

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

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

1. INTRODUCTION
2. PRACTICES IN OTHER COUNTRIES
3. OVERVIEW OF THE PROPOSED APPROACH
4. SUMMARY OF THE PROPOSED CODE
5. REQUEST FOR COMMENTS AND REGISTRATION FOR PUBLIC FORUM

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 Telecommunication Act of 1999 and Section 7(1) of the Info-Communications Development Authority of Singapore Act of 1999, hereby invites comments on its proposed Code of Practice for Competition in the Telecommunication Services.

1. INTRODUCTION

- 1.1 The elimination of limits on entry into the Singapore telecommunication market on 1 April 2000 has created the *potential* for the development of a competitive telecommunication market. A competitive market will attract investment in telecommunication infrastructure, ensure widespread and affordable access to quality telecommunication services, promote the growth of the info-communications sector and secure Singapore’s position as a regional leader in info-communications.
- 1.2 In order for this potential to be realised, however, a suitable regulatory regime must be put into place. This regime must prevent abuses by operators not yet subject to the constraints of market forces, set forth rules designed to facilitate entry by additional operators and adopt an enforcement regime that will police actions that threaten competition once it has been established. A crucial component of this regulatory regime is a code of practice that will inform entities to which IDA has granted a licence (“Licensees”) of their legal rights and obligations.

2. PRACTICES IN OTHER COUNTRIES

- 2.1 Throughout the world, the development of competition is the central regulatory issue in the telecommunication sector. Different jurisdictions have used different approaches to foster competition. Australia relies on enforcement of a competition law that contains specific provisions that address the telecommunication sector. Hong Kong, by contrast, does not have a separate competition law. Rather, it currently seeks to promote telecommunication competition through a sector-specific *ex ante* regulatory regime and the imposition of licensing conditions. Both the European Union and the United States have dual regulatory systems, in which competition in the telecommunication sector is established through sector-specific *ex ante* regulation (administered by one set of regulators) and preserved through after-the-fact enforcement of general competition law (administered by a different set of regulators).

3. OVERVIEW OF THE PROPOSED APPROACH

- 3.1 IDA proposes to take an approach that combines “best practices” from several benchmark jurisdictions, builds on the experiences of those jurisdictions and reflects the particular needs of Singapore. Specifically, IDA will use both *ex ante* regulation designed to promote competition and sector-specific competition law rules to police any abuses by Licensees subject to its jurisdiction.
- 3.2 The proposed Code places significant reliance on market forces. Where effective competition exists, Licensees would be subject to minimal regulatory requirements. At the same time, the proposed Code recognises the need for IDA to take resolute measures where Licensees are not subject to effective competition or where they take actions that would unreasonably restrict competition.
- 3.3 The proposed Code is meant to be applied in tandem with the interconnection and access economic regulatory framework which are encapsulated in the consultation document on “Interconnection and Access in a Fully Liberalised and Convergent Environment”. The interconnection and access framework is designed to provide economic incentives for the efficient deployment of new telecommunication infrastructure, whilst also facilitating the development of services-based competition.
- 3.4 The proposed Code is intended to reflect the growth of convergence, which is eroding historic boundaries among different transmission platforms. The proposed Code does so by basing regulatory requirements on economic and policy considerations, rather than on the historic classification of a given transport medium as “wireline”, “cable”, “wireless” or “satellite”.

4. SUMMARY OF THE PROPOSED CODE

The proposed Code contains ten sections.

- 4.1 Section 1 sets out the goals of the Code and makes clear that it applies to the full range of IDA Licensees. Section 1 also sets forth IDA’s basic regulatory principles. These include:
- maximum reliance on voluntary negotiations and market forces where competitions exists;
 - clear and effective regulatory requirements to promote 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 burdensome regulations that cease to be necessary as competition develops. Finally, Section 1 explains the legal basis and legal effect of the Code, reserves IDA’s authority to modify the Code and states the date on which the Code will become effective.

