

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

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

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

The Info-communications Development Authority of Singapore (“IDA”), after soliciting and considering the views of all interested parties, has adopted the following Code of Practice:

### **1. INTRODUCTION**

#### **1.1 Goals of the Code**

This Code is intended to:

- (a) promote the efficiency and international competitiveness of the information and communications industry in Singapore;
- (b) ensure that telecommunication services are reasonably accessible to all people in Singapore, and are supplied as efficiently and economically as practicable and at performance standards that reasonably meet the social, industrial and commercial needs of Singapore;
- (c) promote and maintain fair and efficient market conduct and effective competition between persons engaged in commercial activities connected with telecommunication technology in Singapore;
- (d) promote the effective participation of all sectors of the Singapore information and communications industry in markets (whether in Singapore or elsewhere);
- (e) encourage, facilitate and promote industry self-regulation in the information and communications industry in Singapore; and
- (f) encourage, promote and facilitate investment in and the establishment, development and expansion of the information and communications industry in Singapore.

#### **1.2 Regulatory Principles**

The following regulatory principles provide the foundation for this Code, and will guide IDA’s implementation of its provisions:

##### **1.2.1 Reliance on Market Forces**

Market forces are generally far more effective than regulation in promoting consumer welfare. Competitive markets are most likely to provide consumers with a wide choice of services at reasonable prices. Therefore, to the extent that markets or market segments are competitive, IDA will place primary reliance on private negotiations and industry self-regulation, subject to minimum requirements designed to protect consumers and prevent anti-

competitive conduct. IDA strongly encourages the telecommunication industry to develop appropriate advisory and self-regulatory fora, in particular to formulate technical and operational processes and mechanisms where it is to the mutual benefit of the industry to co-operate so as to minimise inconvenience in the provision of telecommunication services to end-users.

### **1.2.2 Promotion of Competition**

Because of the effectiveness of market forces in promoting consumer welfare, IDA will take resolute measures to promote and maintain effective competition. This will include measures to foster competition in those markets that, in the past, were protected from competition by special or exclusive government-granted rights.

### **1.2.3 Regulation Proportionate to the Extent of Market Failure**

To the extent that a given market is not yet competitive, significant *ex ante* regulatory intervention is likely to remain necessary. When this is the case, IDA will seek to impose regulatory requirements that are carefully crafted to achieve clearly articulated results. Such requirements will be no broader than necessary to achieve IDA's stated goals.

### **1.2.4 Platform Neutrality**

IDA's regulatory requirements will reflect the phenomenon of convergence, which is eroding historic differences among platforms such as wireline, cable, wireless, and satellite. Regulatory requirements will be based on sound economic principles and will be platform-neutral. Because the phenomenon of convergence is in its early stages, with different platforms subject to differing degrees of competition, the objective application of these principles may result initially in the imposition of different regulatory obligations on providers that use different platforms.

### **1.2.5 Elimination or Modification of Unnecessary Code Provision**

As competition develops, regulation becomes less necessary and, in many cases, can be counter-productive. Therefore, IDA will strive to eliminate or modify existing regulatory requirements to reflect the development of competition. The following two procedures will promote implementation of this principle:

#### **1.2.5.1 Regulatory Review**

At least once every three years, IDA will review this Code. IDA will eliminate or modify provisions that it determines, based on experience and the growth and development of competition, are no longer necessary.

### **1.2.5.2 Petitions for Elimination or Modification of Code Provision**

Licensees may petition IDA to eliminate or modify any Code provision. The Licensee shall specify the Code provisions that it seeks to have eliminated or modified and shall provide a clear statement of the reasons why the Licensee believes that such action is justified. The Licensee may propose alternative approaches that would achieve IDA's regulatory objectives in a less burdensome manner.

### **1.2.6 Open and Reasoned Decision Making**

IDA will apply the provisions of this Code in a transparent manner. Where appropriate, IDA will solicit comments from interested parties. Except to the extent that information submitted is confidential, proprietary, commercially sensitive, or raises law enforcement or national security concerns, submissions will be made available to the public. In arriving at its decisions, IDA will give full consideration to the comments received. IDA will make available to the public its decisions and directions adopted pursuant to this Code, which will clearly explain the basis for its action. Where feasible, IDA will make relevant decisions and directions available through its Website ([www.ida.gov.sg](http://www.ida.gov.sg)). (Similarly, where IDA requires a Licensee to make information publicly available, unless IDA specifically requires otherwise, the Licensee may satisfy this obligation by posting the information on its Website.)

### **1.2.7 Avoidance of Unnecessary Delay**

Recognising the need for Licensees to respond rapidly to changing market forces, IDA will strive to make all decisions within the time frames specified herein and, in any case, as quickly as reasonably possible.

### **1.2.8 Non-discrimination**

IDA's decisions will be non-discriminatory. IDA will treat similarly situated Licensees on an equivalent basis. Where appropriate, IDA's decisions and directions will reflect relevant differences between Licensees or categories of Licensees.

### **1.2.9 Opportunity for Review**

Any Licensee that is adversely affected by a decision rendered or direction issued by IDA pursuant to this Code will have the opportunity to express any objections or make any representations prior to the date on which the decision or direction becomes effective. IDA will consider those objections or representations and, where appropriate, will modify its decision or direction. Any party that is aggrieved by the decision or direction of IDA may, within 14 days of the date on which the decision or direction is issued, appeal to the

Minister of Communication and Information and Technology (“Minister”) under Sections 27(4) and 69 of the Telecommunications Act 1999 (“Telecommunications Act”). Unless IDA orders otherwise, the Licensee shall comply with its decision or a direction until such time, if any, as the Minister reverses or modifies the decision or direction.

### **1.3 Legal Effect of the Code**

Every entity to which IDA has granted, or in the future may grant, a licence to provide telecommunication services (“Licensee”) is required, pursuant to Section 26(4) of the Telecommunications Act, and by the terms of its licence, to comply with this Code. To the extent that any provision of this Code is inconsistent with the terms of the Telecommunications Act, other statutes, regulations, directions or the terms of any licence awarded by IDA, the provisions of those statutes, regulations, directions or licences shall prevail. If any provision of this Code is held to be unlawful, all other provisions will remain in full force and effect. This Code repeals and fully supersedes the Code of Practice (Interconnection, Access and Infrastructure Sharing) issued by IDA’s predecessor, the Telecommunication Authority of Singapore, on 4 February 1999.

### **1.4 Legal Authority to Promulgate the Code**

IDA, in the exercise of its functions under Section 6 of the Information Communications Development Authority of Singapore Act 1999 (“IDA Act”), issues this Code pursuant to its authority under Section 26 of the Telecommunications Act and Section 7(1) of the IDA Act.

### **1.5 Reservations of Authority**

IDA reserves, *inter alia*, the following rights:

#### **1.5.1 Right to Grant Exemptions**

Where good cause is shown, IDA may grant exemptions from specific provisions of this Code. Such exemptions may be applied to individual Licensees or to specified categories of Licensees. An exemption may be on a one-time basis, for a fixed period, effective until the occurrence of a condition subsequent or permanent. Where appropriate, IDA may grant exemptions subject to compliance with specified conditions. IDA will publicly disclose any exemption and will provide a reasoned statement explaining the basis for any exemption.

### **1.5.2 Right to Modify**

IDA reserves the right to modify this Code on its own initiative at any time. Before making material changes, IDA will seek public comment and will provide a reasoned statement explaining the basis for the modification.

### **1.5.3 Right to Take Emergency Measures**

IDA reserves the right to take actions without complying with the procedural requirements of this Code, or to suspend any obligations imposed on IDA under this Code, in any situation in which such action is necessary in the public interest, including but without limitation to the following: preventing physical injury, preventing injury to property and preserving public order.

### **1.6 Effective Date of the Code**

This Code will come into effect 14 days after the date on which it is issued.

### **1.7 Short Title**

This Code may be referred to as the “Telecom Competition Code.”

## **2. CLASSIFICATION OF LICENSEES**

### **2.1 Over-view**

This Code distinguishes between Licensees that are subject to competitive market forces and Licensees whose conduct is not constrained by competitive market forces. Where a Licensee is subject to competitive market forces, IDA will impose minimum regulatory “rules of the road”, coupled with the *ex post* enforcement of general prohibitions on anti-competitive conduct. By contrast, where a Licensee’s conduct is not constrained by competitive market forces, IDA will require it to comply with more comprehensive regulatory requirements.

### **2.2 Categories of Licensees**

IDA will classify every Licensee as either a:

- (a) Non-dominant Licensee; or
- (b) Dominant Licensee.

### **2.2.1 Non-dominant Licensees**

Non-dominant Licensees are subject to competitive market forces. In the absence of evidence to the contrary, IDA will presume that all Licensees (except those designated in Section 2.3 of this Code) are non-dominant.

### **2.2.2 Dominant Licensees**

A Licensee will be classified as dominant if it controls facilities that:

- (i) provide a direct physical connection to end-users within Singapore; and
- (ii) (a) are not subject to sufficient competition to prevent the Licensee from using its control over those facilities to restrict output or raise prices for telecommunication services provided to end-users above competitive levels; or  
(b) are sufficiently costly or difficult to replicate that requiring new entrants to do so would create a significant barrier to rapid and successful entry by an efficient competitor.

### **2.3 Initial Designation of Dominant Licensees**

The following facilities-based Licensees are hereby classified as dominant: Singapore Telecommunications Ltd<sup>\*</sup>; Singapore CableVision Ltd; and 1-Net Singapore Pte Ltd.

### **2.4 Procedure For Classification of Licensee**

IDA will conduct an on-going effort to ensure that all Licensees are classified appropriately. Such classification can occur in any of the following three ways:

#### **2.4.1 Grant or Renewal of the Licence**

At the time it grants or renews a licence, IDA will make an assessment as to the proper classification of the Licensee. IDA will indicate the classification as part of its grant or renewal of the licence.

#### **2.4.2 Reclassification by IDA of a Licensee**

Where appropriate, IDA may initiate a proceeding to reclassify a Licensee. In such cases, IDA will request the Licensee to provide information that will assist IDA in determining whether the Licensee meets the standard specified in Section 2.2.2. IDA will also solicit the views of competitors and customers of the Licensee.

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<sup>\*</sup> The Dominant Licensee classification only applies to Singapore Telecommunication Ltd and does not apply to its subsidiaries that hold separate licences issued by IDA.

### **2.4.3 Petitions for Reclassification**

A Licensee or other interested party may petition IDA to have a Licensee reclassified. A party seeking to have a Licensee reclassified must provide detailed information demonstrating whether or not the Licensee meets the standards specified in Section 2.2.2. Before acting on a petition for reclassification, IDA will solicit the views of competitors and customers of the Licensee.

### **2.5 Exemption from Application of Dominant Licensee Regulation**

Dominant Licensees are subject to a number of special regulatory requirements. IDA recognises, however, that as competition develops, it may no longer be necessary to apply each of these requirements to every facility operated or service provided by the Dominant Licensee. IDA therefore will consider requests from Dominant Licensees to exempt them from these regulatory requirements.

