

INFO-COMMUNICATIONS DEVELOPMENT AUTHORITY OF SINGAPORE

TELECOMMUNICATIONS ACT

(CHAPTER 323)

**ADVISORY GUIDELINES GOVERNING PETITIONS FOR RECLASSIFICATION
AND REQUESTS FOR EXEMPTION UNDER SUB-SECTIONS 2.3 AND 2.5 OF
THE CODE OF PRACTICE FOR COMPETITION IN THE PROVISION OF
TELECOMMUNICATION SERVICES 2005**

DATE OF ISSUE: 30 SEPTEMBER 2005

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30 SEPTEMBER 2005

The Info-communications Development Authority of Singapore (“IDA”), pursuant to Section 28 of the Telecommunications Act (Cap. 323) (“Act”), hereby issues these Advisory Guidelines Governing Petitions for Reclassification and Requests for Exemption under Sub-sections 2.3 and 2.5 of the Code of Practice for Competition in the Provision of Telecommunication Services 2005 (“Code”).

1. INTRODUCTION

1.1 Obligations of Dominant Licensees

- (a) The Code provides that IDA will classify a Licensee as Dominant if the Licensee meets certain specified criteria. All other Licensees are presumed to be Non-dominant.
- (b) A Dominant Licensee must comply with special provisions governing Dominant Licensees, which are set forth in the Code. These provisions address:
 - (i) the duty to provide telecommunication services on just, reasonable and non-discriminatory terms, to file and publish tariffs, and to provide services consistent with effective tariffs (Sub-sections 4.2, 4.3, 4.4, 4.5 and 4.6 of the Code);
 - (ii) the duty to provide Interconnection Related Services and Mandated Wholesale Services to other Licensees (Sub-sections 6.2, 6.3 and 6.4 of the Code); and
 - (iii) prohibitions against abuse of dominant position (Sub-section 8.2 of the Code).
- (c) The Code uses a “licensed entity” approach. Under this approach, once a Licensee has been classified as Dominant, it must comply with all of the special provisions applicable to Dominant Licensees when it provides any telecommunication service, or when it operates any telecommunication facility, pursuant to its licence.

1.2 Exemption and Reclassification

- (a) As competition develops, it may no longer be necessary to apply each of the special provisions applicable to Dominant Licensees to each telecommunication service provided, and each telecommunication facility operated, by a Dominant Licensee. Sub-section 2.5 of the Code therefore provides a procedure by which a Dominant Licensee may request IDA to exempt it from any of the special provisions applicable to Dominant Licensees. This procedure is referred to as a request for exemption (“Request”).

- (b) Similarly, as market conditions change, it may be appropriate to reclassify a Dominant Licensee as Non-dominant or, conversely, a Non-dominant Licensee as Dominant. Sub-section 2.3 of the Code therefore provides a procedure by which a Licensee or any other interested party may petition IDA to reclassify a Licensee. This procedure is referred to as a petition for reclassification (“Petition”). IDA may also initiate a proceeding on its own accord to reclassify a Licensee.

1.3 Guidelines are Advisory

These Guidelines set out the framework that IDA will use to assess Petitions and Requests. The provisions in these Guidelines are advisory. They do not impose any binding legal obligation on IDA. Rather, these Guidelines are intended to describe the procedures that IDA will generally use, and the standards that IDA will generally apply, in implementing the reclassification and exemption provisions contained in Section 2 of the Code. In addition, these Guidelines describe the procedures that Licensees and other parties should follow in order to comply with the requirements contained in the Code. While these Guidelines are not legally binding, IDA will not depart from them without good cause. In order to provide a single document addressing all issues relevant to the implementation of these provisions, certain sections of the Code have been summarised or repeated in these Guidelines. In the event of any conflict between the Code and these Guidelines, the provisions of the Code will prevail.

1.4 Rules of Construction

Except where a term is specifically defined in these Guidelines, capitalised terms used in these Guidelines have the same meaning as in the Code.

1.5 Relevance of Practices by Competition Authorities and Other Sectoral Regulators

To the extent that IDA undertakes any assessment of market competitiveness, IDA will give appropriate consideration to practices of competition authorities or other sectoral regulators in other jurisdictions, as well as practices of the Competition Commission of Singapore. However, IDA may adopt standards or methodologies that are designed to address the unique conditions of Singapore's telecommunication market.

1.6 Effective Date of these Guidelines

These Guidelines will take effect on the date of issue of these Guidelines.

1.7 Short Title

These Guidelines may be referred to as the "Reclassification and Exemption Guidelines".

