



**CONSULTATION PAPER ISSUED BY
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**SECOND PUBLIC CONSULTATION ON THE
SECOND TRIENNIAL REVIEW OF THE CODE OF PRACTICE FOR
COMPETITION IN THE PROVISION OF TELECOMMUNICATION SERVICES**

23 November 2009

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CONSULTATION DOCUMENT

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

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PART I: INTRODUCTION

- 1 On 12 November 2008, IDA initiated the second triennial review of the Code of Practice for Competition in the Provision of Telecommunication Services (“the **Code**”) with a public consultation on the broad areas of the Code that could be fine-tuned.
- 2 At the close of the public consultation on 30 December 2008, IDA received comments from three parties, namely Singapore Telecommunications Ltd (“**SingTel**”), StarHub Ltd (“**StarHub**”) and MobileOne Ltd (“**M1**”). IDA thanks the commenters for their comments.
- 3 The comments addressed a wide spectrum of issues. While the commenters mostly addressed the proposals provided in IDA’s consultation document, they raised some additional issues for IDA’s consideration.
- 4 Following the close of the consultation period, IDA began a thorough review process, giving extensive consideration to the views and proposals contained in each of the submissions. Having taken into consideration IDA’s policy objectives, as well as the views from the commenters, IDA has drafted a revised version of the Code (the “**Proposed Revised Code**”), which is now released for public comments.
- 5 The next section summarises IDA’s position on the key issues raised in the first public consultation and explains the rationale behind IDA’s proposals for the Proposed Revised Code. In addition to these issues, IDA has also made several further modifications to improve the clarity and organisation of the Code.

PART II: IDA'S POSITION ON KEY ISSUES IN PROPOSED REVISED CODE

SECTION 1 - Regulatory Principles

Promotion of Services-Based Competition

- 6 In the first public consultation, IDA proposed modifying the regulatory principle in Sub-section 1.5.3 of the Code to provide that IDA will give equal emphasis to promoting services-based competition in *markets where facilities-based competition has proven difficult or infeasible*. In such markets, IDA explained, the promotion of services-based competition is important to ensure that consumers benefit from the availability of competitive and innovative services and applications. As an example of this approach, IDA cited how, in catalysing the development of the Next Generation Nationwide Broadband Network ("**Next Gen NBN**"), IDA had put in place regulatory requirements that will allow competing operators open access to the Next Gen NBN's underlying infrastructure and wholesale bandwidth services, thereby allowing services-based operators to compete at the retail level.
- 7 In their responses, SingTel and M1 cautioned against giving equal emphasis to facilities-based and services-based competition. They argued that promoting facilities-based competition will provide the best means of achieving sustainable competition in the long term and create incentives for operators to invest in infrastructure. Even so, M1 acknowledged that regulatory measures, such as ensuring open access across the entire Next Gen NBN, are needed to address competitive issues in certain markets. StarHub, by contrast, noted that certain markets would benefit from a more pro-active approach in promoting services-based competition. Nevertheless, it emphasised that care will be needed in identifying those markets and determining the correct measures to implement.
- 8 IDA wishes to clarify that it is not proposing to *abandon* or *alter* its current policy, which seeks to promote facilities-based competition and, instead, adopt a policy that views services-based and facilities-based competition as equally beneficial. Rather, IDA proposes to modify the current language in the Code to *clarify* IDA's long-standing policy of "tak[ing] resolute measures to promote and maintain effective and sustainable competition."¹
- 9 IDA has consistently believed that effective and sustainable competition will be best achieved through facilities-based competition. For example, in the mobile market, IDA has encouraged facilities-based competition by requiring each mobile operator to achieve nationwide coverage for its network. Because this approach has proven effective, IDA does not intend to depart from this policy.

¹ Code 2005 Sub-section 1.5.2.

