



Asia Pacific Carriers' Coalition

Submission in response to the IDA's Consultation Paper

***"Second Public Consultation on the Second Triennial Review of the
Code of Practice for Competition in the Provision of
Telecommunications Services"***

18 January 2010

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STATEMENT OF INTEREST

This submission is provided by the Asia Pacific Carriers' Coalition ("**APCC**") in response to the 23 November 2009 invitation by the InfoCom Development Authority of Singapore ("**IDA**") to comment on its "Second Public Consultation on the Second Triennial Review of the Code of Practice for Competition in the Provision of Telecommunications Services" ("**Second Triennial Review**").

The APCC is an industry association of global and regional carriers operating in Asia-Pacific, formed to work with Governments, National Regulatory Authorities and Consumers to promote open market policies and best-practice regulatory frameworks throughout the Asia-Pacific region, that will support competition and encourage new and efficient investment in telecommunications markets.

APCC submissions reflect the consensus of opinion among at least a majority of its members. Therefore none of the views expressed in this submission should be attributed to any individual member of the APCC.

I. SUMMARY OF ISSUES

1. Regular, systematic and fully transparent reviews of the state of competition and effects of regulatory interventions in telecommunications markets must be considered an essential element of regulatory best practice, the APCC submits.
2. The APCC commends the IDA on undertaking triennial reviews of the *Code of Practice for Competition in the Provision of Telecommunication Services* (“Code”) but regrets to note that both this review and the one proceeding it (in 2004) disappoint in both scope and depth of analysis.
3. The triennial review should provide the opportunity for a systematic assessment of the state of competition across the industry, the failures as well as the successes of regulatory initiatives, the weaknesses as well as the strengths of particular rules, and the changes that should be made to agency methods and objectives in order to better serve the public interest. As executed by the IDA, however, the triennial review appears merely to consider various rule adjustments, without providing a thorough quantitative or qualitative survey of the state of competition in Singapore’s telecommunications markets. Nor does the Second Triennial Review examine the beneficial and detrimental effects of the IDA’s decisions or the performance of the Code generally over the past three years.
4. The main virtue of a triennial review is the opportunity it allows for learning from experience. Unless regulatory experience is thoroughly and openly analysed and debated the learning process will necessarily remain incomplete and the public will be disadvantaged due to the continued application of less than optimal regulation. In the long run, this is likely to detract from Singapore’s attractiveness as an investment destination for telecommunications businesses.
5. The APCC’s submissions fall under the following three headings:
 - Incompleteness of the triennial review;
 - Issues raised by the Second Triennial Review; and
 - Issues neglected by the Second Triennial Review.

Incompleteness of the Triennial Review

6. The APCC believes that an open and systematic review of competition and the effect of regulation in Singapore’s telecommunications markets would be highly beneficial by providing a sound basis for the design of future policy and regulation.
7. Triennial reviews should reveal where and how regulation is *effective* in promoting the development of competition, so that the regime can build on its successes. The reviews should equally identify where and how regulation is *failing* to promote the development of competition, so that

policymakers can take steps to correct shortcomings in the regime.

8. The APCC submits that the IDA should confer with telecommunications stakeholders including licensed operators, SingTel, the Ministry and telecommunications users to develop terms of reference for a systematic assessment of the state of competition in Singapore's telecommunications industry and the performance to date of the Code, in advance of commencing the proposed review of alignment between the regime under the Telecommunications Act 1999 (Cap. 323) and the Competition Act 2004 (Cap. 50B). The APCC would be pleased to contribute to development of terms of reference for a review that would provide the data necessary for designing Singapore's future telecommunications regulation.

