ASIA PACIFIC CARRIERS' COALITION
(Incorporated in the Republic of Singapore)

8 October 2010

RSN/fbm/308688/00001

Ministry of Information, Communications and the Arts

140 Hill Street #02-03

MICA Building

Singapore 179369

By E-mail & Hand

Attention: Mr Muhd Hanafiah

Dear Sir

Asia Pacific Carriers' Coalition – Submission in response to MICA's Public Consultation on the Proposed Amendments to the Telecommunications Act (Cap. 323)

We refer to the above matter.

Please find enclosed the Asia Pacific Carriers' Coalition's submission dated 8 October 2010 in response to the Ministry of Information, Communications and the Arts' Public Consultation on the Proposed Amendments to the Telecommunications Act (Cap. 323) for your consideration.

We look forward to hearing from you.

Yours sincerely,

Rajesh Sreenivasan

Secretary, Asia Pacific Carriers' Coalition

Enclosures

Asia Pacific Carriers' Coalition
c/o Rajah & Tann LLP
9 Battery Road
#25-01 Straits Trading Building
Singapore 049910

T: +65 6535 3600
F: +65 6225 7725
Email: secretary@asiapacificcarriers.org

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(Incorporated in the Republic of Singapore)

ASIA PACIFIC CARRIERS' COALITION

SUBMISSION IN RESPONSE TO THE MINISTRY OF INFORMATION, COMMUNICATIONS AND THE ARTS' PUBLIC CONSULTATION ON THE PROPOSED AMENDMENTS TO THE TELECOMMUNICATIONS ACT (CAP. 323)

8 OCTOBER 2010

Asia Pacific Carriers' Coalition
c/o Rajah & Tann LLP
9 Battery Road
#25-01 Straits Trading Building
Singapore 049910

T: +65 6535 3600
F: +65 6225 7725
Email: secretary@asiapacificcarriers.org

ASIA PACIFIC CARRIERS' COALITION
(Incorporated in the Republic of Singapore)

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Asia Pacific Carriers' Coalition
c/o Rajah & Tann LLP
9 Battery Road
#25-01 Straits Trading Building
Singapore 049910

T: +65 6535 3600
F: +65 6225 7725
Email: secretary@asiapacificcarriers.org

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STATEMENT OF INTEREST

This submission is provided by the Asia Pacific Carriers' Coalition ("**APCC**") in response to the 27 August 2010 invitation by the Ministry of Information, Communications and the Arts ("**MICA**") to comment on its "Review of the Telecommunications Act (Cap. 323)" ("**Telco Act Review**").

The APCC is an industry association of global and regional carriers operating in Asia-Pacific, formed to work with Governments, National Regulatory Authorities and Consumers to promote open market policies and best-practice regulatory frameworks throughout the Asia-Pacific region, that will support competition and encourage new and efficient investment in telecommunications markets.

APCC submissions reflect the consensus of opinion among at least a majority of its members. Therefore none of the views expressed in this submission should be attributed to any individual member of the APCC.

Asia Pacific Carriers' Coalition
c/o Rajah & Tann LLP
9 Battery Road
#25-01 Straits Trading Building
Singapore 049910

T: +65 6535 3600
F: +65 6225 7725
Email: secretary@asiapacificcarriers.org

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I. SUMMARY OF ISSUES

1. While the APCC supports MICA's stated objective of "...ensur[ing] that [the Telecommunication Act] remains relevant and sufficient to regulate a fast-changing telecoms sector", the APCC is deeply concerned that the Ministry's proposals would, if they were implemented, fail to ensure the TA "remains relevant and sufficient" but rather would be likely to seriously chill future investment in telecommunications in Singapore and lead to economically sub-optimal outcomes.

2. In particular, the proposals to confer on the Minister the power to make "Special Administration Orders" to confiscate an operator's network and the powers to order structural or operational separation of a licensee's operations are quite extraordinary administrative discretions. These proposals would be perceived by public and private sector investors around the world as significantly increasing Singapore's regulatory 'sovereign risk'. This would further deter the third party investment and innovation in communications that the government seeks.

