Submission to IMDA

Singtel's response to IMDA's Second Public Consultation on the Draft Code of Practice for Competition in the Provision of Telecommunication and Media Services

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1. Executive summary

Introduction

- Singtel Group (**Singtel**) welcomes the opportunity to respond to the IMDA's second consultation paper on the *Draft Code of Practice for Competition in the Provision of Telecommunication and Media Services* (**Draft Converged Code**).
- The Draft Converged Code contains a number of improvements over the current regulatory framework set out in the *Code of Practice for Competition in the Provision of Telecommunication Services 2012* (**TCC**) and the *Media Market Conduct Code* (**MMCC**).
- However, Singtel remains concerned about several aspects of the Draft Converged Code, which would result in regulation that does not reflect the significant evolutions in Singapore's telecommunications and media sectors since 2000, does not accord with the stated objectives of the Draft Converged Code and is not in line with international regulatory practice.
- Singtel has provided submissions on these specific areas of concern below.

Threshold for initial presumption of SMP

- Singtel considers that market share should not constitute a rebuttable presumption of significant market power (**SMP**) but should instead be treated as one factor used to establish SMP, considered equally alongside other relevant factors. While Singtel agrees that market share is relevant to the SMP analysis, it provides an incomplete and imperfect indicator of market power, particularly in highly dynamic telecommunications and media markets. An SMP presumption threshold based on market share would therefore distort the SMP analysis, by treating market share as more important than other equally relevant factors, such as market structure, evolutions in market share, barriers to entry and countervailing buyer power.
- Even if the IMDA were still inclined to adopt an SMP presumption based on market share, the IMDA's proposed SMP presumption threshold of **50%** is not consistent with the approach used in the general economy and is not justified by reference to the specific characteristics of telecommunications and media markets. The IMDA's proposed SMP presumption threshold of 50% market share should be revised to 60%. This would bring the Draft Converged Code in line with the approach used by the Competition and Consumer Commission of Singapore (**CCCS**) in the general economy, which uses a 60% threshold as being likely to indicate dominance in a market. The CCCS also acknowledges that market share should only be one factor in

the dominance analysis. Market share should then be considered equally with all other SMP factors, rather than constituting a rebuttable presumption of SMP.

"Market-by-Market approach" to dominance

- Singtel supports a market-by-market approach to assessing dominance, but the IMDA's proposal represents the effective continuation of the existing "Dominant Entity" approach and is not a true market-by-market approach. The IMDA's proposed approach is not fit-for-purpose, distorts competition and hinders innovation in Singapore's telecommunication sector and is ultimately contrary to the interests of end-users and the growth of the digital economy.

- The IMDA's proposed approach would continue subjecting licensees to dominance duties in respect of all their existing services, without having conducted any updated market-by-market reviews. Moreover, the majority of innovations in the telecommunications and media sectors typically occur in *existing* markets rather than creating entirely new markets. This means that the bulk of innovative new services in the future are still likely to be subject to the existing "Dominant Entity" approach, thereby defeating the IMDA's objective of encouraging Dominant Entities to innovate and compete with respect to new services.

- Continuing to apply the Dominant Entity approach to existing markets does not reflect the very significant evolutions in the telecommunications sector that have taken place since the Dominant Entity approach was first introduced in 2000. Under the industry structure created by the government-subsidised Next-Generation National Broadband Network (**NGNBN**), different licensees now exert market power at different layers of the supply chain. This calls for a different approach, where dominance is assessed separately and specifically in respect of each individual market. It is no longer appropriate to subject Singtel to dominance duties in respect of all existing markets in which it operates.

- The effective continuation of the Dominant Entity approach is also not in line with the stated goals of the Draft Converged Code. Such an approach creates significant economic distortions, by imposing dominance duties on an entity even if such an entity does not in practice have significant market power in a given market. This approach ultimately fails to promote the efficiency and competitiveness of the sector and hinders incentives for Dominant Entities to innovate and invest in the sector, to the detriment of Singapore's economy.

- The IMDA's proposed approach would place Singapore out of step with international regulatory practice. In other comparable jurisdictions, such as the European Union, Australia and Malaysia, dominance duties are only applied following a periodic

review of each specific market. Such reviews take place every 3 to 5 years, to ensure that dominance designations remain fit-for-purpose.

- In line with these approaches, Singtel strongly recommends that the IMDA adopt a true market-by-market approach under the Draft Converged Code. This would involve conducting new reviews of each market and only imposing dominance duties on licensees on the basis of such reviews. Dominance designations should then be reviewed on a periodic basis to ensure that they keep up with evolutions in market structure and competition in the sector.

- A shift to a true market-by-market approach would not impose a significant administrative burden on the IMDA. Other best-practice regulators, in Australia, Malaysia, the European Union, United Kingdom and beyond, regularly conduct market-by-market reviews in the telecommunications and media sectors without any issues. This model is workable, tested by international regulatory practice and should be readily adopted by the IMDA under the Draft Converged Code.

Tariff filing obligations

- Retail tariff approval and notification requirements are an anachronistic feature of the regulatory framework and are no longer relevant or appropriate given the substantial transformations that have occurred within the telecommunications sector in Singapore over more than 20 years. In any case, the IMDA has approved almost all the tariffs submitted by Singtel and the requirement to submit tariffs, whether for approval or notification, imposes an unnecessary administrative burden on a Dominant Licensee for no discernible benefit. Such obligations have been abolished in all major jurisdictions with economic features similar to Singapore.

- More specifically, Singtel makes the following recommendations:

  - The proposed notification obligation for new and modified non-basic retail tariffs should be replaced by a self-publication obligation (where a licensee would be required to publish tariffs on its website). This would deliver the same transparency benefits as a notification obligation, while imposing a much lower regulatory burden on licensees.

  - The approval obligation for the withdrawal of non-basic retail tariffs should be replaced by a customer notice obligation. The IMDA has not provided any justification for why withdrawal of non-basic retail tariffs should be treated differently to introduction or modification of such tariffs. Moreover, there is no meaningful basis for subjecting *non-basic* services to a withdrawal approval requirement, as such tariffs do not relate to services where there is a specific social policy rationale for tariff regulation.

- The IMDA's proposal to maintain wholesale and resale tariff approval requirements is also unjustified. The wholesale and resale tariff approval requirements apply in an overly broad manner, including to competitive wholesale services supplied to sophisticated wholesale customers, namely other licensees. These services and customers are not in need of regulatory protection in the form of IMDA tariff approval.

Cross-Carriage Measure

- Singtel considers that the Cross-Carriage Measure (**CCM**) should be removed from the Draft Converged Code. The CCM does not respond to any demonstrable regulatory need. This measure is no longer required given the substantial changes that have occurred in the media sector, including the rise of OTT content platforms and the greater flexibility they allow for end-users to access exclusive content. The high costs, limited take-up and regulatory burdens of the CCM outweigh any marginal benefits it provides. Further, CCM is declining in significance with take-up declining substantially, in contrast to the same content on OTT platforms where take-up has grown substantially in the past two (2) years.

- The IMDA's proposal to restrict the CCM to live content is not workable in practice and illustrates broader implementation challenges with the CCM. In the event that an SQL acquires exclusive content, it would typically be on an "entire channel" basis, incorporating both live and non-live content. Applying the updated CCM to live content only would not be possible in practice, particularly as SQLs do not generally have the rights to unbundle live content from non-live content within a channel and make it available as a separate content stream.

- The CCM should not be expanded to cover Qualifying Content (**QC**) offered over the OTT platforms of SQLs:

  - Such expansion (which would not apply to the OTT platforms of international non-licensees) would further disadvantage Singapore licensees in the OTT market, despite large international players such as Netflix and Amazon holding the predominant share in this market.

  - Expanding the CCM to SQL OTT platforms is also entirely unnecessary. End-users are already able to access exclusive content hosted on OTT platforms by subscribing directly to such platforms, which is generally open to anyone with an Internet connection. Such direct access is typically more cost-effective and provides additional technical functionality to end-users (e.g. the ability to stream content across multiple devices), as compared to accessing such content via the CCM.

Interconnection-related obligations

Access to submarine cable landing stations

- Access to submarine cable landing stations should be designated as Critical Support Infrastructure (**CSI**) under the Draft Converged Code, rather than being an obligation that only applies to Dominant Licensees.
- Submarine cable landing stations are 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 facilitate connectivity to a submarine cable system. Symmetrical regulation of such access (via the CSI regime) would enhance competition in respect of international connectivity services and associated domestic backhaul services. Access to submarine cable landing stations also meets all of the CSI criteria in section 7.3.1 of the Draft Converged Code.
- If the IMDA does not accept Singtel's submissions above and considers that access to submarine cable landing stations should not be designated as CSI, then Singtel submits that submarine cable landing stations should be removed from the IRS Schedule. There is no logical basis for regulating access to only some submarine cable landing stations, but not all, submarine cable landing stations.

