CLOSING NOTE ISSUED BY THE INFOCOMM MEDIA DEVELOPMENT AUTHORITY

CODE OF PRACTICE FOR COMPETITION IN THE PROVISION OF TELECOMMUNICATION AND MEDIA SERVICES 2022 ("CODE")

18 APRIL 2022

SECTION I: INTRODUCTION

1. On 20 February 2019, the Infocomm Media Development Authority ("**IMDA**") conducted a public consultation to seek views and comments on the proposed policy positions for a Code of Practice for Competition in the Provision of Telecommunication and Media Services (the "**Code**") ("**First Public Consultation**"). The Code aims to maintain effective and sustainable competition, and safeguard consumer interests in the telecommunication, broadcasting and newspaper markets, and will replace the existing Code of Practice for Competition in the Provision of Telecom Services 2012 (also known as the Telecom Competition Code, or "**TCC**") and the Code of Practice for Market Conduct in the Provision of Media Services (also known as the Media Market Conduct Code, or "**MMCC**"). The consulted policy positions for the Code were intended to align the rules and regulations under the TCC and MMCC and to keep pace with market and technology developments.

2. Having given due consideration to the views and comments received during the First Public Consultation, IMDA issued a second public consultation on 5 January 2021 on the revised policy positions and draft Code ("**Second Public Consultation**").

3. At the close of the Second Public Consultation on 19 March 2021, IMDA received comments from 9 parties (individually referred to as a "**respondent**" and collectively, the "**respondents**"):
   (a) Asia Pacific Carriers' Coalition
   (b) Asia Video Industry Association
   (c) Liberty Wireless Pte. Ltd.
   (d) MyRepublic Limited
   (e) Singapore Telecommunications Limited
   (f) Singapore Press Holdings Ltd
   (g) Starhub Ltd
   (h) The Football Association Premier League Limited
   (i) US-ASEAN Business Council, Inc.

4. IMDA would like to thank all respondents for their comments.

5. This closing note sets out the following:
   (a) A summary of the key views and comments received during the Second Public Consultation;
   (b) IMDA's assessment of the responses; and
   (c) IMDA's final decision and issuance of the Code.

SECTION II: SUMMARY OF VIEWS AND COMMENTS RECEIVED DURING THE SECOND PUBLIC CONSULTATION AND IMDA'S DECISIONS

6. This section provides a summary of the views and comments received on the draft Code, as well as IMDA's assessment and final decisions.

7. IMDA notes that several comments received from the Second Public Consultation were similar to those received from the First Public Consultation. In these cases, IMDA will refer the respondents to the comments and decisions made by IMDA in the Second Public Consultation. Where new information has been provided and were assessed to be reasonable and justified, IMDA has reflected its re-assessment in this document.

PART I: MARKET OVERVIEW AND CONVERGENCE

8. Between 2014 and 2018, IMDA undertook general market studies of key media and telecommunication markets to obtain an overview of the level of competition in these markets in Singapore. IMDA's market studies noted five key macro technology and business trends that have material impact on competition in the media and telecommunication markets over the next few years. The five key macro trends identified were:

   (a) transition to Internet protocol ("**IP**")-based services on the Nationwide Broadband Network ("**NBN**");
   (b) increasing competitive edge of service bundling;
   (c) increasing competition from non-traditional digital services and platforms;
   (d) growth of Over-the-Top ("**OTT**") media services; and
   (e) diminishing reach of traditional media platforms.

9. In the First Public Consultation, IMDA invited views and comments on the impact of the five key macro trends on the competitive dynamics in the telecommunication and media markets.

IMDA's Assessment and Decision

10. IMDA notes that there is general agreement on the trends identified and their impact on the telecommunication and media industries. Regarding the feedback received from the First Public Consultation, IMDA has taken them into consideration and addressed them in the Second Public Consultation. No new comments were received from the Second Public Consultation.

PART II: REGULATORY PRINCIPLES AND REGULATORY REVIEW PERIOD

Regulatory Principles

11. In the First Public Consultation, IMDA indicated that the regulatory principles in the TCC and the MMCC are largely similar and remain relevant in a converged environment. The only exception is Sub-section 1.5.3 of the TCC on the "Promotion of Facilities-based Competition", which is specific to the telecommunication market. Hence, IMDA had proposed to harmonise the regulatory principles of the TCC and the MMCC by merging relevant provisions given that they are substantively similar in effect.

12. In the Second Public Consultation, IMDA stated its policy position to harmonise the regulatory principles of the TCC and the MMCC by merging the following provisions which are substantively similar in effect:

    (a) Reliance on market forces, private negotiations and industry self-regulation;
    (b) Promotion of effective and sustainable competition;
    (c) Proportionate regulation;
    (d) Technology neutrality;
    (e) Open, transparent and reasoned decision making;
    (f) Avoidance of unnecessary delay;
    (g) Non-discrimination; and
    (h) Consultation with other regulatory authorities.

13. IMDA also retained the regulatory principle of "Promotion of Facilities-based Competition" for the telecommunication markets only, given that it is not relevant to the media markets.

14. Respondents did not provide further comments on the Regulatory Principles.

15. Separately, two respondents suggested that IMDA review the regulatory obligations for Facilities-Based Operations ("**FBO**") Telecommunication Licensees, to ensure the framework remains "light touch" and not impose unnecessary compliance requirements on operators. Another respondent suggested that IMDA should provide a clear and fair indication of which "proactive measures" it would take, to facilitate service-based operators' access to 5G mobile communication networks ("**5G networks**") and ensure that services-based competition thrives fully for the benefit of the market.

IMDA's Assessment and Decision

16. From the First Public Consultation, IMDA notes that respondents were largely supportive of the proposal to merge the common regulatory principles under the TCC and MMCC in the Code, with some discouraging the retention of the regulatory principle "Promotion of Facilities-based Competition".

17. IMDA had responded in the Second Public Consultation that the regulatory principle on "Promotion of Facilities-based Competition" has proven to be effective over the last two decades in stimulating innovation and facilitating effective and sustainable competition in the telecommunication markets. This has benefitted consumers by providing them with more choices of innovative services at lower prices. As Singapore continues to develop its fixed and mobile connectivity infrastructure, such as enhancing the performance and resilience of domestic connectivity via optical fibre and 5G networks, and international connectivity and capacity via submarine cables, it will be essential for operators to continue investing and building high quality and resilient infrastructure for the future. However, as mentioned in the TCC, where there are technological, market or other impediments that prevent competing Telecommunication Licensees[1] from deploying facilities, IMDA will strike a balance by providing economic incentives to deploy facilities and taking proactive measures to facilitate services-based competition.

18. Given that there were no further comments from the respondents during the Second Public Consultation, IMDA will proceed to merge the common regulatory principles in the Code and retain the regulatory principle on Promotion of Facilities-based Competition for the telecommunication markets only under the Code.

19. IMDA notes the suggestion by the two respondents to ensure that the FBO framework remains "light touch" and not impose unnecessary compliance requirements on operators.

20. In relation to the suggestion that IMDA should provide a clear and fair indication of which "proactive measures" it would take to facilitate service-based operators' access to 5G networks, IMDA notes that the Code seeks to define the boundaries for acceptable competitive market behaviour in a liberalised telecommunication market, while allowing flexibility for innovation and quick response to market development. Hence, instead of being too prescriptive in the Code, IMDA will issue guidelines, where necessary, on regulatory measures and processes to provide industry with more business certainty. IMDA will also consult the industry

[1] "Telecommunication Licensee" means an entity to which the IMDA grants a licence under Section 5 of the Telecommunications Act 1999.

on proposed guidelines prior to issuance. For instance, IMDA has issued the Framework for the Wholesale of Mobile Services ("**Wholesale Framework**") in January 2020 to guide the Mobile Network Operators and Mobile Virtual Network Operators in their negotiations for a wholesale agreement. IMDA will continue to monitor market developments and, if necessary, issue further guidance to provide more clarity and certainty to the industry.

Regulatory Review Period

21. Under Sub-section 1.6.1 of the TCC and Sub-section 1.7.1 of the MMCC, IMDA will conduct a review of the TCC and MMCC every three years to ensure that the provisions remain relevant and effective. IMDA has in the Second Public Consultation proposed to conduct a review of the Code on a five-yearly basis instead of a three-yearly basis, given that the media and telecommunication markets have matured, and the existing regulatory frameworks have generally stabilised. Notwithstanding the above, IMDA retains the flexibility to consult and amend certain provisions of the Code within the five-year period if necessary. The extension is also aligned with the extended review and validity periods of reference interconnection offer, which is elaborated under Part IX of this document.

22. There was only one response to the proposal to review the Code on a five-yearly basis instead of a three-yearly basis. The respondent disagreed that the market has stabilised and that it would be an appropriate time to relax the review period to a five-yearly basis.

IMDA's Assessment and Decision

23. IMDA would like to reiterate that while the review period will be on a five-yearly basis instead of a three-yearly basis, IMDA continues to retain the flexibility to consult and amend certain provisions of the Code within the five-year period to reflect market developments/ changes where necessary. Further, the wording in Section 1.6.1 of the Code states that "IMDA will review this Code at least once every five years". IMDA will thus adopt five years as the review period for the Code.

PART III: DOMINANCE CLASSIFICATION AND DUTIES OF DOMINANT ENTITIES

24. Under the TCC and the MMCC, licensed entities who (a) operate facilities used for the provision of telecommunication services that are sufficiently costly or difficult to replicate, or (b) who have significant market power, are classified as "Dominant Licensees", or "Dominant Persons", in the TCC and the MMCC respectively. These entities are subject to a greater degree of ex ante and ex post regulation to ensure that they do not abuse their dominant positions in a market to the detriment of competition and consequently, End Users. For the purposes of this closing note, the term "Dominant Entities" shall be used to refer to both "Dominant Licensees" as defined in the TCC and "Dominant Persons" as defined in the MMCC.

25. The First and Second Public Consultations described IMDA's policy positions relating to the classification and duties of Dominant Entities. The policy positions included the criteria used for dominance classification, market share threshold for the presumption of Significant Market Power ("**SMP**"), the approach for assessing dominance and the tariff filing requirement for Dominant Telecommunication Licensees.

Dominance Classification

Criteria Used for Dominance Classification

26. IMDA had decided in the Second Public Consultation that the same standards for dominance classification be applied to both the telecommunication and media markets in the Code. This is in consideration that, similar to a Telecommunication Licensee, a media licensee may also operate facilities, which are used for the provision of licensed media services (i.e., broadcasting services licensed under the Broadcasting Act and printing, publishing, selling and/or distributing of newspaper under the permit pursuant to the Newspaper and Printing Presses Act), that are sufficiently costly or difficult to replicate such that it creates a significant barrier for rapid and successful entry into the media markets by an efficient new competitor. The standards for dominance classification in the Code were as follows:

Dominant Entities are entities that either:

(a) operate facilities used for the provision of telecommunication and/or media services 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 and/or media market in

Singapore by an efficient competitor; or

(b) have the ability to exercise SMP in any market in which it provides services pursuant to its telecommunication or media licence.

27. IMDA received two new comments regarding the proposal to apply the same standards for dominance classification to both telecommunication and media markets. One respondent noted that the Dominance Notification[2] that it received for the media market was issued in the absence of a robust market definition assessment in 2003 and as such, a review should be undertaken, and the respondent should be re-classified as non-dominant in view of developments in the online space that have changed the media market landscape.

28. The second respondent commented that pre-designating dominance was crucial in maintaining market vibrancy under the TCC as dominance did not have to be proven in order to investigate abuse.

IMDA's Assessment and Decision

29. With regard to the first comment that existing dominant licensees should be re-classified in view of market developments, IMDA wishes to clarify that under Section 2.4.2.(b)(ii) of the Code, a Telecommunication Licensee, Regulated Person ("**RP**") or other interested party may submit its request to have a Telecommunication Licensee or RP reclassified for IMDA's consideration.

30. In relation to the second comment, IMDA would like to point out that under Section 8 of the Code (i.e., the prohibitions against "Abuse of a Dominant Position, Anti-Competitive Leveraging, and Unfair Methods of Competition"), a "Telecommunication Licensee or RP's dominant position in a market refers to the Telecommunication Licensee or RP having SMP in that market". A Telecommunication Licensee or RP does not have to be pre-classified as dominant for IMDA to investigate its conduct for potential abuse of dominant position, and to determine that it is in fact dominant.

31. IMDA notes that there was generally no strong objection to the proposed standards for dominance classification. As such, IMDA will retain the proposed standards specified in paragraphs 266(a) and 266(b) above.

32. For completeness and to recap IMDA's positions in the First Public Consultation, IMDA would like to reiterate that the factors determining whether the facilities used for the provision of telecommunication and/or media services are

[2] Media Development Authority of Singapore (Regulated Persons) (Dominant and Non-dominant Positions) Notifications 2003.

sufficiently costly or difficult to replicate are specified in Sub-section 2.6.1 of the TCC will be retained in the Code as follows:

(a) the facilities that the Telecommunication Licensee or RP has deployed to provide services in Singapore;

(b) the cost to a new entrant to deploy facilities that perform a comparable function;

(c) the extent to which such facilities are commercially available;

(d) The extent to which there are technical, economic or regulatory obstacles to the competitive deployment of such facilities; and

(e) the extent to which competitive deployment has occurred and is likely to occur within the foreseeable future.

Threshold to be Used for Initial Presumption of SMP

33. In the assessment of a Telecommunication Licensee's or RP's ability to exercise SMP in any telecommunication or media market, IMDA takes into consideration a range of factors such as market share, entry barriers and countervailing buyer power. IMDA had previously explained that, all things being equal, a larger market share indicates a greater potential ability to act anti-competitively and therefore a large market share is used as an initial presumption of SMP. However, IMDA had also mentioned that this presumption may be overcome by evidence that demonstrates that the Telecommunication Licensee or RP is in fact subject to effective competition.

34. Currently, both the media and telecommunication regulatory regimes provide for a rebuttable presumption that a Telecommunication Licensee or RP has SMP if its market share[3] for the relevant market is in excess of a certain percentage (the "**SMP Presumption Threshold**"). The SMP Presumption Threshold for the media markets is currently set at 60% market share, while the SMP Presumption Threshold for the telecommunication markets is set at 40% market share[4]. IMDA considered that there is merit in adopting a common SMP Presumption Threshold across both media and telecommunication markets under the Code and sought comments on an appropriate market share threshold to be used for the initial presumption of SMP.

[3] In determining the market share, IMDA will seek to use the unit of measurement that best reflects the characteristics of the market. In doing so, IMDA may look at, for instance, revenues, unit sales, capacity or other relevant units of measurement.

[4] Refer to the Advisory Guidelines Governing Petitions for Reclassification and Requests for Exemption under Sub-sections 2.3 and 2.5 of the TCC.

35. One respondent suggested for IMDA not to adopt market share as an SMP Presumption Threshold but instead treat market share equally with other factors such as market structure, barriers to entry and countervailing buyer power for the assessment of SMP. The respondent also urged IMDA to align with the Competition and Consumer Commission of Singapore ("**CCCS**") and adopt a 60% market share threshold given the increased competition within media markets as there is no sound basis for reducing the SMP threshold in the media markets from 60% to 50% due to rise of OTT media service providers.

IMDA's Assessment and Decision

36. IMDA would like to recap its view in the Second Public Consultation. The market share threshold continues to serve as a relevant indicator adopted by international competition authorities (e.g., United States' Federal Trade Commission, the European Union's ("**EU**") European Commission ("**EC**"), United Kingdom's ("**UK**") Competition and Markets Authority) and the CCCS. IMDA also noted that there is no agreement on a market share threshold that would address all concerns raised by the respondents. IMDA is nonetheless of the view that retaining the separate SMP thresholds for the two markets (i.e., 40% market share for the telecommunication markets and 60% market share for the media markets) will not contribute to creating regulatory consistency and certainty in an increasingly converged telecommunication and media landscape.

37. When the telecommunication markets were first liberalised in 2000, IMDA had adopted a lower SMP Presumption Threshold of 40% market share as the markets were still evolving from monopolistic to competitive markets. Adopting a higher market share threshold then might relieve a Dominant Telecommunication Licensee from being classified as dominant prematurely even though the market was not in fact effectively competitive. However, the landscape has since evolved with more than 70 FBO Licensees and more than 200 Services-Based Operations ("**SBO**") Telecommunication Licensees as of 2021. Given the increased competitiveness of the telecommunication markets, and the continued shift in competition dynamics as highlighted in the First Public Consultation, the 40% SMP Presumption Threshold may now be too low and may unnecessarily trigger a presumption of SMP when the market is in fact competitive. Therefore, IMDA held the view that raising the market share threshold for the presumption of SMP from 40% to 50% for the telecommunication markets would be appropriate in light of the above developments and would bring Singapore in line with international standards for the presumption of SMP.

38. For the media markets, a higher SMP Presumption Threshold of 60% market share was adopted in 2007 as there were few key players in the mass media services markets then. IMDA took the view back then that an RP with a market

share of less than 40% was unlikely to be considered as an RP with SMP. If the RP had a market share of between 40% and 60%, IMDA might initiate a closer review to determine whether SMP existed. However, IMDA notes that more players have since entered the media markets and the current 60% market share threshold remains high when compared against other jurisdictions internationally.

39. Regarding the respondent's suggestion to not adopt market share as an SMP Presumption Threshold but instead treat market share equally with other factors such as market structure, barriers to entry and countervailing buyer power for the assessment of SMP, IMDA refers to the explanation above, which was provided in the Second Public Consultation. On aligning with the CCCS' threshold, IMDA notes that the CCCS' 60% threshold is a general presumption intended to apply to a wide range of industries for assessment of the entity's ability to exercise SMP in any market whereas IMDA is an industry-specific regulator who has to take into account various industry-specific concerns and factors in determining the appropriate SMP presumption threshold under the Code. IMDA also notes that overseas jurisdictions such as the EC and the US Federal Trade Commission adopt 50% as their SMP Presumption Threshold. Having conducted market studies, and for the reasons explained above, IMDA has determined that a 50% market share threshold is presently appropriate as the SMP presumption threshold for both the telecommunication and media markets in Singapore.

40. IMDA would like to reiterate that the SMP Presumption Threshold is a rebuttable presumption meant to inform competition assessments and is not an end in itself. Similar to the approach taken by CCCS, IMDA will also consider other factors, such as barriers to entry and the existence of countervailing buyer power, in determining whether the Telecommunication Licensee or RP indeed has SMP.

41. Given the above, IMDA will adopt a 50% market share threshold as the SMP Presumption Threshold for both the telecommunication and media markets.

<u>"Market-by-Market" versus "Licensed Entity" Approach to Dominance Classification</u>

42. Under the MMCC, an RP is classified as a Dominant Person if it is found to have SMP in specific media markets (referred to as the "Market-by-Market" approach), whereas under the TCC, a Dominant Telecommunication Licensee is assumed to be dominant in all telecommunication markets it participates in unless proven otherwise (referred to as the "Licensed Entity" approach)[5]. In the First Public Consultation, IMDA proposed to adopt a "Market-by-Market" dominance classification approach for Telecommunication Licensees moving forward,

[5] A Dominant Telecommunication Licensee can seek IMDA's approval to be exempted from Dominant Telecommunication Licensee obligations in certain markets which the Dominant Telecommunication Licensee views it is not dominant in.

whereby a Telecommunication Licensee will be classified as a Dominant Telecommunication Licensee based on the specific market(s) or facility(ies), as it may no longer be reasonable to presume that a Dominant Telecommunication Licensee would automatically be dominant in these new markets given the level of competition that has developed over the years and the convergence and emergence of new markets. The approach will be aligned with that adopted under the MMCC.

