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Mr Andrew Haire
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8 Temasek Boulevard
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Dear Mr Haire,

PROPOSED ADVISORY GUIDELINES

We would refer to the Proposed Advisory Guidelines issues by the IDA on 11 March 2005, namely the:

(i) Proposed Advisory Guidelines Governing Abuse of Dominant Position, Unfair Methods of Competition and Agreements Involving Licensees that Unreasonably Restrict Competition ("The Dominance Guidelines"); and

(ii) Proposed Advisory Guidelines Governing Petitions for Reclassification and Requests for Exemption ("The Exemption Guidelines").

StarHub welcomes IDA's release of the Proposed Guidelines, and believes that they can fulfill an important role in clarifying IDA's interpretation of certain aspects of the Code of Practice for Competition in the Provision of Telecommunication Services 2005 ("the Code").

StarHub's comments on the Dominance Guidelines are set out as Annex One, while StarHub's comments on the Exemption Guidelines are set out as Annex Two. StarHub's general comments on the Guidelines are set out below.

(I) Lack of Statement on Standards of Proof:

StarHub would note that the Guidelines lack a clear statement on the standards of proof IDA will require from parties in its investigations. The absence of such principles may have a "dampening effect" on parties seeking to make complaints, or seeking exemptions under the Code.

By way of comparison, the draft advisory guidelines "Anti-Competitive Conduct in Hong Kong Telecommunications Market" released by Ofta in February 2004 ("the Ofta Guidelines") include a clear statement that:

"The burden of proving that there is an infringement of the anti-competitive conduct provisions rests with the TA. The civil standard of proof applies; the TA will decide on the balance of probabilities. In other words, the TA will decide on the basis of the evidence available, whether it is more likely than not that the conduct in question constitutes a breach of one of the prohibitions."

StarHub strongly believes that the Guidelines should include a similar statement of proof, on a "balance of probabilities" standard.

(II) Coordination with Other Regulatory Authorities:

StarHub would note that the provisions of the Guidelines might necessitate the IDA investigating markets outside of the telecommunications sector. For example, Section 8.3 of the Code refers to arrangements with entities that have Significant Market Power in non-telecommunication markets. However, it is unclear from the Code and the Guidelines how IDA will carry out such investigations, and the extent to which IDA will cooperate with other competition authorities (such as the Competition Commission of Singapore).

Given that the provisions of the Code now extend beyond the telecommunications sector, StarHub would submit that the Guidelines should clarify:

(i) How IDA will carry out investigations in non-telecommunications markets;

(ii) The extent to which IDA will cooperate with other competition authorities, and

(iii) How IDA will address any conflicting directives or findings between itself and other competition authorities.

(III) Differences between the Competition Act and the Code:

In IDA's Consultation Document on the Second Public Consultation, released on 11 May 2004, it is stated that:

"IDA will coordinate with MTI to ensure that the provisions under the Competition Bill and the Code are aligned, as far as practicable, considering the differences in the policy objectives to be achieved under the Code (which addresses a broader range of sectoral policy goals) and the Competition Bill (which focuses exclusively on preventing anti-competitive conduct)."

However, StarHub would note that there still remain significant differences between the Competition Act and the Code. The key differences include:

- The level of administrative penalties that can be imposed;
- The appeals processes; and
- Private rights of actions.

StarHub would note that certain aspects of the Code already extend beyond the telecommunications sector. Therefore, if the Code and the Competition Act are not aligned, discrepancies may well develop between the telecommunications sector and the rest of the economy. StarHub would also question why anti-competitive behaviour in the telecommunications sector should be subject to lower penalties than the same anti-competitive behaviour in the rest of the economy.

StarHub therefore submits that it is important for the provisions of the Code and the Competition Act to be aligned.

(IV) "Reasonable" Levels of Anti-Competitive Behaviour:

StarHub is concerned that the Dominance Guidelines could be interpreted as condoning "reasonable" levels of anti-competitive behaviour, and suggesting that IDA will not intervene in such cases.

For example, the Dominance Guidelines include statements that:

- *"Not every action that restricts competition constitutes as unreasonable restriction";*
- *"Conduct that has a minimal or insignificant impact on competition generally does not contravene the Code"; and*
- *"Most market participants want to drive their rivals from the market."*

Anti-competitive behaviour can have a serious impact on the telecommunications sector, in deterring competitive entry, blocking investment, and denying consumers the benefits of liberalisation. StarHub therefore submits that the references set out above (which set an unclear threshold for actionable "anti-competitive" behaviour) should be deleted.

