INFO-COMMUNICATIONS MEDIA DEVELOPMENT AUTHORITY

TELECOMMUNICATIONS ACT 1999
INFO-COMMUNICATIONS MEDIA DEVELOPMENT AUTHORITY ACT 2016

ADVISORY GUIDELINES GOVERNING PETITIONS FOR RECLASSIFICATION AND REQUESTS FOR EXEMPTION UNDER SUB-SECTIONS 2.4.2 AND 2.7 OF THE CODE OF PRACTICE FOR COMPETITION IN THE PROVISION OF TELECOMMUNICATION AND MEDIA SERVICES 2022

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The Info-communications Media Development Authority of Singapore ("**IMDA**"), pursuant to Section 32 of the Telecommunications Act 1999 ("**Telecommunications Act**") and Section 61 of the Info-communications Media Development Authority Act 2016 ("**IMDA Act**"), hereby issues these Advisory Guidelines ("**Guidelines**") Governing Petitions for Reclassification and Requests for Exemption under Sub-sections 2.4.2 and 2.7 of the Code of Practice for Competition in the Provision of Telecommunication and Media Services 2022 ("**Code**").

1. INTRODUCTION

1.1 Obligations of Dominant Entities

(a) The Code provides that IMDA may, in its discretion and at any time, classify any Telecommunication Licensee or Regulated Person as a Dominant Entity if the Telecommunication Licensee or Regulated Person meets certain specified criteria. This includes where a Telecommunication Licensee or Regulated Person or other interested party petitions IMDA to have a Telecommunication Licensee or Regulated Person classified as a Dominant Entity.

(b) Where a Telecommunication Licensee is classified as a Dominant Entity, or a Dominant Entity (being a Telecommunication Licensee) is reclassified as non-dominant pursuant to Paragraph 3 of these Guidelines, notice will be given by publication on the IMDA website (www.imda.gov.sg). Where a Regulated Person is classified as a Dominant Entity, or a Dominant Entity (being a Regulated Person) is reclassified as non-dominant pursuant to Paragraph 3 of these Guidelines, notice will be given by notification in the *Gazette*.

(c) A Dominant Entity must comply with a number of obligations governing Dominant Entities, which are set forth in the Code. These obligations include:

(i) the duty to provide services on fair, reasonable, non-discriminatory terms and unbundled basis, to file and publish tariffs, and to provide services consistent with applicable effective tariffs (Sub-sections 4.3 and 4.4 of the Code);

(ii) in the case of Dominant Telecommunication Licensees (as defined in Sub-section 6.1.1(b)(i) of the Code), the duty to provide Interconnection Related Services and Mandated Wholesale

Services to other Telecommunication Licensees (Sub-sections 6.2, 6.3 and 6.4 of the Code); and

(iii) prohibitions against abuse of a dominant position (Sub-section 8.1 of the Code).

(d) Subject to Sub-section 2.4.2 (governing the reclassification of Telecommunication Licensees or Regulated Persons) and Sub-section 2.5 (set out at Paragraph 1.1(e) of these Guidelines) of the Code, a Telecommunication Licensee or Regulated Person who was previously classified as a Dominant Licensee under the Code of Practice for Competition in the Provision of Telecommunication Services 2012, or a Dominant Person under the Code of Practice for Market Conduct in the Provision of Media Services, will continue to be considered a Dominant Entity in markets in which it already operated at the date on which the Code entered into force.

(e) Designated Dominant Entities will not be presumed to be dominant for new services offered in new markets. Dominant Entities will be required to demonstrate to IMDA that the new services do not fall within existing markets in which the Dominant Entities are currently participating and in which they are classified as dominant:

(i) Prior to the introduction of a new service, the Dominant Entity introducing the new service should:

(1) provide a written notification to IMDA requesting IMDA's confirmation that the new service does not fall within existing markets in which the Dominant Entity currently participates and in which it is classified as dominant; and

(2) obtain the said confirmation from IMDA.

(ii) The Dominant Entity's written notification should contain a detailed description of the new service, including the factors specified in Paragraph 2.2.2(b) of these Guidelines. The Dominant Entity should also describe the basis on which it contends that the new service does not fall within existing markets in which the Dominant Entity currently participates and in which it is classified as dominant. To do so, the Dominant Entity should use the "demand substitutability" approach specified in Paragraph 2.4.1(a) of these Guidelines.

(iii) IMDA will make the determination as to whether the new service does or does not fall within existing markets in which the Dominant Entity currently participates and in which it is classified as dominant. IMDA will find that a new service falls within the same market if the evidence demonstrates that it is a reasonable substitute for the services currently offered by the Dominant Entity in markets in which it is classified as dominant.

1.2 Exemption and Reclassification

(a) As competition develops, it may no longer be necessary to apply each of the obligations applicable to Dominant Entities to every facility operated or service provided by a Dominant Entity. Sub-section 2.7 of the Code therefore provides a procedure by which a Dominant Entity may request IMDA to exempt it from any of the obligations applicable to Dominant Entities. This procedure is referred to as an exemption request ("**Request**").

(b) Similarly, as market conditions change, it may be appropriate to reclassify a Dominant Entity as non-dominant. Sub-section 2.4.2 of the Code therefore provides a procedure by which a Telecommunication Licensee or Regulated Person or any other interested party may petition IMDA to reclassify a Telecommunication Licensee or Regulated Person. This procedure is referred to as a petition for reclassification ("**Petition**"). IMDA may, in its discretion and at any time, also make an assessment as to whether any Telecommunication Licensee or Regulated Person classified as a Dominant Entity should be reclassified as non-dominant.

