



**EXPLANATORY MEMORANDUM ON THE DECISION OF
THE INFO-COMMUNICATIONS DEVELOPMENT AUTHORITY OF SINGAPORE
IN RELATION TO THE LONG FORM CONSOLIDATION APPLICATION
SUBMITTED BY OPENNET PTE LTD, THE NETLINK TRUST, CITYNET
INFRASTRUCTURE MANAGEMENT PTE LTD AND SINGAPORE
TELECOMMUNICATIONS LTD**

21 NOVEMBER 2013

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PART I: INTRODUCTION

1. On 22 August 2013, OpenNet Pte Ltd (“**OpenNet**”), CityNet Infrastructure Management Pte Ltd (“**CityNet**”, as Trustee-Manager of the NetLink Trust)², the NetLink Trust (through its Trustee-Manager, CityNet) and Singapore Telecommunications Ltd (“**SingTel**”, as unitholder of the NetLink Trust) (together, the “**Applicants**”) jointly submitted a Long Form Consolidation Application (“**Consolidation Application**”) to IDA for IDA’s consideration and approval in relation to a proposed acquisition by CityNet of 100% of the issued and paid-up share capital in OpenNet (the “**Consolidation**”).
2. On 28 August 2013, IDA issued a consultation paper to solicit comments from the public on the Consolidation Application. At the close of the public consultation on 25 September 2013, four (4) comments were received from the industry and the public.
3. This paper provides a single document (“**Explanatory Memorandum**”) that describes: the Applicants and their Consolidation Application; the comments received in response to IDA’s consultation paper; a brief background of the Next Generation Nationwide Broadband Network (“**Next Gen NBN**”); the legal standards, procedures and analytical framework that IDA used to assess the Consolidation Application; IDA’s assessment of the Consolidation Application; and IDA’s final decision.

¹ Unless otherwise defined, all capitalised terms in this consultation paper shall have the same meanings ascribed to them in the Telecommunications Act (Cap. 323), the Code of Practice for Competition in the Provision of Telecommunication Services 2012 or the Telecom Consolidation and Tender Offer Guidelines, as applicable.

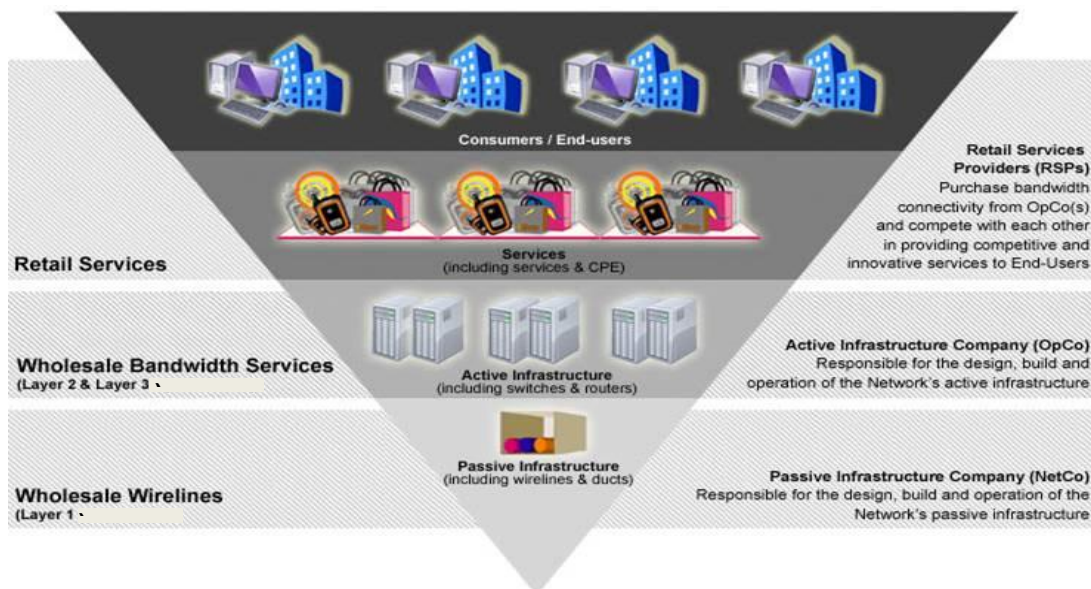
² Unless specified otherwise, all references to CityNet shall be to CityNet, as Trustee-Manager of the NetLink Trust.

PART II: EXECUTIVE SUMMARY

Current Broadband Market Environment

4. The Applicants are key players of the Next Gen NBN, which is the nationwide fibre broadband network providing high-speed broadband access services to all homes and business users in Singapore.
5. Today, there are more than 450,000 subscribers of fibre-based services, representing a fibre penetration of more than 1-in-3 households in Singapore. Residential and business users can choose from a variety of fibre-based broadband plans offered by more than twenty (20) Retail Service Providers (“RSPs”) over the Next Gen NBN.
6. This vibrancy and competition at the service layer is a result of the Next Gen NBN market structure that has been put in place by IDA, focusing on ensuring non-discriminatory and effective open access in the provision of passive fibre infrastructure and wholesale bandwidth services. See Figure 1.

Figure 1. Three-Layered Next Gen NBN Industry



7. Through a Request-for-Proposal (“RFP”) process, which commenced in December 2007, IDA appointed the following service providers:
 - (a) **Layer “1”**, the Next Gen NBN Network Company (“**NetCo**”) layer: OpenNet is responsible for the design, build and operation of the passive infrastructure, which includes the optical dark fibre network and ducts. OpenNet has the obligation to provide dark fibre services to downstream service providers in a non-discriminatory and effective open access manner, amongst other contractual and regulatory obligations. OpenNet, as part of its RFP bid commitment, set up CityNet and the NetLink Trust as the neutral party for SingTel to transfer the relevant passive infrastructure assets (comprising relevant ducts, manholes and

exchange buildings) that will be used by OpenNet for its deployment of fibre for the Next Gen NBN. CityNet and NetLink Trust thus formed an additional Asset Company (“**AssetCo**”) layer or **Layer “0”**. SingTel is the 100% unitholder of the NetLink Trust and had then committed to sell down its stake to less than 25% by April 2014; and

- (b) **Layer “2”**, the Operating Company (“**OpCo**”) layer: Nucleus Connect Pte Ltd (“**Nucleus Connect**”) provides wholesale network services over the active infrastructure, comprising switches and transmission equipment. Nucleus Connect has the obligation to provide wholesale bandwidth services to downstream service providers in a non-discriminatory manner and complying with the effective open access requirement, amongst other contractual and regulatory obligations. Service providers in the OpCo layer then provide wholesale bandwidth services to RSPs, operating at the third layer or **Layer “3”**, to offer retail services to consumers and business end-users.
8. Notwithstanding IDA’s appointment of OpenNet and Nucleus Connect for the provision of passive fibre infrastructure and wholesale bandwidth services respectively, IDA does not prevent the entry of competing service providers in the NetCo and OpCo layers.
 9. Today, in the market, at the NetCo layer, while OpenNet is a key player, there are a number of telecommunication licensees that have rolled or are rolling out dark fibre infrastructure either for their own use to provide telecommunication services downstream or for leasing to third parties (e.g. other telecommunication licensees to provide telecommunication services to their customers). At the OpCo layer, besides Nucleus Connect, there are seven (7) OpCos taking fibre services from OpenNet either to provide their own retail broadband services or to provide wholesale bandwidth services to other RSPs.

Proposed Consolidation

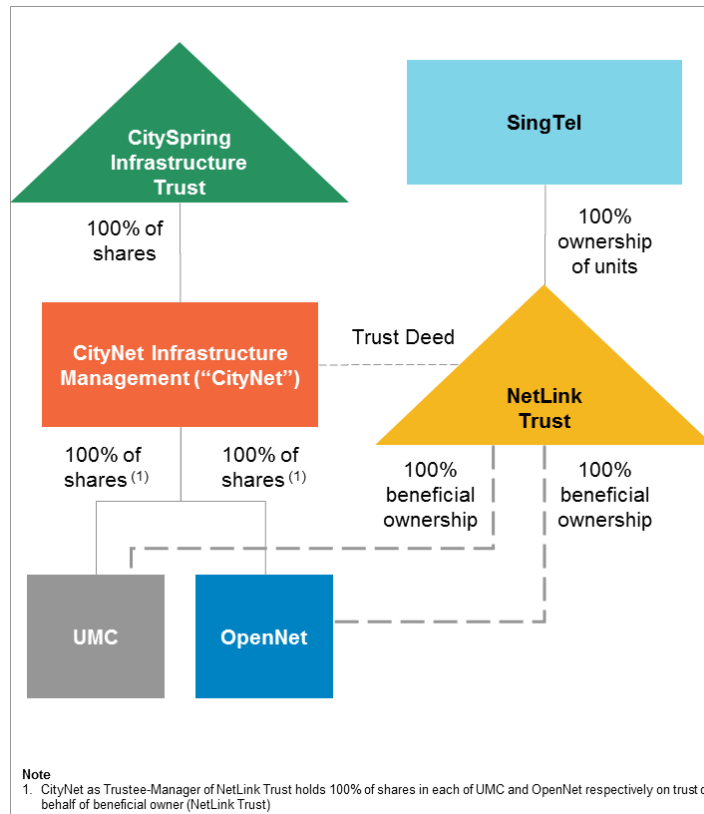
10. The Applicants have sought IDA’s approval for CityNet (the AssetCo) to acquire 100% of the issued and paid-up share capital in OpenNet (the NetCo), and to complete the proposed Consolidation in two (2) phases:

- (a) **Phase 1:**

Immediately following the satisfaction of the conditions precedent under the sale and purchase agreements, including IDA’s approval of the proposed Consolidation, and completion of the acquisition of the shares in OpenNet thereunder, CityNet will hold 100% of the issued and paid-up share capital of OpenNet³. See Figure 2.

³ CityNet, as Trustee-Manager of the NetLink Trust, will hold 100% of the shares in each of UMC and OpenNet respectively, on trust on behalf of the beneficial owner (the NetLink Trust). The latter would be entitled to the economic benefits of ownership of the trust property in UMC and OpenNet (primarily receipt of income), even though it does not have legal title/control.

Figure 2. Post-Consolidation Structure (Phase 1)



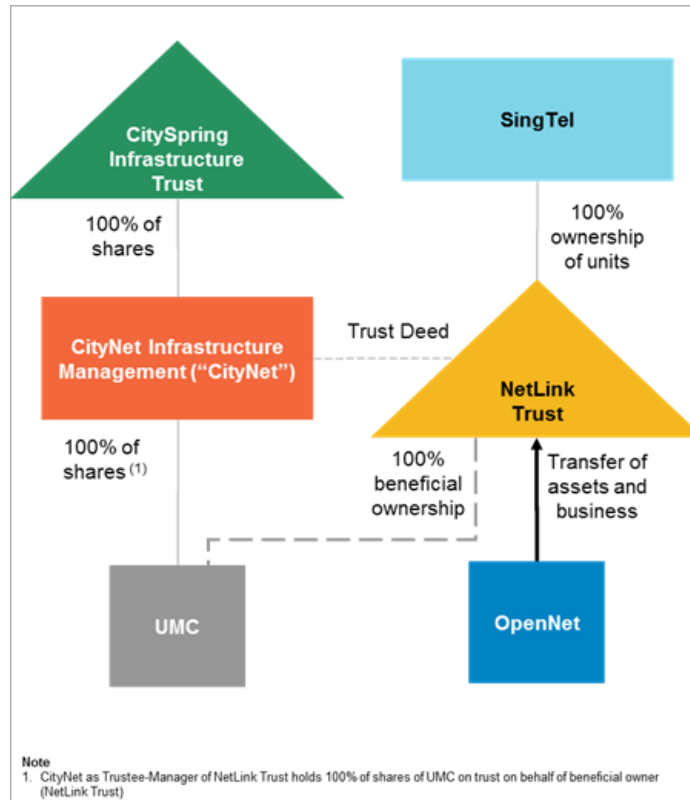
(b) **Phase 2:**

Within twelve (12) months of the commencement of Phase 1 of the proposed Consolidation, the assets and business of OpenNet will be transferred to and integrated into the NetLink Trust. At the same time, SingTel will terminate its agreements with OpenNet to be its Key Sub-Contractor (“KSC”), a commercial arrangement set up by OpenNet to deliver its fibre infrastructure and services under the RFP. These agreements are henceforth referred to as the “**OpenNet Agreements**”⁴. OpenNet and SingTel will transfer the relevant OpenNet and SingTel personnel, skills and expertise to the United Maintenance Company Pte Ltd (“**UMC**”) or a separate equivalent legal entity to provide manpower services to the NetLink Trust in relation to the installation, operation and maintenance of its dark fibre network. CityNet will remain as the neutral, independent Trustee-Manager of the NetLink Trust. Upon completion of the said transfer, OpenNet will surrender or terminate its Facilities-Based Operator (“**FBO**”) licence and CityNet will request for its FBO licence to be amended to enable it to install, operate and maintain the systems and provide the services previously undertaken by OpenNet, on top of CityNet’s existing suite of services. On the commencement of Phase 2 of the proposed Consolidation, there will be a single registered business

⁴ These refer to the four (4) agreements between OpenNet and SingTel, in relation to (a) Engineering, Procurement and Construction; (b) Operations and Maintenance; (c) Co-location; and (d) Duct Use.

trust – the NetLink Trust. CityNet will remain as the neutral, independent Trustee-Manager of the NetLink Trust. See Figure 3.

Figure 3. Post-Consolidation Structure (Phase 2)



Benefits of Proposed Consolidation and Proposed Conditions from Applicants

11. The Applicants submitted that the proposed Consolidation would not result in a substantial lessening of competition as it would be Non-horizontal in nature with no negative change to market concentration levels. Competition in downstream markets would be unaffected. CityNet and OpenNet would be highly regulated with no change in the scope of IDA’s regulations to ensure non-discriminatory and effective open access in the provisioning of their services and facilities. The proposed Consolidation would enable efficiencies to be realised due to the increased level of integration between the passive infrastructure layer of the Next Gen NBN; and further efficiencies in service provisioning would be reaped with the transfer of SingTel’s KSC personnel, competencies and expertise into the NetLink Trust. NetLink Trust would continue to be separately operated and managed by CityNet, which would meet IDA’s “No Effective Control” requirement imposed on the Next Gen NBN to ensure effective open access in terms of its neutrality and independence

from SingTel, the unitholder with economic beneficiary interest⁵ in NetLink Trust.

12. Nonetheless, to enhance the independence of the Post-Consolidation Entity⁶, the Applicants proposed to undertake (in the form of proposed conditions) the following key conditions (“**Proposed Conditions**”):
- (a) SingTel Interactive Pte Ltd (“**SingTel Interactive**”) would sell its approximate 30% shareholding in OpenNet to CityNet;
 - (b) SingTel would sell more than 75% of its unitholdings in the NetLink Trust by 22 April 2018. The Applicants submitted that additional time to divest the unitholdings is required to effect the orderly transfer of the OpenNet assets, business and the relevant OpenNet and SingTel personnel, skills and expertise to the NetLink Trust, and to integrate the two different businesses and operations to achieve a steady-state prior to divestment; and
 - (c) As long as SingTel is the beneficial holder of 25% or more of the units in the NetLink Trust or has the ability to exercise 25% or more of the voting rights in the NetLink Trust, SingTel will not carry out certain actions, such as removing the Trustee-Manager except under limited specified circumstances, approving any amendments to the Trust Deed that are contrary to the Control and Ownership restrictions, taking any action relating to the NetLink Trust that requires IDA’s approval under the Trust Deed without first obtaining IDA’s approval, approving or directing the winding up of the NetLink Trust except where such action is to facilitate the final structure for divestment and amalgamating or changing the structure of the NetLink Trust that is unrelated to its obligation to divest without first obtaining IDA’s approval.

To enhance the capability of the Post-Consolidation Entity:

- (d) SingTel would terminate its agreements with OpenNet to be its KSC and transfer the relevant personnel, skills and expertise to the NetLink Trust; and
- (e) SingTel would continue its arrangement with CityNet to meet the Next Gen NBN’s ongoing requirements for ducts and manholes for installation of Next Gen NBN dark fibre.

The Applicants also undertake that the Post-Consolidated Entity will continue to meet its obligations to IDA and its customers.

⁵ A beneficial holder/owner of a trust (such as the NetLink Trust) is the entity that enjoys the economic benefits of ownership of the trust property (primarily receipt of income), even though ownership (title) and control are in the hands of another entity.

⁶ IDA will use the term “**Post-Consolidation Entity**” to refer to the merged entity after the Consolidation.

Key Comments from Public Consultation

13. The commenters (individually referred to as a “**Commenter**” and collectively the “**Commenters**”) to IDA’s Public Consultation on the Proposed Consolidation submitted that the proposed Consolidation would be against the tenet of structural separation in respect of the layered industry structure conceived by IDA for the Next Gen NBN (“**Structural Separation**”) and would have a negative impact on the competitive landscape as it would result in SingTel having a 100% beneficial ownership over the only nationwide fibre provider in Singapore. They further submitted that CityNet would unlikely be a neutral and independent entity as CityNet would legally be required to serve only the interest of its unitholder, SingTel. In addition, the Commenters expressed concerns over the Applicants’ proposal to postpone the sell-down deadline of SingTel’s unitholdings in the NetLink Trust from April 2014 to 2018. The Commenters also highlighted OpenNet’s service performance issues and submitted that there were no guarantees that the proposed Consolidation would realistically address the current unsatisfactory state of affairs.
14. In light of their concerns, the Commenters submitted that IDA should either reject the proposed Consolidation or at the minimum, impose conditions such as requiring guaranteed improvements in the NetCo’s service delivery performance, ensuring that the Post-Consolidation Entity would be independent and free from SingTel’s influence and control, requiring SingTel to sell down its unitholdings in the NetLink Trust by April 2014 (if not earlier) and setting up an “NBN Task Force” to oversee the implementation of the proposed Consolidation and to monitor the post-Consolidation performance of the relevant parties.

IDA’s Assessment of Proposed Consolidation

No Substantial Lessening of Competition or Public Interest Concerns to Deny Proposed Consolidation

15. Based on IDA’s assessment, the proposed Consolidation is substantially Non-horizontal in nature. Non-horizontal Consolidations are Consolidations that involve two or more entities that are not current competitors in the same market. Non-horizontal Consolidations generally do not raise significant competitive concerns. Indeed, they often facilitate competition by creating a more efficient market participant. In this case, given that the Applicants operate in largely different markets, IDA is of the view that the proposed Consolidation would have minimal impact on competition and market concentration levels in the markets the Applicants participate in, specifically in Layer “0” and “1”. There is no change in the market situation post-Consolidation in the various layers.
16. However, IDA recognises that even Non-horizontal Consolidations can have adverse competitive effects if at least one of the entities has Significant Market Power or participates in a concentrated market with few other competitors. In this case, IDA notes that the Applicants are classified as

Dominant Licensees and that there are a limited number of players operating in the “Layer 0” and “Layer 1” markets. There may therefore be valid concerns that the proposed Consolidation may eliminate a potential competitor, limit the ability of competitors to access an essential “upstream” input or “downstream” facility or enable an entity with Significant Market Power in one market to distort competition in another market. In this regard, IDA notes the industry’s and public’s concerns regarding the proposed Consolidation, particularly concerns in respect of the independence of the Trustee-Manager, CityNet. IDA considers that the concern over the elimination of a potential future competitor has been addressed. Any concerns that the proposed Consolidation might restrict competition by limiting the ability of competitors to access an “upstream” input or a “downstream” facility necessary to deliver services to end-users or allow an entity with Significant Market Power in one market to distort competition in another market would be addressed by the regulatory requirements imposed by IDA on the Next Gen NBN (including the Control and Ownership restrictions i.e. for “No Effective Control”⁷ and interconnection requirements to ensure that the Next Gen NBN provides effective open access to downstream operators).

Applicants Remain Highly Regulated for Open Access and Non-Discriminatory Behaviours

17. In IDA’s assessment, IDA notes that the classification of OpenNet, CityNet and SingTel as Dominant Licensees means that they are required to comply with tighter regulatory requirements. These and other measures to safeguard against anti-competitive conduct in the context of the Next Gen NBN include:
- (a) a requirement to offer standard interconnection offers (“**ICOs**”) at IDA-regulated prices and service quality to ensure non-discriminatory treatment.
 - (b) a Structural Separation requirement for OpenNet and CityNet, which among other things, requires these entities to be independent from, and not be under any effective control of, any telecommunication or broadcast licensees.
 - (c) Universal Service Obligations (“**USOs**”) for CityNet and OpenNet in the context of the Next Gen NBN which require them to provide specific services nationwide to any qualifying person (“**QP**”) who requests for them. OpenNet is further subject to Quality of Service (“**QoS**”) standards in the context of the Next Gen NBN to ensure timely service provisioning.