Issues Raised by the Second Triennial Review

9. The APCC welcomes the IDA's proposed Code clarification to ensure due focus on services-based competition, where facilities-based competition is not feasible.
10. The APCC urges the IDA to recognize in the Code that it is wrong to promote one form of competition (i.e. facilities-based competition) as always and necessarily better than another. Rather, the mode of entry and form of competition should be tailored to the economics of the particular market in question.
11. Although it is a unique approach, the IDA's so-called "licensed entity" approach to classification of Licensees as Dominant or Non-dominant is acceptable, in the APCC's view, provided that the IDA adopts more rigorous analysis and more transparent procedures in dealing with the Dominant licensee's requests for exemption.
12. The Code should be amended, the APCC submits, to provide for limited disclosure of commercially sensitive information that is relied on by applicants, to qualified individuals within affected operators and subject to specified obligations to maintain confidentiality and prevent use of such information by the recipient for commercial purposes.
13. The APCC fully agrees with the IDA's proposal to retain subsection 4.4 of the Code,¹ which requires SingTel, as the Dominant licensee, to file tariffs for the IDA's approval for both retail and wholesale services.
14. The APCC agrees with the IDA's observation that "...*SingTel's network remains the only pervasive last-mile telecommunications network in Singapore today.*"² This fact is of central importance to any review of the state of competition in any market for telecommunications services

¹ IDA Consultation Paper "Second Public Consultation on the Second Triennial Review of the Code of Practice for Competition in the Provision of Telecommunications Services" (23 November 2009) para 35.

² Consultation Paper, *ibid.*, para 42 and see para 12.

- in Singapore. The APCC also agrees, therefore, with the IDA's conclusion that it will continue to require SingTel to provide access to the IRS that SingTel had proposed should be removed from the list.
15. The APCC strongly submits that no CSI designation should be made except on an economically principled basis, following full consultation on the economic evidence relevant to such designation and its projected consequences in all affected markets.
 16. Given that a further review is proposed, the APCC is concerned by the IDA's proposal to extend the prohibition against abuse of a dominant position "...to any Licensee ... that is found to have significant market power in the relevant market."³ If this proposal is given effect it will necessarily involve the IDA staking a claim now, in advance of the forthcoming review, to be the agency responsible for *ex post* regulation of abuse of dominance in the telecommunications sector. The APCC believes that it would be inappropriate to make this proposed change to subsection 8.2 of the Code, expanding the application of the abuse of domination provision, before the review is completed.

Issues Neglected by the Second Triennial Review

17. It is to be expected that competition in the telecommunications sector will not develop evenly across every market at the same time. Some markets will become competitive sooner than others. Until you know which markets are lagging in the progression to competition, it is impossible to design the right regulatory solutions. Triennial reviews should monitor and report on the development of competition across all markets.
18. Assuming that the costs of providing local loops are not significantly higher in Singapore than in other places, the most credible reason for local loop prices being higher in Singapore is the lack of competition in the supply of that service. If there is a lack of competition in the supply of local loops in Singapore, then that fact has implications far beyond the immediate issue of the prices charged for that service.
19. Information regarding the operators' subjective perceptions of Code performance is relevant to a comprehensive review of the Code's operation. If a key stakeholder group feels dissatisfied with some aspect of the Code's operation, then that is information which the triennial review should report and investigate.
20. Statistics on complaints made to, and follow-up actions by, the IDA are vitally important data that ought to be considered in any Triennial Review proceeding.

³ Consultation Paper, *supra* note 1, para 54.

II. INCOMPLETENESS OF THE TRIENNIAL REVIEW

21. The APCC believes that an open and systematic review of the state of competition and the effect of regulation in Singapore's telecommunications markets would be highly beneficial by providing a sound basis for the design of future policy and regulation. The review should reveal where and how regulation is *effective* in promoting the development of competition, so that the regime can build on its successes. The review should equally identify where and how regulation is *failing* to promote the development of competition, so that policymakers can take steps to correct shortcomings in the regime.
22. A comprehensive competition review should be carried out independently of individual regulatory proceedings, in order to achieve a comprehensive and objective view of the state of competition. The Second Triennial Review provided the ideal opportunity for this. The APCC considers it regrettable that the review was not comprehensive.
23. In a recent paper dealing with rating competition agency performance, former Federal Trade Commission Chairman Prof. William Kovacic explained the importance of evaluating an agency's ability to deliver good outcomes for society, based on good data sets about the agency's past activity:

[D]oes the agency have a mechanism for regularly evaluating the effects of its programs and processes? Is there a conscious, routine process for measuring performance and making adjustments based on what evaluation exercises have revealed? The point of policymaking is to deliver good outcomes for society. Good performance does not consist of achieving higher levels of activity but instead consists of delivering good results. Measuring program effectiveness is not an easy undertaking, but to say that it is difficult is not a good reason to ask outsiders to accept effectiveness as a matter of faith. Meaningful evaluation by agency insiders and outsiders requires the competition authority to take steps to reveal useful information about its work. This includes disclosing good data sets about its past activity. An important focus of the FTC's work in this decade has been to produce and disclose data sets on its merger enforcement work and to increase the frequency in which it provides explanations about decisions not to prosecute following an extensive investigation.⁴

