

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

**REVISED PROPOSED
CODE OF PRACTICE
FOR COMPETITION IN THE PROVISION OF
TELECOMMUNICATION SERVICES**

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**REVISED PROPOSED
CODE OF PRACTICE
FOR COMPETITION IN THE PROVISION OF
TELECOMMUNICATION SERVICES**

The Info-Communications Development Authority of Singapore (“IDA”), acting pursuant to its authority under Section 26 of the Telecommunications Act of 1999 and Section 7(1) of the Info-Communications Development Authority of Singapore Act of 1999, hereby invites comments on its revised Proposed Code of Practice for Competition in the Provision of Telecommunication Services.

1. INTRODUCTION

- 1.1 On 17 April 2000, IDA issued two consultation documents: a proposed Code of Practice for Competition in the Provision of Telecommunication Services (“Proposed Code”) and a consultation paper entitled Interconnection/Access in a Fully Liberalised and Convergent Environment. Together, these documents were intended to provide the regulatory framework for the development of a fully competitive telecommunication market in Singapore.
- 1.2 On 15 May 2000, IDA conducted a Public Forum, which was attended by 130 people, representing a wide range of interests. IDA presented an overview of the proposed regulatory regime. Five industry representatives (Covad Communications Company, Callahan Associates International, Singapore Telecommunications Ltd, StarHub Pte Ltd and Telstra) also gave presentations on the proposed regulatory regime. The Public Forum ended with a clarification session.
- 1.3 IDA originally requested that interested parties submit comments on the two papers by 22 May 2000. In response to industry requests, however, IDA extended the deadline for comments to 5 June 2000. IDA also committed to a second round of consultation on the revised Code prior to its adoption.

2. REVIEW OF THE COMMENTS

- 2.1 Fourteen parties, representing a broad range of interests, filed comments: (1) Ascent; (2) Callahan; (3) Covad; (4) Data One-Telstra; (5) Enron International Asia; (6) Global One Communications; (7) Global Crossing Ltd Asia; (8) MCI WorldCom Asia Pte Ltd; (9) MobileOne Asia Pte Ltd; (10) Reuters Asia Pte Ltd; (11) Singapore Telecommunications group of companies; (12) StarHub Pte Ltd; (13) SP Telecommunications Pte Ltd; and (14) Winstar Communications Singapore Pte Ltd.
- 2.2 The commenters expressed a wide range of views. Most supported the general approach proposed by IDA. Some commenters, however, claimed that IDA’s proposed framework would impose excessive and discriminatory burdens on Licensees classified as Dominant. Other commenters, by contrast, concluded that IDA had not gone far enough in assisting new operators to rapidly enter the Singapore telecommunication market. A number of commenters expressed concern about the

suggestion that IDA might establish a pricing regime that distinguished between Facilities-Based Operations and Services-Based Operations. The commenters made a large number of constructive suggestions regarding specific provisions in the Code.

- 2.3 The comments focused almost exclusively on conventional telephone networks, such as those operated by SingTel and StarHub, that primarily carry voice traffic. The parties provided almost no comments regarding the appropriate regulatory regime for broadband telecommunication networks, such as those operated by Singapore Cable Vision Ltd and 1-Net Singapore Pte Ltd.

3. OVERVIEW OF SIGNIFICANT REVISIONS TO PROPOSED CODE

- 3.1 Following the close of the comment period, IDA began an intensive review process. In the course of this process, IDA gave extensive consideration to the views and proposals contained in each of the comments. IDA also considered several additional issues on its own initiative. Based on this process, IDA has revised the Proposed Code and is releasing the revised version today.

- 3.2 The revised Proposed Code follows the same basic format and approach as the original draft. However, IDA has made some significant modifications. The revised Proposed Code also contains several appendices, which integrate into the Code much of the interconnection pricing regime described in the Interconnection/Access Consultation Paper.

- 3.3 The following paragraphs highlight some of the more significant changes that IDA has made to the Proposed Code.

- 3.3.1 The test for determining dominance has been simplified. The dominant classification will be applied on an entity-wide basis, whilst allowing Dominant Licensees to seek an exemption from any specific regulatory obligation that is no longer necessary as a result of the growth of competition.

