SINGAPORE TELECOMMUNICATIONS LIMITED

SUBMISSION TO THE MINISTRY OF INFORMATION, COMMUNICATIONS AND THE ARTS

CONSULTATION PAPER ON PROPOSED AMENDMENTS TO THE TELECOMMUNICATIONS ACT 1999 (CHAPTER 323)

PART A SUMMARY OF MAJOR POINTS

1.1 SingTel welcomes the opportunity to comment on the proposed amendments to the Telecommunications Act 1999 (Chapter 323) (the **Act**). SingTel believes that the Ministry of Information, Communications and the Arts (the **MITA**) has the opportunity to bring the Act more into line with world's best practice by improving certainty, procedural transparency, simplicity and predictability.

1.2 In this submission, SingTel focuses on the following aspects of the Act:

(a) an avenue for appeal to an independent body;

(b) greater procedural fairness in the timeframe for lodging appeals;

(c) improved transparency in decision-making;

(d) comprehensive reasons for regulatory decisions;

(e) reliance on specific powers over general ones;

(f) consistency in decision making across converged sectors;

(g) regulatory intervention where necessary and appropriate; and

(h) other specific recommendations.

These key points are summarised below.

Avenue for appeal to an independent body

1.3 The Act should provide for review of the Info-communications Development Authority of Singapore's (the **IDA**) decisions by an independent body. Currently, persons who are aggrieved by a decision of the IDA can only seek review by the IDA itself or the Minister. The current process of IDA review of its own decisions is inconsistent with world's best practice. The introduction of an independent appeals body would also be consistent with recent proposals contained in the Competition Bill.

Greater Procedural fairness in the timeframe for lodging appeals

1.4 Persons wishing to lodge an appeal have a mere 14 days in which to lodge a comprehensive appeal on often highly complex issues. This timeframe is insufficient and should be extended to 30 days. Further, it is proposed in section 74(g) that the IDA be given power to regulate the way in which appeals to the Minister against IDA decisions may be lodged, including the procedure to be followed by the Minister when determining such an appeal. This is not appropriate and we are not aware of any other developed country where a telecommunications regulator has the power to instruct a Minister in such a manner.

Improved transparency in decision-making

1.5 The appeals process under the Act could benefit from improved transparency. Currently, there is no requirement for the outcome of an appeal to be made public or for the IDA or Minister to provide comprehensive reasons for its decision. The practical result is that parties are limited in terms of what they can release or comment upon. Enabling parties to comment on the decision and keeping the public informed of the appeal outcome would enhance regulatory transparency.

Comprehensive reasons for regulatory decisions

1.6 The Act lacks a requirement for the IDA or the Minister to give comprehensive reasons for decisions. In comparison to other jurisdictions, decisions often lack the same level of detailed, comprehensive policy, legal and economic analysis and supporting evidence provided by other regulators. It would install greater confidence in the regulatory process if detailed reasons were required.

Reliance on specific powers over general ones

1.7 Undue reliance has been placed on section 27 of the Act, which enables directions to be given for a very broad range of reasons. This encourages the use of section 27 powers, rather than following specified procedure or criteria set out in the Code of Practice for Competition in the Provision of Telecommunications Services (**the Code**). The ability to rely on general powers should be qualified, so that it may only do so in a manner consistent with its other powers. The reliance on general powers over specific ones undermines regulatory certainty and predictability.

Consistency in decision-making across converged sectors

1.8 SingTel believes that the Act should be amended to ensure consistent regulation across converged sectors. We note that the proposed Competition Bill will introduce an independent third party appeals process. In addition, SingTel submits that other bodies with responsibility for info-communications, such as the Media Development Authority, should be required to consult with the IDA on matters that affect convergent sectors.

Regulatory intervention where necessary and proportionate

1.9 SingTel believes that there is no need for the IDA to intervene in the executive appointments to publicly listed telecommunications operators as proposed in section 32F.