#### **2.5.1 Request for Exemption from Dominant Licensee Regulation**

A Dominant Licensee that seeks exemption from any specific regulation applicable to Dominant Licensees should submit an application to IDA that identifies the specific Sections of this Code from which, and the specific facility or service for which, the Licensee seeks exemption. The Licensee must demonstrate that, as a result of the growth of competition, continued application of the provision of a specific facility or service is not necessary to protect end-users or promote and preserve effective competition amongst providers of telecommunication services. The Licensee must provide verifiable data to support its request. This typically should include a description of the relevant product, service and geographic market, information regarding the Licensee's market share, and information regarding the practicality of new entry in response to a price increase by the Licensee.

#### **2.5.2 IDA Review**

IDA generally will seek public comments regarding any request for exemption from the special requirements applicable to Dominant Licensees. IDA will seek to issue an order granting or denying such requests within 90 days of receiving the request.

### **2.6 Asset Transfers**

A Dominant Licensee may not avoid the obligations specified in this Code by transferring ownership or control to another Licensee of facilities that the Dominant Licensee uses to provide telecommunication services. Should the Dominant Licensee do so, the Licensee that receives the facilities will be classified as a Dominant Licensee.

### **3. DUTY OF LICENSEES TO END-USERS**

#### **3.1 Over-view**

The growth of competition will provide business and residential users with increased choice among service providers. When providing service to end-users, Licensees have a duty to do so on just and reasonable terms and conditions. In competitive markets, market forces – augmented by the minimal requirements and prohibitions contained in this Section – generally will be sufficient to ensure that this occurs. Where a Licensee is not subject to effective competition, however, IDA will require it to comply with more comprehensive requirements designed to approximate the operation of a competitive market.

#### **3.2 Duties of all Licensees**

Each Licensee shall include in its agreements with its end-users provisions that obligate the Licensee to comply with the following requirements:\*

##### **3.2.1 Duty to Comply with Minimum Quality of Service Requirements**

Unless the parties agree otherwise, Licensees must comply with the minimum quality of service standards promulgated by IDA. Licensees must make publicly available, not less than once each year, in a format that can be understood easily by consumers, a statement of the extent to which the Licensee has met IDA's quality standards. If a Licensee and its customer agree to a lower quality of service standard, the Licensee must inform the customer of the service level that it will provide and the fact that it does not comply with IDA's minimum quality standards.

##### **3.2.2 Duty to Provide Periodic, Accurate and Timely Bills**

All Licensees must provide customers with periodic, accurate and timely bills. In particular, Licensees must comply with the following requirements:

###### **3.2.2.1 Advanced Disclosure of All Material Terms**

Licensees must disclose to customers, in advance, all material price and non-price terms governing the provision of telecommunication services. Dominant Licensees must disclose this information in tariffs filed with IDA. (The tariff filing process is described in Section 3.3.4) Non-dominant Licensees are to disclose this information using appropriate means other than filing tariffs.

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\* Licensees shall amend their existing agreements with their end-users to comply with the requirements not later than 90 days after the effective date of this Code.

### **3.2.2.2 Billing Timeliness**

Licensees must provide customers with statements of charges in a timely manner. Unless otherwise agreed to by the Licensee and the customer, invoices shall be sent monthly.

### **3.2.2.3 Billing Clarity**

All statements of charges must be clear and concise. In particular, the statements must list, in easy-to-understand terms, the charges for each separate service provided.

### **3.2.2.4 Compliance with Tariff or Contract Rates**

The statement of charges must reflect the prices, terms and conditions previously specified by the Licensee. If a Dominant Licensee has filed a tariff, but subsequently enters into an agreement with a customer that contains terms that are different from those contained in the tariff, the terms of the tariff shall govern.

### **3.2.2.5 No Charges for Unauthorised Services**

Licensees may charge a customer only for the specific services that the customer has ordered. In addition to any sanctions that IDA may impose, the customer shall have no liability to pay for any services which the Customer has not ordered, provided the customer notifies the Licensee in writing within 60 days (or longer, if agreed to by the Licensee) from the day on which the customer received the statement of charges.

### **3.2.2.6 No Charges by Unauthorised Providers**

No Licensee may switch a customer from another provider's service to its service without the prior consent of the customer. In addition to any sanctions that IDA may impose, the customer shall have no liability to pay for any services provided by a Licensee from which the customer has not requested services, provided the customer notifies the Licensee within 60 days (or longer, if agreed to by the Licensee) from the day on which the customer received the statement of charges. The Licensee shall also assume any cost necessary to switch the customer back to the customer's original service provider.

### **3.2.3 Duty to Provide Procedures to Contest Charges**

All Licensees must provide procedures that will allow business and residential customers to dispute any charge that the customer believes, in good faith, to be incorrect. Unless otherwise agreed to by the Licensee and a business customer, these procedures shall, at a minimum, include the following:

**3.2.3.1 Initiation of Challenge**

The customer must inform the Licensee of any disputed charge within 60 days (or longer, if agreed to by the Licensee) from the day on which the customer received a statement of charges.

**3.2.3.2 Right to Withhold Payment**

The customer shall pay the undisputed amount of the bill but must not be required to pay any reasonably disputed amounts pending the resolution of the dispute. Should the customer ultimately be found liable for the payment, the customer will be required to pay the amount due, compensation for the Licensee's reasonable arbitration, litigation and collection expenses, plus interest. The rate of interest must be set at a commercially reasonable amount, which will be specified in the Licensee's tariff or customer agreement.

**3.2.3.3 Licensee Review**

The Licensee must conduct a complete and objective review of the customer's complaint, and must provide a written response, within 30 days of receiving the complaint.

**3.2.3.4 Reporting Requirement**

Not less than once in each three-month period, each Licensee must submit to IDA, and make publicly available, a report indicating the number of complaints that it has received from its end-users during the reporting period. Licensees shall group complaints into relevant categories (*e.g.*, disputed charges, service quality, timeliness of installation, etc.).

**3.2.3.5 Conciliation**

In appropriate cases, IDA will assist the parties in resolving billing or other service-related disputes.

**3.2.3.6 Private Dispute Resolution**

If the parties are unable to resolve the dispute, they may refer the matter to the Small Claims Tribunal, if the matter is within that body's jurisdiction. Otherwise, the parties may submit the dispute for resolution to arbitration or to any court of competent jurisdiction.

**3.2.4 Suspension or Termination of Service by Licensee**

A Licensee must specify, in advance, any basis on which it reserves the right to suspend or terminate the provision of service to a customer. The Licensee must also specify procedures for providing the customer with advance notice

of any proposed suspension or termination, the basis for the action, and the means by which the customer can avoid suspension or termination of service. A Licensee must not suspend or terminate service based on the Licensee's belief that the customer is using the service to engage in illegal activities. Rather, the Licensee should inform the appropriate authority and act in conformity with that authority's directions.

### **3.2.5 Prohibition on Excessive Early Termination Liabilities**

IDA may permit Licensees to enter into agreements under which they provide customer with discounts in return for the customer's agreement to commit to a minimum service duration period and/or a minimum revenue commitment. However, such agreements must contain provisions providing for financial liability in the event that the customer ends the agreement prior to the agreed upon termination date. Further, the size of any early termination liability must be reasonably related to the extent of the discount that the Licensee has provided and the duration of the period during which the customer took service.

### **3.2.6 Duty to Protect Customer Service Use Information**

Licensees have a duty to protect Customer Service Use Information ("CSUI").

#### **3.2.6.1 Definition**

CSUI consists of all the information that a Licensee obtains as a result of a customer's use of a telecommunication service provided by the Licensee. This includes, but is not limited to, information regarding: the customer's calling patterns (including number of calls, times of calls, duration of calls and parties called); the services ordered by the customer; the customer's telephone number and network configuration; and the customer's billing name, address and credit history.

#### **3.2.6.2 Restriction on Use**

Other than the necessary CSUI required to be forwarded to other Licensees for purposes of interconnection/inter-operability, unless the customer has provided authorisation as provided for in Section 3.2.6.3 of this Code, the Licensee may use CSUI only for the purposes of: planning, provisioning and billing a telecommunication service provided by the Licensee; managing bad debt and preventing fraud; or providing assistance to law enforcement or other government agencies. Licensees shall adopt appropriate procedures to ensure that, unless the customer has provided authorisation, neither they nor their affiliates may use CSUI for the development or marketing of other goods or services, and that this information is not be provided to its affiliates or third parties.

### **3.2.6.3 Customer Authorisation**

A Customer will be presumed to have withheld consent from the Licensee to use the Customer's CSUI for any purpose other than those specified in Section 3.2.6.2 unless the customer affirmatively grants the Licensee consent to do so. At the time a Licensee enters into a service contract (or, for those Licensees that currently provide service, within 180 days of the effective date of this Code), the Licensee shall obtain the consent of the customer (in any form) to use its CSUI for any lawful purpose. Licensees must also develop, and inform their customer of, easy-to-use procedures by which a customer can subsequently grant or withdraw authorisation.

### **3.3 Special Duties of Dominant Licensees**

Because they are not subject to competitive market forces, Dominant Licensees must comply with the following additional requirements designed to protect the interests of business and residential customers:

#### **3.3.1 Duty to Provide Service on Demand**

Dominant Licensees must provide telecommunication service to any customer upon reasonable request.

#### **3.3.2 Duty to Provide Service at Just and Reasonable Rates**

Dominant Licensees must charge rates for telecommunication services that are just and reasonable.

#### **3.3.3 Duty to Provide Service on a Non-discriminatory Basis**

Dominant Licensees must provide service on prices, terms and conditions that are not discriminatory. This requires that, except where otherwise required by IDA, any variations in the prices, terms and conditions for a given service provided to different customers must be based on objective differences, such as variations in the cost of service, or on the need to meet a *bona fide* offer by a competing Licensee.

#### **3.3.4 Duty to File Tariffs**

Prior to offering a new end-user telecommunication service, or modifying an existing telecommunication service, or offering or modifying a promotion, Dominant Licensees must file a tariff with IDA and obtain IDA's approval.

##### **3.3.4.1 Information to be Included**

The tariff must contain a clear statement of the prices, terms and conditions on which the service will be offered. The tariff filing must be self-contained (*i.e.*,

it must not make reference to any other document) and must not include charges for any goods or services not subject to tariff regulation.

#### **3.3.4.2 Review by IDA**

IDA will review the tariff filing. IDA will determine whether the rates are competitive with those in a “basket” of jurisdiction, including neighbouring countries, newly industrialised countries, and major financial markets. Within seven working days, IDA will either accept or reject the tariff. (This period is shortened to five working days for joint promotional offerings or three working days for stand-alone promotions.) (A working day means Monday through Saturday, except public holidays.) If IDA rejects the filing, it will provide a statement of the basis for its rejection. Once a tariff goes into effect, IDA may review it periodically to determine whether the charges remain just, reasonable and non-discriminatory, and will direct the Licensee to make any appropriate adjustments. In addition, any party that believes that the prices, terms and conditions on which a Dominant Licensee provides telecommunication services are not just, reasonable and non-discriminatory may petition IDA to review the appropriateness of these provisions. The petitioning party must provide adequate information to support its position.

