market power.

## **Section 3                      Duty of Licensees to Their End Users**

### Section 3.2.4                      Restriction on Service Termination or Suspension

StarHub welcomes the fact that IDA has modified this Section to be more supportive of business operations. StarHub would therefore propose that this Section of the Code be retained in its present form.

### Section 3.3.4                      Procedures to Contest Charges

While StarHub agrees with the need for a reasonable timeframe to allow End Users to contest bills/charges, StarHub submits that these timeframes should not impose an unnecessary burden on licensees. As such, StarHub submits that a 6-month timeframe for contesting bills/charges is appropriate. As the number of subscribers grows, it no longer becomes cost-effective for licensees to maintain billing details for such a long period (1 year). Furthermore, the number of End Users that contest such charges falls drastically after the initial 6-month timeframe. The requirement to allow End Users up to 1 year to contest charges therefore imposes an unnecessary cost burden on licensees and will translate to higher costs for End Users.

## **Section 4                      Duty of Dominant Licensees to Provide Telecommunications Services on Just, Reasonable and Non-discriminatory Terms**

### Section 4.2.2.2              Duty to Allow Resale of End User Telecommunications Services

StarHub notes IDA's proposal 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. StarHub considers that, in order for this provision to be effective, it will be necessary for IDA to specify in greater detail the terms on which Licensees can access the Dominant Licensee's services. For example, if Licensee's are only able to access the Dominant Licensee's services at "tariffed rates", while the Dominant Licensee's end-users were able to access those services at discounted rates, this would be discriminatory. At a minimum, StarHub proposes that the Code should specify that Licensees should be able 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 (including any term or volume discounts that the Dominant Licensee makes available to end-users).

### Section 4.3                      Wholesale Services

StarHub notes that IDA is no longer proposing to set the pricing methodology for voluntary wholesale services on a "retail-minus" basis. In addition, it is also stated that IDA is proposing to require voluntary wholesale services to be offered on "just, reasonable and non-discriminatory prices".

StarHub submits that these requirements are insufficient to prevent anti-competitive behaviour by Dominant Licensees. The proposed obligations essentially mean that there is effectively little or no change in the proposed wholesale regulations from those in the present Code. As IDA is aware, Dominant Licensees can have little incentive to develop wholesale services, especially if they are essential inputs to retail services. This is evident from the opposition leveled by SingTel against IDA's decision to set Local Leased Circuits as a Mandated Wholesale Service. StarHub therefore believes that there is a need for more rigorous regulation on wholesale services.

Further, StarHub submits that it is insufficient to merely ensure, in assessing tariffs, that the Dominant Licensee does not engage in predatory pricing or price squeeze. It is necessary for IDA to focus on both price and non-price issues, as non-price issues also afford the possibility of anti-competitive behaviour. Clearly, even if prices are relatively low, issues such as onerous terms and



conditions, long provisioning timeframes, and low quality of service will still affect the ability of Non-dominant Licensees to use the wholesale services.

#### Section 4.5                      Duty to Publish Tariffs

StarHub welcomes IDA's proposal to require greater transparency of pricing information. However, StarHub disagrees with IDA that excessive or unnecessary publication requirements could stifle the Dominant Licensees' incentive to innovate. StarHub's expectation is that pricing information to be published would include: a service description, the IDA-approved tariffs, the discount structure, and the key terms and conditions of the service. StarHub is not suggesting that commercially sensitive information (such as costing data) be included. The additional step of making this information easily available will facilitate competition. It will also prevent Dominant Licensees from deterring competition by delay or denying the provision of information.

In addition, making this information easily available supports IDA's requirement for Dominant Licensees to allow resale of their retail services. Many of the services provided by the Dominant Licensee will be offered only to the corporate market. As IDA is aware, marketing to the corporate market is rarely carried out in the mass media, but rather is undertaken by account managers. Therefore, information on such services, or even their existence, will be difficult to come by. Without such information, it would be very difficult for a licensee to request the ability to resell these services.

StarHub therefore believes that IDA must set out:

- The timeframes within which Dominant Operators must publish their tariffs (and StarHub suggests that the tariffs should be published immediately upon the service being offered by the Dominant Operator);
- An obligation on Dominant Licensees to provide a service description of the service (so that it possible for parties to understand what the disclosure relates to);
- An obligation on Dominant Licensees to publish the IDA-approved tariffs, the discount structure, and the key terms and conditions of the service; and
- The method by which the tariff is made public (and it is StarHub's view that requiring disclosure by way of the Dominant Operators' website would be most effective).

## **Section 5                      Required Cooperation Amongst Licensees to Promote Competition**

### Section 5.3                      Duty to Submit All Interconnection Agreements

StarHub notes that in Section 1.9 (j) of the proposed Code, IDA has widened the definition of Interconnection Agreements to encompass both direct and indirect interconnection agreements. In line with the new definition, licensees will be required to submit both direct and indirect interconnection agreement to IDA.