2. EXEMPTION FROM APPLICATION OF SPECIAL DOMINANT LICENSEE PROVISIONS

2.1 Requests for Exemption

- (a) A Dominant Licensee that seeks an exemption from any of the special provisions applicable to Dominant Licensees must submit a Request that demonstrates that the continued application of the provision to the facility or service for which the exemption is sought is not necessary to protect End Users or to promote or preserve effective competition amongst Licensees. The Request must include verifiable data.
- (b) The Request must identify:
 - (i) any specific services and/or facilities for which the Dominant Licensee seeks an exemption; and
 - (ii) any specific provisions of the Code from which the Dominant Licensee seeks an exemption.
- (c) Where the Dominant Licensee seeks to be exempted from the application of a particular provision to more than one service or facility, the Dominant Licensee must satisfy the standard specified in Paragraph 2.1(a) of these Guidelines for each service or facility.

- (d) Where multiple services are reasonable substitutes, or are subject to similar competitive conditions, the Dominant Licensee may group the services together and make a single showing as to why the application of a special provision in relation to these services is no longer necessary. The Dominant Licensee may refer to these services as forming a specific market. The Dominant Licensee should use the market definition framework specified in Paragraph 2.4.1 of these Guidelines. While IDA will consider the Dominant Licensee's market definition, it is not binding on IDA. If IDA does not agree with the Dominant Licensee's market definition, IDA may:
 - (i) consider separately each service for which the Dominant Licensee has sought an exemption and make an individual determination for each service;
 - (ii) group services together that IDA determines are reasonable substitutes, or are subject to similar competitive conditions, and make a determination for each service group; or
 - (iii) consider some services separately and group some services together.

- (e) Similarly, where multiple facilities perform the same function, or are subject to similar competitive conditions, the Dominant Licensee may group the facilities together and make a single showing as to why the application of a special provision in relation to these facilities is no longer necessary. While IDA will consider the Dominant Licensee's grouping, it is not binding on IDA. If IDA does not agree with the Dominant Licensee's grouping, IDA may:
 - (i) consider separately each facility for which the Dominant Licensee has sought an exemption and make an individual determination for each facility;
 - (ii) group facilities together that IDA determines perform the same functions, or are subject to similar competitive conditions, and make a determination for each facilities group; or
 - (iii) consider some facilities separately and group some facilities together.

- (f) The Dominant Licensee may submit a narrow Request. For example, the Dominant Licensee may request exemption from the

application of a special provision applicable to a specific telecommunication service or facility when the Dominant Licensee provides that service or facility to a particular class of Customers or in a particular geographical area. If the Dominant Licensee chooses to make such a narrow Request, it must clearly identify the scope of the Request, and the basis on which the Dominant Licensee believes that application of the provision to that Customer class, or geographical area, is no longer necessary.

2.2 Evidence to be Considered

A Dominant Licensee must provide evidence necessary to assess its Request.

2.2.1 Ability of Competitors to Replicate Facilities (For Requests for Exemption Applicable to Facilities)

Certain provisions of the Code are applicable to *facilities* controlled by a Dominant Licensee, such as the provisions that require a Dominant Licensee to provide physical interconnection and access to unbundled network elements and essential support facilities.

- (a) Where a Dominant Licensee seeks to be exempted from the application of any special provision to a specific telecommunication facility, or group of telecommunication facilities, the Dominant Licensee should submit:
 - (i) a description of the facility for which the exemption is sought; and
 - (ii) verifiable data regarding the ability of an efficient competitor to replicate those facilities.
- (b) The description of the facility should include its:
 - (i) function;
 - (ii) physical characteristics; and
 - (iii) Customer base (*i.e.*, number and types of Customers).
- (c) Verifiable data regarding the ability of an efficient competitor to replicate a Licensee's facilities should include:

- (i) the facilities that the Licensee has deployed to provide telecommunication services in Singapore;
- (ii) the cost to a new entrant to deploy facilities that perform a comparable function;
- (iii) the extent to which such facilities are commercially available;
- (iv) the extent to which there are technical, economic or regulatory obstacles to the competitive deployment of such facilities; and
- (v) the extent to which competitive deployment of these facilities has occurred and is likely to occur within the foreseeable future.

2.2.2 Ability of a Licensee to Exercise Significant Market Power (For Requests for Exemption Applicable to Services)

Certain provisions of the Code are applicable to the provision of *services* by a Dominant Licensee, such as the duty to provide telecommunication services on just, reasonable and non-discriminatory terms.