- 3.3.2 The process by which Licensees can enter into interconnection agreements has been accelerated. The revised Proposed Code provides significant guidance to Dominant Licensees regarding the Minimum Requirements for the Reference Interconnection Offer (“RIO”), which is the statement of minimum terms that the Dominant Licensee must offer to interconnecting Licensees. In particular, the revised Proposed Code clarifies the Dominant Licensee’s duty to allow Requesting Licensees to co-locate equipment. The accompanying Appendix II defines specific points of interconnection, elements that must be unbundled, and essential support facilities that must be made available. The final version of the Code will contain prices for many of these offerings. The appendices mainly address only the obligations applicable to SingTel as insufficient comments were received with regard to SCV and 1-Net. The revised Proposed Code also contains procedures designed to accelerate the process in those cases in which a Requesting Licensee seeks to enter into an individualised agreement, rather than accepting the RIO. Such agreements can either be reached through voluntary negotiations or the IDA Dispute Resolution Procedure. The revised Proposed Code makes clear that a Requesting Licensee can take service pursuant to the terms of the Dominant Licensee’s RIO, pending the outcome of the negotiations

or Dispute Resolution Procedure. The revised Proposed Code also provides that Interconnection Agreements between Non-Dominant Licensees may become effective upon submission to IDA, rather than after approval by IDA. Finally, the revised Proposed Code modifies the prior position that, once entered, an Interconnection Agreement is a private contract and that any dispute must be resolved through arbitration or litigation. Instead, the revised Proposed Code provides that Licensees that enter into agreements pursuant to a RIO or the Dispute Resolution Procedure must refer any dispute to IDA, which will have the authority, at its discretion, to impose a binding resolution.

- 3.3.3 Certain unbundling and resale obligations that IDA originally proposed to impose on Dominant Licensees have been reduced. These requirements, IDA has concluded, would unduly reduce the incentives of new entrants to deploy their own facilities. In particular, the list of Unbundled Network Elements (“UNEs”) that the Dominant Licensee must offer has been reduced. In addition, the revised Proposed Code eliminates the requirement that Dominant Licensees allow other Licensees to purchase at wholesale rates any end-user service that the Dominant Licensees offer on a retail basis. Dominant Licensees however, will, still be required to offer wholesale rates for international private line service.
- 3.3.4 The revised Proposed Code provides that Dominant Licensees must charge all Requesting Licensees the same prices for Interconnection Related Services. This will be simpler to administer than the asymmetrical pricing approach previously proposed, and will be consistent with the principle of cost-based pricing. At the same time, the revised Proposed Code seeks to advance the goal of promoting facilities deployment by making clear that Services-Based Operators may purchase only a limited number of origination and termination services, and may not purchase Unbundled Network Elements or have access to Essential Support Facilities.
- 3.3.5 The revised Proposed Code significantly strengthens the rules designed to protect Customer Service Use Information (“CSUI”), such as a customer’s calling patterns. The original proposal would have allowed a Licensee to use CSUI for any lawful purpose (such as marketing or development of non-telecommunication services) unless the customer specifically requested the Licensee not to do so. The revised Proposed Code would require a Licensee to use CSUI only for the provision of telecommunication services – and would bar the Licensee from sharing the information with affiliates of third parties – unless the customer specifically authorised the Licensee to do so.
- 3.3.6 The revised Proposed Code expands the protection against anti-competitive conduct by a Licensee. Section Seven, which previously addressed only abuses of a dominant position, has been expanded to cover unfair methods of competition (such as false advertising or intentional disruption of a rival’s service) by any Licensee. Section Eight, which previously addressed only anti-competitive agreements between Licensees, has been expanded to cover anti-competitive agreements between Licensees and non-Licensees (such as network equipment suppliers). Finally, the revised Proposed Code strengthens the restriction on bundling. The original Proposed Code barred a Dominant Licensee from requiring a customer that seeks to purchase a telecommunication service to purchase any other goods or services (such as Internet

access service or terminal equipment). The revised Proposed Code also bars a Dominant Licensee from offering “packages” in which the Dominant Licensee offers a discount available only to customers that purchase both the Licensee’s telecommunication service and another good or service.

4 SUMMARY OF THE REVISED PROPOSED CODE

The revised Proposed Code contains ten sections and three appendices.

4.1 Section One sets out the goals of the Code and makes clear that it applies to the full range of IDA Licensees. Section One also sets forth IDA’s basic regulatory principles. These include:

- maximum reliance on voluntary negotiations and market forces where competition exists;
- clear and effective regulatory requirements to promote full competition where it does not yet exist;
- use of regulation that is no more burdensome than necessary to achieve regulatory goals;
- technological (platform) neutrality; and
- open and reasoned decision-making.

This Section also includes provisions for removing regulations that cease to be necessary as competition develops. For example, IDA is to conduct a review of the provisions of the Code not less than once every three years. Finally, Section One explains the legal basis and legal effect of the Code, repeals the previous Interconnection Code of Practice, reserves IDA’s authority to modify the Code and states that the Code will become effective 14 days after release.

