

**STARHUB SUBMISSION  
ON IDA CONSULTATION DOCUMENT ISSUED ON 16 OCTOBER 2001  
ON THE PROPOSED CONSOLIDATION REVIEW GUIDELINES**

**19 November 2001**

**1. DESCRIPTION OF THE COMMENTING PARTY AND ITS INTEREST IN THE PROCEEDING**

**1.1 Description of commenting party**

StarHub is Singapore's second largest operator as an integrated fixed and mobile tele-communications services. We are positioning ourselves to offer customers in Singapore a comprehensive info-communications package for all their communication requirements including fixed, mobile phone and Internet services.

We aim to be the leading innovator of info-communications solutions, enhancing customer choices and their quality of life. StarHub has built a new generation, integrated broadband info-communications network that is principally fibre-based. This new network infrastructure in Singapore has the capacity to provide true fixed and mobile converged services on an integrated platform, offering customers access to the latest communication solutions.

More information on StarHub can be found on [www.starhub.com.sg](http://www.starhub.com.sg)

**1.2 Interest in the proceedings**

StarHub appreciates the opportunity provided by IDA for members of the industry and the public to comment on the proposed Consolidation Review Guidelines. We hope our comments will contribute towards IDA's effort on public consultation concerning policies that would impact the Singapore telecommunication market.

**2. GENERAL COMMENTS**

**2.1 Advisory nature of Guidelines**

As the Guidelines have an advisory nature, neither the Licensees nor the IDA are under any obligation to follow the provisions of the Guidelines. In addition, under Clause 6 of the Guidelines, IDA has been given rights to modify the framework, if necessary, to better assess the likely competitive impact of the proposed Consolidation, without the need for consultations or other considerations.

This flexibility, does not provide any certainty or predictability on the outcome of any Application. Certainty and predictability in the regime is necessary for the conduct of business, particularly where it affects decisions of major impact on a company such as mergers and acquisitions.

## 2.2 Discretionary powers of IDA

IDA has been given considerable discretion on the procedures and the criteria by which they will review an Application. A prime example of this is Clause 1.3 of the Guidelines which gives IDA full discretion to grant or deny an Application based on Non-competition related factors. Please see our comments in paragraph 3.1 below. Again, this presents difficulty for a Licensee to form an opinion of the likely outcome of an Application and this does not provide for certainty that is necessary for planning of businesses.

This lends no assurance on the objectivity of any Decision made under the Guidelines. Granting to an authority full discretion restricts the ability for any Licensee to make an appeal against such Decision to an independent body such as the Courts, and this may not give investors any assurance that there is an objective mechanism in place to safeguard their interests.

## 2.3 Appeals process

Clause 10 provides that when the Decision is finally made by IDA, any party aggrieved can appeal to the Minister who would be advised by the IDA.

In principle, Licensees have legal rights to avail themselves to the courts under the principles of administrative law. However, the powers of the courts under these same principles, would be limited if the authority makes a decision based on the full discretion granted to it or on public interest issues.

For the purpose of lending greater objectivity to the process, it would be better if any independent body can consider IDA's Decision, or at least, advise the Minister in the appeals process. Also, the Guidelines could be enhanced by including more objective criteria in matters where IDA has been granted full discretion.

Further it would lend Licensee's greater confidence if there is an ability to appeal against the process of review, *during* the process, as well as the Decision at the end of the review process.

## 2.4 Concept of Dominance

The Guidelines use the concept of market share to consider the likelihood of potential anti-competitive behavior or the ability of a Licensee to restrict competition. This is a different yardstick from that of the concept of Dominance under Clause 2.2.1 of the Telecoms Competition Code. It seems rather inconsistent for two different yardsticks to apply in relation to the likelihood of anti-competitive conduct or the ability of a Licensee to restrict competition. It would be better if IDA could clarify how the two yardsticks are to work with each other and how IDA will ensure that there would be no inconsistencies in the results between the two. For example, one of the factors listed in Clause 6.2.3.1 of the risk of unilateral anti-competitive conduct is where the consolidated entity has a 35% market share. There is a presumption that an entity with more than 35% market share would be in a position to restrict competition in that market. *A fortiori*, a licensee with more than 35% would be in an even better position to harm competition. At present, there are certain Licensees who have 50% or more market share in their particular market – would the same presumptions apply then to these operators?

### **3. COMMENTS ON SPECIFIC PROVISIONS OF THE GUIDELINES**

#### **3.1 Clause 1.3**

IDA has reserved the right to grant or deny any Application on non-competition related factors, such as public interest.

This clause confers upon IDA full discretion in its decision making process regardless of the Guidelines. The concept of public interest is very broad and can encompass factors of any nature and number. It would be difficult for any Licensee to assess (a) how its Application will be considered; (b) whether the same considerations are given to its Application as that given to another Licensee's Application; and (c) whether such considerations are applied in a similar manner.

#### **3.2 Clause 1.4**

IDA could unilaterally modify the Guidelines by notice. The general comments given in paragraphs 2.1 to 2.3 above apply.

In addition, we propose that there should be at least a minimum period stipulated for such notice so that the effective date could be fairly determined.

#### **3.3 Clause 5.4.4**

IDA reserves the right to reject requests for confidential treatment of information and could disregard such information in the application process. Licensee may not agree with IDA's assessment of the confidentiality of the information and whether such information should be disregarded in the Application. This may adversely affect the outcome of a Licensee's Application.

There is no procedure for appeal or review of against this or against any particular step in the conduct of the process. A Licensee's interest should be safeguarded even during the process and an avenue for such appeals should be provided for.

#### **3.4 Clauses 6.2.1 and 6.2.1.1.2**

The concept of geographical markets is unlikely to have feasible application in Singapore given its physical size.

#### **3.5 Clause 6.2.1.3**

Upon consideration of the Application, IDA will determine the unit of market share by which it will make its Decision. Again, this provides no transparency on the possible outcome of an Application.

Further, we would like to know how IDA determines the threshold of 35% in market share of a merged entity in the assessment of anti-competitive effect. We would like IDA to consider how this benchmark would apply in the context of a market of only 2 or 3 players.

### **3.6 Clause 6.2.2**

We would be pleased if IDA could clarify how the thresholds of 15% and 35% of market share are determined as having an influence in the market. There are no guidelines on market shares that range between 15% and 35%.

### **3.7 Clause 7.1**

IDA is commendable in foreseeing the need to review Consolidations where entities having market power in markets not regulated by IDA. However, there is no statement on how IDA will determine this. If the Guidelines are to similarly apply in such a case, such a statement should be made in the clause.

### **3.8 Clause 7.2.2**

Criteria by which IDA will consider whether the creation of a common ownership would unreasonably restrict competition has not been identified. If the Guidelines are to similarly apply in such a case, such a statement should be made in the clause. Reference to Section 9 of the Telecom Competition Code is, at the moment, not helpful.

### **Conclusion**

We would like to thank IDA for providing an opportunity for interested parties to comment on the Guidelines. We hope that our comments are helpful and would be happy to lend further assistance if required.