StarHub also submits that the Dominance Guideline should include: (i) an unambiguous statement that IDA takes anti-competitive behaviour very seriously; and (ii) clarification setting out the thresholds at which IDA believes anti-competitive behaviour becomes "unreasonable".

(V) Reclassification under the Code:

StarHub would note that the Exemption Guidelines set out how IDA proposes to consider requests from Dominant Licensees to be reclassified as Non-Dominant. However, the Exemption Guidelines say very little as to how IDA will consider requests for Non-Dominant Licensees to be reclassified as Dominant Licensees. Given the importance of such reclassifications, and the fact that they are likely to be controversial, StarHub believes that it is necessary for the Exemption Guidelines to set out in greater detail the tests and processes relating to such reclassifications.

StarHub is grateful for the opportunity to comment on this issue. We would welcome the opportunity to discuss this matter in greater detail.

Yours sincerely,
For and on behalf of StarHub Ltd

Tim Goodchild
Regulatory & Interconnect

ANNEX ONE:

STARHUB COMMENTS ON THE PROPOSED DOMINANCE GUIDELINES

Section 2.3 The "Reasonably Restricts Competition" Standard:

Section 2.3(c) of the Dominance Guidelines includes a statement that *"not every action that restricts competition constitutes as unreasonable restriction"*, and appears to suggest that Dominant Licensees should, to some degree, be able to restrict competition. As noted in StarHub's general points, we believe that such statements are inappropriate, and provide Dominant Licensees with unwarranted ability to carry out multiple anti-competitive acts, so long as these fall below IDA's unspecified "threshold of tolerance".

StarHub believes that it is useful to contrast Section 2.3 of the Dominance Guidelines with Section 16 of Ofta's *"Guidelines to assist the Interpretation and Application of the Competitive Provisions of the FTNS Licence",* which give considerably less scope for anti-competitive behaviour. Section 16 of Ofta's Guidelines states that:

> *"The TA [Ofta] will give the term 'preventing or substantially restricting' [competition] the widest possible interpretation. Clearly, the words carry the meaning of a relative or qualitative concept. That is, the conduct may result in the total elimination of competition … or it may result in something less (for example, hindering a competitor from competing)."*

Given the impact anti-competitive behaviour can have on a newly liberalised market, StarHub believes that the Dominance Guidelines need to have a clear statement of IDA's intention to pursue and prosecute anti-competitive behaviour.

StarHub is also concerned by IDA's statement in Section 2.2 of the Dominance Guidelines, that *"IDA will strive to ensure that it applies these provisions in a manner that does not deter the vigorous competition that the Code is intended to foster – even if such competition may sometimes have an adverse impact on an individual Licensee."* In a concentrated market, an isolated adverse impact on an individual Licensee may have ramifications on that Licensee's subsequent ability to compete with a Dominant Licensee. While StarHub is not suggesting that inefficient operators should receive artificial support, StarHub would urge IDA to consider seriously any anti-competitive effect on any of the competing Licensees in the telecommunications market.

Section 2.3(c) of the Dominance Guidelines goes on to state that *"conduct that has a minimal or insignificant impact on competition generally does not contravene the Code".* StarHub is concerned that such a statement is too ambiguous. Firstly, there is no definition in the Dominance Guidelines of what constitutes *"minimal or insignificant impact".* Secondly, the Dominance Guidelines do not include any test for assessing whether an incident has had *"minimal or insignificant impact".* As it is currently drafted, Section 2.3(c) of the Dominance Guidelines could discourage IDA from legitimately taking action against anti-competitive behaviour by a Dominant Licensee.

StarHub therefore believes that IDA should amend Section 2.3(c), to:

(i) Delete references to "*conduct that has a minimal or insignificant impact on competition generally does not contravene the Code",* and *"not every action that restricts competition constitutes as unreasonable restriction"*; and

(ii) Include a statement that IDA intends to actively pursue anti-competitive behaviour, even if it is of a relatively small scale, so long as there is an adverse impact on competition.

