



Alexander C Feldman  
President & CEO

**US-ASEAN Business Council**  
1101 17<sup>th</sup> Street, NW  
Suite 411  
Washington, DC 20036  
Tel 202-416-6713  
Fax 202-289-0519  
afeldman@usasean.org

10 May 2019

Aileen Chia (Ms)  
Deputy Chief Executive (Policy, Regulation & Competition Development)  
Director-General (Telecoms & Post)  
Infocomm Media Development Authority  
10 Pasir Panjang Road  
#03-01 Mapletree Business City  
Singapore 117438

**RE: Public Consultation on Proposed Converged Competition Code for Telecommunication and Media Markets**

Dear Ms. Chia:

On behalf of the US-ASEAN Business Council (“US-ABC”) and its members, I am writing to express our sincere gratitude to the Infocomm Media Development Authority (“IMDA”) and the Government of Singapore for the opportunity to participate in the public consultation on the Proposed Converged Competition Code for Telecommunication and Media Markets (“**Converged Code**”). We share the goal of the continued growth and development of the Singaporean economy and hope our comments will be helpful in the further development of the Converged Code and are incorporated in a meaningful manner.

We commend the Government for conducting a multi-stakeholder consultation process in the development of this important instrument. We are enthused by the Government’s efforts to promote competition, enhance consumer protection and improve regulatory clarity to incentivize the development of new and innovative consumer services, through the development of this proposed Converged Code. While we applaud the objective to ensure a consistent regulatory framework is applied the market, we would like to respectfully offer our recommendations to ensure that the Converged Code effectively achieves these aims. Please find attached to this letter an appendix with more detailed comments and recommendations on the Converged Code. **We respectfully request that IMDA and other relevant agencies consider these recommendations when reviewing the Converged Code.**

We thank you again for conducting an open and transparent consultation process as you seek to further develop an effective regulatory approach to ensuring the growth of the Singaporean economy through increased competition and innovation. We believe that there is abundant opportunity for industry and the Government of Singapore to work together on developing such an approach, and we look forward to further collaboration to ensure that Singapore remains an enabling environment for innovation and the growth of the digital economy. In particular, we look forward to hosting the 2019 ASEAN Multi-Stakeholder Dialogue in Singapore on May 16, which we believe will serve as an important platform to exchange views on service management and regulation in media and telecommunication markets.

Should you have any questions or need clarification on any of the points addressed, please do not hesitate to contact me directly at [afeldman@usasean.org](mailto:afeldman@usasean.org) or +1-202-375-4393, or contact Ms. Ella Duangkaew, US-ABC’s Manager for ICT, at [eduangkaew@usasean.org](mailto:eduangkaew@usasean.org) or +1-202-440-3642. Thank you for your time and consideration.

Sincerely,

Alexander C. Feldman

cc: His Excellency Ashok Mirpuri, Ambassador of the Republic of Singapore to the United States  
Ms. Stephanie Syptak-Ramnath, Chargé d'affaires, ad interim, U.S. Embassy in Singapore

*Enclosure*

## **PART II: MARKET OVERVIEW AND CONVERGENCE**

**We are supportive of the IMDA’s view that OTT services have had a positive impact in some of the key markets considered, and that the current regulatory approach remains largely relevant for the key markets in review.** We believe this approach will promote competition in the digital services, platforms and OTT media marketplace while also ensuring that necessary consumer protections are maintained. We also agree that re-evaluating the need for existing regulations is particularly important when considering whether to extend those regulations to new services, as IMDA has. The IMDA’s careful consideration in this regard is commendable and aligns with the views of other law and policymakers around the world.