Other Specific Recommendations

1.10 The proposed amendments to section 17(4) and 21(2) should be removed, all costs and expenses should be recoverable and approval should not be required. Proposals to confer additional discretionary powers on the IDA in section 21 and 27 should be modified, so that any discretion is exercised on an open set of criteria. The proposed information-gathering powers in section 59 should be amended. Any requirement for a licensee to provide information should only be exercised in relation to a matter that is actually relevant to a contravention of the Act or the necessary for the IDA to perform its functions.

Conclusion

1.11 SingTel supports a review of the Act, however, we believe that any revisions should redress the issues experienced with its operation to date.

1.12 SingTel asks the MITA to note its concern that these significant amendments have been afforded a very limited timeframe for public consideration. Whilst SingTel supports a review of the Act, the review must have a timeframe for public comment which is commensurate with the long-term impact of the amendments. In this regard, we submit that three (3) weeks is not sufficient.

PART B STATEMENT OF INTEREST

2.1 SingTel is licensed to provide telecommunications services in Singapore. It was corporatised on 1 April 1992. SingTel is committed to the provision of state-of-the-art telecommunications technologies and services in Singapore. SingTel has a comprehensive portfolio of services that includes voice and data services over fixed, wireless and Internet platforms. SingTel services both corporate and residential customers and is committed to bring the best of global communications to its customers in the Asia Pacific and beyond.

2.2 As a leading provider of telecommunications services and a leading proponent of innovation and competition, SingTel has a strong interest in effective pro-competition regulation of Singapore's telecommunications industry.

2.3 SingTel's submission is made with the experience of operating within the regulatory framework established under the Act, both prior to and since its inception. SingTel is therefore acutely aware of the practical issues surrounding the current Act and its related instruments.

PART C COMMENTS

3.1 Avenue for appeal to an independent body

(a) The Act lacks a process of independent regulatory oversight. The Act should be amended to introduce a system of independent third party review of IDA decisions. The appropriate third party should comprise of experts in telecommunications, economics, competition and technical qualifications. The approach should be similar to that proposed in the Competition Bill pursuant to which a Competition Appeal Board is to be established to review certain decisions of the Competition Commission.[1]

(b) Currently, the following avenues are available to licensees who are aggrieved by a decision or direction of the IDA:

(i) section 1.5.9 of the Code: a licensee can ask the IDA to reconsider its decision or direction; and

(ii) sections 27(4) and 69 of the Telecommunications Act: a licensee can appeal to the Minister within 14 days of an IDA direction. The Minister's decision on the appeal is final.

(c) SingTel submits that the IDA and the telecommunications industry could truly benefit from independent oversight in appeals. As noted above, such benefits have been recognised and are soon to be implemented in the Competition Bill. As acknowledged by the Ministry of Trade and Industry in its consultation on the Competition Bill, the perception of independence is equally important as independence itself. The MTI notes that "several contributors [to the first draft consultation] highlighted the importance that the Commission should not only be independent, but also seen to be so. MTI agrees[2].

(d) Currently, the IDA and all parties concerned are deprived of any criteria by which decisions or directions will be re-considered. Where a decision-maker re-examines its own decision in the absence of any criteria, this leaves the processes open to perceptions that independence, accountability and transparency are lacking.

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1 Proposed section 72 of the Competition Bill.

2 MTI, Second Public Consultation on the Draft Competition Bill, paragraph 5.

(e) The World Bank describes one of the fundamental rules of procedural fairness in regulation as, "Don't be a judge in your own cause". The overriding theme is that regulators should avoid bias, as well as the perception of bias:

> "They should not make decisions on matters in which they have a personal interest. Nor should they make decisions on matters where a reasonable person, knowledgeable of all the facts, would perceive a real likelihood of bias. In the words of the jurisprudence: 'justice should not only be done, it must be seen to be done.' "[3]

(f) In addition to independence in appeals processes, the European Commission requires an appeals body with the appropriate expertise to make decisions. Article 4 of the Framework Directive states in part that this body:

> "…shall have the appropriate expertise available to it to enable it to carry out its functions. Member States shall ensure that the merits of the case are duly taken into account and there is an effective appeal mechanism."[4]

(g) Reforms to the Act which establish an independent, expert appeals body for review of regulatory decisions would therefore be consistent with world's best practice. We submit that the Act should be amended to set out a definitive process for appeals to an independent appeals body.