- 10 Nevertheless, while IDA has placed primary emphasis on the promotion of facilities-based competition, there have been -- and will continue to be -- specific markets, where ubiquitous facilities-based competition is difficult or infeasible. In such markets, requiring Dominant Licensees to provide access to network elements, or requiring the provision of Mandatory Wholesale Services, can help to facilitate new entry. Over time, new entrants may be able to develop a sufficient customer base to make the deployment of facilities economically feasible. For example, in the International Private Leased Circuits ("IPLC") market, IDA initially required SingTel to offer IPLC as a Mandatory Wholesale Service. As facilities-based competition took root, IDA removed the mandatory wholesale requirement in the IPLC market.
- 11 IDA's position is consistent with international practices. SingTel's reliance on the statement of former European Union ("EU") Competition Commissioner, Mario Monti that *"in the longer term, the regulatory framework should privilege operators which base their competition advantage on building their own infrastructure..."*² is misplaced. In his address, Commissioner Monti actually advocated precisely the kind of balance between services-based and facilities-based competition that IDA has long sought to achieve, stating that:

"To these "purists" supporters of facilities-based competition, which often enjoy a satisfactory market position in at least one Member State, I would like to ask whether they ever considered entering a new market, for example a market in another Member State. I would be curious to know how they would ever enter that market if not by becoming service providers, at least for some time, and by buying access services from the incumbents of those Member States, until they have gained a large enough customer base."

"I agree with those who are concerned about providing the right incentives to new entrants. However I believe that there is not necessarily a contradiction between [services]-based and facilities-based competition. Competition would never be able to develop, in the short term, if entrants were not able to gain access to the incumbent operator's network to start offering services. However, it must also be true that, in the longer term, the regulatory framework should privilege operators which base their competitive advantage on building their own infrastructure, simply because they are those who are likely to best improve the competitive conditions of the market."

² Mario Monti, *Competition and Regulation in the Telecom Industry – The way forward*, Speech/03/604, ECTA Conference, Brussels, 10 December 2003.

- 12 IDA also rejects SingTel's assertion that there is no justification for promoting services-based competition because facilities-based competition is already a reality in Singapore. The fact is, at the present time, SingTel is the *only* Licensee that has deployed a nationwide last-mile telecommunication infrastructure. Indeed, IDA has recently reviewed a large number of markets as part of SingTel's latest exemption request in relation to the Business and Government Telecommunication Services Market, and found that, for some critical markets, most End Users have no alternative to purchasing telecommunication services from SingTel³. As highlighted in IDA's decision in the exemption proceeding, StarHub has not even deployed a ubiquitous infrastructure in the Central Business District ("CBD"), much less a nationwide network as SingTel has claimed. While the Next Gen NBN will eventually provide a competitive nationwide infrastructure, the network is yet to be fully deployed at this point.
- 13 In the Proposed Revised Code, IDA therefore proposes to clarify that effective and sustainable competition will be best achieved through facilities-based competition. However, where there are impediments that hamper competing Licensees' ability to deploy facilities, IDA will strike a balance between providing the economic incentives to deploy facilities and taking pro-active measures to facilitate services-based competition.

SECTION 2 - Classification of Licensees

- 14 In the first consultation paper, IDA proposed maintaining the existing "licensed entity" approach for the classification of Licensees as Dominant or Non-dominant. IDA recognises that its approach to classifying a Licensee as dominant differs from the approach used in the EU and some other jurisdictions, which require the regulator to define relevant markets, conduct a market-by-market analysis, and then develop "remedies" in any market in which an operator is found to have significant market power. In Singapore, by contrast, IDA uses a "licensed entity" approach, in which IDA classifies a Licensee as dominant, and requires the Licensee to comply with a number of special Dominant Licensee provisions in all markets in which it provides telecommunication services. However, pursuant to the Code, if a Dominant Licensee is able to demonstrate that continued application of any of those provisions, in a given market, is no longer necessary to protect End Users or promote competition, IDA may grant it an exemption from such provisions.
- 15 StarHub and M1 supported IDA's proposal to maintain the current approach. As StarHub observed, because a Dominant Licensee can obtain an exemption in any market in which competition is effective, a

³ IDA's Decision on SingTel's Exemption Request for the Business and Government Customer Segment and Individual Markets - Issued on 2 June 2009.

“market-by-market” approach would not yield significantly different results from the current approach. SingTel, by contrast, asserted that the current approach leads to over-regulation and is inconsistent with international best practices. SingTel also disagreed with IDA’s assessment that applying a “market-by-market” approach would lead to a level of regulation comparable to the level of regulation that exists today under the “licensed entity” approach.