These regulatory requirements imposed on the Applicants will continue post-Consolidation. In particular, the regulatory requirements placed on OpenNet to provide dark fibre services in a non-discriminatory manner and not be under

⁷ The Control and Ownership restrictions are defined in OpenNet’s and CityNet’s respective licences (as reproduced in Annex A). For the avoidance of doubt, the terms “Control and Ownership restrictions” and “No Effective Control” shall mean the same thing and may be used interchangeably within this Explanatory Memorandum.

any effective control of any telecommunication or broadcast licensee will continue.

18. IDA notes that while the Trustee-Manager under the Business Trusts Act has a statutory requirement to act in the best interests of its unitholders, the Business Trusts Act (Cap. 31A) (“**Business Trusts Act**”) and the CityNet Trust Deed provide that the Trustee-Manager must also comply with the relevant regulatory obligation. The CityNet Trust Deed also provides for independence of the Trustee-Manager from unitholders for day-to-day operations and compliance with regulatory obligations. The Business Trusts Act and the CityNet Trust Deed also require CityNet to have an independent board. As mentioned, the Applicants have also, as one of their Proposed Conditions, committed additional safeguards above and beyond the Business Trusts Act requirements to limit SingTel’s influence over the Trustee-Manager such that SingTel, despite being the sole unitholder, will be unable to exercise the typical voting rights associated with having more than 75% unitholdings under the Business Trusts Act.

Reasonable to Allow Deferment of Divestment Date

19. On the deferment of the divestment date (in respect of SingTel’s divestment of more than 75% of its unitholdings in the NetLink Trust) to April 2018, IDA notes the Applicants’ representation on the scope of the transfer and integration of OpenNet’s assets and business, and the relevant OpenNet and SingTel personnel, skills and expertise, to/with the NetLink Trust following the proposed Consolidation. Also, April 2018 is not the target date for divestment but is the deadline by which divestment to the said threshold *must* have taken place. In view of the need to divest, SingTel would have an interest to preserve and optimise the value of the NetLink Trust before divestment.

Consistent with Original Next Gen NBN Industry Structure with Potential Efficiencies and Service Improvement

20. The post-Consolidation industry structure with the removal of the Layer “0” is also not inconsistent with the three-layered industry structure that IDA had originally conceived under the Next Gen NBN RFP. In this case, as submitted by the Applicants, the increased level of integration between “Layer 0” and “Layer 1” passive infrastructure and the transfer of SingTel’s KSC personnel and expertise into the NetLink Trust could lead to operational efficiencies.
21. In this regard, IDA will continue to review the regulatory frameworks imposed on the relevant Applicants to ensure that the Post-Consolidation Entity will continue to improve service performance to its customers.

Additional Safeguards to Mitigate Potential Competition Concerns

22. Recognising the need for stronger safeguards to mitigate potential competition restriction concerns arising from the risks of Applicants potentially leveraging on their Significant Market Power in one market to affect competition in another and to enhance the independence of the Trustee-Manager (especially

with the extension of the divestment date), in addition to the Proposed Conditions, IDA will impose additional conditions of approval, including the following:

- (a) IDA will set up a Monitoring Board (comprising representatives of IDA and other relevant Government agencies) to monitor the Post-Consolidation Entity's (and where relevant, SingTel's) compliance with the Control and Ownership restrictions until SingTel divests its unitholdings to below 25%;
- (b) The Post-Consolidation Entity shall seek IDA's prior written approval for any appointment of telecommunication or broadcasting licensees (and their associates) as its contractors;
- (c) CityNet shall not take into account any interests of its unitholders that are unrelated to the unitholders' investment in the NetLink Trust;
- (d) The Post-Consolidation Entity shall have full independence and powers in making decisions on prices, terms and conditions for new and existing service offerings;
- (e) The Post-Consolidation Entity shall continue to meet all of CityNet's and OpenNet's regulatory and/or contractual obligations to IDA; and
- (f) SingTel (as unitholder of the Post-Consolidation Entity) shall be required to, at all times, act reasonably and in utmost good faith in exercising its power or ability to approve matters or direct CityNet under the Reserved Matters and Authorised Matters (as defined in the CityNet Trust Deed).

For fuller details and the full list of the conditions to be imposed by IDA, please refer to Part X of this Explanatory Memorandum.

Conclusion

23. IDA has fully considered and carefully assessed the proposed Consolidation and concludes that the proposed Consolidation is not likely to substantially lessen competition in any Singapore telecommunication market and there are no public interest concerns to deny the Consolidation Application. IDA is satisfied that any potential competitive and public interest concerns in connection with the proposed Consolidation will be addressed by the continued imposition of the IDA's current regulatory requirements as well as the Applicants' compliance with the Proposed Conditions (some of which are mentioned in paragraph 12) and the additional conditions that IDA will impose (some of which are mentioned in paragraph 22). IDA notes the potential efficiencies and service improvements that the Proposed Consolidation may bring. IDA will continue to review the regulatory frameworks imposed on OpenNet to ensure that the Post-Consolidation Entity will continue to improve service performance to its customers.

24. IDA has therefore decided to approve the proposed Consolidation, subject to the Applicants' full acceptance of the list of all the conditions to be imposed by IDA.

PART III: BACKGROUND OF THE APPLICANTS

25. A brief description of the Applicants is as follows:

(a) *OpenNet*

26. OpenNet is the party whose shares is the subject of the acquisition. OpenNet is a joint venture between four (4) parties: SingTel Interactive (approximately 30% shareholding), Axia NGNetworks Asia Pte Ltd ("**Axia**") (approximately 30% shareholding), SPH Net Pte Ltd ("**SPH Net**") (approximately 25% shareholding) and SPT Net Pte Ltd ("**SPT Net**") (approximately 15% shareholding).

27. OpenNet was selected as the Next Gen NBN NetCo on 26 September 2008, pursuant to the Next Gen NBN RFP process which commenced on 11 December 2007. The Next Gen NBN is the wired network of the Next Generation National Info-communications Infrastructure under the Intelligent Nation 2015 ("**iN2015**") master plan to provide nationwide ultra-high speed broadband access of 1Gbps and more to all physical addresses including homes, schools, government buildings, businesses and hospitals. OpenNet was issued a FBO licence by IDA on 1 April 2009 to install, operate and maintain the passive infrastructure and systems of the Next Gen NBN and provide "Layer 1" connectivity services and other ancillary services.

28. OpenNet has been classified as a Dominant Licensee⁸ under the Code of Practice for Competition in the Provision of Telecommunication Services 2012 (i.e. the Telecom Competition Code). OpenNet is also a Public Telecommunication Licensee ("**PTL**"). As part of its PTL obligations, OpenNet has a USO to provide the Mandated Services to all Physical Addresses upon the request of any QP⁹, and all other locations in mainland Singapore and connected Singapore islands as may be reasonably requested by any QP.

29. Other rights afforded to and obligations imposed on OpenNet can be found in (but not limited to): (i) OpenNet's FBO licence, a copy of which is published on the IDA website; (ii) the Telecommunications Act (Cap. 323) (the "**Act**"); (iii) the Telecom Competition Code; (iv) the NetCo Interconnection Code; (v) the Outage Reporting Code; (vi) the NetCo Resiliency Code; and (vii) QoS standards on installation-related faults on OpenNet's residential and non-residential end-user connections, as well as QoS standards on OpenNet's timeframe in provisioning residential and non-residential end-user connection services.

⁸ Under the Telecom Competition Code, a Licensee will be classified as dominant if:

- (a) it is licensed to operate facilities used for the provision of Services in Singapore that are sufficiently costly or difficult to replicate such that requiring new entrants to do so would create a significant barrier to rapid and successful entry into the telecommunication market in Singapore by an efficient competitor; or
- (b) it has the ability to exercise Significant Market Power in any market in which it provides Services pursuant to its licence.

⁹ In respect of OpenNet's obligations, the terms "Mandated Services", "Physical Addresses" and "Qualifying Person" are defined in Schedule C of OpenNet's licence, which is available on the IDA website.

(b) *CityNet*

30. CityNet is the Acquiring Party in the Consolidation and will acquire 100% of the issued and paid-up share capital of OpenNet. CityNet is a wholly-owned subsidiary of CitySpring Infrastructure Trust (“**CitySpring Trust**”) (through its Trustee-Manager, CitySpring Infrastructure Management Pte Ltd (“**CitySpring**”).
31. CityNet and the NetLink Trust were set up as part of OpenNet’s RFP bid commitment for SingTel to transfer the relevant passive infrastructure assets (comprising relevant ducts, manholes and exchange buildings) that will be used by OpenNet for its deployment of fibre for the Next Gen NBN (the “**Underlying Assets**”) to a neutral party. The neutral party, called the AssetCo, would be an independent and separately managed entity which may take the form of a registered business trust or be structured in a similar manner to be approved by IDA. In July 2011, CityNet acquired from SingTel the Underlying Assets. CityNet was issued an FBO licence by IDA on 22 September 2011 to carry out the business of establishing, installing, operating and maintaining the Underlying Assets.
32. CityNet has been classified as a Dominant Licensee under the Telecom Competition Code. CityNet is also a PTL. As part of its PTL obligations, CityNet shall establish, install, maintain and operate the Underlying Assets and:
- (i) where CityNet has available ducts and associated manholes, shall provide access to and use of such ducts and manholes; and
 - (ii) where CityNet has no available ducts and associated manholes, shall procure or deploy such ducts and manholes and provide access to and use thereof,
- to any PTL designated by IDA that requests such ducts and associated manholes (as the case may be) from CityNet.
33. Other rights afforded to and obligations imposed on CityNet can be found in (but not limited to): (i) CityNet’s FBO licence, a copy of which is published on the IDA website; (ii) the Act; and (iii) the Telecom Competition Code.

(c) *The NetLink Trust*

34. The NetLink Trust is a registered business trust registered under the Business Trusts Act and established in July 2011 pursuant to the regulatory requirements on Structural Separation under the Next Gen NBN. CityNet is the Trustee-Manager of the NetLink Trust.
35. The NetLink Trust (though its Trustee-Manager, CityNet) holds 100% of the issued and paid-up share capital in UMC. UMC provides manpower services to CityNet in relation to the installation, operation and maintenance of the

network of ducts, manholes and Central Offices (“COs”) under the NetLink Trust.

36. The NetLink Trust has been declared a Designated Business Trust pursuant to Section 32A(2) of the Act.

(d) *SingTel*

37. SingTel is the 100% unitholder of the NetLink Trust.

38. SingTel holds an FBO licence issued by IDA¹⁰ for the deployment of telecommunication networks, systems and facilities to offer telecommunication switching and/or telecommunication services to other licensed telecommunication operators, businesses and/or consumers. SingTel is also a PTL.

39. SingTel has been classified as a Dominant Licensee under the Telecom Competition Code. Nonetheless, over the years, IDA has determined that SingTel is non-dominant in several specific telecommunication markets¹¹ and has exempted SingTel from all or some of its Dominant Licensee obligations in respect of these markets. SingTel continues to be subject to Dominant Licensee obligations for all other facilities that it operates, and for all other services that it provides, pursuant to its licence.

40. SingTel, together with its subsidiaries (the key ones being SingTel Mobile Singapore Pte Ltd (“**SingTel Mobile**”) and SingNet Pte Ltd (“**SingNet**”)), offers a range of retail and wholesale services in Singapore, including the following broad categories of services:

- (i) Fixed Line Telephony Services (including Direct Exchange Line)
- (ii) Local Connectivity Services (including Local Leased Circuits, Backhaul, Dark Fibre services and bandwidth connectivity services)
- (iii) International Connectivity Services (including International Private Leased Circuits and satellite bandwidth services)

¹⁰ SingTel was issued a licence in 1992 by the Telecommunication Authority of Singapore (“**TAS**”) to establish, install and maintain the telecommunication systems and operate and provide the telecommunication services as then specified in the licence. On 1 December 1999, TAS was re-constituted as IDA; the TAS Act was repealed and the Act was enacted. Section 75 of the Act preserves the validity of the licence and deems the licence as having been granted by IDA under section 5 of the Act.

¹¹ The specific markets are: Backhaul, Commercial Retail International Telephone Services; International Managed Data Service (National); Terrestrial International Private Leased Circuit; Digital Video Broadcast – IP (Regional); International IP Transit (National); Leased Satellite Bandwidth (regional); Residential Retail International Telephone Services; Satellite Terrestrial International Private Leased Circuit (Regional); Satellite TV (Downlink) (National); Satellite TV (Uplink) (National); Very Small Aperture Terminal (Regional); and Whole International Telephone Service.

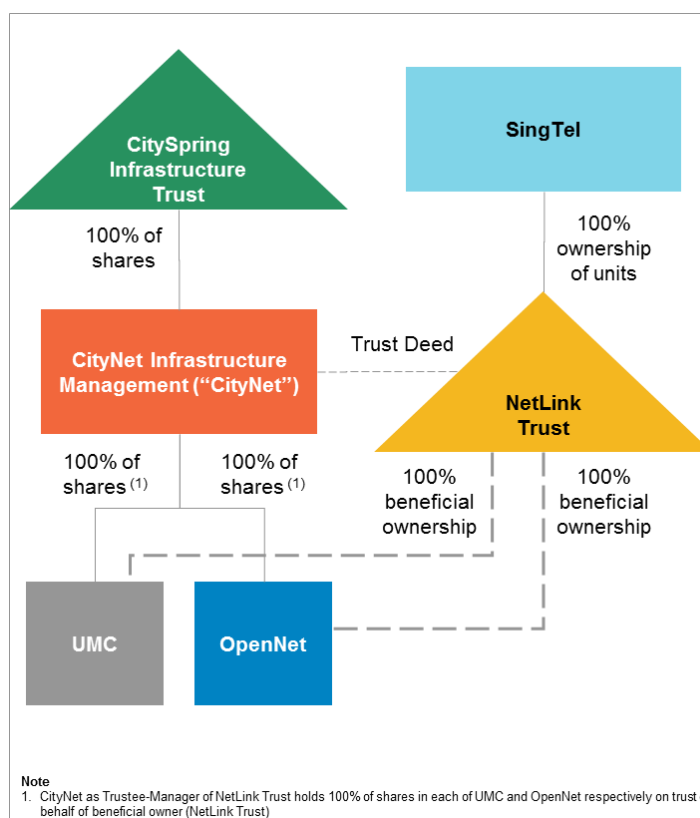
- (iv) Local and International Managed Data Services (including Frame Relay, Virtual Private Network, MetroEthernet etc services)
 - (v) Internet Access/Broadband Services (including xDSL and fibre-based broadband services)
 - (vi) Mobile Communication Services
 - (vii) International Telephone Services (including IDD services)
 - (viii) Pay TV Services (i.e. Mio TV).
41. The rights afforded to and obligations imposed on SingTel can be found in (but not limited to): (i) SingTel's FBO licence, a copy of which is published on the IDA website; (ii) the Act; (iii) the Telecom Competition Code (including but not limited to the interconnection requirements under Section 6 of the Telecom Competition Code); (iv) the Outage Reporting Code, (v) the Telecom Service Resiliency Code; and (vi) QoS standards applied to various services provided by SingTel.
42. In relation to the Next Gen NBN, SingTel is today an integrated OpCo (i.e. it is in both the OpCo and RSP layers). As an OpCo, SingTel purchases OpenNet's Layer 1 services and in turn, provides wholesale local bandwidth connectivity services to downstream players such as RSPs so that the latter can, in turn, offer retail fibre broadband services to end-users. As an RSP, SingTel (and SingNet) provide retail fibre broadband services to both residential and business end-users. In addition, SingTel is OpenNet's KSC for the construction and activation of the Next Gen NBN fibre network.

PART IV: THE CONSOLIDATION APPLICATION

43. Pursuant to Section 32A(2) of the Act, IDA has declared every telecommunication licensee, which is granted an FBO licence under Section 5 of the Act, to be a designated telecommunication licensee (“**DTL**”) for the purposes of Part VA of the Act. DTLs and parties proposing to acquire certain thresholds of voting shares or voting power in DTLs are required to comply with various requirements relating to such proposed acquisitions, under the Act and Section 10 of the Telecom Competition Code. Without limitation, pursuant to Sub-section 10.3.6 of the Telecom Competition Code specifically, a DTL and every Acquiring Party must seek IDA’s approval in connection with any transaction that constitutes a Consolidation with the DTL. Under the Telecom Competition Code, a Consolidation would occur if an acquisition would result in, inter alia, the Acquiring Party becoming a 30% Controller of a DTL, acquiring the business of a DTL as a going concern, or obtaining Effective Control over the DTL.
44. In line with this requirement, on 22 August 2013, the Applicants jointly submitted a Long Form Consolidation Application to IDA in relation to a proposed acquisition by CityNet of 100% of the issued and paid-up share capital in OpenNet.
45. The Applicants submitted that the proposed Consolidation will be completed in two (2) phases:
 - (a) **Phase 1:**

Immediately following the satisfaction of the conditions precedent under the sale and purchase agreements, including IDA’s approval of the proposed Consolidation, and completion of the acquisition of the shares in OpenNet thereunder, CityNet will hold 100% of the issued and paid-up share capital of OpenNet. See Figure 4.

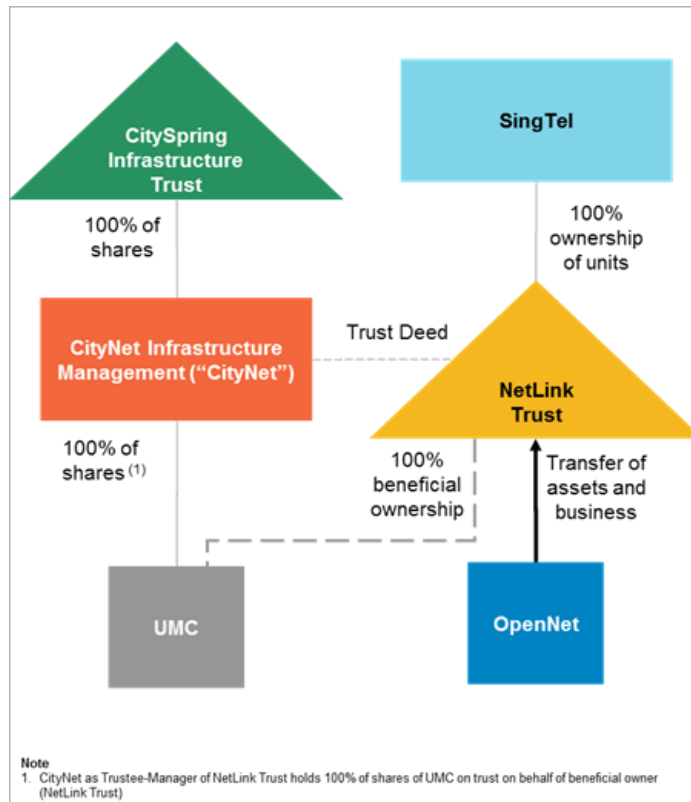
Figure 4. Post-Consolidation Structure (Phase 1)



(b) **Phase 2:**

Within twelve (12) months of the commencement of Phase 1 of the proposed Consolidation, the assets and business of OpenNet will be transferred to and integrated into the NetLink Trust. At the same time, SingTel will terminate the OpenNet Agreements. OpenNet and SingTel will transfer the relevant OpenNet and SingTel personnel, skills and expertise to UMC or a separate equivalent legal entity (subject to the NetLink Trust’s agreement to employ the personnel and agreement by the relevant personnel to accept such employment) to provide manpower services to the NetLink Trust in relation to the installation, operation and maintenance of its dark fibre network. CityNet will remain as the neutral, independent Trustee-Manager of the NetLink Trust. With the transfer of the OpenNet assets, business and personnel to UMC or an equivalent separate legal entity established under the NetLink Trust (through its Trustee-Manager, CityNet), as submitted by the Applicants, OpenNet will surrender or terminate its FBO licence and CityNet will request for its FBO licence to be amended to enable it to install, operate and maintain the systems and provide the services previously undertaken by OpenNet, on top of CityNet’s existing suite of services. On the commencement of Phase 2 of the proposed Consolidation, there will be a single registered business trust – the NetLink Trust. CityNet will remain as the neutral, independent Trustee-Manager of the NetLink Trust. See Figure 5.

Figure 5. Post-Consolidation Structure (Phase 2)



The time interval between the commencement of Phase 1 and the commencement of Phase 2 of the proposed Consolidation will be up to twelve (12) months.

46. In Phase 1, the “Post-Consolidation Entity” would refer to the licensees CityNet, which would hold 100% of the issued and paid-up share capital of OpenNet, and OpenNet. In Phase 2, the “Post-Consolidation Entity” would refer only to the licensee CityNet, given that the assets and business of OpenNet would have been transferred and integrated into the NetLink Trust. OpenNet would have ceased to exist as a company, and CityNet would be the licensee maintaining the systems and providing the services previously undertaken by OpenNet on top of its existing suite of services.

