



**CONSULTATION PAPER ISSUED BY
THE INFO-COMMUNICATIONS DEVELOPMENT AUTHORITY OF SINGAPORE**

**SECOND TRIENNIAL REVIEW
OF THE CODE OF PRACTICE FOR COMPETITION
IN THE PROVISION OF TELECOMMUNICATION SERVICES**

12 November 2008

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PART I: INTRODUCTION

- 1 When the Singapore telecom market was fully liberalised on 1 April 2000, IDA introduced the Code of Practice for Competition in the Provision of Telecommunication Services (“the **Code**”), after extensive consultation with the industry, to guide its transition into a fully competitive market. The Code sets out IDA’s regulatory principles and approach toward competition regulation, as well as a clear and robust regulatory framework to help foster competition in Singapore’s newly liberalised telecom market. Broadly, it contains the following provisions:
 - (a) Regulatory obligations on all Licensees (minimum “rules of the road”), including obligations relating to consumer protection, “any-to-any” interconnection and access to critical support infrastructure;
 - (b) Specific *ex ante* regulatory obligations for Dominant Licensees, including tariff filing obligations and more stringent interconnection and access duties;
 - (c) *Ex post* prohibitions on anti-competitive conduct, including prohibitions on the abuse of a dominant position and anti-competitive agreements; and
 - (d) Provisions governing mergers and acquisitions of Designated Telecommunication Licensees.
- 2 In 2003, IDA conducted the first triennial review of the Code, as part of a regular review process to ensure its continued relevance and effectiveness. After extensive consultation with the industry and public, the revised Code was issued by IDA and came into effect on 4 March 2005.
- 3 It is now time for IDA to conduct the second triennial review of the Code. Based on IDA’s assessment and feedback from industry, the Code has continued to prove useful over the past few years in meeting its objectives of: (a) ensuring that licensees comply with the minimum rules put in place to protect consumers’ interest in a competitive market; (b) facilitating entry by new players, including ease of interconnection with other operators; and (c) ensuring that players do not engage in unfair practices, particularly from a position of market dominance, when competing for customers.
- 4 IDA believes that there is no need for a major overhaul of the Code as it continues to be relevant and consistent with international best practices. However, taking into account market developments over the past three years as well as IDA’s experience in implementing the Code, IDA has identified

several broad areas that could be fine-tuned. IDA would like to seek the public's views and comments before proceeding to amend the Code. IDA will be conducting a second round of consultation on the actual amendments to the Code.

- 5 This Consultation Document summarises and outlines the areas IDA has identified for further improvement, IDA's rationale for the proposed amendments, and the procedures and timeframes for the public to submit their views and comments. The public is also invited to comment on other areas of the Code which can be improved upon and which have not been raised in this Consultation Document.

PART II: SECTION 1 - Regulatory Principles

- 6 Section 1 gives a broad overview of the Code. It specifies, among others, the goals and legal effect of the Code, the regulatory principles underpinning the Code, the manner in which the Code may be modified, and how exemptions from specific provisions of the Code may be sought from and granted by IDA.
- 7 For this Section of the Code, IDA is proposing an amendment to Sub-section 1.5.3 - the regulatory principle of promoting facilities-based competition. IDA is of the view that the remaining regulatory principles in Sub-section 1.5, and the rest of Section 1 of the Code, continue to remain relevant even with rapid technological and market developments in the telecom sector. In this regard, IDA will continue promoting and maintaining effective competition and, in doing so, continue to rely primarily on market forces and industry self-regulation for competitive markets (subject to minimum regulatory requirements designed to protect consumers and to prevent anti-competitive conduct). To the extent that a market is not yet competitive, IDA retains the view that a degree of *ex ante* regulatory intervention remains necessary.