#### **3.3.5 Duty to Provide Unbundled Service**

A Dominant Licensee must provide telecommunication services on an unbundled basis. The Licensee must not require a customer that wants to purchase a telecommunication service that the Licensee provides to purchase any other product or service as a condition for purchasing the telecommunication service. For example, a Dominant Licensee cannot require a customer that wants to buy its exchange line service to purchase a specific Internet access service or terminal equipment. A Dominant Licensee, however, may allow a customer to purchase a “package” containing the telecommunication services and other goods or services, provided that each element is separately available and separately priced. (IDA will consider granting exemptions to allow a Dominant Licensee to provide single-price “packages” in connection with short-term promotions.) If the Dominant Licensee allows any other entity (whether or not affiliated) to offer a package by acting as an agent or reseller of the Dominant Licensee’s telecommunication service, the Dominant Licensee must provide the same opportunity to any interested entity on the same terms and conditions within a reasonable period.

## **4. REQUIRED COOPERATION AMONG LICENSEES TO PROMOTE COMPETITION**

### **4.1 Over-view**

In order to ensure the development of an integrated “network of networks,” which allows for seamless any-to-any communications throughout Singapore, all Licensees must comply with the conditions set forth in this Section.

### **4.2 Minimum Duties**

Each Licensee must fulfil the following Minimum Duties:

#### **4.2.1 Duty to Interconnect With Other Licensees**

Licensees have a duty to interconnect with and/or provide access to other Licensees (“interconnection”). Interconnection may be either direct or indirect. Each Licensee will be responsible for establishing, operating and maintaining the portion of the link from its system to the point of interconnection. Where both Licensees are non-dominant, they may agree to interconnect on any mutually agreeable terms, provided they comply with the Minimum Duties contained in this Section 4.2. IDA generally will not involve itself in interconnection negotiations between two Non-dominant Licensees.

#### **4.2.2 Duty to Establish Compensation Agreements for the Origination, Transit and Termination of Telecommunication Traffic**

Each Licensee has the duty to compensate other Licensees that originate, transit or terminate the Licensee’s traffic. The parties may enter into any mutually acceptable compensation arrangements (including bill-and-keep arrangements).

#### **4.2.3 Duty to Provide Non-discriminatory Interconnection Quality**

Unless the parties agree otherwise, each Licensee that provides direct interconnection to other Licensees shall provide interconnection that is of at least equal quality to the quality that the Licensee provides to itself, its affiliates or to other Licensees.

#### **4.2.4 Duty to Prevent Technical Harm to the Network**

Each Licensee that interconnects to the facilities of another Licensee shall take reasonable measures to ensure that the interconnection does not cause physical or technical harm to the other Licensee’s network.

#### **4.2.5 Duty to Provide Billing Information**

Unless the parties agree otherwise, each Licensee has a duty to provide any Licensee with which it interconnects sufficient information to allow the interconnecting Licensee to provide accurate and timely billing services to itself, its affiliates or other Licensees.

#### **4.2.6 Duty to Preserve Confidential Information Provided by Other Licensees**

Each Licensee has a duty to protect from disclosure any confidential or proprietary information provided by another Licensee in the course of negotiating or carrying-out an Interconnection Agreement.

#### **4.2.7 Duty to Disclose Interfaces**

Each Licensee has the duty to make publicly available, in sufficient detail, the physical and logical interfaces of its network necessary to allow the development and deployment of telecommunication services, value added services and terminal equipment that can interconnect to, and interoperate with, the Licensee's network. Licensees also must make publicly available, sufficiently in advance, changes in logical or physical interfaces that could materially affect existing interconnection arrangements. Licensees may not disclose this information to any affiliated entity (whether licensed or not) prior to the time that the Licensee makes this information available to the public.

#### **4.2.8 Duty to Comply With Mandatory Technical Standards**

IDA recognises the potential benefits of adoption of technical standards. IDA will consult with the industry to determine when a standard should be made mandatory. Each Licensee must comply with any mandatory technical standard adopted by IDA or, in the absence of such standards, with the standards adopted by the International Telecommunication Union ("ITU"). In the absence of an IDA or ITU standard, Licensees may interconnect any service that: complies with a standard adopted by an official standards setting body; complies with an established industry specification; or has been deployed by another Licensee.

#### **4.2.9 Duty to Facilitate Change of Service Providers**

Each Licensee shall take such actions as may be necessary to allow an existing customer that chooses to obtain service from a different Licensee to allow the customer to do so with minimum difficulty. This includes the duty to allow the customer to retain the same telephone number or network address and to continue to receive service using the same local loop.

#### **4.2.10 Duty to Reject Discriminatory Preferences**

A Licensee that is affiliated, directly or indirectly, with a non-licensed entity that controls towers, ducts, conduits or similar support facilities may not

request or accept access to those facilities on prices, terms and conditions that are not available to similarly situated Licensees.

**4.2.11 Duty to Comply with Singapore Law**

All Interconnection Agreements are to be governed by the laws of the Republic of Singapore.

**4.2.12 Duty to Notify IDA of All Interconnection Agreements**

Each Licensee shall submit to IDA a copy of all Interconnection Agreements into which it has entered. If both Licensees are non-dominant, the parties may agree that the agreement will be effective upon submission. Such agreements will remain effective unless IDA informs the parties to the contrary, in writing, within 15 days. IDA shall not reject any Interconnection Agreement between Non-dominant Licensees that fulfils the Minimum Duties specified in this Section 4.2. IDA will not publicly disclose such agreements. Interconnection Agreements involving Dominant Licensee are subject to the additional requirements contained in Section Five of this Code.

**4.3 Enforcement of Interconnection Agreements**

Once an Interconnection Agreement becomes effective, IDA generally will not involve itself in the day-to-day implementation of the agreement.

**4.3.1 Duty to Co-operate**

Licensees have a duty to co-operate, in good faith, in carrying out the terms of their Interconnection Agreements and avoiding unnecessary disputes.

**4.3.2 IDA Conciliation**

Where Licensees are unable to resolve disputes regarding the implementation of an Interconnection Agreement, they may jointly request IDA to provide assistance in resolving the dispute. Licensees seeking conciliation must submit a joint statement describing the disputed issues and the position of each party. IDA will seek to accommodate such requests, where appropriate. IDA's role in any conciliation procedure will be to assist the Licensees to reach a mutually acceptable solution, rather than advocating any specific position.

**4.3.3 Private Enforcement**

Interconnection Agreements are private contracts between the Licensees. If the Licensees are unable to resolve any dispute regarding the carrying-out of their Interconnection Agreement, they may agree to binding arbitration or may seek relief from a court of competent jurisdiction. To the extent that the dispute turns on an interpretation of the Telecommunications Act, IDA regulations, directions or decisions, or the provisions of this Code, Licensees may seek advisory guidance from IDA, but may not use the request for enforcement procedures contained in Section Ten of this Code.

#### **4.4 Modification, Suspension or Termination of Interconnection Agreements by Mutual Agreement**

IDA anticipates that Interconnection Agreements will remain effective throughout their specified term. IDA recognises, however, that there may be situations in which the parties will agree to modify, suspend or terminate agreements. The following provisions govern those situations:

##### **4.4.1 Notification to IDA**

Except where imminent threats to life or property or compliance with other legal or regulatory obligations requires immediate action, prior to modifying, suspending or terminating an Interconnection Agreement by mutual agreement, the Licensees shall inform IDA of the actions they propose to take and the reasons why they believe the action is appropriate.

##### **4.4.2 Review by IDA**

Where both Licensees agree to modify the agreement, the parties may implement the change upon notification to IDA. The modification will remain effective unless IDA informs the Licensees within 15 days that the agreement, as modified, no longer complies with the Minimum Duties specified in Section 4.2 of this Code and, if either Licensee is dominant, that it discriminates against any other Licensee. Where both Licensees agree to suspend or terminate the agreement, they may do so upon submission of notification to IDA.

#### **4.5 Unilateral Suspension or Termination of an Interconnection Agreement**

In exceptional circumstances, IDA will permit one party to an Interconnection Agreement to unilaterally terminate the agreement.

##### **4.5.1 IDA Authorisation**

Every Interconnection Agreement must include a statement of the bases for which unilateral suspension or termination will be permitted. This can include situations where: one party has materially breached the agreement; one party has become insolvent; continued operation of the agreement would be unlawful; or continued operation of the agreement would pose an imminent threat to life or property. Every Interconnection Agreement must further provide that any unilateral suspension or termination, unless by operation of law, will only become effective when (and to the extent) that it is approved by IDA.

##### **4.5.2 Notification of IDA**

Except where imminent threats to life or property or compliance with other legal or regulatory obligations requires immediate action, prior to unilaterally

suspending or terminating an Interconnection Agreement, the Licensee that seeks to take such action must notify IDA, in writing, of the action it proposes to take and the reason why it believes such action is appropriate.

#### **4.5.3 Approval by IDA**

Upon notification, IDA will provide the non-requesting Licensee, and other interested parties, with an opportunity to submit their views regarding the proposed suspension or termination of the agreement. IDA will issue an order, within 45 days of the initial notification, granting or denying (in whole or in part) the request.

### **5. COOPERATIVE DUTIES OF DOMINANT LICENSEES**

#### **5.1 Over-view**

IDA seeks to promote new entry into the Singapore telecommunications market. In order to provide telecommunication services, Licensees will need to interconnect with the networks of other Licensees that use a variety of transmission media (wireline, wireless, cable, etc.). Dominant Licensees, however, typically lack the economic incentives to enter voluntarily into Interconnection Agreements with competing Licensees. Consequently, IDA cannot rely on market forces to ensure that these Licensees enter voluntarily into mutually acceptable Interconnection Agreements. IDA, therefore, will take a more active role in overseeing negotiations involving Dominant Licensees.

#### **5.2 Means of Entering into an Interconnection Agreement**

A Licensee (“Requesting Licensee”) that seeks to interconnect with a Dominant Licensee may do so pursuant to the terms of: (a) an approved Reference Interconnection Offer developed by the Dominant Licensee; (b) any existing Interconnection Agreement between the Dominant Licensee and any similarly situated Licensee; or (c) an individualised agreement between the Dominant and Requesting Licensees.

#### **5.3 Interconnection Pursuant to an Approved Reference Interconnection Offer**

A Licensee may obtain interconnection with a Dominant Licensee on the terms specified in the Reference Interconnection Offer (“RIO”) developed by the Dominant Licensee and approved by IDA.