Regarding the IMDA’s observation that “the take-up of OTT messaging and voice services has placed competitive restraints on traditional voice and messaging services such as SMS,” we note the Australian Competition & Consumer Commission’s (ACCC) recent finding that “[t]he emergence of OTT services has largely been a positive development for consumers,” including in that “[t]he entry of OTT voice and messaging services has . . . provid[ed] consumers with a low cost alternative [to traditional services], and likely influenced the movement towards unlimited call and message inclusions for relevant services.” See IMDA Consultation Paper at 11; ACCC, *Communications Sector Market Study (Final Report)*, at 32, 151 (Apr. 2018), available [here](#)<sup>1</sup>. The ACCC also noted that OTTs “provide[] consumers with new services (such as entertainment, social media, ride-sharing, shopping, etc.) and innovative alternatives to traditional communications services[.]” *Id.* at 151. **We agree and submit to the IMDA that the growth of OTT services has been a boon to consumers.**

**We are supportive of the IMDA’s view that the International Business Connectivity Markets (International Private Leased Circuits (“IPLC”)) and the international Managed Data Services (IMDS) are largely competitive and the current regulatory approach whereby *ex ante* dominant licensee obligations are not applied in the markets can be maintained.** However we would like to mention that IMDA may review the regulatory and compliance reporting obligations for Facility Based Operators (FBOs) to ensure the framework remains light touch and does not stifle innovation and investments.

## **PART III: REGULATORY PRINCIPLES**

IMDA has proposed to harmonize the regulatory principles of the TCC and MMCC by merging the various provisions while retaining the regulatory principles on promotion of facilities based competition for the telecom market only. There needs to be a periodic review of the terms and conditions under which Facilities Based Operations (FBO) Licenses operate towards regulatory simplification and align with market realities. The terms should be suitably reviewed to remove any restrictive regulatory requirements that may inhibit the ability to effectively compete and operate in the market. FBOs have to make substantial investments to build, maintain and support the underlying infrastructure for provision of the services therefore an enabling regulatory framework is key to continued innovation and investment.

We further support IMDA’s view that there continues to be a need to monitor the wholesale and resale tariffs provided by dominant licenses as they operate facilities that are sufficiently costly or difficult to replicate by other licenses. This will ensure non-discriminatory and equal access to the bottleneck facilities, thereby promoting healthy completion in the market.

## **PART VI: CONSUMER PROTECTION PROVISIONS**

We strongly affirm that OTT services increase consumer choice, productivity, and innovation and give local businesses and content creators access to a global customer base. This ultimately expands Singapore’s creative industry as well as overall economy. Prescriptive regulation for this industry could limit the online applications and services available to Singapore’s users and businesses, which would negatively impact the economic potential of its citizens and Singapore’s competitiveness in the digital economy and overall economic growth. Keeping the Internet open, decentralized, and free of barriers is critical to helping Singaporean businesses remain competitive in today’s increasingly digital economy.

---

<sup>1</sup>[https://www.accc.gov.au/system/files/Communications%20Sector%20Market%20Study%20Final%20Report%20April%202018\\_0.pdf](https://www.accc.gov.au/system/files/Communications%20Sector%20Market%20Study%20Final%20Report%20April%202018_0.pdf)

We therefore strongly support IMDA’s proposal to “retain its light-touch approach to the OTT media landscape”, which we agree will provide OTT TV and content providers “greater flexibility to innovate and compete”, to the benefit of consumers. See IMDA Consultation Paper at 46 (Section 6.8). We note that the online video marketplace is diverse and evolving – comprising providers of subscription video on demand (VOD), free VOD, platforms for user-generated content, and other revenue and business models. This implies that regulation deemed necessary for certain services may be ill-suited for other applications or providers. To the extent that any regulation of online apps and services is considered necessary, we must ensure that any rules or policies implemented do not stifle innovation or competition, while also protecting and promoting consumer interests.

**In particular, legacy telecommunications and broadcasting rules should not be automatically extended to OTTs; rather, the legacy telecommunications regulations should be suitably reviewed to remove unnecessary barriers to the service offerings of the telecommunication services provider by offering a lighter touch regulatory framework that enables innovation and competition to the benefit of the consumers.**

Broadcasting services and online video services are similarly distinct. Terrestrial Broadcasters deliver service to customers using spectrum, a valuable and regulated resource. As spectrum is limited, the number of broadcasters that can operate in any market is also necessarily limited. By contrast, the high capacity of broadband networks and global nature of the Internet means that a virtually unlimited number of competing providers can deliver digital content and applications to customers online.

Broadcasting regulations were also designed for traditional, linear services broadcast over universally-receivable terrestrial frequencies on which consumer choice in content is limited. For online video apps, particularly video on demand, users are in control and can consume the content they want anytime, anywhere. Parental controls help assure that adults make the content choices for respective households.