- (a) Where a Dominant Licensee seeks to be exempted from the application of any special provision to a specific telecommunication service, or group of telecommunication services, the Dominant Licensee should submit:
 - (i) a description of the service for which the exemption is sought; and
 - (ii) verifiable data regarding the Dominant Licensee's ability to exercise Significant Market Power in the market for that service.
- (b) The description of the service should include its:
 - (i) function;
 - (ii) physical characteristics; and
 - (iii) Customer base (*i.e.*, number and types of Customers).

- (c) Verifiable data regarding a Licensee's ability to exercise Significant Market Power in the market for a telecommunication service should include:
- (i) the relevant market(s) for the telecommunication service that the Licensee provides (including the basis for the market definition using the market definition framework described in Paragraph 2.4.1 of these Guidelines);
 - (ii) the participants in the market;
 - (iii) the Licensee's market share (including the basis for the estimate);
 - (iv) the level of concentration in the market (including the estimated market shares of other major market participants);
 - (v) the barriers to entry into the market;
 - (vi) the likelihood of timely and sufficient increases in output (either through new entry or the provision of additional services by current market participants) in response to a significant and non-transitory price increase by the Licensee;
 - (vii) the likelihood that End Users would respond to a significant and non-transitory price increase by the Licensee by switching to a competing service provider;
 - (viii) evidence of actual market competition including evidence of:
 - (1) actual successful new entry;
 - (2) changes in market share over time;
 - (3) Customer switching;
 - (4) price changes (based on actual prices, where different from list prices);
 - (5) profitability (including an explanation of any instance in which returns are substantially above competitive levels);
 - (6) new service introduction; and

- (7) non-price competition (such as service quality competition); and
 - (ix) any other relevant factors that could enhance or diminish the Licensee's ability to act anti-competitively.
- (d) The Dominant Licensee must provide any relevant information that it:
 - (i) has in its possession; or
 - (ii) can obtain or develop with reasonable diligence.
- (e) Where the Dominant Licensee is unable to provide complete information, it should make a good faith estimate. In such cases, the Dominant Licensee should explain the basis on which it is providing any estimate. If the Dominant Licensee cannot provide a good faith estimate, it should explain why, despite reasonable diligence, it is not able to do so.
- (f) The Dominant Licensee may request confidential treatment for information that it provides to support its Request in accordance with Sub-section 11.7 of the Code.

2.3 Analytical Framework for Assessing Requests for Exemption Applicable to Facilities

- (a) In considering a request to exempt a Dominant Licensee from any special provision applicable to a telecommunication facility, IDA will seek to apply economic analysis to determine whether, as a result of changing market conditions, application of the provision to the facility continues to be necessary. In general, IDA will grant an exemption if it finds that the facilities for which the Dominant Licensee seeks an exemption are not sufficiently costly or difficult to replicate such that requiring new entrants to do so would create a significant barrier to rapid and successful entry into the telecommunication market in Singapore by an efficient competitor.
- (b) In order to determine whether a Licensee's facility is sufficiently costly or difficult to replicate such that requiring new entrants to do so would create a significant barrier to rapid and successful entry into the telecommunication market in Singapore by an efficient competitor, IDA will consider whether an efficient competitor could:

- (i) construct a facility that performs a function comparable to the Licensee's facility at a cost that would enable it to provide a competitive telecommunication service; or
 - (ii) obtain such a facility from third parties on prices, terms and conditions that would enable it to provide a competitive telecommunication service.
- (c) IDA will conclude that a facility performs a function comparable to the Licensee's facility if a Customer would view the facility as a reasonable substitute for the Licensee's facility, given both price and non-price factors.
- (d) IDA will find evidence regarding actual competitive entry, by operators that deployed their own facilities, or obtained them from third parties, to be especially persuasive.

2.4 Analytical Framework for Assessing Requests for Exemption Applicable to Services

- (a) In considering a request to exempt a Dominant Licensee from any special provision applicable to a telecommunication service, IDA will seek to apply economic analysis to determine whether, as a result of changing market conditions, continued application of the special provision applicable to Dominant Licensees to the service continues to be necessary.
- (b) In general, IDA will grant an exemption if it finds that the Dominant Licensee lacks Significant Market Power in the market or markets in which it provides the service for which it seeks the exemption. "Significant Market Power" means the ability to unilaterally restrict output, raise prices, reduce quality or otherwise act, to a significant extent, independently of competitive market forces.
- (c) In cases in which a market is increasingly competitive, but not yet effectively competitive, IDA may grant an exemption from some special provisions, while retaining those that remain necessary.
- (d) In any case in which the evidence demonstrates that, even under the narrowest market definition, a Licensee lacks Significant Market Power, IDA may forgo conducting the full market definition exercise.