### **5.3.1 Duty to Develop a Reference Interconnection Offer**

Within 30 days of the effective date of this Code, each Dominant Licensee shall submit to IDA a proposed RIO.\*

### **5.3.2 Contents of the Offer**

The RIO must contain a clear and comprehensive statement of the minimum prices, terms and conditions on which a Dominant Licensee is prepared to offer interconnection to any Requesting Licensee. The RIO should be sufficiently detailed to enable a Requesting Licensee that is willing to accept the terms to obtain Interconnection Related Services, on an unbundled basis, without engaging in negotiation with the Dominant Licensee. If a Requesting Licensee accepts the RIO, further discussions will be limited to implementing the agreed upon terms. Such discussions should last no more than 30 days. If IDA approves any change in the RIO, the revised provisions will be binding on both parties. At a minimum, the RIO must contain the following:

- (a) a list and description of the physical locations at which a Requesting Licensee may interconnect and the means by which interconnection may be achieved;
- (b) a description of the physical and logical interfaces to the Dominant Licensee's network that are necessary to allow physical interconnection, access to Unbundled Network Elements and access to Essential Support Facilities, and the procedures to be used if the Dominant Licensee chooses to alter those interfaces;
- (c) a description of the service quality levels that the Dominant Licensee will provide – including the means by which quality will be measured, any short-comings corrected, and the Requesting Licensee will be compensated for any adverse impact resulting from the Dominant Licensee's failure to meet the quality standards;
- (d) a description of any technical requirements that the Requesting Licensee must comply with to avoid harm to the Dominant Licensee's network;
- (e) a description of the means by which the Dominant Licensee will provide information necessary to allow the Requesting Licensee to bill for telecommunication services that it provides to its customers;

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\* To assist Dominant Licensees, IDA will make available on its Website RIOs and Model Interconnection Agreements from other jurisdictions. IDA is making these documents available for informational purposes only; they are intended to provide examples of the format and level of detail that the RIO should contain.

- (f) a statement of the terms on which the Dominant Licensee will protect confidential information provided by the Requesting Licensee in connection with any Interconnection Agreement;
- (g) a description of the means by which the Dominant Licensee will work with the Requesting Licensee to enable its customers to keep their current telephone numbers or network address if they switch to the services provided by the Requesting Licensee;
- (h) a list and description (including pricing) of the origination, transit and termination services that the Dominant Licensee will provide and the terms on which the Dominant Licensee will compensate the Requesting Licensee for providing such services to it;
- (i) a list and description (including pricing) of the Unbundled Network Elements and Unbundled Network Services that the Dominant Licensee is prepared to offer any facilities-based Requesting Licensee, including any modifications that the Dominant Licensee is prepared to make and the extent to which the Dominant Licensee is prepared to combine individual elements;
- (j) a description (including pricing) of the means by which a facilities-based Requesting Licensee can co-locate equipment within the Dominant Licensee's network - including the locations at which co-location is available and any restrictions or procedures that the Dominant Licensee intends to impose due to space, safety or security concerns;
- (k) a list and description (including pricing) of the Essential Support Facilities that the Dominant Licensee is prepared to make available to any facilities-based Requesting Licensee;
- (l) a list and description (including pricing) of end-user telecommunication services that the Dominant Licensee will offer the Requesting Licensee at wholesale prices;
- (m) a description of the means by which the Requesting Licensee can order currently available Interconnection Related Services, on an unbundled basis - including the contact person, the expected number of days from order to deployment, the means by which deployment will be monitored (including quality testing procedures) and the means by which the Dominant Licensee will compensate the Requesting Licensee for any adverse impact resulting from unreasonable delays;
- (n) the means by which the Requesting Licensee can request additional interconnection related services not currently specified in the RIO -

including the timeframe, procedures and processes and standards that the Dominant Licensee will use to assess such requests;

- (o) a list and description of any reasonable restrictions or conditions that the Dominant Licensee intends to impose on the terms of the offer contained in the RIO;
- (p) a statement regarding the duration of the agreements, the means by which they can be amended, and the impact of any change in governing law on the terms of the agreement;
- (q) a provision stating that the Licensees will refer disputes regarding interconnection to IDA for guidance and/or resolution and to seek IDA's authorisation before unilaterally suspending or terminating the Interconnection Agreement; and
- (r) a statement that any disputes between the Licensees will be governed by the laws of Singapore, including this Code.

### **5.3.3 Model Confidentiality Agreement**

At the time it submits the RIO, the Dominant Licensee shall submit a Model Confidentiality Agreement. The Model Confidentiality Agreement will contain provisions, which shall be no broader than necessary, governing preservation of proprietary or commercially sensitive information disclosed by either party during any negotiation related to the adoption of an individualised Interconnection Agreement. IDA will review and, approve, reject or require modification of the Model Confidentiality Agreement at the time it reviews the RIO.

### **5.3.4 IDA Review**

IDA will review the RIO to determine whether it satisfies the Minimum Duties specified in Section 4.2 of this Code, contains all elements specified in Section 5.3.3, and fulfils the Minimum Requirements specified in Section 5.3.5 of this Code. Upon receipt of the proposed RIO, IDA will seek public comments, which must be filed within 15 days. If IDA does not act within 30 days, the RIO will be deemed approved unless, prior to the thirtieth day, IDA notifies the Licensee that it requires an additional 30 days for its review. If IDA rejects any portion of the RIO, it will provide the Licensee with a written explanation of the basis for the rejection and the modifications required to bring the RIO into compliance with IDA's requirements. The Licensee will have seven days to submit a revised RIO that corrects the deficiencies identified by IDA. IDA will have seven days to approve the RIO or direct the Licensee to incorporate specific language. A Dominant Licensee must notify IDA and obtain IDA's approval before making any changes in its RIO.

### **5.3.5 Minimum Requirements of the RIO**

The RIO must satisfy the following Minimum Requirements:

#### **5.3.5.1 Non-discrimination**

The Dominant Licensee must offer to provide all interconnection related-services to a Requesting Licensee on terms and conditions that are no less favourable than the terms and conditions on which it provides comparable services to itself or its affiliates.

#### **5.3.5.2 Physical Interconnection at Any Technically Feasible Location**

The Dominant Licensee must offer to allow the physical linking of facilities-based networks at any technically feasible point. The minimum points of interconnection are specified in Appendix Two. IDA will review this list periodically and may consult with the industry to determine whether to make any revisions. Licensees must provide adequate capacity to meet reasonable forecast traffic flow.

#### **5.3.5.3 Provision of Unbundled Network Elements and Unbundled Network Services**

The Dominant Licensee must offer to allow facilities-based Requesting Licensees to lease, on an unbundled basis, those elements and services of the Dominant Licensee's network that are necessary to provide a competing telecommunication service offering. The Requesting Licensee must be allowed to combine the elements and services with its own facilities. IDA will consider an element or service necessary if it is technically or operationally required to provide the competing service and cannot be replicated, or obtained from any sources other than the Dominant Licensee, at commercially reasonable rates. The minimum elements and services that must be unbundled are specified in Appendix Two. The Dominant Licensee must describe the means by which it will transfer to the Requesting Licensee a loop that the Dominant Licensee uses to provide service to a customer that switches from the Dominant Licensee's telecommunication service to a telecommunication service provided by the Requesting Licensee. IDA will periodically review this list and may consult with the industry to determine whether to make any revisions. Upon request, the Dominant Licensee must combine the elements and services requested by the Requesting Licensee in the most technically efficient manner.

#### **5.3.5.4 Provision of Essential Support Facilities**

The Dominant Licensee must offer to provide the facilities-based Requesting Licensees with access to Essential Support Facilities ("ESFs"). ESFs are passive support structures, for which no practical or viable alternative exists,

that enable the deployment of telecommunication infrastructure. The minimum ESFs that must be offered are listed in Appendix Two.

#### **5.3.5.5 Provision of Wholesale Services**

The Dominant Licensee must offer to allow Requesting Licensees to purchase, at wholesale rates, any telecommunication service designated by IDA that the Licensee provides to end-users at retail rates. The services designated are specified in Appendix Two.

#### **5.3.5.6 Co-location**

The Dominant Licensee must offer to allow facilities-based Requesting Licensees to co-locate equipment at any technically feasible location within the Dominant Licensee's network pursuant to the following provisions:

##### **5.3.5.6.1 Physical Co-location, Where Feasible**

The Dominant Licensee must offer to allow a facilities-based Requesting Licensee, to the extent feasible, to physically place its equipment at locations (such as the exchange or remote terminals) within, or adjacent to, the Dominant Licensee's network. The Dominant Licensee must allow the Requesting Licensee to have unrestricted access (7 days per week, 24 hours per day) to, and physical control over, the equipment. If physical co-location is not feasible, due to actual space constraints or technical considerations, the Dominant Licensee must offer to allow "virtual co-location," in which the Requesting Licensee locates its equipment in a nearby building and uses an interconnection cable to connect to the Dominant Licensee's network.

##### **5.3.5.6.2 Space Limitations**

The Dominant Licensee that claims that space is not available for co-location must verify that it has taken reasonable measure to provide adequate space. This may include re-arrangement of the Dominant Licensee's equipment configuration to eliminate inefficiencies. The Dominant Licensee may not impose discriminatory minimum space requirements. Upon request, the Dominant Licensee must allow the Requesting Licensee to physically inspect any location at which the Dominant Licensee claims space is not available for co-location. Where actual space constraints exist, the Dominant Licensee must take reasonable measures to upgrade or expand its facilities to allow co-location of additional equipment. The Dominant Licensee must initially assume these costs, but may recover them, on a non-discriminatory basis, from those Licensees that subsequently use the upgraded or expanded facilities.

### **5.3.5.6.3 Excess Capacity**

The Dominant Licensee must not prevent a Requesting Licensee from co-locating equipment in currently unused space by asserting that excess capacity has been “reserved” for future use. To the extent that the Licensee demonstrates convincingly that it will need to use a portion of currently unused space in order to achieve reasonably projected rates of growth over a next three-year period, however, the Licensee will not be required to provide co-location.

### **5.3.5.6.4 Equipment That May be Co-located**

The Dominant Licensee must offer to allow the co-location of equipment designated by the Requesting Licensee that will enable the Requesting Licensee to interconnect. The Dominant Licensee must not prevent a Requesting Licensee from co-locating any piece of equipment that the Dominant Licensee allows any affiliate, customer or other Licensee to co-locate, or which is used in other jurisdictions for interconnection.

### **5.3.5.6.5 Security Provisions**

The Dominant Licensee may take reasonable and non-discriminatory measures to protect the security of its network. Such measures, however, must be no more burdensome than necessary. If the Dominant Licensee determines that it is necessary to have an escort present when employees of another Licensee enters upon its property, the Dominant Licensee must make escort service available 7 days a week, 24 hours a day, whilst taking all feasible actions to reduce unnecessary cost to be assumed by the Requesting Licensee. In general, Dominant Licensees will not be allowed to require the use of “cages” or similar structures to physically segregate co-located equipment.

### **5.3.5.7 Compensation for Significant Interface Changes**

The Dominant Licensee must offer to compensate the Requesting Licensee for significant and costs that result from significant changes in interfaces used for origination and termination adopted by the Dominant Licensee, unless such changes are mandated by IDA.

### **5.3.5.8 Pricing**

The prices that the Dominant Licensee offers for all interconnection-related services must be established using a methodology based on incremental forward-looking economic cost (“FLEC”). This standard seeks to replicate market forces by determining what it would cost a Licensee to accommodate the needs of a new entrant using the most efficient technology and practices available. The FLEC methodology is described in Appendix One. Prices that

the Dominant Licensee must offer for most Interconnection Related Services, established using the FLEC methodology, are specified in Appendix Two.

