

ANNEX 1: M1’S COMMENTS ON IDA’S PROPOSED ADVISORY GUIDELINES GOVERNING APPLICATIONS FOR LICENCE ASSIGNMENTS OR CHANGES IN OWNERSHIP OF A LICENSEE IN CONNECTION WITH A PROPOSED CONSOLIDATION (TELECOM CONSOLIDATION GUIDELINES)

Section	Description	Comments
1 – Legal Authority	<p>Both Licence terms and Telecom Competition Code require Licensee to seek IDA approval before implementing Change in Ownership (whether direct or indirect), shareholding or management of the Licensee.</p> <p>Reference that IDA will not find that a change of ownership occurs unless a person or entity obtains an ownership interest of at least 5% in a Licensee.</p>	<p>M1 views that there is a need for IDA to clarify the “Change in Ownership” definition as the term is too broadly defined in the consultation paper. Furthermore, the threshold of 5% set by IDA is too low and may unnecessarily burden licensees. Therefore;</p> <ol style="list-style-type: none"> 1) M1 seeks clarification on the definition “Change in Ownership” with regard to “indirect” ownership. Indirect ownership may be held through multiple intermediate companies and it may be difficult for the Licensee to monitor changes in ownership for all intermediate companies through which indirect ownership is held, particularly where the “Change in Ownership” threshold is so low (see point 2 below). 2) For IDA to require Licensee to seek prior approval for Change in Ownership for as low as 5% is difficult to implement, especially where Licensees and/or shareholders are listed companies and where it involves extensive indirect ownership (see point 1 above). Share-trading activities of all companies in the ownership chain would have to be monitored constantly. M1 suggests the following: <ol style="list-style-type: none"> a) For listed companies, a cure period of eg. 30 days (if the exceeding of the threshold is discovered after the fact) be introduced so that the Licensee/shareholder may reverse or remedy the change. b) The threshold should also be linked to the ability to control the Licensee. Therefore M1 proposes that IDA lift the threshold to at least 20% for both direct and indirect ownership and peg the threshold to share capital / control tests in definitions of “related corporation” and “associated company” as stated in the Companies Act and the SGX Listing Manual respectively. M1 would also like to highlight that in IDA’s Accounting Separation Guidelines (ASG), the threshold of 20% is also used to determine that an entity has ownership interest. 3) IDA also set no specific definition for “change in shareholding”. M1 seeks clarification on whether it has the same definition as Change in Ownership or does it carry a broader definition.

Section	Description	Comments
3 – Consolidation Application	<p>Minimum Information Requirements:</p> <p>Supporting Documentation requested includes a chart indicating the Applicant’s</p> <ul style="list-style-type: none"> - Parents that has at least 5% ownership interest (direct or indirect; intermediate and ultimate) - Subsidiaries in which the Applicant has at least 5% ownership interest (direct or indirect) - Affiliates and other relevant ownership interests 	<p>M1 is concerned that the usage of the following terms is confusing and unclear:</p> <ul style="list-style-type: none"> - Parents / Subsidiaries / Affiliates <p>M1 proposes the following:</p> <ol style="list-style-type: none"> 1) IDA should amend the terms to be in line with their meanings in the Companies Act / SGX Listing Manual. 2) “Affiliate”, as it is commonly understood, is potentially very broad in its definition. As such M1 suggests replacing the term with “Associated Company” as defined in the SGX Listing Manual 3) For the chart that indicates ownership interests, IDA could adopt the similar basis used in the Auction of Third Generation Mobile Communication Spectrum Rights – Application Form; Note 1.5. This would be in line with our proposed amendments to Section 1 on raising the “Change in Ownership” threshold to 20%.
	Consolidation Application Processing Fee	<p>Currently, Licensees are already paying Licence Fees (and other fees such as Spectrum Fees) to IDA. The application for Consolidations involving Licensees is part of conforming to licence terms, thus M1 believes that the Application Processing Fee should not be imposed and any cost incurred by IDA should be covered by the Licence Fees. Furthermore, given the onerous information requirements, any application would be a genuine one and so IDA need not set the Application Processing Fee as a form of deterrent to frivolous applications.</p>
	Waiver of Filing Obligations	<p>Please refer to M1’s comments under Section 9 with regards to our concerns on the issue of transparency.</p>
	<p>Informal Guidance Prior to Agreement:</p> <p>IDA states that 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.</p>	<p>In order for IDA to be transparent in its reviewing process, M1 proposes that IDA disclose the reasons behind any inconsistencies in the final decisions / actions vs. the views contained in the Informal Guidance.</p>