Charging model for fixed voice termination

- The IMDA should continue applying a calling-party-pays (**CPP**) model in relation to fixed voice termination, rather than transitioning to a bill-and-keep (**BAK**) approach.
- Termination charges should reflect the cost causation principle (i.e. the party that causes another party to incur a cost should bear that cost). The CPP model gives full effect to this principle, by ensuring that the originating party compensates the terminating party for the costs incurred by the terminating party in terminating the originating party's call.
- In Singapore, there remain significant traffic imbalances between smaller and larger operators in relation to, for example, fixed voice termination. In 2020, Singtel terminated [start c-i-c] [end c-i-c] more external traffic on its network than the amount of Singtel traffic terminated on other operators' networks.
- Applying a BAK methodology is entirely inappropriate in these circumstances and would violate the cost causation principle. A BAK model applied in these circumstances would require Singtel to bear a disproportionate share of the costs of termination without being compensated for such costs by the operator causing such

costs to be incurred. A BAK approach would also provide a windfall gain to smaller operators, which would distort competition in downstream markets.

- In the current circumstances, a BAK approach does not represent a fair and reasonable approach to dealing with the costs of termination. Such approach would also conflict with the stated objectives of the Draft Converged Code to promote fair and efficient market conduct and effective competition in the telecommunications sector.

Cost model for contestable passive infrastructure

- The IMDA should continue applying a forward-looking economic cost (**FLEC**) methodology for contestable infrastructure.

- While a Regulated Asset Base (**RAB**) approach may potentially make sense when applied to natural monopoly infrastructure (such as the government-subsidised passive network of NetLink Trust (**NLT**)), it is inappropriate in the case of passive infrastructure that is replicable, contestable and subject to build-or-buy incentives. For example, Singtel's passive infrastructure are contestable and replicable, with access seekers having a competitive choice between acquiring access to Singtel's infrastructure, acquiring access to competing NLT infrastructure or building their own infrastructure.

- The IMDA should therefore clarify in section 2.2.2 of the Draft Converged Code that a FLEC methodology is more appropriate in relation to passive infrastructure that is contestable or replicable.

2. Threshold for initial presumption of SMP

2.1 Market share as one factor in determining SMP, rather than being presumptive of SMP

1 Singtel disagrees with the IMDA's view that there should be an "*SMP Presumption Threshold*", which involves treating market share of 50% as a "*rebuttable presumption*" of SMP under the Draft Converged Code.[1]

2 While Singtel agrees that market share is a relevant factor when assessing SMP, this should be treated as only one factor used to establish SMP, considered equally with other factors such as market structure, barriers to entry and countervailing buyer

[1] IMDA, Second Consultation Paper, [33].

power. In contrast, the presumption approach favoured by the IMDA would involve assigning greater weight to market share over other equally relevant factors and would effectively transform market share into the primary factor for assessing SMP. In Singtel's view, the presumption approach is likely to distort the SMP analysis, by focusing unduly on market share at the expense of other equally relevant factors and discouraging a holistic, balanced analysis of all SMP factors.

3 Assigning greater weight to market share than other equally relevant factors is not supported by reference to the economic basis for assessing SMP. The assessment of SMP is fundamentally concerned with identifying whether an entity is able to act independently of its competitors, customers and the competitive process.[2] There is nothing in the underlying economic theory of SMP that requires giving market share the status of a rebuttable presumption. Indeed, determining whether an entity is able to act independently of the competitive process requires looking broadly (and equally) at all relevant factors, including the overall level of concentration in the market, evolutions in market share over time, barriers to entry and countervailing buyer power. An entity's market share at any given point in time provides only a very limited picture of whether that entity has SMP, particularly in dynamic telecommunications and media markets where market shares may change rapidly over time and there is a significant threat of future innovative market entry. Accordingly, using an SMP presumption based on market share creates a risk of "over-diagnosing" SMP.

4 An SMP Presumption Threshold based on market share is also inconsistent with the approach used by the Competition and Consumer Commission of Singapore (**CCCS**) in the general economy. In its Guidelines on the Section 47 Prohibition, the CCCS specifically mentions that *"[t]here are no market share thresholds for defining dominance under the section 47 prohibition*".[3] The CCCS also acknowledges that market share should only be one factor in the dominance analysis, as "*[m]arket shares, by themselves, may not necessarily be a reliable guide to market power*".[4]

5 Accordingly, Singtel submits that the IMDA should not adopt an SMP Presumption Threshold based on market share and should instead treat market share as merely one factor in the SMP analysis (alongside other equally relevant factors).

2.2 Quantum of SMP Presumption Threshold

6 As mentioned above, Singtel does not consider that the IMDA should adopt an SMP Presumption Threshold. However, even if the IMDA were still inclined to adopt such

[2] See, for example, CCCS, *Guidelines on the Section 47 Prohibition 2016*, [3.3].
[3] CCCS, *Guidelines on the Section 47 Prohibition 2016*, [3.5].
[4] CCCS, *Guidelines on the Section 47 Prohibition 2016*, [3.7].

an approach, the IMDA's proposed SMP threshold of **50%** is not consistent with the approach used in the general economy and is not justified by reference to the specific characteristics of telecommunications and media markets.

7 In sectors other than telecommunications and media, the Competition and Consumer Commission of Singapore (**CCCS**) considers a **60%** market share as being *"likely to indicate that an undertaking is dominant in the relevant market"*.[5] Singtel considers, if the IMDA is inclined to adopt an SMP Presumption Threshold, then, consistent with the CCCS, a 60% threshold should be used for the telecommunications and media markets under the Draft Converged Code.

8 The IMDA has not specifically analysed or provided justifications for why a different SMP threshold is warranted for the telecommunications and media markets when compared to the general economy. Lower SMP thresholds for certain sectors are typically only warranted where there are very specific competition concerns within a given sector, including a long-term absence of competition or the presence of structural factors that encourage concentration and that may prevent competition from emerging in the future. This is not the case for either the telecommunications or media sectors in Singapore.

9 In both sectors, competition has significantly increased in the past 20 years. Indeed, the IMDA's Second Consultation Paper itself acknowledges "*the increased competitiveness of the telecommunication markets and the continued shift in competition dynamics*".[6]

10 In the media sector, there is also no evidence of a weakening in competition or of the emergence of structural factors that encourage concentration. In its Second Consultation Paper, the IMDA suggests that a 60% SMP threshold for the media markets was adopted in 2007 due to there being "*few key players in the mass media services markets then*".[7] Since 2007, the nature of competition in the media markets has evolved significantly, due to the factors such as the rise of OTT content providers (including large international competitors such as Netflix and Amazon) and increasing convergence between media and telecommunications sectors. This *increased* competition within the media markets means that there is no sound basis for *reducing* the SMP threshold from 60% under the MCC to 50% under the Draft Converged Code.

11 Accordingly, Singtel does not consider that the IMDA should adopt an SMP Presumption Threshold, where a particular market share becomes presumptive of

[5] CCCS, *Guidelines on the Section 47 Prohibition 2016*, [3.8].
[6] IMDA, Second Consultation Paper, [31].
[7] IMDA, Second Consultation Paper, [32].

SMP. If the IMDA is still inclined to adopt an SMP Presumption Threshold, Singtel submits that the IMDA should adopt a 60% market share threshold as being likely to indicate SMP. This factor should then be considered equally with all other SMP factors, rather than constituting a rebuttable presumption of SMP.

3. "Market-by-Market" approach to dominance

12 Consistent with Singtel's long-held view, we strongly support a genuine market-by-market approach to assessing dominance. However, Singtel continues to have significant concerns regarding the IMDA's proposal to carry over existing dominance designations in existing telecommunication markets and to only apply the "Market-by-Market" approach to new services supplied in new telecommunications markets.

13 Singtel considers that the IMDA's proposed approach:

- does not represent a true Market-by-Market approach and does not constitute a meaningful improvement over the current dominance framework;
- would practically result in the continuation of the existing "Dominant Entity" approach and does not reflect the significant evolutions in competition within existing markets since the "Dominant Entity" approach was first introduced over 20 years ago; and
- is significantly out of line with regulatory principles and international regulatory practice.

3.1 The IMDA's proposed approach is not a true Market-by-Market approach and does not constitute a meaningful improvement over the current framework

14 The effect of the IMDA's proposed approach would be that existing dominance designations under the TCC remain in place in respect of all existing telecommunication markets, unless an exemption is sought by the Dominant Licensee.[8] Moreover, for new services, the Dominant Entity would have to affirmatively demonstrate that its new services "*do not fall within existing markets*

[8] As set out in section 2.3(c) of the Draft Converged Code, a licensee previously classified as a dominant licensee under the TCC 2012 "*will continue to be considered a Dominant Entity in markets in which it already operates at the date on which this Code enters into force*"

in which the Dominant [Entity is] currently participating in and in which they are classified as dominant".[9]

15 In practice, this IMDA proposal represents a change in name only, not a change in substance. This disappointingly represents a continuation of the current "Dominant Entity" approach under the guise of a market-by-market approach. The vast majority of the current and future services offered by Dominant Licensees would continue to be subject to the Dominant Entity approach. This is because the majority of future innovations in the telecommunications sector are likely to take place within *existing* markets rather than creating entirely new markets. The market-by-market approach (confined to new markets only) would therefore have very limited application in practice.