- 16 As noted in the first public consultation, over the last eight years, in response to SingTel’s four requests for exemption, IDA has already defined and studied numerous telecommunication markets. For example, in 2003, IDA reviewed the wholesale and retail International Telephone Services markets. IDA conducted another review of the retail International Telephone Services market in 2006 and 2007. In 2004 and 2005, IDA studied the competitiveness of 10 additional markets, specifically: Backhaul, Terrestrial IPLC, International Managed Data Service (“**IMDS**”), International IP Transit, Leased Satellite Bandwidth, Very Small Aperture Terminal Service, Digital Video Broadcast-IP, Satellite TV Uplink, Satellite TV Downlink and Satellite IPLC. IDA again reviewed three of these markets -- Backhaul, Terrestrial IPLC and IMDS – in 2008 and 2009. During this review, IDA also assessed the level of competition in the Business Local Telephony Service, Local Leased Circuit and Local Managed Data Service markets.⁴
- 17 Through the exemption process, IDA has relieved SingTel of Dominant Licensee obligations in numerous markets in which IDA has determined that SingTel no longer has significant market power. Thus, while the procedural approach contained in the Code differs from the process that has been adopted in the EU and other jurisdictions, in practice, IDA’s approach leads to substantive results that are fully consistent with international best practices: *ex ante* regulation is not applied in markets that are effectively competitive. At the same time, IDA’s approach has reduced the need for IDA and the industry to engage in costly and time consuming market review exercises in every market -- and, instead, allowed IDA and the industry to focus on those markets that may have shifted from non-competitive to competitive.

⁴ More information about the markets that IDA has reviewed can be found on the IDA website in its assessments of and decisions regarding SingTel’s requests for exemption from Dominant Licensee obligations with respect to the: International Telephone Services Market; International Capacity Services Market; Retail International Telephone Services Market; and Business and Government Telecommunication Services (“**BGTS**”) Market.

Many of the markets that IDA has assessed are consistent with those identified in other jurisdictions. For example, in recent years, Ofcom has studied the following markets: retail narrowband telephony (*i.e.*, analogue and ISDN telephone lines and calls for consumers and businesses), retail and wholesale markets for leased lines, wholesale broadband markets, wholesale mobile voice call termination, wholesale international services, business retail, call termination and wholesale local access.

- 18 Given the effectiveness of the exemption process in removing *ex-ante* regulation in markets that have become effectively competitive, IDA will retain its current “licensed entity” approach for the classification of Licensees as dominant.

SECTION 3 - Duty of Licensees to End Users

Service Termination or Suspension with Prior Notice

- 19 In the first public consultation, IDA proposed revising Sub-section 3.2.4.1 of the Code to prohibit Licensees from terminating an End User Service Agreement (“**EUSA**”) on the grounds that the End User has breached terms and conditions in a separate EUSA. IDA proposed this revision to prevent a Licensee from leveraging its relationship with the End User in one telecommunication market to affect the provision of services in a separate telecommunication market.
- 20 All three commenters objected to this proposal, on the grounds that it is unnecessary and would increase the risks and costs that Licensees face. The commenters observed that Licensees generally regarded termination of an EUSA as a last-resort option, and would do so only after giving the End User adequate notice and time to remedy the breach. StarHub also highlighted that “cross-default protection”, which IDA’s proposal would prohibit, is a common procedure in other sectors.
- 21 IDA has considered the feedback and will allow Licensees to terminate an EUSA on the grounds that the End User has breached terms and conditions in a *separate* EUSA, except where:
- (i) the telecommunication service to be terminated or suspended is a Basic Telephone Service; or
 - (ii) the other EUSA that has been breached is with a different Licensee.
- 22 IDA considers the Basic Telephone Service (as provided by a Public Telecommunication Licensee) to be a critical service that must be made available to any person who requests for it. Hence, such Licensee may terminate or suspend the provision of a Basic Telephone Service only if an End User has breached the terms and conditions of an EUSA specific to the Basic Telephone Service, 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 (in accordance with Sub-section 3.2.4.1 of the Proposed Revised Code), or if the circumstances in Sub-section 3.2.4.2 of the Proposed Revised Code apply. As such, Licensees will not be allowed to terminate the provision of a Basic Telephone Service to End Users simply on the grounds that the End User has breached the terms and conditions in another EUSA.