2.4.1 Market Definition

In order to determine if a Licensee has Significant Market Power in the market for a service, IDA will first determine the relevant service, geographic and functional markets in which the Licensee provides the service.

- (a) IDA will define the relevant service market based on a “demand substitutability” approach. Under this approach, the relevant market for a telecommunication service provided by a Licensee consists of both the specific telecommunication service for which the Licensee seeks an exemption and any additional telecommunication service that buyers regard as interchangeable with, or a substitute for, the Licensee’s telecommunication service.
 - (i) To do so, IDA may apply the so-called “SSNIP Test”. If IDA does so, it will consider whether a hypothetical monopoly operator controlling the entire supply of the service provided by the Licensee would be constrained from profitably imposing a small but significant, non-transitory increase in price (“SSNIP”) above the competitive level (typically 5 to 10 percent for a year or more) because a sufficient number of Customers of the service would switch to another service, thereby rendering the price increase unprofitable. If the hypothetical monopolist would be constrained, IDA will include the second service in the market definition. IDA will repeat this process until no additional services could constrain the profitability of a price increase by the hypothetical monopolist. While the SSNIP Test can provide a useful analytic framework, due to the absence of market data regarding consumer conduct in response to a price increase by a hypothetical monopolist, it is not always possible to define a market in strict accordance with this approach.
 - (ii) IDA may also consider whether other telecommunication product offerings, offered by the Licensee and/or other Licensees, can be considered a reasonable substitute for the Licensee’s service because they have a similar function, characteristic or customer base as the Licensee’s telecommunication product offering. IDA will conclude that a service performs the same (or comparable) function as the Licensee’s service, regardless of the technology used, if a Customer would view the service as a reasonable substitute

for the Licensee's service, given both price and non-price factors.

- (iii) IDA will find evidence that Customers have actually found other telecommunication services to be reasonable substitutes to be especially persuasive.
 - (iv) IDA will not consider "supply substitutability" as part of the market definition process. Supply substitutability refers to the ability of entities that are not currently in the market to enter the market relatively quickly and costlessly. IDA will consider this issue as part of its assessment of the factors that would increase or decrease the ability of the Licensee to act anti-competitively.
 - (v) IDA recognises that certain markets are characterised by "one-way substitutability". One-way substitutability exists where product B is a demand substitute for product A, but product A is not a demand substitute for product B. In conducting a competitive analysis, IDA will begin the market definition process with the service market which is the focus of its review. Thus, in an assessment of the competitiveness of product A, IDA would begin with product A and may conclude that product B is a demand substitute and hence in the same market as product A. By contrast, in an assessment of the competitiveness of product B, IDA would begin with product B and may conclude that product A is not a demand substitute for and hence not in the same market as product B.
- (b) IDA will next identify the relevant geographic markets. The relevant geographic market for a telecommunication service provided by a Licensee consists of the geographical area in which the Licensee (and other Licensees that provide substitutable telecommunication services) provides telecommunication services and any additional geographical locations from which Customers would obtain those services if prices charged by the Licensee increased by a small but significant, non-transitory amount. In practice, IDA will consider those areas that have similar competitive conditions to be in the same geographic market.
- (c) IDA will also determine whether a service is provided at the wholesale level (*i.e.*, whether the product is provided to other Licensees), the retail level (*i.e.*, whether the product is provided to

End Users), or both levels. To do so, IDA will consider whether the industry practice is to offer the service to retail and wholesale customers on different prices, terms and conditions. For example, the wholesale service may be offered at a different price, or have different functionality, than the retail service. In those cases in which there are material differences between the wholesale and retail services that preclude the two services from being demand substitutes, IDA will consider the wholesale and retail services to be in separate markets. By contrast, in many cases, Licensees will offer similar functionality, at similar prices, to both wholesale and retail customers. In such cases, IDA will consider the wholesale and retail services to be in the same service market.

- (d) Where appropriate, IDA may also define a market based on a “temporal dimension”. For example, IDA may distinguish between peak and off-peak services.
- (e) In some cases, IDA may conclude that, even though different product offerings may theoretically be in different markets, it is appropriate to assess the need for continued regulation of these product offerings together because they are subject to similar market conditions.

2.4.2 Assessing Competitiveness

After IDA has defined the relevant market, it will conduct a competitiveness assessment.