16 Most innovation within the telecommunications and media sectors in the past few decades has comprised new and more efficient ways of delivering *existing* services or products, rather than creating entirely new services that exist in distinct new economic markets. For example, the evolution from 2G to 3G, 3G to 4G and now 4G to 5G mobile networks has led to a significantly improved way of delivering mobile data, voice and messaging services. However, such shift has not created any meaningful *new* markets, as the technological evolution has occurred in respect of the same underlying mobile data and telephony services that have existed since 2G technology.

17 Even highly significant and ground-breaking innovations such as the Internet have failed to create meaningful new markets in the telecommunications sector. For example, the Internet has significantly increased competition, dynamism and product quality within existing markets, such as data markets, voice telephony and messaging markets, and content markets.

18 Importantly, although such innovations have not meaningfully created *new* markets, they have significantly reshaped competition within existing markets and have transformed previous patterns of market power and dominance (e.g. the rise of OTT services has substantially improved and transformed the nature of competition in voice, messaging and content markets, resulting in previously dominant entities now facing significant levels of competition from typically unlicensed new entrants).

19 Based on such trends, it is highly likely that future innovation in the sector will take place within *existing* markets rather than creating entirely new markets. Accordingly, the IMDA's proposed "Market-by-Market" approach (which would apply to new markets only) will not result in any change to the existing entity-based approach to assessing dominance. The majority of services, including services subject to

[9] Draft Converged Code, section 2.5.

technological innovation, will continue to be supplied within existing markets, where the "Dominant Entity" approach will apply, notwithstanding the fact that the state of competition in such markets has manifestly changed over time.

20 The effect of the IMDA's proposed approach is that there will continue to be significant imbalances and distortions in the application of the dominance framework. Dominant Entities will be subject to dominance obligations in respect of markets where they do not in practice have significant market power. This will ultimately prevent or disincentivise Dominant Entities from innovating and competing vigorously in respect of existing markets, which ultimately impacts on the dynamism and competitiveness of Singapore's telecommunications and media sectors, to the detriment of end-users and the economy more broadly.

21 The IMDA's proposed approach is also problematic from a procedural perspective. Even in relation to any new markets, the burden will be on Dominant Entities to affirmatively prove that their new services do not fall within existing markets. A Dominant Entity will still effectively be presumed dominant in a new market until it satisfies the IMDA that its services do not fall within an existing market. This process would effectively impose the same administrative burdens on Dominant Entities as the current exemption process, which further reduces innovation incentives and the ability to dynamically respond to competition, even in relation to entirely new markets.

3.2 The IMDA's proposed approach does not reflect the significant evolutions in competition within existing markets since the "Dominant Entity" approach was first introduced over 20 years ago

22 As mentioned above, the IMDA's proposed approach would effectively result in the continuation of the "Dominant Entity" model in respect of existing markets. The Dominant Entity approach to regulation was developed over two decades ago[10] and reflects an industry structure that is markedly different from today. This approach to dominance is no longer fit-for-purpose and should be replaced by a true market-by-market approach, which involves a new periodic review of the state of competition of each relevant market.

23 At the time that the Dominant Entity approach was first introduced more than 20 years ago, Singtel was the owner and operator of a ubiquitous copper network, which acted as the primary infrastructure for delivering telecommunications services in Singapore.

[10] See *Code of Practice for Competition in the Provision of Telecommunication Services 2000*, published 15 September 2000.

24 However, since the introduction of this approach under the 2000 TCC,[11] there have been very significant structural changes to the sector, which make the Dominant Entity approach wholly unsuitable to the Draft Converged Code. In particular, the introduction of the government-subsidised NGNBN and the shift from copper to fibre technologies resulted in structural separation between the ownership of the passive and active elements of the primary telecommunications network in Singapore (which is now the fibre-based NGNBN). This shift also created a separation between the ownership of *network elements* and the delivery of *active services* over the NGNBN network.

25 As the owner and operator of the passive elements of the NGNBN, NetLink Trust (**NLT**) now functions as the largest and most significant owner of ubiquitous fibre telecommunications infrastructure in Singapore. Under the industry structure created by the NGNBN, Singtel's role is no longer that of an "owner-provider" which controls all key elements of the supply chain. Instead, Singtel functions as a customer of access to NLT's NGNBN network, providing retail telecommunication services over the NGNBN. In support of this shift, Singtel has also decommissioned its DSL broadband network, meaning that it predominantly relies on the NLT NGNBN network to supply retail residential broadband services.

26 Under this new industry structure, subjecting a single operator to sector-wide dominance duties in all existing markets is antiquated and lacking in logic. The Dominant Entity approach is no longer fit-for-purpose to be applied to the telecommunications sector in Singapore as it currently stands.

27 For example, in relation to the provision of retail broadband services over the NetLink Trust NGNBN, end-users now have a choice between a wide range of service providers, ensuring that no single retail provider is able to act independently of the competitive process. A licensee can now obtain access to all end-users in Singapore via the NetLink NGNBN by interconnecting at only 10 points of presence across the country. This lowers the cost of entering the retail market and has (among other factors) allowed for a much higher level of dynamism and competition in the retail broadband market as compared to the copper-based world for which the Dominant Entity approach was developed. This is evidenced by the fact that over 25 licensees compete in the provision of retail services over the NGNBN infrastructure.[12]

28 This dynamism is also supported by the evidence showing the availability in the market of a wide range of broadband price plans from Internet Service Providers that vary according to speeds, prices, contract terms and even no-contract

[11] *Code of Practice for Competition in the Provision of Telecommunication Services 2000*, published 15 September 2000.
[12] IMDA, Second Consultation Paper, [42].

requirements.[13] Singapore now also has among the world's best speed-to-price ratios for broadband services.[14]

29 Accordingly, Singtel considers that it is not appropriate for the IMDA to continue applying the Dominant Entity approach to existing markets. Such existing markets are now subject to an entirely different structural and competitive landscape compared to when the Dominant Entity approach was first developed. To ensure that regulation is adapted to the contemporary realities of the sector, the Market-by-Market approach should therefore be expanded to all markets. More specifically, the IMDA should conduct new and periodic market reviews of each telecommunications and media market and assess dominance in light of the specific features of each such market.

3.3 The IMDA's proposed approach is significantly out of line with regulatory principles and international regulatory practice

30 The continuation of the Dominant Entity approach in all existing markets is not in line with regulatory principles (including the goals of the Draft Converged Code) and also differs markedly from international regulatory practice.

31 The underlying economic rationale for imposing dominance duties on a licensee is that such licensee has significant market power ***within a particular economic market,*** which justifies the imposition of certain (proportionate) obligations and restrictions on the conduct of such licensee.

32 As discussed above, the market structures and state of competition within the telecommunications sector has evolved substantially in the past decade and is likely to continue evolving over time. Accordingly, an accurate assessment of dominance requires not only a specific market-by-market focus, but also a periodic review of each market, to ensure that any dominance designation reflects the actual conditions of competition in such market at any given point in time.

33 Against this background, deeming a licensee to be dominant in every existing market in which it operates, without conducting a periodic review of competition in that market, is a highly disproportionate and inaccurate regulatory approach. Such approach runs counter to the goals of the Draft Converged Code, which include:

- promoting the "*efficiency and competitiveness*" of the information, telecommunications and media industry in Singapore;

[13] https://dollarsandsense.sg/complete-guide-to-choosing-the-best-broadband-plan-for-your-home/ and https://sg.finance.yahoo.com/news/best-home-fibre-broadband-plan-091057261.html

[14] Mike Hanlon, "Broadband Bang per Buck", *New Atlas*, 27 November 2017, https://newatlas.com/broadband-speed-versus-cost-country-comparison/52346/

- ensuring the "*availability of a comprehensive range of quality telecommunications and media services in Singapore*"; and
- encouraging, facilitating and promoting investment in the information, telecommunications and media industry.[15]

34 The competitiveness and innovation of Singapore's telecommunications sector, as well as levels of investment in such sector, are adversely affected by the distortions inherent in the current "Dominant Entity" approach, which the IMDA proposes to continue applying to existing markets. This approach is therefore unlikely to fully realise the objectives that the Draft Converged Code seeks to achieve.

