



**EXPLANATORY MEMORANDUM ON THE DECISION OF
THE INFO-COMMUNICATIONS DEVELOPMENT AUTHORITY OF SINGAPORE
ON THE OWNERSHIP CHANGE TO CITYNET INFRASTRUCTURE
MANAGEMENT PTE LTD ARISING FROM THE PROPOSED COMBINATION OF
CITYSPRING INFRASTRUCTURE TRUST (PARENT OF DESIGNATED
TELECOMMUNICATION LICENSEE, CITYNET INFRASTRUCTURE
MANAGEMENT PTE LTD) WITH KEPPEL INFRASTRUCTURE TRUST**

23 APRIL 2015

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PART I: INTRODUCTION

1. On 16 January 2015, CityNet Infrastructure Management Pte Ltd (as Trustee-Manager of the NetLink Trust) ("**CityNet**"¹), Keppel Infrastructure Fund Management Pte Ltd (as Trustee-Manager of Keppel Infrastructure Trust) ("**KIFM**") and Keppel Infrastructure Trust (through its Trustee-Manager, KIFM) ("**KIT**") (collectively, the "**Applicants**"²) jointly submitted a Long Form Consolidation Application (the "**Consolidation Application**") to IDA.

¹ Unless specified otherwise, all references to CityNet shall be to CityNet, as Trustee-Manager of the NetLink Trust.

² The Applicants sought IDA's approval, on an exceptional basis, to waive the submission requirement to include the following Keppel-related entities (which are parents to KIFM and KIT) as named applicants in the Consolidation Application:-

- (i) Keppel Integrated Engineering Limited ("**KIE**"), which owns 100% of KIFM;
- (ii) Keppel Infrastructure Holdings Pte Ltd ("**KIH**"), which owns 100% of KIE; and
- (iii) Keppel Corporation Limited ("**Keppel Corporation**") which in turn owns 100% of KIH.

(the "**Applicants' Request**")

Based on the information provided by the Applicants which, amongst others, stated that the parent companies, namely KIE, KIH and Keppel Corporation, do not have any bearing on whether the Consolidation would substantially lessen competition in any Singapore telecommunication market, and that KIFM would promptly provide IDA with any information it might require of KIFM and KIT's Associates as and when IDA requests, IDA has decided to accede to the Applicants' Request on an exceptional basis. Notwithstanding this, KIE, KIH and Keppel Corporation, together with KIFM and KIT, constitute the Acquiring Parties. In the event that IDA approves the Consolidation Application with conditions, IDA may impose such conditions of approval upon the Acquiring Parties and CityNet (as the Designated Telecommunications Licensee), which conditions of approval shall be complied with.

2. The Consolidation Application seeks IDA's approval to form an enlarged infrastructure business trust (the "**Combined Trust**"), which involves the combination of CitySpring Infrastructure Trust (the parent company of CityNet) ("**CIT**") and KIT (the "**Consolidation**"). CityNet is currently 100% owned by CIT. Following the proposed Consolidation, CityNet will be 100% owned by the Combined Trust.
3. On 22 January 2015, IDA proceeded to solicit comments from key industry players who are either competitors or major customers of CityNet on the Consolidation Application (the "**Consultation**").
4. This Explanatory Memorandum provides a single document that describes: the Applicants; the Consolidation Application; comments received in response to the Consultation; 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 decision.
5. Unless otherwise defined, all capitalised terms in this decision paper shall have the same meanings ascribed to them in the Telecommunications Act (Cap. 323) (the "**Act**"), the Code of Practice for Competition in the Provision of Telecommunication Services 2012 (the "**Telecom Competition Code**") or the Telecom Consolidation and Tender Offer Guidelines, as applicable.

PART II: EXECUTIVE SUMMARY

Proposed Consolidation

6. The proposed Consolidation involves the combination of CIT and KIT to form an enlarged infrastructure business trust. Pursuant to the proposed Consolidation, each KIT unitholder will receive 2.106 CIT units for every KIT unit held. The Combined Trust will be owned 53.4% and 46.6% by CIT and KIT unitholders respectively. Upon completion of the proposed Consolidation, KIT will be dissolved.
7. CityNet is currently 100% owned by CIT. Following the proposed Consolidation, CityNet will be 100% owned by the Combined Trust. KIFM (or another related entity of KIFM) will be appointed Trustee-Manager of the Combined Trust, which will subsequently be renamed Keppel Infrastructure Trust.

The Applicants' View of the Effect on Competition and Public Benefits of the Proposed Consolidation

8. The Applicants submitted in the Consolidation Application that the proposed Consolidation is unlikely to substantially lessen competition in any telecommunication market in Singapore. Their reasons are summarised as follows:-
 - (a) the proposed Consolidation is a Non-horizontal Consolidation: there is no restriction and no lessening of competition;
 - (b) the proposed Consolidation does not affect the competitiveness of any telecommunication market in Singapore nor does it harm the public interest;
 - (c) CityNet will remain a highly regulated, open access network business and the "No Effective Control" requirements of the CityNet Facilities-Based Operations ("**FBO**") licence continue to be met;
 - (d) CityNet remains governed by the IDA-approved Trust Deed constituting the NetLink Trust (the "**CityNet Trust Deed**"); and
 - (e) in addition to the regulatory controls imposed by IDA, CityNet and KIFM (or another related entity of KIFM) must discharge their fiduciary duties as Trustee-Manager of the NetLink Trust and the Combined Trust respectively and comply with their obligations under the Business Trusts Act ("**BTA**") to act in the best interests of all unitholders of the business trust as a whole.

9. The Applicants further submitted that the proposed Consolidation has no impact on the market structure or competition in any telecommunication market in Singapore given that KIFM and KIT have no participation in the telecommunication industry and do not own any assets/investments in the telecommunication sector. The Applicants informed IDA that throughout the process of, and following, the proposed Consolidation, open access to the Nationwide Broadband Network (“**NBN**”) will continue to be made available to all Qualifying Persons (“**QPs**”) on a non-discriminatory basis through the IDA-approved Interconnection Offer (“**ICO**”). According to the Applicants, access to CityNet’s ducts, manholes and Central Offices (“**COs**”) will continue to be available pursuant to an IDA-approved Reference Access Offer (“**RAO**”) and/or IDA-approved tariffs.
10. Given the nature of the proposed Consolidation, the regulatory controls imposed by IDA and the regulatory regime under the BTA that imposes fiduciary duties on a Trustee-Manager, the Applicants submitted that the proposed Consolidation will not lessen competition in any telecommunication market within Singapore or harm public interest.

Key Comments from IDA’s Consultation

11. In reviewing the proposed Consolidation, IDA sought the views of major industry players who are either competitors or customers of CityNet. The commenters (individually referred to as a “**Commenter**” and collectively the “**Commenters**”) raised concerns regarding possible conflicts of interest and potential mishandling of commercially sensitive or confidential information arising from the “cross directorships” held by directors who hold positions in multiple Boards, including directorships in other telecommunication licensees. For example, the Commenters noted cross directorships in Nucleus Connect Pte Ltd (“**Nucleus Connect**”) and KIFM, and across M1 Limited (“**M1**”) and KIFM.
12. Some Commenters also submitted that IDA should impose safeguards to ensure that CityNet will not be able to act in an anti-competitive manner with respect to its relationship with M1, post-Consolidation, in the event that the Keppel Group decides to take a more active role in the operations and management of M1.
13. In light of their concerns, a number of Commenters submitted that if IDA is inclined to approve the proposed Consolidation, IDA should impose conditions such as requiring that Keppel-nominated directors and KIFM management not hold any position on the Board of Directors or in the Management of any entity involved in telecommunication activities, data centres or other telecommunication related activities.

