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Singapore Telecommunications Limited

Submission on the Second Public  
Consultation on the Second Triennial  
Review of the Code of Practice for  
Competition in the Provision of  
Telecommunication Services

18 January 2010

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## 1 Introduction

Singapore Telecommunications Limited and its related companies (**SingTel**) are licensed to provide telecom services in Singapore. SingTel is committed to the provision of state-of-the-art telecommunications technologies and services in Singapore.

SingTel has a comprehensive portfolio of services that includes voice and data services over fixed, wireless and Internet platforms. SingTel services both corporate and residential customers and is committed to bringing the best of global communications to its customers in the Asia Pacific and beyond.

SingTel welcomes the opportunity to make a submission in response to the consultation paper issued by the Info-communications Development Authority (**IDA**) on 23 November 2009 in relation to the Second Public Consultation on the Second Triennial Review of the Code of Practice for Competition in the Provision of Telecommunication Services (**Consultation Paper**).

As a leading provider of telecommunications services and a leading proponent of innovation and competition, SingTel has a strong interest in effective pro-competition regulation of Singapore's telecommunications sector. SingTel has views about both the strengths and weaknesses of the IDA's Consultation Paper and proposed amendments to the Code of Practice for Competition in the Provision of Telecommunication Services 2005 (**Telecom Competition Code**).

This submission is structured as follows:

- 1 – Introduction
- 2 – Executive Summary
- 3 – Section 1 – Regulatory Principles
- 4 – Section 2 – Classification of Licensees
- 5 – Section 3 – Duty of Licensees to End Users
- 6 – Section 4 – Duty of Dominance Licensees to Provide Telecommunication Services on Just, Reasonable and Non-Discriminatory Terms
- 7 – Sections 5 and 6 – Interconnection between Licensees and Schedule of Interconnection Related Services and Mandatory Wholesale Services

- 8 – Section 7 – Infrastructure Sharing
- 9 – Section 8 – Abuse of Dominant Position and Unfair Methods of Competition
- 10 – Other issues
- 11 - Conclusion

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## 2 Executive Summary

### 2.1 Summary of main points

**There is no longer a need for the IDA to promote the regulatory objectives of services-based competition in Singapore.**

- Facilities-based competition is already a reality in Singapore and the deployment of the Next Generation Broadband Network (**NGNBN**) is a testament to that.
- Changes to the wording of the Telecom Competition Code must remain focused on facilities-based competition, as long term reliance on services-based competition is likely to have an adverse effect on infrastructure investment
- The IDA must ensure that measures for services-based competition are only taken:
  - where there are impediments against the emergence of facilities-based competition; and
  - over the short term.

**The IDA's continuous focus on licensed entity-based approach to dominance is inconsistent with regulatory practice in other liberalised jurisdictions**

- IDA's licensed based-entity approach to dominance results in overregulation.
- Singapore's licensed-based entity approach to dominance and the presumption of significant market power in respect of abuse of dominance

in sub-section 8.2 of the Telecom Competition Code are inconsistent with international best practice.

- The IDA must move towards adopting a market-based approach to dominance by undertaking a comprehensive market definition analysis in order to achieve targeted and effective competition.
- A comprehensive market definition analysis will promote certainty of market boundaries and assist in determining dominance in those markets.

**Suspension and termination of an end-user account is a last resort for licensees, as it would lessen their competitive advantage**

- The IDA's proposal in relation to termination of service arising from breaches of End User Service Agreement (**EUSA**) as outlined in the Consultation is impractical and cannot be efficiently implemented.
- The IDA's requirement regarding notification to end-users of the expiry of free trial services is unnecessary given there are already similar requirements in the Premium Rate Services Code (**PRS Code**) and the Opt Out Regulations 2009.
- The IDA should allow service providers the flexibility to seek and obtain express agreement of customers regarding prices, terms and conditions for continuation of free trial services through any applicable means that is compliant with the requirements of the Telecom Competition Code.

**Retail regulation should be removed given there is effective wholesale regulation**

- SingTel is already subject to stringent regulation through very significant wholesale regulation of Interconnection Related Service (**IRS**) and Mandatory Wholesale Services (**MWS**) coupled with a burdensome regulatory exemption process.
- SingTel has had an excellent compliance record with its regulatory obligations and should be freed of unnecessary retail regulation.
- From this year, service providers will also be able to acquire wholesale services from the open access NGNBN on IDA-approved terms and conditions.