Promotion of Services-Based Competition

- 8 IDA has thus far adhered to the principle of encouraging facilities-based competition as a primary measure in the belief that, in the long-term, such competition provides the most significant consumer benefits, whilst allowing for a significant reduction in regulatory intervention. Therefore, IDA's position has been to promote facilities-based competition to the greatest extent possible. Only where there are technological, economic or other impediments which would hamper competing Licensees' ability to build facilities essential for them to compete effectively, would IDA intervene to facilitate access to these facilities, and encourage services-based competition to take place for the benefit of consumers.
- 9 However, while facilities-based competition has proven effective in certain segments of the telecom market (such as the mobile/wireless markets), there remain markets where the replication of facilities appears difficult or unfeasible (due to high barriers to entry or high sunk costs, for example) even in the longer term (such as the fixed line market). In such markets, the

promotion of services-based competition is equally important to ensure that consumers at least benefit from the availability of competitive and innovative services and applications.

- 10 IDA has already taken steps towards a more proactive approach in promoting services-based competition. For example, in catalysing the deployment of the Next Generation National Broadband Network, IDA requested proposals for the Operating Company to provide wholesale bandwidth services to retail service providers, including services-based operators, to stimulate competition in price and service innovation. IDA notes that some other regulators have also moved towards focusing regulation on delivering equality of access in parts of the fixed network where it is uneconomic for new entrants to build their own infrastructure.
- 11 Moving forward, IDA intends to modify its regulatory principles to give equal consideration to promoting services-based competition, especially in markets where facilities-based competition appears difficult, as a pragmatic solution towards achieving IDA's overall objective of promoting effective and sustainable competition in the market.

IDA invites views and comments on whether IDA should give equal consideration or take a more proactive approach in promoting services-based competition in markets where facilities-based competition (i.e. the building or replication of facilities) has proven difficult or infeasible, and suggestions on the means by which this could be done.

PART III: SECTION 2 - Classification of Licensees

- 12 IDA is not proposing any changes to Section 2 of the Code, which contains, among others, the standards and procedures for classifying and reclassifying Licensees as Dominant or Non-dominant, and for exempting Dominant Licensees from special regulatory requirements applicable only to them (e.g. those in Section 4 of the Code).
- 13 IDA currently classifies all Licensees as Dominant or Non-dominant on a "licensed entity" basis (Sub-section 2.2). This means that, absent an exemption, a Licensee classified as dominant¹ is subject to all Dominant Licensee obligations in the Code for all facilities and services it provides. A Dominant Licensee may seek an exemption from such obligations in specific markets where it can demonstrate that competition has developed sufficiently such that the continued application of such obligations is no longer necessary to protect End Users or promote competition amongst Licensees (Sub-section

¹ As stated in Sub-section 2.2.1 of the current Code, a Licensee will be classified as dominant if: (a) it is licensed to operate facilities used for the provision of telecom services in Singapore that are sufficiently costly or difficult to replicate such that requiring new entrants to do so would create a significant barrier to rapid and successful entry into the telecom market in Singapore by an efficient competitor; or (b) it has the ability to exercise Significant Market Power in any market in which it provides telecom services pursuant to its licence.

- 2.5). In practice, IDA has thus granted exemptions from Dominant Licensee obligations on a “market-by-market” basis.
- 14 IDA adopted this approach in 2000 in the first version of the Code, in view that the incumbent monopoly operators were likely to be dominant in all market segments at the beginning stages of market liberalisation. At the same time, recognising that the state of competition in specific markets may change over time, the Code contains a procedure by which a Dominant Licensee may obtain exemption from its Dominant Licensee obligations in markets where it can demonstrate that competition has developed to a point at which such regulation is no longer necessary.
- 15 At the last Code review, there were suggestions from the industry to align our approach for the classification of Licensees with the European Union’s (“EU”). Under the EU’s “market-by-market” approach, the regulatory authority first defines each relevant market² and examines the level of competition in each market. The regulatory authority may only impose *ex ante* economic regulation on a Licensee in specific markets where the Licensee has Significant Market Power. This is in contrast to IDA’s “licensed entity” approach whereby a Dominant Licensee is presumed to have Significant Market Power in all telecom markets that it operates in and, absent an exemption, is subject to heightened *ex ante* regulation in all markets in which it provides services pursuant to its licence.
- 16 After careful evaluation, IDA took the position at the end of the last Code review that it would be prudent to retain the existing “licensed entity” approach because competition was less uniformly developed in Singapore than in some other jurisdictions. Adopting a “market-by-market” approach at that juncture was likely to yield similar results as a “licensed entity” approach, based on our preliminary assessment of the state of competition in the Singapore telecom market.
- 17 As part of this current Code review, IDA has again considered the value of implementing a “market-by-market” approach for classifying dominance; and is of the view that there is no significant merit in moving to such an approach. Over the last few years, IDA has already defined and studied many markets in Singapore, arising from requests from one of the Dominant Licensees – Singapore Telecommunications Limited (“**SingTel**”) – to exempt it from its Dominant Licensee obligations in those markets. SingTel has, through the exemption process, already been relieved of certain Dominant Licensee obligations in markets where it has demonstrated that the continued

