

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

**ADVISORY GUIDELINES GOVERNING APPLICATIONS FOR LICENCE  
ASSIGNMENTS OR CHANGES IN OWNERSHIP OF A LICENSEE IN  
CONNECTION WITH A PROPOSED CONSOLIDATION**

[DATE OF ISSUE: \_\_\_\_\_]

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**ATTACHMENT: Consolidation Application Form**

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**[DATE OF ISSUE]**

The Info-Communications Development Authority of Singapore (“IDA”) hereby issues these Advisory Guidelines:

**1. LEGAL AUTHORITY**

This Section sets forth IDA’s legal authority to review Consolidations involving telecommunication Licensees and the legal effect of these Guidelines.

**1.1 IDA’s Authority to Review Consolidations Involving Telecommunication Licensees**

IDA’s authority to review and approve Consolidations involving Licensees is set forth in the Telecom Competition Code (“Code”). Section 9.2.1 of the Code provides that, consistent with the terms of its Licence, any 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 (“Licence Assignment”). In addition, Section 9.2.2 of the Code provides that, consistent with the terms of its Licence, a Licensee must receive the approval of IDA before implementing change in ownership (whether direct or indirect), shareholding or management of the Licensee (“Change in Ownership”). (In general, IDA will not find that a change in ownership occurs unless a person or entity obtains an ownership interest of at least five percent in a Licensee.) Section 9.3 of the Code further provides that IDA will not approve an application to assign a Licence or allow a change in ownership, shareholding or management of a Licensee in connection with a proposed Consolidation (“Consolidation Application”) where IDA determines that the proposed Consolidation is likely to unreasonably restrict competition in any Singapore telecommunication market.

**1.2 Legal Effect of These Guidelines**

The provisions contained in these Guidelines are advisory. They do not impose binding legal obligations on IDA or its Licensees. Rather, these Guidelines are intended to clarify the procedures that IDA generally will use, and the standards that IDA generally will apply, in implementing the Consolidation Review provisions contained in Section Nine [to be amended] of the Code. In order to provide a single document addressing all issues relevant to the Consolidation Review process, certain provision of the Code have been summarised or repeated in these Guidelines. In the case of any conflict between the Code and these Guidelines, the terms of the Code will prevail.

### **1.3 Right to Grant, Deny or Condition Applications Based On Non-competition-related Factors**

In assessing any Consolidation Application, IDA will seek to determine whether the proposed Consolidation would unreasonably restrict competition. However, IDA reserves the right to grant, deny, limit, or condition its approval of a Licence Assignment or Change in Ownership where IDA concludes that such action is in the public interest.

### **1.4 Modification of the Guidelines**

IDA will periodically review these Guidelines and, based on experience and changing market conditions, will make any appropriate modifications. IDA will notify the public of any such modifications.

### **1.5 Effective Date of These Guidelines**

These Guidelines are effective on the Date of Issue.

### **1.6 Rules of Construction**

Any capitalised term used in these Guidelines that is also used in the Code shall have the same meaning as in the Code. As used in these Guidelines, the term “Licensee” shall have the same meaning as in Section 9.1.1 of the Code.

### **1.7 Short Title**

These Guidelines may be referred to as the “Telecom Consolidation Guidelines”.

## **2. CONSOLIDATION REVIEW PRINCIPLES**

This Section describes the regulatory principles that will guide IDA’s review of Applications for a Licence Assignment or Change in Ownership in connection with a proposed Consolidation.

### **2.1 Promotion and Preservation of Competition**

In competitive markets, voluntary transactions generally result in the production of the optimal quantity of each product, push prices towards cost, and promote the most efficient methods of production. Therefore, IDA will seek to promote and preserve competition in all telecommunication markets subject to its jurisdiction.

### **2.2 Competitive Concerns Raised by Consolidations**

In general, voluntary Consolidation agreements – like other voluntary transactions – result in the most efficient allocation of society’s resources. However, in certain limited cases, Consolidations can have an adverse impact by reducing competition. These concerns are described below.

## **2.2.1 Horizontal Consolidations**

Horizontal Consolidations involve Licensees that are current competing providers of the same service (or services that are close substitutes), such as competing providers of local telephony or competing providers of broadband Internet services. Horizontal Consolidations can adversely affect competition in a number of different ways.

### **2.2.1.1 Creation, Preservation or Enhancement of Unilateral Market Power**

A Horizontal Consolidation can adversely affect competition by creating, preserving or enhancing a single Licensee's ability to exercise "market power". Unlike firms in a competitive market, a Licensee with market power can profitably restrict output and raise prices, secure in the knowledge that other firms cannot counter this effort by entering the market or expanding output.

### **2.2.1.2 Facilitation of Concerted Anti-competitive Conduct**

Horizontal Consolidations also can result in the creation of a market in which a small number of Licensees can reach, and enforce, agreements to collectively reduce output and raises prices. Such agreements can have the same adverse impacts as a single Licensee's unilateral abuse of its market power.

## **2.2.2 Non-Horizontal Consolidations**

Non-Horizontal Consolidations involve firms that are not current competitors. This includes Vertical Consolidations, which involve firms at different levels in the supply chain. A Non-Horizontal Consolidation may involve two Licensees or may involve a Change in Ownership of a Licensee as a result of an investment by a non-Licensee. Because Non-Horizontal Consolidations, by definition, do not involve actual competitors, they generally do not restrict competition. To the contrary, in many cases, such Consolidations can increase efficiency, thereby enabling a Licensee to compete more effectively against its horizontal competitors. However, Non-Horizontal Consolidations can have an adverse competitive effect where at least one of the firms has market power (*i.e.*, the ability to unilaterally restrict output and raise prices) or participates in a concentrated market with few other direct competitors. There are several ways in which this can occur.

### **2.2.2.1 Elimination of a Potential Competitor**

A Non-Horizontal Consolidation can eliminate the possibility that, in future, one of the parties will enter, as a competitor, a telecommunication market in which the other party currently participates. This can raise significant concerns in recently liberalised markets that have few current competitors. The current ability of a Licensee or group of Licensees to restrict output and raises prices will be constrained by the existence of a firm that, although not currently in the market, would actually respond (or which current market participants believe would respond) to an anti-competitive restriction in output by entering the market. A Consolidation can eliminate that constraining factor, while reducing the chances of establishing actual competition in future.

### **2.2.2.2 Foreclosure or Discriminatory Access to Upstream “Inputs” or “Downstream” Facilities**

A Non-Horizontal (Vertical) Consolidation can restrict competition by limiting the ability of competing Licensees to access a necessary “upstream” input or a “downstream” facility necessary to deliver telecommunication services to End-Users. This can occur, for example, when a firm that controls an essential “upstream” input, acquires a “downstream” Licensee that relies on that input, and then refuses to provide the input on reasonable and non-discriminatory terms to “downstream” Licensee’s competitors. At a minimum, this may increase the non-affiliated Licensee’s costs, putting it a significant competitive disadvantage. In extreme cases, a Non-Horizontal (Vertical) Consolidation can result in such significant foreclosure that it becomes necessary for future entrants to enter both the “upstream” and “downstream” market at the same time. Because of the extra costs and risk of “dual level” entry, the Consolidation reduces the likelihood of future competition in one or both markets.