- 23 In addition, IDA believes that the breach by an End User of one Licensee's (i.e. first Licensee's) EUSA does not provide a sufficient basis to conclude that the End User will breach another Licensee's (i.e. second licensee's) EUSA, and therefore does not provide a reasonable basis for the second Licensee to terminate its EUSA with the End User. For the avoidance of doubt, this includes the scenario where the second Licensee is an affiliate of the first Licensee. In this manner, IDA seeks to achieve a good balance between Licensees' need to minimise the risk of non-payment and End Users' right to obtain service.
- 24 To clarify, a Licensee will however be allowed to suspend the provision of multiple services provided under a single "master" EUSA if the grounds for service termination or suspension are met. A Master Service Agreement (where a user signs up for multiple services under one agreement) would constitute a single EUSA. However, in cases where the single EUSA containing multiple services involves a Basic Telephone Service, the Licensee should continue to offer the End User the Basic Telephone Service. In this instance, the Licensee should offer the End User the option of a separate EUSA for the continuation of the provision of the Basic Telephone Service.

Unsolicited Telecommunication Services and Supply on Free Trial Basis

- 25 In the public consultation, IDA also proposed revising the existing provision in Sub-section 3.3.3 of the Code ("No Charges for Unsolicited Telecommunication Services") to specify that Licensees will not be allowed to provide an unsolicited telecommunication service which requires an End User to actively unsubscribe (i.e., opt-out), failing which the End User is automatically subscribed to, and charged for, the service. IDA further proposed to add that, where the End User has given prior consent to have the Licensee supply a service on a free trial basis for a certain period of time, after which the End User could be charged for the service (i.e., it is a solicited service), the Licensee would be required to provide the End User a reminder notice before the end of the free trial period. The reminder notice would serve to alert the End User that the free trial period is ending so that the End User could choose to cancel the supply of the solicited service. If the End User failed to cancel the service after receiving the reminder notice, the Licensee could begin charging for the service at the end of the free trial period. IDA also proposed to include the prohibition on charging for unsolicited services under Sub-section 3.2 of the Code ("General Duties of All Licensees") in order to better safeguard consumer interests.
- 26 The responses to these proposals were mixed. SingTel contended that the proposals would lead to over-regulation, noting that there are already sufficient guidelines to regulate the offer of services and provide recourse for End Users in respect of mischarging for services or misleading advertisements. It added that there is also no need to

require Licensees to provide a reminder notice before the end of the free trial when the End User had clearly requested for the free trial or was clearly informed about the terms and conditions of the free trial (including its duration) at the point at which the End User signed up. StarHub contended that existing provisions in the Code are sufficient to protect End Users against misleading (and possibly fraudulent) “opt-out free-trial” services so there is no need to amend the provision regarding unsolicited services. StarHub, however, supported IDA’s proposal for reminder notices for solicited services, but opined that it would be sufficient for the reminder notice to be included as part of the End User’s monthly bill. M1 supported IDA’s proposal with respect to unsolicited services, but felt that it was not necessary (and would indeed be onerous for Licensees) to provide such reminder notices for solicited services on a free trial basis. With regard to including the current prohibition against charging for unsolicited telecommunication services under Sub-section 3.2 of the Code, SingTel and StarHub felt that it was unnecessary while M1 supported it.

- 27 For unsolicited services, IDA proposes to retain the obligation set out in Sub-section 3.3 of the Proposed Revised Code, but to clarify in Sub-section 3.2.8 that it is also a general duty that Licensees are prohibited from charging for unsolicited telecommunication services.
- 28 In respect of free trial services, taking into consideration the feedback received, IDA will not set out in the Proposed Revised Code the obligation that Licensees need to provide a reminder notice before the end of the free trial period. IDA notes that a similar obligation to provide reminder notices in respect of free trial goods and services has already been set out in the Consumer Protection (Fair Trading) (Opt-Out Practices) Regulations 2009, which all businesses (including Licensees) will be required to comply with.
- 29 Instead, for free trial services, IDA will clarify in Sub-section 3.2.9 that where a Licensee has provided an End User with telecommunication services on a free trial basis, the Licensee may not proceed to charge the End User for such services after the end of the free trial period unless the Licensee has notified the End User of the date on which the free trial period will end and has obtained the express agreement of the End User to continue the service after the expiry of the free trial on the applicable prices, terms and conditions notified to the End User. In other words, the End User must opt-in for the service, before the Licensee begins to charge him after the end of the free trial. By this, IDA would expect the Licensee to: (a) draw the End User’s attention to the prices, terms and conditions applicable to the service after the free trial; and (b) obtain the End User’s express agreement to continue the service after the free trial by checking or signing against the relevant clause(s) containing the applicable prices, terms and conditions. The Licensee should also not bury the applicable prices, terms and conditions of the service in fine print within a larger EUSA or position them in such a way as to increase the likelihood of the End User

overlooking the applicable prices, terms and conditions. The Licensee could perform the above duties, for example, prior to or at the start of the free trial period. In addition, Licensees are required to allow End Users to opt-out from the service, at any point before or during the free trial period, in which case Licensees are not allowed to charge the End User for the service,

