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18 January 2010

Mr Andrew Haire  
Deputy Director-General (Telecoms & Post)  
Infocomm Development Authority of Singapore  
#14-00 Suntec Tower 3  
Singapore 038988

By email: IDA\_Consultation@ida.gov.sg

Dear Mr Haire

**SECOND PUBLIC CONSULTATION ON TELECOM COMPETITION CODE (TCC) REVIEW**

1. We refer to the above consultation paper issued by the IDA on 23 November 2009. StarHub is please to submit our comments on IDA's proposed changes to the TCC.
2. Please do not hesitate to contact me, should anything in this letter require clarification or elaboration.

Yours sincerely  
For and on behalf of  
**StarHub Ltd**

A handwritten signature in black ink, appearing to be "TG" with a large flourish underneath.

Tim Goodchild  
Head (Government & Strategic Affairs)

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**SECOND PUBLIC CONSULTATION ON THE SECOND  
TRIENNIAL REVIEW OF THE CODE OF PRACTICE FOR  
COMPETITION IN THE PROVISION OF  
TELECOMMUNICATION SERVICES**

**Submission by the StarHub Group to the Info-communications  
Development Authority of Singapore**

**18 January 2010**

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## **1. General**

StarHub welcomes the opportunity to provide feedback on IDA's proposed changes to the Code of Practice for Competition in the Provision of Telecommunication Services ("the Code").

The Code plays an important role in ensuring a sustainable, viable and competitive telecommunications market in Singapore. Therefore any changes to the Code must take into account the long-term impact on the market.

In this second public consultation of the Code, StarHub is concerned that the draft Revised Code:

- Restricts a Licensee's ability to suspend or terminate services to customers who have already breached the terms of other contracts. Such a restriction would significantly increase the risks faced by Licensees, is contrary to international best practice, and would not benefit the development of the telecoms sector; and
- Provides that prohibitions against abuse of dominant position apply to any Licensee (including holders of Dealer Licenses and Services-based Licensees) that is found to have significant market power. We believe that such an amendment is unwarranted and would still create significant uncertainty within the industry.

StarHub is pleased to provide its comments to the Proposed Revised Code in the following section.

## 2. Specific Responses

### Section 1 – Regulatory Principles

#### Promotion of Services-Based Competition

StarHub notes that IDA has proposed clarifying in the Revised Code that effective and sustainable competition will be best achieved through facilities-based competition. The Revised Code will also state that, where there are impediments that hamper competing Licensees' ability to deploy facilities, IDA will strike a balance between providing the economic incentives to deploy facilities and taking pro-active measures to facilitate services-based competition.

StarHub agrees with IDA that certain markets would benefit from a more proactive approach in promoting services-based competition. However, care will still be needed in identifying those markets and the correct measures to facilitate competition. StarHub would submit that:

- It will be important for IDA to carry out a market-by-market review of competition in the telecoms sector. This review should be accompanied by industry consultation on the markets where facilities-based competition has proven difficult or infeasible.
- In markets where facilities-based competition has proven difficult or infeasible, it should not be an automatic presumption that services-based competition should be promoted. Rather it is necessary to look at why facilities-based competition has failed, and at the steps that could be taken to correct the situation.
- Where it is determined that facilities-based competition has proven difficult or infeasible, and that remedial steps cannot be taken to rectify that situation, IDA's primary mechanism for encouraging services-based competition would be through SingTel's Reference Interconnection Offer ("RIO") under which interconnection related services and mandatory wholesale services are provided.

### **Section 3 – Duty of Licensees to End Users**

#### **Service Termination or Suspension with Prior Notice**

StarHub notes that IDA has proposed to allow Licensees to terminate an End-User Service Agreement (“EUSA”) on the grounds that the End-User has breached terms and conditions in a separate EUSA, except where:

- (i) the telecommunication service to be terminated or suspended is a Basic Telephone Service; or
- (ii) the other EUSA that has been breached is with a different Licensee (including affiliates of the Licensee).