Section 2.3(d) of the Dominance Guidelines includes a statement that *"Most market participants want to drive their rivals from the market".* Based on its knowledge of the market, StarHub does not believe that this statement is correct. In StarHub's view, competitive operators focus on customers and the delivery of services, rather than on attempting to "*drive their rivals from the market".* StarHub would also note that competitive operators lack the market power to force their competitors from the market, and that only Dominant Licensees have such power.

Therefore, including this statement in the Dominance Guidelines could be interpreted as condoning Dominant Licensees using their market power to exclude smaller operators from the market. Given the potential anti-competitive nature of such an action, StarHub would propose that the statement *"Most market participants want to drive their rivals from the market"* be deleted from the Dominance Guidelines.

Section 3.2.1.1 Predatory Pricing:

Section 3.2.1.1 of the Dominance Guidelines states that a Dominant Licensee *"must not sell its service below its costs* ***for a sustained period*** *in order to drive efficient rivals from the market (emphasis added)"* .

StarHub would note that the reference to a *"sustained period"* is not included in the wording of the Code, and is undefined in the Dominance Guidelines. Including this expression in the Guidelines could be interpreted as meaning that a Dominant Licensee is able to sell its service below its costs ***for a limited period*** in order to drive efficient rivals from the market, and still not be in breach of the Code. This result is clearly against the letter and spirit of the Code. StarHub therefore submits that the statement ***"****for a sustained period"* should be deleted from Section 3.2.1.1 of the Dominance Guidelines.

Section 3.2.1.1(e) of the Dominance Guidelines sets out the factors IDA will take into account in assessing entry barriers. The list set out in the Guidelines consists of: technical barriers, access barriers, financial barriers, commercial barriers, and regulatory barriers. Given that the Guidelines are meant to provide a more detailed understanding of IDA's interpretation of the Code, StarHub would propose that the list of barriers be expanded.

StarHub would propose the following additions:

- The advantages of incumbency and an established customer base;

- Reputation barriers, which increase the sunk costs for new entrants and reduce the likelihood of customers moving between operators;

- Network effects, which arise when a customer values access to a network depending on the number of others already connected to that network;

- Product and sales differentiation (with a high degree of product differentiation generally conferring some degree of market power on Licensee); and

- Strategic barriers (i.e. the incumbent specifically engaging in behaviour to deter market entry – such as strategic over-investment in capacity).

StarHub would highlight that these barriers to entry have already been included in the Ofta Guidelines (along with a detailed description of those barriers). StarHub believes that it would be appropriate and advantageous to the industry to include these barriers in Section 3.2.1.1(e) of the Dominance Guidelines.

Section 3.2.1.2 Price Squeezes:

Section 3.2.1.2 of the Dominance Guidelines defines a price squeeze as when *"the price that the Dominant Licensee charges for the telecommunications service of facility is so high that the Dominant Licensee's downstream business or Affiliate could not sell its product."*

However, it is unclear how IDA will interpret the provisions of Section 3.2.1.2 if the Dominant Licensee's Affiliate and the Licensee making the complaint have different definitions of the product. For example, the Affiliate of the Dominant Licensee might well argue that the "product" it is selling includes ancillary services such as consultancy, maintenance, and advisory services. The Licensee making the complaint could argue that IDA must focus on the "core" product being sold by the Dominant Licensee's Affiliate, and that ancillary services should be ignored for the purpose of Section 3.2.1.2.

StarHub therefore believes that the Guidelines should clarify how IDA intends to define the "product" being sold by the Dominant Licensee's Affiliate, for the purposes of Section 3.2.1.2. This gives greater certainty to Licensees to aid compliance.

Section 3.2.1.3 Cross Subsidies:

Section 3.2.1.3 of the Dominance Guidelines states that "*IDA may conduct cost allocation studies in order to determine whether cross-subsidisation has occurred".* However, the Guidelines do not specify what studies will be used, or how a cross-subsidy will be assessed.

By way of comparison, the Ofta Guidelines helpfully state that:

"The TA will normally judge a cross-subsidy to have occurred where a licensee's revenues from an activity, for example, the provision of a new service, may be expected to fail to cover the costs associated with that activity over its economic lifetime. The TA will consider whether the revenue over the lifetime of a service would exceed the LRAIC [Long Run Average Incremental Cost]. If revenues exceed LRAIC, the TA will normally take the view that the service is sustainable in the long term. However, there may still be concerns if the initial low price has the effect of foreclosing the market to potential competitors."

