

**INFO-COMMUNICATIONS DEVELOPMENT AUTHORITY
OF SINGAPORE**

TELECOMMUNICATIONS ACT

(CHAPTER 323)

**ADVISORY GUIDELINES GOVERNING
REQUESTS FOR DISPUTE RESOLUTION BETWEEN LICENSEES
UNDER SUB-SECTION 11.3 OF THE CODE OF PRACTICE FOR
COMPETITION IN THE PROVISION OF TELECOMMUNICATION SERVICES 2010**

21 January 2011

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The Info-communications Development Authority of Singapore (“**IDA**”), pursuant to Section 28 of the Telecommunications Act (Cap. 323) (the “**Act**”), hereby issues these Advisory Guidelines Governing Requests For Dispute Resolution Between Licensees Under Sub-section 11.3 of the Code of Practice for Competition in the Provision of Telecommunication Services 2010 (“**Guidelines**”).

1. INTRODUCTION

- 1.1 The provisions in these Guidelines are advisory and they do not impose any binding legal obligations on IDA. These Guidelines set out the procedures and standards that IDA will generally apply when resolving disputes between Licensees under Sub-section 11.3 of the Code of Practice for Competition in the Provision of Telecommunication Services 2010 (the “**Code**”).
- 1.2 In order to provide a single document addressing all issues relevant to the procedures and standards for dispute resolution, certain provisions of the Code have been summarised or repeated in these Guidelines. For the avoidance of doubt, in the event of any conflict between the Code and these Guidelines, the provisions of the Code shall prevail.
- 1.3 These Guidelines are intended to address the situation where IDA resolves disputes arising between 2 Licensees. However, there may be cases where IDA receives 2 or more petitions for dispute resolution which involve a common Licensee and similar subject matters. For example, disputes may arise between multiple Licensees seeking access to the same infrastructure controlled by a common Licensee. In such cases, IDA may, in its discretion, require all the Licensees to jointly participate in a consolidated dispute resolution proceeding in order to achieve a consistent and non-discriminatory outcome. In doing so, IDA will, where appropriate, apply these Guidelines with suitable modification to accommodate the consolidated dispute resolution proceeding.
- 1.4 These Guidelines may be referred to as the “Dispute Resolution Guidelines”.

2. APPLICABLE PROVISIONS OF THE CODE

- 2.1 Sub-section 11.3(a) of the Code provides that, upon request, IDA will resolve disputes between Licensees arising from the following events:
 - (a) failure to voluntarily reach an Individualised Interconnection Agreement

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with a Dominant Licensee; and

- (b) failure to voluntarily reach a Sharing Agreement for the sharing of infrastructure that IDA has directed or designated to be shared.

2.2 In addition, Sub-section 11.3(b) of the Code provides that IDA may, at its discretion, resolve disputes between Licensees arising from the implementation of:

- (a) an Interconnection Agreement entered into with a Dominant Licensee; and
- (b) a Sharing Agreement entered into via IDA's dispute resolution procedure.

3. PRELIMINARY PROCEDURES APPLICABLE TO DISPUTE RESOLUTION ARISING FROM SHARING AGREEMENTS AND INTERCONNECTION AGREEMENTS ENTERED INTO WITH DOMINANT LICENSEES

3.1 The following preliminary procedures apply to a dispute resolution under Sub-section 11.3(b) of the Code:

- (a) A Licensee that wants to petition IDA to resolve a dispute ("**Requesting Party**"), must submit to IDA a written request for intervention ("**Request for Intervention**") and provide a copy of the Request for Intervention to the other Licensee ("**Other Party**") at the same time. IDA will not consider any Request for Intervention unless the Requesting Licensee complies with this notification requirement.
- (b) In its Request for Intervention, the Requesting Party must provide evidence that it has attempted, in good faith, to resolve the dispute with the Other Party. Such evidence may include a summary of events or circumstances that led to the dispute, correspondences, dispute notices and minutes of meetings. The Requesting Party must provide a copy of the Request for Intervention to the Other Party on the same day that the Request for Intervention is submitted to IDA.
- (c) The Other Party will have 5 days from the day on which the Request for Intervention is submitted to IDA to provide its comments, if any, on why IDA should not intervene to resolve the dispute ("**Comments**"). The Other Party must provide a copy of the Comments to the Requesting Party on the same day that the Comments are submitted to IDA.

3.2 IDA will consider whether it should intervene to resolve the dispute. IDA will generally notify both parties of its decision within 30 days of the Requesting Party's Request for Intervention as to whether IDA will intervene or declines to

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resolve the dispute, as the case may be. Where IDA decides to intervene to resolve the dispute, the Requesting Party must submit to IDA its written petition for dispute resolution in accordance with paragraph 4.2, and IDA will apply the procedures set out in paragraphs 4 to 6 of these Guidelines to resolve the dispute.