IDA's Assessment of Proposed Consolidation

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

14. Based on IDA's assessment, the proposed Consolidation is primarily a Non-horizontal Consolidation. 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. In essence, the proposed Consolidation arises out of a combination of CIT and KIT. KIFM and KIT have neither direct interest nor participation in the telecommunication industry and do not own any assets or investments in the telecommunication sector, whether in Singapore or overseas. KIT's existing investments are in waste incineration, electricity generation, and NEWater (i.e., non-telecommunication space).
15. However, IDA recognises that even Non-horizontal Consolidations can have adverse competitive effects if at least one of the entities has Significant Market Power ("**SMP**") or participates in a concentrated market with few other competitors. In this case, IDA notes that CityNet is classified as a Dominant Licensee and that there are a limited number of players operating in the Layer "0" and Layer "1" markets³. That said, since KIT does not participate in the telecommunication sector, IDA is of the view that the proposed Consolidation would not change the Layer "0" and Layer "1" market situations post-Consolidation.

CityNet Remains Highly Regulated for Open Access and Non-Discriminatory Behaviours

16. In IDA's assessment, IDA notes that the classification of CityNet as a Dominant Licensee means that CityNet is required to comply with tighter regulatory requirements. These and other measures to safeguard against anti-competitive conduct in the NBN include:-
 - (a) a requirement to offer ICOs at IDA-regulated prices and service quality to ensure non-discriminatory treatment;
 - (b) a Structural Separation requirement for CityNet, which amongst other things, requires CityNet to be independent from, and not be under any

³ Please refer to the 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 dated 21 November 2013 (the "**CityNet-OpenNet Consolidation**") on IDA's website.

effective control of, any telecommunication or broadcasting licensees;
and

- (c) Universal Service Obligation for CityNet in the context of the NBN which requires CityNet to provide specific services nationwide to any QP who requests for them. CityNet is also subject to Quality of Service standards in the context of the NBN to ensure timely service provisioning.

These regulatory requirements, including conditions of approval arising from the CityNet-OpenNet Consolidation imposed on CityNet will continue post-Consolidation. In particular, the regulatory requirements placed on CityNet to provide dark fibre, ducts and manholes and COs in a non-discriminatory manner and not be under any effective control of any telecommunication or broadcasting licensee will continue.

Keppel Group's shareholdings in M1

17. IDA notes that KIT is 49.2% owned by KIE which is 100% owned by KIH which is in turn a wholly-owned subsidiary of Keppel Corporation. One of Keppel Corporation's subsidiary, Keppel Telecommunications and Transportation ("**KT&T**") (in which Keppel Corporation holds 79.8%), has 19.2% shareholdings in M1 (as shown in Figure 1 below). M1 is a provider of mobile and fixed telecommunication services in Singapore and participates primarily in the mobile services and fibre broadband market in Singapore. KT&T does not have operational or management control over M1. M1 is held by KT&T as an associated company for investment purposes and is not consolidated as a subsidiary within KT&T.

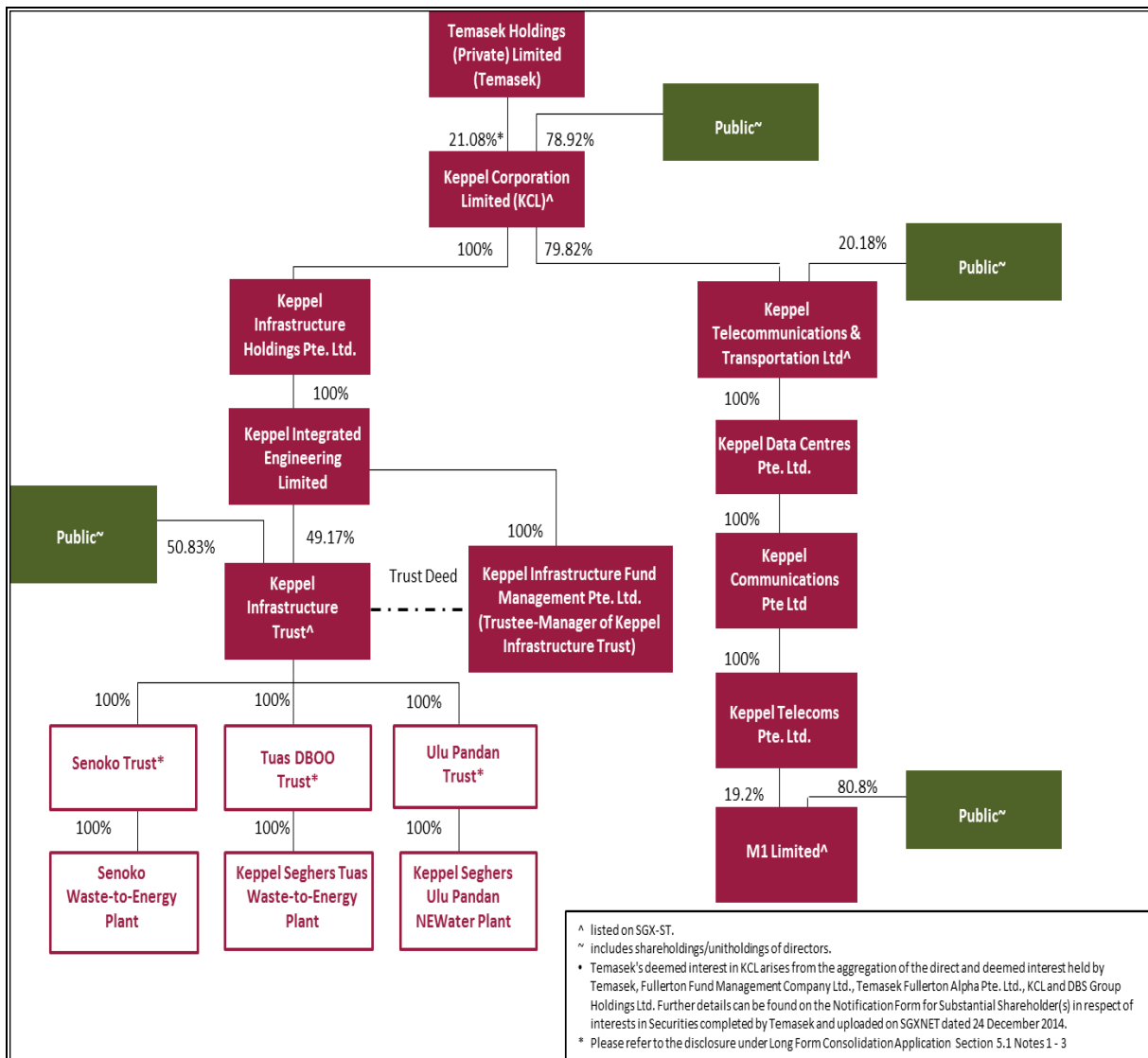


Figure 1 Shareholdings related to Keppel Group of Companies

18. IDA notes that KIT has a distant and indirect relationship with KT&T's 19.2 % shareholding in M1 through a common parent, Keppel Corporation, as noted in Figure 1 above. In this regard, KIT does not hold any interest in M1. IDA also notes that M1 is not a listed subsidiary of KT&T, nor are M1's accounts consolidated within KT&T. In any event, M1 operates primarily in the retail telecommunication market. CityNet, on the other hand, operates in the wholesale market for access to Layer "0" and Layer "1" services, and is not licensed to provide retail services and wholesale transmission services. CityNet and M1 participate in two distinct and separate markets. As such, given that KIT has a distant and indirect relationship with M1 and since KT&T does not have operational or management control over M1, IDA is of the view that the common parentage (i.e., Keppel Corporation) shared by CityNet and M1 does not raise significant competitive concerns.