4.2 Section Two contains provisions for classifying Licensees as dominant or non-dominant. A Licensee will be classified as dominant if it controls facilities that: provide a direct physical connection to end-users within Singapore and (a) either are not subject to sufficient competition to prevent a Licensee from using its control over these facilities to restrict out-put or raise prices for telecommunication services provided to end-users above competitive level or (b) are sufficiently costly to replicate that requiring new entrants to do so would create a significant barrier to rapid and successful entry by an efficient competitor. Dominant Licensees must comply with special regulatory requirements. Section Two designates three current Licensees as dominant: Singapore Telecommunications Ltd (but not its subsidiaries), Singapore Cable Vision and 1-Net. Section Two also contains standards and procedures by which Licensees can request an exemption, on a service or facilities-specific basis, from the special regulatory requirements applicable to Dominant Licensees.

4.3 Section Three specifies the duties that Licensees have to end-users. All Licensees must modify their service agreements with their end-users to incorporate certain basic

requirements – such as the duty to comply with minimum quality standards, the duty to render timely and accurate bills, the duty to provide fair dispute resolution procedures and the duty to protect Customer Service Use Information. In addition, Dominant Licensees are required to provide telecommunication service: on demand; on an unbundled basis; on prices, terms and conditions that are just, reasonable and non-discriminatory; and pursuant to filed tariffs.

- 4.4 Section Four contains the minimum requirements governing co-operation amongst Licensees. For example, Licensees must: interconnect, whether directly or indirectly; establish compensation arrangements for the origination, transit and termination of traffic; disclose network interfaces; comply with mandatory technical standards; facilitate number portability; and provide billing information. IDA will allow Non-dominant Licensees to interconnect on any mutually agreeable terms that satisfy these minimum requirements, without prior approval.
- 4.5 Section Five contains the interconnection obligations of Dominant Licensees. A Requesting Licensee may enter into an Interconnection Agreement using any of the three “pathways.” First, the Requesting Licensee can accept the provisions specified in the Dominant Licensee’s Reference Interconnection Offer (“RIO”). Second, the Requesting Licensee can “opt-in” to an existing agreement between the Dominant Licensee and any similarly situated Licensee. Third, the Requesting Licensee can seek to negotiate an individualised Interconnection Agreement with the Dominant Licensee. The Code contains detailed requirements regarding the terms that Dominant Licensee must include in its RIO. These include requirements that the Dominant Licensee must: allow physical interconnection at any technically feasible point; allow the Requesting Licensee to lease unbundled network elements, such as the local loop, necessary to a telecommunication service; and provide physical co-location. The details of these requirements (including pricing) are specified in Appendices One and Two. The Code also contains detailed procedures regarding the negotiation process. IDA will allow Dominant Licensees to interconnect with Requesting Licensees on any mutually agreeable terms that satisfy the minimum requirements contained in Section Four. Negotiations must begin within seven days after the initial request, and the Licensees must adopt a confidentiality agreement by the fifteenth day. If the Licensees are unable to reach agreement after 90 days, either party may request IDA to conduct a Dispute Resolution Procedure. To the extent Licensees raise issues addressed in the RIO, IDA will impose the terms of the RIO. To the extent Licensees raise other issues, IDA will impose whatever solution it deems appropriate. Licensees that enter into an agreement pursuant to a RIO or pursuant to the Dispute Resolution Procedure must agree to refer any disputes regarding implementation of the agreement to IDA, which may impose a binding resolution on the Licensees.
- 4.6 Section Six contains special provisions by which a Licensee can request the right to share a facility controlled by another Licensee. The Licensees must first attempt to negotiate a voluntary Sharing Agreement. If they are unable to do so, the Requesting Licensee may ask IDA to make a determination as to whether the facility must be shared – either because it constitutes an essential facility or because IDA concludes that requiring sharing would serve the public interest. The Code designates certain facilities that all Licensees must share – such as masts, poles, and towers. Where the

Licensees are unable to reach agreement, IDA will require the Licensee that controls the facility to be shared to set prices using a fully allocated cost methodology described in Appendix Three.