Applicants’ Justifications for Proposed Consolidation

47. In their Consolidation Application, the Applicants submitted that the proposed Consolidation would not lead to a substantial lessening of competition and will in fact enable efficiencies to be realised due to the increased level of integration between the layers in the passive infrastructure network of the Next Gen NBN. The Applicants submitted that post-Consolidation, the Next Gen NBN will continue to operate on an effective open access and non-discriminatory basis and meet IDA’s No Effective Control requirements upon the commencement of Phase 2 of the proposed Consolidation.

48. Notwithstanding the Applicants' view that the proposed Consolidation does not give rise to any competitive concerns, the Applicants have proposed measures to enhance the actual and perceived independence of the Post-Consolidation Entity by way of Proposed Conditions. The Proposed Conditions, as submitted by the Applicants, are summarised below:
- (a) SingTel Interactive will as part of the proposed Consolidation enter into a separate sale and purchase agreement to sell to CityNet its approximate 30% of the issued and paid-up share capital in OpenNet at the same time that CityNet enters into a sale and purchase agreement with Axia, SPH Net and SPT Net to acquire their combined approximate 70% of the issued and paid-up share capital in OpenNet. Consequently, SingTel will be a beneficiary of the NetLink Trust only and have no equity interest in OpenNet or in CityNet. The NetLink Trust will continue to be separately managed by a neutral, independent Trustee-Manager, CityNet. This is to eliminate any control or ownership that SingTel may be perceived to possess through its direct interest in approximately 30% of the issued and paid-up share capital in OpenNet.
 - (b) SingTel will, as part of the proposed Consolidation, sell down its current unitholdings in the enlarged NetLink Trust to less than 25% by 22 April 2018. SingTel undertakes and commits to IDA to do all that is necessary in order to divest more than 75% of its unitholdings by 22 April 2018, including but not limited to, restructuring the balance sheet of the NetLink Trust (in particular, without limitation, the debt to equity ratio) to arrive at an optimal capital structure that is conducive to and will facilitate the divestment of more than 75% of its unitholdings. This is to eliminate any perception that SingTel possesses control of the Post-Consolidation Entity and/or its operations through SingTel's current unitholdings in the NetLink Trust.
 - (c) SingTel will undertake, represent and warrant, as part of the proposed Consolidation, that so long as SingTel is the beneficial holder (whether directly or indirectly) of 25% or more of the units in the NetLink Trust, or has the ability to exercise (whether directly or indirectly) 25% or more of the voting rights attached to the units in the NetLink Trust, SingTel will not remove the Trustee-Manager (except on specific grounds as mentioned in the Consolidation Application); approve any amendments or take any action relating to the Trust Deed that are contrary to the Control and Ownership Requirements as set out in IDA's RFP reference number IDA(RFP)-030; approve any amendments to the Trust Deed to vary the requirement to obtain IDA's approval for those matters set out in the Trust Deed; take any action relating to the NetLink Trust that requires approval from IDA under the Trust Deed without first obtaining such approval in accordance with the Trust Deed; and/or approve or direct the winding up of the NetLink Trust, save where such action is to facilitate the final structure for the divestment.
 - (d) As part of the proposed Consolidation, so long as SingTel is the beneficial holder (whether directly or indirectly) of 25% or more of the

units in the NetLink Trust, or has the ability to exercise (whether directly or indirectly) 25% or more of the voting rights attached to the units in the NetLink Trust, SingTel will not amalgamate or reconstruct, or change the structure or set up of the NetLink Trust or the manner in which any Trust Property (as defined in the Trust Deed) of the NetLink Trust is held, or any merger of the NetLink Trust with any other body, that is not an action or step taken in pursuance of an Authorised Matter as set out in paragraph 2.6 of the Authorised Matters (as defined in the Trust Deed) without first obtaining approval from IDA.

- (e) SingTel will, as part of the proposed Consolidation, amend the Trust Deed such that the OpenNet board and the CityNet board will consist of no more than five (5) directors, of which not more than 25% of its directors shall be appointed by SingTel ("**SingTel Director**") as the 100% unitholder in the NetLink Trust, with the remaining 75% or more comprising independent directors provided always that there shall be at least one (1) SingTel Director. This is to eliminate any perception that SingTel possesses control over the decision-making in OpenNet and/or CityNet.
- (f) SingTel will, as part of the proposed Consolidation, terminate the OpenNet Agreements and OpenNet and SingTel will transfer the relevant OpenNet and SingTel personnel, skills and expertise to UMC or an equivalent separate legal entity established under the NetLink Trust (through its Trustee-Manager, CityNet) to provide manpower services to the NetLink Trust in relation to the installation, operation and maintenance of its dark fibre network. The NetLink Trust may also retain the flexibility to take-over the existing sub-contracting arrangements that SingTel has in place to support the ongoing provision of services to OpenNet at the commencement of Phase 2 of the proposed Consolidation, which includes arrangements with sub-contractors to supply labour and materials for the installation, operation and maintenance of OpenNet's dark fibre network. Alternatively, the NetLink Trust may call its own tenders for its sub-contracting arrangements if it so wishes. SingTel shall, within three (3) months of IDA's approval of the proposed Consolidation or such other date as may be agreed between SingTel and IDA, submit to IDA for approval a detailed implementation plan for the transfer of the OpenNet business, assets and the relevant OpenNet and SingTel personnel to the NetLink Trust. This will enhance the capability and institutional competence of the NetLink Trust, and to eliminate any control which may be perceived to arise as a result of SingTel providing to OpenNet the services under the OpenNet Agreements.
- (g) SingTel will, as part of the proposed Consolidation, resolve the outstanding disputes between SingTel and OpenNet in relation to the provision of services by SingTel to OpenNet pursuant to the OpenNet Agreements at the commencement of Phase 1 of the proposed Consolidation.

- (h) SingTel will, as part of the proposed Consolidation, continue the current arrangements under the Master Framework Agreement dated 22 July 2011 (“**MFA**”) in relation to the future requirements of the NetLink Trust for inter-linking ducts and associated manholes for the installation of Next Gen NBN dark fibre. Following the proposed Consolidation, the MFA between CityNet and SingTel will continue. This is to eliminate any perceived concern regarding the ability of the NetLink Trust to meet the Next Gen NBN’s ongoing requirements for inter-linking ducts and associated manholes for the installation of dark fibre.

PART V: COMMENTS RECEIVED IN RESPONSE TO IDA'S PUBLIC CONSULTATION (AND THE APPLICANTS' REPLY)

Comments Received in Response to IDA's Public Consultation

49. On 28 August 2013, IDA issued a consultation paper seeking comments on the Long Form Consolidation Application. IDA received comments from four (4) parties – a joint submission from the Asia Pacific Carriers' Coalition, M1 Limited ("**M1**"), MyRepublic Pte Ltd, Nucleus Connect, StarHub Ltd ("**StarHub**"), SuperInternet Access Pte Ltd and ViewQwest Pte Ltd (the "**Operators**"), and three (3) submissions from individuals – Andrew Ngiam, Max Ong and F.T. Ling. IDA's consultation paper (along with the Long Form Consolidation Application) and the comments are posted on the IDA website. The comments (raised either individually or collectively) are summarised below.
50. *Competition:* The Commenters noted that the Proposed Consolidation involves three (3) Dominant Licensees – SingTel, OpenNet and CityNet – and would result in "*SingTel's monopoly over Singapore's fibre broadband network*". The Commenters raised concerns that the Consolidation would lead to a substantial lessening of competition and entrench SingTel's "significant market power" in the fixed-line telecommunication market. Some Commenters also submitted that the proposed Consolidation would constitute a "monopoly" in the telecommunication industry in Singapore. This might lead to price hikes, deterioration in service quality and limits to affordable high speed broadband.
51. *Independence and Neutrality of CityNet:* The Commenters asserted that the Consolidation would not meet the requirements of Structural Separation and No Effective Control and that CityNet would unlikely be a "neutral" or "independent" entity that would serve the best interests of the industry. The Commenters submitted that under the Business Trusts Act, CityNet would be obliged to act in the best interests of all the unitholders (i.e. SingTel) as a whole and that the provisions of the existing Trust Deed deter CityNet from acting against SingTel's interests. According to the Commenters, CityNet would therefore be under a legal and enforceable obligation to prioritise SingTel's interests, even ahead of its own interests, and clearly ahead of any interests of customers and the industry at large. The Commenters submitted that the structure of the NetLink Trust would appear to be unique amongst business trusts, offering SingTel significantly more powers than the typical unitholder, thereby casting doubts on the independence and neutrality of CityNet. One Commenter also submitted that the presumption under a business trust structure that the trust beneficiary would be denied significant market power for lack of legal ownership in the trust asset might turn out false if the interests of the trustee-manager and single beneficiary merge in the case of a business trust with a single 100% unitholder.
52. *Divestment:* The Commenters expressed concerns over the Applicants' proposal to postpone the sell-down deadline of SingTel's unitholdings in the NetLink Trust from April 2014 to April 2018. The Commenters submitted that any extension of time given to SingTel beyond April 2014 for divestment

would delay the performance and satisfaction of IDA's Structural Separation requirements under the NetCo RFP.

53. *Benefits to the Public and Industry:* The Commenters highlighted OpenNet's poor service delivery performance and failure to meet its USO by the original committed date, and submitted that the proposed Consolidation had not clearly identified any detailed and improved processes to show that the proposed Consolidation would realistically address the current unsatisfactory state of affairs.
54. The Commenters noted that while the removal of SingTel as OpenNet's KSC as part of the proposed Consolidation might improve OpenNet's service delivery standards, there were no safeguards in place to prevent CityNet from re-appointing SingTel as its sole or major contractor.
55. *Other concerns.* The Commenters also raised other issues on the proposed Consolidation as summarised below:
 - (a) The Commenters raised concerns about the financial implications of the deal, including accounting for the Government grant that had been given to OpenNet. The Commenters submitted that SingTel had benefitted from earning revenue as OpenNet's only KSC, monetised its legacy assets by selling them off to CityNet, and as a shareholder of OpenNet. Further, the Commenters submitted that SingTel would be able to obtain significantly more revenue efficiently from OpenNet under the Consolidation, than if OpenNet remained as a standalone private company.
 - (b) The Commenters submitted that there are risks for third-party creditors in contracting or dealing with CityNet under the registered business trust structure, as CityNet would be personally liable for all liabilities incurred in performing the trust and they would not have a direct claim against the trust assets. However, this position appeared to be in conflict with the provisions of the existing Trust Deed. Further, in the event of subrogation, third party creditors' ability to recover their debts might be affected where CityNet's right of indemnity from the trust assets was somehow impaired.
 - (c) The Commenters also said that there was a lack of transparency of information on, among others, the proposed new Trust Deed and the details of the assets to be transferred between SingTel, CityNet and OpenNet.
56. *Proposed Measures.* The Commenters proposed that IDA either reject the Consolidation Application or, at a minimum, impose conditions in any approval of the Consolidation Application. These proposed conditions include the following conditions:
 - (a) The Post-Consolidation Entity guaranteeing improvements in its service delivery performance, ease of access to service and pricing levels in

meaningful spelt-out service level guarantees (“**SLGs**”). Any failures to comply with these SLGs ought to result in punitive action being taken against the Post-Consolidation Entity.

- (b) Putting in place steps to ensure that the CityNet management, employees and Board of Directors would truly act in the best interests of the public, and not just in SingTel’s commercial interests.
- (c) Putting in place steps to expedite and guarantee the complete transfer of the Underlying Assets from SingTel to CityNet by April 2014.
- (d) SingTel having to sell-down its stake in the NetLink Trust by the original timeline of April 2014. To prevent any circumvention of the intent for divestment, SingTel should not be allowed to sell the units in the NetLink Trust to any SingTel-related entities.
- (e) Putting in place steps to ensure that the rights of third parties who dealt with CityNet would not be prejudiced or compromised if CityNet is unable to satisfy the debts or other liabilities owing to such third parties.
- (f) The Post-Consolidation Entity should be a standalone, neutral entity. In this regard, CityNet should not be allowed to re-appoint SingTel as its KSC or to award significant contracts back to SingTel. SingTel should also transfer all the assets and resources necessary to manage the network infrastructure to CityNet, to remove any reliance CityNet might have on SingTel. Further, the existing Trust Deed should be amended accordingly and the necessary licence conditions imposed by IDA, in order to ensure the independence and neutrality of the Post-Consolidation Entity.
- (g) A Nationwide Broadband Network Task Force “**NBN Task Force**” should be established comprising representatives of IDA, the Ministry, the industry and the public. Among other things, the role of the NBN Task Force would be to oversee the implementation of the proposed Consolidation, to monitor the post-Consolidation performance of the relevant entities, and to report publicly its findings and recommendations.
- (h) The Post-Consolidation Entity should be responsible for continuing to meet all contractual and/or regulatory obligations of OpenNet to IDA and to all QPs and RSPs.

57. IDA would like to thank the Commenters for their feedback and suggestions, which IDA took into account in its assessment of the proposed Consolidation.

The Applicants’ Reply

58. In order to ensure a complete and objective assessment, IDA invited the Applicants to clarify the key issues raised in the Commenters’ submissions. The Applicants’ reply (“**Reply**”), excluding certain confidential information, is

posted on the IDA website. A confidential version of this Reply was provided to IDA earlier in October 2013, which IDA took into account in its assessment of the proposed Consolidation.

59. In summary, the Applicants submitted that the Commenters' concerns that CityNet is not neutral or independent because it must serve only the business interests of SingTel are not valid because they are based on an incorrect understanding of the Business Trusts Act and the duties of CityNet as the Trustee-Manager of the NetLink Trust. Specifically, CityNet is highly regulated by IDA, and the Business Trusts Act and the CityNet Trust Deed require that CityNet complies with its regulatory obligations. In response to the Commenters' concern regarding the extension in SingTel's sell-down deadline of the unitholdings in the NetLink Trust from April 2014 to April 2018, the Applicants submitted that additional time to divest is required, following the Consolidation, to effect the orderly transfer of the OpenNet assets, business and the relevant OpenNet and KSC personnel, skills and expertise to the NetLink Trust, and to integrate the two different businesses and operations to achieve a steady-state prior to divestment. As a public-listed company, SingTel has an obligation to its shareholders to ensure that the value of its assets are preserved and optimised. SingTel will therefore divest its unitholdings in NetLink Trust at an appropriate time and under the right market conditions, while mindful of its obligation to divest by no later than 22 April 2018. In response to comments that CityNet is not neutral or independent because the Trust Deed contains "Reserved Matters" and "Authorised Matters", the Applicants submitted that none of the "Reserved Matters" or "Authorised Matters" refers to the day-to-day operations of CityNet (in particular, the provision of open and non-discriminatory access to the Next Gen NBN Network) nor could they prevent CityNet from complying with its regulatory obligations.
60. In addition to the above, IDA had sought the Applicants' clarification on various aspects of their Consolidation Application as part of IDA's review process. The Applicants' response has been provided in this Explanatory Memorandum insofar as it is relevant to IDA's assessment.

PART VI: STRUCTURE AND REGULATION OF THE NEXT GENERATION NATIONWIDE BROADBAND NETWORK

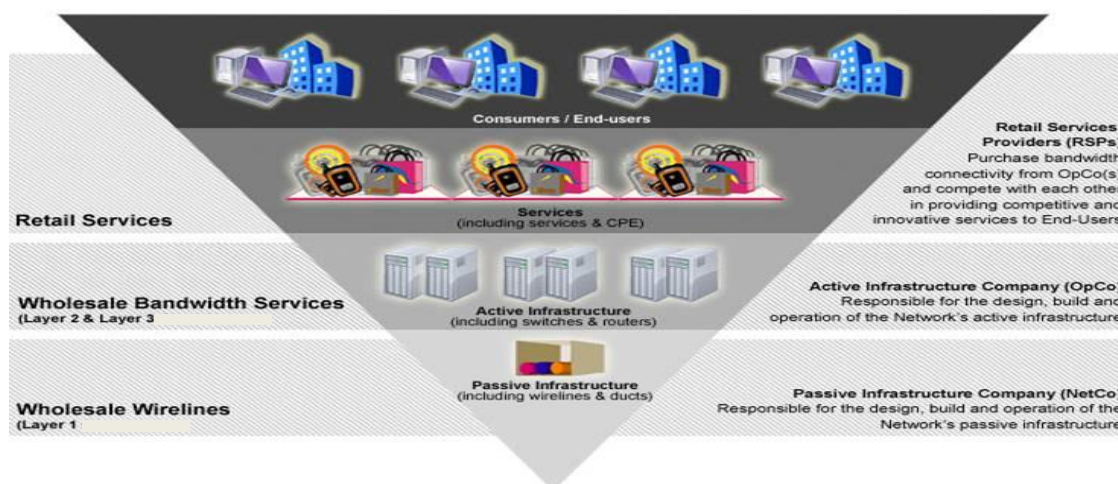
61. For the purposes of assessing the proposed Consolidation, it is important to understand the structure and regulation of the Next Gen NBN, in which the Applicants are key players.

Next Gen NBN Industry Structure

62. As mentioned in paragraph 27, IDA commenced the RFP process for the Next Gen NBN in December 2007. At that point, IDA had conceived a three-layered industry structure comprising the following (see Figure 6):

- (a) The first layer, the NetCo layer, which would be responsible for the design, build and operation of the passive infrastructure, which includes the dark fibre network and ducts;
- (b) The second layer, the OpCo layer, which would provide wholesale network services over the active infrastructure, comprising switches and transmission equipment; and
- (c) The third layer, the RSPs, which would offer services over the Next Gen NBN to end-users, including businesses and consumers.

Figure 6. Three-Layered Next Gen NBN Industry Structure proposed in RFP



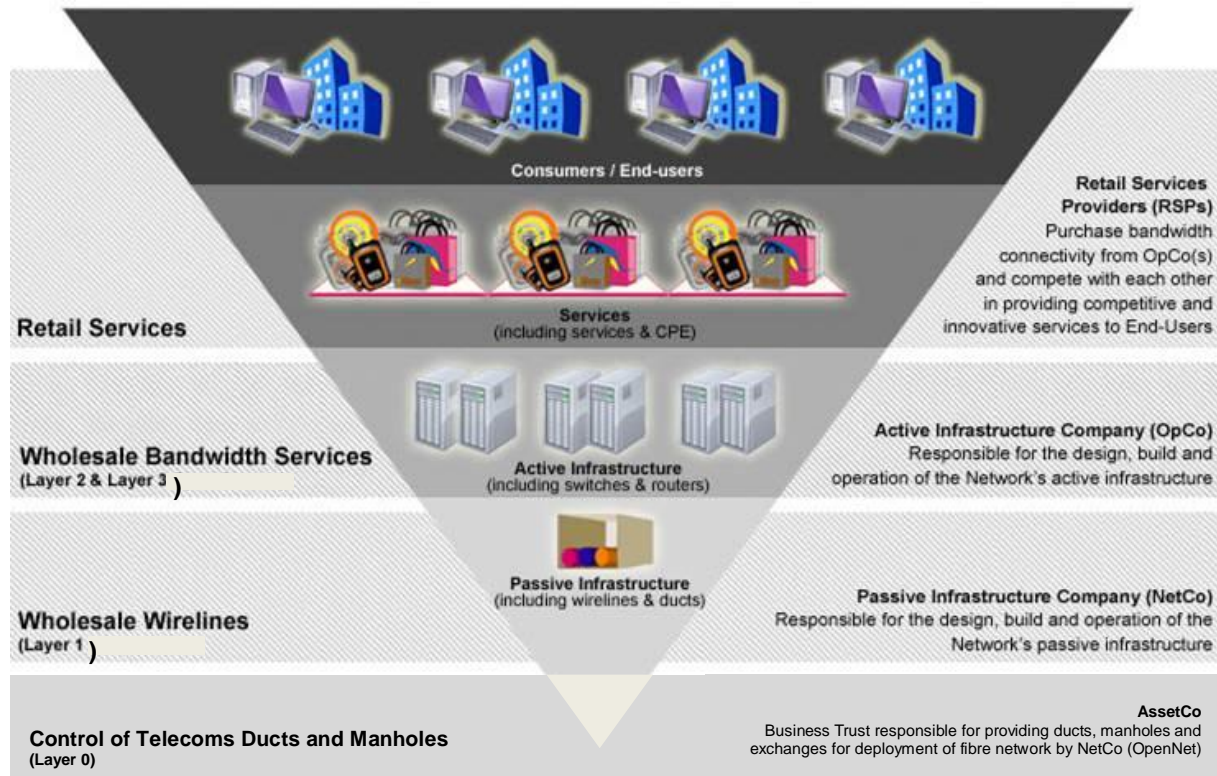
OpenNet was appointed as the Next Gen NBN's NetCo on 26 September 2008 and issued an FBO licence by IDA on 1 April 2009, while Nucleus Connect was appointed as the OpCo on 3 April 2009 and issued an FBO licence by IDA on 30 October 2009.