**Globally, many law and policymakers recommend a cautious approach to the extension of existing telecom and broadcasting regulation to online applications and instead encourage consideration of opportunities to deregulate traditional services.**

- For example, in a joint letter to the European Commission (EC) regarding the reform of the European Union’s telecoms framework, **the governments of 10 European countries cautioned against “automatically extending” regulation to online apps, urging the EC to “consider deregulation of traditional telecoms services.”** See Joint Letter from Belgium, Czech Republic, Denmark, Estonia, Ireland, Finland, Lithuania, Poland, Sweden, United Kingdom to Vice-President Ansip and Commissioner Oettinger, European Commission, at pp. 1-2 (2016), available [here](#)<sup>2</sup>.
- Similarly, **the Nordic National Regulatory Authorities recommended “a cautious approach to regulation” of online apps** and that “possibilities to simplify, modernize and lighten existing regulation should be pursued.” Nordic NRAs, The EU telecommunications legislation for the Digital Single Market, The Nordic NRAs’ viewpoints (July 4, 2016), available [here](#)<sup>3</sup>.

**Regulators and lawmakers are also actively reconsidering existing broadcast regulatory frameworks in light of changes in the marketplace.**

- For example, Hong Kong’s Commerce and Economic Development Bureau (CEDB) has initiated a review of its broadcasting regulatory framework “with the aim of relaxing obsolete statutory requirements.” See Hong Kong Commerce and Economic Development Bureau, *Review of Television and Sound Broadcasting Regulatory Regimes*, Consultation Paper, at 15 (Feb. 2018) available [here](#)<sup>4</sup>. **The CEDB did not propose to extend existing obligations for traditional audiovisual services to online apps** in part because “[t]hrough OTT and other Internet TV and radio programme services are gaining their prominence, traditional media . . . are still highly pervasive and accessible to all in the family, young and old.” *Id.* at 46.

<sup>2</sup>[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/496221/Joint\\_letter\\_to\\_the\\_Commission\\_270116\\_Electronic\\_Communications\\_Framework\\_Review.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/496221/Joint_letter_to_the_Commission_270116_Electronic_Communications_Framework_Review.pdf)

<sup>3</sup>[https://erhvervsstyrelsen.dk/sites/default/files/media/nordisk\\_positionspapir\\_juli\\_2016.pdf](https://erhvervsstyrelsen.dk/sites/default/files/media/nordisk_positionspapir_juli_2016.pdf)

<sup>4</sup>[https://www.cedb.gov.hk/ccib/eng/paper/pdf/BOTOREview\\_1%28eng%29.pdf](https://www.cedb.gov.hk/ccib/eng/paper/pdf/BOTOREview_1%28eng%29.pdf)

- In October 2017, the Australian Parliament enacted broadcasting reform legislation that in part eliminated media control and broadcast audience reach restrictions and was intended to “improve the sustainability of Australia’s free-to-air broadcasting sector” and “reform[] outdated media regulation . . . to better reflect the contemporary digital media environment.” See Parliament of Australia, *Broadcasting Legislation Amendment (Broadcasting Reform) Bill 2017*, Summary (2017), available [here](#)<sup>5</sup>; The Parliament of The Commonwealth of Australia House of Representatives, *Broadcasting Legislation Amendment (Broadcasting Reform) Bill 2017 Explanatory Memorandum*, at p. 2 (2017), available [here](#)<sup>6</sup>.
- In November 2017, the US Federal Communications Commission (FCC) eliminated and revised several of its broadcast ownership rules to “reflect the present, not the past” of the media landscape. The FCC concluded that updating those rules – which principally limited a single entity’s ownership of multiple media outlets – would afford broadcasters and local newspapers “a greater opportunity to compete and thrive in the vibrant and fast-changing media marketplace.” See FCC, *2014 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996 et al.*, MB Docket No. 14 et al., Order on Reconsideration and Notice of Proposed Rulemaking, at ¶ 1 (Nov. 20, 2017), available [here](#)<sup>7</sup>.