² After defining the relevant markets, the EU applies the following three criteria to assess whether a market warrants the application of *ex ante* regulatory obligations: (i) the presence of high and non-transitory barriers to entry (these may be of a structural, legal or regulatory nature); (ii) a market structure which does not tend towards effective competition within the relevant time horizon (involves examining the state of competition behind the barriers to entry); or (iii) the insufficiency of competition law alone to adequately address the market failure(s) concerned. Based on the application of the above criteria, the EU has identified seven reference markets (one retail and six wholesale) that are susceptible to *ex ante* regulation (2007/879/EC - Commission Recommendation of 17 December 2007, which can be found at: http://eur-lex.europa.eu/LexUriServ/site/en/oj/2007/l_344/l_34420071228en00650069.pdf).

application of these obligations is no longer necessary to protect End Users or to promote and preserve competition amongst Licensees³. In other words, where competition has developed and where it is no longer necessary to apply the Dominant Licensee obligations to certain services, IDA has already exempted SingTel from its Dominant Licensee obligations for those services. IDA is also mindful that implementing the “market-by-market” approach would impose significant information burden and implementation costs on the industry, as IDA would require Licensees to provide substantial data in order to conduct the necessary comprehensive market definition exercise and competitiveness studies. In IDA’s assessment, the “market-by-market” approach is unlikely to yield different results from the current “licensed entity” approach, nor is IDA convinced that the benefits of a “market-by-market” study would justify the cost of doing so.

- 18 IDA recognises that, going forward, additional Licensees, such as the Licensee that will operate the Next Generation National Broadband Network’s passive infrastructure, could be classified as Dominant Licensees. It is possible that these new Dominant Licensees do not have Significant Market Power in all markets that they participate in. Such Licensees can, through the exemption process, seek an exemption from their Dominant Licensee obligations in those markets where the application of such obligations is not necessary to protect End Users or to promote and preserve competition amongst Licensees. The outcome would therefore be no different from that under a “market-by-market” approach.

IDA invites views and comments on the proposal to maintain the current “licensed entity” approach for the classification of a Licensee as Dominant.

PART IV: SECTION 3 - Duty of Licensees to End Users

- 19 Section 3 describes the “consumer protection” obligations applicable to all Licensees. IDA is proposing changes to two provisions in this Section: (a) Sub-section 3.2.4.1 (Service Termination or Suspension with Prior Notice) and (b) Sub-section 3.3.3 (No Charges for Unsolicited Telecommunication Services).

Service Termination or Suspension with Prior Notice

- 20 Sub-section 3.2.4.1 of the Code states that a Licensee may seek to terminate an End User Service Agreement (“EUSA”) or suspend the provision of a telecom service to an End User, on the grounds that the End User has breached any of the terms and conditions in the EUSA and has failed to remedy the breach, after the Licensee has provided the End User with advance notice and a reasonable opportunity to do so.

³ IDA has granted SingTel exemption from certain Dominant Licensee obligations in the International Telephone Services markets, and certain services within the International Capacity Services market. In addition, IDA is finalising its decision on SingTel’s request for exemption in relation to several services that it provides to business and government End Users.