3. The APCC urges MICA not to seek enactment of the draft legislation annexed to the Telco Act Review and instead to initiate an open-minded, comprehensive investigation into, and consultation on, Next Generation Regulation for communications in Singapore.

4. The APCC is under no illusions about the difficult challenges involved in designing regulation that will be apt to achieve Singapore's ambitious communications and IT objectives but stresses that:

   - Deferring such a review and reform by focusing merely on amending the penalties and powers under current-generation regulation carries a substantial risk that Singapore will be left behind by other countries that aspire to be communications hubs; and

   - The countries that are first to implement apposite Next Generation Regulation will reap a substantial first-mover advantage in attracting investment and talent to their communications sectors.

5. A starting-point for such Next Generation Regulation can only be found in the findings of a thoroughgoing review which comprehensively examines the current state of investment and competition in Singapore's telecommunications industry, the performance of Singapore's regulatory institutions up to this point, the future drivers of investment and competition, and regulatory policies and tools calibrated for the future, not the world of legacy switched-circuit technology.

Asia Pacific Carriers' Coalition
c/o Rajah & Tann LLP
9 Battery Road
#25-01 Straits Trading Building
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T: +65 6535 3600
F: +65 6225 7725
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6. In relation to the proposals for increased penalties (i.e. 10% of turnover, licence suspension, COIPIF orders) the APCC does not object to the penalty increases *per se* but submits that such penalties should not be administratively imposed. Rather, the IDA should be authorized to apply to a court of competent jurisdiction to make an order imposing the appropriate penalty. This would be consistent with international best practice.

7. In relation to the proposals for qualifying the rights of PTLs pursuant to TA ss 9, 12, 13, 14, 18 and 70 so that those rights would in future apply only in respect of services that have been "...declared by the Authority, by notification in the *Gazette*, to be a basic telecommunication service" [1] again would expand the administrative discretion of the IDA, causing further uncertainty for licensees, without analysis or evidence sufficient to indicate there is any existing problem.

8. In relation to the proposals for changes to the provisions governing consolidations of licensees, the APCC submits that the continuing relevance and focus of the consolidation provisions themselves is urgently in need of review in the context of technical and commercial convergence worldwide. Merely increasing the scope and complexity of the existing threshold provisions will not positively contribute to ensuring the Telecommunications Act remains relevant and sufficient in a fast-changing environment.

II. SEPARATION AND CONFISCATION POWERS WILL CHILL INVESTMENT

9. The Telco Act Review and Annexed draft *Telecommunications (Amendment) Bill* propose radical new powers for the Minister to order that the management and even the ownership of telecommunications licensees' businesses and property be transferred to third parties, and to order the mandatory operational or structural separation of licensees' operations.

10. These proposals are not accompanied by any rigorous analysis or evidence to demonstrate they would have value in the Singapore context. Instead, their implementation would be very likely to further exacerbate the slow investment in communications infrastructure and services in Singapore that the Government has sought to correct for some time.

11. The effect of enacting either of these powers would be to disadvantage Singapore relative to its regional rivals by increasing the regulatory 'sovereign risk' associated with investing in Singapore, relative to neighbouring jurisdictions that do not confer on officials such radical powers of intervention.

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[1] Draft Telecommunications (Amendment) Bill s 2(a).

Network confiscation power

12. The APCC is especially concerned by the Ministry's proposal to introduce a power for the Minister to make an order directing that "the affairs, business and property of that licensee shall be managed by a person appointed by the Minister".[2] It is alarming to the APCC that such a "Special Administration Order" (SAO) could include provision for "...transfer of the property, rights and liabilities of a specified telecommunication licensee to one or more prescribed transferees".[3]

13. The APCC is not reassured either by the statement in the Telco Act Review that "where feasible, the Minister will refrain from intervention and allow the market to rely on existing regimes" or by the extremely general criteria for making an SAO, which include the catch-all that "the Minister considers it to be in the public interest".[4]

14. Future investment in telecommunications in Singapore would be certain to be chilled by the introduction of a virtually unfettered power of confiscation. If this provision is enacted in Singapore, competing telecommunications hubs will overnight become more attractive as investment destinations.