24. In the present proceeding, the IDA has postponed the opportunity to align its regulatory policies and competition enforcement for the telecommunications sector with Singapore's state-of-the-art general competition law and policy. The Second Triennial Review refers to the likelihood of a Ministry review of legislation,⁵ which will allow an opportunity to fill the gaps left by the present review. Whether or not separate administrative oversight for telecommunications is affirmed or is abolished in the law, alignment of detailed policies at the

⁴ Kovacic, W.E. "Rating the Competition Agencies: What Constitutes Good Performance?" [2009] 16 Geo. Mason L. Rev. 903 at 924 (emphasis added).

⁵ Consultation Paper, supra note 1, para 58.

marketplace level is possible and essential, if Singapore is to remain competitive as a telecommunications hub.

25. The telecommunications regulatory regime should be regarded as working well when (as Prof. Gerowski wrote of competition agencies) it is "...*taking on the right cases, analyzing them properly, explaining its reasoning, and doing so without a profligate expenditure of public money.*"⁶ The triennial review process should serve, the APCC submits, as the IDA's opportunity to examine which features of the regime under the Code are working well and which are not working as well as might be hoped, and to make adjustments shown by the data to be necessary.
26. The APCC notes, also, that the IDA stated on introducing both the NetCo Interconnection Code and the OpCo Interconnection Code that: "*IDA may subsequently incorporate the NetCo Interconnection Code into the Code of Practice for Competition in the Provision of Telecommunication Services ("TCC") when it conducts the next triennial review of the TCC, or at such time as IDA considers appropriate.*"⁷ The APCC is concerned that the IDA has not proposed incorporation of the OpCo and NetCo Interconnection Codes into the Code and has not set out reasons for not doing so, stating merely that the timing of the respective Codes "*may not be aligned*" at present.⁸ The IDA states that it will "...*consider changes to the market conditions arising from the Next Gen NBN*"⁹ at the time of the next triennial review. With respect, it is apparent that the introduction of the Next Gen NBN will necessarily involve substantial change to market conditions, so the existing frameworks should be scrutinized and adapted now, rather than in three years time. The assertion, without supporting analysis, that "*IDA believes that the competition principles and procedures contained in the Proposed Revised Code are applicable to any industry structure and technology platform*"¹⁰ is not borne out by experience, the APCC submits. On the contrary, history shows that regulation is quickly left behind by changes in industry structure and technology unless continuing efforts are made to anticipate and accommodate such changes.

6 Geroski, P. "Is Competition Policy Worth It?" in *Competition Commission Essays in Competition Policy* (August 2006).

7 See , <<http://www.ida.gov.sg/Policies%20and%20Regulation/20090224150729.aspx>> and <<http://www.ida.gov.sg/Policies%20and%20Regulation/20060929180143.aspx>>.

8 Consultation Paper, supra note 1, para 61.

9 Consultation Paper, supra note 1, para 62.

10 Consultation Paper, supra note 1, para 60.

III. ISSUES RAISED BY THE SECOND TRIENNIAL REVIEW

27. The issues expressly raised in the Second Triennial Review which are of significance for members of the APCC are:
- Facilities-based versus services-based competition;
 - Non-dominance classifications;
 - Tariffs;
 - Schedule of IRS and MWS;
 - Infrastructure sharing; and
 - Code alignment with the Competition Act.