**The current Schedule of IRS and MWS are overly long and prescriptive and certain services should be removed.**

- Given the low levels of take-up of IRS and MWS, the IDA should at minimum allow pricing flexibility to enable Licensees to recover costs of maintaining those services.
- Fixed Number Porting (**FNP**) should be removed from the list of IRS and MWS given that it is a multi-party service.
- Retaining FNP on the IRS and MWS list only adds unnecessary regulatory burden and costs of maintaining the service.
- **All Submarine Cable Landing Stations should be ‘pre-designated’ as Critical Support Infrastructure**
  - All Submarine Cable Landing Stations are bottleneck infrastructure that are required by all licensees to access international connectivity and provide telecommunications infrastructure.
  - Without pre-designation, Licensees experience delays in gaining necessary access to Submarine Cable Landing Stations in a way that restricts competition and prevents a level playing field for all Licensees.
- **Approach to Abuse of Dominant Position must be applied equally to all Licensees**
  - Abuse of Dominant Position is a serious allegation and all operators must have equal opportunity to rebut an allegation without the automatic presumption of dominance.
  - The IDA must undertake a comprehensive market definition analysis to ensure certainty in respect of market boundaries and then assess dominance in those markets.

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### **3 Section 1 – Regulatory Principles**

#### **3.1 SingTel welcomes IDA’s clarification that facilities-based competition is best**

SingTel welcomes the IDA’s clarification comments in the Consultation Paper that:

- the IDA is not proposing to abandon or alter its current policy which seeks to promote facilities-based competition; and
- the IDA believes effective and sustainable competition will be best achieved through facilities-based competition and that the IDA does not propose to depart from this policy.

SingTel also welcomes the IDA’s review of international practice which is clearly in favour of facilities-based competition and which is likely to best improve the competitive conditions of the market.

The IDA has extracted the full quote from Commissioner Monti which SingTel submits is entirely consistent with SingTel’s position that facilities-based competition must be given primacy. Commissioner Monti makes a clear distinction between short term facilitation of competition through access-based competition and the longer term position where facilities-based competition is to be favoured.

SingTel submits that, on any reasonable measure, 10 years of facilities-based competition in the fixed sector in Singapore is the “long term” to which Commissioner Monti refers. SingTel further submits that it is entirely appropriate, based on international practice to which both SingTel and the IDA refer, that the regulatory framework in Singapore should encourage and promote operators which base their competitive advantage on building their own infrastructure.

#### **3.2 Facilities-based competition constrains SingTel**

SingTel does not agree with the IDA’s rejection of SingTel’s assertion that there is no justification for promoting services-based competition because facilities-based competition is already a reality in Singapore.

First, SingTel submits that there is extensive facilities-based competition in Singapore based on the evidence provided in our first submission. Further,



SingTel believes that the deployment of the open access NGNBN is placing additional competitive constraint on SingTel. Even prior to full deployment of the open access NGNBN, the imminent entry of the open access NGNBN means that the effect of facilities-based competition is already being seen in Singapore.

It has long been recognised that imminent entry places effective competition constraints on telecommunications operators. For example, the European Commission has stated that<sup>1</sup>:

*“Entry is a source of competitive discipline on incumbents. It can upset traditional patterns of market conduct, dethrone dominant firms; introduce new technology and fresh approaches to product design and marketing. New entry often leads to more competitive prices to the benefit of consumers.”*

Similarly, the Australian Independent Competition and Regulatory Commission (ICRC) has confirmed this view in respect of the gas, energy and water industries<sup>2</sup>:

*“In assessing the competitive state of the market, the Commission concluded that the competitiveness of the market cannot be determined by a single characteristic or indicator ... the Commission has identified the following characteristics to be consistent with a competitive market:*

- *the existence of a number of competing retailers and/or the imminent potential entry of new competitors ... (our emphasis)”*

Secondly, SingTel submits that the objectives of the Telecom Competition Code should not be changed, and SingTel should not be punished, due to under-investment by other operators over the past 10 years.