StarHub submits that there should not be a requirement for indirect interconnection agreements to be submitted to IDA. There is already a requirement for all licensees to ensure that interconnection agreements meet the minimum standards stipulated in the Code. Furthermore, IDA has stated that it will not resolve disputes arising from the interconnection agreements between non-Dominant Licensees. Also, the decision to interconnect indirectly is a commercial one, and is largely tailored to meet the needs of the individual operators. Therefore unless there is a compelling reason why IDA requires such interconnect agreements to be submitted to the IDA, this obligation should be removed.

For avoidance of doubt, StarHub supports the requirement that all interconnection agreements involving a Dominant Licensee be submitted to and published by IDA.

## **Section 6                      Interconnection with Dominant Licensees**

### Section 6.3.2(c)                      Services that must be offered under RIO

This section sets out the factors IDA must take into account in considering whether a Dominant Licensee will be required to offer a Mandated Wholesale Service. StarHub would suggest including an additional factor: *“the service would promote competition in the provision of telecommunications services in Singapore”*, as this should be a critical consideration in IDA’s decision to require a Mandated Wholesale Service.

### Section 6.3.4                      Pricing of Interconnection Related Services and Mandated Wholesale Services

StarHub supports IDA’s proposal to publish IRS and Mandated Wholesale Services in a separate list, if this will give greater flexibility in amending the list from time-to-time. However, StarHub would strongly urge IDA to show caution in deleting services from this list. The fact that there could be little or no perceived interest in a service should not be taken as proof that there is no demand for that service. Rather, the lack of perceived interest should suggest to

IDA that there are factors (financial or contractual) which make the service unattractive to Licensees, and which need to be corrected in order to highlight the “true” level of demand for the service.

In regard to IDA’s proposed deletions to the list of IRS, StarHub would make the following comments:

- In regard to co-location at satellite earth stations, this service should be retained. As IDA will be aware, StarHub has a number of concerns with the terms and conditions on which it is able to obtain co-location at SingTel's satellite earth stations. We believe that, if these factors were corrected, there would be considerably more demand for co-location in satellite earth stations, and a greater level of competition in this market segment.
- For line sharing, this service should also be retained. Line sharing is clearly a necessary alternative for new entrants to access the local loop network - particularly for broadband services, given that there is no appropriate wholesale ADSL product.

StarHub notes that IDA has decided not to set out the basis on which charges for Mandated Wholesale Charges will be set. Instead, IDA has set out several pricing methodologies that could be used “*where appropriate*”. The IDA’s decisions on charging methodologies will be of general interest to the sector. We therefore believe that the Code should be amended to reflect that IDA will, when determining the charging methodology for Mandated Wholesale Services, seek public comment on the appropriate methodology to adopt.

## **Section 8                      Unfair Methods of Competition**

StarHub supports IDA’s statement that it will coordinate with MTI to ensure that the provisions of the Code and the Competition Bill are aligned. We believe that such an alignment is necessary to prevent distortions developing between different sectors of the economy. However, StarHub is concerned that major differences still exist between the Competition Bill and the regulatory safeguards in the telecommunications regime (in the Telecommunications Act and the Code). The major points of difference include: (i) the level of penalties for anti-competitive behaviour; (ii) the appeals process to be followed; and (iii) the ability for parties to initiate private actions. StarHub believes that greater focus must be placed on aligning the regulatory safeguards in the telecommunications regime with the Competition Bill.

#### Section 8.2.1.2 Price Squeezes

Given concerns raised about “Price Squeezes” during the Local Leased Circuit dispute, StarHub would strongly encourage IDA to release guidelines setting out how it intends to regulate this area.

#### Section 8.4 Unfair Methods of Competition

IDA has retained the deletion of Sections prohibiting licensees from making false and misleading claims. IDA’s stated reason for doing so is 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.”*

However, StarHub submits that the alternative means set out above do not adequately address anti-competitive issues. StarHub specifically believes that IDA should continue to regulate and resolve disputes in situations where one licensee makes false and misleading claims about another licensee. Clearly, in this situation, while it is still possible to resolve this dispute via the Courts, IDA must understand that the considerations of the Courts will be different. The Courts are likely to evaluate whether there is any case for “defamation or slander” or base decisions on legal considerations, but not assess the anti-competitive effects of such actions pending the enactment of the Competition Act.

Deleting the provisions of the Code governing false and misleading claims would be contrary to international best practice (looking particularly at Australia, Hongkong, and New Zealand); will undermine existing incentives for accuracy in advertising; and would result in less reliable advertising in telecommunications. StarHub therefore believes that the existing provisions of Section 8.4 should be retained.

#### Section 8.4.1 General Prohibition

This Section sets out a general prohibition on unfair methods of competition, and should be amended to state that *“A Licensee must not engage in unfair methods of competition ..... The following sub-sections provide some examples of practices that would constitute unfair methods of competition but are not an exhaustive list of unfair methods of competition under this section 8.4.1:”*

StarHub proposes that the above words should be included to ensure that Section 8.4.1 is not narrowly read to be confined to the specific prohibited practices listed under Section 8.4.2. Experience in relation to Section 7.4 of the existing Code has shown that such a misconstruction may occur, hence this clarification would be both helpful and necessary.