(h) We note neighbouring countries such as Hong Kong and Malaysia have made similar reforms. In 2001, the Hong Kong Telecommunications Authority recognised the importance of appeal certainty for attracting investment and facilitating competition. It noted that:

> "Subjecting [the TA's] decisions to appeal on merits by an independent appeal board [provides] a balanced and open regulatory regime that encourages fair competition."[5]

(i) The Telecommunications (Competition Provisions) Appeal Board in Hong Kong was established as an independent statutory body, pursuant to the Telecommunications Ordinance. Its role is to determine appeals against the telecommunications regulator

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3 The World Bank, *Handbook of Telecommunications Regulation* (2000) page 1-19.

4 Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services (Framework Directive), 7 March 2002.

5 *Regulation of Mergers and Acquisitions in the Telecommunications Market - A Consultation Paper Issued by the Office of the Telecommunications Authority*, 17 April 2001, page 7.

(OFTA). The composition of the Appeal Board includes legal, economic and consumer services experts. Its terms of reference are:

(i) to hear appeals by any person aggrieved by an opinion, determination, direction or decision of OFTA, or any licence condition, sanction or remedy imposed by OFTA; and

(ii) to determine appeals by upholding, varying or quashing the appeal (including making consequential orders).

(j) Malaysia has also established a statutory Appeal Tribunal. Persons on the Appeal Tribunal must have knowledge or experience in communications and multimedia, engineering, law, economics/commerce or public administration.[6] The Appeal Tribunal may review any matter on appeal from a decision or direction of the regulator.[7]

(k) In the United Kingdom, the Competition Appeal Tribunal (CAT) hears appeals in respect of decisions made by regulators across a range of sectors, including telecommunications. Appeals can be made on a range decisions by OFCOM under the Communications Act 2003. The CAT membership comprises persons with expertise in relevant areas such as law, economics, finance and business.

(l) Accordingly, the power of the IDA to review its own decisions is inconsistent with best practice regulatory processes. The perception of independence, as well as independence in practice, has become very important in recent legislative reforms in Singapore (most notably, the Competition Bill).

(m) Similarly, with respect appeals to the Minister, it is more appropriate and consistent with best practice to have an independent review body. However, SingTel recognises the importance of the Minister in seeking to uphold the policy goals of the info-communications sector. Accordingly, SingTel proposes that amendments to the Act include scope for the Minister to give policy guidance to the independent appeals body, similar to that envisaged under the Competition Bill.

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6 Malaysian Communications and Multimedia Commission Act 1998, section 19.

7 Malaysian Communications and Multimedia Commission Act 1998, section 18(1).

SingTel Recommendation 1:

The processes for appeals to the IDA and the Minister against decisions or directions of the IDA should be amended by:

- removing IDA review of its own decisions;
- establishing an independent appeals body consistent with best practice; and
- replacing Ministerial review with a policy guidance function to the new independent appeals body.

3.2 Greater procedural fairness in timeframes for lodging appeals

(a) An aggrieved licensee needs sufficient time to examine the IDA's decision or direction, obtain expert advice and prepare its submission. The current 14-day requirement for lodgement of complex appeals is insufficient and should be extended to at least 30 days.

(b) We note that appeal processes in Australia enable applications for review to be made within 21 days of certain decisions.[8] Furthermore, this application does not require a comprehensive statement of the case for appeal. The party making the appeal then has considerable time to prepare its substantive case for hearing.