63. In its RFP bid proposal, the OpenNet consortium offered to make use of the existing ducts and other Underlying Assets belonging to its consortium member, SingTel, so as to minimise disruption to the public and enable the network to reach homes and buildings nationwide ahead of IDA's stipulated timeline. SingTel committed to the transfer of the relevant Underlying Assets

(comprising relevant ducts, manholes and COs) that would be used to support the deployment of the Next Gen NBN infrastructure by OpenNet to an independent, neutral party known as AssetCo. As explained in paragraph 31, this led to the formation of CityNet and the NetLink Trust.

64. Based on the OpenNet consortium’s bid proposal, the current industry structure of the Next Gen NBN includes a new “Layer 0”, in the form of an AssetCo, as follows (see Figure 7):

Figure 7. Current Next Gen NBN Industry Structure



Regulatory Requirements

65. The key regulatory requirements that have been imposed on the Next Gen NBN include:

Effective Open Access

66. To ensure that the Next Gen NBN NetCo and OpCo provide effective open access to downstream operators, and do not discriminate between the downstream operators, Structural Separation and operational separation were implemented at the NBN NetCo and OpCo layers respectively.
67. Structural Separation requires a licensee (acting alone or in concert with its Associates) not to have Effective Control over any other telecommunication or broadcasting licensee; not to be under the Effective Control of any other telecommunication or broadcasting licensee (acting alone or in concert with its Associates); and not to be under the Effective Control of the same Controlling

Entity (acting alone or in concert with its Associates) as any other telecommunication or broadcasting licensee. Accordingly, among other things, OpenNet is required under its FBO licence to ensure that it is not under the Effective Control of, and does not have any Effective Control over, any other telecommunication or broadcasting licensee. IDA understands that, currently for all intents and purposes, OpenNet and its downstream customers (i.e. the OpCos and the RSPs) are separate entities, each with fully autonomous decision-making considerations and abilities.

68. Under the operational separation requirements, the OpCo, Nucleus Connect, which is a 100% owned subsidiary of StarHub, is required to operate independently and as a separate entity from its parent for its decision-making and its operations, complete with separate branding, physical premises and staff. Nucleus Connect is required to comply with a set of Operational Separation performance indicators, and its compliance is monitored by a monitoring board consisting of IDA representatives.
69. To ensure the independence and neutrality of CityNet, among other things, CityNet is also required under its FBO licence to ensure that it is not under the Effective Control of, and does not have any Effective Control over, any other telecommunication or broadcasting licensee. CityNet must also obtain IDA's prior approval for any changes to its ownership structure. Although SingTel is currently the 100% unitholder of the NetLink Trust and SingTel appointed CityNet as the independent Trustee-Manager, to ensure that SingTel is unable to exercise any Effective Control over CityNet, SingTel is allowed to appoint no more than 30% of CityNet's Board of Directors. At least a 70% majority of the CityNet Board of Directors are independent of SingTel. SingTel has also committed to reducing its unitholdings in the NetLink Trust to less than 25% by April 2014, subject to the relevant approvals being obtained.
70. As additional safeguards to ensure that OpenNet, CityNet and Nucleus Connect remain neutral upstream wholesalers of Next Gen NBN services, they are not permitted under their licences to offer any retail telecommunication systems and/or services or wholesale transmission services without IDA's prior written approval.

Interconnection

71. To facilitate other licensees' access to the Next Gen NBN, OpenNet and Nucleus Connect are required to offer standard ICOs, which set out clearly the prices, terms and conditions at which they will offer their respective interconnection and access services to all QPs.
72. IDA has similarly required CityNet, as a Dominant Licensee, to offer a Reference Access Offer ("**RAO**"), which specifies the prices, terms and conditions at which it will offer (a) building lead-in duct space; and (b) access to building lead-in manholes, to all QPs.

73. The ICOs and RAO were approved by IDA and are reviewed regularly by IDA¹², with inputs from the industry, to ensure that they remain relevant and meet the needs of the industry.

USO

74. To ensure nationwide coverage, IDA accepted OpenNet's RFP bid commitment to reach 60% of all residential and non-residential premises by December 2010 and 95% of all residential and non-residential premises by mid-2012.
75. To cover the remaining areas, IDA imposed a USO on OpenNet, which requires OpenNet to provide the Mandated Services to all Physical Addresses upon the request of any Requesting Licensee, and all other locations in mainland Singapore and connected Singapore islands as may be reasonably requested by any Requesting Licensee. The USO took effect on 1 January 2013.
76. As a PTL, CityNet is required to provide, to any PTL designated by IDA under Section 6 of the Act that requests ducts and/or associated manholes, (a) access to and use of available ducts and manholes; and (b) where there are no available ducts and associated manholes, CityNet is required to procure or deploy such ducts and manholes and provide access to and use thereof.

QoS

77. To ensure a minimum standard of service provisioning, IDA has imposed QoS standards on installation-related faults on OpenNet's residential and non-residential end-user connections as well as QoS standards on OpenNet's timeframe in provisioning residential and non-residential end-user connection services¹³.

Current Status of the Next Gen NBN

78. The Next Gen NBN reached 95% of all residential and non-residential buildings by mid-2012. As of 1 July 2013¹⁴, OpenNet is able to accept orders for fibre services to all homes and businesses, including the remaining homes and businesses.

¹² The latest NetCo and OpCo ICOs are available at <http://www.ida.gov.sg/Policies-and-Regulations/Industry-and-Licensees/Next-Gen-NBN/OpenNets-Interconnection-Offer-2012> and <http://www.ida.gov.sg/Policies-and-Regulations/Industry-and-Licensees/Next-Gen-NBN/Nucleus-Connects-Interconnection-Offer> respectively. The RAO is available at <http://www.ida.gov.sg/Policies-and-Regulations/Regulations/Store/CityNets-Reference-Access-Offer-2011>.

¹³ The QoS frameworks imposed on OpenNet are available at: <http://www.ida.gov.sg/~media/Files/PCDG/Licensees/StandardsQoS/QualityofService/QoSFramework.pdf> and http://www.ida.gov.sg/~media/Files/PCDG/Licensees/StandardsQoS/QualityofService/QoSFramework_OpenNetServiceTimeframe.pdf

¹⁴ IDA has taken enforcement action against OpenNet for its failure to comply with its USO between 1 January 2013 and 30 June 2013.

79. The structural separation and operational separation requirements imposed on the NetCo and the OpCo layers respectively have been successful thus far in engendering a competitive and innovative retail broadband service market. There are now eight (8) OpCos and twenty-six (26) RSPs over the Next Gen NBN. Of the twenty-six (26) RSPs, more than twenty (20) RSPs are providing fibre-based services at the retail level to residential and/or business customers.
80. Residential and business customers can choose from various fibre-based broadband plans in the market today, some of which are being offered at more competitive prices compared to non-Next Gen NBN services. The residential fibre plans available today range from 25 Mbps to 1 Gbps, with promotional prices for a 200 Mbps plan starting from as low as S\$39; and the business fibre plans available range from 10 Mbps to 1 Gbps.
81. To differentiate themselves from the competition, several RSPs have offered specially tailored service plans to meet the needs of specific user segments, such as online gamers; packaged their new ultra-high speed broadband services with value added services, such as interactive TV applications, cloud services and online learning resources; or provided more attractive terms, such as shorter or no lock-in contract periods.
82. The subscriber base of fibre-based services has more than quadrupled to over 450,000 as of October 2013 since OpenNet's announcement of its 100,000th fibre subscriber in January 2012¹⁵.

¹⁵ "Fibre Drives Satisfaction Among Broadband Users", OpenNet Press Release, 12 Nov 2013, available at: <http://www.opennet.com.sg/press/fibre-drives-satisfaction-among-broadband-users/>

PART VII: IDA'S ASSESSMENT FRAMEWORK

83. Under the Telecom Competition Code, it is provided that IDA will not approve a transaction where IDA determines that the transaction is likely to substantially lessen competition in any telecommunication market within Singapore or it is in the public interest to deny the Consolidation Application. IDA will find that a Consolidation substantially lessens competition where the Consolidation would be likely to: (a) result in a significant reduction in existing competition in any Singapore telecommunication market; or (b) significantly impede the development of future competition in any Singapore telecommunication market. IDA may also approve the Consolidation Application, subject to conditions designed to reduce any anti-competitive harm or effect, or public interest concern. The Applicants may propose possible conditions for IDA's consideration that could reduce any potential adverse competitive impact of the Consolidation or public interest concern arising from the Consolidation.
84. Consolidations can generally be considered Horizontal or Non-horizontal. A Horizontal Consolidation refers to a Consolidation involving two or more entities that are current competing providers of the same Services or Services that are reasonable substitutes. Non-horizontal Consolidations are Consolidations that involve two or more entities that are not current competitors. Where a Consolidation has both Horizontal and Non-horizontal aspects, IDA will assess each aspect of the Consolidation under the appropriate standard.
85. IDA recognises that Horizontal Consolidations raise more serious competition restriction concerns as they result in the elimination of direct competitors. This may result in the creation of a market participant with Significant Market Power. Such Consolidations may also result in a concentrated market in which the remaining participants are more easily able to undertake anti-competitive concerted actions, such as price-fixing.
86. By contrast, Non-horizontal Consolidations generally do not raise significant competitive concerns. Indeed, they often facilitate competition by creating a more efficient market participant. However, Non-horizontal Consolidations can have adverse competitive effects where at least one of the entities has Significant Market Power or participates in a concentrated market with few other competitors. The risk is that the Non-horizontal Consolidation may eliminate a potential competitor or limit the ability of competitors to access an "upstream" input or a "downstream" facility necessary to deliver services to end-users. Another possibility is that a Non-horizontal Consolidation may restrict competition by enabling an entity with Significant Market Power in one market to distort competition in another market. For example, after a Non-horizontal Consolidation, an "upstream" entity that has Significant Market Power in the input market could charge above-cost prices in that telecommunication market and use the revenue to enable the "downstream" affiliate to sell services at below-cost prices.

87. In addition, IDA will consider whether the proposed Consolidation will result in significant efficiencies that could not have been achieved absent the Consolidation and which would likely be passed to customers. IDA will also take into account any other public interest considerations. IDA will also consider whether the anti-competitive effect may be ameliorated through the imposition of appropriate conditions of approval.
88. Additionally, in relation to this proposed Consolidation, IDA will, in its assessment, pay special attention to the extent to which the regulatory requirements specific to the Next Gen NBN, such as effective open access, QoS and USO will continue to be fulfilled, as well as how the proposed Consolidation will continue to achieve the original objectives of the Next Gen NBN in engendering a competitive and innovative retail broadband service market.

PART VIII: IDA'S ASSESSMENT

Market Definition and IDA's Assessment of Whether Proposed Consolidation is Horizontal or Non-Horizontal

89. To determine whether a Consolidation is Horizontal or Non-horizontal, IDA will first determine the relevant telecommunication markets within Singapore in which the Applicants participate to assess if there is any overlap in the services they provide. In conducting its market analysis, IDA will begin with defining the service market(s) which will be impacted by the proposed Consolidation. It is important to note that market definition is not an end in itself but serves as a framework for analysing the direct competitive pressures faced by the Post-Consolidation Entity. Where there is strong evidence that there may be a few plausible market definitions, and the competitive assessment is shown to be largely unaltered by which one of these market definitions is adopted, it may not be necessary to define the market uniquely.
90. In this case, IDA's market definition and competition assessment in relation to the proposed Consolidation are in relation to the markets in which the Applicants -- OpenNet, CityNet and SingTel -- operate and which are affected by the transaction. It should be noted that IDA will approach market definition and the related competition assessment on a case-by-case basis, based on the relevant facts and circumstances at the point of time of the assessment. Earlier market definitions determined by IDA may, therefore, not always be applicable and would not set any binding precedent for future matters.

Market Definition

91. As explained in Paragraph 2.4.1 of IDA's Reclassification and Exemption Guidelines and Paragraph 7.2.1.1 of IDA's Telecom Consolidation and Tender Offer Guidelines, IDA will define the relevant service market based on a "demand substitutability" approach. Under this approach, the relevant market consists of both the specific telecommunication service provided by the Applicant(s) and any additional telecommunication service that buyers regard as interchangeable with it. IDA recognises that certain markets are characterised by "one-way substitutability". One-way substitutability exists where product B is a substitute for product A, but product A is not a demand substitute for product B. In conducting a competitive analysis, IDA will begin the market definition process with the focal service market (i.e. starting with the "narrowest" service scope).

CityNet

92. The Applicants submitted that CityNet operates in the wholesale market for access to "Layer 0" passive infrastructure in Singapore, namely ducts, manholes, space at COs and Essential Support Facilities ("ESFs") comprising building lead-in duct space and access to building lead-in manholes. FBO licensees acquire the "Layer 0" services to install their own "Layer 1" passive infrastructure (e.g. dark fibre, copper) or in the case of COs, to co-locate their own passive or active equipment for the purposes of connecting to "Layer 1"

dark fibre services. The Applicants submitted that the “Layer 0” service is not substitutable or interchangeable with any other service. There is no other service available in Singapore which offers a similar function, characteristic or potential customer base as the “Layer 0” services. Given that there are no substitutes, the Applicants submitted that the service or product market is limited to “Layer 0”. The Applicants submitted that the geographic market is national as FBO licensees that require “Layer 0” services must acquire them within Singapore.

93. IDA notes that “Layer 0” is not a pre-defined market today and is a common term used by the industry to refer to passive telecommunication systems and infrastructure, such as ducts and manholes, that carry the telecommunication cables of the telecommunication licensees. Indeed, each of the components, such as ducts and manholes, may be classified as a separate market of its own as each serves a specific purpose and function, as set out below:
- (a) In the provision of ducts for lease, IDA notes that FBO licensees such as SingTel, CityNet, StarHub, BlueTel Networks Pte Ltd (“**BlueTel**”) and SP Telecommunications Pte Ltd build their own telecommunication duct networks for their self or own use to lay their cable infrastructure to provide telecommunication services downstream, or for lease to other telecommunication licensees to facilitate these telecommunication licensees’ laying of their cable infrastructure. Telecommunication duct networks built by some FBO licensees like SingTel and StarHub are primarily for their self or own use, i.e. laying their own cable infrastructure for the provision of their own telecommunication services and they do not presently lease duct space to other third parties. As mentioned above, CityNet’s ducts are those transferred from SingTel as part of the RFP bid arrangement or built by itself, and CityNet leases its ducts to third parties such as OpenNet and SingTel to lay their cable infrastructure. Where ducts are leased to third parties, there may be pricing differences between those laid in Central Business District (“**CBD**”) and non-CBD areas due to different construction cost structures.
 - (b) Different FBO licensees that build their own duct networks also build manholes to access the ducts and cable infrastructure laid within the ducts. SingTel builds manholes primarily to facilitate its own access to its ducts and cable infrastructure laid. CityNet has a set of manholes transferred from SingTel as part of the RFP bid arrangement, or which it built by itself, for telecommunication licensees to have access to CityNet’s ducts to lay or access their cable infrastructure.
 - (c) As for building lead-in duct space and building lead-in manholes, these facilities are often built or acquired by infrastructure players such as SingTel and CityNet when building ducts and manholes as part of the passive infrastructure facilities. Today, access to and lease of these facilities from SingTel and CityNet by other telecommunication licensees are made through IDA’s regulatory frameworks: SingTel is required to lease and allow access to these facilities to competing telecommunication licensees at regulated rates under the Reference

Interconnection Offer (“**RIO**”) as part of its Dominant Licensee obligations while CityNet is similarly required to make available these facilities at regulated rates under its RAO as part of its Dominant Licensee obligations.

94. For the purposes of this competition assessment, IDA is of the view that it is not necessary to define each of the above components as a separate market as the demand for and the provision of these components are generally made together. For example, telecommunication licensees wishing to lease ducts to lay their own cable infrastructure will need manhole access to access the ducts and hence the demand for and provision of duct lease and manhole access is made together. Similarly, the lease of and access to building lead-in manholes and ducts are provided together as part of IDA’s regulatory requirement to facilitate the laying of telecommunication licensees’ cable infrastructure. As such, for the purpose of this assessment, IDA is of the view that it is sufficient to consider the infrastructure components collectively as part of a broader “Layer 0” market.
95. Separately, CityNet has seven (7) exchange buildings¹⁶ in which it leases building space and facilities to telecommunication licensees like SingTel and OpenNet for them to house their telecommunication equipment. Telecommunication licensees usually build or lease space from different building premises in Singapore to set up their own COs. To the extent that these building space and facilities are leased to telecommunication licensees for their provision of telecommunication services, for the purpose of this competition assessment, these space and facilities will be included as part of the telecommunication infrastructure in the “Layer 0” market.
96. IDA also agrees that the geographic market for the “Layer 0” market is national as FBO licensees that require access to ducts, manholes, etc. to install their own passive infrastructure or co-locate their equipment in COs must acquire them within Singapore. For the purpose of this assessment, IDA will assess the impact of the proposed consolidation on the “Layer 0” market as a whole and will not further segregate its analysis into CBD and non-CBD market segments as FBO licensees are free to enter into either of the market segments to supply “Layer 0” systems and infrastructure based on market demand, while the demand for such systems and infrastructure by FBO licensees is, in turn, derived from customers which may be located in CBD and/or non-CBD areas.

OpenNet

97. The Applicants submitted that OpenNet operates in the market for wholesale “Layer 1” dark fibre services in Singapore (but excluding wholesale “Layer 0” services), which may be divided into sectors involving wholesale “Layer 1” residential dark fibre services and wholesale “Layer 1” non-residential dark fibre services. The Applicants submitted that other passive wired or wireless infrastructures do not possess the same functions or characteristics as a

¹⁶ As mentioned in SingTel’s Singapore Exchange (SGX) Announcement on the Establishment of NetLink Trust.

“Layer 1” dark fibre service and they have both distance and capacity constraints compared to “Layer 1” dark fibre. Similarly, other active infrastructures (such as local leased circuits) have limitations (for example, in terms of flexibility) and are also not interchangeable or substitutes for “Layer 1” dark fibre. Given that there are no or limited substitutes to “Layer 1” dark fibre services, the Applicants submitted that the market is limited to “Layer 1” dark fibre services. The Applicants submitted that the geographic market is national as customers that require a “Layer 1” dark fibre service must acquire them within Singapore.

98. IDA agrees that dark fibre services are different from “Layer 0” infrastructure, such as ducts and manholes, in terms of their purpose and functions. Dark fibre services are also different from other active connectivity services (such as local leased circuits, MetroEthernet, etc.) as dark fibres are passive conduits which are used to provide these active connectivity services. These differences are also reflected in the prices between dark fibre and other active connectivity services, as the former provides the raw bandwidth capacity that allows users more flexibility for bandwidth, traffic and network management control. IDA also notes that the provision of dark fibre services may be further divided into the residential and non-residential markets as the two markets face, amongst others, different customer bases, different prices and different competitive conditions. For example, OpenNet’s dark fibre service prices for residential and non-residential connections are priced at \$15 and \$21 per month respectively. OpenNet also provides fibre connection to Non-Building Address Points (“**NBAP**”) and fibre connection for different segments between the COs and users’ premises and NBAP (“**Segment Service**”). The NBAP and Segment Service may each be considered a market in view of different pricing, service quality and delivery arrangements under the ICO. However, for the purposes of this assessment, IDA will consider NBAP and Segment Service as product variations within the wholesale non-residential market, given that such service provisioning differentiations are typically made to meet the different needs of non-residential or enterprise end-users or for telecommunication licensees’ own network connectivity. IDA agrees that the geographic market for dark fibre services is national as customers that require such services must acquire them within Singapore.
99. In addition, IDA notes that OpenNet, as part of its Dominant Licensee obligations, is also required to provide co-location space at regulated rates under its ICO, to allow its customers to co-locate their equipment within designated co-location space within OpenNet’s COs to access OpenNet’s fibre and network facilities. However, while co-location space may be available from CityNet, SingTel or other licensee(s), there is no substitute co-location space available to licensees who wish to access OpenNet’s fibre services as they are required to obtain co-location space from OpenNet under OpenNet’s ICO.

SingTel

100. The Applicants submitted that SingTel operates predominantly in the retail and wholesale markets for “Layer 1.5” to “Layer 3”¹⁷ services in Singapore. These include various IDA-defined telecommunication markets¹⁸ such as Backhaul, Commercial Retail International Telephone Services, Terrestrial International Private Leased Circuit, Local Leased Circuits and Local Managed Data Services, as listed in Annexure 2 of the Applicants’ Consolidation Application submission.
101. The Applicants also submitted that SingTel provides:
- IDA-regulated access under the RIO to certain “Layer 0” passive infrastructure, namely, access to lead-in ducts and associated lead-in manholes, co-location at exchange buildings and ESFs;
 - Limited retail “Layer 1” non-residential dark fibre services in the enterprise market; and
 - Limited wholesale “Layer 1” dark fibre services to FBO licensees (for example, for backhauling submarine cable capacity to points of presence in Singapore).
102. As for the other retail and wholesale services SingTel provides in Singapore, besides those identified in the paragraph above, there is no overlap in market participation with CityNet and OpenNet. It should be noted that CityNet and OpenNet are prohibited from offering downstream services without IDA’s prior written approval. It is therefore not necessary to conduct further market definitions for these other services as part of this Consolidation Application assessment.