### **2.2.2.3 Market Distortion**

A Non-Horizontal (Vertical) Consolidation can restrict competition by enabling a firm with market power in one market to distort competition in an adjacent telecommunication market. For example, after the Consolidation, an “upstream” firm that has market power in one market input could charge above-cost prices in that market and use the revenue to enable the “downstream” affiliate to sell telecommunication services at below-cost prices (“cross-subsidisation”).

## **2.3 Goals of Consolidation Review**

In reviewing any proposed Consolidation, IDA will seek to achieve the following three goals:

### **2.3.1 Prevent Anti-competitive Consolidations**

IDA generally will prevent the consummation of a proposed Consolidation where the transaction would unreasonably restrict competition and where the anti-competitive harm cannot be adequately remedied through the imposition of narrowly tailored structural or behavioural remedies. Because regulation generally is a poor substitute for the operation of a competitive market, preventing such Consolidations is superior to approving the Consolidation and the imposing pervasive regulation.

### **2.3.2 Allow Consolidations, Subject to Conditions**

IDA generally will allow the consummation of a proposed Consolidation, subject to Conditions, where competitive concerns exists but can be adequately addressed through the imposition of narrowly tailored structural or behavioural Conditions.

### **2.3.3 Allow Consolidations Without Conditions**

IDA generally will allow the consummation of a proposed Consolidation, without imposition of Conditions, where the proposed Consolidation does not raise any competitive concerns.



## **2.4 Compliance with Telecom Competition Code Regulatory Principles**

IDA will conduct Consolidation Reviews in a manner that is consistent with the Regulatory Principles contained in the Code – including non-discrimination, proportionately, avoidance of unnecessary delay and open and reasoned decision making.

## **3. CONSOLIDATION APPLICATIONS**

This Section describes the application procedures that Licensees that seek to enter into a Consolidation that involves a Licence Assignment or Change in Ownership must follow. Licensee may also seek Informal Guidance from IDA.

### **3.1 Application for Approval in Connection with a Proposed Consolidation**

Any Licensee that has entered into a Consolidation Agreement that involves a Licence Assignment or a Change in Ownership must file a Consolidation Application with IDA, and obtain IDA’s written approval, before consummating the Consolidation.

#### **3.1.1 Parties that Must File a Consolidation Application**

The Consolidation Application must be submitted by the entity that holds the Licence that is subject to Assignment or Change in Ownership (not by the Licensee’s parents or owners) and the proposed assignee or entity that seeks to obtain an ownership interest in the Licensee (“Applicants”). The Applicants should submit a single, joint Consolidation Application. However, the Applicants may choose to submit proprietary or commercially sensitive information separately.

#### **3.1.2 Definition of Consolidation**

A Consolidation is a transaction that results in previously separate entities becoming a single economic unit. A Consolidation may occur where two previously separate entities merge into a single entity or where one entity acquires the ability to exercise control, whether positive or negative, over the commercial activities of the acquired entity. A Consolidation may, but need not always, involve a change in the legal status of the entities.

#### **3.1.3 Timing of the Consolidation Application; Procedure for Filing**

The Applicants must submit a Consolidation Application not prior to, but within 14 days after, the day on which they enter a binding agreement that, upon approval by IDA, and satisfaction of any specified conditions, would result in a Consolidation that involves a Licence Assignment or Change in Ownership (“Consolidation Agreement”).

### **3.2 Minimum Information Requirements**

Any Consolidation Application submitted to IDA must be submitted in an orderly manner that facilitates IDA’s review. At a minimum, it must satisfy the Minimum Information Requirements specified in Sections 3.2.1 through 3.2.6 of these Guidelines.

### **3.2.1 Consolidation Application Form**

The Applicants must submit the Consolidation Application Form. (The Form is reprinted in Appendix One and can be obtained on the IDA website.)

### **3.2.2 Consolidation Agreement**

The Applicants must submit a copy of the Consolidation Agreement, including any appendices, side letters or supporting documents.

### **3.2.3 Ancillary Agreements**

The Applicants must submit copies of any agreements that, while not directly addressing the Consolidation, are an integral part of the transaction (such as covenants not to compete or licensing agreements) or that are necessary to fully assess the likely competitive impact of the proposed Consolidation.

### **3.2.4 Description, Competitive Impact and Public Interest Statement**

The Applicants must submit a statement that provides a clear, accurate and comprehensive description of the proposed Consolidation, a good-faith assessment of the likely impact on the proposed Consolidation on competition and a discussion of why approval of the proposed Consolidation would serve the public interest. The competitive assessment generally should include information regarding: the relevant markets; the market participants; the level of concentration in the market; the structure of the market (and the extent to which it facilitates concerted action by multiple participants); the likelihood that output would be increased (either by existing market participants or new entrants) in response to a significant and non-transitory price increase; the likelihood of End User switching in response to a significant and non-transitory price increase; and any efficiencies that would likely result from the proposed Consolidation. Applicants should assume that IDA will release this document to the public. If the Statement contains proprietary or commercially sensitive information, the Applicants should put such information in a separate appendix. (Confidentiality protection is further addressed in Section Five of these Guidelines.)

### **3.2.5 Supporting Documentation**

The Applicants should submit a copy of any supporting documents that would assist IDA in assessing the likely competitive effect of the proposed Consolidation. At a minimum, this must include: a copy of the Applicants' current annual reports or audited financial statements; a copy of the Applicants' business plans for the current and two previous years; and a copy of any reports, studies or analyses prepared for the owners, directors, or executive officers of the Applicants assessing the proposed Consolidation and describing the proposed operation of the economic entity that will be created as a result of the Consolidation); and a chart indicating each Applicant's parents (both intermediate and ultimate), subsidiaries (direct and indirect) and affiliates and the relevant ownership interests. Applicants need only provide information regarding a parent that has at least a five percent ownership interest (direct or indirect) in the Applicant or a subsidiary in which the Applicant has at least a five percent ownership interests (direct or indirect). The Applicants should indicate any situation in which the ownership interest grants the holder a special or preferential right. Applicants

should indicate any pending changes in the ownership structure of either Applicant in addition to the change that is the subject of their Application.

### **3.2.6 Proposed Conditions to Address Competitive Concerns**

The Applicants must indicate whether they wish to propose any possible Conditions (such as partial divestiture or the imposition of behavioural safeguards) that could reduce any adverse competitive impact of a proposed Consolidation. If the Applicants choose to propose such Conditions, they should provide a complete description of the proposed Conditions and an assessment of why such Conditions would be adequate to address any competitive concerns arising from the proposed Consolidation.

### **3.3 Consolidation Application Processing Fee**

Each Consolidation Application must be accompanied by a certified cheque, directing payment to the Info-Communications Development Authority of Singapore, in the amount of S\$ 10,000.

### **3.4 IDA Preliminary Review of Consolidation Application**

IDA generally will complete a preliminary review of the Consolidation Application within five business days of receiving the Application. The sole purpose of the preliminary review is to determine whether the Applicants have satisfied the Minimum Information Requirements.