Cross Directorships

19. However, IDA notes the concerns by some Commenters as regards the cross directorships in the Keppel Group, namely, between KIFM, M1 and Nucleus Connect; and between KT&T and M1 in that it may create potential conflicts of interest and the possibility of the mishandling of commercially sensitive or confidential information post-Consolidation.
20. IDA notes that a current Board member of the CityNet Board of Directors may be replaced with another representative from the Combined Trust, post-Consolidation (the “**KIFM-Nominated Director**”). The Applicants submitted that there will be measures in place (such as the existence of a Conflicts Resolution Committee and provisions in the Companies Act and the BTA) to address potential or actual conflicts of interest, as well as regarding the treatment of commercially sensitive or confidential information. Under the BTA and the Companies Act, it is provided that an officer of the Trustee-Manager shall not make improper use of any information acquired by virtue of his position as an officer of the Trustee-Manager to gain, directly or indirectly, an advantage for himself or for any other person to the detriment of the unitholders of the business trust or shareholders of the company. The Applicants also cited that the proper treatment of information is provided for in Section 157(2) of the Companies Act which specifically states that an officer or agent of a company should not make improper use of any information acquired by virtue of his position. Post-Consolidation, the Conflicts Resolution Committee’s primary role would be to review conflicts or potential conflicts of interest in the course of the Combined Trust’s business or operations between (a) the Combined Trust and (b) any director or officer of the Trustee-Manager, any controlling unitholder, or any controlling shareholder of the Trustee-Manager.
21. IDA is cognisant that commercially sensitive or confidential information relating to telecommunication licensees should be treated with due care in Board meetings where directors holding directorship appointments in more than one telecommunication licensee are present. In this regard, IDA notes that the Applicants have agreed that there must not be any misuse of information and that only necessary and limited information relating to the NetLink Trust on a need-to-know basis should be provided by CityNet and/or its directors to any other party (including any member of the Keppel Group). The Applicants also acknowledged the concerns raised by the industry with regard to the treatment of commercially sensitive or confidential information, and the need to avoid any potential or actual conflicts arising from cross directorships, in their nomination and appointment of directors to the KIFM Board. To further address the concerns raised, the Applicants have agreed to undertake an additional measure to ensure that, with effect from the

completion of the proposed Consolidation and for so long as (a) KIFM remains the Trustee-Manager of the Combined Trust; (b) CityNet remains a wholly-owned subsidiary of the Combined Trust; and (c) CityNet remains the Trustee-Manager of the NetLink Trust, no KIFM or CityNet director shall, without the prior written approval of IDA (such approval not to be unreasonably withheld), hold any position on the Board or in the management of other telecommunication licensee or broadcasting licensee in Singapore (herein referred to as the “**Additional Measure**”).

22. The Additional Measure will be applicable to both existing and new KIFM director appointments. For existing KIFM director appointments, i.e., KIFM directors who already hold Board or management positions in other telecommunication or broadcasting licensees in Singapore, the Applicants shall have up to 31 December 2015 or such date as may be agreed between the Applicants and IDA to comply with the Additional Measure. For new KIFM director appointments, the Additional Measure will take effect from the date of completion of the proposed Consolidation.
23. Given the regulatory and legislative safeguards that are in place, as well as the Additional Measure committed by the Applicants, IDA is of the view that the concerns regarding potential conflicts of interest and the treatment of commercially sensitive or confidential information have been addressed.

Conclusion

24. IDA has fully considered and carefully assessed the proposed Consolidation taking into consideration the Applicants’ submissions (including the Applicants’ commitments and the Additional Measure) and the Consultation, and concludes that the proposed Consolidation is not likely to substantially lessen competition in any Singapore telecommunication market. IDA is also of the view that there are no public interest concerns to deny the Consolidation Application.
25. IDA notes that the existing regulatory and legislative mechanisms and instruments, including the Conflicts Resolution Committee within the Board of Directors of the Trustee-Manager of the Combined Trust, the provisions within the Companies Act and the BTA with regard to the treatment of commercially sensitive or confidential information, as well as the Additional Measure committed by the Applicants, will address the Commenters’ concerns on the treatment of commercially sensitive or confidential information relating to CityNet or other telecommunication licensees within the Keppel Group. IDA is also satisfied that any potential competitive and/or public interest concerns in connection with the proposed Consolidation will be addressed by the continued imposition of IDA’s current regulatory requirements, including IDA’s

existing powers under Section 59 of the Act to require any person to produce to IDA any document, or provide any information to IDA, which would assist IDA in the conduct of its investigations or for discharging its functions under the Act.

26. IDA has therefore decided to approve the Consolidation Application on the basis of the Applicants' submissions, including the Applicants' undertaking to abide by the Additional Measure.

PART III: BACKGROUND OF THE APPLICANTS

CityNet

27. CityNet is a wholly-owned subsidiary of CIT through its Trustee-Manager, CitySpring Infrastructure Management Pte Ltd (“**CSIM**”).
28. CityNet carries on the NetLink Trust’s business and holds the assets on trust for the benefit of the unitholders of the NetLink Trust.
29. On 22 September 2011, IDA granted an FBO licence to CityNet for the ownership, installation, maintenance and operation of a nationwide network of ducts, manholes and COs, and for the provision of access to and use of the same (including the provision of operation and maintenance services) to other telecommunication licensees. On 1 October 2014, the FBO licence was amended to incorporate the requirement and responsibility to build, manage and operate a fibre optic network for the NBN, following IDA’s approval of CityNet’s acquisition of 100% of the issued and paid-up capital in OpenNet Pte Ltd.
30. CityNet is a Designated Telecommunications Licensee (“**DTL**”), a Public Telecommunications Licensee and a Dominant Licensee for the purposes of the Telecom Competition Code.

Keppel Infrastructure Trust (KIT)

31. KIT is a business trust listed on the SGX-ST, with a mandate to invest in infrastructure assets in Singapore and globally. KIT (formerly known as K-Green Trust) was listed in 2010 by way of a distribution in specie by Keppel Corporation.
32. KIT currently owns three Singapore-based assets: a waste-to-energy incinerator plant in Senoko, a waste-to-energy incinerator plant in Tuas, and a NEWater plant in Ulu Pandan.
33. KIT had also agreed to acquire a 51% stake in Keppel Merlimau Cogen Pte Ltd (“**KMC**”) which owns a combined cycle gas turbine generation plant on Jurong Island, Singapore. Post-Consolidation, the Combined Trust will take over the obligations of KIT to acquire the 51% stake in KMC.

Keppel Infrastructure Fund Management Pte Ltd (KIFM)

34. KIFM is a wholly-owned subsidiary of KIE.
35. KIFM (or another related entity of KIFM) will be appointed Trustee-Manager of the Combined Trust, of which CityNet will be a wholly-owned subsidiary.