IDA has also clarified that a Licensee will be allowed to suspend the provision of multiple services provided under a single “master” EUSA if the grounds for service termination or suspension are met. However, in cases where the single “master” EUSA containing multiple services involves a Basic Telephone Service, the Licensee must continue to offer the End-User the Basic Telephone Service. In this case, the Licensee must offer the End-User the option of a separate EUSA for the continuation of the provision of the Basic Telephone Service.

StarHub remains very concerned with the proposed restrictions in the Revised Code. We believe that the proposed wording would unreasonably restrict the commercial flexibility of Licensees, and would increase the risk of bad debts that Licensees face in the provision of services. We are particularly concerned about the restrictions on terminations involving different Licensees. StarHub would note the following points:

#### **Absence of “Market Failure”:**

The proposed restrictions on EUSA terminations would apply to all telecoms markets, including to competitive markets (such as the mobile and broadband markets). However, there are no indications of any market failure that would warrant the proposed restrictions. In particular:

- There are no indications that “cross-default” provisions (i.e. the ability for an operator to terminate a contract if the customer defaults on a separate contract) are being used in an unreasonable manner;
- There are no signs of significant numbers of customers having their contracts terminated; and

- There are no suggestions that customers are dissatisfied with current contract termination practices.

In the absence of any clear market failure warranting intervention, we respectfully believe that the operators should be given the commercial flexibility to manage their EUSAs in line with the terms of those agreements.

**International Best Practice:**

StarHub would note that internationally, “cross-default” provisions are standard practice. For example:

- Under the General Service Conditions of Hong Kong Telecommunications (HKT) Limited, *“the Company may immediately terminate the Service or the Agreement without prior notice if ... the Customer has had amounts outstanding on any service or equipment provided to the Customer by the Company or an Affiliate of the Company, under the Agreement, for a period of thirty (30) days or more”*;
- Under the standard Verizon contract, *“Verizon can, without notice, limit, suspend or terminate your Service if ... you are in breach of any of the terms of this Agreement or any payment obligations with respect to the Service, or if charges owed by you to any Verizon affiliate are past due for service(s) provided to you”*;
- Under Telstra’s standard Terms and Conditions, Telstra can *“cancel, suspend or restrict your service ... if .... we reasonably consider that you pose an unacceptably high credit risk to us. We consider that you pose an unacceptably high credit risk to us when there is some doubt as to your ability to pay by the due date based on factors such as ... previous payment history and payment behaviour (eg late payments, dishonoured payments or failure to pay)”*;
- Under BT’s Residential Standard Terms, *“Where we provide you with a range of communications services and you owe us money for one service we reserve the right to charge you for that service via the bills we send you for your other services”* and *“We may also suspend or restrict the service or end the agreement for the service if you break any other agreement you have with us and do not put matters right within a reasonable time”*.
- Under the Telecom New Zealand Standard Terms for Residential Customers, *“We will send you bills for our charges. .... They may also include any other amounts you owe for any reason to us or to other Telecom companies. You must pay each bill by the due date for payment set out on it.”*

The use of “cross-default” provisions are used by these operators to manage their bad debt risk, and to ensure that customers pay amounts owed. We would note that the “cross-default” provisions highlighted above apply across different Licensees. Given the widespread use of “cross-default” provisions around the world, it is unclear why IDA has

proposed to defer from international best practice and restrict such provisions in Singapore.

**Incentives on Operators:**

StarHub would highlight that Licensees already have very strong financial incentives to provide services to their customers. The termination of services to any customer will always be a measure of last resort, after giving due notice to the customer, and allowing the customer to rectify the breach. Depending on the circumstances in question, StarHub can restrict or suspend (rather than terminate) the customers' services; and can establish a payment plan for the customer.

StarHub's reasonable approach to contract termination is shown by the low level of "churn" across its network. StarHub would note that the combined total of voluntary and involuntary churn is typically less than 1% of customers per year.

Given the operators' reasonable approach to contract termination, and the incentives on operators to provide services to their customers, we believe that the proposed restrictions on EUSA termination are unnecessary and inappropriate.

**Restrictions on Operators' Rights:**

The provisions in the Revised Code, restricting contract termination, would unduly benefit customers seeking to deliberately breach their contract terms. The Revised Code would also strip operators of their fundamental right to decide who they wish to provide services to.