IDA’s Assessment of Whether Proposed Consolidation is Horizontal or Non-Horizontal

103. Based on the market definition above and the scope of services that the Applicants are licensed to provide, IDA considers that the proposed

¹⁷ “**Layer 1.5 Services**” refer to connectivity services performed at the “physical” layer of both the OSI and TCP/IP models (defined below), and which entail the channelisation, allocation, filtering and/or multiplexing of electromagnetic wavelengths.

“**Layer 2 Services**” refer to connectivity services performed at the “data link layer” of both the OSI and TCP/IP models, and which minimally include Ethernet frame transmission services.

“**Layer 3 Services**” refer to connectivity services performed at the “network layer” of the OSI model and to the “network/Internet layer” of the TCP/IP model, and which minimally include IP packet transmission services.

Where:

“**Open Systems Interconnection (OSI) Layers**” or “**OSI**” means the ISO-defined networking framework for implementing protocols in seven layers, namely Layer 1 – Physical, Layer 2 – Data Link, Layer 3 – Network, Layer 4 – Transport, Layer 5 – Session, Layer 6 – Presentation, Layer 7 – Application; and

“**TCP/IP**” means a set of communications protocols used for transmitting data between computers and as the basis for standard protocols on the Internet.

¹⁸ Defined during previous requests for exemption under Sub-sections 2.3 and 2.5 of the Telecom Competition Code.

Consolidation is largely Non-horizontal in nature given that CityNet, OpenNet and SingTel have very limited overlaps in the markets they participate in.

104. Where the Applicants do participate in the same markets, IDA is of the view that the effect of the proposed Consolidation on competition in these markets does not appear to be substantial. IDA's assessment is elaborated below:

- (a) In the provision of "Layer 0" market, as explained above, both SingTel and CityNet are required under their respective Dominant Licensee obligations to provide their respective "Layer 0" services to competing telecommunication licensees (for SingTel) and downstream telecommunication licensees (for CityNet). SingTel's "Layer 0" services made available under the RIO are required by IDA to facilitate interconnection with SingTel's network and access to SingTel's "bottleneck" facilities. In this regard, depending on the needs of the telecommunication licensees, they can continue to approach SingTel insofar as they need access to SingTel's "Layer 0" services under the RIO. Moreover, in the case of telecommunication ducts and manholes, unlike CityNet, SingTel does not lease telecommunication ducts to other FBO licensees and its ducts are only for its self-use. FBO licensees who wish to roll out their own telecommunication network can approach CityNet to gain access to CityNet's ducts/manholes. Post-Consolidation, these obligations imposed on SingTel and CityNet will continue to remain. Given that SingTel has commercially decided not to provide ducts and manhole facilities for competing telecommunication licensees' access/lease since full liberalisation, there is little evidence to suggest that absent the proposed Consolidation, SingTel would enter the market to provide these facilities for third-party access.

In other words, based on IDA's current assessment of the relevant circumstances, the proposed Consolidation will not likely change the "Layer 0" market structure today or going forward. The regulatory obligation placed on both SingTel and CityNet to provide their respective "Layer 0" facilities identified under their RIO and RAO, respectively, at regulated prices, will continue.

Moreover, given that CityNet and SingTel operate in the Layer "0" market (for ducts, manholes, and building lead-in ducts and manholes) while OpenNet does not participate in the Layer "0" market, IDA would note that there is no change in the market situation post-consolidation for Layer "0" services as this is not a consolidation between SingTel and CityNet. The ownership structure of SingTel and CityNet are not affected by this proposed Consolidation. SingTel, CityNet and other FBO licensees will continue to build and own "Layer 0" infrastructure in various parts of Singapore.

- (b) In the provision of "Layer 1" dark fibre services in the non-residential market by OpenNet and SingTel, it is important to note that OpenNet is under regulatory (e.g. USO and ICO) and contractual obligations to offer wholesale "Layer 1" dark fibre services to downstream

telecommunication licensees for non-residential end-users. On the other hand, SingTel does not offer a standard dark fibre service and only offers limited customised dark fibre services to the business end-users and FBO licensees (subject to its Dominant Licensee obligations, among other things, to provide services on just, reasonable and non-discriminatory prices, terms and conditions). At this juncture, there is no strong evidence to suggest that competition in the dark fibre services for the non-residential market will be substantially lessened by SingTel ceasing to offer the said limited dark fibre services to non-residential customers post-Consolidation. Moreover, it is noted that besides OpenNet and SingTel, there are other FBO licensees such as M1, StarHub, Verizon Communications Singapore Pte Ltd and BlueTel who have deployed their own optical fibre network, especially in the business district, to provide dark fibre services for their own use or to serve other FBO licensees and non-residential end-users. The proposed Consolidation will not likely change the market structure today or going forward. The regulatory obligation placed on OpenNet to provide “Layer 1” dark fibre services in the non-residential market will continue.

- (c) In the market for the provision of co-location space to access OpenNet’s fibre services, as licensees who wish to access OpenNet’s fibre services are required to obtain co-location space from OpenNet only, i.e. they are unable to obtain it from SingTel, CityNet or any other licensee, IDA considers that there is no competitive impact to this market arising from the proposed Consolidation.

105. As noted above, Non-horizontal Consolidations generally do not raise significant competitive concerns as they do not involve current competitors. In this case, given that the Applicants operate in largely different markets, IDA is of the view that the proposed Consolidation should not raise significant competition concerns in the various Singapore telecommunication service segments. As one of the Commenters has also observed, the proposed Consolidation is not expected to result in any negative change to existing market concentration levels.

106. However, Non-horizontal Consolidations can have adverse competitive effects where at least one of the entities has Significant Market Power or participates in a concentrated market with few other competitors. In this case, IDA recognises the Applicants are Dominant Licensees and there are limited number of players operating in the “Layer 0” and “Layer 1” markets. There may therefore be valid concerns that the proposed Consolidation may eliminate a potential competitor, limit the ability of competitors to access an essential “upstream” input or “downstream” facility or enable an entity with Significant Market Power in one market to distort competition in another market. IDA’s assessment of these risks are discussed below:

Elimination of Potential Future Competitor

107. IDA considers that the concern that the proposed Consolidation would result in the elimination of a potential future competitor between CityNet and

OpenNet has been addressed by the fact that CityNet and OpenNet are prevented under their licences from entering other markets without IDA's prior written approval in the first place. For reasons set out in paragraph 70, CityNet's and OpenNet's licences provide, inter alia, that each (i) shall not offer for sale, sell or otherwise provide retail telecommunication systems and/or services to any End-User without IDA's prior written approval; and (ii) shall not offer for sale, sell or otherwise provide wholesale transmission services through the System or any other networks in Singapore without IDA's prior approval. This requirement will remain in place post-Consolidation.

108. IDA notes that it might be possible to argue that the proposed Consolidation could result in the elimination of a potential future competitor between SingTel and OpenNet with respect to the "Layer 1" residential dark fibre services market, given that SingTel is not currently in this market and might conceivably enter the market in the foreseeable future. However, IDA considers that the inherent characteristics of the residential dark fibre services market (i.e. it is very costly and difficult to replicate a nationwide dark fibre network to serve individual homes in the residential segment) makes this entry by SingTel highly unlikely. SingTel had not entered this segment of the market before the Next Gen NBN was deployed by OpenNet, and had chosen to participate only on a limited basis in the non-residential dark fibre services market. Now that OpenNet has deployed a nationwide dark fibre network to the homes to serve the residential segment, it is less likely that SingTel will deploy another nationwide network to the homes to compete in this market. Hence, IDA is of the view that it is unlikely that the proposed Consolidation will result in the elimination of a potential competitor in relation to SingTel against OpenNet in the residential dark fibre services market. At the retail level, as mentioned earlier, OpenNet is not allowed to participate in downstream markets in the leasing of dark fibre services directly to end-users unless with IDA's approval. Hence, the proposed Consolidation is not likely to change the market structure today or going forward.

Limit the ability of competitors to access an essential "upstream" input or "downstream" facility or enable an entity with Significant Market Power in one market to distort competition in another market

109. Any concerns that the proposed Consolidation might restrict competition by limiting the ability of competitors to access an "upstream" input or a "downstream" facility necessary to deliver services to end-users or allow an entity with Significant Market Power in one market to distort competition in another market would be addressed by the regulatory requirements imposed by IDA on the Next Gen NBN (including the Control and Ownership restrictions i.e. for "No Effective Control") and interconnection requirements to ensure the Next Gen NBN provides effective open access to downstream operators). IDA's assessment of the ability of the Post-Consolidation Entity to meet these regulatory requirements is discussed in detail below.

Compliance with Control and Ownership Restrictions

110. As noted in Part VI above, the Next Gen NBN has been structured to promote long-term competition in the market. Specifically, Structural Separation was imposed on the Next Gen NBN AssetCo and NetCo layers and operational separation was imposed on the OpCo layer to ensure that the Next Gen NBN operators provide effective open access to downstream operators.
111. While the Commenters have submitted that the proposed Consolidation is against the tenet of structural separation because it results in the removal of the fourth layer of an independent and separately managed company (i.e. AssetCo), IDA would note that the post-Consolidation industry structure is not inconsistent with the three-layered industry structure that IDA had originally conceived under the Next Gen NBN RFP.
112. As mentioned, IDA's key considerations include ensuring that the Next Gen NBN continues to be an open access network which is offered on a non-discriminatory basis to all downstream operators and the extent to which the proposed Consolidation is consistent with IDA's Control and Ownership restrictions (at the NetCo layer).
113. The Commenters have highlighted that the business trust structure may not meet the basic tenets of Structural Separation and No Effective Control, based on their understanding of the control that SingTel, as the sole unitholder, can exercise over CityNet. In particular, the Commenters expressed concerns that CityNet is under the statutory requirements of the Business Trusts Act to act in the best interests of its unitholders (i.e. SingTel) and give priority to its unitholders' interests as a whole over its own interests in the event of a conflict of interests. The Commenters questioned whether IDA's regulation and enforcement could outweigh such statutory duties imposed on CityNet and its Board of Directors towards its sole unitholder, SingTel, under the business trust structure.

Business Trusts Act Requires Compliance with Regulatory Obligations

114. At the outset, IDA would like to clarify that CityNet, to-date, has met IDA's Control and Ownership restrictions for AssetCo as AssetCo is subject to IDA's structural separation requirements. With regard to the Commenters' concern that CityNet's statutory requirements under the Business Trusts Act may conflict with the regulatory obligations in respect of the Next Gen NBN, IDA notes that in the Reply, the Applicants have clarified that it is incorrect to interpret the Business Trusts Act as requiring CityNet to favour SingTel's business interests in contravention of CityNet's regulatory obligations. IDA notes the Applicants' submission that CityNet is required to, at all times, act honestly and exercise reasonable diligence in the discharge of its duties as Trustee-Manager in accordance with the Business Trusts Act and the trust deed of the registered business trust under Section 10(1) of the Business Trusts Act. The Applicants noted that similarly, under Section 11(1)(a) of the Business Trusts Act, the Board of Directors of CityNet is required to act honestly and exercise reasonable diligence in the discharge of the duties of

their office and, in particular, shall take all reasonable steps to ensure that CityNet discharges its duties under Sections 10(1) and (2) of the Business Trusts Act.

115. Given that the business of the NetLink Trust is regulated by IDA, CityNet and its Board of Directors would have the statutory duty (in this context) to act honestly and exercise reasonable diligence in managing and operating the business of the NetLink Trust in compliance with its regulatory obligations. Indeed, the Monetary Authority of Singapore (“**MAS**”), in its response to the public consultation feedback received during the formulation of the Business Trusts Act, had also clarified that Section 10 of the Business Trusts Act should not be interpreted to mean that the sole objective of the Trustee-Manager is to preserve the unitholders’ interests to the exclusion of other stakeholders (such as a regulator which has jurisdiction over a regulated activity)¹⁹. Therefore, the Business Trusts Act does not prevent CityNet from complying fully with IDA’s regulatory requirements, including but not limited to the Control and Ownership restrictions. CityNet is fully aware that the Next Gen NBN is highly regulated by IDA and that it is obliged to fulfil all of its regulatory obligations, as explained above and further elaborated below in paragraphs 159 to 162.
116. Section 10(2) of the Business Trusts Act provides that CityNet shall act in the best interests of all the unitholders of the registered business trust as a whole; and give priority to the interests of all the unitholders of the registered business trust as a whole over its own interests in the event of a conflict between the interests of all the unitholders as a whole and its own interests. The Commenters also appear to have interpreted this Sub-section to mean that CityNet is obliged to put SingTel’s interests ahead of its own and it is likely that CityNet would have to consider not just SingTel’s interests in the NetLink Trust but SingTel’s wider interests “as a whole” (e.g. to act in a manner that would favour SingTel such that SingTel can continue to be the dominant player in the fixed-line and related markets).
117. The Applicants have submitted that this is an incorrect interpretation of the expression “as a whole”. Based on the usage of the expression in both the Business Trusts Act and the Business Trusts Regulations (examples of which are listed below), the Applicants have represented and committed that the expression “as a whole”, when used in relation to unitholders, refers to all unitholders as a collective group, rather than inclusive of unitholders’ interests outside the registered business trust.
- (a) Regulation 11 of the Business Trusts Regulations requires CityNet, in carrying out its duties as Trustee-Manager of the NetLink Trust, to (i) treat unitholders of the NetLink Trust who hold units in the same class fairly and equally and unitholders who hold units in different classes fairly; and (ii) report to MAS any contravention of the Business Trusts Act

¹⁹ See “Consultation on Regulation of Business Trusts – MAS’ Response to Feedback Received”, available at:
http://www.mas.gov.sg/~media/resource/publications/consult_papers/2003/MAS%20Consultation%20on%20Regulation%20of%20Business%20Trusts%20%20MAS%20Response%20to%20Feedback%20Received.pdf

or the Business Trusts Regulations by any other person that had, has or is likely to have, a materially adverse effect on the interests of all the unitholders, or any class of unitholders, of the NetLink Trust “as a whole”;

- (b) Section 10(4) of the Business Trusts Act provides that the trustee-manager shall hold the trust property for all the unitholders of the registered business trust “as a whole”;
- (c) Section 41(1)(a) of the Business Trusts Act provides that the court may make an order to authorise civil proceedings against the directors of the trustee-manager of the registered business trust to be brought in the name of or on behalf of all the unitholders of the registered business trust “as a whole” by the person applying for such order;
- (d) Section 42(1) of the Business Trusts Act provides that a complainant may apply to the court for leave to bring an action in the name and on behalf of all the unitholders of the registered business trust “as a whole” for the purpose of prosecuting, defending or discontinuing the action on behalf of the trustee-manager; and
- (e) Section 43(1) of the Business Trusts Act provides that an action brought under Section 42 shall not be stayed or dismissed by reason only that it is shown that an alleged breach of a right of or duty owed to all the unitholders of the registered business trust “as a whole” has been or may be approved by the unitholders.

IDA will require the Applicants to fully comply with the submissions and assurances in their Reply as binding and enforceable obligations to IDA.

118. From the above, it is noted that, while the Trustee-Manager (i.e. CityNet) is obliged to take into account the interests of its unitholders (i.e. SingTel), this cannot compromise CityNet’s regulatory obligations and such “interests” should not be the unitholders’ interests outside the registered business trust. In this regard, IDA recognises the merits of further clarifying and confirming that CityNet considers SingTel’s interests in the NetLink Trust only and not SingTel’s wider interests “as a whole” (e.g. to act in a manner that would favour SingTel in order to maintain SingTel’s dominance in the fixed-line and related markets). In the event of approval, IDA will therefore impose further regulatory safeguards in this regard to ensure that CityNet (as Trustee-Manager of the NetLink Trust) does not take into account any interests of its unitholders that are unrelated to the unitholders’ investment in the NetLink Trust (such as the unitholders’ telecommunication business as an OpCo and/or RSP).

CityNet’s Trust Deed Requires Compliance with Regulatory Obligations

119. Beyond the Business Trusts Act, the duty of CityNet to comply with its regulatory and licence obligations is expressly provided for in the proposed Amended and Restated Deed Constituting NetLink Trust (“**Revised Trust**”

Deed”) itself which, among other things, provides for the governance of the affairs of the NetLink Trust and the conduct of its business. Indeed, the primacy of CityNet’s regulatory obligations is explicitly stated in Clause 1.7 of the proposed Revised Trust Deed:

1.7 Relevant Law, Regulations and Guidelines to Prevail

For the avoidance of doubt, in the event of a conflict between any provision of this Deed and the Relevant Law, Regulations and Guidelines, the Relevant Laws, Regulations and Guidelines shall prevail. [Emphasis added.]

In this regard, under Clause 1.1 of the proposed Revised Trust Deed, “Relevant Laws, Regulations and Guidelines” refer to:

(i) any or all laws, regulations, codes of practice, standards of performance, licensing conditions, directions and orders lawfully issued, in Singapore (including without limitation, the Telecommunications Act, Chapter 323 of Singapore, the Business Trusts Act, the Securities and Futures Act, the Telecom Competition Code (also known as the Code of Practice for Competition in the Provision of Telecommunication Services 2010), and the Listing Rules); and

(ii) all requirements imposed by any competent authority in Singapore,

as the same may be modified, amended, supplemented, revised or replaced from time to time, and that apply to the Trust, the operations of the Authorised Business²⁰ and/or to the Trustee-Manager, in its capacity as the holder of the Licences.

120. CityNet’s duty to perform its regulatory obligations and licence obligations is also provided for in other parts of the proposed Revised Trust Deed, some of which were cited in the Reply, including:

2.1 Authority to Act as Trustee-Manager and Power to Engage in Authorised Business

2.1.2 [The Trustee-Manager shall] have the power... to:

(ii) exercise all powers, authorities, discretions and rights under this Deed or in connection with engaging in the Authorised Business and perform all duties and obligations under this Deed, any Relevant Laws, Regulations and Guidelines or in connection with engaging in the Authorised Business, including the power to give such representations, warranties, indemnities, guarantees or undertakings in connection therewith;

²⁰ Where “**Authorised Business**” means:

- (i) the D&M Business (defined below);
- (ii) the ownership of all issued shares in the OpenNet Company which owns and carries on the OpenNet Authorised Business; and
- (iii) any business, undertaking or activity associated with, incidental and/or ancillary to the operation of the businesses referred to in paragraphs (i) and (ii) of this definition;

while

“**D&M Business**” means ownership, installation, operation, and maintenance of Ducts, Manholes, COs and space in COs in Singapore for the purposes of telecommunications activities;

2.4 Due Care

The Trustee-Manager shall exercise Due Care in the performance of all its duties and obligations, whether conferred or imposed by this Deed or by any Relevant Laws, Regulations and Guidelines.

8.2 Trustee-Manager's Scope of Business and Business Objectives

8.2.2 The Trustee-Manager shall, in determining the business objectives and investment policies of the Trust from time to time and in exercising its powers and fulfilling its duties in relation to the management of the Trust Property of the Trust, exercise Due Care to manage the Trust (including, without limitation, the conduct of the Authorised Business undertaken by the Trust) in compliance with the Relevant Laws, Regulations and Guidelines and all other applicable laws and regulations.

13.1 Safe custody of Trust Property and holding of Licences

The Trustee-Manager shall be responsible for the safe custody of the Trust Property of the Trust and shall ensure that the Authorised Business is carried out pursuant to the Licences. [Emphasis added.]

...

The Trustee-Manager shall at all times exercise Due Care in taking steps to do or refrain from doing all such things as the MAS, IDA, or, as the case may be, any competent authority may direct and shall at times comply with the Relevant Laws, Regulations and Guidelines and all other applicable laws and regulations.

16 Covenants by the Trustee-Manager

16.3 [The Trustee-Manager covenants] that it will manage the Trust and engage in the Authorised Business in a proper and efficient manner in accordance with the Relevant Laws, Regulations and Guidelines and [the Trust] Deed;

121. The Trustee-Manager (in this case, CityNet) shall therefore at all times fulfil all its regulatory obligations, including those to IDA. IDA notes that the Commenter's concern, that CityNet is obliged to give priority to all its unitholders' interests as a whole over its own interests, including the need to comply with the relevant regulations, in the event of a conflict of interests, assumes that the unitholders' interests are inconsistent with CityNet's obligation to comply with the relevant regulations. IDA notes that this is unlikely to be the case, as the Applicants have highlighted in their Reply.
122. As an IDA licensee, CityNet is subject to IDA's regulatory regime, including the need to comply with the Control and Ownership restrictions under its FBO licence. As the Applicants have submitted in their Reply, given the adverse consequences of CityNet breaching its regulatory obligations (e.g. by discriminating in favour of SingTel), such as the imposition of financial penalties on CityNet, the reputational damage to the NetLink Trust arising from regulatory action being taken against CityNet and the potential cancellation of CityNet's FBO licence which would render the business of the NetLink Trust inoperative, it would be in the unitholders' best interests for CityNet to fully comply with all its relevant regulatory obligations to IDA at all times. It follows that any such conflicts of interest between CityNet's fulfilling its duties to all the unitholders of the NetLink Trust as a whole, and its duty to

fully comply with its regulatory obligations, must be resolved in a manner that ensures that CityNet continues to comply fully with its regulatory obligations. Otherwise, it would not be acting in the best interests of all its unitholders as a whole.