## **Section 11                      Administrative Procedures**

### Private Rights of Action

StarHub notes IDA's intention to review the Code, at some (undefined) point in the future, to assess whether the Code needs to be aligned with the Competition Bill in regard to private rights of action. StarHub submits that both the Telecommunications Act and the Code will have to be reviewed in order to ensure alignment with the Competition Act (when enacted). Given that the Competition Bill already contains private rights of action, and that MTI has not indicated that it will be removing these rights, StarHub believes that the Code should be amended as part of this review to trigger a review upon the enactment of the Competition Act for private rights of action and other remedies imposed under the generic competition law. This would trigger a fast review in order to ensure that the telecommunications sector would be subject to a consistent competition regime.

### Section 11.3                      Dispute Resolution Procedure

StarHub is concerned by the proposal to limit IDA's role in dispute resolution to solely Interconnection Agreements and Sharing Agreements. StarHub would highlight that there are many other agreements in the market today (such as the SMS inter-operability agreement, and the mobile number portability agreement) that have strong regulatory implications. If IDA limits its role of just Interconnection Agreements and Sharing Agreements, IDA's ability to respond to regulatory issues will be greatly limited.

In addition, StarHub has entered into agreements (which may or may not be considered Interconnection or Sharing Agreements) which specify that IDA can act to resolve disputes. The proposed amendment to Section 11.3 therefore leaves open the role of IDA under these agreements

StarHub therefore considers that the existing wording of the Code, which refers to the IDA's ability to intervene in broader disputes, should be retained.

### Section 11.4.3                      Interim Direction to Cease and Decease & Section 11.4.4                      Enforcement Measures

StarHub notes IDA's objective of relying primarily on private negotiations between licensees in market which are competitive. However, in order to ensure that all parties have the incentive to negotiate and resolve issues in a timely manner, StarHub believes that IDA should include, in the Code, an intention that IDA will backdate Directions, penalties, and the like to either the date of commencement of negotiations, or the date of the breach. This will then provide an incentive for all parties to negotiate in good faith rather than simply cause delay. It will also support IDA's objective of allowing private negotiations.

#### Section 11.4.4.4 Financial Penalties

StarHub would urge IDA to take steps to procure that the penalties under the Code are aligned with those proposed under the Competition Bill. Fines under the Code are capped at S\$1 million, while parties breaching the Competition Bill can be fined up to 10% of their annual revenues. This would require a review of the Telecommunications Act, but this is a move that would be necessary in light of the latest developments in the generic competition law. StarHub fails to understand why anti-competitive behaviour in the telecommunications sector should attract lower fines than the equivalent behaviour in other sectors of the economy. There is general support in the telecom sector for increasing the level of penalties under the Code, and StarHub believes that this change should be made as part of the current review.

#### Section 11.9 Review of IDA's Decision

StarHub considers that, in order for the regulatory regime to work effectively, the process for reviewing an IDA decision must be straight-forward and carried out in a timely manner. However, in its consultation paper, IDA has proposed a “sequential” review process, in which an aggrieved party must first take a matter to IDA for “reconsideration”, before appealing the decision to Minister.

StarHub is concerned that the sequential reconsideration will:

- Add little (if any) value to the process if the same persons prepare the original decision and carry out the reconsideration; and
- Generate additional delays to the (already lengthy) appeals process.

If the sequential process is to be adopted it will be necessary to:

- (i) Establish a quasi-independent reviews board within the IDA, to carry out the reconsideration (StarHub would highlight the role of the Telecommunications Appeals Board in Hongkong in this regard); and
- (ii) Set (and codify) firm timeframes to be followed for the entire reconsideration process (including Ministerial consideration).

If these measures cannot be adopted, StarHub submits that IDA should allow a parallel process so that parties can either choose to appeal directly to the Minister or first seek a re-consideration of IDA's decision. In regard to the delays currently occurring in the appeals process, StarHub would note the comment by an Optus spokesman earlier this year that “delay is clearly in the interest of the incumbent”.

## D. CONCLUSION

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StarHub believes that the current review of the Code represents a valuable opportunity to align the telecommunications regulatory regime with developments in the sector, and to correct observed flaws in the Code. In addition, it affords an opportunity for IDA to take into account, and act upon, industry consensus in regard to the anti-competitive safeguards needed to protect and promote competition in the telecommunications sector. There is a clear consensus that the anti-competitive safeguards in the telecommunications sector should be no weaker than those in the rest of the economy. We would therefore strongly encourage IDA to take the necessary steps to procure the amendment of the Telecommunications Act and the Code (particularly in regard to penalties, private rights of action, and appeals processes) to bring them into line with the generic competition law.

Given the early stage of telecommunications deregulation in Singapore, StarHub would also encourage IDA not to dismantle important elements of the regulatory regime (such as the list of IRS and the prohibition on false and misleading claims). The existence of these safeguards should not be seen as a sign of “weakness” in the telecommunications regulatory regime, but should rather be seen as a sign of IDA’s determination to ensure competitive outcomes.

StarHub welcomes the opportunity to comment on this Review, and is willing to provide any elaboration or clarification of this submission that IDA requires.