1.3 Guidelines are Advisory

These Guidelines set out the framework that IMDA will use to assess Petitions and Requests. The provisions in these Guidelines are advisory. They do not impose any binding legal obligation on IMDA. Rather, these Guidelines are intended to describe the procedures that IMDA will generally use, and the standards that IMDA will generally apply, in implementing the reclassification and exemption provisions contained in Section 2 of the Code. In addition, these Guidelines describe the procedures that Telecommunication Licensees, Regulated Persons, and other parties should follow in order to comply with the requirements contained in the Code. While these Guidelines are not legally binding, IMDA will not depart from them without good cause. In order to provide a single document addressing all issues relevant to the implementation of these provisions, certain sections of the Code have been summarised or repeated in these Guidelines. In the event of any conflict between the Code and these Guidelines, the provisions of the Code will prevail.

1.4 Rules of Construction

Except where a term is specifically defined in these Guidelines, capitalised terms used in these Guidelines have the same meaning as in the Code.

1.5 Relevance of Practices by Competition Authorities and Other Sectoral Regulators

To the extent that IMDA undertakes any assessment of market competitiveness, IMDA will give appropriate consideration to practices of competition authorities or other sectoral regulators in other jurisdictions, as well as practices of the Competition Commission of Singapore. However, IMDA may adopt standards or methodologies that are designed to address the unique conditions of Singapore's telecommunication and media markets.

1.6 Effective Date of these Guidelines

These Guidelines will take effect on the date of issue of these Guidelines.

1.7 Short Title

These Guidelines may be referred to as the "Reclassification and Exemption Guidelines".

2. EXEMPTION FROM APPLICATION OF DOMINANT ENTITY PROVISIONS

2.1 Requests for Exemption

(a) A Dominant Entity seeking exemption from the obligations applicable to Dominant Entities in any specific telecommunication or media market in which that Dominant Entity participates must submit a Request that demonstrates that it lacks Significant Market Power in that telecommunication or media market. Such Request must include verifiable supporting data, as set out in Sub-section 2.7.3.2 of the Code and Paragraph 2.2.2 of these Guidelines.

(b) A Dominant Entity seeking exemption from specific obligations applicable to Dominant Entities in some or all telecommunication or media markets in which that Dominant Entity participates must submit a Request that demonstrates that the continued application of the provision to the specific facility or service for which the exemption is sought is not necessary to protect Customers or to promote and preserve effective competition amongst Telecommunication Licensees or Regulated Persons. Such Request must include verifiable supporting data, as set out in Sub-section 2.7.3.1 of the Code and Paragraph 2.2.1 of these Guidelines.

(c) The Request must identify, where applicable:

(i) any specific telecommunication or media markets, services and/or facilities for which the Dominant Entity seeks an exemption; and

(ii) any specific provisions of the Code from which the Dominant Entity seeks an exemption.

(d) Where the Dominant Entity seeks to be exempted from the application of a particular provision to more than one service or facility, the Dominant Entity must satisfy the standard specified in Paragraph 2.1(b) of these Guidelines for each service or facility.

(e) Where multiple services are reasonable substitutes, or are subject to similar competitive conditions, the Dominant Entity may group the services together and make a single showing as to why the application of a particular provision in relation to these services is no longer necessary. The Dominant Entity may refer to these services as forming a specific market. The Dominant Entity should use the market definition framework specified in Paragraph 2.4.1 of these Guidelines. While IMDA will consider the Dominant Entity's market definition, it is not binding on IMDA. If IMDA does not agree with the Dominant Entity's market definition, IMDA may:

(i) consider separately each service for which the Dominant Entity has sought an exemption and make an individual determination for each service;

(ii) group services together that IMDA determines are reasonable substitutes, or are subject to similar competitive conditions, and make a determination for each service group; or

(iii) consider some services separately and group some services together.

(f) Similarly, where multiple facilities perform the same function, or are subject to similar competitive conditions, the Dominant Entity may group the facilities together and make a single showing as to why the application of a particular provision in relation to these facilities is no longer necessary. While IMDA will consider the Dominant Entity's grouping, it is not binding on IMDA. If IMDA does not agree with the Dominant Entity's grouping, IMDA may:

(i) consider separately each facility for which the Dominant Entity has sought an exemption and make an individual determination for each facility;

(ii) group facilities together that IMDA determines perform the same functions, or are subject to similar competitive conditions, and make a determination for each facilities group; or

(iii) consider some facilities separately and group some facilities together.

(g) The Dominant Entity may submit a narrow Request. For example, the Dominant Entity may request exemption from the application of a particular provision applicable to a specific service or facility when the Dominant Entity provides that service or facility to a particular class of Customers or in a particular geographical area. If the Dominant Entity chooses to make such a narrow Request, it must clearly identify the scope of the Request, and the basis on which the Dominant Entity believes that application of the provision to that Customer class, or geographical area, is no longer necessary.

2.2 Evidence to be Submitted

A Dominant Entity must provide evidence necessary for IMDA to assess its Request.

2.2.1 Ability of Competitors to Replicate Facilities (For Exemption Requests Applicable to Facilities)

Certain provisions of the Code are applicable to facilities controlled by a Dominant Entity. For example, in the case of Dominant Telecommunication Licensees, the Code sets out provisions that require a Dominant Telecommunication Licensee to provide physical interconnection and access to unbundled network elements and essential support facilities.