PART IV: THE CONSOLIDATION APPLICATION

36. Pursuant to Section 32A(2) of the Act, IDA has declared every telecommunication licensee, which is granted a licence under Section 5 of the Act to provide FBO, to be a DTL for the purposes of Part VA of the Act.
37. Other than FBO licensees, IDA has also declared certain telecommunication licensees⁴ to be DTLs for the purposes of Part VA of the Act. DTLs and parties acquiring voting shares or voting power in DTLs (the “**Acquiring Party**”) are required to comply with various provisions relating to such acquisitions under the Act and Section 10 of the Telecom Competition Code.
38. Specifically, pursuant to Sub-section 10.3.6 of the Telecom Competition Code, a DTL and the Acquiring Party must seek IDA’s approval in connection with any transaction that results in a Consolidation. 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.
39. In the present case, CityNet is a DTL, and therefore the Applicants are required to seek IDA’s approval for the proposed Consolidation.

The Consolidation Application

40. In line with this requirement, on 16 January 2015, the Applicants jointly submitted the Consolidation Application in relation to the proposed Consolidation. The proposed Consolidation involves the combination of CIT and KIT to form an enlarged infrastructure business trust. Pursuant to the proposed Consolidation, each KIT unitholder will receive 2.106 CIT units for every KIT unit held. The Combined Trust will be owned 53.4% and 46.6% by CIT and KIT unitholders respectively. Upon completion of the proposed Consolidation, KIT will be dissolved.
41. CityNet is currently 100% owned by CIT. Following the proposed Consolidation, CityNet will be 100% owned by the Combined Trust. KIFM (or another related entity of KIFM) will be appointed Trustee-Manager of the Combined Trust. The process of the proposed Consolidation is as follows:-

⁴ For more information on Telecommunications (Designated Telecommunication licensees) Notification 2012, please refer to the following URLs: http://www.ida.gov.sg/~media/Files/PCDG/Practice%20Guidelines/TCC/TelAct_DesTelLic_Notif2012.pdf and http://www.ida.gov.sg/~media/Files/PCDG/Practice%20Guidelines/TCC/Designated_Telecomm.pdf

- (a) CIT will acquire all the business undertakings and assets of KIT in exchange for 1,326 million new units of CIT to be issued to KIT, which KIT will in turn distribute to the KIT unitholders. The swap ratio has been arrived at based on the market capitalisations of S\$658 million for KIT and S\$753 million for CIT, based on their units' respective volume weighted average prices for the 180-day period ended on 13 November 2013. Each KIT unitholder will receive 2.106 new CIT units for every KIT unit held. The swap ratio is fixed and is not subject to any adjustment. The actual transfer of assets for this merger is illustrated below in Figure 2:-

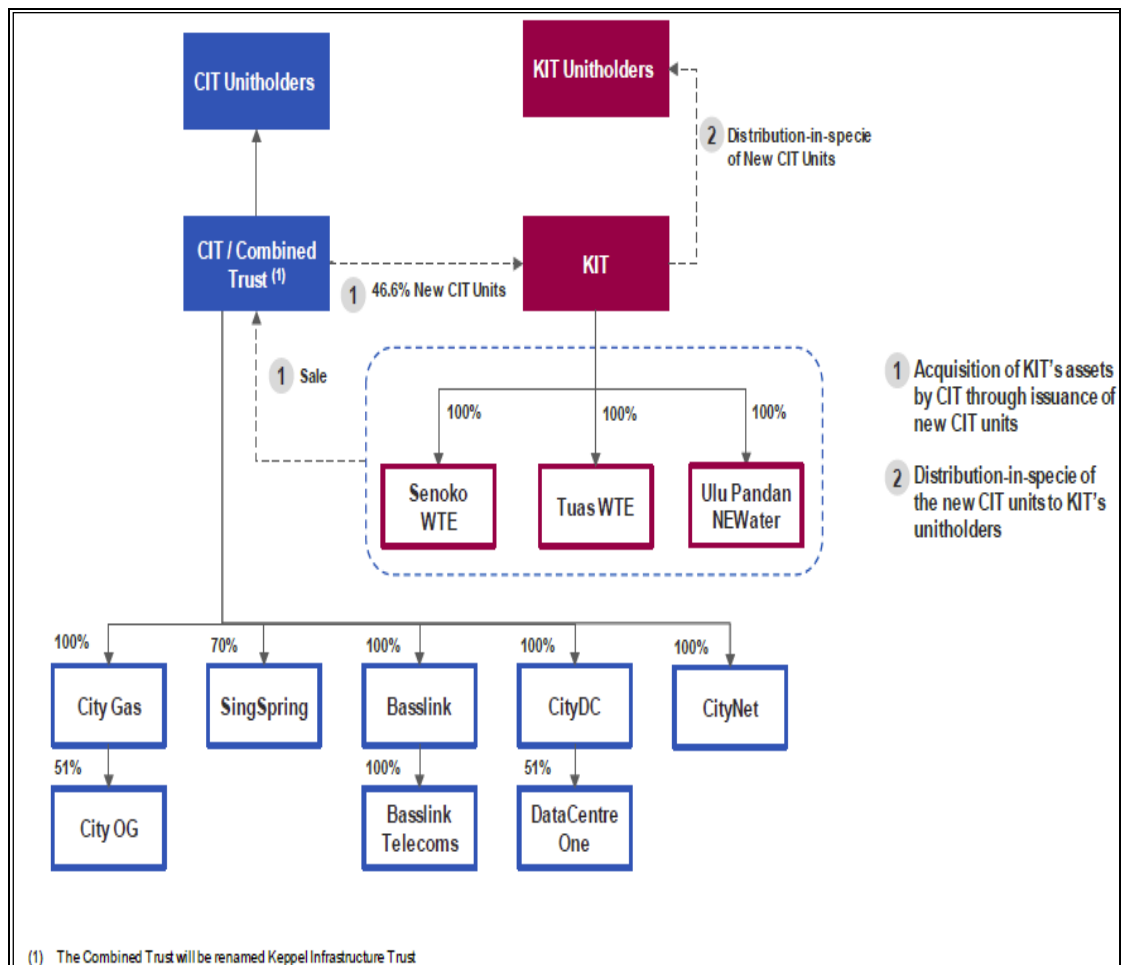


Figure 2 Illustration related to the Transfer of Assets

- (b) Upon completion of the proposed Consolidation, Keppel Corporation, via its wholly-owned subsidiary, KIH, will become the largest unitholder and Temasek Holdings (Private) Limited (“**Temasek**”), through its wholly-owned subsidiaries, will become the second largest unitholder with approximately 22.9% and 19.97% ownership in the Combined Trust respectively. The Combined Trust will be renamed Keppel Infrastructure Trust, and KIFM (or another related entity of KIFM) will

be appointed Trustee-Manager of the Combined Trust. A snapshot of the Combined Trust structure upon the completion of the proposed Consolidation using figures from Figure 1 (but prior to equity fund raising for the KMC acquisition) is shown in Figure 3 below which illustrates the relationships upstream of the Combined Trust as well as the indirect relationship with M1.