15. Other developed countries have not found a Ministerial discretion to compulsorily transfer network management or assets to be necessary to protect national security or continuity of supply. The public interest -- without understating its importance -- can appropriately be protected by less radical powers. The Telco Act Review contains no explanation as to why, for example, the Minister's current extensive powers under ss 58 and 69B are insufficient.

Licensee separation power

16. The APCC is also profoundly concerned by the Ministry's proposal to introduce a power for the Minister to make an order directing that the business of an operator must be operationally or structurally separated.

17. This proposed separation power is 'a solution in search of a problem' in the context of the known NGN issues. A tool from the world of legacy switched-circuit telecommunications, it is being proposed without evidence or analysis sufficient to sustain a finding that it is necessary and without conditions restricting its use to circumstances in which it might conceivably be an appropriate remedy. The result is an unjustified power that could be invoked where doing so would be unhelpful to consumers and competition.

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2 MICA *Telecommunications Act Review* para 28 and draft Telecommunications (Amendment) Bill s. 32L(1).
3 Draft Telecommunications (Amendment) Bill s. 32K(1)(a).
4 Draft Telecommunications (Amendment) Bill s. 32J(2)(d).

Asia Pacific Carriers' Coalition
c/o Rajah & Tann LLP
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#25-01 Straits Trading Building
Singapore 049910

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Email: secretary@asiapacificcarriers.org

18. Mandatory separation of a licensee is such an extreme regulatory intervention and involves such complex issues in determining whether circumstances require it, where the boundaries between activities should be drawn, and what rules should apply to activities across those boundaries, that it is virtually impossible to prescribe appropriate criteria in advance of the particular case and inappropriate to require separation by way of a Ministerial order. It should be noted that where separation has been attempted as a remedy in telecommunications, it has entailed extensive negotiation between the government and the incumbent, very detailed legislation (or the threat of such), protracted litigation, or a combination of these.

19. Separation of a licensee should not be sought as an end in itself but only as a means of remedying an identified competition problem in a downstream market:

> In the sometimes heated debate that has surrounded functional separation, it can be forgotten that functional separation is simply a means to an end. That end is to increase the likelihood that discrimination by the integrated firm, with dominance upstream, which damages its downstream rivals and ultimately harms competition and the interests of consumers, will be detected and, therefore, deterred.[5]

20. Separation should only be contemplated as a regulatory remedy, the APCC submits, in circumstances where:

- an operator is engaging in non-price discrimination in a wholesale market with the purpose or effect of substantially lessening competition in that wholesale market or a related retail market;
- the operator has dominant market power in an upstream market;
- there is no reasonable prospect of the emergence of competition in the downstream market; and
- other less intrusive remedies are ineffective to prevent competition being substantially lessened in the affected wholesale market or related retail market.

21. Under draft s 69C, as presently drafted, the Minister could issue a "separation order" where, in summary:

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5 Cadman, R. "Means not ends: Deterring discrimination through equivalence and functional separation" 34 *Telecommunications Policy* 366 - 374 at 366 (2010).

Asia Pacific Carriers' Coalition
c/o Rajah & Tann LLP
9 Battery Road
#25-01 Straits Trading Building
Singapore 049910

T: +65 6535 3600
F: +65 6225 7725
Email: secretary@asiapacificcarriers.org

- The Minister is satisfied that it is in the public interest and either:
- The licensee operates a system or any installation that an efficient competitor could not replicate to rapidly and successfully enter the market; or
- The licensee has significant market power in any market for telecommunications services in Singapore and other licensees require those services and without access to those services an efficient competitor could not provide its own competitive services in Singapore.