**5.4 Interconnection Pursuant to an Existing Interconnection Agreement**

In lieu of accepting the offer contained in the RIO, a Requesting Licensee may interconnect with a Dominant Licensee on the same terms that the Dominant Licensee has agreed to in any Interconnection Agreement with another Licensee, either prior to or following the effective date of this Code. The Interconnection Agreement between the Requesting Licensee and the Dominant Licensee will terminate on the day that the agreement that the Requesting Licensee “opted-into” terminates.

**5.5 Interconnection Pursuant to an Individualised Interconnection Agreement**

In lieu of accepting the offer contained in the RIO, or interconnecting pursuant to an existing Interconnection Agreement, a Licensee may interconnect with a Dominant Licensee pursuant to the terms of an individualised agreement between the two parties. Such agreements may be arrived at voluntary negotiations or as the result of the Dispute Resolution Procedure described below.

**5.5.1 Duty to Negotiate in Good Faith With Any Licensee Requesting Interconnection**

A Dominant Licensee has a duty to negotiate, in good faith, with any Licensee requesting interconnection. The Requesting Licensee must negotiate in good faith with the Dominant Licensee.

**5.5.2 Negotiations Process**

A Licensee (“Requesting Licensee”) that requests to negotiate an Interconnection Agreement with a Dominant Licensee shall comply with the following procedures:

**5.5.2.1 Request for Negotiation**

The Requesting Licensee shall submit a written request to negotiate to the Dominant Licensee (“Request”). The Request will specify the forms of interconnection requested, designate a contact person and propose a time and place for initial negotiations.

**5.5.2.2 Notification to IDA**

At the time it presents the Request, the Requesting Licensee shall submit a copy of the Request to IDA.

### **5.5.2.3 Initiation of Negotiations**

The parties shall initiate negotiations, preferably in a face-to-face meeting, within seven days after the submission of the Request.

### **5.5.2.4 Confidentiality Agreement**

The two Licensees shall seek to negotiate a confidentiality agreement within 15 days of the receipt of the Request. If the two Licensees fail to enter into a confidentiality agreement by the end of that period, they shall adopt the Model Confidentiality Agreement described in Section 5.3.3.

### **5.5.3 Interim Interconnection Pursuant to RIO**

At the time it submits its initial request to negotiate an Interconnection Agreement, the Requesting Licensee may require the Dominant Licensee to provide interconnection pursuant to the terms of the RIO, pending the outcome of the negotiation.

### **5.5.4 IDA Conciliation**

Should both parties so request, IDA may provide a representative to assist the Licensees in reaching a voluntary Interconnection Agreement.

### **5.5.5 Voluntary Agreements**

IDA encourages the adoption of voluntary Interconnection Agreements derived through negotiations between the parties.

#### **5.5.5.1 Terms of Agreement**

Dominant Licensees are free to enter into Interconnection Agreements on any mutually agreeable terms, provided that they satisfy the Minimum Duties set forth in Section 4.2 of this Code and do not discriminate against any other Licensee.

#### **5.5.5.2 IDA Review**

Licensees who have entered into voluntary Interconnection Agreements with Dominant Licensees must specify that such agreements will be submitted to, and will not become effective until approved by, IDA. If IDA takes no action within 30 days after the agreement is submitted to it, the agreement will be deemed approved. IDA will only reject or modify a voluntary agreement if IDA determines that the agreement does not fulfil the Minimum Duties set forth in Section 4.2 of this Code or discriminates against any other Licensee.

## **5.5.6 Agreements Arrived at Via the IDA Dispute Resolution Procedure**

IDA recognises that, in many cases, Dominant Licensees will not voluntarily enter into negotiated Interconnection Agreements. The following provisions address that situation.

### **5.5.6.1 Petition for IDA Dispute Resolution**

If the Licensees have not reached a mutually acceptable voluntary Interconnection Agreement within 90 days of the date on which the Requesting Licensee submitted its Request, either Licensee may (but is not required to) file a petition for dispute resolution with IDA (“Petition”). (The Licensee filing the petition shall be referred to herein as the “Petitioning Licensee”. The other Licensee shall be referred to herein as the “Responding Licensee”). The Petitioning Licensee must list each point on which the Licensees have reached agreement and each point on which the Licensees have not reached agreement. For those points on which the Licensees disagree, the Petitioning Licensee shall provide a clear statement of its position. The Petitioning Licensee shall provide a copy of the dispute resolution request (including its report referred to herein) to the Responding Licensee.

### **5.5.6.2 Response to the Request**

The Responding Licensee will have 15 days to submit to IDA (with a copy to the Petitioning Licensee) a written response to the Petition. For each point in the Petition on which the Petitioning Licensee claims that the parties are in agreement, the response shall indicate whether the Responding Licensee agrees or disagrees. If the Responding Licensee disagrees, it shall provide a statement of its position. For each point in the Petition on which the Petitioning Licensee claims that the parties disagree, the Responding Licensee must provide a clear statement of the way in which its position differs from that of the Petitioning Licensee.

### **5.5.6.3 IDA Request for Additional Information**

IDA may request either or both Licensees to submit additional information at any time during the course of the dispute resolution procedure. Any submission by one Licensee shall be made available to the other Licensee at the time it is submitted to IDA.

### **5.5.6.4 Binding Effect of Submissions**

The positions taken by a Licensee in its dispute resolution procedure submissions made under this Section shall be binding against that Licensee unless the charges are mutually agreed by the Licensees.

### **5.5.6.5 Effect of Failure to Respond**

If either Licensee fails to submit information required by this Code, or requested by IDA, IDA will base its decision on the information provided by the other Licensee or, if the other Licensee also has not submitted relevant information, on the best publicly available information.

### **5.5.6.6 Resolution by IDA**

IDA will use the following procedure to conduct the Dispute Resolution Procedure:

#### **5.5.6.6.1 Scope of the Dispute Resolution Procedure**

Provided they satisfy the Minimum Duties contained in Section 4.2 of this Code, and do not discriminate against any other Licensee, IDA will not re-open any issues on which the Licensees have reached agreement. Rather, the dispute resolution will be limited to those issues on which the two Licensees are unable to reach agreement.

#### **5.5.6.6.2 Standard to be Applied**

Any order resolving a dispute presented by the Licensees will require compliance with the Minimum Duties specified in Section 4.2 of this Code. To the extent that an issue in dispute is addressed by the terms of the Dominant Licensee's approved RIO, IDA will apply those provisions. To the extent that an issue in dispute is not addressed by the RIO, IDA retains full discretion to impose any solution that it deems appropriate. IDA will require the parties to consent to resolution by IDA of any disputes regarding the implementation of an agreement arrived at through the Dispute Resolution Procedure.

#### **5.5.6.6.3 Timing of the Dispute Resolution Procedure**

IDA will seek to complete the Dispute Resolution Procedure, and issue a direction, within 60 days from the day on which it receives the Petition. This period will be shortened to 15 days where the Requesting Licensee is a services-based Licensee.

### **5.5.6.7 Implementation of Dispute Resolution Decision by Licensees**

Unless either party seeks review from the Minister in accordance with Section 1.2.9 of this Code, within 14 days of the adoption of a dispute resolution direction, the Licensees shall submit an Interconnection Agreement that complies with the terms of the direction. IDA shall have 15 days to either approve the agreement or to direct the parties to amend the agreement by

including provisions specified by IDA that fully implement its decision in the Dispute Resolution Procedure.

**5.6 Publication of Interconnection Agreements**

All Interconnection Agreements involving Dominant Licensees, whether arrived at voluntarily or through the Dispute Resolution Procedure, shall be published by IDA. However, IDA – on its own motion or at the request of either of the Licensees – may withhold from publication any portion of an agreement that IDA determines contains proprietary or commercially sensitive information.

**5.7 Status of Agreements Entered Into Prior to the Effective Date of the Code**

Any Interconnection Agreement entered into and approved by IDA prior to the effective date of this Code shall remain in force, notwithstanding the provisions of this Code, unless expressly modified by IDA or the parties to the agreement.

**5.8 Enforcement of Agreements**

In addition to the procedures specified in Section 4.3.3 of this Code, in any case involving implementation of an Interconnection Agreement adopted pursuant to the RIO or pursuant to the Dispute Resolution Procedure, a Licensee that believes that the other Licensee is violating the terms of the agreement may ask IDA, at its discretion, to impose a binding resolution on the parties.

**6. INFRASTRUCTURE SHARING**

**6.1 Over-view**

In general, a Licensee is not required to “share” the use of its facility with its competitors. Rather, each facilities-based Licensee is expected to build or lease the use of the facilities that it requires. However, where competition or other public policy considerations make it appropriate, pursuant to Section 22 of the Telecommunications Act, IDA may mandate that a Licensee that controls a given facility share the use of the facility with Requesting Licensees.

**6.2 Definition of Sharing**

Infrastructure sharing refers to an arrangement under which a Licensee that controls a specific facility used to support the provision of telecommunication services is obligated to allow other Licensees to jointly use the same facility, at cost-based prices, on non-discriminatory terms. For example, if one Licensee controls a particular leaky feeder cable for provision of radio

coverage in the mass rapid transit and road tunnels, and if IDA determines that the leaky feeder cable is subject to sharing, the Licensee would be required to allow other Licensees to jointly use that facility.

### **6.3 Procedures for Requesting Sharing of a Facility**

The following procedures will govern all requests to share a facility controlled by a Licensee:

#### **6.3.1 Request to Licensee Controlling the Facility**

A Licensee that wants to share a facility that is controlled by another Licensee must first seek to negotiate an agreement with the Licensee that controls the facility. The Licensees may jointly seek the assistance of IDA. IDA will act as a conciliator, but will not seek to impose any specific solution on the parties.

#### **6.3.2 Request to IDA**

If the Licensees are unable to reach agreement regarding the sharing of the facility within 30 days after the initiation of negotiations, the Requesting Licensee may (but is not required to) submit a written request to IDA. The Requesting Licensee shall provide a clear explanation of the specific facility that it seeks to share, the means by which it proposes to share it, and the reasons why the Requesting Licensee believes it should be given a right to share the facility at cost-based prices. The Requesting Licensee shall provide the Licensee that controls the facility with a copy of the request at the same time that the Requesting Licensee provides the request to IDA.

#### **6.3.3 Response by Licensee**

Unless IDA dismisses the Request on its own motion, the Licensee that controls the facility shall have 15 days from the date on which the Request is filed to reply to the Request. The Licensee shall respond to all points made by the Requesting Licensee, and shall provide a full explanation as to the reasons why it does not believe it should be required to share the requested facility at cost-based prices, or, if the Licensee acknowledges that it should be required to share the requested facility at cost-based prices, a full explanation as to the reasons why it has been unable to negotiate a mutually acceptable sharing arrangement.

#### **6.3.4 Timing of IDA Decision**

IDA shall have the right to request either Licensee to submit additional information, subject to suitable protections for proprietary or commercially sensitive information. IDA may also seek public comments. Within 30 days of receiving all necessary information, IDA shall issue a direction as to

whether the Licensee that controls the facility is required to share it with the Requesting Licensee.