## **PART IX: PUBLIC INTEREST OBLIGATIONS**

Concerning the **Cross-Carriage Measure (“CCM”)**, see IMDA Consultation Paper 69, Section 9.2, **we highly recommend that IMDA remove the code’s provision applying CCM to all content in Singapore.** We strongly believe that this measure, which would essentially be a ban on the exclusivity of content in Singapore, is excessive and violates the internationally-guaranteed rights of content owners to exclusively authorize or prohibit the use of their content. International treaties to which both Singapore and the United States are parties require that abridgement of content owners’ rights may take place only in certain special cases which do not conflict with a normal exploitation of the work.

Indeed, the application of the existing CCM across-the-board to all genres of content has already had a negative impact on content providers inside and outside the country. It has resulted in the distortion of contractual negotiations and the virtual elimination of exclusive carriage – except for a very small number of the highest-value sports events – in Singapore’s television industry. Such a sweeping policy is not employed in any other developed country.

**While we respectfully encourage the Government to review the issue with a view to eliminating the impact of this system across non-sensitive parts of the content ecosystem, we also strongly urge IMDA to ensure that the CCM is not applied to online content.** Given the evolving business models of online content providers, and the fact that the Internet is already essentially available to everyone in Singapore, there is no risk of market fragmentation, and thus no rationale for applying the provision to online content.

## **PART X: TELECOMMUNICATION INTERCONNECTION:**

### **Physical and Logical Interconnection:**

We support IMDA’s view to continue to mandate the Dominant Licensee to offer Physical and Logical Interconnection, which is a critical piece of connectivity, to ensure equal access to bottleneck facilities on a competitive basis. With the migration of legacy networks to IP-based networks, IMDA may wish to consider a policy approach to ensure essential support services and network services are offered on competitive basis.

We appreciate IMDA’s view that regulation of the origination, transit and termination (O/T/T) services is still necessary, including price regulation on Dominant Licensee through the Reference Interconnect Offer (RIO) to ensure a level playing field. IMDA may also consider a periodic review of the associated cost related to offering of the services such as the Fixed Number Portability Charges paid by the operators to ensure they remain competitive and cost oriented.

<sup>5</sup> [https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bId=r5907](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r5907)

<sup>6</sup> [http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5907\\_ems\\_978e8b30-1d13-4ced-bfc2-428f25095021/upload\\_pdf/636053.pdf.fileType=application%2Fpdf](http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5907_ems_978e8b30-1d13-4ced-bfc2-428f25095021/upload_pdf/636053.pdf.fileType=application%2Fpdf)

<sup>7</sup> [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-17-156A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-156A1.pdf)

**Essential Support Facilities**

We agree with IMDA's view that access to lead in facilities is important to ensure fair and efficient competition amongst licensees particularly for bottleneck facilities. In this regard, we would further ask IMDA to consider reviewing the existing regulatory framework in relation to the recovery of cost incurred by a FBO due to a diversion at the behest of third party requester. The diversion works are labor intensive and entail significant cost that needs to be incurred. Therefore, such additional cost at the behest of the third party should in fact be borne by the requester entity to ensure fair play, transparency and avoidance of imposition of additional cost on the pipeline/fiber owner, thus making their business less financially viable and competitive.

**PART XII: COMPETITION IN A DIGITAL ECONOMY**

The digital economy is highly-competitive. With low barriers to entry and constant multi-homing by users, new companies are able to enter the market and disrupt existing companies and business models. The history of the digital economy has shown that companies viewed as successful today may lose significant market share tomorrow.

The fierce competition in the digital economy benefits consumers: companies compete aggressively to build innovative new products and to develop new business models that will be compelling in this rapidly-evolving market. Companies recognize that a failure to innovate will leave them susceptible to disruption by new entrants.

Given the dynamic competition in the market, competition authorities should not intervene in the absence of serious evidence of potential and actual harm to competition. For instance, whether data may be a source of market power (*see* IMDA Consultation Paper at 94) should be considered on a case-by-case basis based on the specific circumstances. Enforcement in the absence of such evidence could greatly stifle the constant, rapid innovation of this dynamic industry, harming both consumers and businesses. In light of Singapore's aspirations in the digital economy and Smart Nation, we encourage IMDA to continue to adopt a light-touch regulatory approach in Singapore.