35 In addition, the IMDA's proposed approach is out of line with international regulatory practice. The typical approach to regulating dominance in other jurisdictions comparable to Singapore is for the regulator to conduct market reviews every 3 to 5 years and designate entities as dominant only on the basis of such market review. This is the approach used in all other major best-practice jurisdictions around the world. For example:

- In the **European Union**, national regulatory authorities (**NRAs**) may only impose *ex ante* obligations on a licensee if they conduct a review of a relevant market and find that such licensee is dominant in *that specific* market. Reviews of each relevant market are required to be conducted every 3–5 years,[16] which allows an entity's dominance designation to evolve dynamically over time and reflect updated market conditions. The European Electronic Communications Code specifically emphasises the importance of regular market reviews: *"In order to provide market players with certainty as to regulatory conditions, a time limit for market reviews is necessary**. It is important to conduct a market analysis on a regular basis** and within a reasonable and appropriate time-frame"* (emphasis added).[17]
- In **Australia**, ex-ante obligations are imposed through a "declaration" process, which is conducted on a service-by-service basis. In order to "declare" a service, the Australian Competition and Communications Commission (**ACCC**) must conduct an inquiry into the state of competition in relation to the service (among other factors), with such declaration being

[15] Draft Converged Code, sections 1.2(a), 1.2(b) and 1.2(f).
[16] Under the 2002 EU regulation requiring NRAs to conduct periodic reviews in communications markets, there was a maximum 3-year period between reviews. This was increased to a maximum of 5 years between reviews under the European Electronic Communications Code: *Directive (EU) 2018/1972 of 11 December 2018*, recital 177, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L1972&from=EN.
[17] European Electronic Communications Code, *Directive (EU) 2018/1972 of 11 December 2018*, recital 175, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L1972&from=EN.

limited to a period of 5 years unless there are exceptional factors.[18] Upon expiry of a declaration, the ACCC must conduct a new inquiry, including a new assessment on the state of competition in respect of the relevant service.

- In **Malaysia**, the Malaysian Communications and Multimedia Commission (**MCMC**) imposes dominance duties on a licensee only after the MCMC has defined the relevant market and found such licensee to be dominant in that specific market, as part of a regular public inquiry process.[19] Determinations of dominance (following a public inquiry) were made in 2004 and 2014, with each determination having a clear expiry period. The most recent determination of dominance, issued in 2014, had a 3-year duration, in recognition of the dynamic nature of competition and the constant evolution of market power in telecommunications markets.[20]

36 The fact that leading regulators around the world have repeatedly applied a true market-by-market approach (with regular market reviews) demonstrates that such approach does not impose significant administrative burdens, is workable and has withstood the test of time. In this context, there is no meaningful administrative or procedural justification for the IMDA continuing to apply the "Dominant Entity" approach to existing markets.

37 In summary, Singtel is concerned that the IMDA's proposed approach to dominance is out of line with regulatory principles, would hinder competitiveness, innovation and investment in existing markets and would continue to place Singapore out of line with its peers in other jurisdictions.

38 Singtel therefore strongly urges the IMDA to adopt a true market-by-market approach under the Draft Converged Code. This would involve undertaking market reviews of each telecommunications and media market on a regular basis and only designating an entity dominant if it has SMP within a particular market.

[18] *Competition and Consumer Act 2010* (Cth), section 152ALA.
[19] MCMC, *Guideline on Dominant Position*, 24 September 2014, https://www.mcmc.gov.my/skmmgovmy/media/General/pdf/Commission-Guideline-on-Dominance-in-a-Communications-Market-Final.pdf.
[20] MCMC, *Commission Determination on Dominant Position*, Determination No. 1 of 2014, https://www.mcmc.gov.my/skmmgovmy/media/General/pdf/Com-Det-on-Dominant-Position-No-1-of-2014.pdf

4. Tariff filing obligations

4.1 Tariff filing obligations impose a burden on Dominant Licensees for no discernible benefit

39 Singtel considers that the IMDA's approach to tariff regulation does not serve any reasonable rationale, particularly in light of the fact that, in over 20 years that tariff regulation has been in place, there has been little evidence of tariffs being declined or disapproved by the IMDA. By way of example:

- In just over two (2) years (2019 to 2020), a total of [start c-i-c] [end c-i-c] filings were submitted to the IMDA covering wholesale and retail services. These included all forms of telecommunication services (data, telephony, etc.) and included revisions to existing tariffs, customised tariffs, extensions to existing rates, promotional tariffs, introductions of new schemes, etc.

- Over a ten (10) year period and focusing on three key services that are in demand by both wholesale and retail enterprise customers – local managed data services, local leased circuits and dark fibres – the number of tariffs submitted between 2010 and 2020 totalled [start c-i-c] [end c-i-c] and these included revisions to existing tariffs, customised tariffs, extensions of tariffed prices etc.

40 The IMDA has approved almost all the tariffs submitted. As such, retaining a requirement to submit tariffs, whether for approval or notification, imposes an unnecessary administrative burden on a Dominant Licensee for no discernible benefit.

4.2 Retail tariff regulation should be replaced by self-publication requirements

41 Similar to the proposed continuation of the Dominant Entity approach in existing markets, Singtel considers that the IMDA's approach to tariff regulation for Dominant Licensees does not reflect the current realities of the telecommunications sector in Singapore and is not in line with international regulatory practice.

42 As a starting proposition, Singtel does not consider that regulatory filing or approval obligations should apply to retail tariffs in general. Retail tariff regulation is a feature of telecommunications regulatory frameworks that arose in very different circumstances to those that currently characterise the Singapore telecommunications sector.

43 More specifically, retail tariff regulation was introduced when retail market structures were significantly more rigid and concentrated (prior to the development

of the government-subsidised NGNBN), the wholesale access regime was less developed and technological innovations such as the rise of OTT services had not yet delivered the dynamic and vibrant competition that currently exists within the telecommunications sector in Singapore.

44 The IMDA itself has recognised the important evolutions that have taken place in the sector within the past few decades. In particular, the IMDA recognises in its Second Consultation Paper that there *"appears to be healthy competition at the retail level"* due to the rollout of the NGNBN and the fact that over 25 licensees compete in the provision of retail services over NGNBN infrastructure.[21] Indeed, as mentioned above, Singapore now has one of the most competitive and dynamic retail telecommunication sectors in the world and has been recognised as having one of the world's best speed-to-price ratios for retail broadband services.[22]

45 For example, in the case of enterprise telecommunication services, the average prices for DigiNet and Gigawave services have fallen by more than [start c-i-c] [end c-i-c] between 2013 and 2020. For Dark Fibre services, average prices have fallen even more substantially, from around [start c-i-c] [end c-i-c] in 2013 to [start c-i-c] [end c-i-c] in 2020. This is a more than 50% fall in prices.[23]

46 In this context, it is not clear why the IMDA continues to consider retail tariff regulation as a necessary or proportionate measure under the Draft Converged Code. Indeed, the IMDA has not conducted a rigorous cost-benefit analysis of retail tariff regulation and has not demonstrated why the continued imposition of notification and/or approval obligations is consistent with the goals and objectives of the Draft Converged Code. Regulation should not be maintained where it is no longer fit-for-purpose and serves no meaningful regulatory need.

47 By way of comparison, retail tariff regulation has been abolished in almost all advanced jurisdictions with economic features similar to Singapore:

[21] IMDA, Second Consultation Paper, [42].
[22] Mike Hanlon, "Broadband Bang per Buck", New Atlas, 27 November 2017, https://newatlas.com/broadband-speed-versus-cost-country-comparison/52346/
[23] Singtel internal price data.

- retail tariff regulation no longer applies in **Australia**,[24] the **United Kingdom**,[25] **Malaysia**[26] and **South Korea**;[27]
- retail tariff controls have been abolished for non-basic services in **Japan**;[28]
- retail telecommunications markets are no longer considered as being susceptible to ex-ante regulation in the **European Union**;[29] and
- **Canada** has decided to forbear from regulating prices of retail broadband Internet access services since 2016.[30]

48 Accordingly, by continuing to impose regulatory requirements for retail tariffs, Singapore would be an outlier in the region and among its regulatory peers in advanced economies.

49 Singtel therefore submits that retail tariff regulation should be abolished in the Draft Converged Code and replaced with self-publication or customer notice requirements, particularly in the case of non-basic services. Self-publication of a tariff on an operator's website (or a notice sent by the operator to a customer in the case of withdrawal of a tariff) would continue to ensure transparency of each Dominant Licensee's tariffs without the administrative burdens associated with notification and approval requirements.

50 Singtel is particularly concerned with the following two aspects of the IMDA's proposed approach:

- the notification obligation for new and modified non-basic retail tariffs; and
- the approval obligation for withdrawal of non-basic retail tariffs.