22. Specifically, under draft s 69C(1)(a)(i), a separation order could be issued where a licensee operates a system, installation or plant that is "...so costly or difficult to replicate that a requirement to do so would create a significant barrier to rapid and successful entry into the market for telecommunications services..." and the Minister is satisfied that is in the public interest to issue the order. These grounds clearly have no connection to the accepted role of separation, which is to preclude non-price discrimination in downstream markets by businesses which are dominant in upstream markets. Unless the legislation requires proof of upstream market dominance and anti-competitive downstream discrimination, it is apparent that separation could be mandated in circumstances where it would be the wrong remedy to apply.

23. Under draft s 69C(1)(a)(ii), a separation order could issue where a licensee has significant market power "in any market for telecommunications services in Singapore" and other licensees require those services to compete but it is "so costly or difficult to provide the relevant telecommunications services that a requirement to do so would create a significant barrier..." to their competitive provision by the other licensees, and the Minister is satisfied that is in the public interest to issue the order. While the drafting of these provisions does not assist understanding, it appears that they are wide enough to apply where separation might be beneficial but also so wide as to be applicable where separation would in fact be detrimental to competition and consumers. The well-intentioned but over-extensive application of the remedy of separation could be expected to waste a large amount of both the government's and licensees' money and to deter investment and innovation.

24. In particular, the references in draft s 69C(1)(a)(i) to systems, installations or plant that are "so costly or difficult to replicate" and in draft s 69C(1)(a)(ii)(B) to services that are "so costly or difficult to provide" are misplaced. Structural and operational separation are not properly used to facilitate sharing of costly equipment or services. These tests do not correctly identify the core abuse that structural and operational separation are designed to remedy.

25. The criteria set out in draft s 69C, as presently drafted, have a resemblance to certain well-known tests for mandating access to so-called 'essential facilities' and are not apt to define circumstances in which any form of separation should be applied. The s 69C criteria completely fail to capture the essential characteristics of anti-competitive non-price discrimination in a downstream market

Asia Pacific Carriers' Coalition
c/o Rajah & Tann LLP
9 Battery Road
#25-01 Straits Trading Building
Singapore 049910

T: +65 6535 3600
F: +65 6225 7725
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that is made possible by persistent upstream market dominance.

26. The Ministry's case for introduction of a separation order power appears to rest on the perceived incentive of a vertically integrated operator to discriminate against its competitors when providing them with wholesale products.[6] It is essential, however, to recognize that vertical integration is not by itself pernicious. Lafontaine and Slade found in a meta-study of almost 200 vertical integration studies that:

> [U]nder most circumstances, profit-maximising vertical integration decisions are efficient, not just from the firms' but also from the consumers' point of view. Although there are isolated studies that contradict this claim, the vast majority support it. Moreover, even in industries which are highly concentrated so that horizontal considerations assume substantial importance, the net effect of vertical integration appears to be positive in many instances. We therefore conclude that, faced with vertical arrangements, the burden of evidence should be placed on competition authorities to demonstrate that the arrangement is harmful before the practise is attacked.[7]

27. Since vertical integration is extremely common in the telecommunications industry, and since vertical integration normally is efficient, any proposal for separation bears a heavy onus of showing that the competition problems are sufficiently severe and persistent that separation will enhance overall efficiency, notwithstanding the substantial costs that separation involves.

28. Separation can by no means be implemented as quickly or as cheaply as making a Ministerial order implies. Since the purpose of separation is to police the boundary between markets in which the incumbent exercises persistent market power and markets which are competitive, difficult choices of boundary-setting and rule-making are necessarily involved:

> If separation has been chosen as a regulatory measure, then two dimensions of it have to be defined, one structural, the other behavioural. Firstly the separated components (retail, wholesale; monopoly, competitive) have to be defined. Then rules governing transactions over these boundaries have to be established.[8]

29. Separation of carriers is thus not an easy 'cure all' for any lack of competition -- it is appropriate

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6 MICA *Telecommunications Act Review* para 35.

