

18 November 2013

Info-communications Development Authority of Singapore  
10 Pasir Panjang Road  
#10-01 MapleTree Business City  
Singapore 117438

Attention: Ms Aileen Chia  
Deputy Director – General (Telecoms & Post)

Dear Sirs,

**LONG FORM CONSOLIDATION APPLICATION: NETLINK TRUST ACQUISITION  
OF 100% OF THE ISSUED AND PAID-UP CAPITAL IN OPENNET PTE LTD**

1. We refer to the:

- (i) Long Form Consolidation Application dated 22 August 2013 submitted by CityNet Infrastructure Management Pte Ltd (as Trustee-Manager of NetLink Trust) ("**CityNet**"), NetLink Trust (through its Trustee-Manager, CityNet), Singapore Telecommunications Limited ("**SingTel**") (collectively referred to herein as the "**Applicants**") and OpenNet Pte. Ltd. ("**OpenNet**") (the "**Consolidation Application**");
- (ii) Info-communications Development Authority of Singapore ("**IDA**") public consultation on the Consolidation Application issued on 28 August 2013; and
- (iii) Responses to the Consolidation Application received by the IDA on 25 September 2013 ("**Industry Response**").

2. This is a public version of clarifications that the Applicants submitted to the IDA in October 2013. Generally, the Applicants disagree with the comments contained in the Industry Response. Whilst we do not intend to address each and every one of the aforementioned comments in this letter, we provide the following clarifications in response to certain arguments put forward in the Industry Response. We trust that the following clarifications will assist the IDA in objectively assessing the Consolidation Application. For the reasons outlined in Section 12, Part 5 of the Consolidation Application, the Applicants consider that the Consolidation will not substantially lessen competition in any telecommunications market in Singapore nor will the Consolidation result in any adverse impact to the public interest. Notwithstanding the Applicants' view that the Consolidation does not give rise to any competitive concerns, we submit that the additional conditions set-out in Section 11 of the Consolidation

Application also eliminate any perceived concern with regard to the level of independence of the Consolidation entity.

**(a) CityNet is Neutral and Independent: Highly Regulated by the IDA; BTA and Trust Deed Requires Compliance with the IDA Regulatory Obligations**

3. In relation to arguments that CityNet is not neutral or independent because it must serve only the business interests of SingTel, it is respectfully submitted that these comments are unsubstantiated because they are based on an incorrect understanding of the Business Trusts Act (“BTA”) and the duties of CityNet as Trustee-Manager of NetLink Trust.

**(i) CityNet is Highly Regulated by IDA**

4. As the IDA is well aware, CityNet is highly regulated by the IDA under the Telecommunications Act (Cap. 323) (“Act”), the Code of Practice for Competition in the Provision of Telecommunication Services 2012 (“Telecom Competition Code”), the Code of Practice for Next Generation National Broadband Network NetCo Interconnection (“NetCo Interconnection Code”) and the Facilities-Based Operator (“FBO”) licence issued by the IDA to CityNet. Throughout the Consolidation, both CityNet and OpenNet will remain highly regulated, open access network businesses in compliance with the Act, Telecom Competition Code, NetCo Interconnection Code and their respective FBO licences.
5. In Phase 2 of the Consolidation, CityNet is, and will remain, highly regulated by the IDA under the IDA’s regulatory regime and is and will be under a legal obligation to comply with the IDA’s regulatory regime to ensure open and non-discriminatory access to the NextGen NBN network (“Regulatory Obligations”). In the event that CityNet is in breach of its Regulatory Obligations, the IDA has broad powers under the Act, the Telecom Competition Code, the NetCo Interconnection Code and the FBO licence to take action against CityNet including (without limitation) issuing directions, fines, suspending and forfeiting of the FBO licence.
6. Given the severe adverse consequences of CityNet breaching its Regulatory Obligations, it is in the best interests of the unitholders of NetLink Trust for NetLink Trust to comply with its Regulatory Obligations (rather than disregarding its Regulatory Obligations, as wrongly suggested in the Industry Response). Accordingly, CityNet would not face any conflicts of interests between its duties to unitholders of NetLink Trust and its duty to comply with its Regulatory Obligations because complying with its Regulatory Obligations would be acting in the best interests of the unitholders of NetLink Trust.
7. In summary, arguments made in the Industry Response suggesting that CityNet would be acting in the best interests of the unitholders of NetLink Trust to breach its Regulatory Obligations in order to favour SingTel have ignored the IDA’s regulatory regime and the severe adverse consequences to

the interests of the unitholders in NetLink Trust in the event of a breach of the regulatory regime.

(ii) **BTA and Trust Deed Requires Compliance by CityNet with Regulatory Obligations**

8. The Applicants refer the IDA to the relevant sections of the BTA and the relevant provisions of the trust deed constituting the NetLink Trust (“Trust Deed”) for a proper understanding of the duties of CityNet, as Trustee-Manager of NetLink Trust.

*BTA Requires Compliance with Regulatory Obligations*

9. CityNet, as Trustee-Manager of NetLink Trust, is required by Section 10(1) of the BTA to at all times act honestly and exercise reasonable diligence in the management and operation of the business of NetLink Trust. Similarly, the CityNet directors themselves are required by Section 11(1)(a) of the BTA to act honestly and exercise reasonable diligence in the discharge of their duties and, in particular, to take all reasonable steps to ensure that CityNet discharges the above-mentioned statutory duty.
10. Given that the business of NetLink Trust is regulated by the IDA, CityNet would have the statutory duty (in this context) to act honestly and exercise reasonable diligence in managing and operating the business of NetLink Trust in compliance with its Regulatory Obligations. Similarly, the CityNet directors themselves would have the statutory duty (in the same context) to act honestly and exercise reasonable diligence, and in particular, take all reasonable steps to ensure that CityNet discharges the above-mentioned statutory duty.
11. We respectfully submit that the comments submitted to the IDA are based on an incorrect understanding of the BTA. Apart from failing to take into account the above, the proper and consistent reading of Section 10(2) of the BTA (as well as other statutory provisions of the BTA which refer to all unitholders as a whole) requires CityNet, as Trustee-Manager of NetLink Trust, to take into account the interests of all unitholders of NetLink Trust taken as a whole (that is the holders as a collective group or a general body). Section 10(2) of the BTA does not require CityNet to take into account the interests of unitholders of NetLink Trust beyond their interests as holders of units (representing their investments) in NetLink Trust, such as their wider business interests.