(a) Where a Dominant Entity seeks to be exempted from the application of any obligation to a specific facility, or group of facilities, the Dominant Entity should submit:

(i) a description of the facility for which the exemption is sought; and

(ii) verifiable data regarding the ability of an efficient competitor to replicate those facilities.

(b) The description of the facility should include its:

(i) function;

(ii) physical characteristics; and

(iii) Customer base (*i.e.*, number and types of Customers).

(c) Verifiable data regarding the ability of an efficient competitor to replicate the facilities should include:

(i) the facilities that the Telecommunication Licensee or Regulated Person has deployed to provide services in Singapore;

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

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

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

(v) the extent to which competitive deployment of these facilities has occurred and is likely to occur within the foreseeable future.

2.2.2 Ability of a Telecommunication Licensee or Regulated Person to Exercise Significant Market Power (For Exemption Requests Applicable to Services)

Certain provisions of the Code are applicable to the provision of services by a Dominant Entity, such as the duty to provide services on fair, reasonable and non-discriminatory terms.

(a) Where a Dominant Entity seeks to be exempted from the application of any obligation to a specific service, or group of services, the Dominant Entity should submit:

(i) a description of the service for which the exemption is sought; and

(ii) verifiable data regarding the Dominant Entity's ability to exercise Significant Market Power in the market for that service.

(b) The description of the service should include its:

(i) function;

(ii) physical characteristics; and

(iii) Customer base (*i.e.*, number and types of Customers).

(c) Verifiable data regarding a Telecommunication Licensee or Regulated Person's ability to exercise Significant Market Power in the market for a service should include:

(i) the relevant market(s) for the service that the Telecommunication Licensee or Regulated Person provides (including the basis for the market definition using the market definition framework described in Paragraph 2.4.1 of these Guidelines);

(ii) the participants in the market;

(iii) the Telecommunication Licensee or Regulated Person's market share (including the basis for the estimate);

(iv) the level of concentration in the market (including the estimated market shares of other major market participants);

(v) the barriers to entry into the market;

(vi) the likelihood of timely and sufficient increases in output (either through new entry or the provision of additional services by current market participants) in response to a significant and non-transitory price increase by the Telecommunication Licensee or Regulated Person;

(vii) the likelihood that End Users would respond to a significant and non-transitory price increase by the Telecommunication Licensee or Regulated Person by switching to a competing service provider;

(viii) evidence of actual market competition, including evidence of:

(1) actual successful new entry;

(2) changes in market share over time;

(3) Customer switching;

(4) price changes (based on actual prices, where different from list prices);

(5) profitability (including an explanation of any instance in which returns are substantially above competitive levels);

(6) new service introduction; and

(7) non-price competition (such as service quality competition); and

(ix) any other relevant factors that could enhance or diminish the Telecommunication Licensee or Regulated Person’s ability to act anti-competitively.

(d) The Dominant Entity must provide any relevant information that it:

(i) has in its possession; or

(ii) can obtain or develop with reasonable diligence.

(e) Where the Dominant Entity is unable to provide complete information, it should make a good faith estimate. In such cases, the Dominant Entity should explain the basis on which it is providing any estimate. If the

Dominant Entity cannot provide a good faith estimate, it should explain why, despite reasonable diligence, it is not able to do so.

(f) The Dominant Entity may request confidential treatment for information that it provides to support its Request, in accordance with Sub-section 12.9 of the Code.

2.3 Analytical Framework for Assessing Exemption Requests Applicable to Facilities

(a) In considering a Request to exempt a Dominant Entity from any obligation applicable to a facility, IMDA will seek to apply economic analysis to determine whether, as a result of changing market conditions, application of the provision to the facility continues to be necessary. In general, IMDA will grant an exemption if it finds that the facilities for which the Dominant Entity seeks an exemption are not sufficiently costly or difficult to replicate such that requiring new entrants to do so would create a significant barrier to rapid and successful entry into the telecommunication and/or media market in Singapore by an efficient competitor.

(b) In order to determine whether a Telecommunication Licensee or Regulated Person's facility is sufficiently costly or difficult to replicate, IMDA will consider whether an efficient competitor could:

(i) construct a facility that performs a function comparable to the Telecommunication Licensee or Regulated Person's facility at a cost that would enable it to provide a competitive service; or

(ii) obtain such a facility from third parties on prices, terms and conditions that would enable it to provide a competitive service.

(c) IMDA will conclude that a facility performs a function comparable to the Telecommunication Licensee or Regulated Person's facility if a Customer would view the facility as a reasonable substitute for the Telecommunication Licensee or Regulated Person's facility, given both price and non-price factors.

(d) IMDA will find evidence regarding actual competitive entry, by operators that deployed their own facilities, or obtained them from third parties, to be especially persuasive.

2.4 Analytical Framework for Assessing Exemption Requests Applicable to Services

(a) In considering a Request to exempt a Dominant Entity from any obligation applicable to a service, IMDA will seek to apply economic analysis to determine whether, as a result of changing market conditions, continued application of the provision applicable to Dominant Entities to the service continues to be necessary.

(b) In general, IMDA will grant an exemption if it finds that the Dominant Entity lacks Significant Market Power in the market or markets in which it provides the service for which it seeks the exemption. "Significant Market Power" means the ability to unilaterally restrict output, raise prices, reduce quality or otherwise act, to a significant extent, independently of competitive market forces.

(c) In cases in which a market is increasingly competitive, but not yet effectively competitive, IMDA may grant an exemption from some obligations, while retaining those that remain necessary.

(d) In any case in which the evidence demonstrates that, even under the narrowest market definition, a Telecommunication Licensee or Regulated Person lacks Significant Market Power, IMDA may dispense with conducting a full market definition exercise.