- (a) IDA will first determine the market participants and their market shares.
 - (i) Where reliable information is available, IDA will seek to use the unit of measurement that best reflects the characteristics of the market. In doing so, IDA may look at revenues, unit sales, capacity or other relevant units of measurement.
 - (ii) In markets for “upstream” services that could be used as an input for other services, and in which self-supply accounts for a significant portion of the market, capacity may be a more reliable measure than revenue because it is often not feasible to assign revenues to self-supplied inputs. Indeed, excluding such self-provided capacity could result in significantly under-estimating a Licensee’s competitive significance. For example, if a firm supplies 90 percent of

the total capacity in a market to a single Customer, the firm would almost certainly have market power. If the Customer subsequently acquired the firm, it would still be appropriate to consider the firm's provision of capacity to its new affiliate in assessing the firm's market power. Similarly, if a firm provides capacity to itself as a result of vertical integration, rather than as a result of an acquisition, such capacity should be considered in assessing the firm's market power. However, where a Licensee provides one service to itself, and a different service to other Customers, IDA will not consider the two services to be in the same market.

- (iii) Where a Licensee has Effective Control over an Affiliate, or where an Affiliate has Effective Control over the Licensee, and the two entities provide a service in the same market, IDA may aggregate the market shares of the two entities.
 - (iv) Although market share provides a useful starting point for the assessment of market power, IDA will not impose an absolute maximum market share above which it will conclusively presume that a Licensee has Significant Market Power. Nonetheless, all things being equal, a larger market share indicates a greater potential ability to act anti-competitively and, consequently, a greater need to retain regulation. Therefore, IDA will make an initial presumption that a Dominant Licensee that has a market share in excess of 40 percent has Significant Market Power. However, this presumption may be over-come by evidence that demonstrates that the Licensee, in fact, is subject to effective competition. For example, a Licensee with a market share in excess of 40 percent may be subject to effective competition because there are extremely low barriers to entry or because the Licensee provides service to a small number of "strong" Customers that have significant countervailing market power.
- (b) IDA will next consider other factors that would increase or decrease the ability of the Licensee to act anti-competitively. In carrying out this assessment, IDA will consider all relevant factors.
- (i) IDA will be more likely to find that a Licensee is able to act anti-competitively if:
 - (1) the market is concentrated (*i.e.*, there are only a small number of other participants in the market besides the

Licensee and/or other market participants are significantly smaller than the Licensee);

- (2) there are impediments to other Licensees entering, or expanding their participation in, the market, including:
- technical barriers (such as the need to use specialised or proprietary technology);
 - access barriers (such as the need to obtain access to another entity's infrastructure in order to provide service, and any difficulty in doing so, or significant economies of scale and scope);
 - financial barriers (such as the need to incur significant "sunk costs" in order to enter the market);
 - commercial barriers (such as high advertising, and retail distribution costs); and
 - regulatory barriers (such as limitations on the number of licences or on the entities eligible to provide a service).

A further discussion of IDA's assessment of barriers to entry is set forth in Appendix 1;

- (3) there are no close substitutes (based on price, quality or functionality) for the Licensee's service; and
- (4) the Licensee has the ability to leverage market power that it possesses in a vertically integrated market.
- (ii) IDA will be less likely to find that a Licensee is able to act anti-competitively if:
- (1) Licensees that currently provide other telecommunication services can shift resources, relatively quickly and costlessly, in order to provide a service that is a substitute for the Licensee's service ("supply substitutability");

- (2) “strong” Customers can exercise countervailing buying power; or
 - (3) the Licensee’s Customers can easily switch service providers.
- (c) Finally, IDA will consider evidence of actual market performance. This includes evidence regarding:
 - (i) actual market competition, including evidence of:
 - (1) actual successful new entry;
 - (2) changes in market share over time;
 - (3) Customer switching;
 - (4) price changes (based on actual prices, where different from list prices);
 - (5) profitability;
 - (6) new service introduction; and
 - (7) non-price competition (such as service quality competition); and
 - (ii) any prior anti-competitive conduct by the Licensee.

2.5 Other Considerations

IDA will also consider whether granting the exemption will have any pro-competitive benefits, such as allowing the Dominant Licensee to introduce new services or respond more quickly to changing market conditions.

2.6 Special Considerations Applicable to Requests for Exemption From Provisions Prohibiting Abuse of Dominant Position

IDA will give special scrutiny to Requests by a Dominant Licensee that seek exemption from the prohibitions, contained in Section 8.2 of the Code, against abusing its dominant position. These prohibitions, which are derived from the general principles of competition law as developed in other jurisdictions, generally do not impose *ex ante* obligations on a Dominant Licensee. Rather, they provide an effective means of

enforcement in the event a Dominant Licensee abuses its dominant position. Thus, to the extent that a Dominant Licensee retains, or has any reasonable possibility of regaining, Significant Market Power in a market, or using its dominant position in another market to adversely affect competition in the relevant market, IDA generally will conclude that retaining these prohibitions is necessary to deter anti-competitive conduct and, where necessary, to take appropriate enforcement action.

