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

Submission by the StarHub Group to the Info-communications Development Authority of Singapore

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1. General

StarHub welcomes the opportunity to provide feedback on IDA's proposed changes to the Code of Practice for Competition in the Provision of Telecommunication Services ("the Code").

We believe that the Code plays an important role in ensuring a sustainable, viable and competitive telecommunications market in Singapore. Therefore any changes to the Code must take into account the long-term impact on the market.

While StarHub supports a regular review of the Code, we are concerned with the changes proposed in the Consultation Paper that would:

- Allow Non-dominant Licensees to be found to have Significant Market Power ("SMP") and to have acted anti-competitively. We believe that such an amendment is unwarranted and would create significant uncertainty within the industry; and

- Restrict a Licensees' ability to terminate services to a customer who has already breached the terms of a contract with the Licensee. Such a restriction would significantly increase the risks faced by Licensees (and their staff) in serving such customers.

StarHub is pleased to provide our comments on IDA's specific questions in the following section.

2. Specific Responses

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.

StarHub agrees with the Consultation Paper that, in markets where facilities-based competition has proven difficult or infeasible, it may be necessary for IDA to give equal consideration to services-based competition. For example, with the implementation of the Next Generation National Broadband Network ("NGNBN"), and the Government subsidies that will be provided to the NGNBN entities, it may be difficult for third parties to compete with the NGNBN on a facilities or infrastructure-based level. Services-based competition may be the only form of competition that is sustainable in the long-run in some markets.

In considering which markets IDA should take a more proactive approach in promoting services-based competition, StarHub would make the following points:

- It will be important for IDA to carry out a market-by-market review of competition in the Singapore telecoms sector. This review should be accompanied by detailed industry consultation. As the Consultation Paper has already noted, some markets (such as the cellular mobile market) are already subject to active facilities-based competition. In such markets, there is no obvious need to promote services-based competition.

- In markets where facilities-based competition has proven difficult or infeasible, it should not be an automatic presumption that services-based competition should be promoted in its absence. Rather it is necessary to look at why facilities-based competition has failed, and to look at the steps that can be taken to rectify if.

  Example: It would be generally accepted that facilities-based competition in the domestic leased circuit market is currently very limited, outside of those areas served by StarHub's network, primarily due to the cost of deploying new ducting and trenching infrastructure. However, if entrants could get access to the incumbent's existing ducting and trenching network (on a true LRAIC basis), this would promote facilities-based competition in the domestic leased circuit market. In such cases, attempting to promote services-based competition may well be inappropriate.

- Where it is determined that facilities-based competition has proven difficult or infeasible, and that remedial steps cannot be taken to rectify that situation, IDA's primary mechanism for encouraging services-based competition is through SingTel's Reference Interconnection Offer ("RIO"). While the charges set out in the RIO have a major impact on the viability of services-based competition, the impact of the terms and conditions in RIO on the viability of services-based competition should not be underestimated.

  Example: StarHub has sought on several occasions to lease Tail Lease Circuits and Line-Sharing Services under RIO. Unfortunately, the terms and conditions associated with those services (such as the lack of information on line quality in the case of Line Sharing) have effectively prevented StarHub from using those services as part of a StarHub retail service. Simply regulating the price of the service - by itself - will not ensure the viability of services-based competition.

In short, StarHub appreciates that certain markets would benefit from a more proactive approach in promoting services-based competition. However, care will be needed in identifying those markets and determining the correct measures to implement.

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

StarHub supports IDA's proposal to maintain the current "licensed entity" approach for the classification of a Licensee as Dominant. As IDA has correctly pointed out, in recent years, SingTel has successfully sought exemptions from a number of Dominant Licensee obligations, indicating that the current "licensed entity" approach has not unreasonably restricted SingTel ability to obtain relief from the Code's obligations. We therefore agree with IDA's assessment that a "market-by-market" approach will not yield significantly different results from the current approach.