2.4.1 Market Definition

In order to determine if a Telecommunication Licensee or Regulated Person has Significant Market Power in the market for a service, IMDA will first determine the relevant service, geographic and functional markets in which the Telecommunication Licensee or Regulated Person provides the service. IMDA may also take into account the appropriate time frames when defining the relevant market.

(a) IMDA will define the relevant service market based on a "demand substitutability" approach. Under this approach, the relevant market for a service provided by a Telecommunication Licensee or Regulated Person consists of both the specific service for which the Telecommunication Licensee or Regulated Person seeks an exemption and any additional service that buyers regard as interchangeable with, or a substitute for, the Telecommunication Licensee or Regulated Person's service.

(i) To do so, IMDA may apply the so-called "SSNIP Test". If IMDA does so, it will consider whether a hypothetical monopoly operator controlling the entire supply of the service provided by the Telecommunication Licensee or Regulated Person would be constrained from profitably imposing a small but significant, non-transitory increase in price ("**SSNIP**") above the competitive level (typically 5 to 10 percent for a year or more) because a sufficient number of Customers of the service would switch to another substitute service, thereby rendering the price increase unprofitable. IMDA may use the current price charged by the Telecommunication Licensee or Regulated Person as a reference for the competitive price level. If the hypothetical monopolist would be constrained, IMDA will include the substitute service in the market definition. IMDA will repeat this process until no additional substitute services could constrain the profitability of a price increase by the hypothetical monopolist. While the SSNIP Test can provide a useful analytic framework, due to the absence of market data regarding consumer conduct in response to a price increase by a hypothetical monopolist, it is not always possible to define a market in strict accordance with this approach. In addition, IMDA recognises that the SSNIP Test may not yield an accurate market definition in cases where the current prices of the relevant service are above competitive levels. For example, a Telecommunication Licensee or Regulated Person may have Significant Market Power in providing a particular service and has raised the price of that service above competitive level. In this case, although there are substitutes that are able to constrain the Telecommunication Licensee or Regulated Person with Significant Market Power from further raising its prices, they should not be included in the definition of the relevant market as they would not normally be considered to be substitutes at the competitive price level. Including these inferior substitutes into the market definition could lead to the market being defined too widely, and the market power of the Telecommunication Licensee or Regulated Person being lower than it actually is.

(ii) IMDA may also consider whether other service or product offerings, offered by the Telecommunication Licensee or Regulated Person and/or other Telecommunication Licensees or Regulated Persons, can be considered a reasonable substitute for the Telecommunication Licensee or Regulated Person's service or product offering because they have a similar function, characteristic or customer base as the Telecommunication Licensee or Regulated Person's service or product offering. IMDA will conclude that a service performs the same (or comparable) function as the Telecommunication Licensee or Regulated Person's service, regardless of the technology used, if a Customer would view the service as a reasonable substitute for the Telecommunication Licensee or Regulated Person's service, given both price and non-price factors.

(iii) IMDA will find evidence that Customers have actually found other services to be reasonable substitutes to be especially persuasive.

(iv) IMDA will not consider "supply substitutability" as part of the market definition process. Supply substitutability refers to the ability of entities that are not currently in the market to enter the market relatively quickly and costlessly. IMDA will consider this issue as part of its assessment of the factors that would increase or decrease the ability of the Telecommunication Licensee or Regulated Person to act anti-competitively.

(v) IMDA recognises that certain markets are characterised by "one-way substitutability". One-way substitutability exists where product B is a demand substitute for product A, but product A is not a demand substitute for product B. In conducting a competitive analysis, IMDA will begin the market definition process with the service market which is the focus of its review. Thus, in an assessment of the competitiveness of product A, IMDA would begin with product A and may conclude that product B is a demand substitute and hence in the same market as product A. By contrast, in an assessment of the competitiveness of product B, IMDA would begin with product B and may conclude that product A is not a demand substitute for and hence not in the same market as product B.

(b) IMDA will next identify the relevant geographic markets. The relevant geographic market for a service provided by a Telecommunication Licensee or Regulated Person consists of the geographical area in which the Telecommunication Licensee or Regulated Person (and other Telecommunication Licensees or Regulated Persons that provide substitutable services) provides services and any additional geographical locations from which Customers would obtain those services if prices charged by the Telecommunication Licensee or Regulated Person increased by a small but significant, non-transitory amount. In practice, IMDA will consider those areas that have similar competitive conditions to be in the same geographic market.

(c) IMDA will also determine whether a service is provided at the wholesale level (*i.e.*, whether the service is provided to other Telecommunication Licensees or Regulated Persons), the retail level (*i.e.*, whether the service is provided to End Users), or both levels. To do so, IMDA will consider whether the industry practice is to offer the service to retail and wholesale customers on different prices, terms and conditions. For example, the wholesale service may be offered at a different price, or have different functionality, than the retail service. In those cases in which there are material differences between the wholesale and retail services that preclude the two services from being demand substitutes, IMDA will consider the wholesale and retail services to be in separate markets. By contrast, in many cases, Telecommunication Licensees or Regulated Persons will offer similar functionality, at similar prices, to both wholesale and retail customers. In such cases, IMDA will consider the wholesale and retail services to be in the same service market.

(d) Where appropriate, IMDA may also define a market based on a "temporal dimension". For example, IMDA may distinguish between peak and off-peak services.