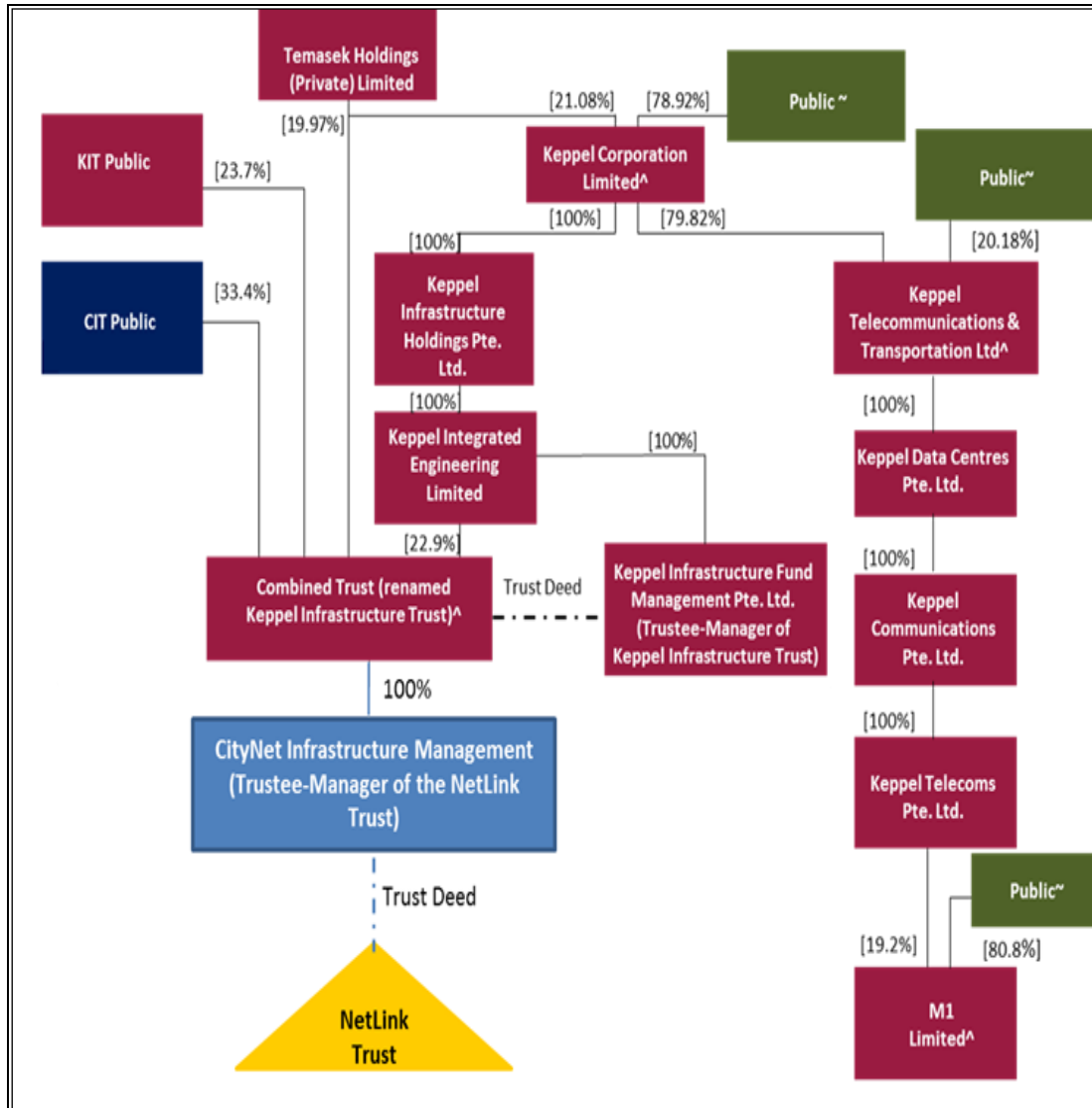


Figure 3 Snapshot of the Combined Trust Structure as at 15 January 2015

- (c) Post-Consolidation, CityNet will remain as the neutral, independent Trustee-Manager of the NetLink Trust. It will continue to install, operate and maintain the systems and the services held and required by the NetLink Trust, as per its FBO licence. There will be no changes to the operations and management of CityNet and consequently, the NetLink Trust. The CityNet/NetLink Trust structures pre- and post-Consolidation are as illustrated below in Figure 4 and Figure 5

respectively. These show that the current relationship between CityNet and the NetLink Trust will remain unchanged, post-Consolidation.

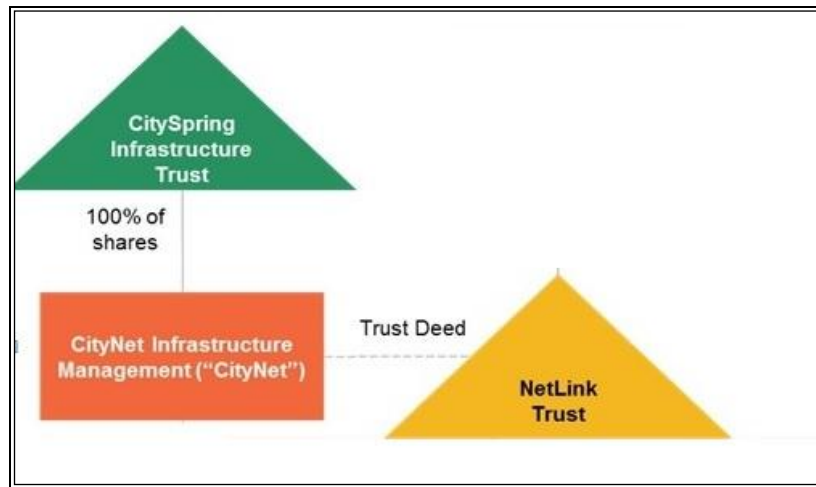


Figure 4 CityNet/NetLink Trust Structures Pre-Consolidation

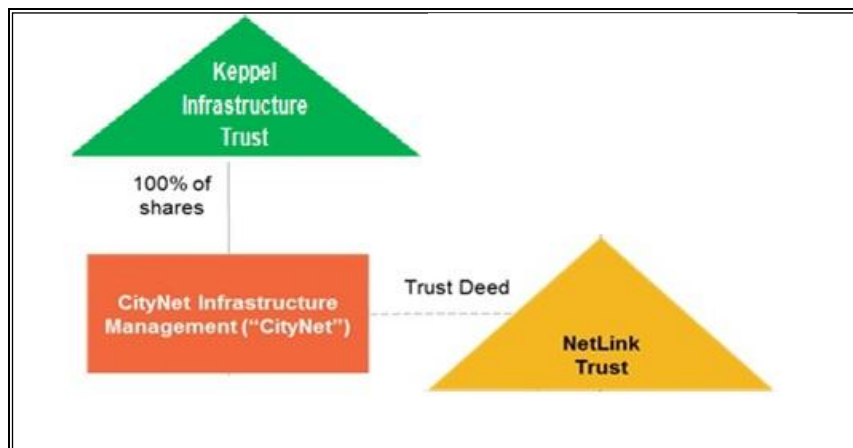


Figure 5 CityNet/NetLink Trust Structures Post-Consolidation⁵

⁵ Post-Consolidation, the Combined Trust will be renamed "Keppel Infrastructure Trust".