StarHub would also note that, under the framework of the NGNBN, the Network Company ("NetCo") is currently designated as a Dominant Licensee. NetCo will be rolling out a nationwide network that is funded and supported by the Government. This gives NetCo a significant advantage over other Licensees. While NetCo may not have SMP from the onset, it would however, have a considerable advantage over other Non-dominant Licensees in terms of a lower cost structure and a ubiquitous network. Given the structure of the NGNBN, we believe that NetCo will quickly achieve SMP status, and StarHub therefore supports IDA's presumption that NetCo should be designated a Dominant Licensee. StarHub also supports IDA's position that NetCo can seek exemption from Dominant Licensee obligations in those markets where the application of such obligations is not necessary.

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.

StarHub believes that the Code should set out a clear and stable set of principles for Licensees to follow. Several of the proposed amendments to the Code appear to be a reaction to specific events in the market (events which already appear to be covered by existing provisions of the Code). As such, StarHub has some concerns with some of the proposed amendments.

StarHub's comments on the proposed changes to Part IV of the Code are set out below.

(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

It is important to note that Licensees already have a strong financial incentive to provide services to their customers, and that the termination of services to any customer will always be a "last-step" measure. However, the ultimate right of any Licensee must be the ability to choose who it provides services to.

StarHub is concerned that the proposed restriction on termination rights will unreasonably restrict the commercial flexibility of Licensees, and will increase the risks that they and their employees face.

As can be seen from StarHub's contract terms[1], there are a number of very valid reasons why it may be necessary for a Licensee to suspend or terminate services to a customer. Suspension or termination may be necessary:

- If a customer is likely to create imminent harm to the StarHub network (or the networks of a third party or parties);

- If a customer harasses or is abusive to StarHub personnel;

- If a customer becomes, or threatens to become, bankrupt or insolvent; or

- If a customer fails to make due payment to StarHub companies.

These measures are sensible, straight-forward, and widely practiced. It is therefore entirely logical that if a customer acts in such a way as to cause a suspension or termination event, the Licensee should have the right (whether exercised or not) to suspend or terminate the customer's other services. For example:

- If a customer physically threatens an employee of StarHub Mobile, given the risk that the customer presents, StarHub should be able to terminate that customer's broadband contract with StarHub Online Pte Ltd. We should not have to delay the termination of that contract until the customer threatens the staff of StarHub Online Pte Ltd.

- If a customer contracts with two StarHub entities, and then creates harm to one of StarHub network, StarHub should have the ability to terminate or suspend the other services the customer takes from StarHub. If StarHub is restricted from terminating other services to that customer, and the customer is free to harm other StarHub networks, this would represent an unreasonable risk to StarHub and our customers (who may be impacted by the customer's actions).

- If a customer refuses to pay amounts owed to a StarHub company, this is a clear indicator that the customer will subsequently refuse to pay amounts due to other StarHub companies. As a commercial entity, StarHub must have the ability to manage its risk, and to decline to serve those customers who have defaulted on payments legitimately owed to other StarHub companies.

If the proposed amendment is made to the Code, this will only benefit those customers who breach their contract terms. This proposed amendment would increase costs for Licensees and the risks faced by their staff. The proposed measure would not benefit the telecoms sector or the overwhelming majority of telecoms customers who comply with the terms of their contracts. It is

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[1] Please see paragraph 17 of StarHub's general terms and conditions, at:
http://www.starhub.com/portal/site/StarHub/menuitem.7143cf2791b7fd9a90e09a608324a5a0/?vgnextoid=4cf6695dcbd60110VgnVCM100000464114acRCRD&vgnextrefresh=10c30948064d50110VgnVCM100000464114acRCRD

unclear why the Consultation Paper is seeking to benefit those parties who deliberately breach their contracts.

We would highlight that the ability of a party to terminate a contract if the other party is in breach of a separate agreement is by no means unique to the telecommunications sector. For example, the concept of "cross default", in which a borrower can be found to be in default of one loan agreement if that borrower defaults on another agreement, is universally accepted in the finance sector. The finance sector recognizes that: (i) a party who is willing to breach one contract may well represent an unacceptable risk – thereby necessitating the termination of other contracts that customer might have; and (ii) the threat of cross default can be an important factor in ensuring the customer's compliance with the agreed contract. Given that cross default procedures are common across the economy, and that IDA has highlighted the need "*ensure consistency with other economic sectors*", it is unclear why this amendment has been proposed to the Code.