43. Under the proposal, designated Dominant Telecommunication Licensees would not be presumed to be dominant for new services offered in new markets. This would provide greater flexibility and certainty for Dominant Telecommunication Licensees entering new markets and incentivise Dominant Telecommunication Licensees to innovate and offer new services, potentially bringing about greater benefits for consumers. IMDA also proposed to require the same from designated Dominant Persons for the media markets. Hence, Dominant Entities are required to demonstrate to IMDA that the new services do not fall within any existing markets in which the Dominant Entities are currently participating in and in which they are classified as dominant. For avoidance of doubt, existing Dominant Telecommunication Licensees and Dominant Persons will continue to be classified as dominant for existing services and facilities that they operate.

44. There was no objection to the adoption of the "Market-by-Market" approach for dominance classification for the telecommunication and media markets. One respondent commented that the scope of "newspaper publishing services industry" is vague, making it difficult to ascertain whether a new service would fall within an existing market in which the RP is designated as a Dominant Person, or would be considered a service in a new market.

IMDA's Assessment and Decision

45. Given that there was no objection, IMDA will adopt the approach for dominance classification for the telecommunication markets. For the avoidance of doubt, the "Market-by-Market" approach will continue to apply for dominance classification for the media markets.

46. IMDA has noted a respondent's comment that the scope of "newspaper publishing services industry" is vague. IMDA is cognisant of the changing landscape in the newspaper publishing industry, such as the prevalence of online news sources on top of physical newspapers. Hence, IMDA may review and clarify the scope of "newspaper publishing services industry" in a separate exercise.

47. IMDA also wishes to highlight that Dominant Entities are required to demonstrate to IMDA that the new service does not fall within any existing markets in which

the Dominant Entities are currently participating in and in which they are classified as dominant. IMDA will then make a determination based on the information available. In the case of Dominant Licensees who will continue to be classified as dominant for existing services and facilities that they operate, if they consider that they are no longer dominant in a particular market, they may submit a request for exemption from Dominant Licensee obligations for IMDA's assessment.

Duties to be Applied to Dominant Entities in Both Telecommunication and Media Industries

48. As Dominant Entities are not subject to effective competitive market forces, additional regulatory requirements are imposed on them including specific duties imposed on an *ex ante* basis to ensure that they do not behave in an anti-competitive manner. *Ex ante* duties are currently set out under both the TCC and MMCC for the provision of services to either End Users or other Telecommunication Licensees. In the Second Public Consultation, IMDA took the position to align the current duties of Dominant Entities under the Code by applying four general *ex ante* Dominant Entity duties (i.e., A to D of Table 1) to all Dominant Entities under the Code and retaining duties that are unique to either the telecommunication or media industries and not applicable to the other industry, as summarised in Table 1.

49. In addition, IMDA noted in the Second Public Consultation that the original intent of the duty to provide access to advertising capacity and the duty to provide fair access to programme lists was to prevent Dominant Persons from limiting or denying other entities the ability to purchase advertising capacity to promote their media service(s) on reasonable and non-discriminatory prices, terms and conditions and fair coverage of the programmes provided by other entities. IMDA recognised that the advertising landscape has evolved with the Internet having become a key advertising platform. Hence, the requirement to provide access to advertising capacity and fair access to programme lists by Dominant Persons in the media markets might no longer be essential. In view of the above, IMDA took the position to remove both the duty to provide access to advertising capacity and the duty to provide fair access to programme lists in the Code.

Table 1: Duties Applicable to Dominant Entities			
S/N	**Description of Duties**	**Telecommunication**	**Media**
General *Ex Ante* Duties			
A	Duty to provide service at just and reasonable prices, terms and conditions	✓	
B	Non-discrimination	✓	
C	Service Unbundling	✓	
D	Duty to provide service on reasonable request	✓	
Industry-specific *Ex Ante* Duties			
E	Duty to allow resale of End User services	✓	X
F	Duty to allow sales agency	✓	X
G	Duty for Wholesale Services	✓	X
H	Duties in relation to tariff	✓	X
I	Duty to provide fair access to programme lists	X	X
J	Duty to provide access to advertising capacity	X	X

50. There was no objection to IMDA's policy positions, but there were two specific comments raised for IMDA's consideration. One respondent suggested that IMDA should not impose obligations on non-Dominant Telecommunication Licensees unless there is a clear market failure and demonstrable need for the new obligation.

51. Another respondent suggested that in relation to the duty to allow resale of End User telecommunication services, IMDA should require Dominant Entities to provide services to resellers at a price reflecting a "cost plus appropriate margin" model. Concerns were also raised in relation to the duty to provide services on a non-discriminatory basis, where it was submitted that a regulatory framework that encourages operational separation with equivalence principles would level the playing field and have the greatest amount of competition. For instance, operators who purchase a larger volume of service from the Dominant Entity are often given lower per-unit access price. Such loyalty rebate structure restricts competition in the market as it places operators who purchase services across multiple suppliers at a disadvantage.

IMDA's Assessment and Decision

52. In relation to the comment that IMDA should not impose obligations on non-Dominant Telecommunication Licensees and RPs unless there is a clear market failure and demonstrable need for the new obligation, IMDA would like to clarify that the obligations stated in the above paragraphs are applicable to Dominant Entities only to ensure that they do not behave in an anti-competitive manner. Notwithstanding, non-dominant Telecommunication Licensees and RPs may be subject to other obligations where IMDA deems as necessary, for example, public interest obligations and duties in relation to consumer protection, to ensure

that consumer interests are safeguarded. These obligations will be addressed in more detail in the subsequent parts of the closing note.

53. IMDA is of the view that in a resale scenario, a competing Licensee is buying a Dominant Telecommunication Licensee's retail service and reselling the same service to its retail customers. Where the Dominant Telecommunication Licensee's tariff provides for discounts for large volume users, competing Licensees can purchase the tariffed service and pass the discounts on to smaller customers. Unless there are compelling reasons why the competing licensees are unable to provide the same retail service themselves, and obtaining the retail service from a Dominant Telecommunication Licensee is necessary as an input to provide competing telecommunication services, in which case IMDA may consider requiring the provision of a Mandated Wholesale Service, there are no strong reasons for IMDA to require the Dominant Telecommunication Licensee to offer such retail services to resellers at cost-plus prices. As such, IMDA is of the view that Sub-section 4.4.1 of the Code (i.e., the Duty to Allow Resale of End User Services), which states that a Dominant Entity must allow any Telecommunication Licensee to purchase any Service that the Dominant Entity makes available to End Users, on the same prices, terms and conditions that the Dominant Entity makes such Service available to End Users, remains reasonable. IMDA has a range of pricing regulatory tools available to be imposed if there are clear concerns in a particular market.

54. With regard to the suggestion for IMDA to introduce a regulatory framework that encourages operational separation with equivalence principles, IMDA notes that discount schemes based on objective differences such as cost and quantity variations, and quality of service, are common business practices that can be to the benefit of customers and are not unique to the telecommunication and media markets. The imposition of equivalence principles, specifically the equivalence of inputs principle, creates a heavy regulatory burden on the Telecommunication Licensees and RPs and should only be imposed if there are clear concerns in a particular market. IMDA will closely monitor market developments to ensure that regulations are fit for purpose. Where necessary, IMDA will issue guidelines as in the case of wholesale mobile services to facilitate negotiations between licensees.

55. The finalised duties that will apply to Dominant Entities under the Code is re-summarised in Table 2 for clarity.

Table 2: Finalised Duties Applicable to Dominant Entities			
S/N	**Description of Duties**	**Telecommunication**	**Media**
General *Ex Ante* Duties			
A	Duty to provide service at just and reasonable prices, terms and conditions	✓	
B	Non-discrimination	✓	
C	Service Unbundling	✓	
D	Duty to provide service on reasonable request	✓	
Industry-specific *Ex Ante* Duties			
E	Duty to allow resale of End User services	✓	X
F	Duty to allow sales agency	✓	X
G	Duty for Wholesale Services	✓	X
H	Duties in relation to tariff	✓	X
I	Duty to provide fair access to programme lists	X	X
J	Duty to provide access to advertising capacity	X	X

Specific Proposals for Tariff Filing for Telecommunication Services

56. Dominant Telecommunication Licensees are currently subject to the tariff filing, review and publication obligations for provision of services in markets which they are found to be dominant in. IMDA notes that there were few concerns raised with respect to the existing Dominant Telecommunication Licensees' service offerings at the retail level. IMDA has also not received any complaints or feedback from competing licensees to-date regarding approved tariffs which Dominant Licensees are required to publish on their websites. As such, IMDA proposed during the First Public Consultation to remove the requirement for Dominant Telecommunication Licensees to seek IMDA's prior approval for most retail service tariffs, including modifications made to tariffs of existing retail services and the offering of promotions or customised schemes involving these services. Instead, a Dominant Telecommunication Licensee will only need to:

(a) notify IMDA regarding new retail tariffs offered to End Users, modifications to approved tariffs of existing retail services, and offerings of customised or promotional schemes on these services ("**Info-tariffs**");

(b) publish the Info-tariffs; and

(c) seek IMDA's approval to withdraw any of the existing retail tariffs

(i.e., notification and publication regime).

57. IMDA will require certain telecommunication services, which the public may view as basic services, to continue to be submitted to IMDA for tariff approval. However, for wholesale and resale tariffs provided by Dominant Telecommunication Licensees, IMDA considered that there continued to be a

need to monitor such tariffs as Dominant Telecommunication Licensees operated facilities that would be sufficiently costly or difficult to replicate, which other Telecommunication Licensees might have to rely on to provide downstream services. The proposed filing of wholesale and resale tariffs would prevent Dominant Telecommunication Licensees from discriminating against other licensees.

58. IMDA received differing views on the modification to the tariff-filing review regime. One respondent was of the view that there was no evidence that prevailing tariff filing process had created any significant burden on the Dominant Telecommunication Licensees and that under a notification and publication regime, contracts would have been entered into, making it more difficult to reverse any errant behaviour. Another respondent submitted that the proposed easing of the tariff filing regime was not sufficient and commented that the notification obligation for new and modified non-basic retail tariffs should be replaced by a self-publication obligation, and that approval obligations for withdrawing non-basic retail tariffs should be abolished and replaced by customer notice obligations given healthy competition at the retail level and that overseas regulators in Australia, U.K., Malaysia, South Korea have removed retail tariff regulation. The respondent added that existing wholesale and resale tariff approval requirements duplicate other wholesale price regulation frameworks and should be abolished. Furthermore, wholesale services are typically acquired by large and highly sophisticated licensees who are able to negotiate prices without the need for regulatory protection.

IMDA's Assessment and Decision

59. IMDA notes the two different views over the modifications to the tariff-filing review regime. To-date, IMDA has received and approved an average of 200 tariff filings (inclusive of retail, wholesale and resale) annually with no major concerns raised by the industry. IMDA further notes that regulatory regimes of most overseas jurisdictions no longer require tariff filing except for interconnection services and any other services determined by the jurisdiction to be necessary to facilitate competition. For example, Hong Kong's Office of the Communications Authority requires Dominant Licensees to publish tariffs for retail and wholesale telecommunication services. In the UK, Ofcom's approval is only required for the provision of wholesale broadband access services. After further consideration, IMDA has decided to relax the tariff-filing review framework as the approval regime may no longer be necessary. Dominant Telecommunication Licensees will no longer need to seek IMDA's prior approval for all tariffs (including wholesale and resale services) except tariffs for basic services and any other services determined by IMDA. However, IMDA will retain the transparency requirement, which is for Dominant Telecommunication Licensees to publish the Info-tariffs. This will allow the industry to alert IMDA if there are any competition

concerns with the prices, terms and conditions offered by the Dominant Telecommunication Licensees, and IMDA will intervene on an ex post basis.

60. IMDA will notify the affected Dominant Telecommunication Licensees on the list of basic telecommunication services and any other services that will still require tariff filing for IMDA's prior approval, following the issuance of the Code. IMDA reserves the right to review, amend, reduce or add to the list of services to be included, and will notify the affected Dominant Telecommunication Licensees of any such action, along with accompanying reason(s).

61. As indicated in the Second Public Consultation, the same notification and publication requirement will also apply to withdrawal of tariffs, except basic tariffs and any other services determined by IMDA, because the effect of modification of existing services and withdrawal of existing services would be similar.

62. In summary, a Dominant Telecommunication Licensee will be required to:

(a) notify IMDA on:

(i) tariffs for new retail, wholesale or resale services offered to End Users;

(ii) modifications to the effective tariffs of existing retail, wholesale or resale services; and

(iii) tariffs for offerings of services designed for specific customers ("**Customised Tariffs**") or promotional schemes on retail, wholesale, or resale services

(collectively known as "**Info-tariffs**"); and

(b) publish the Info-tariffs.

IMDA will require basic telecommunication services and any other services determined by IMDA, to continue to be submitted to IMDA for tariff approval. IMDA will notify the affected Dominant Telecommunication Licensees on the list of basic telecommunication services and any other services that will still require tariff filing for IMDA's prior approval, following the issuance of the Code.

63. IMDA's view is that the revised approach proposed by IMDA is a balanced one and is more in-line with the principle of proportionate regulation where regulations are no broader than necessary to achieve their intended purpose. The move from an approval regime to a notification and publication regime will enable IMDA to continue to safeguard against anti-competitive behaviours in the

markets and calibrate its regulatory framework to remove compliance requirements that are no longer necessary.

PART IV: ANTI-COMPETITIVE CONDUCT

64. Part IV of the Second Public Consultation outlined IMDA's policy positions for *ex-post* competition provisions. IMDA will merge provisions that are substantively similar in effect and drafting, and either remove or extend sector-specific provisions to all sectors. In addition, IMDA will introduce other concepts regarding anti-competitive conduct in the Code.

Abuse of Dominant Position

General Prohibition on Abuse of a Dominant Position

65. The general prohibition against the abuse of a dominant position by a Telecommunication Licensee or RP is provided under Sub-section 8.2 of the TCC and Sub-section 6.4.1 of the MMCC. IMDA noted that while the general prohibition envisaged an abuse of a dominant position by a single party, it is possible for one or more parties to leverage their collective market power to conduct an abuse, and that this concept of joint dominance is not unique to Singapore nor the telecommunication and media industries. IMDA assessed that it would be reasonable and relevant to include provisions that specifically prevent the abuse of a dominant position by one or more Telecommunication Licensees and/or RPs in the Code so as to provide clarity to industry players on the treatment of the abuse of joint dominance.

66. IMDA also noted that the concept of joint dominance is not new. Both the EU's competition law and Singapore's competition law prohibit abuse of a joint dominant position. The MMCC also provided for the concept of joint dominance in relation to the media markets. In this regard, IMDA had decided to introduce the concept of joint dominance in the Code.

67. There were no comments on IMDA's policy position to include the concept of joint dominance.

IMDA's Assessment and Decision

68. As there were no further comments raised in the Second Public Consultation, IMDA will include the concept of joint dominance in the Code. In addition, IMDA will be introducing a separate advisory guideline to provide clarity on the implementation of the concept of joint dominance. IMDA believes that this will alleviate the industry's concerns about the complexity in implementing the concept of joint dominance in any assessment related to the abuse of dominance. IMDA will separately seek industry feedback on the proposed advisory guideline for the application of the concept of joint dominance.

Discrimination

69. A discrimination of access happens when a Telecommunication Licensee or RP with SMP provides access to infrastructure, systems, services, equipment or information (as the case may be) to its downstream affiliate on discriminatory prices, terms and conditions without any objective justification. To adopt a consistent approach for the assessment of discrimination by Telecommunication Licensees and RPs in the Code, IMDA proposed to adopt the effects-based test, currently adopted under the TCC, to determine if a Dominant Entity had abused its dominance by engaging in discriminatory conduct. This means that evidence is required to show that the discriminatory conduct by the Dominant Entity had an effect of restricting or impeding other Telecommunication Licensees' or RPs' ability to compete. IMDA viewed that the effects-based test would be a more reasonable and appropriate test to adopt than the object-based test adopted currently under the MMCC, which only requires evidence of discriminatory prices, terms, and conditions to provide the presence of discrimination.

70. One respondent disagreed with the adoption of an effects-based analysis for discrimination, and with IMDA's view, stated in the Second Public Consultation, that some discriminatory conducts have been found to generate substantial efficiencies or benefits which may outweigh any harm to competition, and as such, the discriminatory conduct per se should not constitute an abuse of dominance.

IMDA's Assessment and Decision

71. IMDA is of the view that moving to an effects-based test is reasonable as some instances of access provisioned on discriminatory prices, terms and conditions have been found to generate substantial efficiencies or benefits (i.e., have objective justifications). Such efficiencies or benefits from the otherwise discriminatory conduct may outweigh any harm to competition. Hence, the discriminatory conduct per se should not constitute an abuse of dominance, unless it is assessed to have the effect of net harm in the market. Furthermore, an effects-based test will result in the application of a higher threshold for IMDA to determine whether the alleged discriminatory conduct constitutes an abuse of dominance. Moving to an effects-based test does not prevent IMDA from determining whether a Dominant Telecommunication Licensee or Dominant Person has abused its dominance by engaging in discriminatory conduct. IMDA also notes that even following the adoption of effects-based test, discrimination will be made out not just where competition has been unreasonably restricted, but where competition is likely to be unreasonably restricted (see paragraph 3.2.2.1.(b) of the Advisory Guidelines Governing Abuse of Dominant Position, Unfair Methods of Competition and Agreements Involving Licensees that Unreasonably Restrict Competition under Sections 8 and 9 of the TCC).

72. Given the above, IMDA will maintain its position to adopt the effects-based test for the assessment of discrimination by Telecommunication Licensees and RPs in the Code.

Price Squeezes

73. The TCC and MMCC adopt slightly different tests in assessing price squeezes. The TCC considers whether the input price affects the ability of a Dominant Telecommunication Licensee's downstream affiliate or equally efficient competitor to obtain a commercially reasonable profit for their end service and/or product (i.e., the equally efficient operator ("**EEO**") test), whereas the MMCC considers whether the input price affects the ability of an efficient non-affiliated competitor to profitably provide such media services or Ancillary Media Services to their consumers (i.e., the reasonably efficient operator ("**REO**") test).

74. IMDA proposed to adopt the EEO test for determining price squeezes under the Code to align with that adopted under Singapore's competition law. More importantly, IMDA took the view that the EEO test is a more objective and reasonable benchmark when assessing whether a Dominant Entity has abused its dominance by engaging in price squeezes.

75. Additionally, IMDA proposed not to include a "pass-on" criterion in the test for price squeeze, to align with international best practices and Singapore's competition law.

76. One respondent was concerned with IMDA's policy position to use the EEO test instead of the REO test for assessing price squeezes. The respondent commented that under the EEO test, competing licensees are effectively required to be as efficient as the Dominant Entity to prove a price squeeze, which was likely to be an impossible hurdle to meet and as such, IMDA should adopt the REO test instead.

IMDA's Assessment and Decision

77. IMDA received the same feedback during the First Public Consultation and Second Public Consultation urging IMDA to use the REO test and not the EEO test, and refers the respondent to IMDA's position provided in the Second Public Consultation, as set out below.