2.7 Implementation of Exemption Decisions

IDA will take effective action to ensure that its regulatory regime reflects market developments over time.

2.7.1 Duration of Exemptions

Any exemption will become effective upon publication in the *Government Gazette*. Unless IDA specifies otherwise, any exemption will remain in effect permanently. However, IDA may subsequently determine that re-imposition of a regulatory requirement is necessary to protect End Users or promote effective competition among Licensees. IDA will provide an opportunity for comment prior to re-imposing any regulatory requirement.

2.7.2 Application of Exemption to New Services

- (a) Unless IDA specifies otherwise, if IDA grants an exemption to services provided in a specific market, the exemption will apply to any other telecommunication service or product offering that the Dominant Licensee introduces during or following the proceeding (“New Service”) that is in the market in which IDA has granted an exemption, provided that the Dominant Licensee:
 - (i) provides a written notification to IDA requesting that the exemption applies to the New Service; and
 - (ii) obtains IDA’s prior written confirmation that the New Service is within the market in which IDA has granted an exemption.
- (b) The Dominant Licensee’s written notification should contain a detailed description of each New Service, including the factors specified in Paragraph 2.2.2(b) of these Guidelines. The Dominant Licensee should also describe the basis on which it contends that the New Service falls within the market in which IDA has granted an exemption. To do so, the Dominant Licensee should use the

“demand substitutability” approach specified in Paragraph 2.4.1(a) of these Guidelines.

- (c) IDA will make the determination as to whether the New Service falls within the market in which IDA has granted the exemption. IDA will find that a New Service is within the same market if the evidence demonstrates that it is a reasonable substitute for the services for which IDA has previously granted an exemption.

2.7.3 Application of New Dominant Licensee Obligations to Exempted Services

IDA may amend the Code to introduce new requirements applicable to Dominant Licensees. If IDA does so, it will determine whether to exempt the Dominant Licensee from the application of those requirements in any market in which IDA previously has granted an exemption.

2.7.4 Review of Exemption Denial

In those cases in which IDA denies a Request, IDA may:

- (a) specify actions that the Dominant Licensee should take in order to obtain an exemption; and/or
- (b) commit to undertake a further market review, at a specified date in the future, to determine whether, as a result of changed market condition, an exemption should be granted.

3. RECLASSIFICATION OF LICENSEES

3.1 Reclassification Standard

- (a) Pursuant to Sub-sections 2.2.1(a) and 2.2.1(b) of the Code, a Licensee will be classified as Dominant if:
 - (i) it is licensed to operate facilities used for the provision of telecommunication services in Singapore that are sufficiently costly or difficult to replicate such that requiring new entrants to do so would create a significant barrier to rapid and successful entry into the telecommunication market in Singapore by an efficient competitor; or

- (ii) it has the ability to exercise Significant Market Power in any market in which it provides telecommunication services pursuant to its licence.
- (b) Sub-section 2.3(a) of the Code further provides that:
 - (i) IDA will reclassify a Dominant Licensee as Non-dominant if IDA concludes, based on relevant evidence, that the Licensee no longer satisfies the conditions for dominant classification specified in Sub-sections 2.2.1(a) and 2.2.1(b) of the Code; and
 - (ii) IDA will reclassify a Non-dominant Licensee as Dominant if IDA concludes, based on relevant evidence, that the Licensee satisfies the conditions for dominant classification specified in either Sub-section 2.2.1(a) or 2.2.1(b) of the Code.
- (c) Thus, in order for IDA to reclassify a Dominant Licensee as Non-dominant, IDA must conclude that the Dominant Licensee does not satisfy Sub-section 2.2.1(a) and Sub-section 2.2.1(b) of the Code.
- (d) By contrast, in order for IDA to reclassify a Non-dominant Licensee as Dominant, IDA must conclude that the Licensee satisfies at least one of the two criteria. If IDA reclassifies a Non-dominant Licensee as Dominant, IDA may grant any appropriate Exemption, pursuant to the procedures and standards contained in Paragraph 2 of these Guidelines.