#### **3.4.1 Acceptance of Complete Applications; Designation of IDA Contact**

If, at the conclusion of its preliminary review, IDA concludes that the Consolidation Application fully satisfies the Minimum Information Requirements, the IDA Industry Liaison Officer will notify the Applicants, in writing, that it has accepted the Consolidation Application for filing. (This determination does not preclude IDA from subsequently requesting the Applicants to provide supplemental information.) If IDA makes such a determination, the Consolidation Review Period will be deemed to have begun on the day on which IDA received the Application. IDA will also provide the Applicants with the name, address, telephone, fax number and email address of the IDA Industry Liaison Officer. The Applicants should direct all subsequent communications (whether written or oral) to the attention of the IDA Industry Liaison Officer.

#### **3.4.2 Incomplete Applications Will Not be Processed**

IDA will decline to process any Consolidation Application that does not satisfy the Minimum Information Requirements. If IDA makes such a determination, it will inform the Applicant as to the additional information that it must submit. The Consolidation Review Period will not begin until IDA determines that the Applicants have fully satisfied the Minimum Information Requirement or obtained a waiver.

### **3.5 Waiver of Filing Obligations**

A party may request that IDA waive any or all of the requirements contained in Sub-sections 3.1 through 3.6. Such waiver will only be granted if the party makes a specific and compelling showing that compliance with the specific requirement or requirements: is not

possible; would be unreasonably burdensome; or is not necessary to ensure that a proposed Consolidation would not unreasonably restrict competition in any telecommunication market within Singapore. A waiver request may be submitted prior to the date on which the Applicants submit the Consolidation Application. Alternatively, the Applicants may submit the waiver request at the same time that they file the Consolidation Request. If the Applicants choose to do so, however, the Consolidation Review period will not begin until IDA has either granted the waiver request and found the Application otherwise complete or, if IDA denies the waiver request, until such time as the Applicants satisfy the Minimum Information Requirement.

### **3.6 Duty to Update Pending Consolidation Applications to Reflect Material Changes**

During the period between the day on which they submit the Consolidation Application and the day on which IDA issues its Decision, the Applicants must promptly inform IDA, in writing, of any new or different fact that is reasonably likely to have a material impact on IDA's consideration of the Consolidation Application. In the event that IDA determines that the Applicants' subsequent submission has substantially altered the terms of the proposed Consolidation, IDA may require the Applicants to withdraw the pending Consolidation Application and file a new Consolidation Application. The Applicants will not be entitled to a refund of the Consolidation Application Processing Fee.

### **3.7 Statement that Consolidation Agreement is Subject to IDA Approval**

Any Licensee that enters into a Consolidation Agreement that involves a Licence Assignment or a Change in Ownership should include language in the Consolidation Agreement expressly stating that the Consolidation is subject to the Info-Communications Development Authority of Singapore's approval of the Licence Assignment or Change in Ownership and that the Consolidation will not be consummated unless and until such time as IDA grants written approval. The Licensee should include similar language in any public statement regarding the proposed Consolidation.

### **3.8 Informal Guidance Prior to Agreement**

A Party may ask IDA to provide Informal Guidance prior to the time at which it is required to file a Consolidation Application. This may include guidance regarding the likelihood that IDA will approve, reject or impose Conditions on proposed Consolidation. However, the Informal Guidance process cannot substitute for a full review following submission of a complete Consolidation Application.

#### **3.8.1 Procedures for Requesting Informal Guidance**

A Party that seeks Informal Guidance should submit a written request, containing all relevant available information regarding the possible Consolidation and its likely impact on competition. The Party should also indicate any specific issues on which it seeks guidance. Unless the Party expressly waives its rights, IDA will treat all information submitted as Confidential. IDA will also treat the Guidance provided as Confidential, unless the Party receiving the Guidance chooses to publicly disclose this information.

### **3.8.2 Limitations**

Informal Guidance is subject to the following limitations:

#### **3.8.2.1 Inability to Provide Informal Guidance Absent Adequate Information**

Assessing whether a Consolidation is likely to unreasonably restrict competition is often a fact-specific process. At a minimum, this requires a clear understanding of the likely structure of the proposed Consolidation as well as basic information regarding market structure and participants. IDA will not provide Informal Guidance in any case in which a Party fails to provide this information. In some cases, assessing the competitive impact of a Consolidation requires significantly more information – including information within the possession of suppliers, competitors and customers. The Informal Guidance process is not an appropriate means to conduct a detailed review. In such cases, IDA will not express a view regarding its likely disposition of a Consolidation Application. IDA may, however, provide preliminary views regarding some of the issues that it anticipates will be relevant to its review.

#### **3.8.2.2 Informal Guidance Does Not Bind IDA**

Recognising the importance of minimising regulatory uncertainty, IDA will attempt to provide reliable Informal Guidance. However, the provision of Informal Guidance does not preclude IDA, following a complete review of a Consolidation Application, from taking actions that are inconsistent with the views contained in the Informal Guidance. This is especially likely where the Consolidation Review reveals additional or different information from the information on which IDA relied in providing the Informal Guidance or where market conditions or other relevant factors have materially changed since the date on which IDA provided the Informal Guidance.

## **4. CONSOLIDATION REVIEW PERIOD**

This Section describes the timing of IDA’s Consolidation Review process. IDA recognises that regulatory delay increases business risk and, potentially, can deter Licensees from entering into pro-competitive Consolidations. IDA is committed to reviewing all Consolidation Applications in a timely manner, while giving adequate consideration to all relevant issues.

### **4.1 Consolidation Review Period Does Not Begin Until Receipt of Complete Consolidation Application**

IDA will inform the Applicants when their Consolidation Application is complete. The Consolidation Review Period will be deemed to have begun on the day on which the Applicants satisfied the Minimum Information Requirement specified in Section 3.2 of the Guidelines and Section Nine [to be amended] of the Code. For example, if the Applicants submit the minimum required information on 1 July, and IDA informs the Applicants on 5 July that their Consolidation Application is complete, the Consolidation Review Period will be deemed to have begun on 1 July.

## **4.2 Length of Review Period**

IDA will ordinarily complete its Consolidation Review within 30 days after the start of the Consolidation Review Period. In any case in which IDA determines that a Consolidation Application raises novel or complex issues, IDA will notify the Applicants that it intends to extend the Consolidation Review Period, by up to 90 days, to a maximum of 120 days. IDA will seek to provide this notification within 21 days after the start of the day of the Consolidation Review Period. IDA will deem a Consolidation Application to raise “novel” issues when disposition of the Application requires IDA to consider an issue that it has not previously addressed, either in these Guidelines or in a prior Consolidation Review, and for which there is no clearly established international “best practice.” IDA will deem a Consolidation Application to raise “complex” issues when disposition of the Application requires IDA to obtain significant factual information or resolve difficult legal, factual or policy issues that cannot be adequately resolved with the ordinary thirty day period.

## **4.3 Tolling of Consolidation Review Period Due to Failure to Adequately Respond to Supplemental Information Requests**

During the course of the Consolidation Review Period, IDA may request that the Applicants provide Supplemental Information to assist IDA in assessing the competitive impact of the proposed Consolidation. (Requests for Supplemental Information are discussed in Section Five of these Guidelines). In any cases in which IDA Requests Supplemental Information, it will specify a reasonable period of time during which the Applicants are to provide the information. If the Applicants request additional time to comply with this request, or if they do not provide all Supplemental Information by the date specified, IDA will “toll” the running of the Consolidation Review Period until such time as the Applicants provide all specified Supplemental Information. IDA will inform the Applicants of the specific day on which the Consolidation Review Period has been tolled (*e.g.*, the 25<sup>th</sup> day after the start of the Consolidation Review Period). Once IDA determines that the Applicants have provided all required Supplemental Information, IDA will resume the running of the Consolidation Review Period, beginning with the day following the day on which the Consolidation Review period was tolled (*e.g.*, the 26<sup>th</sup> day after the start of the Consolidation Review Period).