Scope of Licensees' Obligations to End Users Includes the Provision of Equipment Associated with Telecommunication Services

- 30 IDA proposes to clarify that the Section 3 obligations imposed on Licensees in respect of the provision of telecommunication services, should also apply to the provision of equipment associated with such services. This is to ensure that the protection afforded to the End User in respect of a service (such as the obligation to clearly disclose its prices, terms and conditions) also applies to the associated equipment that is offered in conjunction with the service.

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

Tariffing

- 31 In its comments, SingTel suggested that IDA remove Sub-section 4.4 of the Code “in its entirety”. If adopted, this proposal would eliminate Dominant Licensees’ duty to file, and IDA’s procedures for reviewing tariffs for both retail and wholesale services -- even where these services are not subject to effective competition. In support of this proposal, SingTel claimed that tariffing has an adverse impact on product innovation and competition, and is inconsistent with international best practice. SingTel further asserted that “*the fact that the IDA has approved virtually all the tariff filings lodged ... strongly suggests that tariffing approval serves no useful purpose.*” IDA declines to adopt this proposal.
- 32 Contrary to SingTel’s contention, the fact that IDA has generally approved its tariff filings does not mean that the process is unnecessary. As SingTel is well aware, IDA often grants approval that is conditional upon the Licensee modifying certain prices, terms and conditions of the tariff. In any case, the fact that IDA reviews and monitors a Dominant Licensee’s tariffs provides a strong incentive for the Dominant Licensee to propose prices, terms and conditions that are just, reasonable and non-discriminatory.
- 33 IDA believes that the current tariff review process is not unreasonably burdensome: IDA has limited the tariff filing obligation only to Dominant Licensees, and has granted exemptions from the duty to file tariffs for both retail and wholesale services to SingTel in respect of numerous

markets in which SingTel no longer has significant market power. Moreover, IDA has committed to reviewing and issuing a decision within seven working days (shortened to between three to five working days for promotions), which should not significantly delay a Dominant Licensee's ability to offer a new service.

- 34 SingTel's assertion that "*overseas regulators have recently moved to cease tariff regulation*" is also incorrect. While regulators in some jurisdictions have eliminated some forms of *retail* tariff regulations, many countries -- including the majority of EU member states -- continue to require the filing and approval of tariffs for wholesale and retail fixed line services that are not subject to effective competition. Where regulators have lifted retail tariffing requirement, they generally have done so after significantly enhancing *wholesale* regulation and/or making a finding that the retail market is effectively competitive⁵. In many cases, moreover, regulators have retained requirements related to notification, review and publication of tariffs.
- 35 Since IDA continues to believe that the imposition of tariff filing and approval procedures remains necessary in those markets that are not yet effectively competitive, IDA proposes to maintain Sub-section 4.4 of the Code.

SECTIONS 5 and 6 – Interconnection between Licensees and Schedule of Interconnection Related Services and Mandated Wholesale Services

Review Period for Interconnection Agreements

- 36 In the first public consultation, IDA proposed to revise the provisions of the Code governing review of new or modified interconnection agreements. Specifically, IDA proposed that where IDA requests additional information from Licensees within the 21-day review period, IDA – after providing written notice – may extend the review period by up to 21 days after the date on which the Licensees provides the additional information or clarification.

⁵ As SingTel notes, in some jurisdictions, such as the UK and Hong Kong, regulatory authorities have removed tariff obligations even though the incumbent operator continued to have a high market share. However, SingTel fails to note that, in both the UK and Hong Kong, the regulatory authority first found that competition had taken root in the relevant retail market -- largely as a result of wholesale-level regulation that significantly reduces the cost of entry into the retail market. As these regulators recognised, if the incumbent operator were to act anti-competitively, other operators would rapidly enter the market by purchasing wholesale inputs from the incumbent. Therefore, the threat of such entry may be sufficient to constrain the incumbent from acting anti-competitively, thereby obviating the need for regulation. In Singapore, by contrast, as IDA recognised in the BGTS Decision Explanatory Memorandum, IDA's current wholesale regulatory regime -- which provides SingTel with greater flexibility than operators in many other jurisdictions -- has not enabled competitors to enter the retail market easily by buying wholesale input, such as local leased circuits, from SingTel.