#### **6.4 Standards by Which IDA Will Determine Whether to Require Sharing**

IDA will use the following standards to determine whether the facility must be shared:

##### **6.4.1 Essential Facility**

IDA may require sharing of any facility that it determines is an Essential Facility. A Licensee seeking to demonstrate that a facility controlled by another Licensee is an Essential Facility must demonstrate more than that allowing it to share the facility would reduce its costs, or increase the speed with which it can deploy telecommunication services. Rather, IDA will only deem the facility to constitute an Essential Facility if a Licensee demonstrates that: the facility is required to provide telecommunication services; an efficient new entrant would not be able to replicate the facility within the foreseeable future at a price that would allow market entry; the Licensee that operates the facility has sufficient current capacity to share with the Requesting Licensee; the Licensee that controls the facility has no legitimate business justification for refusing to share the facility with the Requesting Licensee; and that failure to share the facility is limiting competition.

##### **6.4.2 Public Interest**

In certain cases, IDA may determine that public interest requires that a facility be shared. For example, deployment of certain types of infrastructure by multiple Licensees would have significant adverse environmental impact. Therefore, even if such facilities are not Essential Facilities, IDA (in consultation with other government agencies, where appropriate) may require the sharing of such facilities.

#### **6.5 Initial Designation of Facilities That Must be Shared**

The following types of facilities must be shared: masts, poles, towers, “leaky feeder” cable, and in-building cabling\*.

#### **6.6 Implementation of IDA Decision**

The following procedures must be used to implement IDA’s decision to require sharing.

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\* Where the occupant elects to take service from another service provider.

### **6.6.1 Voluntary Negotiations**

Once IDA has determined that a facility must be shared, the Licensee that controls that facility must negotiate a Facility Sharing Agreement. The parties must negotiate in good faith.

### **6.6.2 IDA Dispute Resolution Procedures**

If the Licensees are unable to negotiate a mutually acceptable Facility Sharing Agreement within 30 days from the date of IDA's direction referred to in Section 6.3.4 of this Code, the Requesting Licensee may request IDA to resolve the dispute in accordance with the procedures specified in Section 5.5.6 of this Code. Pending resolution of the dispute, IDA may direct sharing on an interim basis.

### **6.6.3 Compensation for Sharing**

Where the Licensees are not able to reach agreement regarding compensation for sharing of any facility, IDA will establish rates using the fully allocated cost methodology described in Appendix Three.

## **7. UNFAIR METHODS OF COMPETITION**

### **7.1 Over-view**

Once it has complied with the specific provisions described above, IDA generally will not intervene in a Licensee's day-to-day operations. However, Licensees must not act in a manner that can impede competition. Where this occurs, IDA (either on its own motion or at the request of a private party) may initiate an enforcement action, pursuant to the procedures set forth in Section Ten of this Code. This Section provides standards that IDA will use to determine whether a Licensee has acted anti-competitively.

### **7.2 Abuse of Dominant Position in the Singapore Market**

A Dominant Licensee must not use its economic position in the Singapore telecommunication market in a manner that unreasonably restricts competition. This Section provides examples of several forms of impermissible anti-competitive abuses.

#### **7.2.1 Pricing Abuses**

Dominant Licensees must not price services in a manner that is likely to unreasonably restrict competition. In particular, Dominant Licensees may not engage in the following types of anti-competitive pricing:

### **7.2.1.1 Predatory Prices**

Vigorous price competition is the hallmark of a competitive market. Whilst such competition may harm specific (often less efficient) competitors, it generally provides a direct and immediate benefit to consumers. IDA, therefore, will be reluctant to interfere with a Licensee's decision to reduce its prices. A Dominant Licensee, however, must not engage in anti-competitive "predatory" price cutting. IDA will find that a price cut is predatory if three factors are met. First, the Licensee is selling its service at a price that is less than long-run average incremental cost. Second, there is a likelihood that such price cutting will drive efficient rivals from the market (or deter future efficient rivals from entering the market). Finally, entry barriers are so significant that, after driving rivals from the market (or deterring entry), the Licensee could impose a sustained increase in prices high enough to recoup the full amount of the loss that it incurred during the period of price cutting.

### **7.2.1.2 Price Squeezes**

A Dominant Licensee that provides an input used by "down-stream" entities, including an affiliate of the Licensee, must not sell the input at a price that is so high that the Licensee's down-stream affiliate could not profitably sell its product if it were required to pass on to its customers the full retail price of the input. For example, a Dominant Licensee that provides xDSL service could not price its xDSL service at a level so high that, if its affiliated Internet Service Provider were required to pass the full retail price on to its customers, the affiliated Internet Service Provider could not profitably compete against non-affiliated Internet Service Providers. Similarly, a Licensee that uses input provided by an upstream affiliate that has market power may not agree to purchase the input at a price that is so high that efficient competing non-affiliated Licensees could not profitably sell their end-product if they are required to purchase the input at the same price as the Licensee.

### **7.2.1.3 Cross-subsidisation**

A Dominant Licensee must not use revenues from the provision of a telecommunication service that is not subject to effective competition to cross-subsidise the price of goods or services provided that are subject to effective competition. To prevent such abuse, Dominant Licensees must comply with separate regulations issued by IDA requiring accounting separation, the correct allocation of costs between competitive and non-competitive operations, and the use of arm's length transactions between competitive and non-competitive operations. Similarly, a Licensee that is affiliated with an entity that has market power may not accept any cross-subsidisation from that affiliate.

## **7.2.2 Discrimination**

A Dominant Licensee must not provide its down-stream affiliates with access to facilities, systems, services, or information on prices, terms or conditions that are more favourable than the prices, terms and conditions on which the Licensee provides those facilities, services or information to non-affiliated competitors of its “down-stream” affiliate. Similarly, a Licensee that is affiliated with an entity that has market power may not accept access to the facilities, systems, services or information of that affiliate unless the affiliate offers to the Licensee’s competitors access to those facilities, systems, services or information on non-discriminatory price, terms and conditions.

## **7.2.3 Abuse of Dominant Position in a Foreign Market**

A Licensee may be classified as non-dominant in the Singapore telecommunication market even though it is affiliated with a telecommunication operation that has market power in a foreign market. Such a Licensee must, however, not use the dominant position of its foreign affiliate in a manner that enables it to unreasonably restrict competition in the Singapore telecommunication market.

## **7.3 Unfair Methods of Competition**

Whilst Licensees are expected to compete vigorously against their rivals, Licensees must not engage in unfair methods of competition. An unfair method of competition is a practice that improperly deters (or is likely to deter) new entry into the Singapore telecommunication market, or restricts (or is likely to restrict) existing competition in the Singapore telecommunication market, for reasons unrelated to the availability, price or quality of the service that a prospective or current Licensee offers or seeks to offer. Unfair methods of competition can take many forms. The following list is intended to be illustrative:

### **7.3.1.1 False or Misleading Claims**

A Licensee shall not make any claim – either publicly or privately – regarding the availability, price or quality of its service, or of the service of another Licensee, that is not supported by objective evidence or that is reasonably likely to confuse or mislead consumers. In appropriate cases, IDA will consult with the Advertising Standards Authority of Singapore (“ASAS”) to determine whether the Licensee’s advertising is consistent with the standards established in ASAS’s voluntary industry code.

### **7.3.1.2 Degradation of Service Availability or Quality**

A Licensee shall not take any action, or induce any other party to take any action, that has the effect of degrading the availability or quality of another

Licensee's service, or raising the Licensee's costs, without a legitimate business justification.

### **7.3.1.3 Provision of False or Misleading Information to Competitors**

Whilst Licensees are not required to disclose proprietary or commercially sensitive information to its competitors, a Licensee shall not provide information to other Licensees that is false or misleading.

### **7.3.1.4 Interference with Customer Relationships**

A Licensee must not seek to induce a customer or supplier to cease doing business with a competing Licensee by providing false or misleading information to the customer or supplier.

## **8. AGREEMENTS INVOLVING LICENSEES THAT UNREASONABLY RESTRICT COMPETITION**

### **8.1 Over-view**

IDA will not routinely review contractual agreements entered into by Licensees (other than Interconnection and Facilities Sharing Agreements). However, pursuant to the procedures in Section Ten of this Code, IDA may take enforcement action (on its own motion or pursuant to a private request) against any Licensee that enters into an agreement with another Licensee or any unlicensed entity that has the effect of unreasonably restricting competition in the telecommunication market. Certain types of agreements are so clearly anti-competitive that a Licensee may not enter into them under any circumstances. IDA will assess the permissibility of other agreements based on their likely competitive effects. IDA's role is limited to determining whether a Licensee has entered into an agreement that contravenes the provisions of this Code. Contravention of these restrictions can result in the imposition of monetary sanctions or other enforcement measures, as provided for in the Telecommunications Act.

### **8.2 Determining the Existence of an Agreement**

For the purposes of this Section Eight, an agreement can be established in any of three ways. First, an agreement can be established through direct evidence of an express agreement, such as a signed document. Second, an agreement can be established using circumstantial evidence that demonstrates the existence of an express agreement. Finally, an agreement may be tacit. That is, even in the absence of an actual agreement, Licensees may co-ordinate their production and pricing decisions in order to reduce aggregate output and raise market prices. IDA will not find a tacit agreement where Licensees have done nothing more than make similar production and pricing decisions – which could reflect a rational response to changing market conditions. Rather, IDA

will only find that there has been a tacit agreement if the Licensees have employed “signalling devices,” such as the sharing of price and output information that facilitate co-ordinated behaviour. For purposes of this Section, an arrangement between a Licensee and an affiliate that it controls, or that is under common control, does not constitute an agreement.

### **8.3 Prohibited Agreements Between Competing Licensees**

Licensees are prohibited absolutely from entering into certain types of agreements because they are almost always likely to have an adverse effect on competition.

#### **8.3.1 Price Fixing/Output Restrictions**

Licensees must not enter into agreements to fix prices or restrict output, regardless of the levels to which the Licensees agree.

#### **8.3.2 Bid Rigging**

Licensees must not enter into agreements to co-ordinate separate bids for licences auctioned by IDA, or for any input into the Licensee’s service or for the provision by the Licensee of any goods or service, regardless of the levels to which the Licensees agree.

#### **8.3.3 Geographic and Customer Divisions**

Licensees must not enter into agreements not to compete to provide service to specific customers or not to compete in specific geographic areas, regardless of the terms on which the Licensees agree.

#### **8.3.4 Group Boycotts**

Licensees must not agree to refuse to do business with a specific supplier, competitor or customer.

#### **8.3.5 Exception for Agreements Necessary for Legitimate Collaborative Ventures**

Nothing in Sections 8.3.1 through 8.3.4 of this Code prohibits agreements amongst Licensees that enter into an efficiency-enhancing integration of economic activity, where such agreement is no broader than necessary to achieve the pro-competitive benefit. For example, if competing Licensees establish a joint purchasing or production venture, which is designed to increase total output and lower prices, the two parties could agree regarding the prices to be paid or charged by the joint venture. Similarly, if competing Licensees were to establish a market for trading bandwidth, the Licensees

could exclude competitors that did not agree to certain standardised terms, if these terms are necessary to allow for the efficient operation of the market.