We would note that there are a wide range of reasons why an operator would have to terminate a customer contract. These reasons include: (i) if the customer tampers with our network; (ii) if the customer transmits content that is offensive or indecent; and (iii) if the customer provides inaccurate information to us.

Under the Revised Code, if a customer of StarHub Mobile Pte Ltd tampered with the operator's network, transmitted indecent content, and deliberately provided inaccurate information, it is questionable whether StarHub Ltd could terminate that customer's contract. We would respectfully question whether such an outcome is reasonable.

We respectfully submit that, particularly in competitive markets, operators should have the ability to decide who they provide services to. As such, we strongly believe that the restrictions on contract termination (and the restriction on termination across different Licensees, in particular) should be removed from the Revised Code.

**EUSA and Different Licensees:**

Under the Revised Code, an operator would be prohibited from terminating an EUSA on the grounds that the End-User has breached terms and conditions in a separate EUSA where the other EUSA was with a different Licensee.

StarHub would highlight that one reason why operators will contract via different Licensees is due to the licensing and accounting separation requirements operators are required to follow. StarHub Mobile Pte Ltd is the only StarHub entity licensed to provide mobile services; StarHub Online Pte Ltd is only licensed to provide broadband and internet services; etc. StarHub generally contracts through the company that IDA has licensed to provide the services in question.

We welcome IDA's moves to make the Revised Code more workable and reasonable. However, we respectfully believe that it would be unreasonable to prohibit "cross-default" across Licensees. It is extremely common for operators to contract through different Licensees for different services, given the licensing structure in Singapore.

**Impact on Pre-Existing Contracts:**

StarHub has entered into customer contracts taking into account (*inter alia*) its ability to terminate those contracts in cases of "cross-default". The ability to terminate contracts in cases of "cross-default" is an important consideration for StarHub in managing risk.

The proposed terms of the Revised Code would remove StarHub's ability to terminate in many cases of "cross-default" and to manage its risk. As such the Revised Code would effectively over-ride pre-existing customer contracts. We believe that such an approach would be inappropriate and unwarranted.

**Impact of Revised Code:**

The proposed terms of the Revised Code would restrict the commercial flexibility of Licensees, and would increase the level of risk and bad debt that operators are exposed to. The primary beneficiaries of the Revised Code would be those customers who deliberately default on their contracts.

As explained our earlier submission, StarHub has valid reasons to suspend or terminate services to a customer. These measures are sensible, straight-forward, and widely-practiced. There are no indications that StarHub's termination of contracts is excessive or unreasonable. It is therefore entirely logical that if a customer acts in such a way as to cause a suspension or termination event, operators should have the right (whether exercised or not) to suspend or terminate the customer's other services. This approach is internationally-accepted, and is in line with the principle that operators should have the right to decide who they provide services with (and to manage the risks they are exposed to).

We therefore believe that the proposed elements of the Revised Code restricting operators' ability to terminate contracts in case of "cross-default" should be deleted from the finalized Code.

### **Section 3 – Duty of Licensees to End Users**

#### **Unsolicited Telecommunication Services and Supply on Free Trial Basis**

StarHub notes that the Revised Code set out the additional duty in Sub-section 3.2.8, which prohibits a Licensee from charging an End-User for the provision of any telecommunication services that End-User has not consented to receive. Sub-section 3.3.3 of the Revised Code further states that the EUSA must provide that the End-User will not be liable to pay for telecommunication service that the End-User did not consent to receiving.

We note that the Revised Code does not specify how consent from the End-User must be obtained. StarHub submits that the Revised Code should not restrict the manner which service providers can obtain consent from the End-User. The Premium Rate Services Code allow for subscription to a service, and acceptance of the terms and conditions, via SMS or MMS. The Consumer Protection (Fair Trading) (Opt-Out Practices) Regulations 2009 also do not prescribe the manner in which customers should provide consent to subscribe to a service.