## **5. INFORMATION GATHERING AND CONFIDENTIALITY**

In order to assess the likely competitive effect of a proposed Consolidation, IDA often will need to obtain information (in addition to that provided with the Consolidation Application) from the Applicants and other parties regarding the conditions in the relevant markets. At the same time, IDA recognizes that Applicants and other entities have legitimate interests in avoiding public disclosure of proprietary or commercially sensitive information. This Section describes the information gathering and confidentiality procedures that IDA generally will use in performing a Consolidation Review.

### **5.1 Request for Supplemental Information From the Applicants**

Where necessary to assess the likely competitive impact of a Proposed Consolidation, IDA, pursuant to Section Nine [to be amended] of the Code, will request the Applicants to provide information in addition to that contained in their Application. (These requirements are reprinted in Sections 5.1.1 through 5.1.4 of these Guidelines.)

### **5.1.1 Request for Response to Specific Question**

IDA may submit written questions to one or both of the Applicants. To the extent that the Applicant possesses (or through reasonable diligence can obtain) information that would enable it to respond, they must provide responsive, accurate and complete written answers. At the time it submits its answers, the Applicant must submit a statement certifying that it has satisfied this obligation.

### **5.1.2 Document Requests**

IDA may request one or both of the Applicants to provide additional internal documents. IDA may request production of specific documents or may request production of all documents that fall within a particular category. An Applicant must make a good faith effort to locate and produce all responsive documents. At the time it submits the documents, the Applicant must submit a statement certifying that it has satisfied this obligation. The Applicant may either produce the original documents or accurate photocopies. The documents must be organized in a logical and orderly manner that facilitates IDA's review.

### **5.1.3 Interviews**

IDA may request owners, officers or employees of one or both of the Applicants to participate in an interview. At the interview, IDA may request the individuals to respond orally to specific questions. Following the interview, IDA may require the Applicants to provide written answers to specific questions.

### **5.1.4 Inspection Requests**

IDA may require one or both of the Applicants to allow it to physically inspect its facilities or operations.

### **5.1.5 Sanctions for Failure to Comply With Information Requests**

An Applicant's failure to respond, accurately and completely, within a reasonable period of time, can provide a basis for IDA to deny of the Application. In addition, if IDA concludes that a Licensee has engaged in wilful concealment or misrepresentation, it may treat the action as a contravention of Section 9.4 of the Code and impose appropriate sanctions.

## **5.2 Procedures for Obtaining Information from Other Parties**

In some cases, IDA may find it useful to obtain information from suppliers, competitors or customers of one or both of the Applicants, as well as other interested parties. There are several means by which IDA will do so.

### **5.2.1 Public Consultation**

Where appropriate, IDA will provide the public with an opportunity to comment regarding a proposed Consolidation. The procedures governing public consultation are contained in Section 9.3 of these Guidelines.

### **5.2.2 Private Consultations**

In those cases in which IDA does not conduct a Public Consultation, it may nonetheless request, or accept, comments from individual parties, as appropriate. IDA does not assume any obligation to consider unsolicited comments.

### **5.3 Co-operation with Foreign Government Authorities**

Where appropriate, and consistent with applicable international agreements, IDA will seek to co-operate with foreign government authorities in gathering relevant information.

### **5.4 Confidentiality**

While IDA is committed to conducting Consolidation Reviews in a transparent manner, pursuant to Section Nine [to be amended] of the Code, IDA will take appropriate action to prevent the disclosure of commercially sensitive or proprietary information. (These requirements are reprinted in Sections 5.4.1 through 5.4.4 of these Guidelines.)

#### **5.4.1 Procedures for Requesting Confidential Treatment**

An Applicant, or any other party submitting information to IDA, whether voluntarily or pursuant to a request from IDA, may request that information be treated as confidential. The party requesting confidential treatment must identify the specific document, portion of document, or other information for which confidential treatment is sought. IDA generally will not accept requests to treat all information submitted as confidential. Any request for confidential treatment must indicate that the request satisfies the standards contained in Section 5.4.2 of these Guidelines. Applicants and other parties should take reasonable measures to minimise the amount of information for which they request confidential treatment.

#### **5.4.2 Standards Governing Grant of Confidential Treatment**

IDA will grant a request for confidential treatment if the Applicant or other party demonstrates that the specific information for which it seeks confidential treatment is either proprietary, contains commercially sensitive information that is subject to a pre-existing non-disclosure agreement with a third party, or that disclosure would otherwise have a material adverse impact. Information is proprietary if it constitutes the party's legally protected intellectual property – such as a patented formula or a trade secret. Information is commercially sensitive if: (a) it is not otherwise available to the public; (b) it describes the disclosing party's business procedures, practices, plans or its assessment of market conditions or similar matters; and (c) there is a reasonable possibility that disclosure would provide a commercial benefit to the party's competitors.

#### **5.4.3 Restriction on the Use of Confidential Information**

If IDA grants a request for confidential treatment, it will: (a) take all feasible measures to ensure that the information is not disclosed to any other party; and (b) will use the information only for the purpose of conducting the Consolidation Review for which the information was obtained.



#### **5.4.4 Notification of Denial of Confidential Treatment**

If IDA rejects a request for confidential treatment, it will return the information to the sender, with an explanation of the reason why the request was rejected. IDA will not consider this information as part of the Consolidation Review process. IDA's decision not to grant confidential treatment does not excuse an Applicant from complying fully with IDA's request to provide information.

### **6. ANALYTIC FRAMEWORK**

The goal of IDA's Consolidation Review process is to identify those Consolidations involving a Licence Assignment or Change in Ownership that are likely to "unreasonably restrict competition" in any telecommunication market within Singapore. To do so, IDA will apply economic analysis to information regarding the proposed Consolidation and the characteristics of the relevant markets. This Section describes the analytic framework that IDA generally will use. IDA may modify this framework in any given Consolidation Review, where necessary to better assess the likely competitive impact of the proposed Consolidation.

#### **6.1 The "Unreasonably Restrict" Standard**

The "unreasonably restrict" standard is a flexible one. In general, however, IDA will only find that a proposed Consolidation unreasonably restricts competition where the Consolidation would be likely either to: (a) result in a significant and unjustifiable reduction in existing competition in any telecommunication market within Singapore or (b) significantly impede the development of future competition in any telecommunication market within Singapore.

#### **6.2 Horizontal Consolidations**

Consolidations among direct competitors ("Horizontal Consolidations") pose the greatest threat to competition. In carrying out its review, IDA generally will use the methodology described in sub-sections 6.2.1 through 6.2.7 of these Guidelines.

##### **6.2.1 Market Share Assessment**

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

##### **6.2.1.1 Determining the Relevant Markets**

IDA will first determine the relevant telecommunication markets within Singapore in which the two Licensees currently compete.

###### **6.2.1.1.1 Product Markets**

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 consider all relevant evidence. This may include determining which other services have a similar function, characteristics or potential customer base as the Licensee's service. IDA also may consider which other services buyers would switch to if the price of the Licensee's service increased by a small but significant, non-transitory amount.