(c) In the United Kingdom, notice of an appeal to the Competition Appeals Tribunal must be sent so that it is received by the Registrar of the Tribunal within 2 months of the date when the appellant was notified of the disputed decision or the date of publication of the decision, whichever is the earlier. In exceptional circumstances, the Tribunal may extend this time limit.[9]

(d) Further, in the interests of enhancing procedural fairness, the decision or direction of the IDA should be stayed pending the outcome of the appeal.

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[8] For example, an appeal to the Australian Competition Tribunal under section 152CE of the Trade Practices Act 1974.

[9] Section 192(4) of the Communications Act 2003, states that the notice of appeal must be sent within the period specified, in relation to the decision appealed against, in the Tribunal rules. s 8 of those rules specifies the two month limit.

SingTel Recommendation 2:

Aggrieved parties should have 30 days in which to lodge an appeal. The effect of the IDA decision or direction should be stayed pending the outcome of the appeal.

3.3 Improved transparency in decision-making

(a) The appeal process and outcome should be made more transparent.

(b) The current appeals process does not include any criteria for decision-making. Furthermore, parties are not permitted to publicly comment on the decision or are limited in their capacity to do so. The practical result can be unnecessary public confusion and conjecture. In relation to transparency, the best practice principles of transparency have been articulated by the FCC:

> "The third component of an independent regulator is transparency in decision-making. Transparency means that the process of arriving at regulatory policies and specific rulings is open, consistent and predictable."[10]

(c) The ITU has identified transparency in decision-making as one of the key challenges to be addressed in Singapore. The ITU concluded that the IDA's procedures:

> "…are not sufficiently codified to provide legal assurance to parties that they will be fully informed of the all agency decisions impacting their interests…Without clear and comprehensive rules governing transparency it may be difficult for new market entrants (and even existing players) to successfully negotiate the regulatory process or maximize their input into that process."[11]

(d) We recognise that much has been done to improve transparency, however, the introduction of greater transparency in the current appeals process would further enhance transparency and be consistent with other aspects of the IDA's openness in decision-making. In April 2002, the IDA announced that it would publicise its regulatory decisions on investigations, findings and enforcement actions.[12] However, in relation to directions, parties are restricted in what they can say publicly. For

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10 FCC, *Connecting the Globe: A Regulator's Guide to Building a Global Information Community*, June 1999 at page I-2.

11 ITU, *Effective Regulation Case Study: Singapore 2001*, page 54.

12 IDA, *IDA promotes transparency through publication of regulatory decisions*, media release, 16 April 2002.

example, directions are confidential and parties are not able to publicly comment on the contents of directions or that a direction has been issued.

(e) SingTel submits that the telecommunications industry would benefit from improved transparency in decision-making. Regulatory decisions often have significant implications for strategic investment decisions. It is appropriate that parties to an appeal have the ability to publicly explain their reasons for appeal and the outcomes to investors, the public and other interested stakeholders.

SingTel Recommendation 3:

The procedures for appeals and the broad criteria for determining appeals should be publicly available. The outcomes of appeals and the reasoning should be published in sufficient detail. Parties to an appeal should be free to comment on the outcome.

3.4 Comprehensive reasons for decisions

(a) All regulatory decisions and directions made pursuant to the Act should be supported by a comprehensive set of reasons. The scale and scope of these reasons should be proportionate to the subject matter of the decision or direction. An absence of detailed and comprehensive reasoning is detrimental to the predictability, certainty and transparency.

(b) By way of example, the recent IDA decision on the regulation of wholesale local leased circuits was 12 pages in total.[13] Regulators in other countries issued far more detailed reasons for their decisions on this issue. The Singapore regulatory process would be enhanced by encouraging decisions to be supported by more detailed and comprehensive reasoning.

