# M1'S RESPONSE TO IDA'S CONSULTATION PAPER ON THE SECOND TRIENNIAL REVIEW OF THE CODE OF PRACTICE FOR COMPETITION IN THE PROVISION OF TELECOMMUNICATION SERVICES

**30 December 2008**

**M1'S RESPONSE TO IDA'S CONSULTATION PAPER ON THE SECOND TRIENNIAL REVIEW OF THE CODE OF PRACTICE FOR COMPETITION IN THE PROVISION OF TELECOMMUNICATION SERVICES**

1. M1 has been providing cellular mobile services to the Singapore market since 1 April 1997 and in 2000, we launched our international telephone services. In February 2005, M1 took the lead in introducing 3G technology and launching our 3G services. This was followed by the launch of our Mobile Broadband service in December 2006. In August 2008, M1 became a fully-fledged broadband player with the introduction of M1 Fixed Broadband service, transforming M1 from a single-play mobile operator to a dynamic multi-play operator with interests in the mobile and fixed sectors.

2. We welcome the opportunity to submit our comments to IDA for its consideration on the second triennial review of the Code of Practice for Competition in the Provision of Telecommunication Services ("the Code"). Due to the fast changing dynamics of the industry, this review of the Code is timely in ensuring that the competition framework in Singapore remains relevant in fostering an open, vibrant, and competitive industry that would encourage investments and enhance the global economic competitiveness of Singapore.

3. M1 is pleased to note that IDA understands the concerns of the industry with regards to potential abuse of market power by entities with Significant Market Power and views that the application of additional safeguards or regulatory measures would be required. IDA is also prudent in retaining the *ex ante* regulations that are vital for markets that are yet competitive as well as the "licensed entity" approach for the classification of a Licensee as Dominant. Whilst we recognise that IDA's intent is also to enhance end user protection, we urge IDA to review the proposed amendments to the Code from a balanced perspective of protecting end users' interests but not obviating their responsibilities. In addition, M1 would like to highlight the need for greater clarity on the effective dates of IDA's determinations/final decisions.

4. Given the above, our paper would only focus on providing feedback/comments on areas where we deem that further regulatory measures or refinements to the existing competition framework are necessary.

**Further regulations to stimulate competition in the Fixed-line markets**

5. M1 commends the measures adopted by IDA to catalyse the deployment of the Next Generation National Broadband Network ("NGNBN") and to ensure open access across the entire NGNBN ecosystem. These initiatives are necessary to address the lack of competition in the fixed-line markets or those wholly dependent on fair access to domestic leased circuits or connectivity. Promoting and investing in another ubiquitous, facilities-based competition through NGNBN, coupled with strong open access requirements in a levelled playing field, is likely to be the long-term, sustainable solution in resolving the competition issues faced in the existing fixed-line markets.

6. However, as NGNBN would only achieve nationwide rollout in Y2012, it is essential that further regulatory focus and measures be taken to stimulate competition in the current fixed-line markets such as fixed-line broadband, domestic leased circuits market etc. that remained uncompetitive despite more than 7 years of market liberalisation. This is to tackle the underlying issues embedded or inherent in the existing industry structure where the competition framework was unable to address or resolve.

7. Specifically on fixed-line broadband, the market remains a duopoly with both incumbents of fixed access Asymmetric Digital Subscriber Line ("ADSL") or Hybrid Fibre-Coaxial ("HFC") networks having more than 90% market share. M1 would like to reiterate our recommendation in the earlier response to IDA's consultation on industry structure that structural/operational separation should also be applied equally to the vertically integrated ADSL and HFC incumbents. This would not only address open access issues faced in the existing industry structure but also ensure a level playing field for fair competition when the new NGNBN entity enters the market by 2012.

**Maintain Regulatory Principle of Promotion of Facilities-Based Competition ("FBC")**

8. Other than further regulatory measures needed to address the specific competition issues in the fixed-line markets and NGNBN deployment, M1 strongly believes that IDA should maintain its regulatory principle of promotion of FBC. M1 notes that it is the catalytic introduction and deployment of FBC in NGNBN (i.e. Network Operating Company and Operating Company) that provided a viable, alternative entity capable of competing with the incumbents' ubiquitous fixed network infrastructure. FBC remains the best means of achieving sustainable competition in the long-term. It maintains the incentives for investment as well as ensure a certain minimum level of investment commitment to protect this important market against "fly-by-night" or dubitable operators.

**Clarity on the effective dates of IDA's final decisions or determinations and its retrospective effect**

9. M1 would like to highlight the need for greater clarity on the effective dates of IDA's final decisions or determinations and its retrospective effect, particularly involving inter-operator settlement. This is to ensure that operators with little or no incentive to take any positive actions following the issuance of IDA's decisions do not unnecessarily obstruct or delay negotiations or implementation, particularly in cases where there are charging or cost implications. Such clarity provides credibility and certainty of IDA's final decision. It is also in line with international best practices and also in accordance with the regulatory principle of efficiency and effectiveness in decision-making.

**Not to prevent cross-default protection for a licensed entity**

10. In terms of "consumer protection" obligations applicable to licensees, we note that IDA is proposing to provide greater clarity in situations where different telecommunication services are provided under separate End User Service Agreements ("EUSAs") in the proposed clarification in the application of sub-section 3.2.4.1 of the Code.

11. IDA's proposal caters for the situation where one End-User has subscribed to different telecommunication services under separate EUSAs, and where a suspension/termination (with reason) of one EUSA is relied on by the licensee to automatically suspend/terminate another EUSA of the same End-User (without other valid reason). We refer to this broadly as "cross-default" protection.