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[24] *Telstra Carrier Charges – Price Control Arrangements, Notification and Disallowance Determination No. 1 of 2005 Instrument of Revocation 2015* (Australia), Explanatory Statement, https://www.legislation.gov.au/Details/F2015L00330/Explanatory%20Statement/Text

[25] Ofcom, Retail Price Controls – Explanatory Statement, [5.14], https://www.ofcom.org.uk/__data/assets/pdf_file/0012/42114/rpcstatement.pdf.

[26] MCMC, Public Consultation Report – Review of Rates Rules, 9 October 2015, p. 15, https://www.skmm.gov.my/skmmgovmy/media/General/pdf/PCReport-RatesRules-final.pdf.

[27] International Comparative Legal Guide, *Korea: Telecoms Media and Internet Laws and Regulations 2021*, section 2.15, https://iclg.com/practice-areas/telecoms-media-and-internet-laws-and-regulations/korea

[28] Telecommunications Business Law (Japan).

[29] European Commission, Commission Recommendation of 9 October 2014 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services, https://ec.europa.eu/digital-agenda/en/news/commission-recommendation-relevant-product-andservice-markets-within-electronic-communications.

[30] CRTC, Telecom Regulatory Policy CRTC 2016-496, 21 December 2016, [203], https://crtc.gc.ca/eng/archive/2016/2016-496.htm

51 Singtel considers that both such obligations should be replaced by a self-publication obligation or a customer notice obligation, as detailed further below.

(a) The notification obligation for new and modified non-basic retail tariffs should be replaced by a self-publication obligation

52 Singtel considers that the shift from an approval mechanism to a notification obligation for new and modified non-basic retail tariffs does not meaningfully reduce the administrative burdens for Dominant Licensees.

53 Notification of a tariff carries a similar administrative burden to obtaining approval from the IMDA, as the Dominant Licensee must still prepare an IMDA filing for each new or modified tariff (which is substantially similar to preparing an approval application). Accordingly, despite the IMDA's view that the shift from an approval obligation to a notification obligation will deliver "*more regulatory relief*" for Dominant Licensees, [31] Singtel considers that the proposed approach will continue to impose a disproportionate regulatory burden.

54 More specifically, in the past 24 months, Singtel has submitted a total of [start c-i-c] [end c-i-c] filings to the IMDA covering wholesale and retail services. The IMDA has approved almost all the tariffs submitted. Under the IMDA's proposed shift to a notification regime, Singtel would still need to lodge notifications in respect of all such tariffs, which would impose virtually the same administrative burden without any benefits (since tariffs are almost always approved under the current framework in any event).

55 Accordingly, Singtel considers it preferable for the **notification** obligation to be replaced with a **self-publication** obligation, which would require the Dominant Licensee to publish any new and modified retail tariffs on its website. This approach would deliver the same transparency benefits for the industry as a notification obligation, as the IMDA would still be able to clearly ascertain a licensee's retail tariffs from that licensee's website. Such an approach would achieve these same benefits while imposing a significantly lower administrative burden for the Dominant Licensee, as such licensee would not be required to submit separate tariff notifications to the IMDA (in addition to the communications it already makes about such tariffs via its website).

56 The principles of proportionate regulation require that any regulatory intervention should be based on the least burdensome means of achieving a particular objective. In Singtel's view, a self-publication requirement would be a less burdensome way of achieving the transparency objectives of retail tariff regulation, as compared to a

[31] IMDA, Second Consultation Paper, [46].

notification requirement. Moreover, a self-publication requirement would better accord with the goals of the Draft Converged Code, which include encouraging, facilitating and promoting "*industry self-regulation in the information, communications and media industry*" in Singapore.[32]

(b) Approval obligations for withdrawing non-basic retail tariffs should be abolished and replaced by customer notice obligations

57 Singtel does not consider that there is any regulatory basis for continuing to maintain full approval requirements for withdrawing non-basic retail tariffs, particularly when the IMDA proposes to replace the approval obligation for *introducing* non-basic retail tariffs with a notification obligation (which we propose to be a self-publication obligation, as argued above).

58 As mentioned at paragraphs 41 to 51 above, as a general proposition, retail tariff regulation is not currently justified in Singapore and should be replaced by self-publication or customer notice requirements. In respect of withdrawal of tariffs, Singtel considers the most appropriate model to be a customer notice requirement and not an approval process. This would involve Singtel notifying customers of the withdrawal of a tariff, without needing to lodge an approval request with the IMDA.

59 In addition to Singtel's general submissions about why tariff approval requirements are no longer fit-for-purpose (see paragraphs 41 to 56 above), Singtel makes the following submissions specifically in relation to the maintenance of approval obligations for the withdrawal of non-basic retail tariffs:

- The IMDA has not provided any justification for why *withdrawal* of a tariff should be subject to a greater regulatory burden than the introduction or modification of a tariff. From a regulatory consistency perspective, it would make sense to align the obligations that apply to the introduction or modification of a tariff with the obligations that apply to the withdrawal of a tariff. In Singtel's view, the most appropriate aligned position is to have a self-publication obligation for the introduction and modification of a tariff, and a customer notice obligation for the withdrawal of such tariff. Both such obligations would deliver transparency for customers, while significantly minimising the administrative burden associated with notifying or seeking approval from the IMDA. This would involve Singtel notifying customers of the withdrawal, without also needing to lodge an approval request with the IMDA.

[32] Draft Converged Code, section 1.2(e).

- There is a lack of regulatory justification for maintaining approval obligations in relation to the withdrawal of **non-basic** retail tariffs. Singtel acknowledges that basic telecommunication services, such as fixed-line telephony and payphone services, may require a greater level of regulatory oversight, as there is a social rationale in ensuring that all consumers (including low-income or older consumers) can access such services on reasonable terms. While Singtel considers that retail tariff regulation is still not the most efficient or proportionate means of ensuring equal access to basic services, even this limited rationale is absent in relation to non-basic services. Accordingly, it is not clear why full approval obligations should continue to be imposed for the withdrawal of tariffs relating to non-basic services. Singtel considers an approval obligation for withdrawing non-basic retail services to be disproportionate and not supported by any reasonable regulatory rationale.

60 For the reasons above, Singtel strongly considers that the tariff obligations applicable to non-basic services, including the notification obligation for new and modified tariffs and the approval obligation for withdrawal of tariffs, should be replaced by a customer notice obligation, requiring Singtel to itself notify customers of the withdrawal of a tariff for non-basic services.

4.3 Wholesale and resale tariff approval requirements duplicate other wholesale price regulation frameworks and should be abolished

61 Singtel submits that there is no justification for continuing to impose tariff approval obligations in respect of wholesale and resale services under section 3.4.4(a) of the Draft Converged Code.

62 The tariff approval regime for wholesale and resale services exists in parallel with the wholesale price regulation framework that applies in respect of Interconnection Related Services and Mandated Wholesale Services under section 6 of the current TCC and would continue applying under section 6 of the Draft Converged Code. Under this framework, Singtel is currently subject to regulated wholesale prices in its Reference Interconnection Offer (**RIO**), while NLT is subject to an Interconnection Offer and Reference Access Offer and Nucleus Connect is subject to an Interconnection Offer, all of which contain wholesale prices approved by the IMDA.

63 The maintenance of an *additional* layer of wholesale tariff regulation, as captured in section 3.4.4(a) of the Draft Converged Code, is unnecessary for three reasons.

64 **First**, such regime would result in duplication with the regime that applies to Interconnection Related Services and Mandated Wholesale Services in section 6 of the Draft Converged Code. As mentioned above, this regime already provides the

IMDA with the opportunity to approve wholesale prices in respect of bottleneck services where there is an economic rationale for price regulation. In line with the principles of proportionate regulation, Singtel does not consider that the IMDA should continue applying two distinct regulatory frameworks to deal with the same objective (the regulation of wholesale prices where the market is unable to produce efficient pricing).

65 **Second**, the wholesale tariff regulation regime in section 3.4.4(a) of the Draft Converged Code applies broadly to all wholesale and resale services, regardless of whether such services represent true bottleneck services (to which access is *necessary* to facilitate competition in downstream markets) or competitive wholesale services (which should not be subject to any tariff approval or tariff regulation). Singtel currently provides a range of wholesale services in competitive markets, including wholesale services over Singtel's own network which are used as an input into retail services to large business and government end-users. There is no economic basis for subjecting these types of wholesale and resale services to heightened regulatory obligations, in the form of tariff approval requirements. In respect of competitive wholesale services, the competitive process is by definition sufficient to result in efficient pricing without the need for regulation.

66 **Third**, wholesale services are typically acquired by large and highly sophisticated licensees who are able to negotiate prices (and other terms of access) with access providers on a relatively equal basis. As outlined in **Table 1**, Singtel's ten largest wholesale customers include (among others) [start c-i-c] [end c-i-c]. Some of these entities themselves provide wholesale services in a range of markets and therefore have a high level of bargaining power and knowledge about appropriate price levels for wholesale services. Singtel does not consider that such entities require regulatory protection in the form of an additional layer of wholesale tariff approval by the IMDA.