StarHub believes that the Dominance Guidelines could usefully clarify the tests that will be followed for assessing cross-subsidies, in the same way that the Ofta Guidelines have.

Section 3.2.1.3(d)(iii) - StarHub proposes that in assessing the price that the Dominant Licensee has charged in relation to the subsidised service, it is sufficient if the price set by the Dominance Licensee is one that is below its cost, regardless of whether or not it is predatory in nature. A competing Licensee can well suffer an adverse effect even if the Dominant Licensee were to price the subsidised product at cost or slightly below cost.

Section 3.2.2 Other Abuses:

IDA's Cover Document states that *"Section 8 [of the Code] contains non-exhaustive lists of practices that would constitute abuse of dominant position and unfair methods of competition."* This is particularly the case for Section 8.2.2 of the Code, which sets a broad prohibition on Dominant Licensees taking any action to abuse its dominant position. StarHub welcomes this clarification. To avoid the scope of Section 8.2.2 being artificially restrained, StarHub would propose that the Dominance Guidelines state that:

(i) Sections 8.2.2.1 and 8.2.2.2 of the Code are non-exhaustive examples of the behaviour prohibited in Section 8.2.2;

(ii) Actions prohibited under Section 8.2.2 are not limited to just Sections 8.2.2.1 and 8.2.2.2; and

(iii) IDA will consider requests for enforcement under Section 8.2.2 that fall outside Sections 8.2.2.1 and 8.2.2.2.

Section 3.2.2.1 Discrimination:

Section 3.2.2.1(a) refers to Dominant Licensees seeking to *"unreasonably restrict competition".* This statement, which is also reflected in the Code, leaves open the suggestion that there will be cases in which Dominant Licensees can "*reasonably*" restrict competition. StarHub believes that it is appropriate for the Dominance Guidelines to specify how IDA will interpret the expression *"unreasonably restrict competition".*

As noted in our general comments, StarHub believes that the IDA should have a low threshold for Dominant Licensees seeking to restrict competition. We therefore believe that it is appropriate for the Dominance Guidelines to clearly set out the test for assessing whether restrictions on competition are "reasonable".

Section 3.2.2.1(c) states that, in determining whether a Dominant Licensee's infrastructure, systems, services or information are *"necessary",* IDA will consider *"the ability of Licensees to self-provide this infrastructure, systems, services or information."* StarHub would note that in many instances, it may be uneconomic for a Licensee to duplicate and self-provide this infrastructure, systems, services or information. The cost of self-provision might have the effect of denying entry into the market. StarHub would therefore propose a more appropriate test for Section 3.2.2.1(c)(ii) would be:

> *"**economically** self-provide comparable infrastructure, systems, services or information"*

Section 3.2.2.2 Predatory Network Alterations:

Having been adversely affected by what we believe was a predatory network alteration, StarHub believes that the language of the Dominance Guidelines should be strengthened, to clarify IDA's view of such alterations.

In particular, StarHub believes that:

- Section 3.2.2.2(b)(i) must clarify that, when the Guidelines refer to the Dominant Licensee altering its network in a manner that "*imposes significant costs on any interconnected Licensees",* the term "costs" also includes lost revenues. The critical feature of a predatory network alteration is that it can disrupt the services the interconnected Licensee provides to its customers or delay implementation of new services, and thus unfairly deny the interconnected Licensee the revenue it would otherwise receive from customers. By denying the interconnected Licensee the ability to generate revenue, a predatory network alteration could force that Licensee to exit the market, without imposing significant "direct" costs on that Licensee.

- Section 3.2.2.2(c)(i) should be deleted, as it presents an unreasonable burden on the interconnected Licensee and the IDA who would have to prove that the network alteration was not *"commercially reasonable".* Based on our experience of predatory network alterations, we would note that almost any network modification could be argued by a Dominant Licensee to be *"commercially reasonable".* As the language of 3.2.2.2(c)(i) does not appear in the Code, StarHub submits that this clause must be deleted.