- 21 With more Licensees now offering multiple telecom services to the same end users, IDA proposes to provide greater clarity on the application of this provision in situations where a Licensee provides more than one telecom service under different EUSAs. Specifically, the Licensee will not be allowed to terminate an EUSA (say EUSA X in relation to telecom service X), or suspend the provision of telecom service X, on the basis that the End User has breached terms and conditions in a separate EUSA (say EUSA Y in relation to telecom service Y). This is to prevent the Licensee from leveraging on its relationship with the End User in one telecom market to affect the provision of services in a separate telecom market. The Licensee will however be allowed to suspend the provision of multiple services provided under a single EUSA, if the grounds for service termination or suspension are met.

Unsolicited Telecommunication Equipment/Services and Supply on Free Trial Basis

- 22 IDA notes that operators sometimes provide telecom equipment and services on a free trial basis with or without the consent of End Users, and the burden is upon the End User to opt-out from the free trial. Providing unsolicited telecom equipment and services, and giving End Users free trials may be an effective marketing tool to raise awareness of and allow End Users to try out new equipment and services. However, IDA is concerned that this practice may be used as a means to take unfair advantage of End Users.

Unsolicited Equipment/Services

- 23 Sub-section 3.3.3 of the Code (“No Charges for Unsolicited Telecommunication Services”) already states that Licensees must provide in the EUSA that the End User will not be required to pay for any telecom service that he/she did not consent to receiving.
- 24 IDA proposes to clarify that Licensees will therefore not be allowed to provide an unsolicited telecom equipment/service to an End User which requires him/her to actively unsubscribe or opt-out from it, failing which the End User is automatically subscribed to and charged for that equipment/service. For the avoidance of doubt, an unsolicited equipment/service is one that the End User had no knowledge of, had not consented to or did not expressly request for, prior to it being provided to him. In this context, the End User’s failure to actively unsubscribe or opt-out from the equipment/service after the free trial shall not be taken as consent for subscription. This principle was similarly applied in IDA’s Premium Rate Services Code⁴ under sections 2.3 and 2.12 on “Duty relating to unsolicited free services” and “Duty not to charge for unsolicited services” respectively.

⁴ The Premium Rate Services Code (which came into effect on 16 December 2007) is a standalone document which contains all relevant provisions relating to the manner in which IDA regulates the provision of Premium Rate Services, arising from the volume of complaints that IDA received on the provision of such services. The requirements in the Premium Rate Services Code are consistent with the principles in the Telecom Competition Code. Premium Rate Service Providers are required to comply with both Codes.

25 To illustrate, if a mobile service provider provides a new “SMS-news service” to its End Users free of charge for a limited period without prior consent from the End User, the Licensee will not be allowed to require the End User to actively “opt-out” from the service at the end of the free trial period, failing which the End User will be charged. However, should the End User expressly request for the service to be provided to him after the free trial period, it will no longer be considered an unsolicited service and the Licensee may charge the End User for it.

Solicited Equipment/Services

26 On the other hand, the equipment/service is not considered unsolicited if the Licensee first obtains the subscriber’s consent to commence the supply of the equipment/service on a free trial basis. In such cases where the free trial is provided with the prior knowledge and consent of the End User, IDA proposes that Licensees provide the End User a reminder notice before the end of the free trial period. The reminder notice serves to alert End Users that the free trial period is ending so that they can take action to cancel the supply of the equipment/service before the Licensee proceeds to charge them for it. If the End User takes no action to unsubscribe from the solicited equipment/service after a reminder notice has been provided, the Licensee may proceed to charge for the service after the free trial period.

27 For this purpose, the reminder notice should be given to the End User between three (3) working days and 10 working days before the end of the free trial period. The reminder notice should also contain the following information presented in a clear and conspicuous manner: (a) the date when the free trial period ends; (b) the charges payable for the equipment/service; and (c) clear instructions on how the End User can easily unsubscribe from the equipment/service if he/she does not wish to continue after the free trial period. For the avoidance of doubt, Licensees should not impose any charges for any reminder notices sent to End Users.