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<sup>1</sup> Directorate for Financial and Enterprise Affairs Competition Committee, *Roundtable on Barriers to Entry*, DAF/COMP/WD (2005)59, 7 October 2005, page 2.

<sup>2</sup> ICRC, *Final Report Retail Prices for Non-contestable Electricity Customers*, report 8 of 2006, April 2006, page 7.

### 3.3 Changes to the Telecom Competition Code

The IDA has not specified the wording changes that will be made to the Telecom Competition Code. As stated above, SingTel welcomes the retention of the statement that effective and sustainable competition will be best achieved through facilities-based competition.

However, SingTel would be concerned by the addition of any wording in relation to striking a balance between facilities-based and services-based competition. This wording needs to be carefully considered.

In SingTel's first submission, SingTel provided some proposed wording that recognised the issue. Importantly however, SingTel's proposed wording placed an important condition on the reliance on services-based competition, i.e. only where there are technological, market or other impediments and there is clear, tangible evidence that facilities-based competition will not emerge.

Further, SingTel's wording emphasised that the pro-active measures to facilitate services-based competition should only occur over the short term. Long term reliance on services-based competition will have a very damaging effect on infrastructure investment incentives and on sustainable competition for the reasons explained in the first submission.

If the balancing between facilities-based competition and services-based competition is made without these conditions, then services-based competition will always be favoured. This will have a very damaging effect on investment in Singapore.

SingTel submits that the IDA should adopt SingTel's previously proposed wording for addition in the Telecom Competition Code if the IDA wishes to make any statements about services-based competition.

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## **4 Section 2- Classification of Licensees**

### **4.1 SingTel continues to support a market-by-market approach to dominance**

SingTel is disappointed that the IDA has not changed its approach to classification of dominance, despite over 10 years of full deregulation of the Singapore market and best practice to the contrary.

As SingTel has emphasised on many occasions, the IDA's approach is unlike any other comparable regulator in the world. The IDA has not been able to cite any other regulator that favours the IDA approach, particularly over the long period to which the IDA has used the "licensed entity" based approach to dominance.

SingTel also rejects the IDA's assertions that the current "licensed entity" approach to dominance has led to substantive results that are fully consistent with international best practices. The IDA's approach has led to:

- over-regulation, including regulation of 3 dominant 'last mile' infrastructure providers – no other place in the world regulates dominance in this manner and in these circumstances;
- delay in removal of regulation, resulting in delays of 18 months or more in deregulation of competitive markets; and
- higher cost of regulation applied to dominant operators, with these higher costs passed through to consumers in the form of higher prices.

SingTel submits that these costs far outweigh the costs that the IDA and the industry would incur to conduct a study of the relevant markets and determine whether any operators are dominant in any of those markets.

### **4.2 Consistency with proposed amendments to Section 8**

SingTel notes the IDA's proposal to revise the Telecom Competition Code such that any Licensees found to have significant market power in a given market will be subject to sub-section 8.2. The application of that section of the Telecom Competition Code will not be limited to designated Dominant Licensees.

SingTel believes that it would promote certainty for both dominant licensees and other operators if the IDA conducts a comprehensive market study in a similar way to that which occurs in Europe. Under the European Framework Directive<sup>3</sup>, national regulators are required to undertake a comprehensive market definition procedure before finding significant market power<sup>4</sup>. In doing so, the European Commission's Notice on the Definition of the Relevant Market for the Purposes of Community Competition Law (**Notice**) adopts a detailed methodology for conducting market definition. The Notice provides that<sup>5</sup>:

*“Market definition is a tool to identify and define the boundaries of competition between firms. It serves to establish the framework within which competition policy is applied by the Commission, The main purpose of market definition is to identify a systematic way the competitive constraints that the undertakings involved face. The objective of defining a market in both its product and geographic dimension is to identify those actual competitors of the undertakings involved that are capable of constraining those undertakings’ behaviour and of preventing them from behaving independently of effective competitive pressure.*

In addition, Article 82 of EC competition law requires a comprehensive market definition when considering whether an undertaking has abused its dominant position.

The Office of Fair Trading (**OFT**) has adopted a similar approach to the European Commission whereby before determining whether an undertaking is dominant, the relevant market must be determined based on the following elements<sup>6</sup>:

- the relevant goods or services (the product market); and
- the geographic extent of the market (the geographic market).