78. In the Second Public Consultation, IMDA had clarified that a price squeeze occurs when the vertically integrated Telecommunication Licensee or RP sets such a low margin between its wholesale price and the retail price that the downstream competitor is forced to exit the market or is unable to compete effectively. In other

words, price squeezes occur when the vertically integrated Telecommunication Licensee or RP that is dominant at the wholesale market sets the price of an input so high that other downstream equally efficient competing retailers that require the input to provide their service or equipment are unable to profitably sell their service or equipment. Hence, using the EEO benchmark, i.e., determining the business viability of the dominant operator at the retail level, will better test the dominant operator's intent to sacrifice profit at the retail level and engage in price squeeze.

79. Under the REO test, a price squeeze is demonstrated by showing that the margin between the price charged to retail competitors for access and the price which the vertically integrated Dominant Entity charges in the retail market is insufficient to allow a reasonably efficient retailer to obtain a normal profit. Using a REO test relative to an EEO test may result in false positives (i.e., falsely concluding that the Dominant Entity has engaged in a price squeeze) as the reasonably efficient, non-affiliated downstream retailer may have higher operating costs due to its smaller scale compared to the integrated Dominant Entity. IMDA further noted that the exit of a market player might also be caused by its own inefficiency.

80. In addition, IMDA also notes that the CCCS uses an EEO test when testing for price squeezes. CCCS will assess whether the integrated undertaking's downstream business would make (at least) a normal profit if it paid the same input price that it charged its competitors, given its revenues at the time of the alleged price squeeze.[6]

81. In consideration of the above, IMDA maintains its view that the EEO test is a more objective and reasonable benchmark when assessing whether a Dominant Entity has abused its dominance by engaging in price squeezes and will adopt the EEO benchmark for the test of price squeezes under the Code.

<u>Predatory Pricing</u>

82. While both the TCC and the MMCC contain provisions relating to predatory pricing, the MMCC prohibits predatory pricing by all RPs, including those who are not Dominant Persons. IMDA took the view that a Telecommunication Licensee or an RP with no SMP engaging in "predatory pricing" for a sustained period would not be in a position to restrict competition by driving efficient competitors out of the market and has proposed to limit the application of the provision prohibiting predatory pricing only to Telecommunication Licensees and RPs that have SMP. IMDA also proposed to adopt the Average Incremental Cost ("**AIC**") standard under the Code for its investigations and to retain the flexibility to consider other cost standards if the circumstance of the case justifies the use of an alternative cost standard.

[6] Paragraph 11.19 of CCCS Guidelines on the Section 47 Prohibition.

83. One respondent agreed that IMDA should retain the flexibility to consider other cost standards if the circumstance of the case justifies the use of an alternative cost standard. Another respondent suggested that the predatory pricing provision should also be applicable to MNOs with budget brands as they are a vertically integrated Telecommunication Licensee and possibly dominant through the combined core brand and budget brand's market share. The respondent added that the risk of predatory pricing is higher in the mobile market as there are only two 5G MNOs and no regulated wholesale mobile price. Smaller MVNOs will not be able to efficiently compete with a duopoly that undercuts the market.

IMDA's Assessment and Decision

84. IMDA would like to clarify that it will generally adopt the AIC standard for predatory pricing assessments, but where appropriate, IMDA may adopt other cost benchmarks for assessment.

85. IMDA would also like to clarify that the provision prohibiting predatory pricing will be applicable to all Telecommunication Licensees and RPs that have SMP. This includes MNOs with budget brands that have SMP. IMDA again clarifies that dominance per se is not prohibited under the Code but the abuse of a dominant position is. With the recently concluded 2.1 GHz spectrum rights auction, another MNO has entered the market for the provision of 5G services, bringing the total number of 5G MNOs to four. This will increase competition in the provision of 5G services.

<u>Cross-subsidisation</u>

86. Cross-subsidisation generally refers to a situation where a company uses the profit it generated from a market in which it has SMP, to subsidise the services, facilities or equipment that it provides in markets that are subject to a greater degree of competition. Such conduct may harm End Users and/or other company's ability to compete. As noted in the First Public Consultation, there is no provision relating to cross-subsidisation for the media markets. In order to apply a uniform Code to the telecommunication and media markets, IMDA proposed to extend the cross-subsidisation provision currently applied under the TCC to the media markets, so as to provide clarity to the industry that the leveraging of an RP's SMP in one market to cross-subsidise its operations in another market where it faces greater competition may constitute an abuse of a dominant position.

87. There were no comments on IMDA's policy position to extend the cross-subsidisation provision currently applied under the TCC to the media markets.

IMDA's Assessment and Decision

88. In the Second Public Consultation, IMDA had clarified that the existence of cross-subsidisation in the absence of SMP will not constitute an abuse of dominance. However, cross-subsidisation by the Telecommunication Licensee or RP with SMP should be prohibited if it involves the Dominant Entity leveraging its dominance in one market to unreasonably restrict competition in another market. Globally, telecommunication and media markets are typically characterised by a few dominant entities that compete in more than one market. IMDA had noted that within the telecommunication and media markets in Singapore, there are a number of such multi-market Telecommunication Licensees and RPs and is of the view that there is a need to specifically impose a prohibition on cross-subsidisation if it is a result of an abuse of dominance. IMDA had also clarified that the prohibition on cross-subsidisation by a Telecommunication Licensee or an RP with SMP is not a restriction for a Telecommunication Licensee or an RP to participate and compete in more than one telecommunication and/or media markets.

89. IMDA noted that "intra-market" cross-subsidisation, e.g., subsidising within TV content packages, is an industry practice in the media market. IMDA recognised that the media markets are largely characterised by two-sided markets and thus network effects need to be taken into consideration in any assessment. IMDA had also clarified that the proposed prohibition is related to the use of revenues from the provision of service in a market that is not subject to effective competition to cross-subsidise the price of any service in another market that is subject to effective competition. Accordingly, IMDA was of the view that the proposed prohibition on cross-subsidisation by a Telecommunication Licensee or an RP with SMP will only apply to inter-market subsidising that leverages on the Licensee's or RP's SMP in a market as opposed to inter-TV content package (i.e., intra-market) subsidising as per the scenarios raised by the respondents.

90. Given that there were no further comments received from the Second Public Consultation, IMDA will extend the cross-subsidisation provision currently applied under the TCC to the media markets. IMDA will find that the Telecommunication Licensee or RP with SMP has engaged in cross-subsidisation and therefore has abused its dominant position, if the Telecommunication Licensee or RP uses revenues from the provision of a service in a telecommunication or media market that is not subject to effective competition to cross-subsidise the price of a service in another telecommunication or media market that is subject to effective competition, and this has unreasonably restricted competition in the latter telecommunication or media market.

Predatory Network Alteration

91. IMDA noted in the First and Second Public Consultation that Telecommunication Licensees generally interconnect their networks with one another to allow End Users of one telecommunication network to communicate with the End Users of another telecommunication network. IMDA also noted that there was no equivalent provision for the media industry as, historically, minimal network interconnection is required for the provision of media services. Nonetheless, IMDA proposed to extend the TCC provision on prohibiting predatory network alteration to the media industry to apply a consistent approach to both the telecommunication and media markets.

92. One respondent disagreed with the imposition of new regulatory obligations when there is no justifiable need for the obligation, as regulatory obligations result in additional compliance burden on the industry. IMDA's policy position also undermines IMDA's stated regulatory principle of proportionate regulation. Another respondent submitted that predatory conduct is antithetical to fair competition and market vibrancy, regardless of whether the party performing the predatory act possesses SMP or not. As such, IMDA should not set a prerequisite for the Telecommunication Licensee or RP to have SMP for an act of predatory network alteration to be prohibited.

IMDA's Assessment and Decision

93. As explained previously in the Second Public Consultation, network alteration is not prohibited unless a Telecommunication Licensee or RP with SMP carries out the act in a predatory manner that result in anti-competitive impact on the market. Given that such conduct may concern the media market as well, it is in the industry's and consumers' interest to adopt a consistent approach across the telecommunication and media markets. Hence, IMDA disagrees that the proposal undermines the IMDA's regulatory principle of proportionate regulation.

94. IMDA is also cognisant of the limited network interconnection arrangements in the media markets and is of the view that there should not be any significant impact if the prohibition is extended to the media markets as set out in the First and Second Public Consultations. IMDA maintains its position for a consistent approach to be applied across the telecommunication and media markets as far as possible.

95. IMDA notes the suggestion for IMDA to remove the prerequisite for a Telecommunication Licensee or RP to have SMP for an act of predatory network alteration to be prohibited. IMDA would like to highlight that besides the aforementioned prohibition on a Dominant Telecommunication Licensee or an RP with SMP, there is a general prohibition of unfair methods of competition that

is applicable to all Telecommunication Licensees and RPs. One of the provisions prohibits a Licensee from taking any action, or induce any other party to take any action, that has the effect of degrading the availability or quality of another Licensee's services or telecommunication equipment, or raising the other Licensee's costs, without a legitimate business, operational or technical justification.

96. As other feedback received had been previously addressed by IMDA in the Second Public Consultation, IMDA will not address them again. IMDA will extend the prohibition on predatory network alteration, as a form of abuse of dominance, to both the telecommunication and media markets under the Code.

Bundling

97. Bundling typically refers to a scenario where different products, e.g., A and B, are combined and offered as a single package such as triple- and quadruple-play packages. An example of triple-play package is the provision of fixed-line telephony, broadband and Pay TV services through a single package. Bundling can be beneficial to End Users as an additional option, especially if they already have the intention to purchase the services from one single operator, as they may enjoy higher discounts. IMDA notes that such practices are relatively common today and expects them to continue in a converged environment. However, while bundling does not typically result in anti-competitive effects, it may give rise to competition concerns in certain situations when implemented by an entity with SMP, for example, forcing a customer to buy a service from a market where the Dominant Entity faces more competition, together with the service from a market where the Dominant Entity has SMP in (also known in some jurisdictions as "tying"), and may be considered as an abuse of a dominant position where it forecloses a Dominant Entity's competitors from markets. IMDA highlighted in the First Public Consultation that while it could take enforcement action against any bundling that constitutes an abuse of dominant position under the TCC and the MMCC, bundling that results in anti-competitive effects was not expressly prohibited. As such, IMDA proposed to include unreasonable bundling as a specific prohibition under the Code for greater clarity. The specific prohibition would be applicable to all Telecommunication Licensees and RPs with SMP.

98. The sole respondent submitted that it is not clear what "bundling … which results in, or which is likely to result in, the anti-competitive foreclosure of market(s) to competitors and which cannot be objectively justified" refers to. In the absence of any precedent or clarification statement, it is unclear: (a) how Telecommunication Licensees and RPs are expected to comply with the obligation; and (b) how IMDA will enforce this provision.

IMDA's Assessment and Decision

99. As IMDA had clarified in the First and Second Public Consultations what "unreasonable bundling" refers to, the assessment will address the other aspects of the respondent's feedback.

100. IMDA notes that its policy position is aligned with the positions taken by overseas competition authorities in the EU, Australia, and Hong Kong. IMDA also notes that CCCS has included bundling in the revised Section 47 Prohibition guidelines following its recent consultation on amendments to its guidelines.[7]

101. IMDA observed that bundle-play is increasingly offered by telecommunication and media service providers in Singapore. In this regard, IMDA is of the view that it is important to introduce such a safeguard to prevent providers from leveraging their dominance in one market to distort competition in other relatively competitive markets. IMDA will rename this provision from "Unreasonable Bundling" to "Tying and Bundling" and include tying and bundling as a form of abuse of dominance under the Code, where IMDA will consider that the act of tying or bundling by a Dominant Entity unreasonably restricts competition in any telecommunication and/or media market in Singapore.

Anti-Competitive Leveraging/ Anti-Competitive Preferences

102. Anti-competitive leveraging and anti-competitive preferences broadly involve the use of a Telecommunication Licensee's or RP's SMP or its Affiliate's SMP in a market to unreasonably restrict competition in another market. IMDA mentioned in the First Public Consultation that the provisions relating to anti-competitive leveraging or preferences were present in both the TCC and MMCC and were broadly similar in their application. However, the specific prohibition on cross-subsidisation, which prohibits an RP from engaging in predatory pricing using the dominant position of its affiliate was not applied under the MMCC. Hence, IMDA proposed to merge the provisions relating to anti-competitive leveraging or preferences.

103. No comments were received in relation to IMDA's policy position to align the anti-competitive leverage or preferences provisions to that currently applied in the TCC and apply the aligned provisions to the Code.

[7] CCCS Guidelines on the Section 47 Prohibition.

IMDA's Assessment and Decision

104. IMDA had indicated in the Second Public Consultation that it will consider the suggestion raised in the First Public Consultation for IMDA to adopt the EEO test in anti-competitive leveraging assessments for consistency. IMDA has assessed that the EEO test is more relevant in assessing price squeezes than engaging in anti-competitive leveraging and therefore will need to assess its applicability when reviewing specific cases.

105. As there were no further comments from the Second Public Consultation, IMDA will align the anti-competitive leverage or preferences provisions to that currently applied in the TCC and apply the aligned provisions to the Code.

Anti-Competitive Agreements

Anti-Competitive Agreements

106. Anti-competitive agreements broadly refer to arrangements (e.g., written, verbal, formal or informal) between two independent economic entities to coordinate their market conduct with the object or effect of restricting competition.

107. Currently, under the TCC and MMCC, certain horizontal anti-competitive agreements (e.g., price fixing, bid rigging) are outrightly prohibited without requiring assessment of their actual or likely effect on competition (i.e., "**Per Se Prohibitions**"). However, the Per Se Prohibitions are allowed under Sub-section 9.3.3 of the TCC and Sub-section 7.5.7 of the MMCC if they are necessary for the efficiency enhancing integration of economic activity.

108. Except for these outright prohibitions, all other agreements would be assessed based on their actual or likely effect on competition, with positive efficiencies being taken into consideration as part of the assessment. Similar to international approaches adopted in EU, UK, Canada, and Singapore's competition law, IMDA took the policy position to adopt an "object or effect" test for assessing anti-competitive agreements and to rename the Per Se Prohibitions as "by object" agreements under the Code.

109. One respondent suggested that IMDA should adopt a "by effect" test for all agreements, including those currently listed under the Per Se Prohibitions, to assess their actual or likely effect on competition.

IMDA's Assessment and Decision

110. IMDA notes that a similar comment was raised during the First Public Consultation and IMDA had addressed this comment in the Second Public

Consultation. The “object or effect” approach is widely adopted for assessment of anti-competitive agreements by competition authorities globally (e.g. in EU, UK, Canada, Australia, HK) and is aligned to the IMDA Act, Singapore Competition Act, TCC and MMCC. IMDA would like to highlight that some agreements, by their very nature, restrict competition and should be prohibited unless there is strong evidence that such agreements are necessary for the efficiency enhancing integration of economic activity. In this regard, IMDA will adopt the “object or effect” approach and rename the Per Se Prohibitions as “by object” agreements under the Code. This will apply to both Telecommunication Licensees and RPs.

111. In the Second Public Consultation, IMDA had clarified that the term “efficiency enhancing integration of economic activity” refers to agreements that are necessary for achieving significant efficiencies which are likely to be passed on to End Users. Such efficiencies could include, but are not limited to, reductions in the cost of developing, producing, marketing and delivering telecommunication and/or media services and/or equipment.

112. IMDA maintains its view that if the efficiencies arising from these agreements are significant such that they offset any actual or potential anti-competitive effects, IMDA will generally conclude that these agreements do not contravene the Code. However, if the efficiencies are not significant and are relatively limited, and their potential anti-competitive effects are significant, IMDA will generally conclude that these agreements contravene the Code. In this regard, it is necessary to allow the efficiency defense in all anti-competitive agreement assessments.

<u>Other Administrative Amendments</u>

113. In addition to the changes above to align with the general law framework, IMDA proposed several administrative and/or policy changes to the following provisions prohibiting specific anti-competitive agreements to ensure a uniform application of the Code to both the telecommunication and media markets in a converged setting:

(a) Group Boycott Agreements – adopt the drafting of the TCC provision and to provide exemptions for Telecommunication Licensees/ RPs who are also required to comply with other Codes that authorise group boycotts;

(b) Foreclosure of Access – extend provision to the telecommunication industry;

(c) Vertical Market Allocation – extend provision to the media industry; and

(d) Exclusive Dealing – shift the provision on exclusive dealing to the abuse of dominant position section and to extend its applicability to the media industry.

114. For agreements that are assessed to contravene the Code, IMDA had previously decided that only the restrictive terms within the agreements need to be removed instead of voiding the agreement in its entirety. This is the approach currently adopted in the TCC and is regarded as the more reasonable and practical approach which is consistent with the general competition law. Currently, under the MMCC, the entire agreement would be voided.

115. With regard to the prohibition against group boycott agreements, one respondent suggested for IMDA to establish a "blacklist" of End Users who deliberately or serially default on their contract to be shared amongst the telecommunication operators so that operators can refer to the list and determine if they would like to provide a service to the potential End User. A "blacklist" might reduce or deter errant behaviours while encouraging defaulters to come forward to settle their outstanding bills.

IMDA's Assessment and Decision

116. IMDA will adopt the TCC approach to void only specific anti-competitive clauses in contracts in the Code, instead of the entire agreement for the media sector. IMDA notes that this would require amendments to the IMDA Act for such a clause to have legal basis in the Code and will thus effect this change in a later update to the Code when the necessary legislative changes have been made.

117. IMDA would like to highlight that the group boycott agreements are prohibited under the Code. However, IMDA noted in the First Public Consultation that there may be lawful sanctioned agreements and IMDA will only provide exemptions to Telecommunication Licensees and/or RPs that are required to comply with the other Codes that authorise group boycotts (e.g., Advertising Standards Authority of Singapore Code). IMDA also notes that such group boycotts agreements are mainly applicable for the media industry.

118. On the comment from one respondent to establish a "blacklist" of End Users, currently, telecommunication operators can refer to the Telco Credit Bureau Singapore Report ("**TCBS**") for the potential customers' credit profiles. The TCBS is a central repository containing data on consumers' payment defaults and bad debts records contributed by the telecommunication operators in Singapore. It provides information and transparency on the consumers' creditworthiness and potential payment delinquency. As such, IMDA is of the view that there is no need to establish a separate "blacklist" of End Users for such purposes.

119. IMDA had highlighted in the Second Public Consultation that there are unique features of the telecommunication and media markets that are different from the general market. Specifically, access to certain upstream service and/or product is of particular importance to the telecommunication and media markets. Hence, IMDA is of the view that there is merit in specifying prohibition on the aforementioned types of anti-competitive agreement, especially since they are likely to unreasonably restrict competition.

120. IMDA will thus apply prohibitions on the following anti-competitive agreements to both the telecommunication and media markets under the Code, subject to IMDA's assessment of actual or likely effect on competition:

    (a) Group Boycott Agreements;

    (b) Foreclosure of Access;

    (c) Vertical Market Allocation; and

    (d) Exclusive Dealing.

Unfair Methods of Competition

121. Sub-section 8.4 of the TCC and Section 4 of the MMCC set forth rules prohibiting conduct that constitutes an unfair method of competition. These provisions are applicable to all Telecommunication Licensees and RPs. IMDA will retain the general prohibition of unfair methods of competition and is proposing changes to the following specific methods of unfair competition for both the telecommunication and media markets under the Code:

    (a) Degradation of service availability or quality;

    (b) Provision of false or misleading information to competitors; and

    (c) Improper use of information regarding competing Telecommunication Licensee's customers.