#### **8.4 Agreements Between Competing Licensees That Will be Assessed Based on Competitive Effects**

With the exception of the types of agreements described in Section 8.3 of this Code, IDA will assess the permissibility of most agreements between or among competing Licensees based on their actual (or likely) effect on competition. Licensees may not enter into agreements that unreasonably restrict competition. Such agreements include joint agreements to produce inputs used by multiple Licensees, to produce services sold to end-users, to jointly market services, to jointly purchase inputs or to engage in joint research and development activities. Where there is evidence that the agreements have caused actual anti-competitive harm, IDA will find them to be in contravention of this Code. Where there is no evidence of actual market effects because the agreement is relatively recent, IDA will determine the permissibility of the agreement by seeking to assess its likely effect on the market. In conducting this assessment, IDA will consider the following factors:

##### **8.4.1 Business Purpose of the Agreement**

In reviewing an agreement, IDA will make a preliminary assessment of its likely competitive impact. That is, IDA will attempt to determine whether the agreement is likely to lead to reductions in output and increased prices. If the agreement is between or amongst a small number of Non-Dominant Licensees, which collectively account for no more than 25 percent of the relevant market (as that term is defined in Sections 9.4.1.1 and 9.4.1.2 of this Code), and the business purpose of the agreement appears to be to increase output and reduce prices, IDA generally will conclude, without conducting any further analysis, that the agreement does not contravene this Code.

##### **8.4.2 Likelihood of Competitive Harm**

Where an agreement involves a more significant number of Non-Dominant Licensees, which collectively account for more than 25 percent of the relevant market (as that term is defined in Sections 9.4.1.1 and 9.4.1.2 of this Code), or a Dominant Licensee, or where the agreement has the potential to result in higher prices or reductions in output, IDA will conduct a more detailed assessment. In particular, IDA will consider the following factors: whether (and, if so, to what extent) the Licensees retain the ability to act independently of the agreed-upon venture; the duration of the agreement; whether, in the event the Licensees acted anti-competitively, new entry into the market would be likely, sufficient and timely enough to deter or counter-act any competitive harm; and any other factors that help predict the likely competitive effect of the agreement. If, after assessing these factors, IDA concludes that the

agreement poses no risk of competitive harm, IDA will conclude that the agreement does not contravene this Code.

### **8.4.3 Efficiencies**

If IDA's review demonstrates that the agreement has the potential to result in a restriction of output or an increase in prices, IDA will consider whether the agreement is necessary to achieve efficiencies. Such efficiencies could include reductions in the cost of developing, producing, marketing and delivering services. If such efficiencies offset the potential anti-competitive effect, and could not reasonably be achieved through measures that reduce competition to a lesser extent, IDA will conclude that the agreement does not contravene this Code. If such efficiencies do not offset the potential anti-competitive effects, or could reasonably be achieved through measures that reduce competition to a lesser extent, IDA will conclude that the agreement contravenes this Code.

## **8.5 Agreements Between Licensees and Entities at Different Levels in the Supply Chain**

Licensees must not enter into agreements with entities at different levels in the supply chain – such as a down-stream reseller of a facilities-based Licensee's service or an upstream provider of telecommunication equipment – that have the effect of unreasonably restricting competition. This Section provides examples of such agreements.

### **8.5.1 Vertical Price Fixing**

A facilities-based and a services-based Licensee must not agree as to the price that the services-based Licensee can charge end-users to which it resells the facilities-based Licensee's service.

### **8.5.2 Vertical Customer Allocation and Vertical Territorial Allocation**

A Dominant Licensee must not assign specific customers to, or allocate specific geographic markets amongst, Licensees that resell its services.

### **8.5.3 Exclusive Dealing**

A Dominant Licensee must not enter into an agreement in which it agrees to package service that it provides exclusively with the service of another entity. For example, a Licensee that is dominant in the provision of exchange line service must not agree to package its services exclusively with the services of a single provider of terminal equipment or value added services.

## **9. CONSOLIDATIONS BY LICENSEES THAT ARE LIKELY TO UNREASONABLY RESTRICT COMPETITION**

### **9.1 Over-view**

In competitive markets, enterprises often seek to merge with or acquire other enterprises. In many cases, such combinations can have pro-competitive effects, such as creating economies of scale and scope. In other cases, however, such consolidations may harm competition. For example, such transactions could create an entity that is not subject to competitive market forces or could facilitate unlawful collusion amongst competing entities. All licences granted by IDA require the Licensee to obtain prior approval from IDA before assigning or transferring control of the licence. In reviewing requests to assign or transfer control of a Licence in connection with a merger or acquisition (“consolidation”), IDA will seek to allow Licensees to have the maximum freedom to enter into such transactions, provided they are not likely to unreasonably restrict competition. Where IDA believes that a transaction risks unreasonably restricting competition, however, IDA will reject the request to assign or transfer control of the licence, or will impose appropriate conditions on the assignment or transfer of control of the licence.

### **9.2 Duty of All Licensees to Obtain IDA Approval**

In order to prevent anti-competitive concentrations, each Licensee, in accordance with the requirement of its licence, must obtain the prior approval of IDA before engaging in either of the following transactions:

#### **9.2.1 Assignments of Licences**

A Licensee must receive the approval of IDA before assigning, transferring, subletting or otherwise disposing its rights, duties, liabilities, obligations and privileges under its licence to any other entity. For example, if Company A holds a licence, and its assets are to be acquired by Company B, Company A must obtain IDA’s approval before it assigns its licence to Company B.

#### **9.2.2 Transfer of Control of Licences**

A Licensee must receive the approval of IDA before effective control over its licence is transferred to another entity as a result of change in ownership (whether direct or indirect), stockholding or management of the Licensee, even if the licence continues to be held by the same entity. For example, if Company A holds a licence, and if Company A is a wholly-owned subsidiary of Company B, and if Company C proposes to acquire Company B, Company A must obtain IDA’s prior approval even though it will remain the Licensee because control would be transferred from Company B to Company C.

### **9.3 Procedures**

Any Licensee that enters into an agreement that would result in the assignment or transfer of control of a licence must submit a copy of the proposed agreement to IDA, along with a statement explaining the nature and purpose of the transaction and demonstrating that the proposed transaction will not unreasonably restrict competition. The Licensee bears the burden of providing information (including information about customers and competitors) that will enable IDA to assess the likely competitive impact of the proposed consolidation. Where appropriate, IDA will request additional information, and will seek comments from interested persons. (Parties may request confidential treatment of information submitted to IDA.) IDA ordinarily will issue a decision indicating whether it approves, rejects or approves subject to conditions the request to assign or transfer control of the Licence within 30 days. IDA may, however, extend this period by up to 90 days in the case of a proposed transaction that raises novel or complex issues. IDA may take any of the actions specified in Section 9.5 of this Code.

### **9.4 Methodology**

IDA will use the following methodology to assess whether to approve a request to assign or transfer control of a licence in connection with a proposed consolidation between Licensees:

#### **9.4.1 Market Share**

The starting point for IDA's analysis will be to determine the Licensees' shares in each market in which they both compete. To do so, IDA will determine the relevant product and geographic markets, and will then estimate the market share.

##### **9.4.1.1 Identifying the Product Market**

The relevant product market for a specific service provided by a Licensee consists of both the specific services provided by the Licensee and any additional services that buyers regard as interchangeable with, or substitutes for, the Licensee's service. To determine which services are in the same product market as the Licensee's service, IDA will seek to determine to which products buyers would switch if the Licensee (and any other Licensees that provide the identical service) increased the price of the service by a small but significant, non-transitory amount – typically 5 to 10 percent — for a 6 to 12 months period.

##### **9.4.1.2 Identifying the Geographic Market**

The relevant geographic market for a specific service provided by a Licensee consists of the geographic area in which the Licensee (and other entities that

provide substitutable services) provides service and any additional geographic locations from which buyers would obtain those services in the event of a small but significant, non-transitory price increase. To determine which locations are in the same geographic market as the Licensee's service, IDA will seek to determine which additional locations, if any, buyers would seek to obtain service from if the Licensee (and any other entities in the same location that provides a substitutable product) increased the price of the service by 5 to 10 percent for a 6 to 12 months period.

#### **9.4.1.3 Calculating the Share**

Once IDA has determined the relevant product and geographic markets, it will compile a list of all those entities that currently participate in that market. IDA will then seek to assess the Licensees' shares of the market. Typically, market shares will be based on the percentage of customers in a location that the Licensee currently serves. In appropriate cases, however, IDA may consider other measures of market share – such as annual turnover or capacity. All things being equal, a post-consolidation Licensee with a larger market share will have a greater ability to act anti-competitively than a Licensee with a smaller market share – especially where the market is highly concentrated. At the same time, however, IDA recognises that certain consolidations amongst small Licensees may facilitate more effective competition against large, established Licensees.

#### **9.4.2 The Potential Anti-competitive Consequences**

The market share is not intended to be dispositive. IDA will consider market-specific factors that could increase or decrease the ability of the post-consolidation Licensee to act anti-competitively. IDA may approve an application to assign or transfer control of a licence in connection with a consolidation that might be denied based solely on market share where these factors indicate a low risk of post-consolidation anti-competitive conduct. Conversely, IDA may deny an application to assign or transfer control of a licence in connection with a proposed consolidation that might be approved based solely on market share where these factors indicate an unusually high risk of post-consolidation anti-competitive conduct.

##### **9.4.2.1 Determination as to Whether the Proposed Assignment or Transfer Would Facilitate Unilateral Anti-competitive Conduct**

IDA will consider the extent to which the structure of the relevant market creates a heightened risk that, if the proposed consolidation is permitted, the post-consolidation Licensee will have the ability to unilaterally restrict output and raise prices. Amongst the factors that make such conduct more likely are: the two Licensees offer services that consumers view as close substitutes for each other; the cost of evaluating the services offered by rival firms is high; and the cost for rival firms to increase capacity is high.

#### **9.4.2.2 Determination as to Whether the Proposed Assignment or Transfer Would Facilitate Co-ordinated Interaction Between Competing Licensees**

IDA will consider the extent to which the structure of the relevant market creates a heightened risk that, if the proposed consolidation is permitted, competing Licensees will be likely to enter into, and maintain, anti-competitive agreements. Amongst the factors that make such conduct more likely are: the public availability of information regarding individual Licensee's price and production decisions; the existence of a low degree of product differentiation; the existence of market-wide marketing or pricing practices; the absence of "maverick" Licensees that tend to deviate from industry norms.

#### **9.4.3 Likelihood of Timely and Sufficient Entry in Response to Price Increases (Supply Elasticities)**

A Licensee will be able to act anti-competitively if there are no entities that would respond to such conduct by actually entering the market or increasing output. Therefore, IDA will consider whether, if the post-consolidation Licensee were to restrict output and impose a small but significant, non-transitory price increase, other entities would compensate by entering the market or increasing output, thereby thwarting the Licensee's efforts. In order to support classification as a non-dominant carrier, such entry or increase in output would have to be likely, timely (typically within 6 to 12 months) and of a sufficient size to offset any restriction of output by the Licensee. In conducting this analysis, IDA will attempt to identify specific entities that would be likely to enter the market or expand output. IDA will consider the following categories of entities:

##### **9.4.3.1 Supply Substitutability**

IDA will first identify those entities, if any, that currently hold licences to provide services that directly compete against the service that will be provided by the post-consolidation Licensee. IDA will seek to determine whether those Licensees would be likely to try to increase output and, if so, whether they have, or easily could obtain, the capacity and other resources to increase output to a level necessary to compensate for any restriction in output by the post-consolidation Licensee.