28 If the Licensee does not provide a reminder notice, an End User’s failure to notify the Licensee before the end of the free trial period on whether the End User wishes to continue to receive the supply of the equipment/service shall not be taken as consent for subscription. Further, if the Licensee fails to provide a reminder notice, an End User may seek a refund from the Licensee for any payment made for the equipment/service. If the Licensee refuses to provide a refund to the End User and is unable to prove that it had provided a reminder notice, it will be taken as a contravention of the Code for which IDA is empowered to take enforcement action.

29 Finally, the prohibition against charging for unsolicited telecom services is today placed under Sub-section 3.3 of the Code as “Mandatory Contractual Provisions”. While Licensees are required to include such a provision in its EUSA, the onus is on the End User to bring a private legal action against a Licensee to enforce any breach of the provision. To better safeguard consumer interests, IDA proposes to make this obligation part of the “General Duties of All Licensees” under Sub-section 3.2 of the Code.

IDA invites views and comments on:

- (i) *prohibiting Licensees from terminating an EUSA, or suspending the provision of telecom service, on the basis that the End User has breached terms and conditions in a separate EUSA ;*
- (ii) *prohibiting Licensees from providing an unsolicited free telecom equipment/service to an End User which requires him/her to take action to unsubscribe from the equipment/service after the “free” period, failing which the End User is automatically subscribed and charged for it;*
- (iii) *requiring Licensees that provide a solicited telecom equipment/service on a free trial basis to send a reminder notice to the End User before the end of the free trial period; and*
- (iv) *making the prohibition against charging for unsolicited telecom equipment/services part of the “General Duties of All Licensees” under Sub-section 3.2 of the Code.*

PART V: SECTIONS 5 AND 6 - Interconnection between Licensees and Schedule of Interconnection Related Services and Mandated Wholesale Services

- 30 Section 5 discusses, amongst other duties, Licensees’ duty to interconnect with each other, while Section 6 governs interconnection with Dominant Licensees and related matters. IDA proposes to clarify the timeline for IDA’s approval of Interconnection Agreements (“**IAs**”) in Sections 5 and 6, and to remove radio towers and tower sites from list of Interconnection Related Services as set out in the Schedule of Interconnection Related Services (“**IRS**”) and Mandated Wholesale Services (“**MWS**”).

Approval of Interconnection Agreements by IDA

- 31 Sub-section 5.3 of the Code requires Licensees to submit to IDA a copy of all IAs into which they enter. Where neither party is a Dominant Licensee, the parties may provide that their IA will be regarded as effective upon submission to IDA; unless IDA informs the Licensees in writing, within 21 days of the date of submission, that it rejects the IA. The same approval process applies to modifications by mutual agreement of an IA between Non-dominant Licensees (see Sub-section 5.6.1.1) and Individualised IAs entered into with Dominant Licensees (see Sub-section 6.4.2.2).
- 32 IDA proposes to amend Sub-sections 5.3 (ii), 5.6.1.1(ii) and 6.4.2.2(a) of the Code to provide that, if IDA requests the Licensee to provide additional information or seeks the Licensees’ clarification within the 21-day period, IDA - after providing written notice - may extend the review period by up to 21

days after the date on which the Licensee provides the additional information or clarification⁵. In such cases, IDA reserves the right to subsequently reject and require amendments to the IA.

Schedule of Interconnection Related Services and Mandated Wholesale Services

- 33 Pursuant to Sub-section 6.3.2 of Code, IDA has gazetted a Schedule of Interconnection Related Services ("**IRS**") and Mandated Wholesale Services ("**MWS**") that sets out the terms and conditions on which a Dominant Licensee must provide IRS and MWS to other Licensees under its RIO. After careful review, IDA proposes to remove radio towers and tower sites from the list of IRS, as IDA notes that there are alternatives such as buildings and other suitable infrastructure for the industry to mount radio transmission or reception equipment for the provision of telecom services. IDA will maintain the rest of the IRS and MWS given that these services remain necessary to facilitate entry and rollout by new players entering the market.

IDA invites views and comments on the proposed clarification that should IDA request for additional information from Licensees within the 21-day review period when reviewing their Agreements or modifications to the Agreements, IDA - after providing written notice - may extend the review period by up to 21 days after the date on which the Licensee provides the additional information or clarification.