3.2 Evidence to be Considered

- (a) A Dominant Licensee seeking to demonstrate that it should be reclassified as Non-dominant must make two separate showings:
 - (i) first, the Dominant Licensee must demonstrate that the facilities that it uses for the provision of telecommunication services in Singapore are not sufficiently costly or difficult to replicate that requiring new entrants to do so would create a significant barrier to rapid and successful entry into the telecommunication market in Singapore by an efficient competitor. To do so, for each facility (or category of facilities), the Dominant Licensee should submit the verifiable data specified in Paragraph 2.2.1(c) of these Guidelines; and

- (ii) second, the Dominant Licensee also must demonstrate that it does not have Significant Market Power in any market in which it provides telecommunication services pursuant to its licence. To do so, for each market in which it participates, the Dominant Licensee should submit the verifiable data specified in Paragraph 2.2.2(c) of these Guidelines.
- (b) A party seeking to demonstrate that a Non-dominant Licensee should be reclassified as Dominant on the grounds that the Licensee is licensed to operate facilities used for the provision of telecommunication services in Singapore that are sufficiently costly or difficult to replicate such that requiring new entrants to do so would create a significant barrier to rapid and successful entry into the telecommunication market in Singapore by an efficient competitor, must provide verifiable data. Specifically, for each facility that the party believes meets this standard, the party should submit the verifiable data specified in Paragraph 2.2.1(c) of these Guidelines.
- (c) A party seeking to demonstrate that a Non-dominant Licensee should be reclassified as Dominant, on the grounds that the Licensee has Significant Market Power in at least one market in which it provides telecommunication service pursuant to its licence, must provide verifiable data. Specifically, for each market in which the party believes that the Non-dominant Licensee has Significant Market Power, the party should submit the verifiable data specified in Paragraph 2.2.2(c) of these Guidelines.
- (d) A party seeking reclassification of a Licensee on any basis must provide any relevant information that is in its possession or that, with reasonable effort, it can obtain or develop. Where the party is unable to provide complete information, it should make a good faith estimate. In such cases, the party should explain the basis on which it is providing any estimate. If the party cannot provide a good faith estimate, it should explain why, despite reasonable diligence, it is not able to do so.
- (e) A party may request confidential treatment for information that it provides to support its Petition in accordance with Sub-section 11.7 of the Code.

3.3 Analytical Framework

- (a) In considering whether or not a Licensee is licensed to operate facilities used for the provision of telecommunication services in Singapore that are sufficiently costly or difficult to replicate such that requiring new entrants to do so would create a significant barrier to rapid and successful entry into the telecommunication market in Singapore by an efficient competitor, IDA will use the methodology specified in Paragraphs 2.3(b) - 2.3(d) of these Guidelines.
- (b) In considering whether or not a Licensee has Significant Market Power in any market, IDA will use the methodology specified in Paragraphs 2.4.1 and 2.4.2 of these Guidelines.

4. IDA'S PROCEDURES FOR REVIEW OF REQUESTS FOR EXEMPTION AND PETITIONS FOR RECLASSIFICATION

4.1 IDA's Preliminary Review

- (a) Once IDA receives a Request, or a Petition, IDA generally will conduct a preliminary review. This process typically will take no more than 15 days.
 - (i) If IDA concludes that the party that filed the Request or Petition has not provided all required information, IDA will not accept it for filing. In that case, IDA will notify the party filing the Request or Petition as to the additional information that it must provide before IDA will accept it for filing.
 - (ii) If IDA concludes that the Request or Petition plainly lacks merit, IDA will summarily reject it.
- (b) If IDA concludes that the party that filed the Request or Petition has provided all required information, and that the Request or Petition does not plainly lack merit, IDA will notify the party filing the Request or Petition of the date on which IDA accepts the filing.
- (c) At the time it conducts its preliminary review, IDA will consider any request for confidential treatment made by the party filing the Request or Petition. The party must comply with the procedures specified in Sub-section 11.7 of the Code.

4.2 Procedures to Obtain Additional Information

Once IDA has accepted the filing, it will seek to obtain additional information.

- (a) IDA generally will request public comment. Except to the extent that it includes confidential information, IDA will make public the Request or Petition and any comments filed.
- (b) IDA may request the party filing the Request or Petition to provide additional information at any time during the review process.
- (c) IDA may request other Licensees, suppliers or End Users to provide inputs, statistical data or any other relevant information that are necessary for IDA's assessment.
- (d) Where appropriate, IDA may also conduct confidential interviews with Licensees, suppliers and End Users.

4.3 Preliminary Decision

Prior to issuing its final decision, IDA will generally issue a draft or preliminary decision, and seek further public comments regarding all aspects of its preliminary decision.

4.4 Timing

IDA will seek to issue its preliminary and final decision within 90 days from the close of the public consultation. Where appropriate, IDA may extend the time by which IDA will issue its preliminary or final decision by providing a written public notice before the end of each 90-day period.