Facilities-based versus services-based competition

28. In relation to the relative importance of facilities-based versus services-based competition,¹¹ the APCC welcomes the IDA's proposed Code clarification to ensure due focus on services-based competition, where facilities-based competition is not feasible. The APCC does not dispute that, in the long term, sustainable competition is best achieved through facilities-based competition but the obvious difficulty is that facilities-based entry is not equally possible in different services and different geographical areas.
29. Since efficiency requires that different markets must be treated differently, it is vital that the regulator gather hard evidence and undertake economically principled analysis to ensure it correctly identifies the different competitive states of the different markets -- including the costs, benefits and risks associated with facilities investment in those markets. Unless it completes proper market analyses, the regulator courts a very real risk of neglecting to support services-based competition, in the hope that facilities-based entry will occur, when in fact the economics of the particular market entail that facilities-based competition will never be economically viable, or not viable for many years.
30. Because there is a time-dimension to facilities investment decisions, giving absolutely regulatory priority to facilities-based competition is likely to *delay competitive entry*, to the detriment of economic welfare. The error of promoting services-based competition where facilities-based entry is possible is *substantially less economically damaging* than the error of promoting facilities-based competition where facilities-based entry is not viable. If services-based competition arises where facilities-based entry is feasible, then customers at least benefit from services-based competition. Customers are better off than they would have been if there was no entry, which is the likely outcome if the regulator holds out for facilities-based competition in a market in which infrastructure investment is not yet economically viable. The APCC submits that the Code should be amended to reflect that the mode of

¹¹ Consultation Paper, supra note 1, paras 6 - 13.

entry and form of competition should be tailored to the economics of the particular market in question, in order to achieve the greatest economic welfare benefit.

Non-dominance classifications

31. Although it is a unique approach, the IDA's so-called "licensed entity" approach to classification of Licensees as Dominant or Non-dominant is acceptable, in the APCC's view, provided that the IDA adopts more rigorous analysis and more transparent procedure in dealing with the Dominant licensee's requests for exemption.
32. In particular, the APCC is gravely concerned that the IDA has in past exemption proceedings withheld from affected parties the data on which the applicant bases its claim.
33. As the APCC previously submitted to the IDA in our 2009 paper "Consultation, Transparency and the Protection of Confidentiality in Regulatory Decision-making":

In the context of regulatory proceedings under the Telecommunications Act (Chap. 323), if information is protected by full redaction, rather than by "limited circulation, for limited purposes" then the decision will be affected by a substantial risk that the information is not in fact relevant, or is inaccurate, or incomplete, or biased, or otherwise flawed in ways that are not apparent to the regulator. The APCC submits that the IDA must have diminished confidence in data provided to it which it cannot expose to examination and criticism through the process of consultation. The IDA must discount the weight that it attaches to any data that are redacted from consultation documents, the APCC submits, because that data has not been tested by exposure to industry critique.¹²

34. In the case of the IDA's *Revised Preliminary Decision on SingTel's Request for Exemption from Dominant Licensee Obligations*,¹³ for example, the APCC was greatly concerned that virtually all of the quantitative data relied on by SingTel was redacted from the consultation paper, giving operators no opportunity to comment on the very foundations of SingTel's application.¹⁴
35. In consequence, the APCC would like to be able to agree with the IDA's claim that its "licensed entity" approach "...leads to substantive results that are fully consistent with international best practices: ex ante

¹² Asia Pacific Carriers' Coalition "Consultation, Transparency and the Protection of Confidentiality in Regulatory Decision-making" (2009, April).

¹³ IDA, 30 January 2009.

¹⁴ See, Asia Pacific Carriers' Coalition "Submission in Response to the IDA's Revised Preliminary Decision on SingTel's Request for Exemption from Dominant Licensee Obligations" (27 February 2009).

regulation is not applied in markets that are effectively competitive.” The APCC is unable, however, to express confidence that SingTel has been granted exemption only in markets that are “effectively competitive”. Since the data on which critical findings have been based have been kept secret from the operators who are in a position to critique the accuracy of those data, operators have limited faith in the IDA’s claim.

36. The APCC is disappointed that this important procedural matter has yet not been addressed in the Second Triennial Review. The Code should be amended, the APCC submits, to provide for limited disclosure of commercially sensitive information that is relied on by applicants, to qualified individuals within affected operators and subject to specified obligations to maintain confidentiality and prevent use of such information by the recipient for commercial purposes.¹⁵

Tariffs

37. The APCC fully agrees with the IDA’s proposal to retain subsection 4.4 of the Code, which requires SingTel, as the Dominant licensee, to file tariffs for the IDA’s approval for both retail and wholesale services.¹⁶
38. The tariff filing obligation is a crucial discipline on SingTel’s pricing behaviour, the APCC submits. That the IDA may approve the majority of SingTel’s tariff filings without requiring changes does not detract from the fact that, as the IDA has pointed out, IDA review of tariffs “...provides a strong incentive for the Dominant Licensee to propose prices, terms and conditions that are just, reasonable and non-discriminatory.”¹⁷
39. The fact that enforcement of the other conduct provisions of the Code imposes significant delays and evidentiary burdens means that SingTel would, in the absence of the procedure for filing and review of tariffs, have effectively a free hand to set anti-competitive prices and terms and conditions for services.