IDA states in response to StarHub's concerns about the proposed changes to Section 8 that it is highly unlikely that a Licensee will obtain significant market power. However, SingTel submits that this misses the point. The uncertainty is

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<sup>3</sup> European Parliament, *Directive 2002/21/EC of the European Parliament and of the European Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services* (Framework Directive).

<sup>4</sup> Ibid, Article 14.

<sup>5</sup> European Commission's *Notice on the Definition of the Relevant Market for the Purposes of Community Competition Law*, OJ [1997] C372/5, [1998] 4 CMLR 177.

<sup>6</sup> Office of Fair Trading, *Market Definition*, OFT Guideline 403, December 2004.

not at the point of determining dominance within a market – the uncertainty is around the boundaries of the market itself. This uncertainty is caused because the IDA has not conducted a market definition enquiry.

Similarly in Section 2, SingTel submits that the lack of a comprehensive market definition means that the risk of over-regulation of dominant operators is very high and real. Even if the IDA retains its licensed-entity based approach to dominance, SingTel submits that at a minimum the IDA should conduct a comprehensive market study to provide greater certainty for the industry. This would also facilitate later dominance enquiries and would speed up this long-winded process.

A market definition study will help to address both SingTel's concerns in relation to Section 2 and StarHub's concerns in relation to Section 8. Therefore, SingTel submits that there are good reasons for the IDA to conduct a comprehensive market definition analysis.

#### **4.3 Changes to the Telecom Competition Code**

SingTel continues to urge the IDA to alter the “licensed entity” approach used to designate dominance. SingTel regards this approach as out-of-step with the level of competition in Singapore and international best practice. At a minimum, SingTel requests that the IDA conduct a market definition study to provide certainty as requested by both SingTel and StarHub in respect of Sections 2 and 8 of the Telecom Competition Code, respectively.

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## **5 Section 3 – Duty of Licensees to End Users**

### **5.1 Service termination or suspension with prior notice**

In relation to the IDA proposal at paragraphs 19 to 24 of its Consultation Paper, SingTel notes that the IDA is proposing to allow termination of an End – User Service Agreement (**EUSA**) on grounds that the End-User has breached terms and conditions in a separate EUSA except where

- (a) the service to be terminated or suspended is a Basic Telephone Service (**BTS**); or
- (b) the other EUSA that has been breached is with a different licensee.

SingTel notes the proposal in relation to the BTS and agrees for so long as there is an ongoing obligation for a service provider to provide a BTS. Where there is

no longer such an obligation, SingTel believes that this restriction should be correspondingly removed.

In relation to the IDA proposal in (b), SingTel submits that the IDA position would have the unfortunate effect of impairing the efficient and effective practice of billing multiple services under a single aggregate bill.

Service providers and end-users currently find it beneficial to receive one bill for multiple services, whether subscribed with one licensee or with another licensee - in the case of the former under a different EUSA, and in the case of the latter where the two licensees are affiliates for example. This practice could in fact be outsourced to a billing agent that consolidates bills, collects the payment and reflects it against the account / bill.

Where an end-user wishes to contract with parties who use a central billing agent, ie where services are billed in an aggregate bill, the end-user enjoys the benefits offered to them under using an aggregate bill. The consequence of a consolidated billing practice however, is that when an end-user has not paid for any charges or has only paid part of the outstanding charges for one bill, there is no way the billing agent could interpret for itself which service the customer has made payment for.

The IDA position in paragraph (b) is therefore impractical and cannot be efficiently implemented without engaging in unnecessary disputes between the billing agent, the service provider and the end-user itself as well as generating unnecessary bad debt.

There is therefore no reason for licensees and end-users who make use of the consolidated / aggregate bill process to be penalized arising from the IDA proposal.

Accordingly, SingTel submits that the IDA should reconsider its proposal in (b). Termination of EUSAs/ services is generally a last step in the enforcement of the EUSAs, preceded with sufficient notification provided to the end-user under the terms of the EUSA and in many cases, preceded with discussions and negotiations between the end-user and the telecommunication licensee. Suspension and termination is a last resort option for licensees and the IDA should not restrict these rights.