7 Lafontaine, F. and Slade, M. "Vertical Integration and Firm Boundaries: The Evidence" 43 (3) *Journal of Economics Literature* 629-685 (2007). See also Joskow, P. "Vertical Integration" in Menard, C. and Shirley, M.M. (eds.) *Handbook of New Institutional Economics* (Springer, 2008).

8 Cave, M. "Six Degrees of Separation: Operational Separation as a Remedy in European Telecommunications Regulation" (64) *Communications and Strategies* 89-103 (2006) at 92.

to address only the specific problem of downstream non-price discrimination by an operator that is dominant upstream, and requires a vast amount of detailed implementation to make it work. Separation obligations have been imposed on telecommunications operators in only a handful of cases worldwide, have always required voluminous rulemaking to give them effect, and have been resisted and even unwound in leading jurisdictions.

III. TO BEST PROMOTE SINGAPORE'S INTERESTS A 'ZERO-BASE' REVIEW OF TELECOMMUNICATIONS REGULATORY NEEDS IS REQUIRED

30. The deployment of "Next Generation" infrastructure in Singapore not only heralds a new generation of technologies and services, it involves new cost structures, new profit centres, new consumer preferences and new relationships among suppliers. In short, the architecture of the industry and competitive environment is entering its Next Generation also.

31. On the threshold of the worldwide Next Generation competitive environment it would be shortsighted to assume that the regulatory policies and tools which have served many authorities for the regulation of legacy switched-circuit networks ("Legacy Regulation") will continue to be relevant and sufficient in the future.

32. It is greatly to be regretted, the APCC submits, that the IDA did not take the opportunity to comprehensively review the past operation of Legacy Regulation in the context of its recent Second Triennial Review. At that time, the APCC made the following submissions to the IDA:

- The triennial review should provide the opportunity for a systematic assessment of the state of competition across the industry, the failures as well as the successes of regulatory initiatives, the weaknesses as well as the strengths of particular rules, and the changes that should be made to agency methods and objectives in order to better serve the public interest. As executed by the IDA, however, the triennial review appears merely to consider various rule adjustments, without providing a thorough quantitative or qualitative survey of the state of competition in Singapore's telecommunications markets. Nor does the Second Triennial Review examine the beneficial and detrimental effects of the IDA's decisions or the performance of the Code generally over the past three years.

- The main virtue of a triennial review is the opportunity it allows for learning from experience. Unless regulatory experience is thoroughly and openly analysed and debated the learning process will necessarily remain incomplete and the public will be disadvantaged due to the continued application of less than optimal regulation. In the long run, this is likely to detract from Singapore's attractiveness as an investment destination for telecommunications businesses.

[...]

- The APCC believes that an open and systematic review of the state of competition and the effect of regulation in Singapore's telecommunications markets would be highly beneficial by providing a sound basis for the design of future policy and regulation. The review should reveal where and how regulation is *effective* in promoting the development of competition, so that the regime can build on its successes. The review should equally identify where and how regulation is *failing* to promote the development of competition, so that policymakers can take steps to correct shortcomings in the regime.[9]

33. Properly executed, triennial reviews should allow for measurement over time of the effectiveness of different regulatory measures and institutions,[10] to enable incremental learning from experience. Additionally, from time to time a comprehensive, ground-up review will also be required -- and the advent of Next Generation technologies is precisely the occasion, the APCC submits, for such a ground-up review.

34. In framing the purpose of the Telecommunications Act Review in terms of "...ensur[ing] that [the TA] remains relevant and sufficient to regulate a fast-changing telecoms sector",[11] there is a risk that MICA embeds an assumption that the TA does remain "relevant and sufficient" and under-estimates just how fast-changing the sector actually is. Unless and until a comprehensive review is completed, it is not possible to be confident, the APCC submits, that the TA will remain relevant and sufficient, with or without the amendments to powers and penalties that currently are proposed.