122. The following types of unfair methods of competition that were implemented under the MMCC would also be removed:

    (a) Use of media services to disseminate false or misleading claims; and

    (b) Interference with relationships involving consumers, advertisers and ancillary media service providers ("**AMSP**") in the media industry.

123. One respondent commented that there is no need to have a specific prohibition against the "provision of false or misleading information to competitors", as such issues have not arisen in the past. Such an approach clearly goes against the stated principle of proportionate regulation. In relation to "improper use of information regarding competing licensee's customers", the respondent commented that if specific restrictions are already found in broader legislation such as the Personal Data Protection Act ("**PDPA**"), IMDA should not seek to duplicate such requirements under its own requirements. Otherwise, Telecommunication Licensees and RPs end up being subject to overlapping requirements, having to respond to multiple regulators on the same issue, while potentially getting penalised twice.

IMDA's Assessment and Decision

124. IMDA received the same feedback during the First and Second Public Consultations. As mentioned in the Second Public Consultation, the absence of past cases alone does not imply that safeguards are unwarranted. The imposition of the rules is meant to provide clarity on what methods constitute unfair methods and serve as a deterrence to ensure that unfair methods of competition are not adopted. Further, the provision governing the improper use of information on competing Telecommunication Licensee's customers does not contradict the policy considerations under the PDPA. IMDA notes that PDPA's personal data protection provisions are intended to impose a baseline standard of protection for the personal data of individuals. Accordingly, Section 4(6) of the PDPA provides that the provisions of other written law shall prevail to the extent that they are inconsistent with any provision of the PDPA's personal data protection provisions. Moreover, the PDPA is not primarily intended to address the competition-based, sector-specific concerns which is the purview of the Code.

125. IMDA is of the view that it is necessary to specify such unfair methods of competition to provide clear guidance to the industry and the public. As such, IMDA will impose the following specific types of unfair methods of competition to both the telecommunication and media markets under the Code:

    (a) Degradation of service availability or quality;

    (b) Provision of false or misleading information to competitors; and

    (c) Improper use of information regarding competing Telecommunication Licensee's customers.

PART V: CONSUMER PROTECTION

126. Part V of the Second Public Consultation outlined IMDA's assessment on the responses to the proposals relating to consumer protection. Sections 3 of the TCC and the MMCC ("**Consumer Protection Provisions**") set out the duties of Telecommunication Licensees and RPs to residential or business End Users and Consumers (collectively "**End Users**" in this Part V) for the provision of telecommunication and media services respectively. The Consumer Protection Provisions are meant to protect consumer interests and ensure that entities provide services to End Users on fair, reasonable, and non-discriminatory terms.

127. IMDA proposed to align the Consumer Protection Provisions in the TCC and MMCC and structure them in the Code as follows:

(a) Application of Consumer Protection Provisions;
(b) Common provisions to be merged;
(c) Provisions to be extended from one market to the other;
(d) Provisions to be retained or introduced to a specific market; and
(e) Provisions to be removed.

Application of Consumer Protection Provisions

128. Section 3 of the TCC and MMCC are similar in their intent to protect residential or business End Users, and MMCC goes further to protect Resellers[8]. As Resellers are more likely able to protect their interests, IMDA had taken the position in the Second Public Consultation to exclude Resellers from the application of the Consumer Protection Provisions in the Code.

129. IMDA had also proposed to withdraw the exemption of RPs from the obligations under Sub-sections 3.2A, 3.2D(a) and 3.2F of the MMCC for business End Users in the Converged Code, considering that some small and medium sized businesses that purchase standard and non-negotiable corporate packages will benefit from such protection, and that RPs are likely to already be in compliance with these provisions in view that some of them are also Licensees in the telecommunication markets, and meeting these obligations for business End Users.

130. In addition, IMDA had proposed to continue to not apply the Consumer Protection Provisions in the Code to OTT TV or content services for now as there are no strong justifications to do so.

[8] Business users who purchase goods, services or access as inputs for their production, resale or provision of any media service.

131. Most of the respondents agreed to apply all the Consumer Protection Provisions in the Code to both residential and business End Users. One respondent proposed not to apply certain consumer protection provisions to business End Users who would be able to negotiate the terms and protect themselves, and to allow mid-contract changes with one month's notice for the prohibition of detrimental and disadvantageous mid-contract changes provision. Another respondent also proposed not to apply certain consumer protection provisions to business End Users as large enterprises have customised product and service requirements, and given the commercial confidentiality of contract agreements, provisions such as the requirement to publish the terms and conditions of service contracts, is inappropriate and considered a breach of confidentiality obligations.

132. On the policy position to continue to not apply the Consumer Protection Provisions in the Code to OTT TV or content services, all of the respondents who responded to this proposal were supportive. One respondent opined that linear Pay TV service providers similarly need flexibility and the ability to innovate and compete, and hence the regulatory obligations on linear Pay TV service providers should be reduced to enable a level playing field for linear Pay TV service providers.

IMDA's Assessment and Decision

133. All respondents supported IMDA's proposal to exclude Resellers from being protected by the Consumer Protection Provisions in the Code, and IMDA will proceed to do so.

134. IMDA would like to reiterate that the prohibition of detrimental and disadvantageous mid-contract changes is intended to protect End Users against unilateral contract variations that are detrimental to them, in view that End Users typically do not have the power to reject such changes, and hence the respondent's suggestion of allowing mid-contract changes with one month's notice will run counter to the policy intent (see further discussions in paragraphs 172 - 176). However, IMDA shares the respondents' views that business End Users are typically able to negotiate fair terms on their own when contracting with Telecommunication Licensees. Therefore, IMDA will exclude business End Users from the prohibition of detrimental or disadvantageous mid-contract changes for the telecom market.

135. In relation to the feedback of excluding business End Users from the requirement to disclose and publish service information, IMDA is of the view that such safeguards will help the small and medium sized businesses who purchase standard and non-negotiable corporate packages to make informed decisions. The Code will provide Telecommunication Licensees and RPs with sufficient flexibility regarding the baseline related service information of business End

Users which it should disclose or publish. Moreover, this is an existing requirement in the TCC and MMCC which Telecommunication Licensees and RPs would already be in compliance with.

136. With regard to OTT TV or content services, IMDA's approach took into consideration numerous factors including the differing nature and provisioning of OTT services vis-à-vis linear Pay TV services. For instance, OTT service providers compete in a market that has comparatively lower barriers to entry and is more accessible for consumers. Correspondingly, OTT services are typically sold on a monthly renewable basis. This is in contrast to traditional Pay TV service market which is characterised by heavy infrastructure investments that may be a barrier to market entry, which in turn impacts how Pay TV services are sold (i.e., typically in bundles and packages, with minimum contractual periods and applicable early termination charges) to encourage "stickiness" with subscribers. Notwithstanding, IMDA will continue to monitor the developments in the broader media landscape, including the adoption of OTT services *vis* Pay TV services, terms of service provisioning and consumer feedback, and review the need for regulatory intervention where appropriate.

137. In view of the above, IMDA will:

(a) exclude Resellers from the application of the Consumer Protection Provisions in the Code;

(b) apply all the Consumer Protection Provisions in the Code to both residential and business End Users, in both telecommunication and media markets, except for the provisions specific to the Pay TV market (i.e., Sub-sections 3.2B, 3.2C 3.2E, 3.5A and 3.5B in the MMCC), the critical information summary ("**CIS**") requirement, and the prohibition of detrimental or disadvantageous mid-contract changes for the telecom market, which will only be applied to residential End Users; and

(c) continue not to apply the Consumer Protection Provisions in the Code to OTT TV or content.

Common Provisions to be Merged

<u>Duty to Comply with Quality of Service ("**QoS**") Standards</u>

138. Sub-section 3.2.1 of the TCC and Sub-section 3.3 of the MMCC provide that Telecommunication Licensees and RPs must comply with the minimum QoS standards set by IMDA. However, the TCC allows for an agreement between the End User and Telecommunication Licensee on a QoS that is lower than IMDA's

standards. IMDA had adopted the policy position to merge the two requirements and extend the TCC's flexibility for lower QoS standards to the media markets.

139. Most of the respondents agreed with IMDA's policy position as it would not impose additional regulatory requirements on RPs. One respondent opined that stringent regulatory obligations should not be imposed on declining Pay TV services when OTT providers were not subject to the same requirements and there has been no evidence of significant customer complaints related to the quality of Pay TV services.

IMDA's Assessment and Decision

140. IMDA observed that the comment not to impose stringent regulatory obligations on declining Pay TV services has been made and addressed in the Second Public Consultation. As explained earlier, the intention for QoS standards is to protect consumers by ensuring a minimum acceptable service level. Hence, IMDA will proceed to align the requirement on QoS standards for the telecommunication and media markets and extend the flexibility for lower QoS standards to the media markets. IMDA will also continue to review the requirement on QoS standards to ensure relevance with market developments.

<u>Restrictions on Service Termination or Suspension</u>

141. Given the similar intent of the TCC and MMCC to ensure that Telecommunication Licensees and RPs provide advance notice and a reasonable opportunity to resolve disputes before terminating or suspending the provision of service to any End User, IMDA had adopted the policy position to align the requirements and adopt the procedures under the TCC for service terminations or suspensions for both markets.

142. While most of the respondents had no objection to the proposal, one respondent proposed to allow Telecommunication Licensees and RPs to "cross-terminate" business End Users between telecommunications and media services, especially for business End Users who enter into multiple high-value contracts. In some cases, the telecommunications and media services may be connected, as the business End User may rely on a broadband service to view Pay TV service from the same service provider. In such a situation, should the Telecommunication Licensees suspend the broadband service due to non-payment, there would be a natural service suspension to the Pay TV service.

IMDA's Assessment and Decision

143. IMDA understands it is not necessary for Pay TV End Users to subscribe to broadband service from the same provider in order to access the Pay TV service.

In the event that the broadband service would be suspended due to non-payment, the RP shall ensure that it assists the End User on the alternatives to access the Pay TV service, such as through streaming service.

144. In view of the above, IMDA will align the requirements and adopt the procedures under the TCC for service terminations or suspensions for both markets.

Duty to Prevent Unauthorised Use of End User Service Information ("**EUSI**")

145. To avoid any overlap with the PDPA for the media markets, IMDA had proposed to adopt the TCC's approach for data protection provisions for both telecommunication and media markets, and at the same time extend to the telecommunication markets the MMCC requirement for Telecommunication Licensees to develop and inform End Users of easy-to-use procedures via which they could subsequently grant or withdraw consent to the use of their EUSI.

146. Most of the respondents agreed with IMDA's proposals, but one respondent provided the same comment as the First Public Consultation and viewed that data protection and the use of EUSI were already covered under the PDPA, and IMDA's proposed requirements would create confusion.

IMDA's Assessment and Decision

147. IMDA had addressed the same comment in the Second Public Consultation. As explained earlier, PDPA only governs the personal data of residential End Users, not the business End Users. Therefore, IMDA will implement the aforementioned proposed changes to govern protection of EUSI for business End Users.

Disclosure Requirements including CIS

148. Given the similar intent in both the TCC and MMCC to enhance transparency and understanding of the service terms and conditions to End Users at the point of subscription, IMDA had taken the policy position to:

(a) merge the disclosure requirements in the TCC and MMCC;

(b) extend the CIS requirement to all Telecommunication Licensees;

(c) reduce the timeframe from 14 days to 5 working days for RPs to provide End Users with the CIS and service agreements; and

(d) extend the reduction of timeframe to the telecommunication markets to enhance consumer awareness of the terms and conditions in their service agreements.

149. IMDA notes that there were no comments on the abovementioned policy position.

IMDA's Assessment and Decision

150. Given that there was no objection, IMDA will implement the aforementioned changes.

Prohibition on Charging for Services Supplied on Free Trial or Complimentary Basis

151. IMDA had proposed to merge Sub-section 3.2.9 of the TCC and Sub-section 3.2F of the MMCC as both provisions share the same intent. To further protect consumers, IMDA had also proposed to introduce a new requirement to require Telecommunication Licensees and RPs to provide a reminder notice to End Users, at least three days before and not earlier than 14 days before the end of the free trial or complimentary services, to notify the End User of the date on which the free trial or complimentary period will end, and that charges may be imposed for the service going forward.

152. While most of the respondents had no objections to the proposals, one respondent opined that such requirement would be an unnecessary burden to the industry, as there was no evidence of market failure. In addition, while IMDA appeared to be taking reference from the Consumer Protection (Fair Trading) (Opt-Out) Practices Regulations, IMDA's proposed requirement would be inconsistent, as the reminder message requirements of the existing Consumer Protection (Fair Trading) (Opt-Out) Practices Regulations are based on working days, and they only apply to residential End Users and contracts where no Early Termination Charges ("**ETCs**") are applicable during the free trial period.

IMDA's Assessment and Decision

153. IMDA would like to clarify that it had taken into consideration the requirements in the Consumer Protection (Fair Trading) (Opt-Out) Practices Regulations, and hence will similarly use working days to avoid confusion. However, IMDA views that it is important to apply this requirement to all End Users and all contracts, as it is in Telecommunication Licensees', RPs' and End Users' common interest to minimise unnecessary disputes.

154. In view of the above, IMDA will merge Sub-section 3.2.9 of the TCC and Sub-section 3.2F of the MMCC, and introduce a new requirement to require Telecommunication Licensees and RPs to provide a reminder notice to End Users, at least three working days before and not earlier than 14 working days before the end of the free trial or complimentary services, to notify the End User

of the date on which the free trial or complimentary period will end and that charges may be imposed for the service going forward.

Provisions to be Extended from One Market to the Other

Mandatory Contract Provisions

155. IMDA had taken the policy position to extend the approach in the TCC, which requires Telecommunication Licensees to include the following provisions in their service agreements, to the media markets, as there are no similar requirements in the MMCC:

(a) Billing period;

(b) Prices, terms and conditions on which service will be provided;

(c) No charges for unsolicited services;

(d) Procedures to contest charges;

(e) Procedures for private dispute resolution;

(f) Bases and procedures for termination or suspension of service by Telecommunication Licensee; and

(g) Purposes for which EUSI of the business End Users may be used, and the means of granting and withdrawing consent.

156. Most of the respondents agreed with IMDA's policy position, except one respondent who provided the same comments as the First Public Consultation that the EUSI provision should be covered under the PDPA, and not under separate regulatory requirements by IMDA.

IMDA's Assessment and Decision

157. IMDA had addressed the comment in the Second Public Consultation, and would like to reiterate that PDPA does not give full effect to IMDA's policy intent, in view that it only governs personal data of individuals. Hence, IMDA will extend the approach in the TCC, which require Telecommunication Licensees to include the abovementioned provisions in their service agreements, to the media markets.

Billing Period

158. In view of the feedback from End Users that the current amount and level of details in the bill is insufficient and lacks transparency, IMDA had proposed to introduce a new requirement for both telecommunication and media markets to increase transparency and facilitate the resolution of billing disputes by including the following minimum billing information in their bills:

(a) the services subscribed;

(b) the respective value-added and ad-hoc services and their charges, and third-party charges (e.g., roaming charges, international calls charges, global SMS/MMS charges, Premium Rate Service ("**PRS**") charges, billing-on-behalf charges, excess usage charges, etc.);

(c) the billing period;

(d) indications where services are provided on a free trial or complimentary basis; and

(e) the expiry date of the trial or complimentary service.

159. While most respondents supported IMDA's policy position to introduce the list of minimum billing information, one respondent provided the same comments as the First Public Consultation and viewed that there was no evidence of market failure, and the requirement to indicate trial or complimentary service in the bill might be excessive and unnecessarily burdensome.

IMDA's Assessment and Decision

160. IMDA had addressed the repeated comment in the Second Public Consultation and would like to reiterate that IMDA's proposed list of minimum billing information is limited to key information most Telecommunication Licensees and RPs already provide in their bills today, and it is in all parties' interests to provide transparency and ensure consistency in providing a set of minimum information in the bills in order to reduce the likelihood of billing disputes. Hence, IMDA will introduce the list of minimum billing information to be included in End Users' bills for both markets.

Procedures to Contest Charges and for Private Dispute Resolution

161. While Sub-sections 3.3.4 and 3.3.5 of the TCC and Sub-section 3.4.3 of the MMCC similarly require Telecommunication Licensees and RPs to provide procedures for End Users to dispute any charge for any subscription service (and

associated equipment for MMCC) that they believe to be incorrect, there are some additional requirements that are only available in TCC. Therefore, IMDA had proposed to extend to the media markets, the TCC requirements on the inclusion of procedures to contest charges and dispute resolution in the End User Service Agreement ("**EUSA**"), including the circumstances under which an End User might withhold payment, the timeframe for contesting the disputed charges, and the setting of the interest rates or methodology for establishing the interest rates.

IMDA's Assessment and Decision

162. IMDA notes that there was no objection to this and will extend the TCC requirements on the inclusion of procedures to contest charges and dispute resolution in the EUSA, to the media markets.

Duty to Notify of Certain Events – Advance Notice for Advantageous Service Changes

163. Currently, there is no requirement for Telecommunication Licensees and RPs to provide any advance notice to End Users on advantageous changes to their telecommunication and media services. However, the definition of "advantageous" is subjective and could be disputed by the End Users. Hence, IMDA had proposed to introduce an advance notice requirement for any service change by Telecommunication Licensees and RPs deemed to be "advantageous" to End Users, that may have a long-term impact on the End User's service for both telecommunication and media markets, so that the End Users could be alerted in advance of the change.

164. Most respondents had no objection except one respondent who provided the same comment during the First Public Consultation and viewed that instead of adding additional regulatory burden, Telecommunication Licensees and RPs should be accorded the flexibility in deciding whether to inform End Users.

IMDA's Assessment and Decision

165. IMDA had addressed the comment in the Second Public Consultation and would like to reiterate that flexibility would be provided for how and when Telecommunication Licensees and RPs could notify End Users. Therefore, IMDA will impose the proposed requirement.

Duty to Notify of Certain Events – Advance Notice for Cessation of Service or Operations

166. Sub-section 3.5C.1(b) of the MMCC provides that RPs must provide at least six-months' notice in writing to End Users of their intention to cease operations or

provision of any broadcasting service. The TCC has no equivalent requirement, but Telecommunication Licensees are required under their respective telecommunication licence conditions to seek IMDA's approval in advance of the termination of their operations or services. In view of the current market environment where there is a myriad of service providers and service offerings in active competition for subscribers, IMDA had proposed to extend the requirement to provide advance notice to End Users for the termination of operations or services to the telecommunication markets, and to provide at least three-month advance notice in writing to End Users for cessation of operations or provision of any telecommunication and media services, while allowing IMDA the right to specify a reasonable notice period to End Users to better protect End Users' interest under certain circumstances.

167. There was no objection for advance notice before cessation of service or operations. One respondent suggested that in some cases, a three-month advance notice may not be sufficient.

IMDA's Assessment and Decision

168. IMDA would like to clarify that Telecommunication Licensees and RPs have the flexibility to provide a longer notice where they deem necessary. The minimum three-month notice was selected as a general baseline notice period, and IMDA will require this period to be extended where necessary.

