# CONSULTATION PAPER ISSUED BY

# THE INFOCOMM MEDIA DEVELOPMENT AUTHORITY

# SECOND PUBLIC CONSULTATION ON THE DRAFT CODE OF PRACTICE FOR COMPETITION IN THE PROVISION OF TELECOMMUNICATION AND MEDIA SERVICES

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## SECTION I: INTRODUCTION

1. On 20 February 2019, the Infocomm Media Development Authority ("**IMDA**") conducted a public consultation to seek views and comments on the proposed policy positions for a Code of Practice for Competition in the Provision of Telecommunication and Media Services (the "**Code**") ("**First Public Consultation**"). The Code aims to maintain effective and sustainable competition, and safeguard consumer interests in the telecommunication, broadcasting and newspaper markets, and will replace the existing Code of Practice for Competition in the Provision of Telecom Services 2012 (also known as the Telecom Competition Code, or **"TCC**") and the Code of Practice for Market Conduct in the Provision of Media Services (also known as the Media Market Conduct Code, or **"MMCC**"). The consulted policy positions for the Code were intended to align the rules and regulations under the TCC and MMCC and to keep pace with market and technology developments.

2. The First Public Consultation broadly covered the following topics:

   (a) Market Overview and Convergence;
   (b) Regulatory Principles;
   (c) Dominance Classification and Duties of Dominant Entities;
   (d) Anti-Competitive Conduct;
   (e) Consumer Protection;
   (f) Mergers and Acquisitions;
   (g) Resource Sharing;
   (h) Public Interest Obligations;
   (i) Telecommunication Interconnection; and
   (j) Administrative and Enforcement Procedures.

3. IMDA also sought early views and comments on the issues and challenges brought about by the changing competitive dynamics in the digital economy and its impact on competition policy in the longer term.

4. At the close of the First Public Consultation on 15 May 2019, IMDA received comments from 17 parties (individually referred to as a "**respondent**" and collectively, the "**respondents**"):

   (a) Asia Internet Coalition
   (b) Asia Pacific Carriers' Coalition
   (c) Asia Video Industry Association
   (d) Liberty Wireless Pte. Ltd.
   (e) Discovery Networks Asia-Pacific Pte. Ltd.
   (f) Global Antitrust Institute

(g) M1 Limited
(h) Mediacorp Pte. Ltd.
(i) Motion Picture Association
(j) MyRepublic Limited
(k) NetLink Management Pte. Ltd (as trustee of NetLink Trust)
(l) Singapore Telecommunications Limited
(m) Singapore Press Holdings Ltd
(n) Starhub Ltd
(o) TPG Telecom
(p) TVBI Company Limited
(q) US-ASEAN Business Council, Inc.

IMDA would like to thank all respondents for their submissions to the First Public Consultation.

5. The rest of the document sets out a summary of the key views and comments received during the First Public Consultation, and IMDA's responses and decisions on the consulted policy positions. IMDA would also like to invite further comments on the draft Code in **Annex A** of this consultation paper.

## SECTION II: SUMMARY OF VIEWS AND COMMENTS RECEIVED DURING FIRST PUBLIC CONSULTATION AND IMDA'S DECISIONS

6. This section provides a summary of the views and comments received on the Code, as well as IMDA's assessment and decisions. IMDA notes that some of the policy decisions entail amendments to the Info-communications Media Development Authority Act 2016 ("**IMDA Act**") and that some drafting format and/or terminologies in the Code may change as a result. IMDA will highlight the changes (if any) when IMDA issues the final Code.

## PART I: MARKET OVERVIEW AND CONVERGENCE

7. Between 2014 and 2018, IMDA undertook general market studies of key media and telecommunication markets to obtain an overview of the level of competition in these markets in Singapore. IMDA's market studies noted five key macro technology and business trends that have material impact on competition in the media and telecommunication markets over the next few years. The five key macro trends identified were:

   (a) transition to Internet protocol ("**IP**")-based services on the Nationwide Broadband Network ("**NBN**");
   (b) increasing competitive edge of service bundling;
   (c) increasing competition from non-traditional digital services and platforms;
   (d) growth of Over-the-Top (**"OTT**") media services; and
   (e) diminishing reach of traditional media platforms.

8. In the First Public Consultation, IMDA invited views and comments on the impact of the five key macro trends on the competitive dynamics in the telecommunication and media markets. While most respondents broadly agreed with the observed trends and developments in the telecommunication and media industries, in particular the impact of OTT on competition, two respondents suggested that the Code should go further in its regulatory response to these changes.

*IMDA's Assessment and Decision*

9. IMDA notes that there is general agreement on the trends identified and their impact on the telecommunication and media industries. In relation to the suggestion by the two respondents that regulations should be further amended in consideration of the new developments, in particular the impact of OTT on competition, IMDA has taken the feedback and suggestions into consideration and will address them in the relevant sections of the document.

