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Our Ref: LAM/01-IDA/ler

15 November 2001

Info-Communications Development Authority of Singapore
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Attn: Ms Aileen Chia
Director of (Economic Regulation)

Dear Ms Chia

PROPOSED ADVISORY GUIDELINES

Norton Rose together with Rodyk & Davidson, are panel lawyers of the IDA. We have reviewed the Proposed Advisory Guidelines on Consolidation and would like to submit the following comments for consideration by IDA.

As a general point, we consider that IDA is proposing a very useful set of Guidelines, which are comprehensive in scope, sensible in their approach, and likely to be helpful to those involved in the sector. We particularly endorse IDA's decision to have regard to international best practice rather than simply aligning the Guidelines with the practice in any one particular jurisdiction. The IDA would do well to strive to be consistent in its application of policies and rulings so that there is no suggestion of inconsistency or confusion amongst the players. This is sometimes the perceived case in USA and Europe with regulators.

Within this context, our only specific comments are as follows:

- **1.4 (Modification of the Guidelines):** When there are to be modifications, it would be very helpful if IDA were then to publish consolidated versions of the Guidelines incorporating the modifications.

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- **2.21 (Horizontal consolidations):** We note the reference here to “competing providers of *local* telephony”. However, there may also be concerns about a reduction of competition between providers of, say, trunk lines outside Singapore – and which are therefore not “local” – which have an effect on the pricing of services to (and, therefore, by) downstream providers of telephony within Singapore.
- **3.2 (Minimum information requirements):** We would respectfully suggest that there might be advantages in imposing a lesser information requirement in the case of mergers having a relatively limited effect on competition. This would relieve the burden on IDA in terms of having to process applications of limited importance, and would also ensure that businesses did not face unnecessary regulatory burdens which could have a “chilling” effect on legitimate market activity.

In particular, we note that in the draft Consolidation Application Form, question 8 requires fairly detailed market share information on each telecommunication market within Singapore in which *either* of the parties has a market share of 5 per cent or more. It seems to us that this 5 per cent threshold could sensibly (and without harm) be raised. For example, in the application form used under the EC Merger Regulation for seeking merger clearance from the European Commission’s competition Directorate General (the “Form CO”), detailed market share information is only required for mergers in respect of either (i) markets where the parties compete against each other and have a combined market share of 15 per cent or more or (ii) markets where one party is upstream or downstream of the other and that party has a market of share of 25 per cent or more.

3.8 (Informal guidance prior to agreement): We believe companies would find it helpful to have an explicit assurance that, if they apply for informal guidance, the application and the fact of their proposals will be kept fully confidential. This should be in addition to the procedures for confidentiality of specific information that is commercially sensitive or proprietary (in 5.4).

- **6.2 (Horizontal consolidations):** It may be worth adding here that the greatest concerns relate to horizontal mergers in “upstream” telecommunications markets which result in the merged entity controlling the “gateways” or “bottlenecks” for downstream players to participate in the market – e.g. internet backbone connectivity. This has been a particular concern expressed by the European Commission’s competition DG in its handling of telecommunications mergers; for example the *MCI WorldCom/Sprint* merger was one of only a handful of transactions to be prohibited by the European Commission, the reason being that it would have “led to the creation of such a powerful force that both competitors and customers would have been dependent on the new company to obtain universal internet productivity” (Case COMP/M.1741 of 28 June 2000).

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- **6.3.1 (Determination of market power and market concentration):** A 35 per cent market share seems a fairly low threshold for an initial presumption of market power. In the EU, the equivalent concept of a “dominant position” is not generally held to arise with market shares below 40 per cent. (Significantly, the test used by telecoms regulators within the EU to impose specific interconnection obligations – the concept of “significant market power” - is now being revised upwards from a 25 per cent threshold to the equivalent of a “dominant position”, i.e. above 40 per cent.)
- **6.4.2 (Efficiencies):** It might be worth adding here that, where there are claimed efficiencies but IDA is sceptical that they are achievable or (even if they are) that they will be passed on to customers, the merger could be made conditional on the merged entity giving price cuts to customers over a period of one or two years following the merger. A similar approach has been used for the approval of mergers in the water industry in the UK.
- **9.3 (IDA solicitation of public comments):** In seeking public views, the IDA will be giving the public information about the proposed transaction, it is suggested that the parties who receive this information give a confidentiality undertaking as well to the IDA and the applicant. Thus even though IDA releases the non-confidential information (as far as the applicant is concerned), the information is still confidential as far as the public is concerned.
- **Generally:** Consideration should perhaps be given to how these extremely useful Guidelines might be applied for use in any competition reviews by other Singapore authorities for mergers in other sectors of the economy.

We very much hope that these comments are helpful. If there are any points on which IDA would require clarification, please feel free to contact:

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Yours sincerely

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