Table 1: Top 10 largest wholesale customers of Singtel in 2016–2020 (in alphabetical order)
[start c-i-c]

[end c-i-c]

67 Accordingly, Singtel considers that wholesale and resale tariff regulation should be removed under section 3.4.4(a) of the Draft Converged Code. Wholesale price regulation should apply solely to Interconnection Related Services and Mandated Wholesale Services, under the framework set out in section 6 of the Draft Converged Code.

5. Cross-Carriage Measure

5.1 The Cross-Carriage Measure

68 As a starting principle, Singtel considers that the CCM should be entirely removed from the Draft Converged Code. Since its introduction, the CCM has been used to a very limited extent by end-users, has disadvantaged Singapore licensees relative to large international OTT competitors and has not addressed any demonstrable regulatory need.

69 Singtel believes that its comments in its May 2019 submission to the IMDA's *Consultation Paper on a Converged Competition Code for the Media and Telecommunications Markets* are still relevant. The CCM is an example of highly disproportionate regulation when reviewed against the costs imposed on industry and the take-up of the services in question.

70 As cited in our 2019 submission:

- the high costs associated with the implementation of the CCM create a significant deadweight loss for the sector – [start c-i-c] [end c-i-c]; and
- there is very limited take-up of services that rely on the CCM, which Singtel currently estimates to be less than [start c-i-c] [end c-i-c] of the total pay-TV customer base in Singapore. This contrasts to approximately 377,000 residential customers for Singtel TV[33] and approximately 324,000 residential customers for StarHub TV, as at 30 September 2020.[34]

[33] https://www.singtel.com/content/dam/singtel/investorRelations/financialResults/2021/H1FY21-Group-MDA.pdf
[34] StarHub FY2020 results

71 The declining significance of the CCM is illustrated by the fact that:

- the take-up of cross carriage services started to decline within two (2) years from the commencement of the CCM and has continued to decline since then. The cross-carriage subscriber base peaked at approximately [start c-i-c] [end c-i-c] in August 2015 and has declined by 60% to [start c-i-c] [end c-i-c] as at December 2020. There is little interest in cross-carriage as a service by the wider community and population;
- only two (2) pieces of content have been designated as Qualified Content under the CCM so far and no discernible economic benefits to the industry have been reported as a result of the CCM, despite the industry incurring significant costs to implement the CCM; and
- no innovations have been made with the implementation of the CCM since it was introduced.

72 In contrast, take-up of the same content on OTT platforms has grown substantially. As mentioned above, by December 2020, the number of customers of Singtel cross-carriage services had declined to [start c-i-c] [end c-i-c], while the number of Singtel CAST customers watching the same PL content had increased to [start c-i-c] [end c-i-c] in just two (2) years of launch. It is questionable as to why CCM is retained as a Public Interest Obligation when there is declining consumer interest and take-up (and, presumably, when the Converged Code is implemented, almost negligible take-up), constituting wastage of economic resources.

5.2 Restricting the CCM to live content is unworkable and illustrates broader implementation challenges with the CCM

73 Singtel considers that the CCM should be removed. In any case, restricting the scope of the CCM to live content would be unworkable in practice and would further magnify the irrelevance of the CCM in practice.

74 In the event that a Pay TV operator acquires access to exclusive content, it would typically be on an "entire channel" basis or at least as a bundle of programmes, rather than acquiring access only to a specific programme. An exclusive channel or bundle of programmes generally contains a mixture of linear live and non-live content (e.g. it may contain live sports during certain segments of the day, and replays or other programming for the remainder of the day). The rights that SQLs acquire to such exclusive channels do not typically allow operators to themselves unbundle live content from non-live content (e.g. by editing out the non-live content or merging the live content into a separate channel stream that can be made available under the CCM).

75 Accordingly, the IMDA's proposal to restrict the CCM to live programming would not be workable in respect of channels that contain a mixture of live and non-live content. The inability to unbundle live and non-live content means that, in practice, the CCM would still end up applying to non-live content that is provided as part of the same channel or content stream as live Qualifying Content, due to the definition of Qualified Content in the Draft Converged Code.

76 The IMDA's proposal illustrates broader challenges with the practical application of a CCM that applies to live content only. The manner in which licensees commercially acquire exclusive rights to content does not correspond with the rigid rules that the CCM imposes in respect of such content, whether under the current approach or the IMDA's proposed approach in the Draft Converged Code. If the CCM were to require unbundling of live and non-live content (as suggested in the IMDA's consultation paper), this would require licensees to negotiate special arrangements with content owners. This would further increase content acquisition costs for licensees and lead to an overall loss for the sector.

77 Concerningly for Singapore's digital economy, the burden of CCM obligations on Singapore SQLs is likely to advantage global OTT players, such as Netflix and Amazon Prime, who are not subject to the CCM and are therefore able to acquire exclusive content in a more dynamic, commercially rational manner.

78 Accordingly, Singtel considers that, rather than the CCM being narrowed in an unworkable manner (i.e. to apply only to live content), the CCM should be abolished as a whole. This would allow licensees to more effectively compete with each other and with non-licensees (such as global OTT players), while reducing overall costs for the industry and ensuring the continued vibrancy and dynamism of Singapore's subscription media markets.

5.3 The CCM should not be expanded to Qualifying Content hosted on an SQL's OTT platform

79 Singtel disagrees with the IMDA's proposal to expand the CCM to QC offered over the OTT platforms of SQLs. Section 11.6.1(a) of the Draft Converged Code would require an SQL to make available to a Receiving Qualified Licensee (**RQL**) all QC it holds rights to, even if the SQL itself does not transmit such content on a "Relevant Platform" or if such content is only (or partly) transmitted over the SQL's OTT platform.

80 Singtel has tabled its views on the application of the CCM in the preceding sections and considers that the CCM has in fact not offered benefits and has lost any significance as a public interest obligation. We consider that further expansion of a regulatory measure that has lost its significance, as is the case for the CCM, is

unnecessary and would offer no material benefits to end-users, while simply increasing costs and regulatory burdens on Singapore licensees and therefore artificially advantaging international OTT providers. These arguments are detailed further below.

(a) Expanding the CCM to OTT services would discriminate against Singapore SQLs, who already have only a small share of the OTT market

81 The IMDA's proposed expansion to the CCM would apply only to the OTT platforms of Singapore licensees and would further disadvantage Singapore licensees compared to international OTT players, who would not be subject to the expanded CCM despite being by far the largest OTT providers in Singapore.

82 The past few years have witnessed an explosion of OTT content platforms in Singapore. Importantly, the OTT content landscape is dominated by large international operators, such as Netflix and Amazon, rather than Singapore licensees (SQLs). In 2019, Netflix had a 46% share of subscription video-on-demand (**SVOD**) services in Singapore. This was followed by 10% for Amazon Prime, compared to only 9% for Starhub OTT services and 6% for Singtel OTT services.[35]

83 International OTT providers are not currently subject to the CCM and would still not be subject to the CCM under the IMDA's proposed new rules (as such providers are not SQLs for the purposes of the Draft Converged Code). Expanding the CCM to apply only to the OTT platforms *of Singapore licensees* would therefore have the effect of further disadvantaging Singapore pay TV and content providers competing in the OTT space, while leaving unregulated large international OTT players who already have a predominant share of the Singapore OTT market.

84 Given the high costs and regulatory burdens involved in complying with the CCM, a discriminatory application of the CCM to SQLs would hinder the development of the Singapore digital media sector and further prevent the ability to Singapore OTT platforms from competing effectively with large global OTT providers.

(b) Expanding the CCM to OTT services is unnecessary and would not deliver any meaningful benefits for end-users

85 The expansion of the CCM to the OTT platforms of SQLs also serves no legitimate regulatory purpose and would not deliver any meaningful benefits for end-users. End-users in Singapore can already easily access content (including exclusive

[35] Jessica Goodfellow, "Netflix dominates SVoD in Singapore; traditional TV still top for time spent", *Campaign Asia*, 7 August 2019, https://www.campaignasia.com/article/netflix-dominates-svod-in-singapore-traditional-tv-still-top-for-time-spent/453539.

content) on OTT platforms, typically at a lower price and with greater technical features as compared to accessing such content via the CCM.

86 The CCM arose in response to perceived technical limitations of traditional pay TV services, where it was more difficult for end-users to simultaneously subscribe to multiple different pay TV services.

87 These constraints are absent in respect of OTT services. OTT services are available to any subscriber with an Internet connection, without the need for any special equipment or any pay TV/IPTV subscription. Singtel's own OTT offering reflects this, with the Singtel CAST platform being a universally accessible OTT service that is available to any end-user in Singapore, without any contractual requirement to have an underlying Singtel broadband or pay TV/IPTV subscription.