## PART II: REGULATORY PRINCIPLES AND REGULATORY REVIEW PERIOD

### Regulatory Principles

10. In the First Public Consultation, IMDA proposed to harmonise the regulatory principles of the TCC and the MMCC by merging the following provisions which are substantively similar in effect:

    (a) Reliance on market forces, private negotiations and industry self-regulation;
    (b) Promotion of effective and sustainable competition;
    (c) Proportionate regulation;
    (d) Technology neutrality;
    (e) Open, transparent and reasoned decision making;
    (f) Avoidance of unnecessary delay;
    (g) Non-discrimination; and
    (h) Consultation with other regulatory authorities.

11. IMDA also proposed to retain the regulatory principle of Promoting Facilities-based Competition for the telecommunication markets only, given that it is not relevant to the media markets.

12. Respondents were generally supportive of the proposal to merge the common regulatory principles of the TCC and MMCC. One respondent commented that the phenomenon of "convergence" had not been proven to be so strong that regulation can truly be "neutral" between technologies. IMDA should therefore unpack the stock phrase "technology neutrality" and explain the circumstances in which different technologies should be treated alike or differently. Another respondent commented that substantive provisions should align more closely with the regulatory principles proposed by IMDA. For example, the regulatory principles referred to the need for proportionate regulation and prioritise reliance on market forces, private negotiations and industry self-regulation over regulatory intervention. However, IMDA's proposals to retain retail tariff regulation and continue imposing *ex-ante* obligations in existing markets without any market reviews did not demonstrate a priority for market forces and proportionate regulation.

13. On the proposal to retain the regulatory principle on Promotion of Facilities-based Competition for the telecommunication markets only, feedback received was primarily on whether this regulatory principle should be maintained. One respondent questioned the relevance of promoting facilities-based competition, given that the NBN had made facilities-based competition largely irrelevant and that competition had shifted to focus more on OTT services. Another respondent

took the view that encouraging facilities-based competition would lead to inefficient and costly replication of fibre infrastructure and higher incidence of traffic congestion due to roadworks. This would indirectly translate to a higher cost structure and more costly services for end-users. A third respondent mentioned that promoting facilities-based competition should not only be about encouraging new entry into the market, but also facilitating the introduction of new infrastructure by existing operators. There were no specific views on extending this regulatory principle to the media markets.

*IMDA's Assessment and Decision*

14. IMDA notes that respondents are largely supportive of the proposal to merge the common regulatory principles under the TCC and MMCC in the Code, with some discouraging the retention of the regulatory principle on Promoting Facilities-based Competition.

15. IMDA is of the view that the regulatory principle on Promotion of Facilities-based Competition has proven to be effective over the last two decades in stimulating innovation and facilitating effective and sustainable competition in the telecommunication markets. This has benefitted consumers by providing them with more choices of innovative services at lower prices. As Singapore progresses into the next phase of fixed and mobile connectivity, such as enhancing the performance and resilience of domestic connectivity via optical fibre and 5G networks, and international connectivity and capacity via submarine cables, it will be essential for operators to continue investing and building high quality and resilient infrastructure for the future. However, as mentioned in the TCC, where there are technological, market or other impediments that prevent competing Telecommunication Licensees[1] from deploying facilities, IMDA will strike a balance by providing economic incentives to deploy facilities and taking proactive measures to facilitate services-based competition.

16. IMDA will therefore merge the common regulatory principles listed in paragraph 10 above, and retain the regulatory principle of Promotion of Facilities-based Competition for the telecommunication markets only under the Code.

**Regulatory Review Period**

17. Under Sub-section 1.6.1 of the TCC and Sub-section 1.7.1 of the MMCC, IMDA will conduct a review of the TCC and MMCC every three years to ensure that the provisions remain relevant and effective. While the regulatory review period was not consulted earlier, IMDA is of the view that instead of a three-year review

[1] "Telecommunication Licensee" means an entity to which the IMDA grants a licence under section 5 of the TA.

period, it may be more appropriate to conduct a review of the Code on a five-yearly basis, given that the media and telecommunication markets have matured and the existing regulatory frameworks have generally stabilised. Notwithstanding the above, IMDA retains the flexibility to consult and amend certain provisions of the Code within the five-year period if necessary. The extension is also aligned with the extended review and validity periods of reference interconnection offer, which is elaborated under Part IX of this document.

## PART III: DOMINANCE CLASSIFICATION AND DUTIES OF DOMINANT ENTITIES

18. The First Public Consultation described the proposals relating to the classification and duties of Dominant Telecommunication Licensees and Dominant Persons as specified under the TCC and MMCC respectively (collectively referred herein as "**Dominant Entities**"). The proposed changes included the criteria used for dominance classification, market share threshold for the presumption of Significant Market Power ("**SMP**"), the approach for assessing dominance and the tariff filing requirement for Dominant Telecommunication Licensees.