- 4.7 In Section Seven, IDA sets forth competition law rules that preclude Licensees from engaging in unilateral anti-competitive conduct. In particular, a Dominant Licensee may not set prices at levels that are so low, or so high, as to unreasonably restrict competition or leverage its position in the market to impede competition in an adjacent, currently competitive market. In addition, all Licensees are subject to a prohibition on engaging in unfair methods of competition – such as false advertising or degrading the quality of a competitor’s service.
- 4.8 Section Eight prohibits Licensees from entering into agreements that unreasonably restrict competition. This Section sets out an analytic framework by which IDA will assess the permissibility of such agreements. Licensees are prohibited absolutely from entering into certain types of agreements, such as price fixing arrangements or group boycotts. The permissibility of a Licensee entering into other agreements, such as joint research or marketing ventures, will be assessed based on the agreements’ likely or actual impact on competition. IDA reserves the right to impose penalties on Licensees that violate these restrictions.
- 4.9 Mergers and similar consolidations involving Licensees are addressed in Section Nine. Each licence issued by IDA requires the Licensee to obtain IDA’s approval before assigning a licence or transferring control (including changes in ownership, shareholding and management arrangements) of the Licensee. This Section makes clear that IDA will not approve a request to assign a licence or transfer control over a licence where this would allow a concentrative transaction that is likely to unreasonably restrict competition. This Section establishes a procedure for notifying IDA of such proposed changes, and sets forth the procedures by which IDA will seek to determine – using economic analysis – whether a proposed change is likely to unreasonably restrict competition.
- 4.10 Finally, Section Ten sets forth the procedures that IDA will use, in accordance with the Telecommunications Act of 1999, to enforce the Code. This Section contains two enforcement mechanisms. First, IDA can initiate an enforcement action on its own initiative. Second, IDA can initiate an enforcement action in response to a Request for Enforcement filed by a private party. Such actions must be initiated within two years of the date on which the contravention occurred or, in certain cases, within two years after the date of discovery. This Section also addresses the sanctions that IDA may impose on Licensees found to have contravened the Code. IDA can issue warnings, directions or orders to cease and desist. IDA may also impose monetary penalties and suspend, shorten the duration of, or terminate a Licensee’s licence. Whilst IDA reserves the right to impose fines of up to \$1 million, it will consider all relevant aggravating and mitigating factors in order to ensure that any monetary sanction is proportionate to the contravention. IDA may also provide non-binding guidance as to whether a particular action would contravene the Code.

5 REQUEST FOR COMMENTS

5.1 Written Comments

5.1.1 IDA hereby invites Licensees, potential entrants, other regulatory authorities, users, and any other interested parties to submit written comments regarding the revised Proposed Code.

5.1.2 IDA requests that commenters use the following format:

- Description of the commenting party and its interest in the proceeding;
- Summary of the commenting party's position
- General comments
- Views regarding specific provisions of the revised Proposed Code.

5.1.3 Parties should identify the specific provisions of the Code (by number) on which they are commenting. Where appropriate, commenting parties are encouraged to suggest additional or different language accompanied by an explanation of the reasons for the proposal.

5.1.4 Parties are requested to focus on the changes from the original Proposed Code. In particular, parties that filed comments in the first round of this consultation process are strongly urged not to repeat proposals or arguments made in their earlier filings. All parties are asked to keep comments clear and succinct.

5.1.5 All comments should be submitted to IDA in hard copy (6 copies) and diskette (Word 97 Format). Comments may also be emailed. All written comments must be submitted to IDA by 12 noon on Friday, 14 July 2000. Comments received after that time will not be accepted or considered. Comments should be addressed to:

Ms Ng Cher Keng
Director (Policy)
Infocomm Development Authority of Singapore
8 Temasek Boulevard
#14-00 Suntec Tower Three
Singapore 038988
Email: ng_cher_keng@ida.gov.sg

5.1.6 IDA will post all comments on its website (www.ida.gov.sg).

5.2 IDA will conduct a Second Public Forum regarding the revised Proposed Code on Thursday, 6 July 2000, in Room 306 at the Singapore International Convention & Exhibition Centre, 1 Raffles Boulevard, Singapore 039593. The forum will begin at 9.30 a.m. and last until approximately 12.30 p.m. IDA and its consultants will make introductory presentations regarding the revisions that have been made to the regulatory framework. Members of the public will then be invited to make comments

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or ask questions. Individuals who would like to attend the forum are invited to register with:

- (i) Ms Chew Bee Leng (email: chew_bee_leng@ida.gov.sg); or
- (ii) Ms Salbinah Mohamad (email: salbinah_mohamad@ida.gov.sg).

Please submit the names and designations of attendees no later than 3 July 2000, 5pm. Please note that late returns will not be processed.

- 5.3 IDA will not entertain requests for private meetings to discuss the Proposed Code.
- 5.4 Based on the written comments and the discussion at the Public Forum, IDA will make any appropriate further modifications to the Proposed Code. IDA currently anticipates releasing the final Code by 1 September 2000.
- 5.5 The Code will become effective 14 days after it has been released.