- 37 While there were no concerns raised on the said proposal, StarHub requested that IDA expedite the review process to the extent possible. To clarify, IDA will only extend the review period if the parties have not provided IDA with sufficient information to conduct a proper review in the first instance. In cases where the parties fail to provide complete information to IDA within the specified time, IDA may reject the interconnection agreement instead of extending the review period.
- 38 IDA will also make a similar amendment to Sub-section 5.6.2 of the Code. Where IDA requests additional information from Licensees within the 45-day review period in relation to requests for unilateral suspension or termination of an interconnection agreement, IDA – after providing written notice – may extend the review period by up to 21 days after the date on which the Licensees provide the additional information or clarification.

Schedule of Interconnection Related Services (“IRS”) and Mandated Wholesale Services (“MWS”)

- 39 In the first public consultation, IDA proposed to remove radio towers and tower sites from the list of IRS. IDA proposed to maintain the rest of the IRS and MWS because these remain necessary to facilitate market entry.
- 40 While the commenters generally agreed with IDA’s proposal, SingTel contended that IDA should also remove the following IRS from the list:
- (i) Unbundled Network Elements, such as local loops, sub-loops and line sharing;
 - (ii) Access to building MDF distribution frames;
 - (iii) Access to outdoor cabinet distribution frames;
 - (iv) Access to lead-in duct and its associated lead-in manholes;
 - (v) Roof space and co-location space at roof sites; and
 - (vi) Co-location at points of access.

SingTel claimed that there is little or no take-up for the above IRS, and an abundance of alternative supply options for licensees who wish to take up such services. SingTel added that overseas regulators are recalibrating regulation to focus on enduring bottlenecks and called on IDA to do so same.

- 41 In establishing and determining the list of IRS and MWS, IDA uses a “bottleneck test”. Under this approach, IDA will require a Dominant Licensee to offer an IRS/MWS if the service is technically or operationally required to provide a competing telecommunication service, and cannot be replicated, or obtained from a source other than the Dominant Licensee, at commercially reasonable rates. 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. In this regard, it is

still necessary to maintain the list of IRS because the actual level of take-up for various IRS is not the only consideration for IDA in determining whether the obligation for SingTel to offer IRS should be maintained or lifted.

- 42 IDA also disagrees with SingTel's assertion that "*the existence of two competing nationwide wireline networks*" justifies the removal of SingTel's obligation to provide access to local loops, sub-loops and line sharing. As noted earlier in paragraph 12, SingTel's network remains the only pervasive last-mile telecommunication network in Singapore today. IDA, therefore, will continue to require SingTel to provide access to the IRS specified above.⁶
- 43 In terms of the form, IDA will be appending the Schedule of IRS and MWS as Appendix 2 of the Proposed Revised Code, rather than as a separate document as is currently adopted, for the industry's ease of reference.
- 44 IDA is also proposing to amend Sub-paragraph 3.4 of the Schedule of IRS and MWS (now found as Appendix 2 of the Proposed Revised Code) by deleting the words "...with the costs of the link borne by the Services-based Licensee", given that responsibility for the costs of transmission links used for interconnection between Dominant Licensee and a Requesting Licensee is already specified clearly in Sub-paragraph 3.5 of the same document.

SECTION 7 – Infrastructure Sharing

Critical Support Infrastructure

- 45 SingTel also proposed that, pursuant to Sub-section 7.3 of the Code, submarine cable landing stations be designated as Critical Support Infrastructure ("**CSI**"). This would require Non-dominant Licensees that own and operate submarine cable landing stations to provide access, just as SingTel is required to do.
- 46 IDA does not believe it is necessary to determine, at this time, that all submarine cable landing stations should be designated as CSI. Moreover, pursuant to Sub-section 7.4 of the Code, any Licensee may request the right to share an infrastructure controlled by another Licensee. 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.

⁶ Because IDA declines to eliminate SingTel's access requirements, IDA need not consider SingTel's proposal to "grandfather" existing customers of these services.