IV. COMMENTS ON PARTICULAR PROPOSALS

35. In this section of its submission the APCC responds to the particular questions enumerated by MICA in the Telco Act Review.

Question 1: MICA invites views and comments on the proposal to revise the ceiling for the maximum financial penalty that may be imposed by IDA under section 8 of the TA, for breach of licence conditions, code of practice or standards of performance, or directions, to 10% of the annual business turnover of licensable services, or $1 million, whichever is higher.

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9 Asia Pacific Carriers' Coalition "Response to the IDA Consultation Paper 'Second Public Consultation on the Second Triennial Review of the Code of Practice for Competition in the Provision of Telecommunications Services'" (18 January 2010) available at: <http://www.ida.gov.sg/Policies%20and%20Regulation/20081111104551.aspx>.

10 Kovacic, W.E. "Rating the Competition Agencies: What Constitutes Good Performance?" [2009] 16 Geo. Mason L. Rev. 903 at 924.

11 MICA Telecommunications Act Review para 3.

36. The APCC supports increasing the maximum penalties for breaches of licence conditions, codes of practice, standards of performance and directions to the higher of SGD1 million or ten percent of annual business turnover of licensable services, provided that the maximum penalty that can be imposed by the IDA remains SGD1 million. If, in all the circumstances, the IDA considers that a higher penalty is appropriate, the IDA should have the power to apply to a court of competent jurisdiction for imposition of such greater penalty.

37. In a serious case, a penalty in excess of SGD1 million may be appropriate but it is not appropriate that a financial penalty of up to ten percent of turnover could be imposed by an administrative agency such as the IDA. To ensure fairness it is highly desirable that the IDA should not be investigator, prosecutor and judge, in such serious cases.

38. The correct course, the APCC submits, is for the TA to be amended to give the IDA the power to apply to a court of competent jurisdiction for imposition of a penalty of up to ten percent of turnover. The APCC notes that this approach currently applies in Australia and New Zealand, as well as in the Telecommunications Ordinance and the proposed cross-sector Competition law in Hong Kong.

39. Placing in the courts' hands the responsibility for imposing the most severe financial penalties would ensure that very heavy penalties are in fact available in the most serious cases. Doing so would also assist to ensure that the integrity of the enforcement process is fully protected, including the rights of the licensee that is exposed to sanction. The state would also have available to it the full panoply of further enforcement measures that are available to courts if defendants fail to pay the penalties that have been imposed on them.

Question 2: MICA also invites views and comments on the proposal for IDA to be empowered to suspend or revoke a licence, or to reduce the period for which a licence is to be in force, on a case-by-case basis, in the event of a licensee's failure or refusal to pay a financial penalty under section 8 of the TA.

40. The APCC supports introduction of a penalty of licence suspension or licence revocation for failure or refusal to pay a financial penalty under TA s 8, provided that the IDA should be required to apply to a court of competent jurisdiction to impose such penalties.

41. In the event of a failure or refusal to pay a financial penalty, suspension or revocation of licence might be an appropriate sanction but it is not appropriate that a penalty having such serious consequences for the licensee and its customers could be imposed by an administrative agency such as the IDA. To ensure fairness it is highly desirable that the IDA should not be investigator, prosecutor and judge, in such serious cases.

Asia Pacific Carriers' Coalition
c/o Rajah & Tann LLP
9 Battery Road
#25-01 Straits Trading Building
Singapore 049910

T: +65 6535 3600
F: +65 6225 7725
Email: secretary@asiapacificcarriers.org

42. The correct course, the APCC submits, is for the TA to be amended to give the IDA the power to apply to a court of competent jurisdiction for an order suspending or revoking a licence in the event of the licensee, without lawful excuse, failing or refusing to pay a financial penalty that has properly been imposed under TA s 8. Such a procedure would ensure that the integrity of the enforcement process is fully protected, including the rights of the licensee that is exposed to possible loss of its licence.