PART V: COMMENTS RECEIVED IN RESPONSE TO IDA'S CONSULTATION

42. As part of its review of the Consolidation Application, IDA interviewed and sought the views of key industry players who are either competitors or major customers of CityNet. The Commenters' views are summarised below.
43. *Keppel Corporation's shareholding in M1:* One Commenter submitted that IDA should put in place sufficient safeguards to ensure that CityNet will not be able to act in an anti-competitive manner with respect to its relationship with M1, post-Consolidation, in the event that the Keppel Group decides to take a more active role in the operations and management of M1.
44. *Potential Conflicts of Interest:* Some Commenters raised concerns regarding several cross directorship appointments between KT&T and M1, and between KIFM and both M1 and Nucleus Connect.
45. These Commenters noted that these cross directorships necessitate IDA's imposition of conditions on the Applicants to, amongst other things, put in place safeguards to mitigate actual and/or potential conflicts of interest arising from the proposed Consolidation and to enhance the independence of CityNet following the proposed Consolidation, to ensure that CityNet continues to fulfil its duties as Trustee-Manager of the NetLink Trust.
46. *Treatment of Confidential Information:* Some Commenters further indicated that cross directorships may result in the mishandling of commercially sensitive or confidential information relating to CityNet since such information may be made available to Board members and hence management of Nucleus Connect and M1.
47. *Other concerns in relation to CityNet:* Some Commenters also raised other issues on the proposed Consolidation as summarised below:-
 - (a) The Commenters submitted that the proposed Consolidation should not affect Singapore Telecommunication Limited's ("**Singtel's**") obligation to sell down its units in the NetLink Trust by 22 April 2018.
 - (b) The Commenters also sought confirmation that the proposed Consolidation would not result in changes to the status and/or ownership of United Maintenance Company Pte Ltd.
48. *Proposed Measures:* Some Commenters proposed that should IDA decide to approve the Consolidation Application, IDA should impose the following conditions on the Applicants to ensure that anti-competitive behaviour by the Applicants would not occur:-

- (a) the directors of KIFM and KIFM management must not hold any position on the Board or in any management of any entity involved in telecommunication activities, data centres or other telecommunication related activities;
 - (b) the KIFM management and CityNet should ensure that only necessary and limited information relating to the NetLink Trust should be provided on a need-to-know basis by CityNet and/or its directors to any member of the Keppel Group (including KIFM) and/or its officers and the scope of that information should be clearly defined (such as financial information for the preparation of consolidated financial statements);
 - (c) the KIFM-Nominated Director to the CityNet Board should not hold any position on the Board or in the management of any entity involved in telecommunication activities, data centres or other telecommunication related activities; and
 - (d) KIFM should not engage in any other telecommunication activities, data centres or other telecommunication related activities.
49. IDA would like to thank the Commenters for their feedback and suggestions, which IDA has taken into account in its assessment of the proposed Consolidation.

The Applicants' Response

50. In order to ensure a complete and objective assessment, IDA offered an opportunity to the Applicants to clarify the issues raised in the Commenters' submissions.
51. The Applicants submitted that there are already stringent regulatory and legislative safeguards, as provided for under the Companies Act (Chapter 50) and in particular, the BTA, against any possible conflicts of interest (see paragraphs 67 and 68 for further elaboration). The Applicants highlighted that a majority of the Board of the Trustee-Manager of the Combined Trust will consist of independent directors, as provided for under the Business Trusts Regulations, which will act as an additional level of safeguard against any possible conflicts of interest. The Applicants also pointed out that the same applies to the Board of CityNet. Further, the KIFM Board has in place a Conflicts Resolution Committee which serves as an additional layer of checks against any actual or potential conflicts of interest (see paragraph 66 for further elaboration). The Applicants also highlighted that cross directorships and potential conflict of interest issues, such as those raised by the Commenters, could arise between any competing companies which are telecommunication licensees, and are not restricted only to the companies

involved in the proposed Consolidation. Any such issues and concerns would be sufficiently addressed by the relevant regulatory and legislative safeguards. In this regard, the Applicants submitted that there is no need for IDA to impose any measures or conditions on the Applicants in respect of the proposed Consolidation.

52. The Applicants also pointed out that the parent company of CityNet, CSIM, presently manages other telecommunication and data-centre related investments including Basslink Telecoms Pty Ltd and Data Centre One Pte Ltd, which has not raised any substantial competitive concerns at this juncture.
53. Nonetheless, to better address the concerns raised, the Applicants agreed to undertake an additional measure to enhance the independence of CityNet. Specifically, to mitigate the concerns raised by the industry as regards the treatment of commercially sensitive or confidential information, and to avoid any potential or actual conflicts arising from cross directorships, the Applicants undertook that, upon the completion of the proposed Consolidation and for so long as (a) KIFM remains the Trustee-Manager of the Combined Trust; (b) CityNet remains a wholly-owned subsidiary of the Combined Trust; and (c) CityNet remains the Trustee-Manager of the NetLink Trust, no KIFM or CityNet director shall, without the prior written approval of IDA (such approval not to be unreasonably withheld), hold any position on the board or in the management of other telecommunication licensee or broadcasting licensee in Singapore.
54. The Additional Measure will be applicable to both existing and new KIFM director appointments. For existing KIFM director appointments, i.e., KIFM directors who hold board or management positions in other telecommunication or broadcasting licensees in Singapore, the Applicants shall have up to 31 December 2015 or such date as may be agreed between the Applicants and IDA to comply with the Additional Measure. For new KIFM director appointments, the Additional Measure will take effect from the date of completion of the proposed Consolidation.

PART VI: IDA'S ASSESSMENT FRAMEWORK

55. 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 effect or public interest concern arising from the Consolidation.
56. 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.
57. IDA recognises that Horizontal Consolidations raise more serious competition concerns as they result in the elimination of direct competitors. This may result in the creation of a market participant with SMP. Such consolidations may also result in a concentrated market in which the remaining participants are more easily able to undertake concerted anti-competitive actions, such as price-fixing.
58. 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 SMP or participates in a concentrated market with few other competitors. The risk is that a 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 SMP in one market to distort competition in another market. For example, after a Non-horizontal Consolidation, an "upstream"

entity that has SMP 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.

59. 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.

PART VII: IDA'S ASSESSMENT

Assessment of Whether the Proposed Consolidation is Horizontal or Non-horizontal

60. The proposed Consolidation arises out of a combination between CIT and KIT. KIFM and KIT have neither direct interest nor participation in the telecommunication industry and do not own any assets or investments in the telecommunication sector, whether in Singapore or overseas. KIT's existing investments are in waste incineration, electricity generation, and NEWater (i.e., non-telecommunication space). Absent the proposed Consolidation, the Applicants submitted that there are no present plans for KIT to acquire assets or investments in the telecommunication sector.
61. The Commenters submitted that IDA should put in place sufficient safeguards to ensure that CityNet will not be able to act in an anti-competitive manner with respect to its relationship with M1, post-Consolidation, in the event that the Keppel Group decides to take a more active role in the operations and management of M1.
62. IDA notes that KIT has a distant and indirect relationship with M1 through KT&T's 19.2% shareholdings in M1. The Applicants submitted that that M1 is not a subsidiary of KT&T, nor are M1's accounts consolidated within KT&T and accordingly, KT&T has no operational or management control over M1.
63. Given the above, CityNet should be considered as a separate entity from M1 and will remain as a separate entity notwithstanding the proposed Consolidation. Accordingly, as the proposed Consolidation involves changes which do not involve current competitors in any telecommunication market in Singapore, IDA holds the view that it is primarily a Non-horizontal Consolidation. In addition, as the proposed Consolidation does not involve any other telecommunication licensees other than CityNet, adverse effects related to Non-horizontal Consolidations such as elimination of a potential future competitor would not be applicable.