169. In view of the above, IMDA will retain the requirement to provide at least three months' advance notice in writing to End Users who will be affected by the cessation of operations or provision of any telecommunication and media services, and reserves the flexibility to specify a reasonable notice period under certain circumstances.

Provisions to be Retained or Included for a Specific Market

Prohibition on "Slamming"[9]

170. As competition in the telecommunication markets intensifies, Telecommunication Licensees have been offering more innovative service plans to facilitate the switching of End Users from one service provider to another, and hence the risk of End Users being switched from one Telecommunication Licensee to another remains. Therefore, IMDA had adopted the policy position to retain the

[9] No Telecommunication Licensee may switch an End User from one Telecommunication Licensee's Service to another Telecommunication Licensee's Service without prior consent of the End User. In addition, no Telecommunication Licensee may collect or retain any payment from an End User for any Service that the End User did not consent to receiving.

prohibition on “slamming” for the telecommunication markets in the Code to protect End Users against such unfair practices.

IMDA’s Assessment and Decision

171. IMDA notes that there was no objection, and hence will retain the prohibition for the telecommunication markets.

Prohibition of Detrimental or Disadvantageous Mid-contract Changes for the Telecommunications Markets

172. To protect End Users against unilateral contract variations that are detrimental to them, the Key Telecommunication Licenses[10] are currently prohibited from making any changes to the prices, terms and conditions of any fixed or minimum term service contract that are disadvantageous or detrimental to the End User during the term of the fixed or minimum service contract period. For instance, Customer A signed a two-year minimum contract with Telecommunication Licensee X. During the two-year contract period, Telecommunication Licensee X is not allowed to make any unilateral detrimental changes to the prices, terms and conditions. IMDA had adopted the policy position to include the prohibition on mid-contract detrimental or disadvantageous changes in the Code and extend its application to all Telecommunication Licensees, instead of the key Telecommunication Licensees.

173. While most respondents had no objections to the policy position, one respondent proposed (i) to exclude business End Users from this requirement as business End Users are often able to negotiate the terms of their service contracts, and (ii) to allow detrimental or disadvantageous mid-contract changes with one-month notice. The respondent opined that the position proposed by IMDA would be contrary to the European Electronic Communications Code which allows providers of electronic communications services to provide End Users at least one-month’s notification of any contractual changes, including detrimental changes. Another respondent opined that such requirements amplified the disparity between the heavy regulation of Telecommunication Licensees, as compared to the lack of regulation on OTT players, and further shared that if such a requirement is to be implemented, it should be applied to all players, including parties based outside of Singapore, to ensure a level playing field.

[10] Under the then-IDA’s Direction issued in 2015, key Telecommunication Licensees include M1 Limited, M1 Net Ltd, Singapore Telecommunications Limited, Singtel Mobile Singapore Pte Ltd, SingNet Pte Ltd, StarHub Ltd, StarHub Mobile Pte Ltd, StarHub Online Pte Ltd and StarHub Internet Pte Ltd.

IMDA's Assessment and Decision

174. As explained above, IMDA notes the respondent's view that business End Users typically are able to protect themselves when contracting with Telecommunication Licensees, as compared to residential End Users, and hence will exclude business End Users from the prohibition of detrimental or disadvantageous mid-contract changes for the telecom market. However, IMDA disagrees with the proposal to allow mid-contract detrimental or disadvantageous changes for residential End Users with one month's notice, as this conflicts with the intention to protect residential End Users against unilateral contract variations that are detrimental or disadvantageous to them during the term of the fixed or minimum service contract period.

175. On the disparity between Telecommunication Licensees and OTT players, as explained earlier, IMDA would like to clarify that the approach towards OTT services takes into consideration the nature and the provisioning of the service, along with the market characteristics. Notwithstanding, IMDA will continue to monitor the developments in the broader landscape, including the adoption of OTT services, terms of service provisioning and consumer feedback, to review the need for regulatory intervention.

176. Considering the above, IMDA will extend the prohibition on mid-contract detrimental or disadvantageous changes to all Telecommunication Licensees.

<u>One-month Advance Notice for Detrimental Mid-contract Changes for the Media Markets</u>

177. In view that changes to content and channel line-ups are inevitable as Pay TV service providers may not have full control over the continued provision of content or channels, Sub-sections 3.5C.1(a) and 3.5C.2 of the MMCC currently provide that RPs must give at least one-month advance notice in writing to End Users for any increase in subscription fees, or cessation of any channel or material sports content. End Users are also allowed to exit their service agreements without ETCs for the specific instances as ascribed in the Code. IMDA had taken the policy position to retain the current requirement.

IMDA's Assessment and Decision

178. IMDA notes that there was no objection, and hence will retain the aforementioned requirement.

Prohibition on ETCs in Certain Cases for the Media Markets

179. IMDA took the policy position to retain the requirement for RPs to allow End Users to exit their service agreements without ETCs for specific instances, and the enabling provisions (i.e., Sub-sections 3.2E, 3.5B and 3.8 of the MMCC) for this requirement.

180. Most respondents had no objections and did not have further comments. However, one respondent commented that the obligation unfairly discriminates against linear Pay TV service providers, while benefitting OTT service providers.

IMDA's Assessment and Decision

181. As explained above, the current approach towards OTT services takes into consideration the nature and the provisioning of the service, along with the market characteristics. Notwithstanding, IMDA will continue to monitor the developments in the broader media landscape, including the adoption of OTT services *vis* Pay TV, terms of service provisioning and consumer feedback, to review the need for regulatory intervention.

182. In view of the above, IMDA will retain the requirement for RPs to allow End Users to exit their service agreements without ETCs for specific instances, and the enabling provisions (i.e., Sub-sections 3.2E, 3.5B and 3.8 of the MMCC).

Duty to Offer Option of Short-Term Agreements

183. IMDA had taken the position to retain the requirement for RPs to offer short-term agreements for all Pay TV service packages.

184. Most respondents had no objections to the proposal. One respondent, however, made the same comment in the First Public Consultation that such legacy obligations should be removed to enable linear Pay TV service providers to compete with the OTT service providers.

IMDA's Assessment and Decision

185. IMDA had addressed the repeated comment in the Second Public Consultation, and hence, IMDA will retain the requirement for RPs to offer short-term agreements for all Pay TV service packages.

Duty Not to Act Unreasonably in Contracting

186. It is common practice for service providers to bundle their Pay TV services with telecommunication services, and there have been instances in which End Users

were made to upgrade their telecommunication services in order to purchase additional Pay TV services. To continue to protect the consumers, IMDA had adopted the position to retain the prohibition on RPs from leveraging an End User's Pay TV service agreement to impose changes on a non-Pay TV service agreement that the End User has from the same service provider.

IMDA's Assessment and Decision

187. IMDA notes that there was no objection to its proposal, and hence will retain the prohibition to prevent such unfair practices against End Users.

Provisions to be Removed

Service Quality Information Disclosure Requirements

188. In view that IMDA is already consolidating and publishing such service quality data on its website, IMDA had taken the position to remove Sub-section 3.2.7 of the TCC which requires Telecommunication Licensees to disclose information on service quality.

IMDA's Assessment and Decision

189. IMDA notes that there was no objection to its proposal, and hence will remove this requirement from the Code.

Anti-avoidance of Obligations

190. Considering that RPs should be aware of their regulatory obligations for consumer protection and legally, the RPs cannot avoid their licensing and regulatory obligations, IMDA had adopted the position to remove Sub-section 3.7 of the MMCC which prohibits any arrangement by RPs in the media markets to avoid the application of regulatory requirements under the Consumer Protection Provisions.

IMDA's Assessment and Decision

191. IMDA notes that there was no objection to its proposal, and hence will remove the anti-avoidance provisions for the media markets.

PART VI: MERGERS AND ACQUISITIONS

192. The primary objective of the mergers and acquisitions ("**M&A**") provisions is to ensure that any acquisition or consolidation involving telecommunication or media licensees does not substantially lessen competition in the telecommunication or media markets respectively. This part of the document covers the provisions governing acquisitions and consolidations contained under Section 10 of the TCC and Section 8 of the MMCC.

Applicability of Consolidation Provisions

Transactions Subject to IMDA's Review

193. At present, all transactions relating to acquisitions of voting shares and power in specified Telecommunication Licensees, i.e., Designated Telecommunication Licensees, Designated Business Trusts and Designated Trusts (collectively, the "**Designated Telecommunication Licensees**") are subject to IMDA's review under the TCC, whereas only transactions in which voting shares or power in an RP are acquired by an RP or AMSP are subject to IMDA's review under the MMCC.

194. Given that transactions where voting shares or power in an RP are acquired by a non-RP or non-AMSP may also potentially raise competition concerns, especially in a converged environment whereby the acquiring party may have SMP in one or more of the telecommunication markets, IMDA had proposed to adopt a consistent approach and subject all transactions that involve acquisition of voting shares or power in a Designated Telecommunication Licensee and/or an RP, by any person, to IMDA's review.

195. IMDA received one response to the proposal, where the respondent opined that there was no need for sector-specific M&A provisions. The respondent highlighted that multiple M&A transactions involving other markets with similar high barriers to entry, e.g., stock exchanges and car manufacturing, have been subject to assessments by the CCCS. The respondent also added that the barriers to entry for players such as OTT service providers and MVNOs are low, given that they do not deploy extensive infrastructure in Singapore. Accordingly, sector-specific M&A provisions should be removed to ensure greater alignment with other markets in Singapore.

IMDA's Assessment and Decision

196. IMDA would like to reiterate its position from the Second Public Consultation that the telecommunication and media markets possess certain unique features that are different from the general market, including but not limited to, high barriers of entry in terms of deploying underlying infrastructure, as well as the criticality and

essentiality of the services involved. With regard to market participants that may not deploy extensive telecommunication infrastructure in Singapore (e.g., MVNOs), IMDA would add that only SBO Telecommunication Licensees which are determined by IMDA to be a significant participant in a concentrated market, are subject to the notification and/or approval process as stipulated under the M&A provisions. Accordingly, IMDA views that it is necessary to closely monitor and review M&A developments to ensure that competition and consumer interests are not compromised. IMDA would also like to add that such M&A regulatory regimes are not unique to the telecommunication and media markets, as other sectors such as the energy sector also have their own M&A regulatory regimes.

197. IMDA would like to highlight that the extension of the requirement subjecting all transactions that involve acquisition of voting shares or power in a Designated Telecommunication Licensee and/or an RP, by any person, to IMDA's review, would require changes to the IMDA Act. In view of the need to first enact legislative changes, this requirement will not be implemented in the current version of the Code. However, IMDA will subsequently implement this change via amendments to the Code when the necessary legislative changes have been enacted.

Notification/ Approval Requirements

198. Presently under the TCC, a Designated Telecommunication Licensee is required to notify IMDA if there is a transaction that results in an acquiring party acquiring 5% or more of the voting shares or voting power in the Designated Telecommunication Licensee. A Designated Telecommunication Licensee and its acquiring party are both required to seek IMDA's prior written approval if there is a transaction that results in an acquiring party acquiring 12% or more of the voting shares or voting power in the Designated Telecommunication Licensee, and if there is a transaction that results in an acquiring party becoming a 30% Controller of the Designated Telecommunication Licensee, or obtaining the ability to exercise Effective Control over the Designated Telecommunication Licensee, or acquiring the business of the Designated Telecommunication Licensee as a going concern. A Designated Telecommunication Licensee is also required to notify IMDA if there is a transaction that results in pro forma change(s). In comparison, an RP is required to obtain IMDA's prior written approval only for consolidations (transactions that result in an acquiring party acquiring at least 30% direct or indirect ownership interest) with another RP or with any AMSP under the MMCC. Minister's prior approval is required for any acquisition of ownership interest in a broadcasting company and/or newspaper company (who may be an RP) that crosses the 5% and 12% thresholds. The existing notification/ approval requirements for the respective industry are provided in Table 3 below.

Table 3: Existing notification/ approval requirements under TCC and MMCC		
Level of ownership interest in relevant Telecommunication Licensee/ RP	**Requirement for transactions involving Designated Telecommunication Licensees**	**Requirement for transactions involving RPs**
<5%	N.A.	N.A.
≥5% and <12%	Notification to IMDA under the TCC	Approval from Minister under the Broadcasting Act or Newspaper and Printing Presses Act[11]
≥12% and <30%	Approval from IMDA under the TCC	
≥30% or effective control		Approval from IMDA under the MMCC
Pro forma change	Notification to IMDA under the TCC	N.A.

199. As noted in Table 3, while the thresholds that trigger the necessary notification or approval are similar for the transactions involving Designated Telecommunication Licensees and RPs, they are subject to approval by different authorities. IMDA had clarified in the First and Second Public Consultations that there was no intention to change the thresholds as the current thresholds are appropriate in allowing IMDA to review acquisitions and consolidations that may give rise to competition concerns and will continue to provide commercial flexibility for market transactions within each band.

200. IMDA also proposed to extend the requirement to notify IMDA of any transactions resulting in *pro forma* change to all RPs, to provide a consistent procedure across both industries that eases the regulatory burden of seeking approval for acquisition/ consolidation transactions involving companies within the same group, that do not give rise to competition concerns.

201. IMDA received one response to this proposal, reiterating the same viewpoint that IMDA should not be adopting sector specific M&A provisions and that its requirements should be aligned with the broader economy.

IMDA's Assessment and Decision

202. IMDA has addressed this response above and notes that there is no specific comment on the proposed extension of the requirement to notify IMDA of any transactions resulting in *pro forma* change to all RPs. Nonetheless, IMDA would like to highlight that this would require changes to the IMDA Act. Accordingly, this notification requirement for *pro forma change* to all RPs will not be implemented in the current version of the Code and will be subsequently implemented via

[11] Depending on whether the RP is a broadcasting company or a newspaper agency, the approval from Minister (Communications and Information) will be required under the Broadcasting Act (Cap. 28) or Newspaper and Printing Presses Act (Cap. 206) respectively.

amendments to the Code when the necessary legislative changes have been enacted.

203. For the avoidance of doubt, the notification and/or approving authority for telecommunication and media related transactions will remain the same, given the wider considerations involved in the assessment for transactions involving Designated Telecommunication Licensees and RPs. For clarity, the notification/approval requirements to be included under the Code are summarised in Table 4 below:

Table 4: Revised notification/ approval requirements under the Code

Level of ownership interest in relevant Telecommunication Licensee/ RP	Requirement for transactions involving Designated Telecommunication Licensees	Requirement for transactions involving RPs
<5%	N.A.	N.A.
≥5% and <12%	Notification to IMDA	Approval from Minister under Broadcasting Act or Newspaper and Printing Presses Act[12]
≥12% and <30%	Approval from IMDA	
≥30% or effective control		Approval from IMDA
Pro forma change	Notification to IMDA	***Notification to IMDA***

Other Amendments to M&A Provisions

Short Form and Long Form Consolidation Application

204. At present, the TCC and MMCC set out a "two-track" procedure to be adopted for transactions involving Designated Telecommunication Licensees and RPs in which an application must be filed with IMDA for approval. Specifically, this entails either a short form or long form application form ("**Short Form**" or "**Long Form**" respectively). In general, applicants should adopt the Long Form unless they are eligible to use the Short Form, which is a streamlined application process for transactions in which IMDA believes are less likely to raise competition concerns. IMDA noted that while the current provisions under the TCC and MMCC are largely similar, the criteria for eligibility to use the Short Form were different. Specifically, the market share threshold for use of Short Form for the media industry is 40% or between 20% to 40% where the largest 3 RPs or AMSPs, or a combination thereof, is 70% or more of any media market, whereas the threshold for the telecommunication industry is 15% for horizontal consolidation or 25% for non-horizontal consolidation.

[12] Depending on whether the RP is a broadcasting company or a newspaper agency, the approval from Minister will be required under the Broadcasting Act (Cap. 28) or Newspaper and Printing Presses Act (Cap. 206) respectively.

205. To provide a harmonised approach and minimise confusion amongst industry players, IMDA had proposed to adopt the following criteria for determining whether a consolidation application uses a Short Form or Long Form:

(a) A Short Form may be used when none of the applicants have, and/or the post-consolidation entity will not have, a share of:

(i) 30% or more of any telecommunication or media market in Singapore or elsewhere; or

(ii) between 20% to 30% when the combined market share of the three largest RPs or AMSP, or a combination thereof, is 70% or more of any telecommunication or media market in Singapore; or

(b) A Long Form shall be used if the consolidation does not fall into the scenarios provided in (a) above.

206. While IMDA did not receive any further comments on this proposal, IMDA notes a general comment from one respondent who asked IMDA to consider adopting a more expansive view of telecommunication and media markets, taking into account competition from overseas players (particularly OTT operators).

IMDA's Assessment and Decision

207. IMDA notes that this comment was provided during the First Public Consultation and IMDA had addressed this comment in the Second Public Consultation, giving the view that it will not expand the scope of the Code beyond Telecommunication Licensees and RPs at this juncture.

208. As discussed in the First Public Consultation, IMDA reiterates its intent to implement a Code that can be uniformly applied to both the telecommunication and media markets. Adopting a 30% market share as the threshold for use of the Short Form would be a more prudent approach that strikes a good balance between the telecommunication and media markets. The proposed revision for the second criteria from "between 20% to 40%" market share to "between 20% to 30%" market share was also consistent with the unified threshold of 30% market share and would minimise any overlaps between the two criteria.

209. Accordingly, IMDA will adopt the proposed harmonised criterion across the telecommunication and media markets for determining whether a consolidation application should use a Short Form or Long Form.

Consolidation Review Period

210. The TCC and MMCC currently set out, among other things, the timeline in which IMDA will respond to a consolidation application after it has satisfied the minimum information requirements. The existing review periods are set out in Table 5.

Table 5: Consolidation review period	
Review Period under TCC	**Review Period under MMCC**
• Ordinarily complete consolidation review within 30 days after the start of the consolidation review period • If a consolidation application is deemed to raise novel or complex issues, IMDA will extend the review period by up to 90 days, to a maximum of 120 days	• Ordinarily complete consolidation review within 30 working days after the start of the consolidation review period • If a consolidation application is deemed to raise novel or complex issues, IMDA will extend the review period by up to 90 working days, to a maximum of 120 working days • In extraordinary cases, IMDA may extend the review period by an additional 60 working days and will seek to provide notification by the 110th day of the review period

211. IMDA noted that the review periods of consolidation applications differ under the TCC and MMCC and that there is merit in having the same review period under the Code. IMDA hence took the position to adopt the shorter review period as follows:

(a) IMDA will ordinarily complete its consolidation review within 30 days after the start of the consolidation review period; and

(b) IMDA may extend the review period by up to 90 days, to a maximum of 120 days if a consolidation application is deemed to raise novel or complex issues.

212. While IMDA did not receive any further comments on this, IMDA notes the same general comment from the respondent referred to in paragraph 206 above, asking IMDA to consider adopting a more expansive view of telecommunication and media markets.

IMDA's Assessment and Decision

213. Having addressed the abovementioned comment in the above paragraph, IMDA will adopt the shorter review timeline under the TCC for the Code as proposed.

PART VII: RESOURCE SHARING

214. Part VII of the Second Public Consultation covered the provisions in Section 7 of the TCC and Section 9 of the MMCC regarding sharing of resources among Telecommunication Licensees and media licensees that is necessary for the provision of telecommunication and/or media services. Either at the request of the Telecommunication Licensees, or at its own initiative, IMDA will designate a resource which requires sharing as either "**Critical Support Infrastructure**" ("**CSI**") (under the TCC) or "**Essential Resource**" (under the MMCC). In certain cases, IMDA may also determine that it is in the public interest to require sharing of resources even if such resources do not constitute a CSI or Essential Resource.