- Section 3.2.2.2(c)(ii) should be amended, as it fails to reflect the fact that the Dominant Licensee will (in many instances) be considerably larger than the Interconnected Licensee. The current wording of Section 3.2.2.2(c)(ii) requires the interconnected Licensee and the IDA to prove that the adverse impact of the

network alteration on the Interconnected Licensee was *"grossly disproportionate"* compared to the benefits to the Dominant Licensee. However, the fact that the Dominant Licensee will be considerably larger than the Interconnected Licensee may make it almost impossible to satisfy this test. At a minimum, StarHub believes that Section 3.2.2.2(c)(ii) should be amended to refer to Dominant Licensee's adverse impact being "*disproportionate", rather than "grossly disproportionate".*

Section 3.3 Anti-Competitive Preferences:

As noted in StarHub's general comments, this Section of the Dominance Guidelines fails to clarify how IDA will work with other sectoral regulators (such as the Competition Commission of Singapore), given that IDA will (apparently) be assessing the market power of companies in non-telecommunication markets. StarHub believes that it is important for this matter to be clarified.

Section 3.3.1 General Prohibition:

Section 3.3.1(d) states that, if a Licensee accepts any benefit from an Affiliate, or from its non-telecommunications business, which is not available to other Licensees, which enables that Licensee to obtain a competitive advantage by *"impairing other Licensee's ability to compete effectively",* IDA will find that the Licensee has accepted an anti-competitive preference. However, the test for anti-competitive preference under Section 8.3(a) of the Code is significantly different.

Section 8.3(a) of the Code states that:

- A breach will only occur if the Affiliate has Significant Market Power. However, Section 3.3.1(d) of the Dominance Guidelines simply applies to all Affiliates, whether or not they have Significant Market Power.

- A breach will only occur when that Affiliate with Significant Market Power uses its market power in a manner that enables the Licensee to, or is likely to enable the Licensee to, *"unreasonably restrict competition"*. However, Section 3.3.1(d) of the Dominance Guidelines applies to any competitive advantage the Licensee gains by "*impairing other Licensees' ability to compete effectively".*

It is clear that Section 3.3.1(d) of the Dominance Guidelines varies considerably from the provisions of Section 8.3(a) of the Code. It is also uncertain what is meant by "*impairing other Licensees' ability to compete effectively"*, and this term is undefined in the Dominance Guidelines. StarHub would therefore submit that Section 3.3.1(d) of the Dominance Guidelines should be amended to bring it into line with the provisions of the Code.

Section 3.4 Unfair Methods of Competition:

Section 3.4.2(a) states that a *"Licensee must not take any action … that has the effect of degrading the availability or quality of another Licensee's telecommunication service or equipment, or raising the other Licensee's costs, without a legitimate business, operational or technical justification."* By implication, a Licensee can degrade the availability or quality of another Licensee's service, if that Licensee has *"a legitimate business, operational, or technical justification".*

To avoid subsequent disputes on this matter, StarHub would propose that the Dominance Guidelines set out how IDA will interpret the expression *"a legitimate business, operational, or technical justification"* for the purposes of Section 3.4.2(a), and (in particular) the tests to be applied.

Section 4.3 Agreements between Licensees Providing Competing Telecommunications Services (Horizontal Agreements):

Section 4.3(a) of the Dominance Guidelines correctly notes that not all Horizontal Agreements are necessarily anti-competitive. To provide guidance to the industry on this point, StarHub would propose that the Guidelines give non-exhaustive examples of the type of Horizontal Agreements that might not be regarded as anti-competitive.

Under Section 5.20 of the Ofta Guidelines:

> *"Trade associations and co-operative bodies can often be regarded as beneficial to the competitive process. For instance, they can encourage new technology and innovation and can facilitate the adoption of good practices. The adoption of common standards in many cases may be desirable, particularly where they produce net economic benefits. Agreements that relate to technical or design standards (for example relating to interconnection or interoperability) may lead to an improvement in services by reducing costs or raising quality, or they may promote technical or economic progress. The TA may encourage the adoption of codes of conduct which provide a transparent benchmark for the industry."*

StarHub would propose that similar provision be made for trade associations and cooperative bodies in Section 4.3(a) of the Dominance Guidelines.

Section 9.4.1 of the Code states that IDA will make a *"preliminary assessment"* of the competitive impact of an agreement between competing Licensees, with both the Code and the Dominance Guidelines noting that some agreements can have a pro-competitive impact. To assist parties entering into such agreements, StarHub would submit that the Dominance Guidelines should include provisions:

(i) Allowing Competing Licensees who are entering into an agreement to seek IDA's assessment of whether that agreement would breach the terms of the Code; and

(ii) Noting that IDA's assessment would be for guidance purposes only, and that IDA's opinion on the agreement could change with changes in the circumstances.