StarHub would note that we face vigorous and effective competition in all of the markets in which we operate. StarHub is not a monopoly in any of its markets, and any customer subject to suspension or termination has the clear ability to take services from another operator. StarHub's use of suspension or termination provisions in its contracts will in no way block a customer's access to any service.

On the issue of competition, we would note that the Consultation Paper justifies the proposed amendment on the grounds that a Licensee could leverage "*on its relationship with the End User in one telecom market to affect the provision of services in a separate telecom market.*"[2] Clearly, such "leveraging" would only be an issue if the Licensee possesses SMP in either the leveraged or leveraging market. As StarHub lacks market power in all of the retail telecommunications markets in which it operates, StarHub clearly lacks any ability to "leverage", and the justification for this propose amendment is flawed.

StarHub therefore believes it is essential from Licensees to be able to terminate an EUSA, or suspending the provision of telecom service, if a customer has breached terms and conditions in a separate EUSA. We believe that this is sound, cross-sectoral, best practice.

(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

StarHub understands that this issue arose from customer complaints in regard to the actions of a third-party Licensee. StarHub would note that:

- Section 3.2.2 of the Code already provides that *"Prior to providing any telecommunication service to an End User, a Licensee must disclose to that End User the prices, terms, and conditions on which the Licensee provides such telecommunication service. In addition, a Licensee must also publish, in a form available to the public, the prices, terms, and conditions of its standard telecommunication services. The information must be published in a manner that is readily available, current and easy-to-understand";* and

- Section 3.3 of the Code already provides that *"The End User Service Agreement must provide that the End User will not be required to pay for any telecommunication service that the End User did not consent to receiving"*

[2] Para 21, Page 6 of the Consultation Paper.

StarHub in no way condones the use of misleading (and possibly fraudulent) "opt-out free-trial" services. We would encourage IDA to take swift action against any Licensee attempting to offer such services. However, we would question the need to introduce additional regulatory measures specifically against such services. The Code already obliges Licensees to disclose their contractual terms in an "*easy-to-understand manner*", and prohibits Licensees from collecting charges for any service the customer did not agree to receive.

StarHub would respectfully suggest that the existing provisions of the Code are already sufficient to address the "opt-out free-trial" services described in the Consultation Paper.

(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

While StarHub supports this proposal, we believe that the Code should identify the mode in which such reminder notices can be provided. StarHub believes that it should suffice for the reminder notice to be included in the customer's monthly bill.

We also believe that Licensees should be allowed to send reminder notices to customers up to 30 calendar days before the end of the free trial period. This will facilitate the inclusion of reminder notices in the customers' monthly bills. StarHub believes that there is no need to limit the timeframe to 10 working days and that it is more feasible to allow customers more time to make a decision and/or to find out about the services/charges. Further, any charges imposed will only be effective from the end of the trial period, notwithstanding that the customer may have informed the Licensee of his decision much earlier. Therefore allowing a longer timeframe for the sending of reminder notices will not be detrimental to the effectiveness of IDA's proposal.

(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.

As noted above, we submit that the existing provisions of the Code already provide sufficient safeguards against the "opt-out free-trial" services described in the Consultation Paper.

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 provide 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.

Generally, StarHub has no objections to IDA's proposal to extend the review period by up to 21 days in cases where additional information or clarification is required. However, StarHub asks that, in situations where any extension of the review period may adversely impact the relevant Licensee's commercial interests, IDA will be able to conversely expedite the review and refrain from or shorten the extension period.

In addition, StarHub also has no objections to the removal of radio towers and tower sites from the list of IRS, and to maintain the rest of the IRS and MWS.

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.

StarHub is concerned by the proposed change, as we believe it will lead to uncertainty and disputes within the sector.

The existing Code makes a clear distinction between the obligations of Non-dominant and Dominant Licensees. The Code further presumes that Non-dominant Licensees do not have the market power to impede competition. The Code, in Section 2.3, also contains provisions in which Non-dominant Licensees can be reclassified as Dominant, if market conditions so require. These provisions provide Licensees (Dominant and Non-dominant) with clear guidelines as to their obligations and the boundaries within which they can price and market their services. StarHub believes that such clarity is important for the development of sustainable competition and innovative services and pricing packages.