## 5.2 No charges for unsolicited telecommunication services

In its Consultation Paper, the IDA has proposed that licensees must notify end-users of the expiry of free trial(s) and obtain express agreement with the prices, terms and conditions in order to continue providing the service.

SingTel notes that the IDA already requires similar procedures to be put in place in the Premium Rate Services Code (**PRS Code**) when offering services to consumers. The Consumer Protection Act (Fair Trading) (Opt Out Practices) Regulations 2009 (**Opt Out Regulations 2009**) also contains similar provisions requiring service providers to obtain express agreement to prices, terms and conditions at the expiry of free trials.

To this extent, SingTel submits that the requirements in the PRS Code and the Opt Out Regulations 2009 would in fact already apply to the situation as envisaged by the IDA in its Consultation Paper. As such, SingTel believes that the requirements proposed by the IDA in its Consultation are unnecessary.

Furthermore, the IDA proposal in its Consultation Paper is only feasible where they do not contradict the requirements or provisions set in the PRS Code and / or the Opt Out Regulations 2009.

For example, in its Consultation Paper, the IDA indicates a preference for the End-User to check or sign against relevant clauses. SingTel notes that many PRS or other services are provided electronically or via mobile and end-users would accept the applicable prices, terms and conditions via SMS. SingTel also notes that the Opt Out Regulations 2009 does not prescribe the way and manner in which the end-user would give its consent to the applicable prices, terms and conditions.

SingTel proposes that service providers be permitted to seek and obtain the express agreement through any applicable means as long as this fulfils the requirement of the Telecom Competition Code.

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## 6 Section 4 – Duty of Dominant Licensees to Provide Telecommunication Services on Just, Reasonable and Non-Discriminatory Terms

### 6.1 Existing wholesale regulation means that retail tariff regulation is unnecessary

In response to SingTel's submission that the IDA remove sub-section 4.4 (regarding tariffing), the IDA states that "IDA's current regulatory regime ... provides SingTel with greater flexibility than operators in many other jurisdictions". This is then used to justify the continued imposition of retail tariffing regulation.

SingTel does not agree that the wholesale regulation which applies to SingTel is more flexible than other jurisdictions and/or that that wholesale regulation does not justify removing retail regulation.

First, the IDA's approach to market definition substantially extends the breadth of regulation by applying it to SingTel as an entity, and due to the time taken for deregulation to take place through the cumbersome exemption process.

Secondly, SingTel is subject to very significant wholesale regulation as the IDA is well aware. The IDA has the ability to regulate both Interconnection Related Services (**IRS**) and Mandatory Wholesale Services (**MWS**) supplied by SingTel as a Dominant Licensee. SingTel's terms and conditions are required to be set through the Reference Interconnection Offer (**RIO**) process, through which the IDA has the power to approve or disapprove of SingTel's proposed and existing terms and conditions. The IDA also has significant rights under the RIO such as the ability to prevent termination of the RIO with a particular operator.

Furthermore, from this year, service providers will also be able to acquire wholesale services from the open access NGNBN on IDA-approved terms and conditions.

SingTel submits that wholesale regulation renders retail regulation redundant.

This is consistent with international best practice.



Under the EC Regulatory Framework, retail regulation is used as an absolute last resort. The Universal Service Directive<sup>7</sup> states that national regulatory authorities may impose retail regulation (e.g. tariff regulation) only where they conclude that wholesale obligations<sup>8</sup> have been unsuccessful. Article 26 of the Universal Service Directives states that:

*“regulatory controls on retail services should only be imposed where national regulatory authorities consider that relevant wholesale measures or measures regarding carrier selection or pre-selection would fail to achieve the objective of ensuring effective competition and public interest.”*

This is based on the guiding principle that retail regulation is not necessary where wholesale regulation has been successful. In its public consultation regarding the removal of retail regulation, which resulted in the removal of retail regulation in all the relevant markets except one, the European Commission stated that<sup>9</sup>:

*NRAs have powers as a last resort and after due consideration to impose retail regulation on an undertaking with significant market power<sup>10</sup>*

...