StarHub would note that similar provisions for seeking guidance on horizontal agreements already exist under the Competition Act.

Section 4.5 Agreements Between Licensees and Entities that are Not Direct Competitors (Non-Horizontal Agreements):

StarHub would agree that Non-Horizontal Agreements could, under the correct circumstances, have pro-competitive outcomes. However, StarHub would submit that it is important for the Guidelines to clarify that Non-Horizontal Agreements will generally only raise competition issues where one of the parties to the Agreement has Significant Market Power.

ANNEX TWO:

STARHUB COMMENTS ON THE PROPOSED EXEMPTION GUIDELINES

Section 2.1 Requests for Exemption:

Section 2.1 of the Exemption Guidelines states, in several places, than any request for exemption must include *"verifiable data".* However, the Exemption Guidelines do not define how data is to be verified. StarHub would submit that *"verifiable data"* be defined as:

> *"Data that is: (i) able to be confirmed by way of an audit, or (ii) substantiated via an independent third party."*

Section 2.1(d) of the Exemption Guidelines states that Dominant Licensees seeking Exemptions may group services together into a market, but must show that those services are *"reasonable substitutes or are subject to similar competitive conditions".* StarHub would respectfully note that this obligation is insufficient, and that products or services that share *"similar competitive conditions*" may not necessarily be part of the same market. StarHub would therefore submit that, if a Dominant Licensee wishes to group services together, it must demonstrate that those services are *"close substitutes",* which we believe is a more appropriate test.[1]

Section 2.4.1 Market Definition:

StarHub would respectfully note that Section 2.4.1 of the Exemption Guidelines provides relatively little details on how IDA intends to define "markets" for the purposes of considering requests for Dominance Exemptions.

For example, the Exemption Guidelines do not set out:

- The need to define the product in terms that set out the particular functions/ characteristics/features of the product/service that allow an assessment to be made of the substitutes for the product/service;
- The need to assess close substitutes, from both the supply side and the demand side; and
- The need for all four dimensions of a market (product or service, geographic, functional, and temporal) to be considered.

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[1] StarHub would note that Section 4.2 of the Ofta Guidelines states that *"Firms that constrain each other through the supply of* ***close substitutes*** *are said to compete in the same market (emphasis added)."*

StarHub would request that the Exemption Guidelines set out in greater detail how IDA intends to define "markets" for the purposes of considering requests for Dominance Exemptions.

Similarly, in regard to the "hypothetical monopolist" test in Section 2.4.1(a)(i) of the Exemption Guidelines, the Guidelines appear to define *"non-transitory"* as *"a year or more".* StarHub believes that this definition is unnecessarily vague, and will lead to disputes. StarHub would note that Section 4.6 of the Ofta Guidelines states that *"one year is considered to be a reasonable period"* under a hypothetical monopolist test. StarHub would therefore propose that the Exemption Guidelines define *"non-transitory"* as *"one year".*

StarHub would also suggest that the Exemption Guidelines state the logical conclusion of the "Hypothetical Monopolist" test, that a market can be seen as the narrowest product category, supplied in the smallest geographical area, over which a hypothetical monopolist could exercise market power.

The existence of "substitutes" is a critical factor in assessing the definition of markets. In this regard, StarHub would suggest that the Exemption Guidelines follow the Ofta Guidelines in noting that the substitutability of products/services can be assessed by considering:

- *"past evidence that customers have switched between telecommunications service suppliers in response to relative changes in price or in other competitive dimensions (such as quality, service levels, innovation, etc);*

- *past evidence that suppliers of telecommunications services have responded to the prospect of customers switching suppliers in response to relative changes in price or in other competitive dimensions; and*

- *evidence that potential suppliers of telecommunications services can rapidly respond and supply a close substitute service in response to relative changes in price or in other competitive dimensions without incurring significant investment costs."*

StarHub believes that, including these points in Section 2.4.1 of the Exemption Guidelines, will increase the transparency and effectiveness of the Guidelines.