IDA also invites views and comments on its position to remove radio towers and tower sites from the list of IRS and maintain the rest of the IRS and MWS.

PART VI: SECTION 8 - Abuse of Dominant Position and Unfair Methods of Competition

- 34 Section 8 of the Code contains *ex post* prohibitions on unilateral anti-competitive conduct, including prohibitions on the abuse of a dominant position. IDA proposes to amend this Section such that the prohibitions on the abuse of a dominant position will apply to all Licensees, and not just to Dominant Licensees.

Abuse of Dominant Position in the Singapore Market

- 35 Under general competition law provisions, any entity with Significant Market Power is prohibited from abusing its dominant position. If an entity is determined, during an investigation, to have Significant Market Power, and to have engaged in conduct (such as predatory pricing) that constitutes an abuse of that market power, the competition regulator can take appropriate

⁵ However, if IDA does not seek clarification nor take any other action during this 21-day period, the Agreement can be taken as approved, as per current practice.

enforcement action. Under the current Code, there is an assumption that any Licensee that has Significant Market Power will be classified as a Dominant Licensee. Based on this assumption, Sub-section 8.2 of the Code provides that only a Dominant Licensee (i.e. a Licensee classified by IDA as being dominant) can be found to have engaged in an abuse of dominant position.

- 36 Over time, SingTel has repeatedly requested an exemption from these Sub-section 8.2 provisions in respect of specific markets, pursuant to Sub-section 2.5.1 of the Code, on the grounds that it is no longer dominant in those markets. In the Reclassification and Exemption Guidelines, IDA stated that it will only exempt a Dominant Licensee from these provisions, pursuant to Sub-section 2.5.1 of the Code, if the evidence demonstrates that the Dominant Licensee does not retain, and has no *“reasonable possibility of regaining, Significant Market Power in a market, or using its dominant position in another market to adversely affect competition in the relevant market ...”*.
- 37 IDA notes that this approach has caused considerable concern in the industry, which is unintended. In review, IDA considers that the application of the safeguards in Sub-section 8.2 against the abuse of dominant position should apply to any entity which is assessed to have Significant Market Power. IDA thus proposes to revise Sub-section 8.2 of the Code to provide that all Licensees are subject to the prohibitions against abuse of dominant position, regardless of whether IDA has already classified the Licensee as a Dominant Licensee. This means that if a non-Dominant Licensee is determined, during an investigation, to have Significant Market Power, and to have engaged in conduct that constitutes an abuse of that market power, IDA can take appropriate enforcement action. This revision to Sub-section 8.2 of the Code would make our approach consistent with general competition law. For the avoidance of doubt, for the purposes of this Sub-Section, a Licensee already classified as being a Dominant Licensee will be presumed by IDA to have Significant Market Power in all telecom markets it participates in, except in the specific markets where it has been granted exemptions by IDA from Dominant Licensee obligations.
- 38 Because the prohibitions against abuse of dominant position will no longer apply only to Dominant Licensees, a Dominant Licensee will no longer be allowed to seek an exemption from these provisions pursuant to Sub-section 2.5.1 of the Code. In light of this change to Sub-section 8.2, existing exemptions granted by IDA (to SingTel in a small number of markets) in respect of the current Sub-section 8.2 will not apply to the new Sub-section 8.2 of the Code.

IDA invites views and comments on the proposal to clarify that the prohibition against abuse of dominant position in Sub-section 8.2 of the Code applies to any Licensee that is found to have Significant Market Power in the market in question at that point in time, whether or not it has previously been classified by IDA as a Dominant Licensee.