Keppel Group's shareholdings in M1

64. As indicated above, CityNet should be viewed as a separate entity from M1 notwithstanding the proposed Consolidation. KIT is 49.2% owned by KIE, which is 100% owned by KIH, which is in turn a wholly-owned subsidiary of Keppel Corporation. One of Keppel Corporation's subsidiary, KT&T (in which Keppel Corporation holds 79.8%), has 19.2% shareholdings in M1 (as shown in Figure 1 above). M1 is a provider of mobile and fixed telecommunication services in Singapore and participates primarily in the mobile services and fibre broadband market in Singapore. KT&T does not have operational or

management control over M1. M1 is held by KT&T as an associated company for investment purposes and is not consolidated as a subsidiary within KT&T. In this regard, KIT does not hold any interest in M1. That said, even if IDA were to adopt the hypothetical view that both entities could potentially “co-ordinate” their activities through their distant and indirect relationship as a result of the proposed Consolidation or in the event that the Keppel Group decides to take a more active role in the operations and management of M1, IDA’s assessment is that the proposed Consolidation would also not impact the market or substantially lessen competition. IDA’s rationale is as follows:-

- (a) IDA notes that CityNet operates in the wholesale market for access to Layer “0” services (i.e., passive infrastructure including ducts, manholes, spaces at COs) and Layer “1” services (i.e., dark fibre services), and is not licensed to provide retail services (i.e., services to end-users) and wholesale transmission services. IDA also notes that while M1 operates primarily in the retail telecommunication market (for both mobile services and fixed services like broadband services), M1 does roll out its own Layer “0” and Layer “1” duct and fibre networks. However, M1’s network coverage is comparably more limited. In relation to the concerns over the elimination of a potential future competitor (i.e., M1), if both entities could hypothetically co-ordinate their activities through their indirect relationship, IDA’s view is that the competitive impact is insignificant given CityNet’s monopolistic supply of Layer “0” and Layer “1” duct and fibre networks to residential premises. As regards the non-residential Layer “0” and Layer “1” duct and fibre networks, IDA notes that there are several other operators, such as Singtel, StarHub Ltd and BlueTel Networks Pte Ltd who have their own Layer “0” and Layer “1” duct and fibre networks that compete with CityNet. Accordingly, the competitive impact on Layer “0” and Layer “1” markets as a result of the proposed Consolidation is minimal.
- (b) As highlighted above, IDA recognises that even Non-horizontal Consolidations can have adverse competitive effects, especially since CityNet is classified as a Dominant Licensee and that there are a limited number of players operating in the “Layer 0” and “Layer 1” markets. In relation to the concerns that the proposed Consolidation might restrict competition by limiting the ability of competitors to access an “upstream” input or a “downstream” facility; allow an entity with SMP in one market to distort competition in another market; or allow an entity with upstream SMP to favour its related company in a downstream market, these concerns would already be addressed by the regulatory requirements imposed by IDA on CityNet (including the

Control and Ownership restrictions, i.e., “No Effective Control”, and interconnection requirements) to ensure that the NBN provides effective open access to downstream operators.

Cross Directorships

65. IDA notes the discomfort some Commenters have with regard to the cross directorships between KIFM and M1, KIFM and Nucleus Connect, and KT&T and M1, such that it may create possible conflicts of interest and opportunities for the potential mishandling of commercially sensitive or confidential information post-Consolidation.
66. In relation to the KT&T and M1 cross directorship, IDA notes that the director is currently neither in the management of KIFM, nor a KIFM-Nominated director. Accordingly, IDA does not hold the view that there could be any potential conflicts or mishandling of commercially sensitive or confidential information between CityNet and M1 as a result of the proposed Consolidation. As regards the directors of KIFM who hold directorships on the Boards of M1 and Nucleus Connect, IDA notes that the KIFM Board of Directors has a Conflicts Resolution Committee, consisting entirely of independent directors which would continue to be in place for the Board of Directors of the Trustee-Manager of the Combined Trust post-Consolidation. Post-Consolidation, the Conflicts Resolution Committee’s primary role would be to review conflicts or potential conflicts of interest in the course of the Combined Trust’s business or operations between (a) the Combined Trust and (b) any director or officer of the Trustee-Manager, any controlling unitholder, or any controlling shareholder of the Trustee-Manager. All the directors have a duty to disclose their interests in respect of a transaction in which they have any personal material interest or any actual or potential conflicts of interest (including a conflict that arises from their directorship or employment or personal investment in any corporation). Upon such disclosure, such directors will not participate in any proceeding of the Board and shall abstain from voting in respect of any such transaction where the conflict arises unless the Conflicts Resolution Committee has determined that there is no such interest or conflict of interest.
67. In addition to the Conflicts Resolution Committee, IDA notes that the Trustee-Manager of the Combined Trust is required under the BTA to at all times act honestly and exercise reasonable diligence in the discharge of its duties as a Trustee-Manager. Under the BTA and the Companies Act, it is also provided that an officer of the Trustee-Manager shall not make improper use of any information acquired by virtue of his position as an officer of the Trustee-Manager to gain, directly or indirectly, an advantage for himself or for any other person to the detriment to the unitholders of the business trust or

shareholders of the company. In this regard, directors who hold directorships in more than one telecommunication licensee would be bound by their fiduciary duties to the respective Boards they serve on. In addition, the Board of Directors of the Combined Trust is required under Section 11(1)(a) of the BTA to act honestly and exercise reasonable diligence in the discharge of the duties of their office. In particular, the BTA mandates that the Board of Directors of the Combined Trust shall take all reasonable steps to ensure that the Trustee-Manager of the Combined Trust discharges its above-mentioned duties and gives priority to the interests of all the unitholders as a whole over the interests of the Trustee-Manager in the event of a conflict between the interests of all the unitholders as a whole and the interests of the Trustee-Manager.

68. With regard to the concerns raised by the Commenters regarding the treatment of commercially sensitive or confidential information, the Applicants agreed that there must not be any misuse of information and that only necessary and limited information relating to the NetLink Trust on a need-to-know basis should be provided by CityNet and/or its directors to any other party (including any member of the Keppel Group). Additionally, the Applicants have cited that the proper treatment of information is provided for in Section 157(2) of the Companies Act which specifically states that an officer or agent of a company should not make improper use of any information acquired by virtue of his position.
69. IDA notes that the existing regulatory and legislative mechanisms and instruments, including the Conflicts Resolution Committee within the Board of Directors of the Trustee-Manager of the Combined Trust, and provisions within the Companies Act and the BTA with regard to the treatment of commercially sensitive or confidential information, should sufficiently address the Commenters' concerns on the treatment of commercially sensitive or confidential information belonging to CityNet or other telecommunication licensees within the Keppel Group. In addition, IDA may exercise its powers under Section 59 of the Act to require that any person produce to IDA any document, or provide IDA with any information, which IDA considers to be related to any matter relevant to an investigation conducted by IDA or for discharging its functions under the Act. In this regard, if it is brought to IDA's attention post-Consolidation that, *inter alia*, a telecommunication licensee may have obtained an unfair competitive advantage in any telecommunication market in Singapore as a result of commercially sensitive or confidential information pertaining to CityNet being mishandled by any of the Applicants, KIE, KIH and/or Keppel Corporation (as the case may be), IDA may conduct an investigation and the Applicants, KIE, KIH and/or Keppel Corporation (as

the case may be) may be required to produce to IDA any document, or provide IDA with any information in accordance with Section 59 of the Act.