215. IMDA noted that the intent of both sections is aligned, with the aim of facilitating the sharing of resources (including infrastructure) among Telecommunication Licensees and media licensees, where necessary. The key differences arise from the application of the sections. Under the Code, IMDA sought to harmonise the provisions to the extent possible.

Applicability

Types of Resources Applicable

216. IMDA noted that Section 7 of the TCC can apply to any infrastructure, while Section 9 of the MMCC can apply to any apparatus, accessory, system, service, information or such other resource of any kind required to provide media service(s) ("**Media Resource**").

217. IMDA had decided to limit Media Resource that may be shared to only infrastructure (similar to Section 7 of the TCC), as IMDA foresees that infrastructure is likely to be the only potential resource that a media licensee cannot produce or lease within the foreseeable future in order to provide a media service.

218. There were no comments on IMDA's policy position to limit Media Resource that may be shared to only infrastructure.

IMDA's Assessment and Decision

219. Given that there are no comments, IMDA will retain the terms CSI for the telecommunication markets and Essential Resource for the media markets.

IMDA will also apply the scope of "infrastructure" as listed in Sub-section 7.5.1[13] of the TCC to the "Media Resource" required to be shared. IMDA would like to reiterate that the intent of this provision is to ensure that a licensee is able to access any supporting infrastructure or resource that is necessary to access a CSI or an Essential Resource respectively. An example of such a supporting infrastructure could be a manhole, for which access is necessary in order to access a duct which has been designated as a CSI. Capturing this under the scope of the Resource Sharing provision provides certainty to licensees requesting CSI or Essential Resource sharing, that the necessary access to all common infrastructure/resources leading to the CSI or Essential Resource will be facilitated. As the infrastructure/resources required may differ, IMDA will determine the infrastructure/resources required on a case-by-case basis. In the event that IMDA determines that the infrastructure/resources required for the effective sharing constitute a CSI or an Essential Resource, IMDA will set out the reasons for its determination in its decision.

Licensees on which the Resource Sharing Provisions Apply

220. IMDA is of the view that restricting the infrastructure sharing obligation to FBO Licensees only no longer meets present-day needs and should be updated because the sharing of infrastructure owned or controlled by SBO Licensees may also be essential for public interest. Therefore, IMDA had adopted the policy position to extend the Resource Sharing Provisions applicable to Telecommunication Licensees to include all FBO and SBO Licensees. This would give IMDA the ability to declare any infrastructure, owned or controlled by an FBO or SBO Licensee, as a CSI which must be shared with other FBO Licensees as long as the said infrastructure fulfils the criteria for the designation of CSI.

221. There were no comments from the Second Public Consultation on IMDA's policy position to extend the Resource Sharing Provisions applicable to Telecommunication Licensees to include all FBO and SBO Licensees.

[13] Designation of Specific Infrastructure: The following types of infrastructure must be shared:
(a) radio distribution systems for mobile coverage in train or road tunnels;
(b) in-building cabling (where the occupant elects to take Service from another service provider);
(c) lead-in ducts and associated manholes;
(d) monopoles; and
(e) radio towers (excluding towers used for the operation of any broadcasting service).

IMDA's Assessment and Decision

222. Given that there was no objection, IMDA will extend the Resource Sharing Provisions applicable to Telecommunication Licensees to include all FBO and SBO Licensees[14].

223. In addition, IMDA will retain the current TCC's position that only FBO Licensees can submit request for the sharing of CSI as SBO Licensees are only providing service-based telecommunications services.

Criteria for Designation

224. For the designation of Essential Resource or CSI, IMDA will determine whether such Media Resource or infrastructure satisfy the criteria as set out under Sub-section 9.3.1.5 of the MMCC and Sub-section 7.3.1 of the TCC respectively. IMDA notes that the criteria are largely similar and had decided to adopt the same set of criteria as set out under Sub-section 9.3.1.5 of the MMCC and Sub-section 7.3.1 of the TCC for the determination of both Essential Resource and CSI. The criteria are set out below:

(a) the infrastructure / Media Resource is required to provide the telecommunication / media services;

(b) an efficient new entrant would neither be able to replicate or create the infrastructure / Media Resource in the foreseeable future, nor obtain the infrastructure / Media Resource from a third party at costs that would allow market entry;

(c) the infrastructure / Media Resource is not fully and efficiently utilised; and

(d) owners of the infrastructure / Media Resource have no legitimate justification to refuse sharing.

225. IMDA had also stated its policy position on requiring the sharing of both infrastructure (for Telecommunication Licensees) and/or Media Resource (for media licensees) if it is in the public interest to do so.

226. In the Second Public Consultation, IMDA had agreed with a respondent's suggestion to reinstate the "failure to require access to the Resource would unreasonably restrict competition" criterion, as it considered that the duty to provide access to the Critical Support Infrastructure / Media Resource should be

[14] Including licensees such as those holding In-Building Terrestrial Telecommunications Systems licence.

based on objective competition principles and there is merit in including such a criterion in the determination of both Essential Resource and CSI.

IMDA's Assessment and Decision

227. IMDA has further deliberated on the "failure to require access to the Resource would unreasonably restrict competition" criterion and noted that criteria (a) to (d) stated in paragraph 224 above are already based on objective competition principles in considering that the new entrants and/or SBO Licensees have access to the Resource. IMDA is of the view that these criteria are sufficient in lowering entry barriers and are more targeted as compared to replicating and stating that failure to access the Resource would unreasonably restrict competition. Hence, IMDA will not proceed with the earlier decision to reinstate the "failure to require access to the Resource would unreasonably restrict competition" criterion into the list of criteria for the determination of Essential Resource and CSI in the Code.

228. Notwithstanding the above, IMDA will retain its policy position on requiring the sharing of infrastructure (for Telecommunication Licensees) and/or Media Resource (for media licensees), if IMDA determines that it is in the public interest to do so, even if such resources do not constitute a CSI or Essential Resource.

Designation Of Infrastructure Hosting Submarine Cable Systems as CSI

229. In the Second Public Consultation, one respondent proposed that IMDA should designate submarine cable landing stations as a CSI.

230. The respondent submitted that currently, access to submarine cable landing stations was an obligation that only applied to Dominant Telecommunication Licensees, and it was regulated as an Interconnection Related Service ("**IRS**") under the TCC. A Dominant Telecommunication Licensee is required to offer co-location and connection services under its reference interconnection offer, to facilitate other licensees' access to the submarine cable systems landed within the stations. The respondent highlighted that the majority of submarine cable landing stations in Singapore were currently not subject to access obligations, despite all such submarine cable landing stations having the same "bottleneck" characteristics.

231. The respondent was of the view that submarine cable landing stations were a key example of "bottleneck" infrastructure, with access to such facilities being necessary for licensees to access their submarine cable capacity and provide domestic backhaul and transmission services that would facilitate connectivity to a submarine cable system. Thus, treating submarine cable landing stations as CSI would ensure that all operators (regardless of whether they are Dominant

Telecommunication Licensees or not) are required to provide access to such infrastructure to those who seek it. This would ultimately enhance competition in respect of international connectivity services and support the continued growth of Singapore as a global submarine connectivity hub.

232. IMDA believed that the proposal merits consideration. Further, IMDA also noted that, increasingly, submarine cables are being landed in buildings (e.g. in data centres) instead of cable landing stations.

233. IMDA sought further inputs from a number of key parties who controlled submarine cable landing stations and/or who owned infrastructure or facilities where submarine cables are or could be landed in. Specifically, IMDA sought inputs on whether there is merit to designate any infrastructure/facility controlled or owned by a non-Dominant Telecommunication Licensee in which a submarine cable system has landed as CSI in order to ensure fair and reasonable access to these infrastructure/facilities to access the submarine cable systems. From the feedback received, most respondents generally agreed on the proposed designation of those infrastructure/facilities wherein submarine cables are landed or hosted as CSI, regardless if these infrastructure/facilities are owned or controlled by Dominant Telecommunication Licensees or not.

234. Some of the respondents highlighted concerns on how prices would be regulated, in particular, how the designation of such infrastructure/facilities as CSI would impact them commercially.

235. One respondent pointed out that the proposal to designate all submarine cable landing stations, including those submarine cable landing stations of Non-Dominant Telecommunication Licensees, as CSI, did not meet the requirements for designation of CSI under the TCC. Further, for the submarine cable landing stations that the respondent owned, no parties were ever unreasonably denied access, and it was not aware of any indication of market failure related to its submarine cable landing stations. The respondent also pointed out that, of all the submarine cables landed in Singapore, only a small percentage belonged to it. The respondent thus had the view that even if it rejected access to its submarine cable landing stations, it would not unreasonably restrict competition since operators could still easily approach other landing parties to request access to other submarine cables. The respondent also raised concerns that it might not have sufficient space in its cable landing stations to lease to other Telecommunication Licensees at cost-based rates. In line with the foregoing, the respondent opined that any move by IMDA to designate all submarine cable landing stations, including those submarine cable landing stations of Non-Dominant Telecommunication Licensees, as CSI would have a '*chilling effect*' on operators looking to bring in new submarine cables into Singapore, especially since the landing of submarine cables by the respondent was purely a

commercial investment that was made without government support, and negatively impact Singapore's reputation as a hub for submarine cables.

IMDA's Assessment and Decision

236. IMDA notes that increasingly, submarine cables are being landed by Non-Dominant Telecommunication Licensees.

237. In addition, with the evolution of technology and changes in market landscape, IMDA notes that more and more submarine cable systems are increasingly being built such that Submarine Line Terminating Equipment ("**SLTE**") can be housed at locations outside of submarine cable landing stations. This nature of new submarine cable system has resulted in a decoupling of the physical cable from the active elements of the submarine system, allowing capacity owners to install their own SLTEs outside of the submarine cable landing station (such as in data centres located in-land).

238. IMDA is of the view that there would be a need to ensure open access to submarine cable systems, regardless of which premises/buildings these submarine cable systems have landed, or where their SLTEs are hosted. Once a party procures capacity on a particular submarine cable system, it is not possible for the party to obtain access to its capacity at any other infrastructure/facility, except at the infrastructure/facility where the submarine cable system has landed. Therefore, the timely of provision access to such capacity is important.

239. IMDA has assessed that for any space/infrastructure/facilities where the submarine cable systems have been landed or hosted within, be it a purpose-built submarine cable landing station or any other facility such as data centres, the said designation meets the criteria of CSI as described in Section 7.3.1 of the Code. For the avoidance of doubt, the space/infrastructure/facilities involved in the access provision include co-location services and connection/cross-connect services that would allow physical access to the submarine cable systems landed, but does not include the international capacity on submarine cables.

240. Pursuant to the CSI framework in Section 7 of the Code, parties would commercially agree on a sharing/access arrangement. Should parties not be able to mutually agree on a sharing/access arrangement, a dispute resolution request can be raised to IMDA. Where IMDA intervenes in a pricing dispute, IMDA will establish cost-based, non-discriminatory rates. IMDA would also clarify that, in line with the CSI framework, IMDA will not establish prices or terms and conditions for access upfront, but expect parties to first negotiate in good faith.

241. Considering all of the above, IMDA is of the view that there is merit to designate the space/infrastructure/facilities in which a submarine cable system has landed or is hosted within, as CSI in order to ensure fair and reasonable access to the submarine cable system. IMDA will impose this CSI obligation on non-Dominant Telecommunication Licensees who obtain IMDA's approval to land submarine cable systems in Singapore ("**Landing Party**"). The Landing Party is to provide fair and reasonable access to the submarine cable systems landed, which would include the co-location services and connection/cross-connect services that would allow physical access to the submarine cable systems landed/hosted within the premise/building. The proposed CSI may include submarine cable landing stations, space/infrastructure/facilities within any building (such as data centres) where a submarine cable system has landed or is hosted within. In this regard, IMDA will designate such space/infrastructure/facilities as CSI under Section 7.5.1 of the Code. IMDA would like to clarify that, similar to other infrastructure designated as CSI, co-location space will only be required to be leased where available. As long as there is sufficient space available to share with a requesting licensee, parties may first negotiate in good faith on the pricing for such space.

242. IMDA will reiterate that, as specifically allowed for under Section 7 of the Code, parties would (and should, to the extent possible and in good faith) commercially agree on a sharing/access arrangement. There should therefore be no impact to any commercial investment, and neither should there be any '*chilling effect*' on operators looking to bring in new submarine cables into Singapore nor any negative impact on Singapore's reputation as a hub for submarine cables. This is in line with IMDA's long term policy objective of facilitating the deployment of international connectivity infrastructure in land-scarce Singapore.

243. For the avoidance of doubt, notwithstanding the above CSI designation, there would be no change to the existing IRS regulatory obligations imposed on a Dominant Telecommunication Licensee, and a Dominant Telecommunication Licensee continues to be required under the Code, to offer access to its submarine cable landing stations (e.g., co-location services and connection/cross-connect services) under its reference interconnection offer.

PART VIII: PUBLIC INTEREST OBLIGATIONS

244. This part of the document concerns Section 2 of the MMCC which sets out the Public Interest Obligations to be observed by specific media entities. While IMDA had proposed in the Second Consultation to harmonise the provisions under the TCC and the MMCC, IMDA also recognised that there remain some inherent differences between the telecommunication and the media markets, and inevitably, there will be some unique market-specific regulatory conditions that are relevant to, and should apply only to, one market Hence, IMDA will be retaining the Public Interest Obligations specific to the media markets only.

The Cross-Carriage Measure ("CCM")

245. In 2010, then-MDA introduced the CCM to discourage Pay TV operators from pursuing an exclusive content-centric strategy. Such a strategy had resulted in a high degree of content fragmentation and inconvenience to consumers, as well as diverted resources away from other aspects of competition such as content and service innovation. The CCM sought to encourage Pay TV operators to focus competition through other means such as service differentiation, competitive packaging and pricing. Since the introduction of the CCM, IMDA observed that content fragmentation has abated. The number of common channels that can be found on the current Pay TV platforms has increased substantially, and there is greater service differentiation and innovation in the Pay TV markets. Hence, IMDA is of the view that the CCM has been effective in achieving the policy objective, and remains relevant.

<u>Restricting the CCM by Content Genre</u>

246. While the CCM is currently applicable to Pay TV content of any genre, IMDA notes that with technological developments and changes in the way media content has been distributed in the industry since the introduction of CCM in 2010, consumers now have more options to access the content over the Internet and may no longer need to subscribe to multiple Pay TV operators, and use multiple set-top boxes, in order to watch the full suite of content. Apart from some live sports content, most of the TV content, such as dramas and movies, are increasingly being made easily available to consumers over the Internet. Hence, IMDA decided that it is sufficient to limit the application of CCM to only live programmes that are acquired on an exclusive basis.

247. Some respondents commented that it may not be practical to limit the CCM to live programmes, as Pay TV operators usually negotiate the access rights to either an entire channel or bundles of content, including both live and recorded content. Such rights usually do not permit the Pay TV operators to unbundle or repackage the content to separate the 'live' content into a separate channel

stream for cross-carriage. Other respondents commented that singling out live sports programmes for regulation would result in disproportionate economic impact on the sports content distribution industry and questioned the relevancy of the CCM given that live sports programmes are also increasingly available over the Internet.

IMDA's Assessment and Decision

248. IMDA notes that most content is currently acquired on an "entire channel" or "bundled" basis which might include both live and non-live content. IMDA would like to clarify that the CCM applies if the Pay TV operator acquires the above on an exclusive basis. This is consistent with the current implementation. The onus is on the Pay TV operator to take IMDA's requirement into consideration when negotiating with the content providers.

249. However, IMDA notes that in some instances, Pay TV operators acquire channel bundles on a non-exclusive basis, but the bundles may contain live programmes that are acquired exclusively by content aggregators for channel bundling purposes. In such cases, IMDA is of the view that that CCM will not be applicable given that the Pay TV operator did not acquire the content on an exclusive basis.

250. IMDA maintains its view that the CCM remains relevant in encouraging Pay TV operators to divert from pursuing an exclusive content-centric strategy to focus on competition through other means such as service differentiation, competitive packaging and pricing. Hence, IMDA will limit the application of CCM to only live programmes that are acquired on an exclusive basis. IMDA will continue to monitor the media landscape and will regularly review the relevance of the CCM.

<u>Offering OTT Services that Contain Qualified Content[15] ("**QC**") on a Standalone Basis</u>

251. While IMDA generally does not intervene in how Pay TV operators bundle their service offerings, IMDA is concerned that if the QC, or a portion of the QC, is offered exclusively on an OTT platform that is restricted to only the Supplying Qualified Licensee's ("**SQL**") subscribers, the cross-carried subscribers on the Receiving Qualified Licensees' ("**RQL**") platform may be forced to sign up for a Pay TV subscription with the SQL in order to access the full suite of QC. Hence, IMDA decided to impose a requirement on the SQL to offer cross-carried subscribers access to the QC on the SQL's OTT platform at the same prices and terms as those offered to the SQL's subscribers, if only a portion of the QC is on

[15] Qualified Content refers to channels and programming content, acquired by a RP under an arrangement, whether explicit or implicit, which prevents or restricts another RP from acquiring the channels or programming content for transmission on any of the Relevant Platforms.

the Relevant Platform[16]. This is to prevent Pay TV operators from using their OTT platform as a mean to circumvent the CCM.

252. Some respondents commented that the decision would discriminate Pay TV operators against OTT providers and stifle competition, as it imposes additional obligations on Pay TV operators which will reduce the SQL's incentive to invest in its own OTT service. On the other hand, OTT providers are not subject to any obligations and can acquire exclusive content in a more dynamic and commercially rational manner. One respondent added that there are no justifications to impose the CCM on OTT platforms, as consumers can access exclusive content via OTT platforms using any Internet connection and without the need for special equipment or Pay TV subscription.

253. One other respondent provided feedback that the CCM denied copyright owners of the ability to authorise or prohibit certain parties from exercising certain exclusive rights and was not aligned with Singapore's obligations under the Berne Convention and the World Trade Organisation's ("**WTO**") Agreement on Trade-Related Aspects of Intellectual Property Rights ("**TRIPS**"). Under the Berne Convention's "three-step test" and the WTO's TRIPS, limitations or exceptions to exclusive rights of "communication to the public" are to be "confined…to certain special cases which do not conflict with a normal exploitation of the work", as distribution via exclusive carriage arrangements is a normal part of exploitation of live sporting events) and which "do not unreasonably prejudice the legitimate interests of the right holder".

IMDA's Assessment and Decision

254. IMDA is of the view that the requirement is unlikely to discriminate Pay TV operators against OTT providers, as IMDA is not seeking to extend CCM to OTT platforms but is concerned with cross-carried subscribers on the RQL's platform being forced to sign up for a subscription with the SQL, if a portion of the QC is offered exclusively on an OTT platform that is restricted to only the SQL's subscribers. IMDA's intent is to ensure that the subscribers on both the SQL and RQL platforms are treated in a non-discriminatory manner. The requirement will take effect only if a portion of the QC is restricted to only the SQL's subscribers and will not affect the SQL if the QC is cross-carried on the RQL's platform in its entirety, in a non-discriminatory manner.