SECTION 8 – Abuse of Dominant Position and Unfair Methods of Competition

Abuse of Dominant Position in the Singapore Market

- 47 In the first public consultation, IDA proposed to revise the Code to provide that Sub-section 8.2 titled “Prohibitions against Abuse of Dominant Position” apply to any Licensee found to have significant market power in a given market, not just to designated Dominant Licensees. IDA proposed this change in order to ensure that, if a Licensee that is not currently classified as a Dominant Licensee were to obtain significant market power in a specific market, and were to then abuse that market power, the Licensee would be subject to enforcement action under the Proposed Revised Code. IDA further proposed that, consistent with the current regime, a designated Dominant Licensee would be presumed to have significant market power in all telecommunication markets, except in specific markets where IDA had granted it exemptions from Dominant Licensee obligations.
- 48 StarHub objected to IDA’s proposal on the grounds that it would lead to uncertainty because Non-dominant Licensees would not know what conduct was permissible until after IDA initiated an enforcement action against them. StarHub further stated that, if a Non-dominant Licensee obtains significant market power, IDA should promptly reclassify it as a Dominant Licensee, rather than waiting for an enforcement proceeding.
- 49 SingTel objected to IDA’s proposal to presume that Dominant Licensees have significant market power in all markets. Rather, SingTel submitted that *all* allegations of abuse of dominant position should be subject to market analysis to determine whether the accused firm has significant market power in the relevant market.
- 50 In response to StarHub’s concern, IDA thinks it highly unlikely that a Licensee will obtain significant market power -- which is defined as “the ability to unilaterally restrict output, raise prices, reduce quality or otherwise act, to a significant extent, independently of competitive market forces” -- without being aware that it has done so. IDA’s Reclassification and Exemption Guidelines provide clear guidance regarding the factors that IDA considers in assessing whether a Licensee has significant market power. These include: the existence of a high market share, significant barriers to entry, etc. Furthermore, IDA’s proposed process is similar to the process implemented under the general competition law regime where there is no requirement for a competition authority to provide prior notification to an undertaking that it has obtained a position of market dominance. Rather, undertakings must assess their own position in the market and ensure that their conduct is lawful.

- 51 As noted above, IDA's proposed amendment stems from the recognition that a Licensee may not possess significant market power at the point of its licensing -- and therefore, will not be classified as a Dominant Licensee -- but may subsequently acquire and abuse its significant market power. In such cases, there may be a lag between the time at which the Licensee acquires significant market power, and the time IDA reclassifies the Licensee as a Dominant Licensee. During this lag, the Licensee could engage in activities amounting to an abuse of its dominant position. Given the potentially substantial harm to the market that an abuse of dominance may cause, IDA should have the ability to take appropriate enforcement action against such a Licensee, even though IDA has not yet reclassified it as a Dominant Licensee.
- 52 Should IDA find during an abuse of dominance enforcement proceeding that a Licensee does possess significant market power, IDA will then initiate a proceeding to re-classify the applicable Licensee as a Dominant Licensee, pursuant to Sub-section 2.3 of the Proposed Revised Code.
- 53 IDA also disagrees with SingTel's contention that, in an abuse of dominance enforcement action, IDA should not presume that a Dominant Licensee has significant market power. While IDA will *presume* that a Dominant Licensee has significant market power in all telecommunication markets in which it participates, except in specific markets where it has been exempted from all Dominant Licensee obligations as set out in Section 4 of the Proposed Revised Code, the Dominant Licensee will still have the opportunity to rebut this presumption by demonstrating that at the time the alleged abuse occurred, the Dominant Licensee no longer had significant market power in the market in which the alleged abuse occurred.
- 54 In light of the above, IDA will revise the Code to provide that the prohibition against abuse of dominant position in Sub-section 8.2 of the Code applies to any Licensee (including holders of Dealer Licences and Services-based Licensees that do not use Switching/Routing equipment) that is found to have significant market power in the relevant market.

SECTION 10 – Changes in Ownership and Consolidations Involving Designated Telecommunication Licensees

- 55 In the first public consultation, IDA had limited its proposals to the procedural details and timeframes contained in Section 10 of the Code, since revisions to the substantive provisions in this section would first require corresponding changes to the Telecommunications Act.
- 56 Rather than making amendments to this section on a piecemeal basis, IDA is proposing to review and consult on all the proposed changes to Section 10 together in a separate consultation process. Hence, no

changes have been proposed to Section 10 of the Proposed Revised Code at this time. Nonetheless, for the purpose of completeness, the existing Section 10 has been reproduced in the Proposed Revised Code.