*Should a national regulatory authority have reason to consider that wholesale interventions would prove unsuccessful, retail regulation may be imposed<sup>11</sup>.*

Even in circumstances where services are not IRS or MWS, the IDA imposes significant constraints through the duties in Section 4 of the Telecom Competition Code, including as specifically applied to Wholesale Services in Section 4.3 of the Telecom Competition Code.

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<sup>7</sup> Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) OJ L 108, 24.4.2002, p. 51–77

<sup>8</sup> Imposed under the Access Directive (Directive 2002/19/EC) or Article 19 of the Universal Service Directive (i.e. carrier selection and pre-selection) to achieve the objectives of effective competition under Article 8 of the Framework Directive (Directive 2002/21/EC).

<sup>9</sup> European Commission Staff Working Document, Public Consultation on a Draft Commission Recommendation, *On Relevant Product and Service Markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services*, Second Edition, 28 June 2006.

<sup>10</sup> Ibid, page 17.

<sup>11</sup> Ibid, Draft Recommendation number 14, page 50.

In addition, SingTel also has an excellent compliance record. SingTel is not in the position of other operators where additional regulation has been imposed due to continued breaches of regulation, discriminatory behaviour and delay.

SingTel submits that the IDA should take into account the EU approach and only require retail regulation where absolutely necessary. In the EU, there is a presumption against retail regulation, as shown above, and this approach should be followed in Singapore.

## **6.2 Changes to the Code**

SingTel again requests the IDA to remove Section 4.4 of the Telecom Competition Code in its entirety.

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## **7 Sections 5 and 6 – Interconnection between Licensees and Schedule of Interconnection Related Services and Mandated Wholesale Services**

### **7.1 Review Schedule of IRS and MWS**

SingTel wishes to reiterate that it considers the current Schedule of IRS and MWS as overly long and prescriptive and certain services should be removed.

SingTel also highlights Section 1.5 of the ‘Schedule of Interconnection Related Services and Mandated Wholesale Services that must be offered under the RIO’ gazetted on 18th February 2005 which states the following regarding its review of the Schedule of IRS and MWS:

*“As part of its review, IDA will determine whether to:*

*(a) require Dominant Licensees to continue to comply with any or all of the requirements specified in this Schedule;*

*(b) require Dominant Licensees to continue to offer Interconnection Related Services and Mandated Wholesale Services, but allow the Dominant Licensees to set the prices within specified price floors and/or ceilings;*

*(c) require Dominant Licensees to continue to offer Interconnection Related Services and Mandated Wholesale Services, without specifying price floors or ceilings; or*

*(d) otherwise add to, modify or eliminate the requirements specified in this Schedule, or take any other appropriate action.”*

SingTel submits that when there has been no take-up of IRS and MWS in the past and no indication of take-up in the future but IDA still insists that Dominant Licensees should continue offering those services, IDA should at a minimum review whether certain IRS and MWS fits the approach described in (b), (c) or (d) above.

Allowing this additional pricing flexibility would be appropriate so that Dominant Licensees can seek to recover costs of maintaining those services through more flexible pricing approaches than are currently available.

At a minimum, SingTel submits that the IDA should follow-through with its previous commitment to review whether such pricing approaches should be permitted.

## **7.2 Remove Fixed Number Portability from Schedule of IRS and MWS**

SingTel submits that fixed number portability (**FNP**) should be removed from the Schedule of IRS and MWS. FNP regulation should not be imposed on a single Dominant Licensee, when FNP is clearly a multi-party service and its implementation requires all parties to be involved.

SingTel also does not possess any dominant power in fixed number porting. In any case, SingTel cannot unilaterally offer FNP services due to the inherent nature of the multi-party service.

Hence, the separate Number Port Schedule under the RIO as an IRS does not have any practical use, besides the fact that so far there is no take-up under the Number Port Schedule of the RIO. Removing the Number Port Schedule from the RIO will not affect any existing Licensee or any new Licensees who need to establish number port arrangements; and retaining such a Schedule under the RIO will not benefit the industry but simply imposes unnecessary regulatory costs.

Finally, in paragraph 41 of this consultation paper, IDA has mentioned that “In establishing and determining the list of IRS and MWS, IDA use ‘bottleneck test’”. Applying this standard, IDA is satisfied that no practical alternatives currently exist on a pervasive scale for requesting licensees to obtain the IRS listed above, except from the Dominant Licensee.