255. With regard to the comment that the CCM denied copyright owners from certain exclusive rights, IMDA had set out its positions in the Second Consultation on

[16] Under the MMCC, Relevant Platform means a managed network over or using any one, or any combination, of Hybrid fibre-coaxial, Optical fibre, and the Asymmetric Digital Subscriber Line. Given the cessation of Hybrid fibre-coaxial, IMDA will remove Hybrid fibre-coaxial from the definition of Relevant Platform under the Code to reflect changes in broadcasting mediums.

the preliminary policy positions for CCM in the Pay TV market issued on 1 September 2010 and the Third Consultation on the implementation of CCM in the Pay TV market issued on 23 March 2011 that the CCM is not an exception, exemption or limitation to any forms of intellectual property right ("**IPR**") copyright. IMDA considers that there is no denigration as to the scope of exclusive rights that can still be exercised by IPR owners, as content owners may continue to sign exclusive arrangements with its preferred Pay TV retailer and the channel continues to be branded in its original form featuring the preferred Pay TV retailer's branding and commercials.

256. IMDA would like to reiterate that the intent of the CCM is to ensure that consumers continue to benefit from competition through measures such as competitive packaging and pricing, and service differentiation even if Pay TV operators were to acquire exclusive content rights. IMDA further notes that the Berne Convention and TRIPs Agreement do not constrain the ability of countries to adopt appropriate regulatory measures to prevent or control practices constituting an abuse of IP rights having an adverse effect on competition in the relevant market. In this regard, IMDA maintains its view that the CCM is fully consistent with Singapore's international obligations for Intellectual Property.

257. Given the above, IMDA will impose the requirement on SQLs who choose to offer only a portion of the QC on its Relevant Platform and the other portions of the QC on its OTT platform, to offer the cross-carried subscribers access to the QC on the SQL's OTT platform at the same prices and terms as those offered to the SQL's subscribers.

Anti-Siphoning Scheme ("Scheme")

258. Under Sub-section 2.6 of the MMCC, Pay TV operators are restricted from acquiring certain exclusive broadcast rights for programmes listed in the anti-siphoning list to increase the opportunities for viewers in Singapore to access programmes of public interest and national significance on FTA TV. The programmes on the anti-siphoning list are determined by the criteria set out in Sub-section 2.6.1.3 of the MMCC and are reviewed on a regular basis. Programmes on the anti-siphoning list are classified into two categories:

    (a) Category A programmes: Pay TV operators cannot acquire both the exclusive "live" and "delayed" rights to broadcast all or part of the programme; and

    (b) Category B programmes: Pay TV operators can acquire exclusive "live" rights, but not exclusive "delayed" rights to broadcast all or part of the programme.

259. In the Second Public Consultation, IMDA had indicated its decision to drop the proposal to introduce coverage obligations for the Category A or B programmes if FTA TV operators acquired exclusive rights to these listed programmes, in light of industry feedback received during the First Public Consultation that it may be too onerous to require the FTA TV operators to broadcast the entire event live or delayed given that some programmes under the anti-siphoning list (such as the Summer Olympic Games) could have more than 300 events, many of them taking place concurrently. The technical and production costs involved in broadcasting the entire programme would be non-trivial.

260. IMDA received one response requesting for IMDA to put in place a transparent and rapid process to make available the unused Category A / B programmes to other operators.

IMDA's Assessment and Decision

261. IMDA would like to clarify that IMDA has put in place existing processes which require FTA TV operators to make available unused exclusive broadcast rights for Category A / B programmes to other operators under Sub-section 11.5.2.2. of the Code.

262. In the First Public Consultation, IMDA received a suggestion to not use the term "anti-siphoning" as it has invidious connotations. IMDA had recommended retaining the term in the Second Public Consultation, as the term has been in use in Singapore for a long time and the industry is familiar with it. In addition, IMDA noted that the term "anti-siphoning" is used in overseas jurisdictions such as Australia.

263. IMDA has further deliberated on the suggestion and noted that most overseas authorities and jurisdictions, except Australia, had moved away from using the term "Anti-Siphoning". Hence, IMDA will revise the term to "**Mandatory Shared Programme**" in the Code.

264. In the Second Public Consultation, IMDA had indicated its proposed decision that it may be too onerous to require the FTA TV operators to broadcast the entire event live or delayed, even if the FTA TV operators had acquired exclusive rights to these the programmes under the anti-siphoning list. IMDA noted that there had not been any public feedback on the insufficient coverage of such events in the past. As such, IMDA will not proceed with its proposal to introduce coverage obligations for the Category A or B programmes if FTA TV operators acquired exclusive rights to these listed programmes. IMDA will continue to monitor public feedback and work with FTA TV operators to close potential gaps in programme coverage where necessary.

Designated Video and Newspaper Archive Operators

265. In the Second Public Consultation, IMDA noted that the national archive management role is currently performed by the National Library Board ("**NLB**") and the National Archives of Singapore ("**NAS**") (collectively known as "**NLB/NAS**"), and decided to remove Sub-section 2.5 of the MMCC which sets out the obligations of designated video and newspaper archive operators, and Sub-section 10.4(b), which allows Designated Video Archive Operators to request IMDA to provide conciliation services.

266. Respondents were supportive of the proposal to remove Sub-sections 2.5 and 10.4(b) of the MMCC from the Code.

IMDA's Assessment and Decision

267. IMDA notes that the industry is supportive of the decision and no further comments were made during the Second Public Consultation. Hence, IMDA will proceed with its decision to remove Sub-sections 2.5 and 10.4(b) of the MMCC from the Code.

PART IX: TELECOMMUNICATION INTERCONNECTION

268. In the Second Public Consultation, IMDA had taken the position to amend the interconnection regime to ensure that the interconnection frameworks continue to be relevant for the telecommunication markets. This is in line with the market's developments, where the general shift in the telecommunication landscape from traditional copper and hybrid fibre-coaxial-based networks to IP-based networks has seen increasing number of deployments and take-up of services on the NBN.

269. Given that these interconnection frameworks are applicable for telecommunication markets, but are not required for the media markets, IMDA will only apply these frameworks to the telecommunication markets in the Code.

Removal of Services from the Schedule of Interconnection Related Services and Mandated Wholesale Services

270. Pursuant to Sub-section 6.3.2 of the TCC, IMDA has specified under Appendix 2 of the TCC, a Schedule of IRS and Mandated Wholesale Services ("**MWS**") which a Dominant Telecommunication Licensee must offer to other telecommunication licensees under its reference interconnection offer.

271. In the Second Public Consultation, IMDA had indicated its proposed decision to remove the following services from the Schedule of IRS and MWS, as there has been no take-up of these services over the past 5 years and longer:

    (a) unbundled network elements, namely local loops, sub-loops, line sharing, distribution frame access and internal wiring[17];

    (b) unbundled network service, namely tail local leased circuits[18]; and

    (c) support facilities, namely co-location at roof sites[19],

    (collectively, the "**Services With No Take-up**").

272. One of the respondents submitted in the Second Public Consultation that it was supportive of the proposal which would be aligned with the IMDA's principle of proportionate regulation.

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[17] Specific to Singtel's Reference Interconnection Offer ("**RIO**") only, the relevant schedules that would be removed are: Schedule 3A – Licensing of Local loop/Sub-loop, Schedule 3B – Line Sharing, Schedule 3C – Sale of Internal Wiring, Schedule 3D – Licensing of Building MDF Distribution Frame and Schedule 3E – Licensing of Outdoor Cabinet Distribution Frame.

[18] Specific to Singtel's RIO only, the relevant schedule that would be removed is Schedule 4C – IRS Tail Circuit Service.

[19] Specific to Singtel's RIO only, the relevant schedule that would be removed is Schedule 5C – Licensing of Roof Space and Co-location Space at Roof Sites.

IMDA's Assessment and Decision

273. Considering that there was no objection from the respondents of the Second Public Consultation for this proposal, IMDA will remove the Services With No Take-up from the Schedule of IRS and MWS.

Relevance of Interconnection Related Services Regulated under the Code

274. Apart from the proposed removal of the Services With No Take-up, IMDA had also consulted in the Second Public Consultation on the relevance of the remaining services regulated under the Schedule of IRS and MWS, which a Dominant Telecommunication Licensee must offer under its reference interconnection offer. These services are:

    (a) Physical and Logical Interconnection;

    (b) Origination, Transit and Termination;

    (c) Essential Support Facilities; and

    (d) Unbundled Network Services,

    (collectively, the "**Regulated Services**").

275. A respondent submitted that it supported the continued regulation of the Regulated Services as some telecommunication licensees were still relying on the Regulated Services provided by the Dominant Telecommunication Licensee.

IMDA's Assessment and Decision

276. IMDA notes that the Regulated Services relate primarily to (i) voice traffic and network interconnection services which facilitate the deployment of an integrated ''network of networks'' that provide seamless any-to-any communications throughout Singapore; and (ii) access to "bottleneck" infrastructure (e.g., lead-in ducts) and emergency services.

277. IMDA thus agrees with the respondent that the Regulated Services comprising specific services set out in para 274 are still relevant and should continue to be regulated to ensure fair and reasonable access is provided by the Dominant Telecommunication Licensee.

278. Considering no further objection from the respondents of the Second Public Consultation for this proposal, IMDA will maintain its position to continue the regulation of the Regulated Services.

Validity Period of Reference Interconnection Offer

279. In the Second Public Consultation, IMDA had taken the position to extend the validity period of the reference interconnection offer to five years, instead of the current three years. This was in consideration that generally, the passive civil infrastructure and underlying technology required to provide the regulated services under the Dominant Telecommunication Licensee's reference interconnection offer, would unlikely change significantly and rapidly within short periods of time, and that the related infrastructure would generally have a long asset life, i.e., depreciates over a longer period.

280. Respondents did not object to IMDA's policy position to extend the validity period of the reference interconnection offer to five years instead of the current three years.

IMDA's Assessment and Decision

281. IMDA notes that in addition to regular review periods for Dominant Telecommunication Licensee's reference interconnection offer, IMDA may also conduct ad-hoc reviews on specific issues that may be outside of the regular review periods.

282. As no objection was received in the Second Public Consultation on this proposed change, IMDA will extend the review period and validity period of the Dominant Telecommunication Licensee's reference interconnection offer to five years.

Harmonisation of the Voice Termination Regime to Bill-and-Keep ("**BAK**") **and Change of Interconnection Charging Regime for Fixed Call Termination from Calling-Party-Pays ("CPP**") **to BAK**

283. Following the First Public Consultation, IMDA proposed to change the interconnection charging regime for fixed voice termination from CPP to BAK. This would allow for a harmonised interconnection charging framework for all domestic telephony services, which would be appropriate, given that these services would eventually be provided over IP-based networks which would be more cost efficient. A BAK approach would also help to ensure competitive neutrality between the incumbent fixed-line operator and other telecommunication licensees, including those providing voice and data traffic services delivered over the NBN or mobile networks. In consideration of the changes BAK will have on the industry, IMDA had proposed for a three-year

period for the industry to effect the change to BAK. For the avoidance of doubt, the three-year period would commence from the effective date of the Code.

284. In the Second Public Consultation, there were two respondents who provided comments to IMDA's proposal. The first respondent highlighted that any removal of charges for termination of international voice traffic would encourage undesirable forms of traffic into Singapore (such as fraudulent and "scam" traffic). The respondent therefore submitted that BAK should be implemented only between domestically originated and terminated traffic. The second respondent commented that the BAK model was inappropriate as there was still significant imbalance in the amount of traffic exchanged between operators today. This imbalance would result in distortions to competition in downstream markets and violate cost causation principle. The respondent also disputed that fixed call traffic was diminishing which could justify the transition.

IMDA's Assessment and Decision

285. IMDA would like to clarify that in the scenario described by the first respondent, the operator will not receive any compensation for calls terminating into their network only when it is through another local operator in a BAK regime. Given that the scammer/fraudster may not be able to choose the route to terminate its calls, it is inconclusive that a BAK regime will encourage more scam/fraudulent calls. IMDA disagrees with the second respondent that there is no decline of fixed line traffic. Fixed line traffic has reduced substantially over the past 10 years with the significant increase in mobile traffic. While IMDA agrees that traffic balance is important, IMDA is of the view that the diminishing fixed traffic minutes would mean that the potential impact of moving to a BAK regime will be significantly reduced moving forward, and therefore, the net loss/gain to operators will be reduced as well.

286. As most operators have already migrated their internal network to an IP-based network (except for the interconnection), the cost for terminating voice traffic is low except for interconnection. Having assessed and reviewed the responses, IMDA is of the view that it will be timely for BAK to come into effect once IP interconnection is fully implemented, which will be more cost efficient and effective for all operators. IMDA is already consulting the industry on the migration to an IP-Interconnection framework. This will allow more time for the entire industry for the transition to IP-based interconnection and for BAK to take effect thereafter, so that operators can plan and effect any necessary changes, as required in their network.

Implementation of IP-based interconnection

287. In the First Public Consultation, IMDA highlighted the need to review the interconnection regime to take into account the ongoing migration of services and End Users from traditional copper-based networks to IP-based networks. Given the growing volume of IP-based and VoLTE calls, IMDA would consider interconnection at the IP-level to be the new default, replacing the existing SS7 signalling. IMDA thus sought industry's views on implementing IP-based interconnection.

288. Respondents were broadly supportive of the proposed change to migrate to IP-based interconnection. Respondents were also broadly of the view that more assessment and technical discussions would be needed on the move towards IP-based interconnection.

IMDA's Assessment and Decision

289. IMDA agrees with the respondents that a separate in-depth review on the implementation of IP-based interconnection would be necessary to address the various technical, operational and commercial concerns before IP-based interconnection is mandated as the default in Singapore. Such concerns include identifying a common set of technical standards and specifications for IP-based interconnection in Singapore.

290. In view of industry's request, IMDA had, on 1 March 2021, issued a separate public consultation to review the implementation of IP-based interconnection in Singapore. Following the close of the said consultation, IMDA will review and assess the respondents' comments, and further engage the industry as necessary, before arriving at its decision.

Update of Principles Governing the Pricing of IRS, CSI and Essential Resources

291. In the Second Public Consultation, IMDA maintained its position on the broad principles for the choice of pricing methodology. In summary, IMDA proposed that the following broad principles should apply in assessing which pricing methodology is appropriate for the determination of prices: (a) the nature of the network element that is to be interconnected or accessed, i.e., passive civil infrastructure or active network elements, where there is greater interest to mitigate the inefficiency of past network and technology designs; (b) the contestability of the market segment where build-versus-buy incentives remain; and (c) the replicability of the network element and whether re-use would be encouraged. Based on the broad principles above, IMDA will adopt the pricing methodology that will be most suited or appropriate. The pricing methodologies that IMDA may adopt, but not limited to, are Historical Cost Accounting ("**HCA**"), Forward Looking Economic Cost ("**FLEC**") or Regulated Asset Base ("**RAB**").

292. IMDA received two responses to IMDA's proposal. One respondent agreed that there was a need to mandate access to IRS, CSI and Essential Resources. However, the respondent disagreed that HCA or RAB should be the appropriate costing methodology for network elements that are more passive and civil-based infrastructure in nature. The respondent submitted that adopting an HCA or RAB methodology might cause historical costs to fall to zero, which could then trivialise the actual costs incurred by the owner (including third-party costs) in deploying the infrastructure. Another respondent opined that RAB methodology was only appropriate for passive infrastructure that constituted a natural monopoly which was not contestable nor subject to any build-or-buy incentives. It would not be appropriate to apply to all passive infrastructure, including contestable infrastructure. The respondent also commented that FLEC methodology was more appropriate where there was contestability in a market segment or where a build-or-buy incentive existed. The respondent added that there would be significant costs incurred by the licensee to develop a new RAB which would outweigh any perceived benefits.

IMDA's Assessment and Decision

293. IMDA does not agree that adopting HCA or RAB trivializes the value of the passive and civil-based asset. For assets that are aged, the RAB methodology allows IMDA to assess and revalue the assets and to also review the economic life of the assets. RAB also allows full recovery of all costs incurred in building up the passive network.

294. Besides considering whether the passive infrastructure is a natural monopoly, IMDA will also assess whether the infrastructure could be either a bottleneck or critical support infrastructure where it would be difficult to replicate. For these assets which are of a passive and non-contestable nature, IMDA is of the view that RAB methodology is more appropriate because RAB methodology focuses on the recovery of actual incurred costs of passive infrastructure where technology for such passive and civil infrastructure does not change drastically in the short to medium term. For example, in Singapore, RAB methodology has been adopted for Netlink Trust's NBN to encourage the leasing of its fibre infrastructure instead of a competitive build. As for IRS which comprises mostly active equipment, e.g., voice services, a FLEC methodology could then be more appropriate because active network elements go through more frequent technological changes due to advancement of technologies and efficiency in cost. As such, adopting a FLEC methodology for active network elements reflects the costs of efficient modern equivalent assets, and provides the right incentive for competitive build.

295. IMDA also wishes to highlight that an RAB or RAB-based approach has been adopted by telecommunication regulators in other countries for telecommunication networks, particularly for establishing asset value that involves largely passive infrastructure that are not expected to change rapidly over time. For example, Australia and New Zealand have implemented a building block model for its RAB approach. In the UK, the regulator Ofcom defined an RAB to value civil infrastructure assets deployed prior to 1997. The EC had also issued a recommendation in 2013 that advised EU telecommunication regulators to adopt an RAB based approach to value existing assets (e.g. reusable civil assets) that are being reused for next-generation access networks. Since the recommendation was released, the approach has been adopted in several countries too.

296. Considering the above, IMDA is of the view that it is important that the pricing methodology should be adopted according to the specific type of network element that is being regulated, as well as the competitive and market outcomes that the regulatory policies seek to achieve. As such, IMDA will maintain and adopt its proposed broad principles on the choice of pricing methodology.

Administrative Changes

297. In addition to the above consulted sections, IMDA had, in the Second Public Consultation, outlined the following administrative changes to the drafting of the proposed Code:

(a) Appendix 1 of TCC: Update price review processes such as effecting of new prices within six months following IMDA's price review of regulated services, and revising the period between price reviews to five years with the option for a mid-term review;

(b) Section 7 of TCC: Provide clarity by specifying that an infrastructure can be designated as a CSI before it is constructed, or before its construction is completed; and

(c) Section 5.3(b) of TCC: Revision of requirement that Interconnection Agreements between two Non-dominant Licensees shall be submitted for IMDA's information (instead of seeking IMDA's approval). Within 21 days of the date of submission, should IMDA find any non-compliance with Minimum Duties in the submitted Interconnection Agreements, IMDA reserves the right to require licensees to modify the Interconnection Agreements to comply with Minimum Duties.

IMDA's Assessment and Decision

298. IMDA has not received any comments in the Second Public Consultation on the proposed administrative changes. Given that the administrative changes provide clarity to the regulatory requirements, as well as streamline the administrative processes in the Code, IMDA will implement these administrative changes.

PART X: ADMINISTRATIVE AND ENFORCEMENT PROCEDURES

299. This part of the document covers the Administrative and Enforcement procedures contained in Section 11 of the TCC and Section 10 of the MMCC.

Changes to Decision and Reconsideration Process

300. Under Sub-section 11.9.1 of the TCC, any person who is aggrieved by IMDA's decision or direction, may either request IMDA to reconsider its decision or direction, or appeal to the Minister directly. If the person remains aggrieved by IMDA's decision after the reconsideration process, he may submit an appeal to the Minister. In contrast, under Sub-section 10.6.2 of the MMCC, IMDA will first issue a preliminary decision, followed by draft decision, for licensees' comment before issuing its final decision. There is no process to request for reconsideration of IMDA's final decision under the MMCC. A person who is aggrieved by IMDA's final decision may appeal to the Minister directly.