### **SECTIONS 5 and 6 – Interconnection between Licensees and Schedule of Interconnection Related Services and Mandated Wholesale Services**

#### **Review Period for Interconnection Agreements**

StarHub notes that IDA has proposed to make a similar amendment to Sub-section 5.6.2 of the Code. Where IDA requests additional information from Licensees within the 45-day review period in relation to requests for unilateral suspension or termination of an interconnection agreement, IDA – after providing written notice – may extend the review period by up to 21 days after the date on which the Licensees provide the additional information or clarification.

StarHub would like to highlight a Licensee may request for unilateral suspension or termination of an interconnection agreement when the other party has committed a service affecting material breach of the agreement or non-service affecting material breach of the agreement (e.g. failure to pay any sum for which the other party has been invoiced) and that the other party has failed to rectify the breach within a specified

period. By extending the review period, the Licensee requesting unilateral termination of an interconnection agreement would be exposed to further operational and financial risks. Given that such circumstances would demand some urgency, StarHub respectfully submits that the current timeframe of 45 days would be adequate for IDA to issue its decision on the request.

## **SECTION 8 – Abuse of Dominant Position and Unfair Methods of Competition**

### **Abuse of Dominant Position in the Singapore Market**

StarHub is concerned that the Revised Code provides that the prohibitions against abuse of dominant position in Sub-section 8.2 of the Revised Code apply to any Licensee (including holders of Dealer Licenses and Services-based Licensees) that is found to have significant market power in the relevant market.

The existing Code makes a clear distinction between the obligations of Non-dominant and Dominant Licensees. The existing Code further presumes that Non-dominant Licensees do not have the market power to impede competition. Sub-section 2.3 of the existing Code also contains provisions in which Non-dominant Licensees can be reclassified as Dominant, if market conditions so require. These provisions provide Licensees (Dominant and Non-dominant) with clear guidelines as to their obligations and the boundaries within which they can price and market their services.

The proposed amendment would generate considerable uncertainty as to how Non-dominant Licensees could operate, thereby making business operations more difficult. IDA has clarified that the Reclassification and Exemption Guidelines would provide an indication of the factors that IDA would consider in assessing whether a Licensee has significant market power. However, StarHub believes that uncertainty will remain, as an operator will not be in a position to comprehensively determine whether it has acquired significant market power.

StarHub also fails to see how the proposed amendment would facilitate or expedite the enforcement against a Licensee that is not currently classified as a Dominant Licensee for abusing its market power in a specific market. The Revised Code appears to take a presumption that a Non-dominant Licensee would be classified as a Dominant Licensee arising from an enforcement action against the Licensee. However, StarHub believes that prior to taking any enforcement action against a Non-dominant Licensee for abuse of market power, IDA would still have to establish that the Licensee has indeed acquired a dominant position and hence should be reclassified as a Dominant Licensee. IDA would also have to demonstrate that the Non-dominant Licensee (even if it is to be reclassified as a Dominant Licensee) has indeed abuse its market power.

We therefore believe that the proposed amendments should be removed from the Revised Code. If an operator is Dominant, the prohibitions against abuse of dominant position should apply to it. If IDA believes that an operator has acquired dominance, procedures are in place to reclassify that operator (as IDA has noted).

### **3. Conclusion:**

StarHub believes that the Code should be revised from time-to-time, to reflect change in Singapore's telecoms markets. We welcome the steps IDA has taken to consult with the industry on the Revised Code. We also welcome the changes IDA has made to the Revised Code, to take into account some of the operators' comments.

However, StarHub is concerned by the proposed restrictions on contract termination, and on the proposed extension of Sub-section 8.2 to Non-Dominant operators. StarHub is particularly concerned with the proposed restrictions on "cross-default" across different Licensees.

We believe that these amendments would create uncertainty, and (in the case of termination restrictions) would simply increase the risks faced by operators. We also believe that these amendments are out of line with international best practice and would not benefit the development of the industry. StarHub therefore strongly believes that these provisions should be removed from the Revised Code.

StarHub is grateful for the opportunity to comment on this matter. We would also welcome the opportunity to discuss the Revised Code with IDA in greater detail.

StarHub Ltd  
18 January 2010