#### **6.2.1.1.2 Geographic Markets**

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 if prices increased by a small but significant, non-transitory amount. To determine which locations are in the same geographic market as the Licensee's service, IDA will consider all relevant evidence. In general, the relevant market will consist of all locations with Singapore.

#### **6.2.1.2 Determining Market Participants**

For each telecommunication market in which the two Licensees compete, IDA will seek to identify all other Licensees that participate that market. IDA will include only those Licensees that currently provide a service that directly competes against, or is a substitute for, the Licensees' services.

#### **6.2.1.3 Determining Market Shares**

IDA will next determine the unit of measurement to be used to assess participants' market shares. This may include unit sales, revenues or capacity. In determining which unit of measure to use, IDA will consider both the availability of reliable information and the extent to which a given unit of measurement best reflects the actual competitive position of the market participants. Once IDA has determined the unit of measurement, it will assign a market share to each Licensee that currently participates in the market. IDA will then determine the market share of the entity that would be created if IDA approves the Consolidation Application ("Post-Consolidation Entity"). (Depending on the structure of the transaction, the Post-Consolidation Entity may be a single Licensee or a "group" consisting of multiple separately licensed entities.)

#### **6.2.2 Situations in Which Approval Ordinarily Will be Granted Without Significant Review**

IDA will ordinarily grant Approval without significant review to any proposed Horizontal Consolidation in which the Post-Consolidation Entity will not have more than a 15 percent share in any telecommunication market within Singapore.

#### **6.2.3 Assessing the Risk of Anti-competitive Impact**

All things being equal, a Post-Consolidation Entity with a larger market share will have a greater ability to act anti-competitively than a Post-Consolidation Entity with a smaller market share. However, determining the Post-Consolidation Entity's market share is only the beginning of IDA's competitive analysis. IDA will consider market-specific factors that

could increase or decrease the ability of the Post-Consolidation Entity to act anti-competitively.

#### **6.2.3.1 Factors Likely to Increase the Risk of Unilateral Anti-competitive Conduct**

IDA will consider the extent to which the structure of the relevant market creates a heightened risk that, if the Consolidation Application is granted, the Post-Consolidation Entity will have the ability to unilaterally restrict output and raise prices. Among the factors that may make such conduct more likely are: (a) one of the Licensees is currently classified as Dominant; (b) the post-Consolidation Entity would have a market share in excess of 35 percent in any telecommunication market within Singapore; (c) prior to the Consolidation, the two Licensees offered services that consumers view as close substitutes for each other; (d) there are no “strong customers” that would have the ability to resist any effort by the Post-Consolidation Entity to raise prices; or (e) current customers of the Licensee’s would face significant impediment in the event that, following the Consolidation, they sought to switch to alternate suppliers.

#### **6.2.3.2 Factors Likely to Increase the Risk of Concerted Anti-competitive Action**

IDA also will consider the extent to which the structure of the relevant market creates a heightened risk that, if the proposed Consolidation Application is granted, competing Licensees would be likely to enter into, and maintain, anti-competitive agreements. Among the factors that make such conduct more likely are: (a) the market is a concentrated one, in which there are few other significant firms in the market that offer consumers a competitive alternative; (b) information regarding individual Licensee’s price and production decisions is publicly available; (c) there is a low degree of product differentiation; (d) there are market-wide marketing or pricing practices; or (e) there are no “maverick” Licensees that tend to deviate from industry norms.

#### **6.2.3.3 Elimination of a Significant Market Participant**

IDA will also consider whether the Consolidation will result in the elimination, as an independent competitor, of a firm that has played a competitively significant role in the market. This may include a firm that has been a significant source of innovation or price competition.

#### **6.2.4 Other Relevant Factors**

IDA will also consider other relevant factors that may indicate that a proposed Horizontal Consolidation would not be likely to unreasonably restrict competition. Those factors are described in Sections 6.4 to 6.4.4 of these Guidelines.

### **6.3 Non-Horizontal Consolidations**

Because Non-Horizontal Consolidations can often facilitate competition, IDA generally will seek to limit such Consolidations only if one or both of the Applicants has unilateral market power (*i.e.*, the ability to unilaterally restrict output and raise prices).

### **6.3.1 Determination of Market Power and Market Concentration**

In assessing a proposed Non-Horizontal Consolidation, IDA will first seek to determine whether either of the Applicants has market power. For purposes of reviewing a proposed Non-Horizontal Consolidation, IDA will make an initial presumption that an Applicant has market power if: (a) it is a Licensee that IDA currently classifies as Dominant; (b) it enjoys government-granted exclusive rights (such as an exclusive right to provide a service) or has control over “bottleneck” facilities; (c) it has more than a 35 percent share in any market in which it operates; or (d) other relevant factors indicate that the Applicant has the ability to unilaterally restrict output and raise prices.

### **6.3.2 Situations in Which Approval Ordinarily Will be Granted Without Significant Review**

IDA will ordinarily grant Approval without significant review of any proposed Non-Horizontal Consolidation in which neither of the Applicants: (a) has more than a 15 percent share of any market in which it participates or (b) participates in a concentrated market.

### **6.3.3 Determining the Likelihood of Anti-competitive Effects**

In those cases in which IDA determines that one of the Applicants has market power, or participates in a concentrated market, IDA will consider market-specific factors that could increase the likelihood that the proposed Consolidation would unreasonably restrict competition.

#### **6.3.3.1 Elimination of a Potential Future Competitor**

IDA will consider whether the proposed Consolidation would be likely to prevent the development of effective competition in any telecommunication market by precluding the future entry of an effective competitor. This may occur where one of the Applicants currently has market power in a telecommunication market, or participates in a concentrated market, and the second Applicant would be likely to enter that market and become a significant competitor. Such “entry preclusion” is especially likely where: (a) the proposed Consolidation is a Vertical Consolidation or (b) one of the Applicants is required, pursuant to the terms of a government-granted Licence, to enter the other Applicant’s market within the foreseeable future.

#### **6.3.3.2 Foreclosure/Increased Need for Dual-Level Entry by Future Competitors**

In the case of a Vertical Consolidation, IDA will also consider whether the proposed Consolidation would be likely to unreasonably restrict competition or prevent the development of effective competition in any telecommunication market by restricting the ability of competing Licensees to access: (a) an “upstream” input necessary to provide a telecommunication service or (b) a “downstream” facility necessary to deliver a telecommunication service to End-Users. Such restrictions can increase competing Licensees’ costs and, in extreme cases, require future entrants to simultaneously enter the “upstream” and “downstream” markets. A Vertical Consolidation is likely to result in foreclosure and/or create the needs for “dual level entry” where one of the Applicants has market power and that Applicant: (a) controls an “upstream” input that is necessary for the “downstream” Applicant and its competitors to provide a telecommunication service or (b)

controls “downstream” facilities that are necessary for the “upstream” Applicant and its competitors to deliver a telecommunication service to End-users and, in either case, (c) is not subject to (i) IDA’s jurisdiction and (ii) an effective regulatory regime, administered by another government authority, requiring the Applicant to deal with the other Applicant’s competitors in a reasonable and non-discriminatory manner.