88 OTT platforms also offer significant benefits to end-users, as compared to accessing QC via the "Relevant Platform" of an RQL (which is how QC would be accessed under the CCM). More specifically:

- Unlike CCM services (delivered over the RQL's Relevant Platform), OTT services can be accessed over a wide range of devices, including smart TVs, laptops, smartphones, tablets and digital media players such as Apple TV. This provides greater flexibility to end-users and allows them to consume content in a wider range of situations and environments.

- Subscriptions to OTT services are generally made available at a lower price point than both traditional pay TV services and cross-carried content hosted on an RQL's Relevant Platform. For example, a subscription to Singtel's CAST OTT service begins at $5.90 per month, while sports-specific packages are priced at $5.90 to $49.90 per month.[36] This is lower than the prices at which comparable content is made available via the CCM or via the pay TV platforms of SQLs which may range from $22.80 to $99.90[37].

89 In light of the factors above, Singtel considers that there is no legitimate basis or consumer benefit to be derived from expanding the CCM to an SQL's OTT platforms. Even in the absence of the CCM, a subscriber could access QC by simply obtaining a subscription to the relevant OTT platform. Such user would not require the CCM to obtain access to such exclusive content and would in fact be able to access such content with improved technical functionality and at a lower price point than by using the CCM.

[36] https://cast.singtel.com/
[37] Using Singtel TV's price packages and incorporating the price of CCM price package for comparison.

90 The ability for end-users to easily subscribe to multiple OTT services is also borne out by the market evidence. In 2019, Singaporeans on average had access to 1.17 paid subscription services per user, suggesting that there is a significant number of users who have a subscription to more than one OTT content service.[38]

91 In October 2020, the SPOTX In-depth Look at APAC OTT viewership[39] noted that *"Singapore has truly embraced OTT, with 91% of video viewers regularly watching free or paid streaming services, the highest level seen regionally, versus 86% of viewers who regularly watch video-sharing platforms and 63% who watch TV (free or paid)*".

92 The same study shows that Singaporeans are sophisticated OTT consumers, watching such content on a range of devices, such as smartphones, smart TVs, etc:

> *"Most Singaporean OTT viewers, 81%, often choose to stream in a private space, while 54% prefer streaming in a shared space OTT consumption is not confined to the home, with 31% of viewers watching on their commute and 28% watching whilst traveling which reflects the ubiquitous connectivity on public transport and Singapore's role as a hub for tourism and business travel."*[40]

93 These market dynamics illustrate that end-users are overwhelmingly preferring to access content directly by subscribing to an OTT platform, rather than by accessing such content via the CCM. In this context, expanding the CCM to cover an SQL's OTT platforms is not necessary and represents a form of regulatory intervention that does not respond to any market failure or legitimate consumer need.

94 The expansion of the CCM to OTT platforms is effectively seeking to resolve a problem that does not exist in practice. There is no evidence that SQLs have circumvented the CCM by hosting QC on their OTT platforms. There is also no evidence that end-users are facing barriers in subscribing directly to an SQL's OTT platform to access exclusive content. Indeed, as mentioned above, such direct access represents an easier, better and more cost-effective way for end-users to access QC, as compared to using the CCM.

95 Accordingly, Singtel strongly considers that the CCM should not be expanded to QC that is made available on an SQL's OTT platform.

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[38] Jessica Goodfellow, "Netflix dominates SVoD in Singapore; traditional TV still top for time spent", *Campaign Asia*, 7 August 2019, https://www.campaignasia.com/article/netflix-dominates-svod-in-singapore-traditional-tv-still-top-for-time-spent/453539.

[39] SPOTX OTT is for Everyone "An Indepth Look at APAC OTT Viewership", October 2020

[40] SPOTX OTT is for Everyone "An Indepth Look at APAC OTT Viewership", October 2020

6. Interconnection-related obligations

6.1 Access to submarine cable landing stations should be designated as CSI

96 Under section 5.3.1 of the Schedule of Interconnection-Related Services (**IRS Schedule**) in the Draft Converged Code, Dominant Telecommunication Licensees have an obligation to provide access to co-location at submarine cable landing stations. The IMDA's Second Consultation Paper also mentions that access obligations in respect of submarine cable landing stations should apply specifically to Dominant Licensees.[41]

97 While Singtel agrees that access to submarine cable landing stations should be regulated, Singtel considers that such facilities should be designated as a type of CSI, rather than being listed on the IRS Schedule.

98 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.

99 In particular, symmetrical access to all submarine cable landing stations would provide access seekers with the ability to co-locate at a larger number of submarine cable landing stations as compared to the current approach, which only imposes access obligations on Dominant Licensees.

100 There are currently 7 submarine cable landing stations in Singapore. Three of these (Changi, Tuas Singtel and Katong) are owned by Singtel, while the four other stations (three at Tuas and one at Tanah Merah) are owned by StarHub, Matrix Networks and Telstra, which are non-dominant licensees.[42] This means that the majority of submarine cable landing stations are not currently subject to access obligations, despite all such submarine cable landing stations having the same bottleneck characteristics. Under the current approach, non-Singtel owners or controllers of submarine cable landing stations may either completely refuse access to their submarine cable landing station (thereby preventing competitors from providing diverse backhaul connectivity or onward international connectivity) or may provide access on unreasonable commercial terms (which would still place access seekers at

[41] IMDA, Second Consultation Paper, [268].
[42] Submarine Cable Networks, "Cable Landing Stations in Singapore", https://www.submarinenetworks.com/stations/asia/singapore.

a disadvantage compared to the submarine landing station owner's own downstream services).

101 Designation of all submarine cable landing stations as CSI would significantly improve the coverage of the access regime, ensuring that access seekers are able to equally access all submarine cable systems landing in Singapore (through their respective submarine cable landing stations). Even though some "open" submarine cable systems now permit operators to access connectivity on the relevant submarine cable system at a downstream location (e.g. a city point of presence or data centre), access to the submarine cable landing station is still necessary if an access seeker wishes to provide domestic backhaul connectivity to the respective submarine cable landing station, which is necessary both for diversity and redundancy purpose, as well as to introduce competition in respect of such backhaul connectivity.

102 Ubiquitous access at all submarine cable landing stations will therefore contribute to enhancing competition and investment in the markets for international connectivity and associated domestic backhaul and transmission services. For example, submarine cable landing station access on reasonable terms and conditions will allow access seekers (other than the landing party or landing station owner) to develop diverse links between a submarine cable landing station and other points of presence in Singapore, providing downstream customers with greater choice and route diversity. A vibrant international connectivity market, characterised by a high level of competition and choice, is ultimately critical to sustaining Singapore's role as a regional and global submarine cable connectivity hub.

103 Submarine cable landing stations also satisfy all of the five CSI criteria in section 7.3.1 of the Draft Converged Code. More specifically:

- access to a submarine cable landing station is "*required to provide a Telecommunication Service*" (which includes domestic backhaul/transmission service from the submarine cable landing station to a point of presence or data centre and, in the case of closed submarine cable systems, also includes international connectivity services);

- a submarine cable landing station serving a particular submarine cable system cannot be "*replicated*" by an "*efficient new entrant*", as the only way to physically access connectivity on a submarine cable system (and/or provide downstream backhaul services in respect of such submarine cable system) is through the submarine cable landing station associated with such submarine cable system;

- submarine cable landing stations are not typically "*fully utilised*", with the owner or controller having "*sufficient current capacity to share with other*

Licensees" – while capacity constraints at a submarine cable landing station should be assessed on a case-by-case basis, this is unlikely to apply in the majority of cases and does not represent a reason to deny treating submarine cable landing stations, in general, as a form of CSI;

- owners or controllers of submarine cable landing stations do not have a "*legitimate justification to refuse sharing*" – while access to submarine cable landing stations typically requires the access seeker to comply with reasonable physical access rules and co-location principles, there is no legitimate justification to refuse access as a whole, as such access is almost always technically feasible and does not affect the ability of the submarine cable landing station owner to provide its own services; and

- failure to provide access to submarine cable landing stations would "*unreasonably restrict competition*" in a range of downstream telecommunications markets in Singapore, including the market for domestic connectivity to each submarine cable landing station and the market for international connectivity services on the submarine cable system served by the relevant submarine cable landing station.

104 For the reasons above, Singtel strongly considers that access to submarine cable landing stations should be designated as a form of CSI under section 7.5 of the Draft Converged Code.

105 If the IMDA does not accept Singtel's submissions above and considers that access to submarine cable landing stations should not be designated as CSI, then Singtel submits that submarine cable landing stations should be removed from the IRS Schedule. The criteria for including submarine cable landing stations under the IRS Schedule is very similar to the CSI criteria, and is primarily focused on the fact that submarine cable landing stations are "*Essential Support Facilities … for which no practical or viable alternatives exist*" and "*that enable the deployment of telecommunication infrastructure*".[43] If (contrary to Singtel's submissions above), the IMDA considers that there is no regulatory basis for designating submarine cable landing stations as CSI, then it must logically follow that there is also no basis for submarine cable landing stations being listed on the IRS Schedule.