With the change proposed in the Consultation Paper, Non-dominant Licensees will no longer be certain whether they will be found to have SMP, and therefore whether they should refrain from certain methods of competition. The definition of SMP under the Code is "*the ability to unilaterally restrict output, raise prices, reduce quality or otherwise act, to a significant extent, independently of competitive market forces*".[3] StarHub would note that there is no comprehensive definition for SMP, and therefore Licensees are not in the position to determine whether they are indeed in breach of the Code until after IDA has initiated an enforcement action against them. Businesses need certainty in their legal and regulatory framework as a basis for their operations. The proposed change would remove this element of certainty, making business operations more difficult.

In addition, it is costly for Licensees to conduct regular internal assessments of dominance, this impedes business efficiency and increases costs in a manner that may be potentially prohibitive for Licensees.

The proposed amendment will also create uncertainties within the Code. For example, the proposed amendment will allow Licensees to be determined to have SMP, even if they are not classified as Dominant. However, Section 2.3 of the Code already sets out a procedure to be followed in which Non-dominant Licensees, who are found to have SMP can be reclassified as Dominant. If processes already exist in which Non-dominant Licensees can be found to have SMP, and can be reclassified as Dominant, it is unclear why the proposed amendment is needed.

The Consultation Paper is entirely correct in that SingTel's repeated requests from sub-section 8.2 have *"caused considerable concern in the industry"*.[4] However, we would respectfully note that the industry's concerns relate to the exemptions that have been granted to SingTel, rather than to issues related to SMP by Non-dominant Licensees. The proposed amendment would in no way address the concerns raised by the industry in regard to the grant of market-specific exemptions to Dominant Licensees. Rather, the proposed amendments would increase the uncertainty for Non-dominant Licensees, and would increase dissatisfaction with this element of the Code.

StarHub submits that such uncertainty is detrimental to competition and works against the stated objectives of the Code. StarHub would not support this amendment to the Code.

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[3] Section 1.9(t) of the Code.

[4] Para 37, Page 10 of the Consultation Paper.

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

StarHub has no objections to IDA's proposed changes to the Code in relation to Requests and Consolidation Applications.

Other Matters

The Consultation Paper has referred to the need to "*align with best practices and ensure consistency with other economic sectors*".[5] We believe that alignment is particularly needed in regard to the Competition Act. It is unclear why measures such as the private right to action should form an integral element of the Competition Act, but are entirely absent from the Code and the Telecommunications Act.

We note the statement in the Consultation Paper that "*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 and the Competition Commission*".[6] Unfortunately, no indication is given as to whether such a review is underway, and (if it is) what the timeline would be for any of this work.

StarHub would respectfully submit that, regardless of the eventual review of the sectoral carve-outs from the Competition Act, it is important for regulators to work to align the Codes and legislation they operate under with the Competition Act.

[5] Para 41, Page 11 of the Consultation Paper.
[6] Para 48, Page 13 of the Consultation Paper.

3. Conclusion:

It is beyond question that the Code forms a critical element in Singapore's telecommunications regulatory regime. The Code, through the establishment of clear and stable principles, clearly enunciates the behaviors that are (and are not) acceptable for Dominant and Non-dominant Licensees in Singapore. In this way, pro-competitive behavior can be encouraged, and stability in the sector can be promulgated (thereby encouraging investment).

StarHub has no objections to the Consultation Paper's proposals in regard to such matters as maintaining the current "licensed entity" approach for the classification of a Licensee as Dominant, and the proposed timeframes for the Requests and Consolidation Applications. We believe that these proposals are warranted and will support the growth of the sector.

However, we also believe that the proposed amendments to restrict the ability of Licensees to terminate services, and to allow Non-dominant Licensees to be found to have SMP, require reconsideration. StarHub submits that these proposals would restrict the commercial flexibility of Licensees, increase the risks they face, and amplify the uncertainty in the sector. These amendments would therefore be detrimental to the development of the sector, and contrary to IDA's stated objective of establishing an infocomm market "*that attracts foreign investment and sustains long-term GDP growth*".[7]

StarHub is grateful for the opportunity to comment on this matter.

StarHub Ltd
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[7] Please see IDA's homepage at: http://www.ida.gov.sg/About%20us/20060406102431.aspx