### **6.3.3.3 Market Distortion**

IDA will also consider whether a proposed Consolidation is likely to allow an Applicant with market power to distort competition in the other Applicant’s market. In making this determination, IDA will give careful consideration to the existence of any regulatory regime, whether administered by IDA or any other entity, that could reduce the risk of such market distorting conduct.

## **6.4 Consideration Applicable to All Proposed Consolidations**

In the case of both Horizontal and Non-Horizontal Consolidations, IDA will also consider additional factors that may indicate that the proposed Consolidation would not be likely to unreasonably restrict competition. These factors are described below.

### **6.4.1 Likelihood and Adequacy of New or Expanded Entry**

The ability of the Post-Consolidation Entity to reduce output and raise prices, either alone or in conjunction with other current market participants, in any telecommunication market within Singapore will be limited if there are other firms that are likely to enter the market – or expand existing production – within a reasonably short period of time to the extent necessary to offset any reduction in output. If IDA determines that timely and sufficient entry or expansion is likely, it will generally approve the Consolidation Application.

In seeking to make this determination, IDA will consider whether there has been a history of entry and expansion in the relevant market and whether there are impediments to future entry or expansion. Such impediments may include: regulatory restrictions (such as limitations on the number of licences or on the entities eligible to obtain a licence); technical barriers (such as the need to use proprietary technology); productive barriers (such as the need to obtain access to another Licensee’s infrastructure in order to provide service or significant economies of scale and scope); financial barriers (such as high start-up or expansion costs); or commercial barriers (such as high advertising and retail costs or high consumer switching costs). IDA will also seek to identify any firm that is committed to enter the market, or expand output, within the foreseeable future. This may include Licences that are obligated, pursuant to the terms of the licences granted by IDA, to do so. IDA will attempt to assess the extent to which such firms are likely to become significant participants in the market.

### **6.4.2 Efficiencies**

In a close case, in which a proposed Consolidation may have some anti-competitive effect, IDA will generally grant the Consolidation Application if it concludes, with reasonable certainty, that: (a) the transaction will result in significant efficiencies, not the result of an anti-competitive reduction in output, that could not have been achieved absent the consolidation and (b) the post-Consolidation Entity is likely to pass on a reasonable portion of these efficiencies to its customers. Because most Non-Horizontal Consolidations increase

efficiency, and are less likely to restrict competition, IDA will place somewhat more weight on claimed efficiencies when reviewing a Non-Horizontal Consolidation than it will in reviewing a proposed Horizontal Consolidation. However, efficiencies rarely, if ever, are likely to provide a basis for IDA to approve a Consolidation that would result in the creation of a firm with a monopoly or near monopoly in any telecommunication market within Singapore.

### **6.4.3 Failing Undertakings and Failing Divisions**

Finally, IDA will generally grant an Application in Connection with a Consolidation that would otherwise be found to unreasonably restrict competition where one of the Licensees is a “Failing Undertaking.” A Failing Undertaking is a firm that: (a) is unable to meet its near-term financial obligations; (b) is unlikely to be able to re-organise successfully through a bankruptcy proceeding; (c) cannot find any reasonable alternative purchaser of its assets; and (d) is likely to exit the market, thereby removing its productive assets, absent the Consolidation. IDA will apply the same approach to a Consolidation that involves the division of a Licensee that meets the test specified in this sub-section.

### **6.4.4 Other Relevant Factors**

In conducting any Consolidation Review, IDA will consider any other relevant factors, based on reliable information, that will enable it to assess the likely competitive impact of the proposed Consolidation. This may include anticipated changes in the legal or regulatory environment, anticipated introduction of new services or technologies or changing consumption patterns.

### **6.4.5 Other Public Interest Considerations**

Notwithstanding the result of its analysis of the likely competitive impact, IDA may grant a Consolidation Application, grant the Application subject to Conditions or deny the Application if IDA concludes that doing so will serve the public interest. In any case in which IDA does so, it will provide an explanation of the basis for its decision.

## **7. SPECIAL SITUATIONS**

This Section describes the way in which IDA will conduct its Consolidation Review in certain special situations.

### **7.1 Consolidations with Entities that have Market Power in Markets Not Subject to Direct IDA Regulation**

IDA recognises that, in some cases, a Consolidation may involve an Applicant that has market power in a market that is not subject to IDA regulation, such as a foreign telecommunication operator that has exclusive or special rights in its home country or a Singapore-based company that does not provide telecommunication services. In assessing whether the proposed Consolidation is likely to unreasonably restrict competition, IDA will give full consideration to the ability of the non-licensed entity to use its market position in a manner that would restrict competition in the telecommunication markets subject to IDA’s

jurisdiction. IDA will also consider the need for, and likely effectiveness of any Conditions, such as the imposition of structural separation or non-discrimination obligations.

## **7.2. Consolidations Involving Commonly Owned Licensees**

Consolidations involving Licensees with over-lapping ownership interests can raise special concerns.

### **7.2.1 Consolidations Involving Licensees Commonly Owned Prior to the Consolidation**

In some cases, an entity may have an ownership interest in two Licensees. If the two Licensees subsequently propose to enter into a Consolidation, IDA will determine whether, prior to the proposed transaction, the two Licensees acted as a single “economic unit”. To do so, IDA will assess the extent to which the parent company actually controls or coordinates the activities of the Licensees. While the extent of the parent’s ownership interest in each Licensee may be relevant, IDA will not adopt any presumptions regarding the level of ownership that results in control. Rather, IDA will look at all relevant factors. If IDA concludes that the two entities are already a single economic unit, it will dismiss the Application without any further review on the grounds that the License Assignment or Change in Ownership does not constitute a Consolidation.

### **7.2.2 Consolidations that Result in Common Ownership of Competing Licensees**

In some cases, a Consolidation may result the Post-Consolidation Entity having a direct or indirect ownership interest in two competing Licensees. In reviewing a proposed Consolidation, IDA will consider whether creation of common ownership in the competing Licensees unreasonably restricts competition and, if so, whether imposition of Conditions would be appropriate. Conditions may include divestiture of one of the competing Licensees, imposition of restrictions on common officers or employees, restrictions on information sharing between the commonly owned Licensees and/or the imposition of non-discrimination requirements. (These Conditions are discussed further in Section Nine of the Code.)

## **8. DISPOSITION OF CONSOLIDATION APPLICATIONS**

This Section describes the three types of actions that IDA may take at the conclusion of a Consolidation Review.

### **8.1 Grant of the Application**

IDA may grant the Application in full.

### **8.2 Denial of the Application**

IDA may deny the Application.

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

IDA may grant the Application, subject to the Applicants' agreement to conditions designed to reduce any anti-competitive harm. Conditions that IDA may propose include are described below.

#### **8.3.1 Structural Conditions**

Structural conditions involve either the divestiture or the structural separation of a certain operations of one or both of the Applicants.

##### **8.3.1.1 Partial Divestiture to an Approved Purchaser**

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

##### **8.3.1.2 Purpose**

In some cases, a Consolidation may be generally pro-competitive, but raise a competitive concern in one telecommunication market. For example, Licensee 1 may participate in Telecom Market A, Telecom Market B and Telecom Market C. Licensee 2 may participate in Telecom Market C, Telecom Market D and Telecom Market E. A Consolidation between the two Licensees is unlikely to have any adverse competitive impact on Telecom Markets A, B, D and E – but could result in creation of a firm with market power in Telecom Market C. The Code states that IDA will not approve a Consolidation that is likely to “unreasonably restrict competition in *any* market in which the Licensee competes.” Requiring the Licensees to divest some or all of their operations in Telecom Market C to a qualified buyer could allow the Consolidation of Licensee 1 and 2, while preserving competition in Telecom Market C.

