

PUBLIC CONSULTATION DOCUMENT

**REPUBLIC OF SINGAPORE
INFO-COMMUNICATIONS DEVELOPMENT AUTHORITY
OF SINGAPORE**

**PROPOSED ADVISORY GUIDELINES GOVERNING (I) PETITIONS FOR
RECLASSIFICATION AND REQUESTS FOR EXEMPTION AND (II) ABUSE
OF DOMINANT POSITION, UNFAIR METHODS OF COMPETITION AND
AGREEMENTS INVOLVING LICENSEES THAT UNREASONABLY RESTRICT
COMPETITION
UNDER THE CODE OF PRACTICE FOR COMPETITION IN THE PROVISION
OF TELECOMMUNICATION SERVICES 2005**

11 MARCH 2005

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1. INTRODUCTION

- 1.1 On 18 February 2005, IDA issued the Code of Practice for Competition in the Provision of Telecommunication Services 2005 (“Code”). Prior to this, IDA conducted two rounds of public consultation in October 2003 and May 2004 respectively on the then proposed Code.
- 1.2 In the second public consultation held on 11 May 2004, IDA proposed to issue Advisory Guidelines on (i) IDA’s assessment framework for Dominant and Non-dominant Licensee reclassification, and Dominant Licensees seeking exemptions from special obligations imposed under the Code; and (ii) IDA’s assessment criteria for anti-competitive behaviour and agreements that IDA deems to unreasonably restrict competition. This was in response to commenters’ call for greater transparency in IDA’s review criteria in these areas during the first public consultation. Commenters also expressed the view that better clarity in IDA’s decision-making process would provide greater business certainty.
- 1.3 In accordance with IDA’s commitment to seek public comments on the Advisory Guidelines prior to their finalisation, IDA is releasing, for public consultation, the proposed Advisory Guidelines governing (i) “Petitions for Reclassification and Requests for Exemption” under Sub-sections 2.3 and 2.5 of the Code; and (ii) “Abuse of Dominant Position, Unfair Methods of Competition and Agreements involving Licensees that Unreasonably Restrict Competition” under Sections 8 and 9 of the Code.

2. ISSUANCE OF PROPOSED ADVISORY GUIDELINES

Reclassifications and Exemptions

- 2.1 Section 2 of the Code contains procedures for the classification and re-classification of Licensees as Dominant or Non-dominant. The Code adopts a “licensed entity” approach. Under this approach, if a Licensee is classified as

Dominant, it must comply with the special requirements applicable to Dominant Licensees when providing any telecommunication service under its licence. IDA will classify a Licensee as Dominant if it either: (i) exercises operational control over facilities used for the provision of telecommunication services that are sufficiently costly or difficult to replicate in that market; or (ii) has the ability to exercise Significant Market Power in any market in which it provides telecommunication services under its licence.

- 2.2 Section 2 also contains a procedure by which a Dominant Licensee may obtain exemption from the application of the requirements applicable to Dominant Licensees to any service if the Dominant Licensee can demonstrate that competition has developed to the point that such regulation is no longer necessary. The Dominant Licensee bears the burden of satisfying IDA that the requirements for an exemption are met.
- 2.3 The proposed Advisory Guidelines provide further explanation on the procedures by which a Licensee or any other interested party may petition IDA to reclassify a Licensee as well as the procedures by which a Dominant Licensee may obtain exemption from the application of the requirements applicable to Dominant Licensees. The proposed Advisory Guidelines also provide the analytical framework that IDA will adopt in considering a petition for reclassification or a request for exemption.

Anti-Competitive Conduct and Agreements that Unreasonably Restrict Competition

- 2.4 Section 8 contains provisions, based on general competition law principles that prohibit Licensees from engaging unilaterally in certain anti-competitive acts or unfair methods of competition. A Dominant Licensee may not engage in conduct that constitutes an abuse of its dominant position in the Singapore telecommunication market. An abuse of dominant position occurs when the Dominant Licensee engages in conduct that unreasonably restricts, or is likely to unreasonably restrict, competition.
- 2.5 Section 8 also addresses conduct by a Licensee that is affiliated with an entity that has Significant Market Power, such as a Licensee whose parent has a monopoly in its home market.
- 2.6 Section 8 prohibits certain “unfair methods of competition” by which a Licensee attempts to obtain a competitive advantage for itself or an Affiliate for reasons

unrelated to the availability, price or quality of the service that the Licensee or its Affiliate offers.

- 2.7 Section 8 contains non-exhaustive lists of practices that would constitute abuse of dominant position and unfair methods of competition.
- 2.8 Section 9 contains provisions, based on general competition law principles that prohibit Licensees from entering into anti-competitive agreements. Agreements may be express, implied or tacit. However, an arrangement between a Licensee and an Affiliate over which it can exercise Effective Control (i.e., the ability to cause the Affiliate to take, or prevent the Affiliate from taking, a decision regarding the management and major operating decisions of the Licensee) does not constitute an agreement for the purposes of this Section.
- 2.9 Section 9 contains a general prohibition against Licensees entering into agreements with Competing Licensees (horizontal agreements) that unreasonably restrict, or are likely to unreasonably restrict, competition in any telecommunication market in Singapore. Section 9 then specifies certain types of agreements that are conclusively presumed to be anti-competitive, and are therefore prohibited, even in the absence of evidence of anti-competitive effect.
- 2.10 Section 9 also addresses agreements between a Licensee and another entity that is not a direct competitor, such as a supplier or reseller (non-horizontal agreements). Such agreements typically raise fewer competitive concerns than horizontal agreements. Such agreements are only impermissible if they restrict, or are likely to restrict, competition.
- 2.11 The proposed Advisory Guidelines provide further explanation on the standards IDA will use to assess abuse of dominant position, unfair methods of competition and agreements that unreasonably restrict competition.

3. PROCEDURES AND TIMEFRAME FOR SUBMITTING COMMENTS

- 3.1 IDA invites interested parties to submit comments on the two sets of proposed Advisory Guidelines. Commenters should clearly identify the provisions of the specific proposed Advisory Guideline on which they are commenting. Where appropriate, respondents are encouraged to suggest changes to the proposed Advisory Guidelines. The proposals should be accompanied by reasons for the changes.

- 3.2 All comments should be submitted in writing, in both hard and soft copy (preferably in Microsoft Word format). The submissions must reach IDA by **12 noon, 6 May 2005**. Commenters are required to include their personal/company particulars as well as the correspondence address in their submissions to this Consultation Document. Submissions should be addressed to:

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- 3.3 IDA reserves the right to make public all or parts of any written submissions made in response to this Consultation Document and to disclose the identity of the source. Any part of the submission, which is considered commercially confidential, should be clearly marked and placed as a separate annex. IDA will take this into consideration when disclosing the information submitted.