Schedule of IRS and MWS

40. The APCC agrees that, for ease of reference, the Schedule of IRS and MWS should be appended to the Code¹⁸ and agrees with deletion of the words “*with the costs of the link borne by the Services-based*

15 Compare, for example, the procedure implemented by New Zealand’s Commerce Commission, of giving commercially sensitive information limited circulation for limited purposes: see, Commerce Commission “Guidelines on Confidentiality Orders in proceedings under the Telecommunications Act 2001” available at: <http://www.comcom.govt.nz/IndustryRegulation/Telecommunications/GeneralInformation/confidentiality3.aspx>.

16 Consultation Paper, supra note 1, para 35.

17 Consultation Paper, supra note 1, para 32.

18 Consultation Paper, supra note 1, para 43.

Licensee".¹⁹

41. The APCC agrees with the IDA's observation that "...*SingTel's network remains the only pervasive last-mile telecommunications network in Singapore today.*"²⁰ This fact is of central importance to any review of the state of competition in any market for telecommunications services in Singapore. The APCC also agrees, therefore, with the IDA's conclusion that it will continue to require SingTel to provide access to the IRS that SingTel had proposed should be removed from the list.²¹

Infrastructure Sharing

42. SingTel's proposal that *all* cable landing stations ("**CLS**") should be designated as Critical Support Infrastructure ("**CSI**") is economically unfounded and rightly rejected by the IDA.²²
43. The APCC strongly submits that no CSI designation should be made except on an economically principled basis, following full consultation on the economic evidence relevant to such designation and its projected consequences in all affected markets.
44. A country's regulatory posture in relation to CLS access is critically important to an operator's (or a consortium's) decision to invest in building a CLS or landing a cable at an existing CLS. If operators or their investors perceived that Singapore might designate any entrant's CLS as CSI (or subject it to any other form of mandated access) without the most compelling economic evidence of the necessity for doing so, then Singapore would very likely be perceived as a less attractive landing point.

Code alignment with the Competition Act

45. The APCC discusses together under this heading issues referred to in the Second Triennial Review paper under the headings "Abuse of Dominant Position in the Singapore Market", "Changes in Ownership and Consolidations Involving Designated Telecommunication Licensees" and "Alignment with the Competition Act".
46. From an international commercial perspective, the limited scope of the IDA's Second Triennial Review leaves the interplay between regulation and competition in the Singapore telecommunications sector opaque for the next three years. In that case, the climate for new investment in communications technology infrastructure and services in Singapore is likely to be less certain when compared with other locations vying to become an international telecommunications hub.

19 Consultation Paper, supra note 1, para 44.

20 Consultation Paper, supra note 1, para 42 and see para 12.

21 Consultation Paper, supra note 1, para 42.

22 Consultation Paper, supra note 1, para 46.

47. The APCC notes that "...IDA is proposing to review and consult on all the proposed changes to Section 10 together in a separate consultation process"²³ and that there is an "...upcoming consultation on the Telecommunications Act review."²⁴ The APCC expresses the hope that this latter Ministry review will fill the gaps left by the Second Triennial Review.
48. In light of the ongoing development of competition in telecommunications provision in Singapore, technological development, the impending deployment of the Next Gen NBN and the establishment of the Competition Commission of Singapore ("CCS"), there has been substantial change in the competitive landscape in Singapore. These changes warrant a ground-up (or 'zero-base') review of how competition in telecommunications markets in Singapore can best be protected and promoted in future.
49. As competition in some of Singapore's telecommunications markets begins to mature, it may be that the CCS should have an increasing role. While it is deeply regrettable that the Second Triennial Review has not addressed this question so far, the forthcoming Ministry review at least provides the opportunity for this to be examined.
50. Alignment of telecommunications policy with general competition policy would require the IDA to zero-base its existing regulatory interventions (such as historical licensing requirements) and to test all new initiatives, using empirical data and well-established economic reasoning, to demonstrate market failure warranting the contemplated intervention. Competition enforcement ought similarly be based on empirical evidence that conduct is causing or is likely to cause adverse economic impacts.
51. The emerging best practice approach to regulation in the telecommunications sector is to subject all interventions to a rigorous process of Regulatory Impact Assessment, as demonstrated by Ofcom in the UK²⁵ and the Telecommunications Authority in Hong Kong, so that the justification for the reasoning has a firm basis in economics, and any compromises or adjustments between different interest groups that may be made for 'policy' reasons are fully transparent. In contrast, it appears from the Second Triennial Review documents that the IDA intends to continue to rely on presumptions of market power and presumptions about the efficacy of its consumer welfare interventions. The effect of the IDA not referencing specific economic evidence as the basis for its interventions is that SingTel remains able to resist commercial accommodations with new entrants and external operators,