##### **8.3.1.3 Minimum Requirements**

In order for a partial divestiture to constitute an adequate remedy, the Applicants must agree to the following provisions. First, the divestiture must involve the sale of a sufficient portion of the Applicant's operations to eliminate the risk that the Consolidation will create, preserve or increase a Licensee's ability to unreasonably restrict competition. Second, the divestiture must be made to a firm that, in IDA's reasonable opinion, has the ability and incentive to operate the divested assets as a viable, competitive business.

##### **8.3.1.4 Timing and Procedures**

In those cases in which IDA requires the Applicants to agree to divest assets as a condition of approval of a proposed Consolidation, IDA generally will require the divestiture to be successfully completed within a specified period after the Consolidation date. This period typically will be no more than one year. IDA may condition approval on the Applicants' agreement that: (a) during the period between the Consolidation and the partial divestiture, the operations to be divested will be conducted on a structurally separate basis and (b) if, at the conclusion of the specified period, the divestiture has not occurred, the Post-Consolidation entity will appoint an independent expert, satisfactory to IDA, that will have authority to negotiate a sale of the assets. Where a proposed Consolidation raises particularly



serious competitive concerns, or where it is not clear that acceptable purchasers exists, IDA may require that the divestiture be successfully completed before the Consolidation can occur.

### **8.3.1.5 IDA Right to Approve Proposed Purchaser**

In any case in which IDA grant a proposed Consolidation subject to the Applicants agreeing to a divestiture, IDA may also reserve the right to approve the proposed buyer of the divested operations. IDA will not approve any proposed buyer that lacks the ability and incentive to operate the divested assets as a viable, competitive business.

### **8.3.2.2 Structural Separation**

As a condition of its approval of the Application, IDA may require the Applicants to agree that the Post-Consolidation Entity will conduct certain operations through a structurally separate affiliate. The separate affiliate may be required to have separate facilities, separate officers, separate personnel, separate credit lines, and/or other appropriate forms of separation. Structural separation is often appropriate in vertical Consolidations in which one of Applicants has market power. Structural separation can allow the Post-Consolidation Entity to achieve certain integration efficiencies, while creating a “self-enforcing” means to reduce the post-Consolidation Entity’s ability and incentive to engage in, or benefit from, access discrimination and cross-subsidisation.

### **8.3.3 Behavioural Safeguards**

Behavioural safeguards are conditions that govern the post-Consolidation Entity’s conduct following a Consolidation. Limited behavioural safeguards may be appropriate where a transaction is generally pro-competitive, but raises specific competitive concerns that do not warrant either denial of the Application or imposition of structural conditions.

#### **8.3.3.1 Accounting Separation**

As a condition of its approval of the Application, IDA may require the Applicants to agree that the post-Consolidation Entity will 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 condition its approval on the Applicants’ agreement that the Post-Consolidation Entity will contract for independent audits to confirm compliance or to self-certify its compliance periodically.

#### **8.3.3.2 Non-discrimination Requirements**

As a condition of its approval of the Application, IDA may require the Applicants to agree that the Post-Consolidation Entity will either: (a) provide access to infrastructure, information or services to Licensees, other entities or end-users on a non-discriminatory basis or (b) reject any preferential access to infrastructure, information or services from a non-licensed affiliate. IDA also may condition its approval on the Applicants agreeing that the Post-Consolidation Entity will contract for independent audits to confirm compliance or periodically to self-certify its compliance.

### **8.3.3.3 Limitations on Joint Directors or Managers**

As described in Section 7.2.2, a Consolidation may result in the Post-Consolidation Entity having a direct or indirect ownership interest in two competing Licensees. In this situation, as a Condition of its approval of the Application, IDA may require the Applicants to agree that the Post-Consolidation Entity will not permit the same individual to hold a directorship, or serve in an executive management position, in both of the competing Licensees.

### **8.3.3.4 Limitations on Information Sharing**

In any Consolidation that results in two competing Licensees being under partial or total common ownership, as a Condition of its approval of the Application, IDA may require one or both of the competing Licensees to agree to take necessary measures to ensure that they neither provide nor receives non-public information from each other, whether directly or indirectly.

### **8.3.3.5 Termination or Modification of Restrictive Existing Agreements**

As a Condition of its approval of the Application, IDA may require the Applicants to agree to terminate any existing agreement that, following the Consolidation, would be likely to unreasonably restrict competition. For example, IDA could require an Applicant to agree to modify existing agreements that: (a) imposes early termination penalties on customers that seek to switch to rival providers; (b) require customers to make all or a specified portion of their purchases of specific services from the Applicant; or (c) require supplier to make all or a specified portion of their sales to the Applicant.

### **8.3.3.6 Other Behavioural Safeguards**

IDA may require the Applicants to agree to other Conditions that are designed to increase competition. This includes Conditions designed to increase entry into markets that are not yet fully competitive.

## **8.4 Consultation With Applicants Prior to Rejection or Imposition of Significant Conditions**

In any case in which, after review of the Application, IDA determines that it is likely to reject the Application or impose significant Conditions, IDA will meet with the Applicants, describe its primary competitive concerns and provide the Applicants with a reasonable opportunity to present their views.

## **8.5 Notification by IDA**

IDA will notify the Applicants, in writing, as to whether their Application has been approved, rejected or approved subject to Conditions. No IDA decision shall be effective until conveyed to the Applicants in written form.

## **8.6 Notification by Applicants of Acceptance or Rejection of Conditions**

In any case in which IDA approves an Application subject to Conditions, the Applicants will have 14 days from the date on which IDA issues its decision to notify IDA as to whether they accept the Conditions or wishes to withdraw their Application.

## **8.7 Sanctions for Post-Consolidation Failure of a Licensee to Comply with Conditions**

Any failure by a Licensee to comply with a Condition adopted by IDA, and accepted by the Licensee, shall constitute a contravention of the Code and may result in IDA taking enforcement action pursuant Section Ten of the Code.

## **9. TRANSPARENCY**

Public participation in the review process can assist IDA in developing a better understanding of market conditions and the likely competitive effect of a proposed Consolidation. Therefore, consistent with the need to protect the legitimate confidentiality interests of the Applicants, and the need to make efficient use of administrative resources, IDA will provide notice and, where appropriate, seek public comment. This Section describes the means by which IDA will do so.

### **9.1 Public Notification at the Start of the Consolidation Review Period**

IDA generally will notify the public, by means of a Notification posted on its Website, of each complete Consolidation Application that has been filed. Notification will be provided on the same date that IDA notifies the Applicants, pursuant to Section 3.4.1, that the Consolidation Application has been accepted for filing. The Notification will include the name of the Applicants, a brief description of the proposed Consolidation, and the contact information for the IDA Industry Liaison Officer, who will be responsible for co-ordinating the Consolidation Review.