6.2 A BAK charging methodology is entirely inappropriate for fixed line termination

106 Singtel disagrees with the IMDA's proposal to transition from a CPP charging model to a BAK model in respect of fixed line termination.

[43] Draft Converged Code, section 5.1.

107 The underlying objective behind regulating termination charges under the CPP approach is to ensure that the costs of termination are borne by the party that causes such terminating costs to be incurred (i.e. the originating operator). The originating operator is in turn able to recoup such termination costs as part of the charges it obtains from the end-user making the relevant call. If the terminating operator cannot pass on the cost of termination to the originating operator, then the terminating operator would have to cross-subsidise its termination costs by increasing the charges of its other services. This would also effectively result in an unjustified subsidy from the terminating operator to the originating operator. These forms of subsidisation are economically inefficient and distort competition in downstream markets.

108 A BAK (settlement-free) interconnection model is only consistent with the cost causation principle described above if the amount of traffic being exchanged between two operators is approximately equal. In these circumstances, the terminating costs faced by Operator A (due to traffic from Operator B) and the terminating costs faced by Operator B (due to traffic from Operator A) broadly offset each other. It may therefore be more efficient in these circumstances to allow each terminating party to bear its own costs, rather than requiring Operator A and B to transfer roughly equal termination charges to each other.

109 Importantly, a BAK model is entirely inappropriate where there is a significant imbalance in the amount of traffic being exchanged between two operators. Applying the BAK model in such circumstances would result in the operator that terminates a greater share of traffic on its network bearing a disproportionate share of the costs of interconnection, while the smaller operator effectively obtains a windfall gain (by bearing a proportionally smaller share of termination costs). The BAK model does not allow this imbalance to be corrected (through a termination charge) and therefore results in distortions to competition in downstream markets and a violation of the cost causation principle.

110 Fixed voice termination is a key example of a service where significant traffic imbalances continue to apply. As can be seen in **Table 2**, the termination charges received by Singtel from other operators in 2020 were [start c-i-c] [end c-i-c] times greater than the termination charges paid *by* Singtel to other operators. This indicates that a significantly greater amount of traffic terminates on Singtel's network than Singtel terminates on other operators' networks. While this imbalance in traffic has reduced marginally from 2018 (when it was [start c-i-c] [end c-i-c]), the imbalance remains very significant and remains more than [start c-i-c] [end c-i-c]. Such a high level of imbalance makes the BAK model inappropriate for fixed voice termination.

Table 2: Imbalance in termination charges between Singtel and other operators

[start c-i-c]

[end c-i-c]

111 Singtel also disputes the IMDA's assertion that fixed call traffic is diminishing and that this justifies a transition from the CPP to the BAK model. This is for two reasons:

- **First**, the overall amount of fixed call traffic and its relative share compared to data, mobile and OTT traffic is not relevant to the decision of whether to impose a BAK model for fixed call termination. As mentioned above, the most important factor in determining whether a BAK or CPP model should apply is the relative imbalance of traffic between various operators of fixed voice services. Even if a service were declining in terms of its *overall* traffic volumes, the persistence of high levels of imbalance between operators would still result in the CPP model being more appropriate, as it would produce more efficient economic outcomes and remove competitive distortions.

- **Second**, the data does not actually support the view that fixed voice traffic has meaningfully declined in Singapore. IMDA data indicates that, as of September 2020, Singapore's fixed line household penetration rate was 84.5%.[44] Singtel had [start c-i-c] [end c-i-c] fixed line subscribers in September 2020, out of a total of 1,899,500 subscribers across all operators. Accordingly, fixed voice telephony remains a very significant service in Singapore, and one which results in high overall termination volumes (and therefore cost burdens) for operators. For this reason, it cannot reasonably be said that the switch from a CCP to a BAK model would have no or minimal consequences for operators. Such a switch would distort the market for fixed

[44] IMDA, "Statistic on Telecom Service for 2020 Jan – Jun", https://www.imda.gov.sg/infocomm-media-landscape/research-and-statistics/telecommunications/statistics-on-telecom-services/statistic-on-telecom-service-for-2020-jan

voice calls by reallocating the costs of termination so that they sit disproportionately with larger operators, without any principled economic basis.

112 Singtel also submits that the switch to a BAK approach would be in conflict with the goals of the Draft Converged Code as well as with the IMDA's regulatory approach in respect of other interconnection pricing matters. The goals of the Draft Converged Code include the promotion of efficiency of the telecommunications industry in Singapore, the promotion and maintenance of *"fair and efficient market conduct and effective competition"* and the encouragement, facilitation and promotion of investment in the telecommunications industry in Singapore.[45] An approach that introduces economic distortions in respect of termination costs and artificially advantages some operators at the expense of others will not reasonably promote the efficiency of the telecommunications industry in Singapore, nor will it facilitate fair and effective competition.

113 Finally, the transition to a BAK approach in respect of fixed voice telephony would run counter to IMDA's approach to price regulation in respect of other services. In relation to the pricing of IRS, CSI and Essential Resources, IMDA notes in its Second Consultation Paper that:

> *"It is important to adopt a pricing methodology that is **fair and reasonable** such that the determined prices are able to meet the policy objectives of the prescribed regulation while the regulated licensee is **able to recover its costs**"* (emphasis added).[46]

114 A BAK approach does not achieve any of these objectives. For the reasons explained above, such approach is not "*fair and reasonable*", runs counter to the *"policy objectives"* of the Draft Converged Code and does not allow the regulated licensee to recover any of its costs in respect to fixed voice termination.

115 Accordingly, Singtel submits that the IMDA should continue applying a CPP approach to fixed voice termination and should not transition to a BAK approach.

6.3 The IMDA should maintain a FLEC pricing methodology for contestable passive infrastructure

116 Singtel welcomes the IMDA's proposal to assess the pricing methodology for IRS, CSI and Essential Resources on a case-by-case basis, according to principles such as the

[45] Draft Converged Code, section 1.2(a), 1.2(c) and 1.2(f).
[46] IMDA, Second Consultation Paper, [290].

nature of the specific network element, the contestability of the relevant market segment and the replicability of the network element.[47]

117 In this context, Singtel considers that a RAB methodology is only appropriate for passive infrastructure that constitutes a natural monopoly, that is not contestable and that is not subject to any build-or-buy incentives.

118 The passive infrastructure of NLT may fall within this category, as NLT is the sole provider of passive infrastructure for the government-subsidised NGNBN network. Under the structurally separated industry structure underpinning the NGNBN, contestability is intended to exist only at the active OpCo and retail level, with all active services delivered over the same underlying passive infrastructure owned by NLT. NLT's infrastructure was therefore not intended to itself be subject to a build-or-buy incentive or to be contestable or replicable.

119 Singtel does not consider it appropriate to apply a RAB approach to *all* passive infrastructure. For example, Singtel's own passive infrastructure was rolled out as part of a commercial network build (predating the rollout of the government-subsidised NGNBN). Such infrastructure exists in a contestable market, where access seekers have a genuine choice between acquiring access to Singtel infrastructure, acquiring access to competing infrastructure from NLT or building their own competing infrastructure. In these circumstances, the existing FLEC methodology would be more appropriate than a RAB approach for two key reasons:

- First, as the IMDA itself acknowledges, a FLEC methodology is more appropriate where there is contestability in a market segment or where a build-or-buy incentive exists.[48] This is the case regardless of whether the relevant network element is active or passive.
- Second, continuing to apply a FLEC methodology in relation to contestable infrastructure would minimise the administrative burdens and distortions created by switching to a RAB approach. This includes the significant cost to licensees of developing a new RAB (which would I itself outweigh any perceived benefits of this approach) leading to the inefficient utilisation of network elements owned or controlled by other suppliers as the RAB approach is inappropriate for contestable infrastructure.

120 Accordingly, Singtel considers that, in section 2.2.2 of the Draft Converged Code, the IMDA should clarify that the FLEC methodology is also appropriate in relation to *passive* infrastructure that is contestable or replicable. This would augment the

[47] Draft Converged Code, section 2.2.1.
[48] Draft Converged Code, section 2.2.2.

existing reference in section 2.2.2 that a FLEC methodology is more appropriate *"if the network element is active or there is contestability in the market segment"*.

7. Conclusion

121 Singtel encourages the IMDA to conclude the Draft Converged Code as soon as possible and to adopt the recommendations and amendments set out in this submission. Such amendments would ensure that the Code is fit-for-purpose and better able to achieve its regulatory objectives, while enhancing the competitiveness and innovation of the telecommunications and media sectors, and ultimately delivering enduring benefits for end-users and for the Singapore economy.