23 Consultation Paper, supra note 1, para 56.

24 Consultation Paper, supra note 1, para 58.

25 See, Ofcom "Better Policy Making: Ofcom's approach to Impact Assessment" (21 July 2005), available at: <http://www.ofcom.org.uk/consult/policy_making/>.

discouraging innovation and new investment.

52. Given that a Ministry review of the Telecommunications Act is proposed, the APCC is concerned by the IDA's proposal to extend the prohibition against abuse of a dominant position "*...to any Licensee ... that is found to have significant market power in the relevant market.*"²⁶ If this proposal is given effect it will necessarily involve the IDA staking a claim now, in advance of the forthcoming review, to be the agency responsible for *ex post* regulation of abuse of dominance in the telecommunications sector. The APCC believes that it would be inappropriate to make this proposed change to subsection 8.2 of the Code, expanding the application of the abuse of domination provision, before the review is completed. The proposed change might later prove to have been fortuitously optimal but it is equally likely that a different change would be superior. The implications of each option should be closely examined *before* a change is made. It would be poor regulatory practice, the APCC submits, to make the proposed change to the IDA's competition powers before the subject has been fully examined and openly debated.
53. The APCC therefore submits that no change should be made to subsection 8.2 until all of the issues connected with Competition Act alignment have been considered as a whole, in the context of the Ministry's upcoming Telecommunications Act review.

²⁶ Consultation Paper, *supra* note 1, para 54.

IV. ISSUES NEGLECTED BY THE SECOND TRIENNIAL REVIEW

54. The APCC considers that there are relevant issues that have not been addressed in the review that ought to have been addressed. In summary, these issues are:
- Failure of competition to develop in certain services markets in Singapore;
 - Operators' perception of difficulty in initiating investigations of dominant operator misconduct; and
 - Apparent weaknesses of the Code in dealing with dominant operator conduct problems.
55. It is to be expected that competition in the telecommunications sector will not develop evenly across every market at the same time. Some markets will become competitive sooner than others. It is important, though, that the IDA should monitor and report on the development of competition across all markets.
56. A systematic, comprehensive and fully transparent review of the state of competition in Singapore's telecommunications markets would identify those markets in which competition was strong and those markets in which it is weak or non-existent. That information is vital to designing appropriate regulation. Until you know which markets are lagging in the progression to competition, it is impossible to design the correct regulatory solutions.
57. A good example is provided by the problem in Singapore of high local loop prices. The costs of local loops in Singapore are significantly higher than in other countries in this region. The APCC has demonstrated this in a benchmarking study conducted by independent experts and provided previously to the IDA.²⁷ Assuming that the costs of providing local loops are not significantly higher in Singapore than in other places, the most credible reason for local loop prices being higher in Singapore is the lack of competition in the supply of that service. If there is a lack of competition in the supply of local loops in Singapore, then that fact has implications far beyond the immediate issue of the prices charged for that service. In particular, it means that the regulator should be vigilant against bundled offerings by the local loop provider that have the effect of leveraging power in the local loop market into adjacent markets for other services that are more competitive. The APCC has recently expressed to the IDA its concerns about bundling conduct by SingTel and that local loops at regulated prices are only available to a customer's premises from the nearest exchange, and not from the tandem level. The APCC hopes that these issues will receive thorough investigation by the IDA.

²⁷ Teligen "Access Price Benchmarking: A study produced for the Asia Pacific Carriers' Coalition" (December 2006), available at: <http://www.asiapacificcarriers.org/sp/user/attach/2007-03-01_Access%20Price%20Benchmarking%20Report_Final_061215.pdf>. The APCC has recently commissioned a further study to update this data.