(e) In some cases, IMDA may conclude that, even though different service or product offerings may theoretically be in different markets, it is appropriate to assess whether the distinct service or product offerings may be included in the relevant market due to "bundling". The perspective of Customers will be important in assessing the appropriate frame of reference. In assessing market definition involving bundling of services and/or product offerings, IMDA will consider whether a hypothetical monopolist supplying a bundled offering will be constrained from introducing a small but significant non-transitory price increase by the threat that Customers will switch to buying the individual components separately and/or alternative bundles offered by its competitors.

(f) Depending on the circumstances, the relevant market may also be expanded to include products or services which, although not directly substitutable, should be included into the market definition because of so-called "chain substitutability". Chain substitutability occurs where it can be demonstrated that two products, *e.g.*, A and C, are not directly substitutable, but a third product, B, is substitutable for both products A and C. Therefore, products A and C should be in the same product market since their pricing might be constrained by the substitutability of product B.

(g) Apart from identifying groups of substitutes, markets can also be defined to include groups of complements. Complements are groups of products that are consumed or produced together; the complementary good usually has little to no value when consumed alone. IMDA may consider complements to be included in the same market when competition in the provision of one product constrains the price charged for the other.

2.4.2 Assessing Competitiveness

After IMDA has defined the relevant market, it will conduct a competitiveness assessment.

(a) IMDA will first determine the market participants and their market shares.

(i) Where reliable information is available, IMDA will seek to use the unit of measurement that best reflects the characteristics of the market. In doing so, IMDA may look at revenues, unit sales, capacity or other relevant units of measurement.

(ii) In markets for "upstream" services that could be used as an input for other services, and in which self-supply accounts for a significant portion of the market, capacity may be a more reliable measure than revenue because it is often not feasible to assign revenues to self-supplied inputs. Indeed, excluding such self-provided capacity could result in significantly under-estimating a Telecommunication Licensee or Regulated Person's competitive significance. For example, if a firm supplies 90 percent of the total capacity in a market to a single Customer, the firm would almost certainly have market power. If the Customer subsequently acquired the firm, it would still be appropriate to consider the firm's provision of capacity to its new affiliate in assessing the firm's market power. Similarly, if a firm provides capacity to itself as a result of vertical integration, rather than as a result of an acquisition, such capacity should be considered in assessing the firm's market power. However, where a Telecommunication Licensee or Regulated Person provides one service to itself, and a different service to other Customers, IMDA will not consider the two services to be in the same market.

(iii) Where a Telecommunication Licensee or Regulated Person has Effective Control over an Affiliate, or where an Affiliate has Effective Control over the Telecommunication Licensee or Regulated Person, and the two entities provide a service in the same market, IMDA may aggregate the market shares of the two entities.

(iv) IMDA will take into account the extent to which a Telecommunication Licensee or Regulated Person acts in concert with or has Effective Control over another Telecommunication Licensee or Regulated Person.

(v) Although market share provides a useful starting point for the assessment of market power, IMDA will not impose an absolute maximum market share above which it will conclusively presume that a Telecommunication Licensee or Regulated Person has Significant Market Power. Nonetheless, all things being equal, a larger market share indicates a greater potential ability to act anti-competitively and, consequently, a greater need to retain regulation. Therefore, IMDA will make an initial presumption that a Dominant Entity that has a market share in excess of 50 percent has Significant Market Power. However, this presumption may be over-come by evidence that demonstrates that the Telecommunication Licensee or Regulated Person, in fact, is subject to effective competition. For example, a Telecommunication Licensee or Regulated Person with a market share in excess of 50 percent may be subject to effective competition because there are extremely low barriers to entry or because the Telecommunication Licensee or Regulated Person provides service to a small number of "strong" Customers that have significant countervailing buying power.

(vi) IMDA will take into consideration whether the ability of a Telecommunication Licensee or Regulated Person to exercise its market power in a relevant market is constrained by:

(1) another related market. For example, a Telecommunication Licensee or Regulated Person with Significant Market Power in the upstream (wholesale)

market may find it difficult to exploit its market power due to the existence of a strong buyer in the downstream (retail) market;

(2) the ability and incentive of competitors to take actions (such as increasing the output of programmes or advertising space) that would render it unprofitable for that Telecommunication Licensee or Regulated Person to carry out unilateral conduct, such as unilaterally raising prices, reducing prices, reducing quality of services provided, or otherwise acting independently of competitive market forces;

(3) the extent to which new entrants can enter the relevant market in a timely and effective manner; and

(4) the ability of Customers to switch to alternative providers.

(vii) IMDA may also consider whether the relevant market is a one-sided market or a two-sided market to provide an integrated framework for understanding the interactive relationships between dominance, conduct and effect so as to properly assess any competition issues. Two-sided markets are markets in which a Telecommunication Licensee or Regulated Person provides a platform that enables two distinct but related groups of Customers to obtain products or services. The two sides of the platform are linked, with interdependent prices and output and intertwined strategies. For two-sided markets, in addition to price level, IMDA may take into consideration price structure, i.e., the relative price level between the two sides of the market and the profit-maximising strategy of the Telecommunication Licensee or Regulated Person, which is generally a holistic decision of the level and structure of prices across both sides. IMDA may also consider the demands of Customers of both sides, the interrelationship between these demands, the costs directly attributable to each side and the costs of running the platform.

(b) IMDA will next consider other factors that would increase or decrease the ability of the Telecommunication Licensee or Regulated Person to act anti-competitively. In carrying out this assessment, IMDA will consider all relevant factors.