70. In addition to the above, IDA notes that the Applicants have agreed to undertake an Additional Measure⁶ to further assuage concerns as regards the treatment of commercially sensitive or confidential information arising from cross directorships in KIFM. In this vein, the Applicants have committed that upon the completion of the proposed Consolidation and for so long as (a) KIFM remains the Trustee-Manager of the Combined Trust; (b) CityNet remains a wholly-owned subsidiary of the Combined Trust; and (c) CityNet remains the Trustee-Manager of the NetLink Trust, no KIFM or CityNet director shall, without the prior written approval of IDA (such approval not to be unreasonably withheld), hold any position on the board or in the management of other telecommunication licensee or broadcasting licensee in Singapore.
71. The Additional Measure will be applicable to both existing and new KIFM director appointments as mentioned in paragraph 54.
72. As such, IDA is of the view that the concerns raised by the Commenters in relation to cross directorships, and the treatment of commercially sensitive or confidential information, have been addressed.

CityNet Remains Highly Regulated for Open Access and Non-Discriminatory Behaviour

73. The NBN has been structured to promote competition particularly in the broadband services markets. Specifically, Structural Separation was imposed on CityNet to ensure that CityNet provides effective open access to downstream operators. In this regard, the Applicants submitted that the proposed Consolidation would not result in any changes to the NBN industry structure and the function of CityNet. In other words, CityNet will continue to provide effective, non-discriminatory, open access to CityNet's Layer "0" and Layer "1" services for downstream QPs in the NBN. Furthermore, the Applicants also submitted that there is no intention to change the business and operations of CityNet in any way following the proposed Consolidation. For the avoidance of doubt, the proposed Consolidation has no bearing on the requirement for Singtel to divest its unitholdings in the NetLink Trust by 22

⁶ See paragraphs 21-22 above.

April 2018⁷. In other words, 22 April 2018 remains as the deadline by which Singtel must complete its divestment.

74. The Applicants have indicated that a current Board member of the CityNet Board of Directors may be replaced with a KIFM-Nominated Director. The Commenters submitted that the KIFM-Nominated Director will have direct access to commercially sensitive or confidential information/data relating to CityNet and the NetLink Trust, and as a result, may give rise to actual or potential conflicts of interest. The Commenters suggested that the KIFM-Nominated Director should not hold any position on the Board of Directors or in the management of any entity involved in telecommunication activities, data centres or other telecommunication related activities. In a similar vein, the Commenters have also suggested that the KIFM management should not hold any position on the Board or in the management of any entity involved in telecommunication activities, data centres or other telecommunication related activities.
75. IDA notes the Commenters' representations on the scope of activities which the KIFM management or the Board of Directors should be restricted to include data centres, which are not regulated by IDA, and hence beyond IDA's purview. Therefore, the scope of IDA's assessment in this respect will only take into account services or sectors which are regulated by IDA.
76. Under Condition 31 of CityNet's FBO licence, IDA's prior approval has to be obtained, before a new director can be appointed to CityNet's Board of Directors. In any case, regardless of whether there are subsequent changes to CityNet's Board of Directors, CityNet's Board of Directors must comply with CityNet's FBO licence conditions, including the requirement for the Board of Directors to direct CityNet to ensure compliance with its Control and Ownership Restrictions. Regardless of its Board constitution⁸, CityNet must also continue to meet its obligations under the CityNet Trust Deed and the BTA. To this end, the Applicants have submitted that no significant changes in the management or operations of CityNet are anticipated. Given that the business of the NetLink Trust is regulated by IDA, CityNet and its Board of Directors 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. CityNet is fully aware that the NBN is highly regulated by IDA and of its obligation to fulfil all of its

⁷ See footnote 3 above.

⁸ As provided for in the CityNet Trust Deed, independent directors must comprise a majority of the CityNet Board.

regulatory obligations. Notwithstanding the proposed Consolidation, CityNet will continue to comply with all of its regulatory obligations which, amongst others, include the Control and Ownership Restrictions and providing effective open access to the NBN through its ICO and RAO respectively.

77. Given the above, IDA notes that the KIFM-Nominated Director to CityNet's Board will be obliged to comply with CityNet's FBO licence conditions, and its statutory and fiduciary duties. In this regard, any change to CityNet's Board of Directors is subject to IDA's further approval under a separate application by CityNet as required under CityNet's FBO licence. Indeed, IDA expects the KIFM-Nominated Director to CityNet's Board to be independent from any telecommunication or broadcasting licensee in Singapore, unless there are strong justifications for an exception to be made.
78. CityNet will remain a highly regulated, effective open access-based business. The regulatory regime, in particular, the Control and Ownership Restrictions, also prevents CityNet from leveraging its relationship with any other telecommunication or broadcasting licensee to distort competition. Coupled with the Additional Measure that the Applicants have agreed to undertake, as well as CityNet's licence requirement to seek IDA's prior written approval before the appointment of new directors, IDA holds the view that the concerns raised by the Commenters in relation to the appointment of a KIFM-Nominated Director on the CityNet Board have been addressed.

Business Activities of KIFM and KIT

79. Following the proposed Consolidation, KIFM will hold 100% of the share capital in CityNet. To avoid any actual and/or potential conflicts of interest, the Commenters submitted that following the proposed Consolidation, KIFM should not engage in any other telecommunication activities, data centres or other telecommunication related activities.
80. As noted above, the proposed Consolidation arises out of a combination between CIT and KIT. KIFM and KIT currently neither participate nor have direct interest in the telecommunication industry and do not own any assets or investments in the telecommunication sector, whether in Singapore or overseas. KIT's existing investments are in waste incineration, electricity generation, and NEWater (i.e., non-telecommunication space). Absent the proposed Consolidation, the Applicants submitted that there were no present plans for KIT to acquire assets or investments in the telecommunication sector. In the event that the Combined Trust/KIFM intends to:
 - (a) expand into the telecommunication sector by acquiring existing telecommunication licensee(s), it will be subject to the applicable consolidation requirements under the Act and the Telecom Competition

Code. IDA will then review the potential competitive impact as a result of the Combined Trust/KIFM's further expansion into the telecommunication sector; or

- (b) participate directly in telecommunication sector to provide and offer telecommunication services, it will be subject to the applicable licensing and regulatory frameworks. IDA will also review the potential competitive impact and IDA reserves the right, where necessary, to impose appropriate conditions on the Combined Trust, KIFM or CityNet.

Therefore, the above should not be a substantial factor to be considered in IDA's assessment of the proposed Consolidation.

- 81. IDA reiterates that its regulatory frameworks is designed to ensure that CityNet will not be able to leverage its market power to behave anti-competitively and distort competition in any telecommunication market in Singapore or to prevent the development of effective competition in any telecommunication market by restricting the ability of competitors to obtain necessary or essential inputs. These regulatory requirements imposed on IDA by CityNet, in particular, the Control and Ownership Restrictions, also prevent CityNet from leveraging its relationship with any other telecommunication or broadcasting licensee to distort competition.
- 82. Therefore, IDA is of the view that the concerns raised by the Commenters in relation to the business activities of KIFM post-Consolidation will be addressed by IDA's existing regulatory requirements imposed on CityNet, which will continue to apply post-Consolidation.

PART VIII: IDA'S DECISION

83. Based on the evidence and assessment above, IDA 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 hereby approves the Consolidation Application on the basis of the Applicants' submissions, including the Applicants' undertaking to abide by the Additional Measure.