123. IDA notes the Commenters' concerns that there may be little or no incentive for CityNet to act in the best interests of the industry, if doing so may conflict with the business and/or commercial interests of SingTel given that its annual remuneration will be adjusted downwards in accordance with the formula in the Trust Deed if CityNet commits a material breach of the Trust Deed (which potentially could include a scenario whereby CityNet fails to act in SingTel's best interests). However, as noted above, CityNet will not be permitted to take into account any interests of its unitholders that are unrelated to the unitholders' investment in the NetLink Trust (such as the unitholders' telecommunication business as an OpCo and/or RSP). Furthermore, CityNet would be required to fulfil all its regulatory obligations, including but not limited to the Control and Ownership restrictions, at all times. In any event, IDA notes that CityNet would be financially incentivised to meet its regulatory requirements to IDA, such as the USO and QoS, as there would be a direct impact to its management fee in the event that it fails to meet IDA's regulatory requirements.
124. IDA also notes the Applicants' submission that as a public-listed company, SingTel has an obligation to its shareholders to ensure that the value of its assets are preserved and optimised. Given that SingTel intends to divest its unitholdings in the Netlink Trust by 22 April 2018, SingTel (as unitholder) would have similar interest to preserve and optimise the value of the Netlink Trust before divestment.
125. In addition, IDA would note that under the proposed Revised Trust Deed, SingTel as the unitholder is prohibited from giving any directions to the Trustee-Manager that may result in the Trustee-Manager ceasing to comply with any Relevant Laws, Regulations and Guidelines:

3.10 Restrictions on Unitholders' (including SingTel's) Directions

... the Holders (including SingTel) shall not give any directions to the Trustee-Manager if it would require the Trustee-Manager to do or omit doing anything which may result in:

3.10.1 the Trust or the Trustee-Manager, in its capacity as trustee-manager of the Trust, ceasing to comply with any Relevant Laws, Regulations and Guidelines or any other applicable laws and regulations;

126. In other words, SingTel as a unitholder is unable to prevent or hamper CityNet in performing its regulatory duties, such as to implement IDA's directions efficiently and effectively.
127. IDA would also highlight that as a further safeguard, SingTel has committed, as part of the Proposed Conditions in the Consolidation Application, that so long as it is a beneficial holder of 25% or more of the units in NetLink Trust, it will not approve any amendments to the Revised Trust Deed or take any

action relating to the Revised Trust Deed that are contrary to the “No Effective Control” requirements; and/or vary the requirement to obtain IDA’s approval for those matters set out in the Revised Trust Deed that require IDA’s approval.

Unitholders’ Approval Not Required for Day-to-Day Operations or Compliance with Regulatory Obligations

128. The Commenters have also expressed concern that the list of “Reserved Matters” and “Authorised Matters” in the Trust Deed requires CityNet to seek SingTel’s approval before undertaking many major decisions.
129. As noted, CityNet should not be permitted to take into account any interests of its unitholders that are unrelated to the unitholders’ investment in the NetLink Trust. Further, CityNet would be required to comply with all its regulatory obligations, including but not limited to the Control and Ownership restrictions, at all times. These would similarly apply to the issue of CityNet seeking SingTel’s approval for the “Reserved Matters” and being subject to SingTel’s direction for the “Authorised Matters”.
130. Further, under the proposed Revised Trust Deed, CityNet has autonomy to carry out its Authorised Business and is not subject to the influence of SingTel:

3.11 Exercise of Rights Over Authorised Business

... the Holders (including SingTel) shall not operate, manage, interfere or seek to interfere with the Authorised Business undertaken by the Trust or recommend or propose to the Trustee-Manager the manner in which the Authorised Business undertaken by the Trust should be managed, administered, operated or carried on.

3.12 Exercise of Rights Over Trust Property

3.12.1 ... [the Holders (including SingTel) shall not] operate, manage, interfere or seek to interfere with the rights, powers, authority or discretion of the Trustee-Manager conferred by this Deed, or recommend or propose to the Trustee-Manager the manner in which any Trust Property of the Trust should be dealt with;

131. Specifically in relation to the Reserved and Authorised Matters, the Applicants have submitted in the Reply that none of the Reserved Matters or Authorised Matters refers to the day-to-day operations of CityNet (in particular, the provision of open and non-discriminatory access to the Next Gen NBN Network) nor could they prevent CityNet from complying with its regulatory obligations. The Applicants highlighted that by reading Clause 1.7 together with Clauses 2.4 and 13.1 of the proposed Revised Trust Deed, CityNet is not required to seek approval from SingTel, nor act upon direction of SingTel, in respect of the Reserved Matters or Authorised Matters, as the case may be, where CityNet is required to comply with the “Relevant Laws, Regulations and Guidelines”.

132. IDA would note that under the Reserved Matters, SingTel's approval is required only if threshold amounts are exceeded and/or are not arm's length transactions and/or the amount has not been budgeted for. The Authorised Matters are primarily for the purpose of enabling SingTel to fulfil its obligation to divest its unitholdings in the NetLink Trust. Indeed, CityNet is not required to seek approval from SingTel, nor act upon direction of SingTel, in respect of Reserved Matters or Authorised Matters, as the case may be, where CityNet is required to comply with the "Relevant Laws, Regulations and Guidelines".

133. For example,

- (a) Financial autonomy has been given to the Trustee-Manager so that operations are not impeded and that the Trustee-Manager may invest and/or raise or borrow money without SingTel's approval as long as the threshold amount is not exceeded according to paragraphs 1.4 and 1.7 of the Reserved and Authorised Matters:

1.4 Any acquisition of, or investment in, any undertaking, assets (including, without limitation, copyright, trademarks, service marks, patents or other intellectual property rights and any interest in any land or real property, but excluding any inter-linking Ducts and associated Manholes in Singapore owned by SingTel and annual budgeted capital expenditure approved by the Board in respect of building Ducts and Manholes, works and equipment for the Central Offices, office computers and furniture and fittings which are necessary in the ordinary course of the D&M Business) or shares or other equity interests outside the ordinary course of any Authorised Business and/or which, whether in a single transaction or when aggregated with such transactions by the Trustee-Manager (in its capacity as trustee-manager of the Trust) in the same financial year of the Trust, exceeds S\$[x].

1.7 Borrowing or raising moneys or issuing debentures or other securities, with or without security and the assumption (whether by way of declaration of trust, transfer, novation, vesting, assignment, pledging, granting a lien, or otherwise) of obligations or liabilities for such raising, borrowings or issuance of debentures, or the entry into swap or derivative transactions, or taking any action pursuant to Clause 8.4 or the exercise of its powers pursuant to Clause 12.1.9 of this Deed, except for any matter or action that falls within paragraph 2.2 of the Authorised Matters, where the amount of borrowing, obligations or liabilities (whether alone or when aggregated with the then-outstanding amounts of borrowing, obligations or liabilities) equals to or exceeds, as the case may be (or, in the case of sub-paragraph (c) below, falls below), any of the following thresholds:

- (a) the resulting amount of aggregated borrowing, obligations and liabilities causes the ratio of Total Debt divided by Total Capital (where Total Capital means Total Debt plus Total Unitholders' Equity) to be equal to or more than [x]; or
- (b) the resulting amount of aggregated borrowing, obligations and liabilities causes the ratio of Total Debt divided by EBITDA to be more than [x]; or
- (c) the resulting amount of aggregated borrowing, obligations and liabilities causes the Interest Coverage Ratio to be less than [x] times; or
- (d) the resulting amount of aggregated borrowing, obligations and liabilities (but excluding the Total Debt incurred to finance the initial acquisition of inter-linking Ducts, associated Manholes and relevant Central Offices from SingTel upon establishment of the Authorised Business) is more than S\$[x], without the prior approval of SingTel (such approval not to be unreasonably withheld).

- (b) SingTel's approval is not required for any price change that is mandatorily required by IDA according to paragraph 3.12 of the Reserved and Authorised Matters:

3.12 Any change to the prices submitted to the IDA as part of the bid jointly made by (amongst others) SingTel Interactive Pte. Ltd. (as one of the consortium parties) in response to the Singapore's Next-Generation Broadband Network NGNBN Project-Network Company (NetCo) Request for Proposal dated 11 December 2007 (and as amended from time to time) issued by IDA and bearing reference number IDA(RFP)-030 which has or is likely to have a material adverse effect on any of the matters set out in or referred to in or connected with paragraph 2.6 of Part A of Schedule 2, other than any change that is mandatorily required by the IDA.

134. IDA is of the view that the limited scope of SingTel's ability to approve or direct CityNet as stipulated under the Reserved and Authorised Matters is legitimate and reasonable, taking into account SingTel's economic interest as the unitholder and to eventually divest its unitholdings in the Netlink Trust to below the 25% threshold. In any event, IDA would clarify that if there is any inconsistency between SingTel's ability to approve matters or direct CityNet as stipulated under the Reserved and Authorised Matters, and the Control and Ownership restrictions, the latter shall prevail to the extent of any inconsistency.

135. In response to the following specific scenarios raised by the Commenters, the Applicants have separately clarified to IDA whether SingTel's approval would be required:

(a) *CityNet is directed by IDA to provide new services which are currently not provided under its existing ICO:* IDA's direction to provide new services under the ICO to improve the performance of the Next Gen NBN falls within the ambit of "Authorised Business" and the scope of CityNet's FBO licence. It does not amount to a change of "Authorised Business" and is therefore not a "Reserved Matter". Accordingly, SingTel's approval is not required.

(b) *The amendment of CityNet's terms of its licence:* The amendment of CityNet's licence would need to be approved by IDA. SingTel's approval is not required in the situation where CityNet is required by IDA to amend the terms of its licence. In this regard, IDA would clarify that SingTel's approval and direction are not required or permitted in respect of licence amendments to CityNet's FBO licence required by IDA.

(c) *CityNet to acquire new network assets exceeding S\$20 million in a financial year to improve its network:* If the acquisition is to comply with the "Relevant Laws, Regulations and Guidelines", SingTel's approval is not required. SingTel approval is not required in the situation where CityNet is deploying its own ducts and manholes or, following the proposed Consolidation, deploying its own fibre to residential and non-residential premises in accordance to approved budget and in the ordinary course of business.

As mentioned, IDA will require the Applicants to fully comply with the submissions and assurances that they have provided in their Reply as binding and enforceable obligations to IDA.

136. In relation to the Commenters' concern that it might be difficult for CityNet to secure external funding to improve or enhance the new NetCo network as the creation of security or encumbrance over the trust assets are subject to SingTel's approval, IDA notes that CityNet may borrow or raise money in relation to the Authorised Business under the Revised Trust Deed. As observed from the extract of paragraph 1.7 of the Reserved and Authorised Matters above, the unitholder's approval is also not required so long as the thresholds for borrowing or raising moneys, etc, are not exceeded. In any event, IDA reiterates that the Control and Ownership restrictions shall prevail over anything contained in the Reserved and Authorised to the extent of any inconsistency.

Business Trusts Act Requirement for Independent Board

137. As mentioned above, under Sections 11(1)(a) of the Business Trusts Act, the Board of Directors of CityNet shall act honestly and exercise reasonable diligence in the discharge of the duties of their office and, in particular, shall take all reasonable steps to ensure that CityNet discharges its duties under Section 10(1) and (2) of the Business Trusts Act. Accordingly, an entity which has influence over the Board of Directors will be able to exert some level of control over the Trustee-Manager. In this regard, there are statutory requirements imposed on the composition of the Trustee-Manager's Board of Directors to ensure that the Board must remain independent. The Business Trusts Regulations imposes conditions on the composition of the Board of Directors of the Trustee-Manager to ensure that (i) at least a majority of the Directors shall be independent from the management and business relations with the Trustee-Manager; (ii) at least one third of the Directors shall be independent from the management and business relations with the Trustee-Manager and from every substantial shareholder of the Trustee-Manager; and (iii) at least a majority of the Directors shall be independent from any single substantial shareholder of the Trustee-Manager.
138. Today, SingTel has been allowed to appoint no more than 30% of CityNet's Board of Directors (i.e. at least a 70% majority of the CityNet Board of Directors are independent of SingTel) to ensure the independence of AssetCo. As part of the Proposed Conditions in the Consolidation Application, SingTel has proposed to reduce its representation on the Board further and amend the Revised Trust Deed such that the OpenNet Board and the CityNet Board will consist of no more than 5 Directors, of which not more than 25% of its Directors shall be appointed by SingTel as the 100% unitholder in the NetLink Trust, with the remaining 75% or more comprising independent Directors provided always that there shall be at least 1 SingTel Director.
139. The Commenters have argued that the presence of a majority of independent Directors and an independent Chairman on the Board of the Trustee-Manager

does not mitigate against the potential of conflicts of interests arising, given the Commenters' interpretation that the Directors are under a legal and statutory obligation to always put SingTel's interests first. As stated above, however, IDA notes that there is unlikely to be an inconsistency between CityNet's duty to act in the best interests of all its unitholders as a whole and CityNet's duty to fulfil all its regulatory obligations. As mentioned, CityNet will not be permitted to take into account any interests of its unitholders that are unrelated to the unitholders' investment in the NetLink Trust (such as the unitholders' telecommunication business as an OpCo and/or RSP). Further, in the event of any conflicts of interests, CityNet would be required to manage and resolve such conflicts in a manner that allows it to continue to comply with/fulfil all its regulatory obligations, including but not limited to the Control and Ownership restrictions. In these premises, the Board of Directors of the Post-Consolidation Entity will similarly be required to exercise the duties of their office in a manner that will allow the Post-Consolidation Entity to fully meet all its regulatory obligations, including but not limited to the Control and Ownership restrictions. As an additional safeguard, to minimise SingTel's influence in the event of potential conflicts of interests, the proposed Revised Trust Deed states:

16A.5 Abstention from Voting

The SingTel Director* shall abstain from voting in respect of matters relating to any transaction between the Trustee-Manager and the SingTel Group.

* The SingTel Director is the director appointed by SingTel to serve on the Trustee-Manager's board of directors. Pursuant to the proposed Revised Trust Deed, SingTel may appoint no more than 25 percent of the Trustee Manager's board of directors.

140. IDA notes that it is an existing licence condition for CityNet and OpenNet to seek IDA's written approval at least one month in advance of any change in the appointment of its Chairman, Board of Directors or Chief Executive Officer. There is no need for IDA to intervene further by appointing the Chairman or requiring IDA's approval for the key management of the Post-Consolidation Entity, or requiring the key management of the Post-Consolidation Entity not to be sourced from and to be independent from SingTel, as proposed by the Commenters.

Additional Safeguards in proposed Revised Trust Deed beyond Business Trusts Act Requirements

141. IDA notes that the Applicants have committed that additional safeguards will be imposed above and beyond the Business Trusts Act requirements to limit SingTel's influence over the Trustee-Manager such that SingTel, despite being the sole unitholder, is unable to exercise the typical voting rights associated with having more than 75% of unitholdings under the Business Trusts Act. IDA believes that these additional safeguards should further mitigate any concerns about SingTel's influence over the Trustee-Manager. These additional safeguards are (as mentioned in paragraph 48 above):

- (a) **Removal of trustee-manager by unitholders** (*Section 20 of the Business Trusts Act*). SingTel has, as part of the Proposed Conditions in the Consolidation Application, committed not to remove the Trustee-Manager, except on specific grounds, such as the Trustee-Manager committing an offence or acting fraudulently. As an additional safeguard, IDA's approval is also required to transfer the Trustee-Manager's licence to a new Trustee-Manager under Clause 19A of the proposed Revised Trust Deed, before the removal of the existing Trustee-Manager shall be effective:

19A Compliance with IDA's Requirements on Removal and Resignation of Trustee-Manager

- 19A.1 Notwithstanding any provision in this Deed, no removal or resignation of the Trustee-Manager shall be effective unless:
- 19A.1.1 IDA has approved the issue or transfer of the Licences to the new trustee-manager of the Trust or its nominee;
- 19A.1.2 IDA has approved the transfer of all shares in all Handover Companies to the new trustee-manager of the Trust or its nominee; and
- 19A.1.3 such removal or resignation is in compliance with the Relevant Laws, Regulations and Guidelines.

- (b) **Change of trust deed** (*Section 31 the Business Trusts Act*). SingTel has, as part of the Proposed Conditions in the Consolidation Application, committed not to approve any amendments to the Revised Trust Deed or take any action relating to the Trust Deed that are contrary to the No Effective Control requirements; and/or vary the requirement to obtain IDA's approval for those matters set out in the Trust Deed that require IDA's approval.

- (c) **Winding up at direction of unitholders** (*Section 45 the Business Trusts Act*). SingTel has, as part of the Proposed Conditions in the Consolidation Application, committed not to approve or direct the winding up of the NetLink Trust, other than to facilitate divestment of its unitholdings in the NetLink Trust.

- (d) **Voluntary deregistration by Trustee-Manager** (*Section 51 the Business Trusts Act*). SingTel has, as part of the Proposed Conditions in the Consolidation Application, committed not to (i) amalgamate or reconstruct, or change the structure or set up of the NetLink Trust; or (ii) enter into any merger of the NetLink Trust with any other body, that is not an action or step taken in pursuance of the divestment of its unitholdings in the NetLink Trust, without first obtaining approval from IDA.

142. As an additional clarification, IDA would note that IDA is not a party to the Ancillary Agreements mentioned in Section 12 of the Consolidation Application and is not bound by these Ancillary Agreements in any manner. Where there is any inconsistency between the Applicants' regulatory obligations to IDA, including but not limited to the Control and Ownership restrictions, and anything contained in these Ancillary Agreements, the

Applicants' regulatory obligations to IDA, including but not limited to the Control and Ownership restrictions, shall prevail.

Efficiencies and Service Improvements

143. The Applicants have stated in their Consolidation Application that the proposed Consolidation will enable some efficiencies to be realised due to the increased level of integration between “Layer 0” and “Layer 1” passive infrastructure, such as:
- (a) Improved network fault detection and resolution;
 - (b) Improved co-ordination and planning of the deployment of the “Layer 0” and “Layer 1” passive infrastructure;
 - (c) Improved operational efficiency and responsiveness with the transfer of the personnel, skills and expertise to the NetLink Trust;
 - (d) Improved efficiency in maintenance of the “Layer 0” and “Layer 1” passive infrastructure of the Next Gen NBN; and
 - (e) Personnel and management efficiency benefits.
144. In addition, as one the Proposed Conditions, SingTel will terminate the OpenNet Agreements and OpenNet and SingTel will transfer the relevant OpenNet and SingTel personnel, skills and expertise to UMC or an equivalent separate legal entity established under the NetLink Trust (through its Trustee-Manager, CityNet) to provide manpower services to the NetLink Trust in relation to the installation, operation and maintenance of its dark fibre network. Related to this, another Proposed Condition is that SingTel and OpenNet will resolve the outstanding disputes between SingTel and OpenNet in relation to the provision of services by SingTel to OpenNet pursuant to the OpenNet Agreements at the commencement of Phase 1 of the proposed Consolidation.
145. IDA notes that a key concern raised by the Commenters is whether there will, as a result of the proposed Consolidation, be benefits to the public and industry, and improvements to the current QoS issues faced in the Next Gen NBN. Specifically, the Commenters submitted that there are no guarantees that the proposed Consolidation would address the issues related to OpenNet's declining service standards and provide improved service delivery or QoS standards. The Commenters highlighted that delayed service provisioning and faults rectifications have been common in both residential and non-residential market segments, with OpenNet often citing “spring-boarding” issues, insufficient capacity and exceptionally high demand as reasons for the delay. OpenNet was also unable to provide services to all addresses in Singapore due to rollout delays as at 1 January 2013. The Commenters also questioned how operational efficiency gains through the proposed Consolidation would translate to substantial benefits to customers and the industry in practical terms.