(c) In the United Kingdom, OFCOM has published a guide to its consultation process, in which it states that it will consult clearly and openly before taking its decisions. OFCOM states that it "will give reasons for [its] decisions and will give an account of how the views of those concerned helped shape decisions." OFCOM's consultation process is shaped by the requirements of the European Union's regulatory framework for electronic communications networks and services, implemented in the United Kingdom via the Communications Act 2003. In Singapore, there is only a

[13] IDA, Designation of Singapore Telecommunications Limited's Local Leased Circuits as a Mandated Wholesale Service, 16 December 2003.

requirement in the Code for the IDA to "generally" make its reasons available and publish them "where feasible".[14]

(d) The ITU has also suggested that Singapore should adopt a code that sets out the rules for decision-making. This code could include details of the kinds of decisions made at certain levels within the IDA, or referred for input from the Ministry or other government entities.[15] SingTel submits that this should also include legislative requirements for providing detailed and comprehensive reasons consistent with world's best practice.

(e) In the United States, the FCC Rules state that final decisions of the Commission, as well as initial and recommended decisions, "shall contain findings of fact and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law or discretion presented on the record."[16] One of the core principles of telecommunications regulation in the United States has been the obligation to provide detailed reasoning:

> "…the regulator should make public the reason for initiating the rulemaking, issue a notice setting forth the proposed rule, allow interested persons to file public comments on the proposal, publish a decision setting forth the text of the final rule, and **clearly explain how and why the regulator adopted the particular rule**."[17] (emphasis added)

(f) SingTel submits that a legislative obligation to provide detailed and comprehensive reasoning for decisions should be enshrined in the Act.

SingTel Recommendation 4:

The Act should include a requirement for regulatory decisions to be given with comprehensive reasons and published. The IDA's decision-making process should also be codified in the Act and applied by the IDA in every case.

14 Code of Practice, section 1.5.6.
15 ITU, *Effective Regulation Case Study: Singapore 2001*, page 54.
16 Code of Federal Regulations, Title 47, Volume 1, sections 1.267 and 1.282.
17 FCC, *Connecting the Globe: A Regulator's Guide to Building a Global Information Community*, June 1999 at page I-5.

3.5 Reliance on specific powers over general ones

(a) The Act should specify that where a specific decision-making power is conferred on the IDA, then the IDA should apply that power rather than a general one. Reliance on broad powers when specific powers are available undermines certainty in the regulatory process.

(b) A key principle in purposive statutory interpretation is that if a particular procedure is designed to achieve something, the use of other procedures is excluded. This principle has not been applied in the exercise of powers under the Act. As a result, operators and investors do not know when and to what extent the IDA will rely on a general power to "ensure reliability" of communications, "ensure technical compatibility and safety", or "ensure fair and efficient market conduct by licensees" under section 27(1).

(c) A key principle in statutory interpretation is that where there is a conflict between general and specific provisions, the specific provisions prevail.[18] This principle is based on the commonsense conclusion:

> "that the drafter will have intended the general provisions to give way should they be applicable to the same subject matter as is dealt with specifically."[19]

(d) This is such a basic and well-accepted principle of statutory interpretation in common law jurisdictions. One important effect of this principle is that where a general grant of power is conferred without limitations or qualifications, but the specific power is limited in some way, the general power may not be used to do the thing that is the subject of the special power.

(e) Best practice by telecommunications regulators around the world is to observe this principle in the interests of certainty and transparency of regulatory decision-making. In Australia, for example, the ACCC has broad and discretionary powers under the Trade Practices Act which it may exercise to fulfil its functions as the competition regulator.[20] However in making decisions on telecommunications-specific issues, the ACCC always identifies and relies on a specific grant of power, as set out in those parts of the Act that deal with the telecommunications industry and telecommunications access regime.[21]

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18 Often referred to by the Latin maxim: *Generalia specialibus non derogant.*
19 Pearce and Geddes, *Statutory Interpretation in Australia* (5th ed.), page 113.
20 Trade Practices Act 1974, section 28.
21 Parts XIB and XIC of the Trade Practices Act.