PART VII: SECTION 10 - Changes in Ownership and Consolidations Involving Designated Telecommunication Licensees

- 39 Section 10 of the Code contains provisions regarding changes in Ownership Interest and Consolidations involving Designated Telecommunication Licensees, and ties in with Part VA of the Telecommunications Act (Cap. 323) (“**Act**”) relating to “Control Over Designated Telecommunication Licensees”. Under Part VA of the Act and Section 10 of the Code, parties seeking to acquire an Ownership Interest in Designated Telecommunication Licensees are required to notify IDA or seek IDA’s approval, depending on the percentage of Ownership Interest that it seeks to acquire in the Designated Telecommunication Licensee⁶.
- 40 Currently, under the Act, Ownership Interest is determined by the amount of voting shares held by an acquiring party. However, since Part VA was introduced at the last Act review in 2005, new concepts relating to mergers and acquisitions have been incorporated in Acts such as the Companies Act (Cap. 50), Banking Act (Cap. 19), the Electricity Act (Cap. 89A) and the Postal Services Act (Cap. 237A). These new concepts relate, among others, to: (a) requirements to notify/seek approval for changes in voting power, *in addition* to changes in voting shares⁷; and (b) inclusion of interest in the acquired party held by an acquiring party’s associates, in determining the acquiring party’s voting shares/voting power in the acquired party.
- 41 To align with best practices and ensure consistency with other economic sectors, MICA/IDA is considering similar changes to the Act. These changes, if made to the Act, will be correspondingly reflected in the Code. MICA/IDA will separately consult on these changes as part of the review of the Act. In this proceeding, IDA shall consult on proposed enhancements to the procedural details and timeframes for seeking IDA’s approval for changes in Ownership Interest and Consolidations involving Designated Telecommunication Licensees. IDA proposes to make refinements to the information required to be submitted, the submission timeframes, as well as the validity period of IDA’s approval in connection with such notifications and requests for approval.

Information to be Included in Consolidation Applications

- 42 Every Licensee and Acquiring Party must seek IDA’s approval in connection with any transaction that results in a Consolidation with the Licensee, as contained in Sub-section 10.4 of the Code. Currently, IDA provides for two types of application forms for the filing of Consolidations: the Short Form Consolidation Application and the Long Form Consolidation Application. The former requires less information to reduce the burden of information provision

⁶ Acquisition of Ownership Interest of at least 5% but less than 12% Ownership Interest in a Designated Telecommunication Licensee requires disclosure through a written notification to IDA. Acquisition of at least 12% Ownership Interest in a Designated Telecommunication Licensee, and Consolidations involving a Designated Telecommunication Licensee require IDA’s prior approval.

⁷ For instance, the Postal Services Act requires notification/approval where the 5%, 12% and 30% thresholds are crossed, either in terms of voting shares or voting power.

by Acquiring Parties and the Designated Telecommunication Licensee for Consolidations that IDA believes are less complex⁸. Today, Applicants using the Short Form Consolidation Application procedure need only submit an abbreviated statement, which provides information on the relevant telecom markets, market participants and estimated market shares in which the Applicants and their Affiliates participate. However, in practice, IDA has found the need for more information for a proper review of the Consolidations, such as:

- (a) a chart indicating the relationship between each Applicant and its Affiliates and the relevant ownership interests;
- (b) situations in which Ownership Interest in the Designated Telecommunication Licensee grants the holder thereof a special or preferential right; and
- (c) any pending change in the ownership structure of any of the Applicants in addition to the change that is the subject of their Consolidation Application.

43 For IDA to conduct a proper review in an expeditious manner, IDA therefore proposes that Applicants submitting the Short Form Consolidation Application also provide the above supporting documentation described.

Information to be Included in Request

44 Under the Code today, Licensee and an Acquiring Party must submit a Request and seek IDA's approval in which the Acquiring Party proposes to acquire, or has acquired, an Ownership Interest in the Licensee, that would result in the Acquiring Party holding an Ownership Interest in the Licensee of at least 12%, but less than 30%. The Code today requires the Applicants to submit some information for IDA's review of the Request (Sub-section 10.3.6.4). In practice, IDA has found the need for more information for a proper review of the Request, such as: services provided by the Applicants and their Affiliates, and the estimated market shares in which the Applicants and their Affiliates participate. IDA therefore proposes that Applicants submitting a Request include the above information as described, which is reasonably necessary for IDA to determine the likely impact of the acquisition on competition and the public interest.