Question 3: MICA invites views and comments on the proposed modifications to PTL rights and the consequential amendments to sections 9, 12, 13, 14, 18 and 70 of the TA.

43. The APCC is concerned that the proposal to qualify the rights of PTLs pursuant to TA ss 9, 12, 13, 14, 18 and 70 so that those rights would in future apply only in respect of services that have been "...declared by the Authority, by notification in the *Gazette*, to be a basic telecommunication service" [12] again would expand the administrative discretion of the IDA, causing further uncertainty for licensees, without analysis or evidence sufficient to indicate there is any existing problem.

Question 4: MICA invites views and comments on the proposal for IDA to be given the power to issue written orders to building owners/developers to require compliance with the COPIF as proposed in section 19 of the TA.

44. The APCC supports the proposal that the IDA be given the power to issue to building owners or developers with written orders requiring compliance with the COPIF, as proposed in draft subsection 19(7).

Question 5: MICA invites views and comments on the proposal to incorporate new concepts such as "voting shares", "voting power", "associates", business trust and trust, and the strengthened penalty framework in Part VA of the TA.

45. The APCC is concerned that the proposed amendments to Part VA of the TA would merely add further complexity to provisions of the Act that are not working well to protect competition and consumers in Singapore

46. The question of how best to manage the risk of aggregations of control of telecommunications operators (whether by way of ownership interests, voting control, trusts or otherwise) would be best addressed as part of a comprehensive review aimed at development of Next Generation Regulation for Singapore.

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12 Draft Telecommunications (Amendment) Bill s 2(a).

Asia Pacific Carriers' Coalition
c/o Rajah & Tann LLP
9 Battery Road
#25-01 Straits Trading Building
Singapore 049910

T: +65 6535 3600
F: +65 6225 7725
Email: secretary@asiapacificcarriers.org

47. The comprehensive review of regulatory aims and means should consider, for instance, whether it remains effective to examine the effects of concentrations when, and only when, they involve crossing arbitrarily specified ownership thresholds (e.g. 5 percent, 12 percent or 30 percent of voting shares[13]). The current consolidation provisions are needlessly complex, and in some cases involve licensees and the IDA in notifying and examining transactions that pose no conceivable risk to competition in Singapore.

48. The APCC considers there is considerable scope to simplify the consolidation provisions of the TA and thereby economize on both public and private sector expenditure of money and effort. The telecommunications consolidation provisions should be brought into line with internationally accepted merger review standards, as is proposed in Hong Kong, for example. The Competition Bill currently before Hong Kong's Legislative Council would repeal current s 7P of Hong Kong's *Telecommunications Ordinance*, which requires consideration of the effects on competition of "changes of control" that exceed specified thresholds, and enact instead a rule prohibiting any acquisition of a carrier licensee that "has, or is likely to have, the effect of substantially lessening competition in Hong Kong".[14]

49. The review should also consider whether it is optimal for the IDA to continue to have responsibility for reviewing the effects on competition of mergers and acquisitions in the telecommunications sector or whether the Competition Commission of Singapore should instead have that responsibility. As the Competition Commission already has reviewed more mergers than the IDA has,[15] it might be appropriate for the IDA to have the power to refer telecommunications transactions to the Competition Commission and for the Commission to review their effect on competition in Singapore, having regard to any submissions made by the IDA and other parties.

50. The review should also consider legislation for a fast-track clearance procedure for appropriate merger and acquisition transactions. APCC members' experience suggests that the current "short form" consolidation notification process is not substantially simpler or faster than the "long form" consolidation notification process. Yet experienced regulators are able to discriminate quickly between transactions that raise no competition concerns and those that require further investigation. The TA should provide, the APCC submits, for fast-track clearance of transactions that do not raise competition concerns, to reduce the agency's costs and avoid causing unnecessary cost and delay to licensees.

51. Pending the outcome of a comprehensive regulatory review, the APCC submits, it would not be

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13 *Telecommunications Act* (Cap. 323) s 32B.