SingTel Recommendation 5:

The Act should be amended to require that where it confers a specific power on the IDA, the IDA must rely on that specific head of power rather than a general one. The IDA's ability to rely on its general powers needs to be qualified, so that it may only do so in a manner that is consistent with its other powers.

3.6 Consistency in decision-making across converged sectors

(a) SingTel submits that the Act should be amended to ensure consistent regulation across converged sectors. As noted above, the proposed Competition Bill will introduce an independent third party appeals process. In addition, SingTel submits that other bodies with responsibility for info-communications, such as the Media Development Authority, should be required to consult with the IDA on matters that affect convergent sectors. SingTel notes that the Competition Bill proposes that the Competition Commission must co-operate with other regulatory bodies with the aim of:

> "…ensuring, as far as practicable, consistency between decisions made or other steps taken by the Commission and the regulatory authority, is so far as any part of those decisions or steps consists of or relates to a determination of any issue of competition between undertakings."[22]

(b) However, SingTel is also concerned with proposed references to IDA jurisdiction over broadcasting services in the Act. SingTel has outlined its concerns above with respect to the proposed section 27(1)(ca) of the Act, whereby the IDA can issue a direction on "such terms as it may specify". SingTel submits that it is inappropriate for the Act to also confer this power in respect of the provision of any broadcasting service, as currently drafted under section 27(1)(ca).

SingTel Recommendation 6

The Act should be modified to ensure consistency and co-ordination with other regulatory agencies.

In addition to SingTel's comments above regarding section 27(1)(ca), this provision should not extend to broadcasting services.

[22] Competition Bill, section 76(1)(c).

3.7 Regulatory intervention where necessary and appropriate

Section 32F

(a) SingTel believes that the proposal in section 32F that the IDA must approve the appointment of chief executive officers, directors or chairmen is unnecessary.

(b) Whilst this is currently contained in FBO licenses SingTel submits that, it is no longer appropriate in a fully liberalised and open market and should not be re-visited in this review.

(c) SingTel submits that it is particularly not relevant or appropriate for publicly listed companies such as SingTel to be subject to such a requirement. As a publicly listed company, we are already subject to considerable oversight via the Companies Act, SGX, and ASX requirements. SingTel recommends removing these provisions from Act and license or limiting its application to private companies.

Section 74(g)

(d) SingTel is also concerned by the proposed section 74(g), which will empower the IDA to determine to the manner and procedure for appeals against its decisions to the Minister. This is inconsistent with the independence of the appeals process.

(e) As noted above, SingTel strongly recommends that the Act be amended to include a process for independent third party appeals processes. SingTel also recommends that the Minister retain a policy guidance role in respect of this independent appeals body. SingTel is not aware of any other liberalised environment where the regulator is empowered to determine the process by which a Minister may hear and determine appeals against its decisions.

SingTel Recommendation 7:

SingTel recommends that proposed section 32F be rejected or alternatively applied only to private companies.

Section 74(g) should also be rejected. The Minister should retain a discretion to give policy guidance to the independent third party appeals body proposed by SingTel, without being fettered by the IDA.

3.8 Other Specific Recommendations

Section 17(4)

(a) SingTel recommends that the current provisions of the Act be retained. Public telecommunications have deployed their telecommunications networks on the basis that they have rights to install equipment for the provision of telecommunications services. To date, public telecommunications licensees have deployed their networks in an efficient manner.

(b) The proposed amendment would preclude public telecommunications licensees from recovering the costs and expenses for the alteration, removal, relocation or diversion of certain installed plant. We believe that this is unfair as these costs and expenses are incurred as a direct result of the request from the owner or occupier. Accordingly, we believe it is fair and reasonable that all costs and expenses be recovered. Moreover, from a practicable perspective it will be difficult to determine or distinguish the costs and expenses in the manner that this amendment would require.