12. It is submitted that a licensed entity should not be prevented from relying on cross-default protection in the case of that licensed entity providing different services to an End-User under separate EUSAs. For example, if the End-User has signed up with that licensed entity for mobile phone services and mobile broadband services under two separate EUSAs – "EUSA Mobile" and "EUSA Mobile Broadband" and the End-User defaults on EUSA Mobile (including for reasons of non-payment) thereby resulting in a valid termination or suspension of EUSA Mobile, that licensed entity should be able to terminate or suspend EUSA Mobile Broadband under the mechanics of cross-default. This is because that licensed entity has the right to protect its financial and commercial interests by avoiding the effects of the End-User's potential or anticipatory default on EUSA Mobile Broadband. In this case, a cross-default protection should not be viewed as a penalty to the defaulting End-User, but rather as a justifiable self-preservation mechanism for the licensed entity.

13. In our highly saturated market, the licensed entity would generally already be slow to suspend/terminate an End-User's account. However, for example, in the case of an End-User failing to make payment for services rendered, or improperly using the services, the licensed entity may have little choice but to activate a suspension/termination of the EUSAs. It is to be noted that the licensed entity has its own payment obligations to meet, for e.g. to roaming partners, and the failure to collect payment from End-Users is usually no justification to withhold the licensed entity's payment to third parties.

14. In addition, cross-default protection prevents both unintentional and intentional misuse of services by End-Users especially where the End-User has (i) no ability to pay, or (ii) no intention to pay. In light of there being separate EUSA's, in the absence of a cross-default protection, the licensed entity may have to wait for an actual non-payment, or default to occur under EUSA Mobile Broadband even though the End-User has wilfully, intentionally or fraudulently not paid for services, or defaulted under EUSA Mobile. This is manifestly inequitable to the licensed entity as the licensed entity has to still provide the Mobile Broadband service (without reasonable prospect of payment, or where a potential default is anticipated) to the End-User. In

addition to the sheer inequity, the position may run counter to the established principles of anticipatory breach at law.

15. If IDA prevents a licensed entity from having cross-default protection, there will be a window of opportunity for errant or hard-pressed End-Users to take advantage of the situation and request for different services with no intention to pay for them or to comply with the conditions of use. An End-User may sign up for multiple services and in the event of non-payment or default under one EUSA, he continues to enjoy different services under other EUSAs (and chalks up more charges) until the remaining EUSAs are also eventually suspended/terminated on their own independent grounds (which grounds in all likelihood would be similar to the grounds for suspension/termination of the first-mentioned service). In the case of an End-User that is insolvent or recalcitrant, the licensed entity would have no or little recourse to payment for the services rendered, thus exposing the licensed entity to financial loss and expense, having provided the services upfront.

16. IDA needs no reminder that the entire global economy is presently engulfed by a financial crisis of an unprecedented nature. The removal of the cross-default protection will only facilitate more defaults (including payment defaults) in a situation where debtor ageing is already expected to escalate (not only in telecommunication but in a variety of industries). It does nothing to promote sensible and responsible consumer patterns in a troubled world economy.

**Not to impose excessive regulations on solicited equipment/services**

13. As a customer-focused telecommunications service provider, we recognise and share IDA's views on the importance of safeguarding consumer interests with regards to the provision of unsolicited services. We support IDA's proposed clarification on sub-section 3.3.3 of the code on "No Charges for Unsolicited Telecommunication Services" where Licensees should not be allowed to provide an unsolicited service to the end user requiring him/her to unsubscribe from it and IDA's proposed move to make the prohibition as part of the "General Duties of All Licensee" under Sub-section 3.2 of the Code.

14. With regards to the treatment of solicited equipment/services, M1 is of view that the existing requirements of the Code 2005, in tandem with the Premium Rate Services Code ("PRS") are sufficient. With the IDA's introduction of the PRS Code at the end of 2007, the operators have in fact comprehensively reviewed all services and processes to ensure full compliance with the requirements of the PRS Code.

15. Specifically, the current requirements of the PRS Code for reminder messages already fulfils the IDA's intent of providing the customer an alert that that his free trial service is ending. To include an additional criterion of the date of which the free trial period ends would be extraneous. In fact, M1 has in place a reminder message system for solicited PRS that are provided on a free trial basis, whereby before the end of the free trial period, our customers would receive a reminder message alerting them of their subscription to the service,

the charges payable for the service and clear instruction on how they can unsubscribe from the service including the unsubscribe keyword.

16. We would also like to highlight that Licensees usually have several billing cycles or periods to facilitate management of daily operations. Promotions offered are usually tied to the date from which the customer subscribes and it would be onerous for Licensees to track each and every subscription and generate a specific reminder message for all the services that a customer holds.

17. In short, while there is a need to protect end users, there should also be a balance between the assumption of responsibility of the end users and over-regulating the telecommunications industry. Thus, we strongly submit to IDA that the current requirements are adequate and it would not be necessary to impose additional requirements on Licensees with regards to solicited equipment/services.

**Conclusion**

18. In summary, M1's recommendations are:-

    a. To provide more regulatory focus and measures to address remaining or embedded market dominance issues in the fixed-line sectors;

    b. To maintain regulatory principle of promotion of FBC;

    c. To provide clarity that IDA's final decisions (particularly involving inter-operator settlement) would be effective from the date of decision and shall have retrospective effect;

    d. Not to prevent cross-default protection for a licensed entity; and

    e. Not to impose excessive regulations on solicited equipment/services.