146. However, the Commenters were receptive to the the Applicants' Proposed Condition for SingTel to step-down as OpenNet's KSC. The Commenters submitted that SingTel's current role as OpenNet's largest shareholder and KSC is in clear and direct conflict with SingTel's role as the incumbent service provider. The Commenters highlighted that OpenNet had stated publicly that its issue with its KSC has affected its service standards to customers and potentially, the removal of SingTel as the KSC could result in more suitable and capable candidate(s) being appointed as sub-contractors for the new NetCo. However, the Commenters cautioned that while the removal of SingTel as OpenNet's KSC as part of the proposed Consolidation might improve OpenNet's service delivery standards, there would be no appreciable difference from the current state of affairs if there are no safeguards in place to prevent CityNet from re-appointing SingTel as its sole or major contractor.
147. IDA acknowledges OpenNet's QoS performance issues in delivering residential and non-residential end-user connection services by the stipulated service provisioning timeframes and has taken enforcement action against OpenNet for its non-compliance with the QoS indicators for residential end-user connection services in the second quarter of 2013. IDA has imposed a financial penalty on OpenNet of \$200,000 for the non-compliance with its QoS indicators and OpenNet has been given until 31 December 2013 to rectify its QoS performance for residential end-user connection services. As part of its rectification measures, OpenNet will further increase its installation capacity per business day, particularly during large scale promotional events where many orders are taken. OpenNet will also conduct a mass exercise to rollout fibre termination points to reach out to more homes ahead of demand. IDA will next assess OpenNet's QoS performance in the first quarter of 2014.
148. In addition, IDA has looked at or is working on other OpenNet performance issues. On OpenNet's inability to comply with its USO in the period between 1 January 2013 and 30 June 2013, IDA has taken enforcement action against OpenNet and imposed a financial penalty of \$550,000 on OpenNet. As of 1 July 2013, OpenNet is now able to accept orders for fibre services to all homes and business. IDA has also facilitated access to building premises and intervened in some cases, specifically those related to OpenNet's use of certain buildings to serve neighbouring buildings. IDA is closely monitoring the situation to see whether additional measures would be necessary and required.
149. IDA will review OpenNet's ICO and the QoS framework to bring about better service performance from OpenNet.
150. As noted above, Non-horizontal Consolidations by their nature often increase efficiency. In this case, the increased level of integration between "Layer 0" and "Layer 1" passive infrastructure could lead to the operational efficiencies, as submitted by the Applicants. Indeed, this Post-Consolidation industry structure would revert to the three-layered industry structure that IDA had originally conceived under the Next Gen NBN RFP.

151. Separately, as the Commenters seem to agree, the removal of SingTel as OpenNet's KSC would remove the Commenters' concerns on SingTel being the cause of OpenNet's current service provisioning difficulties.
152. IDA is of the view that the termination of the OpenNet Agreements and the transfer of the relevant SingTel personnel, skills and expertise to allow CityNet to perform the KSC function itself if it wishes to is likely to bring about greater efficiency in the Post-Consolidation Entity's operations, to the benefit of the industry and consumers.
153. IDA also agrees with the Commenters' view that in order for the removal of SingTel as the KSC not to merely be a temporary measure, there needs to be safeguards in place to prevent CityNet from re-appointing SingTel as its sole or major contractor.

Divestment

154. As one of their Proposed Conditions, SingTel has committed to sell down its current unitholdings (which for the avoidance of doubt would include the associated unitholding voting rights) in the enlarged NetLink Trust to less than 25% by 22 April 2018. The Applicants submitted that this would completely remove any concerns that SingTel possesses control of the Post-Consolidation Entity through SingTel's unitholdings in the NetLink Trust.
155. The Commenters expressed concern that the extension in SingTel's sell-down deadline of the unitholdings in the NetLink Trust from April 2014 to April 2018 would delay SingTel's compliance with its divestment obligation. In response, the Applicants explained in their Reply that following the Consolidation, additional time to divest would be required to effect the orderly transfer of the OpenNet assets, business and the relevant OpenNet and KSC personnel, skills and expertise to the NetLink Trust. Further, CityNet's board and management would need to focus on network deployment and maintenance, to chart the next phase of growth for the Next Gen NBN. According to the Applicants, the expansion of the business and operations of the NetLink Trust to include the Next Gen fibre network, in addition to the Next Gen NBN ducts, manholes and COs, means that additional time would be required to integrate the two different businesses and their operations and achieve a steady-state prior to divestment.
156. IDA recognises that the Commenters' concern is a valid one. However, having considered the Applicants' representation on the scope of the transfer and integration of OpenNet's assets and business, and the relevant OpenNet and SingTel personnel, skills and expertise, to/with the NetLink Trust following the proposed Consolidation, and the estimated time required, IDA is of the view that it would be reasonable to allow SingTel more time to carry out the divestment. As the Next Gen NBN is a key info-communication infrastructure and given the plethora of RSPs riding on OpenNet's infrastructure, it is important to ensure that the transfer of assets and business is completed smoothly before divestment, for the benefit of all industry players, consumers and businesses riding on the Next Gen NBN.

157. However, IDA would also emphasise that April 2018 is not the target date for divestment but is the deadline by which the divestment to the said threshold *must* have taken place. As mentioned, SingTel would also therefore have an interest to preserve and optimise the value of the NetLink Trust before divestment.
158. In the meantime, given the extension of the divestment timeline and the period in which SingTel will remain as 100% unitholder of the NetLink Trust, IDA agrees that stronger ex ante regulatory safeguards should be put in place to ensure that the Control and Ownership restrictions are upheld and complied with and SingTel does not exercise Effective Control over the Post-Consolidation Entity.

Compliance with Existing Regulatory Requirements and Contractual Obligations to QPs

159. In addition to the upholding of the “No Effective Control” requirements, another key consideration in IDA’s assessment is the extent to which the other regulatory requirements for the Next Gen NBN will continue to be fulfilled with the proposed Consolidation.
160. As mentioned under Part III, IDA has imposed various regulatory requirements on OpenNet, including via its licence and through the respective codes of practice. These include:
- (a) The requirement for OpenNet to offer an ICO, which sets out clearly the prices, terms and conditions at which it will offer the relevant interconnection and access services to all QPs;
 - (b) A USO, which requires OpenNet to provide the Mandated Services to all Physical Addresses upon the request of any QP, and all other locations in mainland Singapore and connected Singapore islands as may be reasonably requested by any QP; and
 - (c) QoS standards on installation-related faults on OpenNet’s residential and non-residential end-user connections as well as QoS standards on OpenNet’s timeframe in provisioning residential and non-residential end-user connection services.
161. In the Consolidation Application, the Applicants have committed that the Post-Consolidation Entity will continue to comply with and meet its respective contractual and/or regulatory obligations to IDA and the QPs.
162. To ensure that the NetLink Trust is able to meet the Next Gen NBN’s ongoing requirements for inter-linking ducts and associated manholes for the installation of Next Gen NBN dark fibre, SingTel has, as a Proposed Condition, undertaken to continue the current arrangements with CityNet under the MFA in relation to the future requirements of the NetLink Trust for inter-linking ducts and associated manholes for the installation of Next Gen NBN dark fibre.

Overall Assessment and Additional Regulatory Safeguards to be Imposed by IDA to Further Mitigate Competition Concerns

163. IDA has assessed that most of the competitive and public interest concerns in connection with the proposed Consolidation have been addressed by IDA's existing regulations, further safeguards proposed in the Revised Trust Deed the Applicants' Proposed Conditions, and the additional clarifications and commitment provided by the Applications as discussed in the preceding sections.
164. However, IDA notes the Commenters' request for tighter regulation, should the proposed Consolidation be approved, mainly to ensure the independence of the Trustee-Manager. Noting that the delay in the divestment date to 2018 is reasonable, IDA agrees that stronger ex ante regulations should be imposed on the Post-Consolidation Entity through additional conditions of approval for the proposed Consolidation to address any potential competitive and public interest concerns the industry may have post-Consolidation until SingTel divests its unitholdings to below the 25% threshold. These additional conditions of approval to be imposed by IDA are elaborated on below.
- (a) *Requiring Post-Consolidation Entity to Seek IDA's Approval for Subsequent Appointment of Contractors*
165. As noted above, the removal of SingTel as OpenNet's KSC is a potential source of efficiency and improvement to the current operation of the Next Gen NBN. IDA also notes the Commenters' concern that while the removal of SingTel as OpenNet's KSC as part of the proposed Consolidation might improve OpenNet's service delivery standards, there might be no appreciable difference from the current state of affairs if there are no safeguards in place to prevent CityNet from re-appointing SingTel as its sole or major contractor.
166. IDA is of the view that this concern can be addressed by requiring the Post-Consolidation Entity to seek IDA's prior written approval before appointing any telecommunication or broadcasting licensees (and their Associates, as defined under Part VA of the Act²¹), including but not limited to SingTel, as its

²¹ Under Part VA of the Act, a person, A, is an associate of another person, B, if —

- (a) A is a relative of B;
- (b) A is a related corporation of B;
- (c) A is a corporation whose directors are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of B or, where B is a corporation, of the directors of B;
- (d) B is a corporation whose directors are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of A or, where A is a corporation, of the directors of A;
- (e) A is a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of B or, where B is a corporation, of the directors of B;
- (f) B is a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of A or, where A is a corporation, of the directors of A;
- (g) A is a corporation in which B, alone or together with other associates of B as described in paragraphs (b) to (f), is in a position to control not less than 12% of the voting power in A;

contractor. While the Commenters have focused on the potential for SingTel to abuse its role as the KSC of the Post-Consolidation Entity to favour itself (and its downstream business) or its affiliates, IDA would note that the potential for this is equally present if any other telecommunication or broadcasting licensee were to be subsequently appointed as the Post-Consolidation Entity's contractor. For the avoidance of doubt, regardless of any appointment of contractors, the onus shall rest wholly on the Post-Consolidation Entity to manage its contractors, arrange its affairs and put in place all necessary resources, to ensure that it is able to fulfil all its regulatory and contractual obligations to IDA. Any approval from IDA of the Post-Consolidation Entity's contractors shall not in any way waive or relieve the Post-Consolidation Entity of its regulatory and contractual obligations; nor give rise to any claim of variation, waiver or estoppel against IDA; nor amount to the assumption of any risk by IDA with respect to the Post-Consolidation Entity's responsibility for managing its contractors which remains solely and fully with the Post-Consolidation Entity.

(b) Establishment of Monitoring Board

167. IDA agrees with the Commenters that the basic tenet of "No Effective Control" and Structural Separation must continue to be upheld post-Consolidation in order to bring about a competitive and vibrant broadband market through an open access Next Gen NBN network. IDA notes the Commenters' suggestion that an "NBN Task Force" comprising representatives from IDA, the Ministry, the industry and the public be set up by IDA to oversee the implementation of the proposed Consolidation, to confirm that effective safeguards have been applied and monitor the post-Consolidation performance of the Post-Consolidation Entity and related parties.
168. Notwithstanding IDA's assessment above that the proposed business structure (including the additional safeguards proposed by the Applicants) is consistent with IDA's Control and Ownership restrictions, as an additional safeguard, IDA agrees that a Monitoring Board should be put in place for the purpose of monitoring the Post-Consolidation Entity's (and where relevant, SingTel's) compliance with the Control and Ownership restrictions.
169. In this regard, among other things, the Monitoring Board will require the submission of reports by the Post-Consolidation Entity (and where relevant, SingTel) in relation to Post-Consolidation Entity's provisioning of services to SingTel vis-à-vis other customers and monitor and investigate any complaints of non-compliance with the Control and Ownership restrictions by the Post-Consolidation Entity.

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- (h) B is a corporation in which A, alone (or together with other associates of A as described in paragraphs (b) to (f)), is in a position to control not less than 12% of the voting power in B;
 - (i) A is a person with whom B has an agreement or arrangement, whether oral or in writing and whether express or implied, to act together with respect to the acquisition, holding or disposal of shares, units or other equity interests in, or with respect to the exercise of their voting power in relation to, a designated telecommunication licensee, a designated business trust or a designated trust; or
 - (j) A is related to B in such other manner as may be prescribed by any regulations made under section 74.

170. The Monitoring Board will also monitor the operations of the Post-Consolidation Entity (and where relevant, SingTel) to ensure that SingTel does not abuse its role as OpenNet's KSC and favour itself or its affiliates during Phase 1. Potential areas of concerns during Phase 1 while SingTel remains as OpenNet's KSC include SingTel (as OpenNet's KSC) delivering better service to OpenNet for SingTel-originated orders and SingTel (as OpenNet's KSC) underperforming on OpenNet's orders to encourage consumers to switch to competing SingTel services that are delivered over non Next Gen NBN.
171. The Monitoring Board will exist until such time that SingTel divests its current unitholdings in the enlarged NetLink Trust to less than 25%. The Monitoring Board will comprise such persons as IDA may appoint at its sole and absolute discretion. The Monitoring Board will likely comprise IDA and other Government representatives. IDA is of the view that it would be inappropriate to appoint industry representatives or members of the public to this Monitoring Board since commercial sensitivity information would likely be involved.
172. The Post-Consolidation Entity (and where relevant, SingTel) will be required to render its fullest cooperation to the Monitoring Board, including but not limited to submitting regular reports, and providing all information relevant to their compliance activities, to the Monitoring Board. The Monitoring Board will then submit its assessment and recommendation of the Post-Consolidation Entity's (and where relevant, SingTel's) compliance status to IDA. For the avoidance of doubt, IDA would remain the regulatory body to exercise its regulatory powers against the Post-Consolidation Entity (and where relevant, SingTel), should it be found that the Post-Consolidation Entity (and where relevant, SingTel) are not compliant with the Control and Ownership restrictions.
- (c) *Trustee-Manager Prohibited from taking into account any Interests of its Unitholders that are Unrelated to the Unitholders' Investment in the NetLink Trust*
173. As noted above, IDA recognises that the Commenters have a valid concern that CityNet might be obliged to consider not just SingTel's interests in the NetLink Trust but SingTel's wider interests "as a whole" (e.g. to act in a manner that would favour SingTel such that SingTel can continue to be the dominant player in the fixed-line and related markets).
174. IDA considers that this concern can be addressed by expressly prohibiting CityNet (as Trustee-Manager of the NetLink Trust) from taking into account any interests of its unitholders that are unrelated to the unitholders' investment in the NetLink Trust (such as the unitholders' telecommunication business as an OpCo and/or RSP).

(d) Full Independence in Decisions on Prices, Terms and Conditions for Service Offerings

175. IDA agrees with the principle that the Trustee-Manager should, as far as possible, be given autonomy to act and not have to seek the unitholders' approval for its day-to-day operations or basic affairs relating to its service provisioning.
176. The Post-Consolidation Entity shall have full independence and powers in deciding all matters relating to prices, terms and conditions (under its ICO, Customised Agreements and/or promotions) for its service offerings (both existing and/or new services), including both the provision of and the revisions to such service offerings, i.e. it shall not need to seek approval from unitholders nor be subject to directions from unitholders for such matters. Ahead of divestment by SingTel, SingTel's prior approval for the above matters shall not be required nor can SingTel issue a direction to CityNet if the matter does not or is not likely to have a material adverse effect on SingTel's ability to carry out its divestment of its unitholdings in the NetLink Trust in accordance with paragraph 2.6 of the Authorised Matters (as defined in the Trust Deed). In the event that SingTel withholds its approval or issues a direction for any of the above matters:
- (i) CityNet shall be required to notify IDA and provide its views on whether the matter would have a material adverse effect on SingTel's ability to carry out its divestment in accordance with paragraph 2.6 of the Authorised Matters (as defined in the Trust Deed); and
 - (ii) Should IDA deem it necessary, SingTel shall be required to submit a report to IDA explaining (with adequate substantiation and evidence) why in SingTel's view, the matter would have a material adverse effect on SingTel's ability to carry out its divestment in accordance with paragraph 2.6 of the Authorised Matters (as defined in the Trust Deed).

(e) Continued Compliance with Regulatory/Contractual Obligations

177. Without limitation to the foregoing, with regard to OpenNet's obligations under the NetCo Contract and SingTel's obligations under the Deed of Undertaking between IDA and SingTel dated 20 October 2008 specifically, the Applicants shall provide a Deed of Undertaking to IDA, on terms acceptable to IDA, or any other legal instrument of equivalent effect and outcome to be approved by IDA, to ensure that the relevant Applicants shall be responsible for any breaches of the NetCo Contract by OpenNet and/or breaches of the Deed of Undertaking dated 20 October 2008 by SingTel and that the relevant Applicants shall perform all outstanding obligations of OpenNet under the NetCo Contract and of SingTel under the Deed of Undertaking dated 20 October 2008.

(f) *Exercise of SingTel's Power or Ability to Approve Matters under the Reserved Matters and Authorised Matters*

178. To address the Commenters' concern that SingTel might be able to exercise influence over the CityNet through its power or ability to approve matters or direct CityNet as stipulated under the Reserved and Authorised Matters, IDA would require that SingTel shall at all times act reasonably and in utmost good faith in exercising such power or ability under the Reserved Matters and Authorised Matters in order to comply with the Control and Ownership restrictions. If there is any inconsistency between SingTel's power or ability to approve matters or direct CityNet as stipulated under the Reserved and Authorised Matters and the Control and Ownership restrictions, the latter shall prevail.

PART IX IDA'S FURTHER CLARIFICATION AND RESPONSE TO OTHER KEY POINTS RAISED BY APPLICANTS AND COMMENTERS

Granting Temporary Waiver from Breach of No Effective Control Licence Condition during Transition Period from Phase 1 to Phase 2

179. As the Applicants have recognised, in the transition period between Phases 1 and 2 of the proposed Consolidation, given that CityNet will be holding 100% of the issued and paid-up share capital in OpenNet, this would by definition breach IDA's Structural Separation requirement for CityNet and OpenNet (as stipulated in their licence conditions) to not have Effective Control of any other telecommunication or broadcasting licensee, and not be under the Effective Control of any other telecommunication or broadcasting licensee, respectively.
180. IDA has considered that this breach is only for a limited period during the transition from Phase 1 to Phase 2 of the proposed Consolidation and that it would not be possible for the Applicants to immediately move into Phase 2 of the proposed Consolidation given the assets, personnel and businesses to be transferred from OpenNet, and the personnel, skills and expertise to be transferred from SingTel, to CityNet. IDA is therefore agreeable to grant OpenNet and CityNet a temporary waiver from compliance with the relevant FBO condition during Phase 1 of the proposed Consolidation, which would be no longer than twelve (12) months. Nevertheless, IDA reserves the right to take enforcement action against OpenNet and CityNet in the event that Phase 1 of the proposed Consolidation exceeds twelve (12) months.
181. For the avoidance of doubt, the waiver granted is a limited waiver only for this specific cross-holding arising from the Proposed Consolidation. OpenNet and CityNet are required to comply with their No Effective Control obligations with respect to any other telecommunication or broadcasting licensee and in all other circumstances unrelated to the Consolidation.

Monitoring of Progress of Transfer of Assets

182. The Commenters have asked IDA to put in place steps to expedite and guarantee the complete transfer of the Underlying Assets from SingTel to CityNet by April 2014, including clear timeframes set for monitoring and tracking the progress of the transfer.
183. As mentioned, CityNet and the NetLink Trust were set up as part of OpenNet's RFP bid commitment for SingTel to transfer the Underlying Assets that will be used by OpenNet for its deployment for the Next Gen NBN to a neutral party. In July 2011, CityNet acquired from SingTel the Underlying Assets. Given that OpenNet has reached its 95% coverage of all residential and non-residential building, the relevant Underlying Assets have been transferred.
184. Going forward, for the transfer of the OpenNet business, assets and the relevant OpenNet and SingTel personnel, skills and expertise to the NetLink Trust under the proposed Consolidation, IDA shall impose as a condition of

approval for the Applicants to complete the transition from Phase 1 to Phase 2 of the Consolidation, within twelve (12) months from the date of the approval.

185. IDA agrees with the importance of closely monitoring the progress of transfer and to ensure that the transfer takes place within the proposed timeframe of no more than twelve (12) months. IDA will therefore, as a condition of approval of the Proposed Consolidation, accept the Applicants' undertaking to submit a detailed implementation plan for the transfer of the OpenNet business, assets and the relevant OpenNet and SingTel personnel, skills and expertise to the NetLink Trust and all other relevant or associated matters. The detailed implementation plan shall be submitted to IDA within three (3) months from the commencement of Phase 1 of the Consolidation and minimally include the:
- (a) detailed timeline for the various activities relating to the transfer of the OpenNet business, assets and personnel and the transfer of the relevant SingTel personnel, skills and expertise to the NetLink Trust;
 - (b) assets to be transferred;
 - (c) relevant contracts to be novated or assigned;
 - (d) entity to which the assets and/or personnel will be transferred;
 - (e) personnel and their respective roles and responsibilities;
 - (f) provision of regular updates on the progress of implementation;
 - (g) submission of the draft revised Trust Deed for Phase 2 of the Consolidation for IDA's consideration; and
 - (h) submission of the draft Deed of Undertaking referred to in paragraph 177 above for IDA's consideration.

For the avoidance of doubt, the detailed implementation plan (including but not limited to (a) to (h) above) shall be binding and enforceable against the Applicants as a condition of approval.

186. IDA will therefore closely monitor the progress of the transfer as well as other aspects of the implementation of the Proposed Consolidation.