*CityNet Trust Deed Requires Compliance with Regulatory Obligations*

12. Further, the duty of CityNet to comply with its Regulatory Obligations is expressly provided for in the Trust Deed. By way of example:
- Clause 2.4 requires CityNet to exercise Due Care in the performance of all its duties and obligations imposed by the “Relevant Laws, Regulations and Guidelines” (which is defined in the Trust Deed as encompassing CityNet’s obligations under the IDA’s regulatory regime);

- Clause 13.1 requires CityNet to at all times comply with the “Relevant Laws, Regulations and Guidelines”;
  - Clause 1.7 provides that in the event of a conflict between any provision of the Trust Deed and the “Relevant Laws, Regulations and Guidelines”, the “Relevant Laws, Regulations and Guidelines” shall prevail;
  - Clause 2.1.2.2 provides that CityNet is empowered to perform all duties and obligations under any “Relevant Laws, Regulations and Guidelines”; and
  - Clause 16.3 requires CityNet to exercise Due Care in managing the NetLink Trust and engaging in the “Authorised Business” in a proper and efficient manner in accordance with the “Relevant Laws, Regulations and Guidelines”.
13. In short, by reading the Trust Deed, it is plain and clear that CityNet is duty-bound to comply with the IDA’s regulatory regime and is therefore required to comply with its Regulatory Obligations.
14. In summary, for the reasons outlined above, the Applicants respectfully submit that the arguments put forward in the Industry Response that CityNet is not neutral or independent because it must serve only the business interests of SingTel are unsubstantiated.

**(b) Divestment in Unitholdings by 2018: Additional Time to Divest Necessary**

15. In relation to comments in the Industry Response that SingTel’s divestment of more than 75% of its unitholding (i.e. at least 75% + 1 unit of its unitholding) in the NetLink Trust by 22 April 2018 would result in SingTel being able to expand and exert control over CityNet, it is respectfully submitted that these comments are also incorrect.
16. The Applicants refer the IDA to Section 12, Part 5 of the Consolidation Application which comprehensively addresses the issue of no Effective Control and to our submissions in (a) above.
17. Following the Consolidation, additional time to divest is 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 will need to focus on network deployment and maintenance to chart the next phase of growth for the NextGen NBN.
18. The expansion of the business and operations of the NetLink Trust to include the NextGen fibre network, in addition to the NextGen NBN ducts, manholes and Central Offices, means that additional time is required to integrate the two different businesses and their operations and achieve a steady-state prior to divestment.

19. As a publicly-listed company, SingTel has an obligation to its shareholders to ensure that the value of its assets are preserved and optimised. In Section 11 of the Consolidation Application, SingTel has undertaken to the 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 to arrive at an optimal capital structure that is conducive to, and will facilitate, the divestment. SingTel will 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.
- (c) **Authorised Matters/Reserved Matters: Do Not Affect CityNet's Neutrality or Independence**
20. In relation to comments that CityNet is not neutral or independent because the Trust Deed contains "Reserved Matters" and "Authorised Matters", it is respectfully submitted that these comments are not valid.
21. The Applicants refer the IDA to Section 12, Part 5 of the Consolidation Application and the submissions in (a) above regarding the independence and neutrality of CityNet.
22. At the outset, it is worth noting that if SingTel, as sole unitholder of NetLink Trust, had control of CityNet, it would not be necessary to include any "Authorised Matters" or "Reserved Matters" (as these terms are defined in the Trust Deed) in the Trust Deed. Indeed, the very existence of "Authorised Matters" and "Reserved Matters" actually stems from SingTel not having any control over CityNet. Yet, despite having no control over CityNet, SingTel is under an obligation to dispose of at least 75% of its unitholding (i.e. at least 75% + 1 unit of its unitholding) in the NetLink Trust within a specified time period.
23. 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 NextGen NBN Network) nor could they prevent CityNet from complying with its Regulatory Obligations. By reading Clause 1.7 of the Trust Deed together with Clause 2.4 and 13.1 of the Trust Deed, 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". In addition, as mentioned in Section 11 of the Consolidation Application, SingTel has undertaken that it will not take any actions relating to the Trust Deed that are contrary to the "Control and Ownership Requirements" referred therein.
24. With the above clarifications, we trust that we have more than adequately addressed the more salient comments raised in the Industry Response.

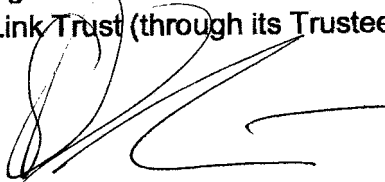
Yours sincerely,



Ms Jacqueline Ong  
Acting Chief Executive Officer  
CityNet Infrastructure Management Pte. Ltd. (as Trustee-Manager of the NetLink Trust) ("CityNet")



Ms Jacqueline Ong  
Acting Chief Executive Officer  
NetLink Trust (through its Trustee-Manager, CityNet)



Mr. Sean Slattery  
Vice President (Regulatory and Interconnect)  
Singapore Telecommunications Limited (as unitholder of the NetLink Trust)  
("SingTel")