Section 21

(c) The proposed section 21 confers power on the IDA to make directions where it considers it "necessary" for a telecommunications service to be provided to a building. The MITA Consultation Document states that this power is intended to ensure that building developers provide the space necessary to install telecommunications equipment.[23] However, section 21 also enables the IDA, where it "considers necessary" to:

> "require any telecommunication licensee to install, within such period as may be specified in the direction, such installation, plant or system as the Authority considers necessary for the provision, or the enhancement of quality, of the telecommunications network." (section 21(1)(b))

(d) The practical effect of this proposal will be that any licensee, at any time, may be directed by the IDA to install any type of plant or equipment in any building. This requirement can be invoked irrespective of whether any type of telecommunications service is actually required to be installed in a building. It can also be invoked without the IDA having regard to any criteria that would reasonably necessitate that installation. If the MITA is concerned to ensure that telecommunications services are delivered to buildings, it should be firstly established that a customer in that building requires a specific service. The

[23] MITA Consultation Document, paragraph 8.

requirement for a licensee to install that equipment should be limited to satisfying the relevant request for the service.

(e) The proposed amendment in section 21(2) should be removed. Public telecommunications licensee we should be permitted to enter and install equipment for provision of telecommunications services whether within the building or nearby buildings. Should this amendment be retained we envisage considerable delay in deploying new equipment or replacing existing equipment as a result of negotiations with owners. Further, it is likely that improvements may not be able to occur where permission is not forthcoming or the conditions imposed are prohibitive. The overall effect is potentially lower service quality, delays in network deployment and higher costs which ultimately affect end users.

Section 27(1)(ca)

(f) Similarly, the proposed section 27(1)(ca) expands on the general powers of the IDA to give directions to licensees without regard for consistency with the IDA's other powers. The IDA will be able to give a direction to ensure co-ordination and co-operation for sharing plant, systems or installation, "on such terms as the Authority may specify". This level of discretion is unnecessary. Rather, the IDA should be required to have regard to specified criteria in order for licensees to be aware of what the terms of any such sharing will be.

Section 59

(g) The proposed powers for the IDA to require information under section 59(1) are unnecessarily broad and inconsistent with best practice. As drafted, the IDA will have unlimited power to obtain any documents that the IDA (in its sole discretion) considers necessary to discharge its functions. This will could potentially effectively operate as a "fishing expedition" and enable the IDA to demand documents on any matter, regardless of whether or not a licensee is alleged to have contravened the Act.

(h) These proposed information-gathering powers contrast with the criteria in regional jurisdictions. For example, in Australia, the ACCC only has power to obtain information, documents and evidence if:

(i) it relates to an actual or potential contravention of the Act;

(ii) is relevant to a designated telecommunications matter; or

(iii) is relevant to a decision of the ACCC.[24]

(i) As drafted, the IDA has the discretion to decide the terms of what it alone "considers" to be related to an investigation. This negates any opportunity to dispute the relevance of the information being sought, because the IDA can rely on its discretion as to what it along "considers" relevant. The scope of this power is unnecessarily broad and should be modified.

SingTel Recommendation 8:

The proposed amendments to section 17(4) and 21(2) should be removed, all costs and expenses should be recoverable and approval should not be required.

Proposals to confer additional discretionary powers on the IDA in section 21 and 27 should be modified, so that any discretion is exercised on an open set of criteria.

The proposed information-gathering powers in section 59 should be amended. Any requirement for a licensee to provide information should only be exercised in relation to a matter that is actually relevant to a contravention of the Act or the necessary for the IDA to perform its functions.

4 CONCLUSION

4.1 SingTel recommends that the MITA use this opportunity to install a transparent and independent appeals process consistent with world's best practice and the practice in neighbouring jurisdictions

[24] Trade Practices Act 1974, section 155(1).