301. IMDA noted that while the TCC and the MMCC differ in terms of process, the outcome is similar, i.e., under the TCC, Telecommunication Licensees are given opportunities to request for reconsideration of IMDA's decision before submitting an appeal to the Minister. Under the MMCC, persons are similarly given the opportunity to comment on IMDA's preliminary or draft decision before submitting an appeal. Hence, IMDA decided to align the process by removing the requirement for IMDA to issue preliminary and draft final decisions, and to introduce the reconsideration process for media-related decisions on competition and consumer protection matters. For the avoidance of doubt, there is no change in the process for IMDA's decisions on issues not pertaining to competition and consumer protection. For example, there will be no change to the process for issues related to media content regulation given that these fall under the Broadcasting Act, which has its own set of decision processes.

302. One respondent requested for IMDA to extend the submission timeline for reconsideration requests from 14 days to 21 days so as to give the industry more time and flexibility to make a considered request. Another respondent requested that IMDA aligns the process across the telecommunications and media sectors, as media-related decisions made outside of the Code are not subject to a reconsideration process.

IMDA's Assessment and Decision

303. As explained in the Second Public Consultation, IMDA is of the view that the 14-day timeline is sufficient for affected party(ies) to assess and seek a reconsideration on IMDA's decision or direction based on past experiences. Hence, IMDA will maintain its position to stay with the 14-day time to avoid

unnecessarily extending the process. A party may seek IMDA's approval to extend the submission timeline by up to seven days, where the party demonstrates good cause (sub-section 12.6.1.8 of Code).

304. IMDA will introduce the reconsideration process for media-related decisions on competition and consumer protection matters in the Code, given that the IMDA Act presently does not preclude such an approach. However, to the extent that any procedural inconsistencies may arise, the provisions of the IMDA Act will prevail over those in the Code.

Dispute Resolution

305. IMDA's dispute resolution process for Telecommunication Licensees is currently established under Sub-section 11.3 of the TCC, and further details are provided in a separate Telecom Dispute Resolution Guidelines ("**DR Guidelines**") document. Similarly, under the MMCC, IMDA has the discretion to provide dispute resolution in relation to the following disputes as described in Sub-section 10.4 of the MMCC. However, unlike the TCC, the detailed procedures for requesting dispute resolution are set out within the MMCC itself. IMDA decided in the Second Public Consultation to align the dispute resolution procedures for the telecommunication and media markets to the TCC approach under the Code and set out the details of dispute resolution in a separate guideline document. Sub-section 10.4(b) of the MMCC which provides for dispute resolution involving a Designated Archive Operator will also be removed. The changes to align the dispute resolution process are summarised in Table 6 below.

Table 6: Existing and Changes to Dispute Resolution Process

TCC and DR Guidelines	MMCC	Changes under the Code
Request for Intervention		
A Telecommunication Licensee that wishes to petition IMDA to resolve a dispute ("**Requesting Party**") must submit a written request for intervention and provide a copy of the Request for Intervention to the other Telecommunication Licensee ("**Other Party**"). The Other Party will be given five days to provide its	While TCC/DR provides a procedure for IMDA to determine if it should intervene, the MMCC does not specify such procedure but provides IMDA with general discretion to decide whether it will intervene to resolve the dispute.	IMDA had proposed to adopt the TCC approach, as this would provide Telecommunication Licensees with greater clarity on the approach that IMDA would take to resolve disputes.

comments on why IMDA should not intervene. Where IMDA decides to intervene to resolve the dispute, based on the submitted representations, the Requesting Party will be required to submit its written petition for dispute resolution.		
Submission of Petition		
The Requesting Party must submit to IMDA a written petition for dispute resolution ("**Petition**"). The Other Party will be given 15 days to submit its representation. IMDA may provide both parties an opportunity to submit two rounds of representation at its discretion. Each party will be given 15 days to submit its further reply.	Persons who fail to reach a voluntary agreement within 90 working days after the date on which a request to negotiate has been made may submit a petition for Dispute Resolution with IMDA. Respondent will have 15 working days from the date it receives the petition to respond.	<u>The dispute resolution process under the TCC and the MMCC are largely similar, except for the following</u>: 1 The timelines in TCC/DR Guidelines are stated in terms of "days" as opposed to "working days" under the MMCC. IMDA had proposed to adopt the TCC/DR Guidelines approach i.e., to use "days". This will ensure that applicable timelines are consistent with the IMDA Act and TA. 2 Under the MMCC, IMDA has the discretion to allow the person who made the request to submit the Petition within 90 working days after the request to negotiate. However, there is no such provision in the TCC/DR Guidelines. Under the Code, IMDA will have the flexibility to expedite the submission of the

		Petition. Under the TCC/DR Guidelines, IMDA has the discretion to allow the petition party and the respondent the opportunity to submit a second round of representation, as well as to grant an extension of up to seven days for both parties to submit their representations and may extend the time by which it may issue its decision. We note that these are not provided for under the MMCC. IMDA proposes to adopt the TCC approach so that respondents will have the chance to clarify on the other party's submission, and more time to gather the information required, where necessary.
Settlement Conference		
IMDA does not have the flexibility to set up a settlement conference.	IMDA has the flexibility of having a settlement conference to resolve outstanding dispute.	IMDA proposes to adopt the MMCC approach, and to retain the flexibility of setting up Settlement Conference in cases where having a Settlement Conference will help to resolve the dispute.

IMDA's Assessment and Decision

306. IMDA notes that no comments were submitted on the above changes, hence IMDA will proceed to align the dispute resolution procedures for the telecommunication and media markets under the Code and set out the details of dispute resolution in a separate set of guidelines.

Informal Guidance

307. Under the MMCC, any person under the jurisdiction of IMDA may approach IMDA to request for informal guidance regarding the application of any provision of the MMCC, such as whether a particular course of action would contravene the MMCC or IMDA's likely response to an application or request made pursuant to the MMCC. IMDA will provide such informal guidance at its discretion, and the informal guidance is non-binding on IMDA. There is no corresponding procedure under the TCC, although IMDA has been providing Telecommunication Licensees informal guidance on telecommunication regulatory matters in practice.

308. IMDA is of the view that there is merit in extending the informal guidance provisions under the MMCC to the telecommunication markets in the Code to provide players in the telecommunication industry an opportunity to seek informal guidance if they have genuine and substantial queries on the application of the Code. IMDA decided to prescribe the criteria and procedures for requesting informal guidance under the Code, and to apply the requirements and procedures stated in the MMCC to Telecommunication Licensees. No further comments were received on IMDA's decision on the matter.

IMDA's Assessment and Decision

309. IMDA notes that no comments were submitted and will proceed with the decision to extend the Informal Guidance provisions to the telecommunication markets. The requirements and procedures for requesting informal guidance under the MMCC will be prescribed under the Code and applied to the telecommunication markets. Entities that wish to seek informal guidance from IMDA should submit a written request to IMDA[20].

Structural Separation

310. IMDA recognised that any structural separation requirement imposed on an RP may impose significant costs and should only be exercised in very exceptional circumstances. To be consistent with the approach taken for the telecommunication industry, IMDA decided to remove IMDA's powers to impose structural separation on an RP under the MMCC, and to vest the powers with the Minister. The Minister will order structural separation of an RP only if he/she

[20] The written request should:
a) state that the person has a genuine and substantial question regarding the application of a provision of the Code to its specific factual situation;
b) demonstrate that the person's commercial interest would be directly and immediately affected by resolution of the question;
c) indicate the specific issues on which the person seeks guidance; and
d) contain all relevant available information.

considers it necessary in the public interest, and/or where existing and potential regulatory measures may be insufficient to enhance competition in the industry.

IMDA's Assessment and Decision

311. IMDA did not receive any comments and notes that there was no objection to this decision. That being said, as the process of enacting this change will involve making the necessary legislative changes to the IMDA Act, IMDA will not apply this change in the current version of the Code being issued and will only implement this via amendments to the Code after the respective changes to the IMDA Act have been made.

Request for Enforcement by a Private Party

312. Presently under Sub-section 11.4.1 of the TCC, any Telecommunication Licensee or End User that has been injured, or is likely to be injured, as a direct result of the contravention of any provision of the TCC by a Telecommunication Licensee, may submit a Request for Enforcement ("**RFE**") asking IMDA to take enforcement action against that Telecommunication Licensee ("**Party Requesting Enforcement**"). Once the RFE is accepted, the responding Telecommunication Licensee ("**Responding Licensee**") will have 15 days to respond to the RFE. Subsequently, the Party Requesting Enforcement and the Responding Licensee will each have 15 days to provide its further reply and final reply respectively on a sequential basis. IMDA will then seek to issue its decision within 60 days of receiving all necessary information.

313. In the Second Public Consultation, IMDA proposed to include an option for IMDA to dispense with giving both the Party Requesting Enforcement and the Responding Licensee the right to file its further reply and final reply respectively, for clear-cut situations where IMDA considers that it has all the necessary information to come to its decision. IMDA was of the view that this will benefit both the Party Requesting Enforcement and the Responding Licensee as it reduces their burden of having to file additional replies and expedite the entire RFE process by allowing IMDA to come to a decision earlier.

314. One respondent asked IMDA to clarify what situations it would deem as "clear-cut", as the proposal may potentially disfavour one party to the other. Another respondent supported IMDA's proposal but suggested that IMDA establish a clear process, such as the publication of IMDA's decisions in a timely and clear manner and allowing an injured third party to join or submit a RFE.

IMDA's Assessment and Decision

315. IMDA has considered the industry's feedback to its proposal. Given that the definition of "clear-cut" situation is dependent on the facts of the enforcement request, IMDA is of the view that having different processes may create uncertainty for both the Party Requesting Enforcement and Responding Licensee, who would prefer to have the opportunity to file its further replies. Hence, IMDA will not proceed with its proposal to include an option for IMDA to dispense with giving both the Party Requesting Enforcement and the Responding Licensee the right to file its further reply and final reply respectively.

316. On the suggestion to establish a clear process for RFE, IMDA would like to clarify that it has set out the process in the Code, specifically Sub-section 12.6.1.9 which provides that IMDA may request any person to submit additional information at any time during the course of the enforcement proceedings and Sub-section 12.6.1.11 of the Code on the timeline for issuance of IMDA's decision. IMDA will periodically review the Code to ensure that the process remains clear and relevant.

PART XI: COMPETITION IN A DIGITAL ECONOMY

317. Part XI of the Second Public Consultation outlined IMDA's views on the development of the digital economy, and the potential impact these developments may have on competition policy and regulation in general. IMDA did not propose any changes to the Code based on these developments, and did not receive any further comments in the Second Public Consultation on Part XI. Notwithstanding, IMDA remains committed to monitoring how these developments might affect the telecommunication and media markets and whether our regulatory frameworks could be dynamically applied within the context of the larger economic shifts and the broader regulatory environment going forward.

Changes in Business Models in the Digital Economy

318. In the First Public Consultation, IMDA noted that Singapore has ambitions to become a leading digital economy. Digitalisation can help businesses be more productive and expand into other markets, thereby providing more service choices for consumers at competitive prices. At the same time, digitalisation will alter market dynamics and change business models, which will have an impact on how firms choose to compete and grow. IMDA sought respondents' views on their digital economy experience and whether the business models are here to stay or likely to only remain in the short to medium term.

319. In the Second Public Consultation, IMDA noted the views on the increasing importance of digital markets and impact of digitalisation on competition in markets. Where there may be valid competition concerns, it is important to account for the new manners in which digital platforms compete in order to reflect actual competition dynamics in the market. This includes accounting for the multi-sided nature of such markets, the role of data, vertical relationships and scope economies amongst others. IMDA further noted that this may involve an updated interpretation of competition, moving beyond traditional price and output metrics. IMDA was of the view that the central focus on the impact of competitive restraint and consequent harm to consumers should remain the guidepost for competition assessments.

320. There were no further comments on this area arising from the Second Public Consultation. IMDA will continue to keep a close eye on the developments in business models in the digital economy and its impact on market competition.

Updating Competition Policy Frameworks for the Digital Economy

321. In the First Public Consultation, IMDA noted that a number of authorities have started to examine the digital economy related issues more comprehensively. In

the longer term, beyond this review of the Code, IMDA noted the need to consider the impact of digitalisation on competition in the telecommunication and media industries to ensure that the Code will remain fit for purpose as Singapore pursues its digital economy ambitions.

322. In the Second Public Consultation, IMDA noted that industry's views on the competition policy and philosophy to adopt in a digital economy were in line with IMDA's principles-based, pro-market approach. Respondents generally advocated a forward-looking posture to designing policy and regulations in a digital economy. This would require that sectoral regulators be nimble and agile in their approach to regulation. Regulation should be light-touch and neutral between traditional players and digital platforms. Other non-regulatory levers such as active industry engagement, increasing market transparency and literacy of consumers can also contribute to positive policy outcomes.

323. There were no further comments on this area arising from the Second Public Consultation. IMDA will continue to stay mindful of potential gaps in regulation that may emerge with new business models but also remain cognisant that regulatory interventions should not overly stifle innovation or distort markets. To this end, IMDA will continue to monitor developments to ensure that its frameworks and regulations remain fit for purpose in a digital economy.

Challenges to Traditional Competition Frameworks in a Digital Economy

324. IMDA sought views in the First Public Consultation on the key, traditional competition concepts that need to be reviewed and relooked in a digital economy in view of these observations:

(a) Digital platform markets, goods and services may be offered for free or at a heavily discounted prices for long periods, with firms recovering revenues from other sources, for example, advertising. This means that price or output may not provide an informative signal on market competitiveness. By the same note, revenue shares and turnover figures may not reflect true market dynamism and any such analysis would have to consider competition dynamics across multiple sides of a market.

(b) At the same time, online channels allow for rapid price changes as well as personalised pricing. This presents challenges to assessing competition issues such as predatory pricing that rely on price to costs comparisons. Price may well be zero or differentiated across users or time, making it difficult to make systematic comparisons. The relevant cost benchmark may also be less clear for an eco-system platform – it may be hard to attribute

common costs to a particular market or service given much of the cost might be argued to be common to the eco-system.

(c) These challenges associated with assessing price relative to costs (including for profitability analysis) will also pose challenges to defining relevant markets and assessing market power. More generally, dimensions of competition may increasingly shift away from price and output to other dimensions of quality – for example in relation to the level of data privacy offered, choice and investment.

325. IMDA noted in the Second Public Consultation that there was consensus that price and cost levels alone are not good benchmarks in markets where services are offered at a discounted rate or free. Instead, the increasing role of data, as an input to innovation and a key resource that may afford market power, was raised by several respondents to be particularly pertinent in digital platform markets. This reflects the multi-sided nature of these markets as well as the scope for digital delivery of services to adapt to personalisation or customisation of services. A number of respondents noted that while data portability affords consumers clearer rights to their data, data portability requirements on its own, is unlikely to go far enough to absolve market power from data dominance.

326. No further comments on this were received during the Second Public Consultation. IMDA recognises that the exact competition dynamic relevant to a market will need to be determined and assessed on a case-by-case basis. IMDA further notes that digital markets evolve rapidly, and new modes of competition will continue to emerge. IMDA will continue to engage the industry to better understand how new digital business models affect competition dynamics.

Policy Considerations in a Digital Economy

327. In the First Public Consultation, IMDA sought views on whether competition assessments should be overlaid with broader policy considerations in a digital economy and the relevant policy considerations to consider. IMDA noted that there may be other policy considerations associated with data and AI that overlaps but extends beyond competition concerns. This could include for instance, the broader public benefit from freer data flows on innovation; rights and returns to data; and establishing a 'Duty of Care' when using data to train AI models. Some of these policy postures could have pro-competitive effects but others might be at tension with improving competitiveness. This implies that considerations of data and AI in updates to competition policy may well benefit from a holistic consideration on the impact of other public policy objectives. IMDA recognised the importance of these complementary policies and for a coordinated approach to policy formulation.

328. IMDA noted in the Second Public Consultation that respondents were split in their views on broader policy considerations – a number of responses were for competition policy to focus solely on solving competition issues while some other responses consider that broader considerations relating to quality of news, innovation incentives, and certain economic agenda, are relevant considerations.

329. IMDA was therefore of the view that competitive markets can bring about a number of positive side effects, including a pro-innovation environment, productivity improvements, better data privacy standards. IMDA recognised that using competition policy to solve non-competition issues may lead to unintended consequences and risks the cause for intervention becoming less objective. No further comments were received on this.

330. Notwithstanding this, IMDA noted that competition assessments need to keep up with new modes of competition and possible (non-price-based) harms. Hence, IMDA will continue to study and evaluate the possible remedies that can target these harms and result in broader improvements beyond the impact on competition.

Early Regulatory Intervention in Data and AI Centric Business Models

331. IMDA noted in the First Public Consultation that a central feature of digitalisation is the explosion of data which has in turn helped propel AI as a key business driver. Data is likely to become a key factor of production as the use of AI becomes more pervasive. This may introduce 'data network effects' – data generated from consumption improves quality, scope and efficiency of monetisation, offering higher returns to investment, in turn attracting more users to a platform, creating a reinforcing feedback loop. This is over and above other network effects as well as scale and scope economies that may lend to larger platforms and more concentrated markets. This may have the effect of entrenching a first-mover advantage in technology platform markets, making a scale advantage enjoyed by an incumbent difficult to overcome. This may mean greater emphasis on early regulatory intervention, amongst others, while bearing in mind the need to continue to facilitate innovation. Given the above, IMDA invited views on whether there should be early policy or regulatory intervention in data and AI centric business models that lend to significant scale advantages.

332. In the Second Public Consultation, IMDA noted the views on the key role of data and how increasing use of AI is evolving the importance of data and first mover advantages in digital platform markets. This meant that any potential intervention should be justified and measured.

333. IMDA will continue to study the role of data and AI and explore the necessity of early regulatory intervention in data and AI-centric business models.

Capabilities and Toolkits Required to Assess Competition Dynamics in Digital Markets

334. Given the challenges to traditional competition framework, IMDA invited views in the First Public Consultation on the new capabilities and toolkits that would be necessary to assess competition dynamics in markets where data and AI are central. For instance, the application of an SSNDQ test to define relevant markets where the more familiar SSNIP test may not provide an accurate market definition. Recognising the increasing need to assess competition on non-price dimensions, the OECD led a roundtable discussion in June 2018 on non-price effects of mergers including the role of data protection in merger assessments.

335. IMDA noted in the Second Public Consultation that other than one respondent who commented that the role of big data in providing competitive advantages should be taken into consideration, no further comments were received.

336. IMDA notes that discussions on competition matters in the digital economy are evolving and remains of the view that no further changes are needed to the competition framework in the Code. IMDA will continue to monitor developments in this area and should changes to IMDA's competition framework in the Code be made, the public will be consulted at a suitable time.

SECTION III: CONCLUSION AND ISSUANCE OF THE CODE

337. Having given due consideration to the views and comments received during the First and Second Public Consultations, IMDA has finalised its policy positions to adopt in the Code. The finalised policy positions are reflected in the Code that is issued in conjunction with this closing note. The finalised Code will take effect **14 days** after the issuance of the Code.