### **9.2 IDA Solicitation of Public Comments**

Where appropriate, IDA will issue a Consultation Document, which will describe the proposed transaction, indicate issues of particular concern, and invite the public to submit written comments. IDA is most likely to seek public comment in those cases in which a proposed Consolidation raises novel or complex issues, where the proposed Consolidation involves a Dominant Licensee or other significant market participant, where IDA requires additional facts about market conditions or the likely competitive effect of the Consolidation or where IDA would benefit from public input regarding possible Conditions.

In those cases in which IDA seeks public comment, it will release the non-confidential portions of the Description, Competitive Effect and Public Interest Statement submitted by the Applicants pursuant to Section 3.2.4 of the Guidelines and Section Nine [to be amended] of the Code. IDA generally will provide between seven and 15 days for public comments. Commenters should limit their submission to those issues that are directly relevant to the Consolidation Application. Commenting parties should clearly articulate the basis for their views regarding the likely competitive effect of the proposed Consolidation, providing factual

support to the extent feasible. Unsupported allegations about the Applicants' prior or likely future conduct are strongly discouraged. Commenting parties should provide a reasoned justification for any Conditions that they propose.

IDA will consider all submission to be public documents, and will post them on IDA's Website. However, a Commenting party may seek confidential treatment of specific information that is proprietary or commercially sensitive. A Commenting may do so by submitting a separate confidential appendix, which may be referenced in the text of its comments. Commenting may only seek confidential treatment for information that is proprietary or commercially sensitive. IDA will not consider the submission of any Commenter that seeks unreasonably broad confidential treatment.

IDA will give full consideration to all properly and timely filed comments submitted pursuant to a Consultation Document. IDA will generally address the significant points raised by the Commenting parties in its Decision regarding the Consolidation Application.

### **9.3 Publication of Decisions**

At the conclusion of the Consolidation Review, IDA will issue a Decision describing the proposed Consolidation, the action taken by IDA (including the imposition of any Conditions), and the rationale for IDA's actions. IDA will make the Decision available on its Website.

## **10. ADMINISTRATIVE REVIEW OF DECISIONS**

Any Party that is adversely affected by a Decision rendered by IDA in response to a Consolidation Application may ask IDA to reconsider its Decision. IDA will consider those objections or representations and, where appropriate, will modify its Decision. Notwithstanding the above, any party that is aggrieved by any Decision of IDA in response to a Consolidation Application may, within 14 days of the date on which the Decision is issued, appeal to the Minister of Communication and Information and Technology ("Minister") under Sections 27(4) and 69 of the Telecommunications Act (CAP 323). Unless IDA orders otherwise, Licensees shall comply with its Decision until such time, if any, as the Minister reverses or modifies the Decision.

**CONSOLIDATION APPLICATION FORM**

1. List the name and headquarters address of the Applicant that is the Licensee subject to the proposed Licence Assignment or Change in Ownership. Indicate the name of the Applicant's primary contact in connection with this Application and his or her title and contact information (mailing address, telephone number, fax number, email address etc.).

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2. List each entity in which the Applicant identified in response to Question One holds a direct or indirect ownership interest of five percent or more. For each entity, indicate the entity's principal line-of-business and the Applicant's percentage ownership interest.

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3. List each entity that holds a direct or indirect ownership interest of five percent or more in the Applicant identified in response to Question One. For each entity, indicate the entity's principal line-of-business and the entity's percentage ownership interest in the Licensee. Indicate any situation in which an owner has special or preferential rights in the Licensee.

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4. List the name and address of the Applicant (whether or not a current Licensee) that is the proposed assignee or that seeks to obtain an ownership interest in the Licensee. Indicate the name of the party's primary contact in connection with this Application and his or her title and contact information (mailing address, telephone number, fax number, email address etc.).

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5. List each entity in which the Applicant identified in response to Question Four holds a direct or indirect ownership interest of five percent or more. For each entity, indicate the entity's principal line-of-business and its percentage ownership interest.

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6. List each entity that holds a direct or indirect ownership interest of five percent or more in the Applicant identified in response to Question Four. For each entity, indicate the entity's principal line-of-business and entity's percentage ownership interest in the Applicant. Indicate any situation in which an owner has special or preferential rights in the Applicant.

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7. Description of Transaction

Check each of the following that correctly describes the proposed transaction (you may check more than one):

\_\_\_ The Applicant identified in response to Question Four is seeking to have the licence held by the Licensee identified in Response to Question One assigned to it.

\_\_\_ The Applicant identified in response to Question Four is seeking to obtain an ownership of at least five percent or a management interest in the Licensee identified in Response to Question One.

\_\_\_ The proposed transaction will result in two previously separate entities (at least one of which is a Licensee) becoming a single economic unit. (This can occur where two previously separate entities merge into a single entity or where one entity acquires the ability to exercise control, whether positive or negative, over the commercial activities of the acquired entity. It may, but need not always, involve a change in the legal status of the entities.)

8. Using the methodology specified in Section 6.1.1 through 6.2.1.3 of the Consolidation Review Guidelines, identify each telecommunication market within Singapore in which, based on your best estimate, either of the Applicants has a market share of five percent or more. For each such market, indicate, based on your best available information, the estimated market share of the five largest market participants (based on revenue, customers, or other appropriate measurement).

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9. Identify any additional market, wherever located, in which either Applicant has a market share in excess of 15 percent.

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10. Does the Proposed Consolidation satisfy either of the following criteria? (Check the appropriate box or boxes.)

The proposed Consolidation is a Horizontal Consolidation that will result in Post-Consolidation Entity with no more than a 15 percent market share in any telecommunication market within Singapore.

The proposed Consolidation is a Non-Horizontal Consolidation in which neither Applicant has more than a 15 percent market share in any market.

11. Do you wish to propose any Conditions to address possible competitive concerns arising from the proposed Consolidation?

(Y/N)

If yes, please attach a separate statement describing the proposed Conditions and the means by which they will address any possible competitive concerns.

12. Minimum Required Information

Check if you have attached each item listed below; mark N/A (not applicable) where, to the best of your knowledge, no documents meeting the description exist:

Consolidation Agreement

Ancillary Agreements

Description, Competitive Impact and Public Interest Statement (this must contain all required information specified in Section 3.2.4 of the Guidelines and Section Nine [to be amended] of the Code)

Current annual report or financial statement for each Applicant

Business plans for each Party for the current and two previous years

All reports, studies or analyses prepared for the owners, directors, or executive officers of each Party assessing the proposed Consolidation and the proposed operation of the Post-Consolidation Entity

Chart indicating each of the Applicant's direct and indirect parents, subsidiaries and affiliates and the relevant ownership interests, including any preferential or special rights

Consolidation Application Processing Fee (certified cheque in the amount of S\$ 10,000)



13. Confidentiality

Have you indicated all material submitted as part of this Application that contains information for which you are seeking confidential treatment?

\_\_\_ (Y/N)

(Note: Requests to treat all information as confidential are not acceptable.)

14. Certification

The undersigned hereby certify that they have made a diligent effort to fully complete this Consolidation Application Form and that, to the best of their knowledge, all information contained in this Consolidation Application Form and the attachments thereto is current, accurate and complete. The Undersigned further certify that they will promptly, fully and accurately respond to any IDA request for Supplemental Information and that, even in the absence of a request, they will promptly notify IDA of any new or different fact that is reasonably likely to have a material impact on IDA's consideration of this Consolidation Application.

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Date Submitted: \_\_\_\_\_