14 Telecommunications Bill (Hong Kong), Sch. 7, para. 2.

15 [Andrew will insert relevant numbers.]

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c/o Rajah & Tann LLP
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#25-01 Straits Trading Building
Singapore 049910

T: +65 6535 3600
F: +65 6225 7725
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beneficial or timely to compound the complexity of the existing consolidation provisions of the TA by amending them in the manner proposed.

Question 6: MICA invites views and comments on the proposal to provide the Minister with the power to make Special Administration Orders under the newly introduced Part VB in the TA.

52. The APCC is opposed to the proposal to provide the Minister with the power to make Special Administration Orders under draft Part VB, for the reasons set out above, at paragraphs [10 to 15] of this submission.

Question 7: MICA invites views and comments on the proposal to provide the Minister with the power to require structural or operational separation under the newly introduced section 69C in the TA.

53. The APCC is opposed to the proposal to provide the Minister with the power to require structural or operational separation under draft s 69C, for the reasons set out above, at paragraphs [16 to 29] of this submission.

Numbering Resources and Licensing of Satellite Orbital Slots

54. The APCC is supportive of MICA's proposal to issue regulations governing the number allocation framework under revised section 74 of the TA, provided that the MICA undertakes proper consultation with stakeholders on the proposed regulations and has due regard to views and comments received in the course of consultations.

55. The APCC is supportive of MICA's proposal to clarify the IDA's powers with regard to the licensing of satellite orbital slots under draft section 5B of the TA.

56. In regard to proposed amendments to TA ss 2, 7, 21, 26, 27 and 29 "for housekeeping issues and to ensure consistency in legislative language", the APCC has no views or comments.

V. CONCLUSIONS

57. Having made very substantial efforts to promote Singapore's further development and success through the Next Generation Nationwide Broadband Network (NGNBN), it is timely for Singapore now to thoroughly review its telecommunications regulatory regime and institutions, from the ground up. To ensure the success of the NGNBN and to attract investment and talent to

its communications industry, Singapore should now put in place a regime of Next Generation Regulation.

58. While the APCC supports MICA's stated objective of "...ensur[ing] that [the Telecommunication Act] remains relevant and sufficient to regulate a fast-changing telecoms sector", the APCC is deeply concerned that MICA's proposals would, if they were implemented, fail to ensure the Act "remains relevant and sufficient" and would in fact seriously chill future investment in telecommunications in Singapore.

59. In particular, the proposals to confer on the Minister the power to make "Special Administration Orders" to confiscate an operator's network and the power to order structural or operational separation of a licensee's operations are quite extraordinary administrative discretions which would be perceived by public and private sector international investors as increasing the regulatory 'sovereign risk' involved in investing in Singapore and hence will further deter investment in communications.

60. The APCC urges MICA not to seek enactment of the draft legislation annexed to the Telco Act Review and instead to initiate an open-minded and comprehensive investigation into, and consultation on, Next Generation Regulation in Singapore. Difficult challenges are involved in designing regulation that will be apt to achieve Singapore's ambitious communications and IT objectives but deferring such a review and reform by focusing merely on amending the penalties and powers under current-generation regulation carries a substantial risk that Singapore will be left behind by other countries that also aspire to be regional communications hubs.

61. The countries that are first to implement apposite Next Generation Regulation will enjoy substantial first-mover advantages in attracting investment and talent to their communications sectors.

62. A starting-point for such Next Generation Regulation can only be found in the findings of a thoroughgoing review which comprehensively examines the current state of investment and competition in Singapore's telecommunications industry, the performance of Singapore's regulatory institutions up to this point, the future drivers of investment and competition, and regulatory policies and tools calibrated for the future.

Asia Pacific Carriers' Coalition
c/o Rajah & Tann LLP
9 Battery Road
#25-01 Straits Trading Building
Singapore 049910

T: +65 6535 3600
F: +65 6225 7725
Email: secretary@asiapacificcarriers.org