4.5 Conditions

IDA seeks to eliminate regulations that are no longer necessary. Therefore, IDA may grant a Request or Petition subject to a condition, such as the imposition of safeguards, where IDA determines that this will provide an effective means to protect End Users or promote and preserve effective competition among Licensees.

5. REVIEW OF IDA'S DECISION

Any Licensee that is aggrieved by a decision rendered by IDA may seek reconsideration of IDA's decision, or may appeal to the Minister, pursuant to the procedures specified in Sub-section 11.9 of the Code.

Appendix 1 – Entry Barriers

1. IDA's Reclassification and Exemption Guidelines specify a number of situations in which IDA must make an assessment regarding the existence, and significance, of barriers to entry. In general, the more significant the barriers to entry, the more likely it is that IDA will need to intervene in a market or find that an anti-competitive action has occurred.
2. In assessing barriers to entry, IDA will seek to identify those factors that could preclude an efficient Licensee from being able to market or provide a service.
3. In conducting its assessment, IDA may seek information regarding the cost of, and barriers to, entry from: Licensees that are currently in the market; Licensees or other entities that have sought to enter the market; and Licensees or other entities that may seek to enter the market. Where appropriate, IDA will consider whether changes over time have increased or decreased the difficulty of entry.
4. IDA has identified five broad, but non-exclusive, categories of barriers to entry:
 - (a) technical barriers;
 - (b) access barriers;
 - (c) financial barriers;
 - (d) commercial barriers; and
 - (e) regulatory barriers.
5. Technical barriers exist when a new entrant must use technology that is costly or difficult to develop or obtain from third parties. This may occur, for example, where a new entrant must obtain a licence to use proprietary technology, especially where the rights are controlled by a competitor. In assessing the existence of technical barriers, IDA will consider the extent to which new entrants must use such technology, and the cost and difficulty of doing so.
6. Access barriers exist when a new entrant must access a competitor's infrastructure in order to provide service to End Users, and doing so is costly or difficult. For example, where a competitor controls a facility that constitutes a "bottleneck" or "essential" facility, its refusal to provide access to this facility may create an absolute barrier to entry. Access barriers are potentially significant in the telecommunication market, which is characterised by both economies of scale and network effects. Economies of scale refers to the situation in which the average cost of providing services decreases as the volume of services increases.

Network effects arise when the value a consumer places on connecting to a network depends on the number of others already connected to it. A new entrant into the telecommunication market typically must be able to provide End Users with the ability to communicate with all other End Users. Once an entrant has done so, the cost of serving any individual Customer is relatively low. However, due to the high cost of infrastructure deployment, it is often not economically feasible for a new entrant to deploy a ubiquitous infrastructure. Therefore, in order to provide service, the new entrant may need to access infrastructure controlled by a competing operator that is currently in the market. In assessing the existence of access barriers, IDA will consider the extent to which existing regulation ensures that new entrants have access to infrastructure that is required to provide a competitive telecommunication service on just, reasonable and non-discriminatory prices, terms and conditions.

7. Financial barriers exist when a new entrant must incur significant costs in order to enter the market. For instance, new entrants into the telecommunication market may often have to incur significant costs to roll-out their network. Such costs cannot be recovered quickly. Neither can the entrant readily recoup these costs if it decides to exit the market within a short period. Such barriers will be especially significant if there are high "sunk costs". Sunk costs refer to the cost of acquiring capital and other assets that are incurred in order to enter the market and supply services, where the costs cannot be recovered and assets cannot be redeployed in another market when the service provider exits the market or ceases service supply. Therefore, in assessing financial barriers, IDA will consider the costs that a new entrant must incur, as well as the extent to which such costs constitute sunk costs.
8. Commercial barriers exist when a new entrant must incur significant costs to obtain, retain, and serve End Users. For example, a new entrant to a market may need to incur significant costs including: advertising costs in order to obtain brand recognition; additional costs to get individual End Users to switch from their current service provider; and high ongoing "customer care" costs in order to retain the End User's "brand loyalty". In assessing the existence of commercial barriers, IDA will consider the need for, and cost of, such expenditures.
9. Regulatory barriers exist when a new entrant must obtain regulatory approval to enter, or participate in, a market. Such barriers may be especially significant in markets in which resource constraints – such as limited amounts of spectrum – require regulatory authorities to impose an absolute numeric limit on the number of entrants.
10. IDA will consider any other barrier to entry that is identified by a party. Parties seeking to do so should provide verifiable data about the nature of the barriers, the costs that a new entrant would have to incur, and the other obstacles a new entrant would have to overcome in order to surmount the barrier.