Other Issues

Alignment with the Competition Act

- 57 Several commenters advocated aligning the Code with the Competition Act and called for IDA to provide some indication on the presence and timeline for such a review.
- 58 The Ministry of Trade and Industry had earlier indicated that it would review sectoral exclusions under the Competition Act three years after it has been enforced. In the meantime, IDA will consider the extent to which it should align its regulatory framework with the provisions in the Competition Act, during the upcoming review of the Telecommunications Act. Details regarding this alignment, along with responses to comments regarding private right to action and the incorporation of new concepts of “voting power” and “associates” for mergers and acquisitions, will be provided in the upcoming consultation on the Telecommunications Act review. Such changes, if made to the Telecommunications Act, will be correspondingly reflected in the Code where relevant.

Regulatory Review to Take into Account Impending Changes with Next Gen NBN

- 59 Some commenters contended that IDA’s Code review does not sufficiently take into account the impact of the deployment of the Next Gen NBN.
- 60 IDA is mindful of the changes that the Next Gen NBN will bring about, and has already considered its implications on the Proposed Revised Code. IDA believes that the competition principles and procedures contained in the Proposed Revised Code are applicable to any industry structure and technology platform. Therefore, there is no need to fundamentally alter the Code as a result of the implementation of the Next Gen NBN.
- 61 One exception is the interconnection obligations of Licensees contained in Sections 5 and 6 of the Code. The Next Gen NBN Network Company and Operating Company (“**NetCo**” and “**OpCo**” respectively) are required to develop separate Interconnection Offers (“**ICOs**”) for the provision of services on the Next Gen NBN. While IDA has considered incorporating the obligations in respect of the ICOs into the Proposed Revised Code, IDA recognised that the timing of this triennial review of the Code may not be aligned with that of the two

ICOs. Nevertheless, IDA will consider incorporating the two ICOs' obligations into the Code by the next triennial review.

- 62 In the next triennial review, IDA will also consider changes to the market conditions arising from the Next Gen NBN. At that time, IDA will make any necessary modifications to the Code to reflect changed market conditions.

Delays and Adequacy of Triennial Review

- 63 SingTel expressed concern that only two reviews have been conducted during the past nine years since the first version of the Code was issued in the year 2000.
- 64 IDA has met its commitment to review the Code at least once every three years. The first triennial review began in 2003, three years after the first Code was released, with the revised Code issued in 2005; the present review began in 2008, three years after the issuance of the revised Code in 2005. SingTel's suggestion that the second triennial review should have taken place and concluded by 2006, just one year after the issuance of the revised Code in 2005, is not practical. Each Code review involves a rigorous internal review and an external consultation process, which would take time to conclude. Notwithstanding the triennial reviews undertaken by IDA, IDA welcomes the industry to submit any feedback on the Code at any time.
- 65 That said, for the avoidance of doubt, IDA will clarify in the Proposed Revised Code that IDA intends to conduct the next triennial review three years after the effective date of this revised Code.

Manner of Notification

- 66 IDA is mindful of the need to keep all interested parties, including Licensees and End Users, notified of obligations under the Proposed Revised Code, in a timely, efficient and easily accessible manner.
- 67 As part of the Code revision, IDA will remove the requirement within the Proposed Revised Code to publish revisions to the Code in the *Gazette*. Correspondingly, IDA will also remove the requirements within the Proposed Revised Code to gazette any information and decisions issued by IDA pursuant to the Code. IDA will instead publish the relevant information on the IDA website, which would be easier for Licensees and the public at large to access than the *Gazette*.

PART III: PROCEDURES AND TIMEFRAME FOR SUBMITTING COMMENTS

- 68 IDA would like to seek the views and comments from the industry and members of the public on the Proposed Revised Code.
- 69 Parties that submit comments regarding the issues identified in this Consultation Document should organise their submissions as follows:
- (i) cover page (including their personal/company particulars and contact information);
 - (ii) table of contents;
 - (iii) summary of major points;
 - (iv) statement of interest;
 - (v) comments; and
 - (vi) conclusion.

Supporting materials may be placed in an annex.

- 70 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 Proposed Revised Code on which they are commenting. In any case in which a party chooses to suggest revisions to the text of the Proposed Revised Code, the party should clearly indicate the specific changes in language that they propose.
- 71 IDA strongly discourages parties from repeating arguments that have previously been made, and rejected by IDA. Comments should focus on the specific changes proposed in this round of the consultation.
- 72 All submissions should reach IDA **before 12 noon on 18 January 2010**. Comments must be submitted in both hard and soft copy (preferably in Microsoft Word or PDF 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

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

- 75 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.