Timeframes for Applicants to Submit Request and Consolidation Application

45 Applicants today are subject to varying timeframes for submission of a Request or Consolidation Application under the Code. For greater clarity, IDA

⁸ For example, if: (i) the Consolidation is a Horizontal Consolidation that will not result in the Post-Consolidation Entity having more than 15 percent share in the telecom market in Singapore; or (ii) the Consolidation is a Non-horizontal Consolidation in which none of the Applicants has more than a 25% share of any telecom market, whether in Singapore or elsewhere, in which it participates.

proposes to simplify the submission timeframes, by allowing Applicants to work out a suitable timeframe for their submission, so long as they are able to meet IDA's review period of 30 days for a Request or Consolidation Application. IDA had similarly adopted such an approach in the Postal Competition Code 2008.

Validity Period of IDA's Approval

- 46 IDA recognises that, in practice, a transaction may remain uncompleted for some time even after IDA has approved a Request or Consolidation Application. In the interim, there may be changes to the information that IDA had relied on to review the Request or Consolidation due to market developments. Depending on the nature of such changes, IDA's basis for approving the transaction may no longer be valid. IDA therefore proposes to clarify in the Code that IDA's approval will generally be valid for one year; and that Applicants are required to notify IDA in the interim of any material changes that may affect the basis of IDA's approval for the transaction that remains uncompleted.

IDA invites views and comments on the proposed refinements to the information to be submitted and the submission timeframes for Requests and Consolidation Applications, as well as the validity period of IDA's approval.

PART VIII: OTHER ISSUES

Alignment with the Competition Act 2004

- 47 The Competition Act (Cap. 50B), introduced in Singapore in 2004, specified that sectors governed by other regulators and competition law, such as telecom, media and energy sectors, are carved out from the application of Sections 34, 47 and 53 of the Competition Act. IDA has taken note of views from several Licensees on the need for the telecom sector to be governed by the Competition Act.
- 48 Matters relating to the review of the sectoral carve-outs from the Competition Act and alignment of such sectoral competition frameworks would have to be discussed with the Ministry of Trade and Industry (MTI) and the Competition Commission. In the meantime, IDA will consider aligning its framework (e.g. administrative penalty quantum) with the provisions in the Competition Act, during the review of the Telecommunications Act.

PART IX: PROCEDURES AND TIMEFRAME FOR SUBMITTING COMMENTS

- 49 IDA would like to seek the views and comments from the industry and members of the public on the above issues.

- 50 Parties that submit comments regarding the issues identified in this Consultation Document should organise their submissions as follows: (a) cover page (including their personal/company particulars and contact information); (b) table of contents; (c) summary of major points; (d) statement of interest; (e) comments; and (f) conclusion. Supporting material may be placed in an annex.
- 51 All submissions should be clearly and concisely written, and should provide a reasoned explanation for any proposed revisions. Where feasible, parties should identify the specific provision of the Code on which they are commenting and explain the basis for their proposals.
- 52 All submissions should reach IDA **before 12 noon on Wednesday, 10 December 2008**. Comments must be submitted in both hard and soft copy (in Microsoft Word format). All comments should be addressed to:

Mr. Andrew J. Haire
Deputy Director General (Telecoms & Post)
Infocomm Development Authority of Singapore
8 Temasek Boulevard
#14-00 Suntec Tower Three
Singapore 038988
Fax: (65) 6211 2116

AND

Please submit your soft copies, with the email header "Public Consultation on TCC Review", to this e-mail: IDA_Consultation@ida.gov.sg

- 53 IDA reserves the right to make public all or parts of any written submission and to disclose the identity of the source. Commenting parties may request confidential treatment for any part of the submission that the commenting party believes to be proprietary, confidential or commercially sensitive. Any such information should be clearly marked and placed in a separate annex. If IDA grants confidential treatment it will consider, but will not publicly disclose, the information. If IDA rejects the request for confidential treatment, it will return the information to the party that submitted it and will not consider this information as part of its review. As far as possible, parties should limit any request for confidential treatment of information submitted. IDA will not accept any submission that requests confidential treatment of all, or a substantial part, of the submission.