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5 – Information Gathering and Confidentiality	<p>Request for Response to Specific Questions and Document Requests:</p> <p>IDA states that to the extent that the Applicant possesses (or through reasonable diligence can obtain) information that would enable it to respond, the Applicant must provide responsive, accurate and complete written answers.</p>	<p>Due to the potentially sensitive nature of mergers and acquisitions, and consolidations, Licensees must not have any careless disregard for the issue of confidentiality, especially so when the information could cause harm in the marketplace.</p> <p>As such M1 proposes the following:</p> <ol style="list-style-type: none"> 1) IDA should allow applicants to make a case that the information and / or document requested are not relevant or necessary for IDA’s evaluation of the application. 2) The confidentiality procedures used by IDA for the relevant information, which has been demonstrated to be commercially sensitive, should be made part of the Telecom Competition Code (Code), so that they are mandatory and certain to the applicants..
6 – Analytic Framework	<p>Determining Market Participants:</p> <p>IDA will seek to identify all other Licensees that participate in the market.</p> <p>IDA will include only those Licensees that currently provide a service that directly competes against, or is a substitute for, the Licensees’ services.</p>	<p>M1 notes that Section 9 of the Code applies only to Facilities-based Licensees and in the section, the term “Licensee” refers to Facilities-based Licensees.</p> <p>IDA should reword the statements in the Consolidation Guidelines, specifically Section 6.2.1.2 to state ‘IDA will include only those Licensees and their subsidiaries and associates that currently provide a service that directly competes...’ so that the analysis undertaken by IDA would be more comprehensive and accurate. An example, would be how Virgin Mobile might not be considered a market participant under IDA’s proposed Consolidation Guidelines, as it is not a Facilities-based Licensee.</p>
	<p>Determining Market Shares</p>	<p>In addition to IDA’s suggested measurements like unite sales, revenue or capacity, M1 would like to propose that Customer Base could also be another form of measurement in assessing participants’ market shares.</p>
	<p>Factors Likely to Increase the Risk of Unilateral Anti-competitive Conduct:</p> <p>IDA will likely consider one of the factors as ‘the post-Consolidation Entity would have a market share in excess of 35 percent in any telecommunication market within Singapore’</p>	<p>M1 would like to seek IDA’s rationale for setting the 35 percent benchmark.</p>

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6 – Analytic Framework	<p>Failing Undertakings and Failing Divisions:</p> <p>IDA will generally grant an Applicant that would otherwise be found to unreasonably restrict competition where one of the Licensees is a “Failing Undertaking”.</p> <p>IDA spells out the test to determine a “Failing Undertaking” and subjects “Failing Division” to the same test.</p>	<p>M1 views that different tests should be specified for “Failing Undertakings” and “Failing Division”, since the ability to meet financial obligations and likelihood of successful reorganisation through bankruptcy proceedings would not be relevant to a Division of a Licensee.</p> <p>Therefore M1 proposes that IDA introduce a separate test for “Failing Division” based on the Division being no longer commercially viable and likely to exit the market if Consolidation does not proceed.</p>
7 – Special Situations	<p>IDA will give consideration to special situations such as:</p> <ul style="list-style-type: none"> - Consolidations that result in Post-Consolidation Entity having direct or indirect ownership in two competing Licensees 	<p>M1 is concerned that special situations may arise whereby the result of the Post-Consolidation Entity itself has common ownership with a competing Licensee. As such we suggest that IDA generalise the scenario to include the outcome whereby the Post-Consolidation Entity has common ownership with a competing Licensee.</p>

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8– Disposition of Consolidation Applications	<p>Applicant will receive notification from IDA which will indicate its approval (with or without conditions) or rejection of the application.</p>	<p>In order for IDA to be transparent in its reviewing process, the basis of IDA’s decision should also be disclosed.</p>
	<p>Grant of Application, Subject to Conditions:</p> <p>Possible IDA conditions listed are, requiring structural or accounting separation, imposing behavioural safeguards or non-discrimination requirements, or forbidding common directorship or executive management positions where the post-Consolidation Entity has direct or indirect ownership interest in 2 competing Licensees.</p>	<p>Similar to the concerns raised in Section 7, IDA should consider the scenario whereby the Post-Consolidation Entity has common ownership with a competing Licensee and amend the wordings accordingly.</p>
9– Transparency	<p>IDA explains the process on how IDA will seek public comment, where appropriate and at the conclusion of the Consolidation Review, publish IDA’s Decisions.</p>	<p>Although the proposed Guidelines aims to be transparent and accountable to Licensees, M1 believes that more transparency is needed in the following aspects:</p> <ol style="list-style-type: none"> 1) Details of any modified / reversed decision from the Minister, following an appeal on IDA’s decision, should also be published. 2) As currently drafted, the public is privy to the details (non-confidential parts) of an application under review only in cases where IDA decides to seek public consultation. Further, IDA may allow a waiver of specific filing requirements in the application (ref: Section 3) which will remain undisclosed if there is no subsequent public consultation. For transparency in the review process, IDA should publish all instances when such waivers are granted, including the rationale for IDA’s waiver.