58. Secondly, the APCC submits that the Second Triennial Review has failed to identify the areas in which the operators and end-users regard the Code as performing well and those in which they regard it as performing poorly.
59. For example, operators have from time to time alleged anti-competitive conduct by the Dominant licensee but been told in response that they have not provided sufficient evidence to warrant further action by the IDA. From the operators' point of view, the IDA is in a greatly superior position to obtain relevant evidence, since it has statutory information-gathering powers that are unavailable to the operators. As a result, operators have felt frustrated in their efforts to invoke the conduct provisions of the Code against the Dominant licensee. Operators consider they ought not to bear an onus of proving contravention by the Dominant licensee.
60. While the correctness or otherwise of operators' perceptions in this connection might be debated, the APCC submits that information regarding the operators' subjective perceptions is relevant to a comprehensive review of the Code's operation. If a key stakeholder group feels dissatisfied with some aspect of the Code's operation, that is information which the triennial review should report and investigate.
61. Similarly, statistics on complaints made to, and follow-up actions by, the IDA are vitally important data that ought to be considered in any Triennial Review proceeding. The failure to consider such information reduces the value of the Second Triennial Review.
62. Finally, the APCC submits that the Second Triennial Review of the Code provides the opportunity to conclude consideration of the question open since April 2008, as to "*...whether Structural and Operation separation requirements should be included in the regulatory toolkit for regulating other players in the telecommunications industry, in addition to existing regulatory measures under the Telecom Competition Code.*"²⁸ The APCC has previously explained the reasons for its opposition to this suggestion, in a June 2008 submission to the IDA,²⁹ and submits that the Second Triennial Review should determine that the Code ought not to be amended in this way.

28 See, <<http://www.ida.gov.sg/Policies%20and%20Regulation/20080417153248.aspx>>.

29 "[I]t is not necessary for the IDA to add those measures to its 'regulatory toolkit' in the short term. [...] Because it is a complicated and far-reaching form of intervention, separation is unlikely to be imposed on short notice. Since an obligation to separate structurally or operationally is unlikely to be imposed except following extensive deliberation and consultation, it appears unnecessary to have it ready to hand in the regulatory toolkit." *Asia Pacific Carriers' Coalition "Response to IDA Consultation Paper on 'Industry Structure for Next Generation Access Networks'"* (13 June 2008).

V. CONCLUSIONS

63. Regular, systematic and fully transparent reviews of regulation and the state of competition in regulated markets must be considered an essential element of regulatory best practice, the APCC submits. The APCC commends the IDA on undertaking triennial reviews of the Code but regrets to note that both this review and the one proceeding it (in 2004) disappoint in both scope and depth of analysis.
64. The IDA has rightly identified the need to give consideration to the alignment of its regulatory framework and the *Competition Act*.³⁰ The APCC submits that the relationship between the *Competition Act* and the telecommunications regulatory regime is the single most important issue in telecommunications policy in Singapore today.
65. If Singapore is to avoid placing itself at a competitive disadvantage relative to rival jurisdictions it must ensure that its general competition policy and its telecommunications regulatory regime operate in harmony and with clear and correct allocation of functions between the responsible agencies. Such alignment of competition policy and telecommunications regulation can only be achieved if a thorough and objective examination is completed of the state of competition in Singapore's telecommunications markets and the impacts (both positive and negative) of telecommunications regulation in those markets. It is regrettable that the present triennial review has not yielded such a review. The APCC urges the IDA to undertake (or to commission independent experts to undertake) a thoroughgoing analysis of the state of competition and effects of regulation in Singapore, as a matter of urgency, before any further policy steps are taken. It would risk grave error, if any competition or regulatory policy decision were made without reliable economic evidence having first been gathered.
66. The APCC submits that the IDA should confer with telecommunications stakeholders including licensed operators, SingTel, the Ministry and telecommunications users to develop terms of reference for a systematic assessment of the state of competition in Singapore's telecommunications industry and the performance to date of the Code, in advance of commencing the proposed review of alignment between telecommunications regulation and the *Competition Act*. The APCC would be pleased to contribute to development of terms of reference for a review that would provide the data necessary for designing Singapore's future telecommunications regulation.

³⁰ Consultation Paper, supra note 1, para 58.