SingTel submits that this test does not apply to Number Port Services either. As mentioned, FNP is a multi-party service and the “no practical alternatives” test is irrelevant in these circumstances.

Therefore, SingTel requests that the Number Port Service be removed from the list of IRS and correspondingly Number Port Schedule can be removed from SingTel’s RIO.

### **7.3 Editorial change**

SingTel notes that Section 3 of Appendix 2 of the Telecom Competition Code uses the title “Physical Interconnection”. However, the content of Section 3 deals with physical interconnection AND logical interconnection. Therefore, the title should be changed accordingly.

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## **8 Section 7 – Infrastructure Sharing**

### **8.1 All Submarine Cable Landing Stations as Critical Support Infrastructure (CSI)**

SingTel submits that all Submarine Cable Landing Stations should be designated up-front as Critical Support Infrastructure – not just SingTel’s. The IDA’s proposal to adopt a passive wait-and-see approach will result in significant delays. In circumstances where SingTel submits there is a clear case for the designation of all Submarine Cable Landing Stations as CSI, SingTel requests the IDA to undertake a upfront designation to avoid any future delays and the consequent damage to competition caused by the delay.

First of all, Submarine Cable Landing Stations should be considered as a class of Critical Support Infrastructure (**CSI**) that is owned by any Licensee, as Submarine Cable Landing Stations fulfil all of the criteria according to Section 7.3.1 of Telecom Competition Code:

- (a) the infrastructure is required to provide telecommunication services;
- (b) an efficient new entrant would not be able to obtain it from a third-party through a commercial transaction, at a cost that would allow market entry;
- (c) the Licensee that controls the infrastructure has sufficient current capacity (co-location space) to share with other Licensee;

- (d) the Licensee that controls the infrastructure has no legitimate justification for refusing to share the infrastructure with other Licensees; and
- (e) failure to share the infrastructure would unreasonably restrict competition in any telecommunication market in Singapore.

SingTel submits that licensees should not need to request IDA to designate Submarine Cable Landing Stations CSI after negotiation has failed to reach an outcome. This arrangement will restrict competition, cause further delay on accessing the Submarine Cable Landing Station(s), and result in a lack of a level playing ground for Licensees who are unable to access the Submarine Cable Landing Station in a timely manner.

Submarine Cable Landing Stations are bottleneck infrastructure required by Licensees to access international connectivity and provide telecommunication services to end-users. The only viable way to access shore-to-shore capacity on a submarine cable is through access at the Submarine Cable Landing Station. Therefore, all Facilities-Based Operators (**FBO**) should be able to access the Submarine Cable Landing Station in order to access international connectivity.

Where more and more Submarine Cable Landing Stations are owned by non-Dominant Licensees, access to Submarine Cable Landing Stations is not forthcoming and therefore could restrict competition.

In addition, IDA has mentioned in paragraph 46 of the Consultation Paper that “Should the parties be unable to reach a voluntary Sharing Agreement within 60 days, the Licensee requesting sharing may submit a written request to IDA to designate the infrastructure as an infrastructure that must be shared”. However, if such a failure of negotiation on sharing indeed happens following the failure of negotiation on accessing a station, Licensees then have to wait another 75 days for IDA to decide whether to designate the station to be shared<sup>12</sup>.

Without ‘pre-designation’ of Submarine Cable Landing Station as CSI to be shared, Licensees are possibly exposed to more than 135 days of delay to access these Submarine Cable Landing Stations. The delay incurred by

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<sup>12</sup> Section 7.4.3 and 7.4.4 of the Code

Licensees will restrict competition and prevent a level playing field for all Licensees.

Therefore, SingTel believes that the IDA should undertake pre-designation to mandate sharing of Submarine Cable Landing Station to promote fair competition and avoid the unnecessarily long time required to resolve a dispute arising from accessing Submarine Cable Landing Stations.

Unlike the long delays that a Licensee could be subject to if it was required to request designation of a Submarine Cable Landing Station on a case by case basis, SingTel notes that the terms and conditions under SingTel's Reference Interconnection Offer (RIO) approved by the IDA provides a more expeditious solution for access to Submarine Cable Landing Station - co-location space will be provided within 45 days from the date of a request by a licensee, and a timely provisioning process for Connection Service is stipulated under the RIO.