Section 2.2.2 Assessment of Competitiveness:

Section 2.4.2 (b)(ii) of the Exemption Guidelines sets out the barriers to entry for markets. As noted in StarHub's comments on the Dominance Guidelines, we believe that it is necessary to include, as barriers to entry, the following factors:

- The advantages of incumbency and an established customer base;

- Reputation barriers, which increase the sunk costs for new entrants and reduce the likelihood of customers moving between operators;

- Network effects, which arise when a customer values access to a network depending on the number of others already connected to that network;

- Product and sales differentiation (with a high degree of product differentiation generally conferring some degree of market power on Licensee); and

- Strategic barriers (i.e. the incumbent specifically engaging in behaviour to deter market entry – such as strategic over-investment in capacity).

Section 2.5 Other Considerations:

Section 2.5 of the Exemption Guidelines states that IDA will consider the pro-competitive benefits of Dominance Exemptions. StarHub accepts that some Dominance Exemptions will have some pro-competitive benefits. However, StarHub would respectfully suggest that a more appropriate test for Section 2.5 would be whether the pro-competitive benefits of Dominance Exemptions outweigh the public dis-benefits of granting such an Exemption.

Section 4.1 IDA's Preliminary Review:

Section 4.1 of the Exemption Guidelines states that *"If IDA concludes that a Request or Petition plainly lacks merit, IDA will dismiss it".* However, the Exemption Guidelines do not define how IDA will assess whether a request *"plainly lacks merit".* StarHub would note that, during the assessment of SingTel's Exemption request for "International Capacity Services", a number of parties commented that IDA should dismiss SingTel's request. Several of those parties noted that SingTel had failed to comply with the provisions of the Code in regard to the provision of *"verifiable data".*

In order to bring clarity to Section 9.1 of the Code, StarHub would propose that the IDA sets out the circumstances in which IDA would dismiss an application. In this regard, StarHub would propose the following criteria:

- *The Dominant Licensee has made similar Exemption Requests in the past, which have been turned down; and the Dominant Licensee's latest Exemption Request fails to prove any change in circumstances since its previous Request; or*

- *The Dominant Licensee has failed to provide information reasonably requested by the Authority, despite notification by the Authority to the Dominant Licensee.*

4.2 Procedures to Obtain Additional Information:

StarHub would note that Exemption Requests (by definition) involve significant competition issues. StarHub believes that Exemption Requests are best considered in

an open and transparent environment in which the public (and other operators) are able to comment in an effective manner.

In SingTel's Exemption request for "International Capacity Services", very little information was made public in regard to SingTel's assessment of the competitiveness of that market. StarHub believes that this has hampered the ability of the public (and other Licensees) to comment effectively on the proposed Exemption.

StarHub would respectfully submit that the Guidelines should include a statement that:

- *IDA will hold a general presumption to making public all information submitted by the Dominant Licensee as part of an Exemption Request; and*

- *Information submitted as part of an Exemption Request will only be treated as "Confidential" in exceptional circumstances, if justified by the Dominant Licensee.*

If such a statement is included in the Exemption Guidelines, Dominant Licensees seeking Exemptions will enter into the process with their eyes open, knowing that the information they submit will generally be made public. The disclosure of this information will improve both the transparency of the process, and the quality of submissions that the public and other Licensees are able to make on the Exemption Request. This transparency will give credence to the liberalisation and the effective regulation of the Singapore telecommunications industry.

Statement of Interest:

StarHub Ltd is a Facilities Based Operator ("FBO") in Singapore, having been awarded a licence to provide public basic telecommunication services ("PBTS") by the Telecommunications Authority of Singapore ("TAS") (the predecessor to IDA) on 5 May 1998.

StarHub Mobile Pte Ltd is a wholly-owned subsidiary of StarHub Ltd. StarHub Mobile Pte Ltd was issued a licence to provide public cellular mobile telephone services ("PCMTS") by the TAS on 5 May 1998. StarHub launched its commercial PBTS and PCMTS services on 1 April 2000.

StarHub Ltd acquired CyberWay (now StarHub Internet Pte Ltd) for the provision of Public Internet Access Services in Singapore on 21 January 1999. In July 2002, StarHub Ltd completed a merger with Singapore Cable Vision to form StarHub Cable Vision Ltd ("SCV"). SCV holds a FBO licence and offers broadband and cable TV services.

This submission represents the views of the StarHub group of companies, namely, StarHub Ltd, StarHub Mobile Pte Ltd, StarHub Internet Pte Ltd and StarHub Cable Vision Ltd (collectively "StarHub").