(i) IMDA will be more likely to find that a Telecommunication Licensee or Regulated Person is able to act anti-competitively if:

(1) the market is concentrated (*i.e.*, there are only a small number of other participants in the market besides the Telecommunication Licensee or Regulated Person and/or

other market participants are significantly smaller than the Telecommunication Licensee or Regulated Person);

(2) there are impediments to other Telecommunication Licensees or Regulated Persons entering, or expanding their participation in, the market, including:

- technical barriers (such as the need to use specialised or proprietary technology);

- access barriers (such as the need to obtain access to another entity's infrastructure in order to provide service, and any difficulty in doing so, or significant economies of scale and scope);

- financial barriers (such as the need to incur significant "sunk costs" in order to enter the market);

- commercial barriers (such as high advertising costs or high consumer switching costs); and

- regulatory barriers (such as limitations on the number of licences or on the entities eligible to provide a service).

A further discussion of IMDA's assessment of barriers to entry is set forth in Appendix 1;

(3) there are no close substitutes (based on price, quality or functionality) for the Telecommunication Licensee or Regulated Person's service;

(4) the Telecommunication Licensee or Regulated Person is able to act unilaterally, such as unilaterally raise prices, reduce prices, reduce quality of services provided or otherwise act independently of competitive market forces; and

(5) the Telecommunication Licensee or Regulated Person has the ability to leverage market power that it possesses in a vertically integrated market.

(ii) IMDA will be less likely to find that a Telecommunication Licensee or Regulated Person is able to act anti-competitively if:

(1) Telecommunication Licensees or Regulated Persons that currently provide other services can shift resources, relatively quickly and costlessly, in order to provide a

service that is a substitute for the Telecommunication Licensee or Regulated Person's service ("**supply substitutability**");

(2) "strong" Customers can exercise countervailing buying power; or

(3) the Telecommunication Licensee or Regulated Person's Customers can easily switch service providers.

(c) Finally, IMDA will consider evidence of actual market performance. This includes evidence regarding:

(i) actual market competition, including evidence of:

(1) actual successful new entry;

(2) changes in market share over time;

(3) Customer switching;

(4) price changes (based on actual prices, where different from list prices);

(5) profitability;

(6) new service introduction; and

(7) non-price competition (such as service quality competition); and

(ii) any prior anti-competitive conduct by the Telecommunication Licensee or Regulated Person.

2.5 Other Considerations

IMDA will also consider whether granting the exemption will have any pro-competitive benefits, such as allowing the Dominant Entity to introduce new services or respond more quickly to changing market conditions.

2.6 Implementation of Exemption Decisions

IMDA will take effective action to ensure that its regulatory regime reflects market developments over time.

2.6.1 Duration of Exemptions

Any exemption will become effective upon publication by notice on the IMDA website (www.imda.gov.sg) or by any other means of publication as IMDA considers appropriate. Unless IMDA specifies otherwise, any exemption will remain in effect permanently. However, IMDA may subsequently determine that re-imposition of a regulatory requirement is necessary to protect Customers or promote effective competition among Telecommunication Licensees or Regulated Persons. IMDA will provide an opportunity for comment prior to re-imposing any regulatory requirement.

2.6.2 Application of Exemption to New Services

(a) Unless IMDA specifies otherwise, if IMDA grants an exemption to services provided in a specific market, the exemption will apply to any other service or product offering that the Dominant Entity introduces during or following the proceeding ("**New Service**") that is in the market in which IMDA has granted an exemption, provided that the Dominant Entity:

  (i) provides a written notification to IMDA requesting that the exemption applies to the New Service; and

  (ii) obtains IMDA's prior written confirmation that the New Service is within the market in which IMDA has granted an exemption.

(b) The Dominant Entity's written notification should contain a detailed description of each New Service, including the factors specified in Paragraph 2.2.2(b) of these Guidelines. The Dominant Entity should also describe the basis on which it contends that the New Service falls within the market in which IMDA has granted an exemption. To do so, the Dominant Entity should use the "demand substitutability" approach specified in Paragraph 2.4.1(a) of these Guidelines.

(c) IMDA will make the determination as to whether the New Service falls within the market in which IMDA has granted the exemption. IMDA will find that a New Service is within the same market if the evidence demonstrates that it is a reasonable substitute for the services for which IMDA has previously granted an exemption.

2.6.3 Application of New Dominant Entity Obligations to Exempted Services

IMDA may amend the Code to introduce new requirements applicable to Dominant Entities. If IMDA does so, it will determine whether to exempt the Dominant Entities from the application of those requirements in any market in which IMDA has previously granted an exemption.

2.6.4 Review of Exemption Denial

In those cases in which IMDA denies a Request, IMDA may:

(a) specify actions that the Dominant Entity should take in order to obtain an exemption; and/or

(b) commit to undertake a further market review, at a specified date in the future, to determine whether, as a result of changed market condition, an exemption should be granted.

3. CLASSIFICATION OR RECLASSIFICATION OF TELECOMMUNICATION LICENSEES OR REGULATED PERSONS

3.1 Classification or Reclassification Standard

(a) Pursuant to Sub-sections 2.3(a)(i) and 2.3(a)(ii) of the Code, a Telecommunication Licensee or Regulated Person will be classified as a Dominant Entity if the Telecommunication Licensee or Regulated Person is an entity that either:

(i) operates facilities used for the provision of telecommunication and/or media services that are sufficiently costly or difficult to replicate such that requiring new entrants to do so would create a significant barrier to rapid and successful entry into the telecommunication and/or media market in Singapore by an efficient competitor; or

(ii) has the ability to exercise Significant Market Power in any market in which it provides services pursuant to its telecommunication or media licence.