4. PROVISIONS APPLICABLE TO ALL DISPUTE RESOLUTION PROCEEDINGS

4.1 The following procedures apply to dispute resolution under:

- (a) Sub-section 11.3(a) of the Code; and
- (b) in the case where IDA has accepted the dispute for resolution, Sub-section 11.3(b) of the Code.

4.2 Any Licensee requesting IDA to resolve its dispute with another Licensee must submit to IDA a written petition for dispute resolution (“**Petition for Dispute Resolution**”). For the avoidance of doubt, the Petition for Dispute Resolution is a separate document from the Request for Intervention mentioned under paragraph 3. The Licensee submitting the Petition for Dispute Resolution shall be referred to as the “**Petitioning Party**” and the other Licensee shall be referred to as the “**Responding Party**”. A copy of the Petition for Dispute Resolution must also be provided to the Responding Party on the same day that the Petition for Dispute Resolution is submitted to IDA. The Petition for Dispute Resolution must describe, in detail, each issue on which the parties have reached agreement and each issue on which the parties have not reached agreement. The Petitioning Party’s position on each of the issues in dispute should be described in a separate paragraph.

4.3 The Responding Party will have 15 days from the day on which the Petition for Dispute Resolution is submitted to IDA to submit a written response to the Petition for Dispute Resolution (“**Response**”). A copy of the Response must also be provided to the Petitioning Party on the same day that the Response is submitted to IDA. For each point in the Petition for Dispute Resolution on which the Petitioning Party claims that the parties are in agreement, the Response must indicate whether the Responding Party agrees or disagrees. If the Responding Party disagrees, it must provide a statement of its position. For each point in the Petition for Dispute Resolution on which the Petitioning Party claims that the parties disagree, the Responding Party must provide a clear statement of the way in which its position differs from that of the Petitioning Party.

4.4 In appropriate cases, IDA may provide the Petitioning Party an opportunity to reply in writing to the Response. In such cases, IDA will allow the Responding Party a similar opportunity to submit a final written reply to IDA. Each party will be given 15 days to submit its further reply.

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- 4.5 Where a party demonstrates good cause, IDA may grant a further extension of time of up to 7 days for making its submissions. Any request for an extension of time must be made in writing to IDA at least 3 days before the expiration of the specified period for which the party must submit its response. IDA will seek to inform both the Petitioning Party and the Responding Party of its decision within 2 days of the date of receipt of the request for extension.
- 4.6 IDA will apply the following standards to resolve the dispute:
- (a) Provided that they are consistent with the provisions of the Act, the Code and the conditions of the parties' licences, IDA will not re-open any issue on which the parties have reached agreement. Rather, the dispute resolution will be limited to those issues on which the parties are unable to reach agreement.
 - (b) To the extent that an issue in dispute is addressed by a provision of the Code, IDA will apply that provision. To the extent that an issue in dispute is not addressed by any provision of the Code, IDA retains full discretion to impose any solution that it deems appropriate (including solutions not advocated by the parties); in such cases, IDA is not obliged to confine its considerations to the specific arguments submitted by each party to IDA.
- 4.7 Where appropriate, IDA may impose an interim solution on the parties pending conclusion of the dispute resolution proceeding. Where feasible, IDA will give the parties reasonable advance notice of the proposed interim solution. Any interim solution will be no more extensive than is necessary to avoid serious harm to either of the parties or to the public interest. The interim solution will only be in effect up to and until the conclusion of the dispute resolution proceeding.
- 4.8 IDA will generally complete the dispute resolution proceeding and issue a decision resolving each of the unresolved issues and specifying any further actions that the parties must take, within 60 days of receiving all necessary information. Where appropriate, IDA may, by written notice to the parties before the expiration of the 60- day period, extend the time by which IDA will issue its decision.

5. SUBMISSION OF INFORMATION TO IDA

- 5.1 IDA may request either or both parties to submit additional information at any time during the course of a dispute resolution proceeding initiated under paragraphs 3 and 4 above. Unless a party requests confidential treatment of information pursuant to Sub-section 11.7 of the Code, any submission by a party must be made available to the other party at the time it is submitted to IDA.

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- 5.2 Where a party wishes to submit confidential information to IDA in connection with a dispute resolution proceeding, that party may request IDA for confidential treatment of such information pursuant to Sub-section 11.7 of the Code.

6. BINDING EFFECT OF INITIAL SUBMISSIONS

- 6.1 Consistent with the requirements of Sub-section 11.5 of the Code, any party that submits a Petition for Dispute Resolution or Response, must in its initial submission to IDA, raise all relevant issues in dispute and submit all relevant information to substantiate that party's position taken on the issues in dispute.
- 6.2 In addition, IDA will reject the relevant portion of any subsequent submission made by the party in the course of the relevant proceeding that:
- (a) raises any new issue in dispute not previously disclosed in its initial submission of the Petition for Dispute Resolution or Response;
 - (b) contains information that could have been submitted in its initial submission of the Petition for Dispute Resolution or Response; or
 - (c) takes any position that is inconsistent with its initial submission of the Petition for Dispute Resolution or Response.