Resolution of Disputes between SingTel and OpenNet

187. IDA notes that pending IDA's decision on the Consolidation Application, SingTel and OpenNet have put on hold their arbitration over the disputes for the present KSC arrangements. As mentioned, as one of the Proposed Conditions in the Consolidation Application, SingTel committed to resolving the outstanding disputes between SingTel and OpenNet in relation to the provision of services by SingTel to OpenNet pursuant to the OpenNet Agreements at the commencement of Phase 1 of the proposed Consolidation.

188. IDA would clarify that it expects SingTel and CityNet to act in utmost good faith and the best interests of OpenNet in the resolution of the outstanding disputes, so that going forward, the Post-Consolidation Entity can function effectively and be unencumbered by existing disputes. Such resolution should also not result in unjustified increases in cost to the industry. For the avoidance of doubt, under IDA's existing applicable regulatory price review framework for the OpenNet ICO services, IDA reserves its right to reject recovery of any resulting additional costs from the resolution of the above disputes. Should the Post-Consolidation Entity subsequently seek to do so in any subsequent price reviews, it would need to demonstrate to IDA why it was reasonable for OpenNet to undertake such costs and that the costs are in line with efficient industry practices. If the Post-Consolidation Entity fails to do so to IDA's satisfaction, IDA would not approve the price increases.

Network Resiliency

189. Following the fire incident at the Bukit Panjang Exchange on 9 October 2013 which disrupted telecommunication services in the northern and western parts of Singapore, there have been views that the proposed Consolidation would exacerbate the situation by consolidating all the networks within one service provider, i.e. SingTel.
190. IDA highlights that with or without the proposed Consolidation, OpenNet and SingTel already share a number of common exchanges. Although IDA imposes a regulatory requirement on licensees to ensure that their network and key telecommunication services are resilient to outages, IDA does not generally interfere in how the licensees design their networks, nor does IDA prevent operators from using existing infrastructure, such as COs and ducts, to deploy their networks. The reliance on an incumbent's existing infrastructure by competitors/new entrants is not new or unique to Singapore. In countries with similar nationwide fibre broadband rollout projects, a common practice is the continued reliance on existing infrastructure to facilitate the fibre rollout, to enable faster speed of network deployment, lower costs and provide better service coverage.
191. The change in ownership of OpenNet arising from the proposed Consolidation would not immediately affect the current state and design of OpenNet's physical network. As IDA had previously clarified, the resiliency of a telecommunication network mainly depends on factors such as how the network is configured, how key facilities are protected and how incidents are dealt with, rather than who owns the network²². It is therefore not true that the proposed Consolidation would worsen the resilience of the Next Gen NBN network. On the contrary, to the extent that the proposed Consolidation realises the claimed efficiencies such as improved network fault and detection as well as improved operational efficiency and responsiveness, the proposed Consolidation would likely improve service restoration efforts in the event of any service outages.

²² "Don't confuse it with network resiliency: IDA", The Straits Times, 15 October 2013

192. Nonetheless, as a result of the incident, IDA has commenced a separate review on the systemic resiliency of the fixed info-communication infrastructure, which will be captured in a new audit framework. Any resiliency measures introduced would be applied to the relevant licensees, including the Post-Consolidation Entity, where relevant.

Financial Implications and Risks of Prejudicing Rights of Third Parties

193. In response to the Commenters' concerns about the financial implications of the proposed Consolidation as well as the risks that the business trust structure would prejudice or compromise the rights of third parties, IDA would highlight that these are not relevant to IDA's assessment of the proposed Consolidation. IDA's considerations in assessing a Consolidation Assessment focus on whether the transaction is likely to substantially lessen competition in any telecommunication market within Singapore or if it is in the public interest to deny the Consolidation Application .

194. With regard to the financial implications, IDA had previously publicly clarified²³ that it is incorrect to take IDA's grant to OpenNet, deduct it from the value of the transaction and conclude that OpenNet has made a loss. IDA's S\$750 million grant was for rolling out the nationwide Next Gen NBN dark fibre network so that consumers and businesses would not need to bear the full cost of the roll-out. By mid-2012, fibre was effectively deployed to 95% of homes and businesses. On the other hand, the proposed S\$126 million transaction price for OpenNet's shares is a commercial decision. This price may have taken into account cash flow from OpenNet's continued services to telecommunication operators, amongst others.

195. With regard to the risks of prejudicing the rights of third parties under the proposed business trust structure, IDA is of the view that this is purely a private commercial matter between the Post-Consolidation Entity and its customers and it would be up to the relevant parties to put in place appropriate commercial and risk-management arrangements (e.g. insurance, indemnity, etc.) to mitigate any risks. In this regard, this has no bearing on IDA's competition or public interest assessment of the proposed Consolidation.

Information Transparency

196. IDA notes that the Commenters have commented on the lack of information transparency on the proposed new Trust Deed, the details of the assets to be transferred between SingTel, CityNet and OpenNet, and whether SingTel could be allowed to influence pricing units at the NetLink Trust to prevent the sales of its units, amongst others.

197. IDA would clarify that most of this information is commercially-sensitive and cannot be disclosed publicly at present. However, IDA appreciates that where

²³ "Govt grant for fibre network helped to lower cost to public," TODAY, 18 September 2013.

possible and non-commercially sensitive, the relevant provisions of the proposed Revised Trust Deed can be published so that the industry and the public can better understand the relationship between CityNet and SingTel, and the limits of SingTel's authority as unitholder. IDA has therefore extracted and clarified the relevant proposed Revised Trust Deed provisions in this Explanatory Memorandum. IDA would highlight that these provisions are still subject to the approval of MAS, which is the authority with jurisdiction over such business trusts. The final Revised Trust Deed, once approved, shall be made available by CityNet to the public.

PART X: IDA'S DECISION

198. Based on the evidence and assessment above, IDA concludes that the proposed Consolidation is not likely to substantially lessen competition in any Singapore telecommunications market and there are no public interest concerns to deny the Consolidation Application where, and provided that, the potential competitive and public interest concerns in connection with the proposed Consolidation are addressed by the Applicants' full compliance with the Applicants' Proposed Conditions as well as the additional conditions to be imposed by IDA (together, the "**Conditions of Approval**")
199. IDA hereby grants approval to the proposed Consolidation with the following Conditions of Approval:
- (a) SingTel Interactive shall as part of the Consolidation enter into a separate sale and purchase agreement to sell to the NetLink Trust (through its Trustee-Manager, CityNet) its approximate 30% of the issued and paid-up share capital in OpenNet at the same time that the NetLink Trust (through its Trustee-Manager, CityNet) enters into a sale and purchase agreement with Axia, SPH Net and SPT Net (together the "**Vendors**") to acquire the Vendors' combined approximate 70% of the issued and paid-up share capital in OpenNet. This sale and purchase agreement involving SingTel Interactive's approximate 30% of the issued and paid-up share capital in OpenNet shall occur as part of the Consolidation and shall be completed at the commencement of Phase 1 of the Consolidation.
 - (b) SingTel shall as part of the Consolidation sell more than 75% of its unitholdings (i.e. at least 75% + 1 unit of its unitholdings) (which, for the avoidance of doubt, would include the associated unitholding voting rights) in the NetLink Trust by 22 April 2018. SingTel shall provide regular updates to IDA on the progress of the divestment.
 - (c) SingTel undertakes, represents and warrants that so long as SingTel is the beneficial holder (whether directly or indirectly) of 25% or more of the units in the NetLink Trust, or has the ability to exercise (whether directly or indirectly) 25% or more of the voting rights attached to the units in the NetLink Trust, SingTel shall not do any or all of the following:
 - (i) Remove the Trustee-Manager, except on the following grounds:
 - (1) the Trustee-Manager has committed an offence under Singapore law or has contravened any material condition or restriction imposed on it by any Licences (as defined in the Trust Deed ²⁴ constituting the NetLink Trust);

²⁴ References to the Trust Deed shall, for the avoidance of doubt, mean the Trust Deed as amended from time to time.

- (2) the Trustee-Manager has (A) acted fraudulently, in wilful default or in breach of trust; (B) failed to exercise Due Care (as defined in the Trust Deed constituting the NetLink Trust); or (C) otherwise committed a material breach of any of its obligations or covenants under the Trust Deed constituting the NetLink Trust;
 - (3) any order by a court of competent jurisdiction is made for the liquidation, winding up or bankruptcy of the Trustee-Manager or the appointment of any receiver of any of the assets of the Trustee-Manager or any liquidator or provisional liquidator or judicial manager of the Trustee-Manager or any resolution is validly and effectively passed by the members or creditors of the Trustee-Manager for the liquidation or winding up (including but not limited to a resolution by its members for a voluntary liquidation or winding up) of the Trustee-Manager or any analogous procedure under any applicable law; and/or
 - (4) subject to IDA's approval, such approval not to be unreasonably withheld, in the event that Clause 3.9.2 and/or Schedule 2 of the Trust Deed constituting the NetLink Trust have been amended or deleted and any of the following occurs:
 - (A) the Trustee-Manager undertakes or performs any of the Authorised Matters (as such term is defined in the Trust Deed constituting the NetLink Trust as at the date thereof and prior to any amendment or deletion thereof) without being directed by SingTel or without the approval of SingTel;
 - (B) the Trustee-Manager refuses or fails to undertake or perform any of the Authorised Matters where directed to do so by SingTel; or
 - (C) the Trustee-Manager refuses or fails to take such actions and steps, including but not limited to making modifications, alterations or additions to the provisions of the Trust Deed constituting the NetLink Trust and/or making applications to such persons, bodies or authorities or appointments of such persons, as may be required of the Trust or the Trustee-Manager to undertake or perform in relation to the relevant Authorised Matters, in accordance with SingTel's directions;
- (ii) Approve any amendments, or take any action relating, to the Trust Deed constituting the NetLink Trust that are contrary to the Control and Ownership Requirements as set out in paragraph

4.2, Part A, Volume 1 of Singapore's Next Generation National Broadband Network Project – Network Company (“NetCo”) RFP dated 11 December 2007 (and as amended from time to time) issued by IDA and bearing reference number IDA(RFP)-030;

- (iii) Approve any amendments to the Trust Deed constituting the NetLink Trust to vary the requirement to obtain IDA's approval for those matters set out in the Trust Deed constituting the NetLink Trust;
 - (iv) Take any action relating to the NetLink Trust that requires approval from IDA under the Trust Deed without first obtaining such approval in accordance with the Trust Deed constituting the NetLink Trust; and/or
 - (v) Approve or direct the winding up of the NetLink Trust, save where such action is to facilitate the final structure for the divestment as described in paragraph 2.6 of the Authorised Matters.
- (d) So long as SingTel is the beneficial holder (whether directly or indirectly) of 25% or more of the units in the NetLink Trust, or has the ability to exercise (whether directly or indirectly) 25% or more of the voting rights attached to the units in the NetLink Trust, SingTel shall not amalgamate or reconstruct, or change the structure or set up of the NetLink Trust or the manner in which any Trust Property (as defined in the Trust Deed) of the NetLink Trust is held, or enter into any merger of the NetLink Trust with any other body, that is not an action or step taken in pursuance of SingTel's divestment of its unitholdings in the NetLink Trust in accordance with paragraph 2.6 of the Authorised Matters (as defined in the Trust Deed) without first obtaining approval from IDA.
- (e) SingTel shall as part of the Consolidation amend the Trust Deed constituting the NetLink Trust such that the OpenNet Board and the CityNet Board shall consist of no more than 5 Directors, of which not more than 25% of its Directors shall be appointed by SingTel (“**SingTel Director**”) as the 100% unitholder in the NetLink Trust, with the remaining 75% or more comprising independent Directors provided always that there shall be at least 1 SingTel Director.
- (f) SingTel shall as part of the Consolidation terminate the OpenNet Agreements; i.e. the following four short form agreements between SingTel and OpenNet within twelve (12) months of the commencement of Phase 1 of the Consolidation:
- (i) Engineering, Procurement and Construction Agreement;
 - (ii) Operations and Maintenance Agreement;

- (iii) Co-location Agreement; and
- (iv) Duct Use Agreement.

Upon the termination of the OpenNet Agreements, SingTel shall no longer provide to OpenNet the services under the OpenNet Agreements. The termination of the OpenNet Agreements shall occur on the same day that the OpenNet assets and business are transferred and integrated into the NetLink Trust. With the transfer of the OpenNet assets and business into the NetLink Trust and termination of the OpenNet Agreements, the relevant OpenNet and SingTel personnel, skills and expertise shall be transferred to UMC (or a separate equivalent) (subject to the NetLink Trust's agreement to employ the personnel and agreement by the relevant personnel to accept such employment) to provide manpower services to the NetLink Trust in relation to the installation, operation and maintenance of its dark fibre network.

The NetLink Trust may also retain the flexibility to take-over the existing sub-contracting arrangements that SingTel has in place to support the ongoing provision of services to OpenNet at the commencement of Phase 2 of the Consolidation, which includes arrangements with sub-contractors to supply labour and materials for installation, operation and maintenance of OpenNet's dark fibre network. Alternatively, the NetLink Trust may call its own tenders for its sub-contracting arrangements if it so wishes. Prior approval from SingTel is not required in the selection of subcontractors for Outsourced Costs (i.e., the sub-contracting and outsourced costs incurred by OpenNet in the course of carrying on its Authorised Business).

- (g) The Applicants shall fully comply with their representations and commitments in the Consolidation Application as well as the submissions and assurances that they have provided to IDA (including but not limited to their Reply) as binding and enforceable obligations to IDA as a condition of approval. Without limitation, these commitments include but are not limited to those referred to in paragraphs 117 and 135 above.
- (h) The Applicants shall complete the transition from Phase 1 to Phase 2 of the Consolidation, within twelve (12) months from the commencement of Phase 1 of the Consolidation.
- (i) The Applicants shall, within three (3) months from the commencement of Phase 1 of the Consolidation or such other date as may be agreed between the Applicants and IDA, submit to IDA for approval, a detailed implementation plan for the transfer of the OpenNet business, assets and the relevant OpenNet and SingTel personnel to the NetLink Trust and all other relevant or associated matters. The detailed implementation plan shall minimally include the:

- (a) detailed timeline for the various activities relating to the transfer of the OpenNet business, assets and personnel and the transfer of the relevant SingTel personnel, skills and expertise to the NetLink Trust;
- (b) assets to be transferred;
- (c) relevant contracts to be novated or assigned;
- (d) entity to which the assets and/or personnel shall be transferred;
- (e) personnel and their respective roles and responsibilities;
- (f) provision of regular updates on the progress of implementation;
- (g) submission of the draft revised Trust Deed for Phase 2 of the Consolidation for IDA's consideration; and
- (h) submission of the draft Deed of Undertaking referred to in subparagraph (p) below for IDA's consideration.

For the avoidance of doubt, the detailed implementation plan (and every step to be carried out thereunder including but not limited to (a) to (h) above) shall be binding and enforceable against the relevant Applicants as a condition of approval.

- (j) SingTel shall resolve the outstanding disputes between SingTel and OpenNet in relation to the provision of services by SingTel to OpenNet pursuant to the OpenNet Agreements at the commencement of Phase 1 of the Consolidation.
- (k) SingTel shall continue the current arrangements under the MFA in relation to the future requirements of the NetLink Trust for inter-linking ducts and associated manholes for the installation of Next Gen NBN dark fibre to:
 - (i) the remaining 5% of residential and non-residential premises that were not included in the Rollout Plan covering the 95% of residential and non-residential premises in Singapore;
 - (ii) meet its USO; or
 - (iii) an NBAP.

Following the Consolidation, the MFA between the NetLink Trust (through its Trustee-Manager, CityNet) and SingTel shall continue.

- (l) The Post-Consolidation Entity shall seek IDA's prior written approval before appointing any telecommunication or broadcasting licensees (and their Associates, as defined under Part VA of the Act) as its contractor, including but not limited to SingTel.
- (m) The Post-Consolidation Entity shall allow its activities, and SingTel shall allow its activities in relation to the Post-Consolidation Entity, to be monitored by a Monitoring Board, for purposes of ensuring their compliance with the Control and Ownership restrictions. This includes but is not limited to monitoring to ensure that SingTel does not abuse its role as OpenNet's KSC and favour itself or its affiliates. For more details, please see paragraphs 167 to 172 above. For the avoidance of doubt, as part of this condition of approval, the Post-Consolidation Entity (and where relevant, SingTel) shall render their fullest cooperation to the Monitoring Board, including but not limited to submitting regular reports, responding to any and all queries from the Monitoring Board and providing all information relevant to their compliance activities to the Monitoring Board.
- (n) In carrying out its duties as the Trustee-Manager of the NetLink Trust, CityNet shall not take into account any interests of its unitholders that are unrelated to the unitholders' investment in the NetLink Trust (such as the unitholders' telecommunication business as an OpCo and/or RSP).
- (o) The Post-Consolidation Entity shall have full independence and powers in deciding all matters relating to prices, terms and conditions (under its ICO, Customised Agreements and/or promotions) for its service offerings (both existing and/or new services), including both the provision of and the revisions to such service offerings, i.e. it shall not need to seek approval from unitholders nor be subject to directions from unitholders for such matters. Ahead of divestment by SingTel, SingTel's prior approval for the above matters shall not be required nor can SingTel issue a direction to CityNet if the matter does not or is not likely to have a material adverse effect on SingTel's ability to carry out its divestment of its unitholdings in the NetLink Trust in accordance with paragraph 2.6 of the Authorised Matters (as defined in the Trust Deed). In the event that SingTel withholds its approval or issues a direction for any of the above matters:
 - (i) CityNet shall be required to notify IDA and provide its views on whether the matter would have a material adverse effect on SingTel's ability to carry out its divestment in accordance with paragraph 2.6 of the Authorised Matters (as defined in the Trust Deed); and
 - (ii) Should IDA deem it necessary, SingTel shall be required to submit a report to IDA explaining (with adequate substantiation and evidence) why in SingTel's view, the matter would have a material adverse effect on SingTel's ability to carry out its

divestment in accordance with paragraph 2.6 of the Authorised Matters (as defined in the Trust Deed).

- (p) The Applicants shall provide a Deed of Undertaking to IDA, on terms acceptable to IDA, or any other legal instrument of equivalent effect and outcome to be approved by IDA, to ensure that the relevant Applicants shall be responsible for any breaches of the NetCo Contract by OpenNet and/or breaches of the Deed of Undertaking dated 20 October 2008 by SingTel and that the relevant Applicants shall perform all outstanding obligations of OpenNet under the NetCo Contract and of SingTel under the Deed of Undertaking dated 20 October 2008.
- (q) The Post-Consolidation Entity shall continue to meet all of CityNet's and OpenNet's regulatory and/or contractual obligations owed to IDA (including but not limited to the Control and Ownership restrictions).
- (r) SingTel shall at all times act reasonably and in utmost good faith in exercising its power or ability under the Reserved Matters and Authorised Matters in order to comply with the Control and Ownership restrictions. In any event, IDA reiterates that if there is any inconsistency between SingTel's power or ability to approve or direct CityNet and/or OpenNet as stipulated under the Reserved and Authorised Matters, and the Control and Ownership restrictions, the latter shall prevail to the extent of any inconsistency.

Annex A. Control and Ownership Restrictions

The Licensee shall ensure that it:

- (a) acting alone or in concert with its Associates, has no Effective Control over any other telecommunication licensee or broadcasting licensee;
- (b) is not under the Effective Control of any other telecommunication licensee or broadcasting licensee, whether acting alone or in concert with its Associates; and
- (c) is not under the Effective Control of the same Controlling Entity, acting alone or in concert with its Associates, as any other telecommunication licensee or broadcasting licensee.

For the purposes of the paragraph above:

- (a) An entity and its Associate are presumed to be “acting in concert” with each other unless the contrary is established. An entity is “acting in concert with its Associate” where, pursuant to an agreement or understanding (whether formal or informal), the parties co-operate through any means to hold or exercise Effective Control over another entity;
- (b) An Entity A, is an “**Associate**” of another Entity B, if:
 - (i) A is the spouse or a parent, remoter lineal ancestor or step-parent or a son, daughter, remoter issue, step-son or step-daughter or a brother or sister, of B;
 - (ii) A is a corporation whose directors are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of B or, where B is a corporation, of the directors of B;
 - (iii) B is a corporation whose directors are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of A or, where A is a corporation, of the directors of A;
 - (iv) A is a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of B or, where B is a corporation, of the directors of B;
 - (v) B is a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of A or, where A is a corporation, of the directors of A;

- (vi) A is a related corporation of B;
- (vii) A is a corporation in which B, alone or together with other associates of B as described in sub-paragraphs (ii) to (vi), is in a position to control not less than 30%, as the case may be, of the voting power in A;
- (viii) B is a corporation in which A, alone or together with other associates of A as described in sub-paragraphs (ii) to (vi), is in a position to control not less than 30%, as the case may be, of the voting power in B; or
- (ix) A is a person with whom B has an agreement or arrangement, whether oral or in writing and whether express or implied, to act together with respect to the acquisition, holding or disposal of shares or other interests in, or with respect to the exercise of their voting power in relation to, the telecommunication licensee or holder of a broadcasting licence (as the case may be).