(b) Sub-section 2.4.2(c) of the Code further provides that IMDA will reclassify a Dominant Entity as non–dominant if IMDA concludes, based on relevant evidence, that the Telecommunication Licensee or Regulated Person no longer satisfies the conditions for dominant classification specified under Sub–sections 2.3(a)(i) and 2.3(a)(ii) of the Code.

(c) Thus, in order for IMDA to reclassify a Dominant Entity as non-dominant, IMDA must conclude that the Dominant Entity does not satisfy Sub-section 2.3(a)(i) or Sub-section 2.3(a)(ii) of the Code.

3.2 Evidence to be Submitted

(a) A Dominant Entity seeking to demonstrate that it should be reclassified as non-dominant must make two separate showings:

(i) first, the Dominant Entity must demonstrate that the facilities that it uses for the provision of services in Singapore are not sufficiently costly or difficult to replicate that requiring new entrants to do so would create a significant barrier to rapid and successful entry into the telecommunication and/or media market in Singapore by an efficient competitor. To do so, for each facility (or category of facilities), the Dominant Entity should submit the verifiable data specified in Paragraph 2.2.1(c) of these Guidelines; and

(ii) second, the Dominant Entity also must demonstrate that it does not have Significant Market Power in any market in which it provides services pursuant to its licence. To do so, for each market in which it participates, the Dominant Entity should submit the verifiable data specified in Paragraph 2.2.2(c) of these Guidelines.

(b) A Telecommunication Licensee or Regulated Person or other interested party petitioning IMDA to have a Telecommunication Licensee or Regulated Person classified as a Dominant Entity should describe the basis on which it contends that the Telecommunication Licensee or Regulated Person in question satisfies the conditions for dominant classification specified under Sub-sections 2.3(a)(i) and 2.3(a)(ii) of the Code:

(i) A party seeking to demonstrate that a non-dominant Telecommunication Licensee or Regulated Person should be classified as a Dominant Entity on the grounds that the Telecommunication Licensee or Regulated Person is licensed to operate facilities used for the provision of services in Singapore that are sufficiently costly or difficult to replicate such that requiring new entrants to do so would create a significant barrier to rapid and successful entry into the telecommunication and/or media market in Singapore by an efficient competitor, must provide verifiable data. Specifically, for each facility that the party believes meets this standard, the party should submit the verifiable data specified in Paragraph 2.2.1(c) of these Guidelines.

(ii) A party seeking to demonstrate that a non-dominant Telecommunication Licensee or Regulated Person should be classified as a Dominant Entity, on the grounds that the Telecommunication Licensee or Regulated Person has Significant Market Power in at least one market in which it provides services pursuant to its licence, must provide verifiable data. Specifically, for each market in which the party believes that the non-dominant Telecommunication Licensee or Regulated Person has Significant Market Power, the party should submit the verifiable data specified in Paragraph 2.2.2(c) of these Guidelines.

(c) A party seeking classification or reclassification of a Telecommunication Licensee or Regulated Person on any basis must provide any relevant information that is in its possession or that, with reasonable effort, it can obtain or develop. Where the party is unable to provide complete information, it should make a good faith estimate. In such cases, the party should explain the basis on which it is providing any estimate. If the party cannot provide a good faith estimate, it should explain why, despite reasonable diligence, it is not able to do so.

(d) A party may request confidential treatment for information that it provides to support its Petition in accordance with Sub-section 12.9 of the Code.

3.3 Analytical Framework

(a) In considering whether or not a Telecommunication Licensee or Regulated Person is licensed to operate facilities used for the provision of telecommunication and/or media services in Singapore that are sufficiently costly or difficult to replicate such that requiring new entrants to do so would create a significant barrier to rapid and successful entry into the telecommunication and/or media market in Singapore by an efficient competitor, IMDA will use the methodology specified in Paragraphs 2.3(b) - 2.3(d) of these Guidelines.

(b) In considering whether or not a Telecommunication Licensee or Regulated Person has Significant Market Power in any market, IMDA will use the methodology specified in Paragraphs 2.4.1 and 2.4.2 of these Guidelines.

4. IMDA'S PROCEDURES FOR REVIEW OF EXEMPTION REQUESTS AND PETITIONS FOR RECLASSIFICATION

4.1 IMDA's Preliminary Review

(a) Once IMDA receives a Request or a Petition, IMDA will generally conduct a preliminary review. This process will typically take no more than 15 days.

   (i) If IMDA concludes that the party that filed the Request or Petition has not provided all required information, IMDA will not accept it for filing. In that case, IMDA will notify the party filing the Request or Petition as to the additional information that it must provide before IMDA will accept it for filing.

   (ii) If IMDA concludes that the Request or Petition plainly lacks merit, IMDA will summarily reject it.

(b) If IMDA concludes that the party that filed the Request or Petition has provided all required information, and that the Request or Petition does not plainly lack merit, IMDA will notify the party filing the Request or Petition of the date on which IMDA accepts the filing.

(c) At the time it conducts its preliminary review, IMDA will consider any request for confidential treatment made by the party filing the Request or Petition. The party must comply with the procedures specified in Sub-section 12.9 of the Code.

4.2 Procedures to Obtain Additional Information

Once IMDA has accepted the filing, it will seek to obtain additional information.

(a) IMDA will generally request industry comments. Except to the extent that the Request or Petition includes confidential information, IMDA will make public the Request or Petition and any comments filed.

(b) IMDA may request the party filing the Request or Petition to provide additional information at any time during the review process.