##### **9.4.3.2 New Entry**

IDA will next identify other entities, if any, that do not currently hold licences to provide services that directly compete against the service provided by the Licensee, but which would likely try to enter the market in response to a small but significant non-transitory price increase by the post-consolidation Licensee. IDA will seek to determine whether those entities could easily obtain the necessary regulatory approvals and, if so, whether they have the

resources to increase output to a level necessary to compensate for any restriction in output by the post-consolidation Licensee.

**9.4.4 Likelihood of Consumer Switching in Response to Price Increases (Demand Elasticities)**

IDA also will consider whether, if the post-consolidation Licensee were to impose a small but significant non-transitory price increase, its customers would be likely to switch to a service provided by a competing Licensee. In making this determination, IDA will consider market patterns, the difficulty (technically and economically) of switching, and the existence of long-term contracts or high early-termination liability that would tend to “lock-in” the Licensee’s customers.

**9.4.5 Efficiencies**

In a close case, in which a proposed consolidation may have some anti-competitive effect, IDA will approve an application for assignment or transfer of control of a licence if it concludes that the transaction will result in significant efficiencies that could not have been achieved absent the consolidation.

**9.4.6 Failing Undertakings**

Finally, IDA will approve an application for assignment or transfer of control in connection with a proposed consolidation that would otherwise be found to be anti-competitive where one or both the Licensees is a “failing undertaking” that, absent the merger, would be almost certain to exit the market (rather than consolidating with, or selling its assets to, another entity) within a short period of time.

**9.5 Action by IDA**

At the conclusion of its review, IDA will take one of the following actions:

**9.5.1 Grant of the Application**

IDA may grant the application in full. Where significant opposition to the application has been submitted to IDA, IDA will provide a written statement of the reasons why it did not find the opposing arguments to be persuasive.

**9.5.2 Denial of the Application**

IDA may deny the application. In this circumstance, IDA will provide a written statement of the reasons for its denial.

### **9.5.3 Grant of the Application, Subject to Conditions**

IDA may grant the application, subject to conditions designed to reduce any anti-competitive harm from the consolidation. Where IDA imposes conditions, the Licensee filing the application will have 14 days to notify IDA as to whether it accepts the conditions or wishes to withdraw its application. Conditions that IDA may impose include:

#### **9.5.3.1 Non-discrimination Requirements**

As a condition of approval of an application to assign or transfer control of a licence, IDA may require the Licensee to provide access to facilities, information or services to other Licensees, other entities or end-users on a non-discriminatory basis. IDA may require the Licensee to contract for independent audits to confirm compliance or periodically to certify its compliance.

#### **9.5.3.2 Accounting Separation**

As a condition of approval of an application to assign or transfer control of a licence, IDA may require the Licensee to account separately for revenues from operations that are subject to effective competition and operations that are not subject to effective competition, and to comply with rules governing allocation of joint costs and transactions between affiliates, in order to deter cross-subsidisation. IDA may also require the Licensee to contract for independent audits to confirm compliance or to certify its compliance periodically.

#### **9.5.3.3 Structural Separation**

As a condition of approval of the application to assign or transfer control of the licence, IDA may require the Licensee to establish structurally separate affiliates – which may be required to have separate books of account, separate facilities, separate officers, separate personnel, separate credit lines, and/or other appropriate forms of separation.

#### **9.5.3.4 Partial Divestiture**

As a condition of approval of the application to assign or transfer control of the licence, IDA may require the Licensee to divest certain assets to a third party, in an arm's length transaction.

#### **9.5.3.5 Other Pro-competitive Conditions**

IDA may impose other conditions for approval of the application that are designed to increase competition. This includes conditions designed to increase entry into markets that are not yet fully competitive.

## **10. ENFORCEMENT OF THE COMPETITION CODE**

### **10.1 Over-view**

Whilst IDA intends to place maximum reliance on competitive market forces and industry self-regulation, IDA recognises the need for strong enforcement procedures that will detect and deter contraventions of this Code. Enforcement actions can be brought by IDA, either on its own motion or at the request of a private party.

### **10.2 Specific Regulatory Principles**

In addition to the general principles set forth in Section One of this Code, IDA's enforcement procedures will be subject to the following specific regulatory principles:

#### **10.2.1 Timeliness**

Any enforcement action must be timely. IDA will not bring any enforcement action more than two years after the date of occurrence of the action that constitutes the alleged contravention of this Code. If the contravention could not reasonably be discovered at the time it was committed, however, IDA will bring the action within two years of the date on which the conduct was (or reasonably should have been) discovered.

#### **10.2.2 Open and Reasoned Decision Making**

IDA will provide adequate notice to any Licensee against whom an enforcement action is brought, and will provide the Licensee with a full and fair opportunity to respond to any adverse claims. All decisions will be based on the controlling legal and regulatory authority, the submissions of the parties and other publicly available information. Licensees will have an opportunity to seek review from the Minister. IDA will publicly disclose the basis for, and extent of, any enforcement action taken against a Licensee.

#### **10.2.3 Standard of Proof**

IDA will not take any enforcement action unless it has determined, based on the preponderance of the evidence, that the Licensee has failed to act in accordance with the provisions of this Code.

#### **10.2.4 Proportionality**

Whilst the enforcement process is designed to provide a significant deterrent to impermissible conduct, any sanction imposed by IDA will be proportionate to the severity of the contravention.

**10.3 IDA Enforcement Actions**

Where appropriate, IDA will initiate enforcement procedures against a Licensee that it believes has contravened this Code.

**10.3.1 Procedures**

IDA will use the following procedures:

**10.3.1.1 Notification of Licensee**

IDA will provide a written notification to the Licensee. The notification will clearly indicate the specific provisions of this Code that IDA believes the Licensee has contravened, and will describe in reasonable detail the basis for IDA's belief.

**10.3.1.2 Opportunity to Respond**

A Licensee will have 15 days to respond, in writing, to IDA's notification. (IDA may extend this period in appropriate cases.) The Licensee's response should provide a clear statement, supported by documents, affidavits, or other relevant material, providing the basis on which the Licensee disputes IDA's allegation.

**10.3.1.3 Request for Further Information**

After reviewing the material submitted by the Licensee, IDA may request the Licensee to provide additional information. Such requests shall be limited to information necessary to resolve those issues that remain in dispute. IDA shall seek to issue a decision within 60 days of receiving all necessary information.

**10.3.2 Remedies**

Pursuant to Section Eight of the Telecommunications Act, in the event that IDA concludes that the Licensee has acted in contravention of this Code, IDA may impose any of the following remedies:

**10.3.2.1 Warnings**

IDA can issue a warning to the Licensee. The warning will contain a statement of IDA's basis for concluding that the Licensee has acted in contravention of the Code, but will impose no further sanction. This remedy may be appropriate where a Licensee has no prior contravention, the contravention was inadvertent, and/or the contravention had no serious adverse consequences.

**10.3.2.2 Orders to Cease and Desist**

Where appropriate, IDA will direct the Licensee to cease engaging in conduct that is, or if continued will, constitute a contravention of this Code.

**10.3.2.3 Directions by IDA**

Where appropriate, IDA will direct the Licensee to take specific action to cure the contravention.

**10.3.2.4 Monetary Sanctions**

IDA may impose monetary sanctions on any Licensee that contravenes the provisions of this Code. IDA reserves the right to impose penalties up to the statutory maximum of \$1,000,000 per contravention. Typically, however, IDA will carefully calibrate the amount of the penalty to reflect the severity of the offence.

**10.3.2.4.1 Aggravating Factors**

IDA will consider any aggravating factors. These include: the severity of the contravention; the duration of the contravention; whether the contravention resulted in injury to persons and property; whether the Licensee acted knowingly, recklessly, or in a grossly negligent manner; whether the Licensee has a previous history of contraventions; and whether the Licensee made any effort to conceal the contravention.

**10.3.2.4.2 Mitigating Factors**

IDA also will consider any mitigating factors. These include: whether the contravention was minor or technical; whether the Licensee took prompt action to correct the contravention; whether the contravention was accidental; whether this is the Licensee's first contravention; and whether the Licensee voluntarily disclosed the contravention to IDA.

**10.3.2.5 Suspension or Revocation of License**

In extreme cases, IDA may temporarily suspend (in whole or in part), reduce the period of or permanently revoke a Licensee's licence.

**10.4 Private Requests for Enforcement**

Licensees or end-users that have been injured as a direct result of the contravention of any provision of this Code by a Licensee may file a request asking IDA to take enforcement actions.

#### **10.4.1 Procedures**

Any party that requests IDA to take enforcement action shall submit a written Request for Enforcement (“Request”). The Request must cite the specific provisions of this Code that the Requesting Party alleges the Licensee has contravened and must provide factual allegations that, if proven to be true, would demonstrate a contravention. Each claim and each supporting factual allegation must be contained in a separate paragraph. Whenever possible, the Requesting Party should attach to the Request copies of all relevant documents necessary to prove the factual allegations contained in the request. Where this is not possible, the Requesting Party must provide a statement explaining why it could not provide the supporting documentation. The Request must contain a statutory declaration attesting to the fact that: the Requesting Party has used reasonable diligence in collecting the facts; the facts alleged are true to the best of the Requesting Party knowledge; the Requesting Party has a good faith belief that, if proven, the factual allegations would constitute a contravention of the provisions of this Code cited in the request; and the Requesting Party has made a good faith effort to resolve the underlying dispute through direct negotiation with the Licensee against which enforcement is sought. The Requesting Party also shall state the specific enforcement action sought and the basis on which the Requesting Party believes that the extent of the proposed enforcement action is appropriate.

#### **10.4.2 Remedies**

If IDA concludes that the Licensee has contravened this Code, IDA will take enforcement action pursuant to Section 10.3.2 of this Code.

#### **10.5 Request for Advisory Guidance**

Any interested person may submit a request to IDA, in writing, asking for advisory guidance regarding any matter within the scope of this Code. Such guidance could include, for example, whether the taking of (or the failure to take) a particular action would constitute a contravention of this Code.

##### **10.5.1 Procedures**

Persons seeking advisory guidance should provide a complete written description of all relevant facts and a statement of the specific question(s) about which they request guidance. IDA will either provide a written response answering the question(s) or a written notification that it declines to do so. Unless the party submitting the request specifically requests confidential treatment, IDA will treat all communications in connection with a request for advisory guidance as public documents.

## **10.5.2 Legal Effect of Guidance**

IDA's guidance does not restrict IDA's ability subsequently to take enforcement action against either the party that submitted the request or against other parties. In general, however, once IDA has issued guidance, it will only take enforcement action if the relevant facts are materially different from the facts that provided the basis for the guidance or if IDA provides advanced notice that it has changed its position.