In order to allow open access and to promote fair competition on international connectivity, SingTel submits that all Submarine Cable Landing Stations should be designated as CSI and the terms and conditions for accessing the Submarine Cable Landing Stations under the IDA audited and approved RIO applied to SingTel should be applied to other Licensees who control Submarine Cable Landing Stations. Those terms and conditions should be used as a basis for any negotiation on accessing Submarine Cable Landing Stations in order to reduce the time needed for interconnection among Licensees. When there is a dispute arises, the terms and conditions of the RIO can be taken as the default dispute resolution mechanism.

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## **9 Section 8 – Abuse of Dominant Position and Unfair Methods of Competition**

### **9.1 Approach to Abuse of Dominant Position should be applied equally to all Licensees**

SingTel submits that the IDA approach to the abuse of dominant position proposed for Section 8 of the Telecom Competition Code should be applied to all Licensees, not just non-Dominant Licensees. The IDA's approach to abuse of dominance for non-Dominant Licensees is to assess dominance on a case by case basis when a particular complaint is made.

Abuse of dominance is a very serious allegation and the IDA should take an open approach to all aspects of its investigation of the allegation and its determination of whether a breach has occurred. SingTel submits that this

should include an open approach to determining whether the licensee is dominant in the market(s) relevant to the allegation.

SingTel does not agree that a Dominant Licensee should have the onus of disproving that it is dominant in the relevant market in circumstances when an allegation of abuse of dominance is made. In relation to all allegations of abuse of dominance, SingTel submits that all operators should have the equal opportunity to rebut an allegation and there should be no presumptions of dominance.

## **9.2 Approach to market definition and consistency across Sections 2 and 8 of the Telecom Competition Code**

If the IDA chooses to retain its approach to allegations of abuse of dominance, SingTel believes that there should a degree of consistency should apply to the IDA's approach to dominance in Section 2 and Section 8 of the Telecom Competition Code.

SingTel has been concerned for a long period that dominance should not be determined on a "licensed entity" approach, but on a market-by-market approach. Similarly, StarHub is concerned in respect of Chapter 8 that there may be a finding of dominance at the time of an abuse of dominance allegation, which leads to uncertainty.

SingTel submits that SingTel's concerns in relation to Section 2 and StarHub's concerns in relation to Chapter 8 could be addressed by the IDA conducting a market study through which it would define the relevant markets in Singapore. This is similar to the approach taken in Europe where markets are defined for the purposes of National Regulatory Agencies applying those markets in their jurisdictions to determine whether an operator has significant market power.

For the purposes of Section 8, this approach would provide all operators with certainty at least as to the boundaries of the markets in Singapore. Operators would then have more certainty about whether they are dominant in those markets or not (or whether they have the ability to rebut dominance).

These markets could then be used for assessing dominance in those markets under Section 2. SingTel believes this is an effective way of addressing all operators concerns and provides a greater degree of consistency across Sections 2 and 8 of the Telecom Competition Code.

## 10 Other issues

### 10.1 Timing of Triennial Review

SingTel continues to be concerned about the timing of the Triennial Review. Over the past 10 years, there have been only two reviews of the Telecom Competition Code – instead of at least the required three reviews. This means the regulation in Singapore is not updated regularly and updates in best practice regulation are missed.

In circumstances where the NGNBN will have a significant effect on the market structure in Singapore, SingTel submits that another 5 years is far too long for a further review of the Telecom Competition Code. This would mean no adjustment to regulation under the Telecom Competition Code until 2015.

SingTel again submits that the IDA should conduct more regular reviews which are completed within 3 years since the last review. Alternatively, the IDA should consider undertaking mid-term reviews where the next Telecom Competition Code review is not completed for another 5 years until 2015.

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## 11 Conclusion

SingTel thanks the IDA for the opportunity to provide further comments on the Telecom Competition Code review. SingTel submits that with further enhancements, certainty and consistency of regulation across the Telecom Competition Code could be improved.

Further, SingTel considers that other refinements such as a proper review of the IRS and MWS will benefit competition and ultimately end users in Singapore.