(c) IMDA may request that other Telecommunication Licensees or Regulated Persons, suppliers, or End Users provide inputs, statistical data or any other relevant information that may be necessary for IMDA's assessment.

(d) Where appropriate, IMDA may also conduct confidential interviews with Telecommunication Licensees or Regulated Persons, suppliers and End Users.

4.3 Preliminary Decision

Prior to issuing its final decision, IMDA will generally issue a draft or preliminary decision, and seek further industry comments regarding all aspects of its preliminary decision.

4.4 Timing

IMDA will seek to issue its preliminary and final decision within 90 days from the close of the public consultation. Where appropriate, IMDA may extend the time by which IMDA will issue its preliminary or final decision by providing a written public notice before the end of each 90-day period.

4.5 Conditions

IMDA seeks to eliminate regulations that are no longer necessary. Therefore, IMDA may grant a Request or Petition subject to a condition, such as the imposition of safeguards, where IMDA determines that this will provide an effective means to protect Customers or promote and preserve effective competition among Telecommunication Licensees and Regulated Persons.

5. REVIEW OF IMDA'S DECISION

Any Telecommunication Licensee or Regulated Person that is aggrieved by a decision rendered by IMDA may seek reconsideration of IMDA's decision, or may appeal to the Minister, pursuant to the procedures specified in Sub-section 12.10 of the Code.

Appendix 1 – Entry Barriers

1. IMDA's Reclassification and Exemption Guidelines specify a number of situations in which IMDA must make an assessment regarding the existence, and significance, of barriers to entry. In general, the more significant the barriers to entry, the more likely it is that IMDA will need to intervene in a market or find that an anti-competitive action has occurred.

2. In assessing barriers to entry, IMDA will seek to identify those factors that could preclude an efficient Telecommunication Licensee or Regulated Person from being able to market or provide a service.

3. In conducting its assessment, IMDA may seek information regarding the cost of, and barriers to, entry from: Telecommunication Licensees or Regulated Persons that are currently in the market; Telecommunication Licensees or Regulated Persons or other entities that have sought to enter the market; and Telecommunication Licensees or Regulated Persons or other entities that may seek to enter the market. Where appropriate, IMDA will consider whether changes over time have increased or decreased the difficulty of entry.

4. IMDA has identified five broad, but non-exclusive, categories of barriers to entry:

   (a) technical barriers;

   (b) access barriers;

   (c) financial barriers;

   (d) commercial barriers; and

   (e) regulatory barriers.

5. Technical barriers exist when a new entrant must use technology that is costly or difficult to develop or obtain from third parties. This may occur, for example, where a new entrant must obtain a licence to use proprietary technology, especially where the rights are controlled by a competitor. In assessing the existence of technical barriers, IMDA will consider the extent to which new entrants must use such technology, and the cost and difficulty of doing so.

6. Access barriers exist when a new entrant must access a competitor's infrastructure in order to provide a service to End Users, and doing so is costly or difficult. For example, where a competitor controls a facility that constitutes a "bottleneck" or "essential" facility, its refusal to provide access to this facility may create an absolute barrier to entry. Access barriers are potentially significant in the telecommunication and media markets, which is are characterised by both economies of scale and network effects. Economies of scale refers to the situation in which the average cost of providing services decreases as the volume of services increases.

Network effects arise when the value a consumer places on connecting to a network depends on the number of others already connected to it. A new entrant into the telecommunication/media market typically must be able to provide End Users with the ability to communicate with all other End Users. Once an entrant has done so, the cost of serving any individual Customer is relatively low. However, due to the high cost of infrastructure deployment, it is often not economically feasible for a new entrant to deploy a ubiquitous infrastructure. Therefore, in order to provide a service, the new entrant may need to access infrastructure controlled by a competing operator that is currently in the market. In assessing the existence of access barriers, IMDA will consider the extent to which existing regulation ensures that new entrants have access to infrastructure that is required to provide a competitive service on fair, reasonable and non-discriminatory prices, terms and conditions.

7. Financial barriers exist when a new entrant must incur significant costs in order to enter the market. For instance, new entrants into the telecommunication/media market may often have to incur significant costs to roll-out their network. Such costs cannot be recovered quickly. Neither can the entrant readily recoup these costs if it decides to exit the market within a short period. Such barriers will be especially significant if there are high "sunk costs". Sunk costs refer to the cost of acquiring capital and other assets that are incurred in order to enter the market and supply services, where the costs cannot be recovered and assets cannot be redeployed in another market when the service provider exits the market or ceases service supply. Therefore, in assessing financial barriers, IMDA will consider the costs that a new entrant must incur, as well as the extent to which such costs constitute sunk costs.

8. Commercial barriers exist when a new entrant must incur significant costs to obtain, retain, and serve End Users. For example, a new entrant to a market may need to incur significant costs including: advertising costs in order to obtain brand recognition; additional costs to get individual End Users to switch from their current service or equipment provider; and high ongoing “customer care” costs in order to retain the End User’s “brand loyalty”. In assessing the existence of commercial barriers, IMDA will consider the need for, and cost of, such expenditures.

9. Regulatory barriers exist when a new entrant must obtain regulatory approval to enter, or participate in, a market. Such barriers may be especially significant in markets in which resource constraints – such as limited amounts of spectrum – require regulatory authorities to impose an absolute numeric limit on the number of entrants.

10. IMDA will consider any other barrier to entry that is identified by a party. Parties seeking to do so should provide verifiable data about the nature of the barriers, the costs that a new entrant would have to incur, and the other obstacles a new entrant would have to overcome in order to surmount the barrier.