- 4.2 Section 2 contains provisions for classifying Licensees as dominant or non-dominant. Non-dominant Licensees, whose conduct is constrained by market forces, will be subject to minimal regulation. By contrast, Dominant Licensees, who are not subject to effective competition, will be required to comply with more extensive regulatory requirements. Section 2 designates three current Licensees as dominant in selected markets, and contains standards and procedures by which Licensees can be re-classified.
- 4.3 Section 3 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 (unless mutually waived), the duty to render timely and accurate bills and the duty to protect “Customer System Use Information”. In addition, Dominant Licensees are required to provide service on demand, at cost-oriented and non-discriminatory rates, pursuant to filed tariffs.
- 4.4 Section 4 contains the minimum requirements governing co-operation amongst Licensees. For example, all facilities-based Licensees must: interconnect, whether directly or indirectly; disclose network interfaces; comply with mandatory technical standards; allow number portability; and provide access to poles, towers, ducts and rights-of-way on cost-based and non-discriminatory terms. IDA will allow Non-dominant Licensees to interconnect on any mutually agreeable terms that satisfy these minimum requirements.
- 4.5 Section 5 contains the interconnection/access obligations of Dominant Licensees. Such Licensees are obligated to publish a “Reference Interconnection Offer” and to negotiate in good faith with any Licensee that requests interconnection or access. IDA will allow Dominant Licensees to interconnect with Non-dominant Licensees on any mutually agreeable terms that satisfy the minimum requirements contained in Section 4. If the parties are unable to reach voluntary agreement after 90 days, however, the Requesting Licensee can ask IDA to resolve all outstanding issues. The Code specifies the “default” provisions that IDA will impose. 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 (or equivalent) where necessary to a telecommunication service; provide physical co-location; and make their telecommunication service available at wholesale rates.
- 4.6 Section 6 contains special provisions by which a Licensee can request the right to share an essential facility controlled by another Licensee.
- 4.7 In Section 7, IDA sets forth competition law rules that preclude Dominant Licensees from abusing their market position. In particular, a Licensee may not “tie” a telecommunication service in which it is dominant to any other offering; set prices at levels that are so low, or so high, as to foreclose competition; or leverage its position in the dominant market to impede competition in an adjacent, currently competitive market.

- 4.8 Section 8 prohibits Licensees from entering into agreements with other Licensees 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 between Licensees are addressed in Section 9. Each licence issued by IDA requires the Licensee to obtain IDA's approval before assigning a licence or transferring control of its Licence or for change 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 or for a change in shareholding arrangement 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 – based on actual market conditions – whether a proposed change is likely to unreasonably restrict competition.
- 4.10 Finally, Section 10 sets forth the procedures that IDA will use, in accordance with the Telecommunication Act of 1999, to enforce the Code. This Section also identifies the enforcement mechanisms. This Section also contains the standards IDA will use to impose sanctions on Licensees found to have contravened this Code.

5. REQUEST FOR COMMENTS

5.1 Written Comments

- 5.1.1. IDA hereby invites Licensees, users, and any other interested parties to submit written comments regarding the proposed Code and the interconnection and access economic regulatory framework.
- 5.1.2. IDA requests that commenters use the following format:
- Description of the commenting party and its interest in the proceeding;
 - General views;
 - Comments regarding specific provisions of the proposed Code;
 - Suggestions for additional provisions; and
 - Comments regarding the interconnection and access economic regulatory framework.
- 5.1.3 Parties that choose to comment on specific provisions of the proposed Code and the interconnection and access regulatory framework should identify the provision (by number) and, where appropriate, should suggest alternative language accompanied by an explanation of the reasons for the proposed alteration.
- 5.1.4 All comments should be submitted to IDA in hard copy (6 copies) and diskette (Word 97 Format). Comments may also be emailed. Comments should be clear and succinct. All written comments must be submitted to IDA by 12 noon on Monday, 22 May

2000. Comments received after 12 noon 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

5.1.5 IDA will post all comments on its website www.ida.gov.sg

5.2 IDA will conduct a public forum regarding the proposed Code on Monday, 15 May 2000 at the Singapore International Convention & Exhibition Centre, 1 Raffles Boulevard, Singapore 039593. The forum will begin at 8.30 a.m. and last until approximately 6.30 p.m. In the morning, IDA, its consultants, and select invited industry representatives will make presentations regarding the proposed Code and the interconnection and access economic regulatory regime. During the afternoon, IDA will conduct an open discussion with interested participants. Those who are interested 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. A registration fee of S\$40.00 will also be payable for each attendee. **Registration will close on 5 pm, 8 May 2000.**

5.3 IDA will not entertain requests for private meetings to discuss the proposed Code.

5.4 Based on the written comments and the public discussion at the forum, IDA will make any appropriate modifications to the proposed Code, including the interconnection and access economic framework which will be incorporated in the Code. IDA anticipates releasing the Code by the third quarter 2000.

5.5 The Code will become effective 14 days after it has been released.