### Dominance classification

Criteria Used for Dominance Classification

19. IMDA had proposed in the First Public Consultation that the same standards for dominance classification be applied to both the telecommunication and media markets in the Code. This is in consideration that, similar to a Telecommunication Licensee, a media licensee may also operate facilities, which are used for the provision of licensed media services (i.e., broadcasting services licensed under the Broadcasting Act and printing, publishing, selling and/or distributing of newspaper under the permit pursuant to the Newspaper and Printing Presses Act), that are sufficiently costly or difficult to replicate such that it creates a significant barrier for rapid and successful entry into the media markets by an efficient new competitor. The proposed standards for dominance classification in the Code were as follows:

    *Dominant Entities are entities that either:*

    *(a) operate 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*

    *(b) have the ability to exercise SMP in any market in which it provides services pursuant to its telecommunication or media licence.*

20. Most respondents were supportive of the proposed standards for dominance classification. One respondent called for further clarification on the definition of "sufficiently costly or difficult to replicate" while another respondent questioned the relevance of a facilities-based standard of dominance given that most new

entrants for media markets would be digital and would unlikely require access to facilities. One other respondent commented that while the key concepts of dominance would still be applicable, it would be necessary for IMDA to consider a more expansive definition of the terms “telecommunication and/or media market in Singapore” and not restrict it purely to licensees. Another respondent suggested that upstream suppliers in the telecommunication markets should be explicitly identified to be in possession of SMP.

*IMDA’s Assessment and Decision*

21. IMDA notes that while there were specific requests to clarify or amend specific parts of the dominance classification, there were generally no strong objections to the proposed standards.

22. In relation to the suggestion for further clarification on the definition of “sufficiently costly or difficult to replicate”, IMDA would like to highlight that the factors determining whether the facilities used for the provision of telecommunication and/or media services are sufficiently costly or difficult to replicate are specified in Sub-section 2.6.1 of the TCC and will be retained in the Code as follows:

    (a) the facilities that the Telecommunication Licensee or Regulated Person (“**RP**”) has deployed to provide services in Singapore;

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

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

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

    (e) the extent to which competitive deployment has occurred and is likely to occur within the foreseeable future.

23. Notwithstanding whether new entrants in the media markets would require access to facilities for the provision of media services, IMDA views that these new entrants could still be assessed to be dominant if they have the ability to exercise SMP in any market in which it provides services pursuant to their media licences.

24. In relation to the suggestion for IMDA to consider a more expansive definition of the terms “telecommunication and/or media market in Singapore” and not restrict it purely to licensees, IMDA would like to highlight that the Code aims to promote and maintain effective and sustainable competition in the provision and use of

telecommunication and media services, pursuant to the powers granted under the IMDA Act and the Telecommunications Act ("**TA**"). Unless there are strong policy reasons, IMDA is of the view that it is not necessary to expand the scope of the Code beyond Telecommunication Licensees and RPs at this juncture.

25. On the respondent's suggestion that upstream suppliers in the telecommunication markets should be explicitly identified to be in possession of SMP, IMDA is of the view that to simply identify upstream suppliers as dominant is artificial and may result in false positives. For example, a new entrant in the upstream market with a small market share entering into a market with low entry barriers, strong competitors and customers with strong countervailing buyer power in the downstream market etc. would unlikely have the ability to exercise SMP.

26. As such, the proposed standards for dominance classification set out in the First Public Consultation i.e., paragraphs 19(a) and 19(b) above will be retained.

Threshold to be Used for Initial Presumption of SMP

27. In the assessment of a Telecommunication Licensee's or RP's ability to exercise SMP in any telecommunication or media market, IMDA takes into consideration a range of factors such as market share, entry barriers and countervailing buyer power. IMDA had previously explained that, all things being equal, a larger market share indicates a greater potential ability to act anti-competitively and therefore a large market share is used as an initial presumption of SMP. However, IMDA had also mentioned that this presumption may be overcome by evidence that demonstrates that the Telecommunication Licensee or RP is in fact subject to effective competition.

28. Currently, both the media and telecommunication regulatory regimes provide for a rebuttable presumption that a Telecommunication Licensee or RP has SMP if its market share[2] for the relevant market is in excess of a certain percentage (the "**SMP Presumption Threshold**"). The SMP Presumption Threshold for the media markets is currently set at 60% market share, while the SMP Presumption Threshold for the telecommunication markets is set at 40% market share[3]. IMDA considered that there is merit in adopting a common SMP Presumption Threshold across both media and telecommunication markets under the Code

[2] In determining the market share, IMDA will seek to use the unit of measurement that best reflects the characteristics of the market. In doing so, IMDA may look at, for instance, revenues, unit sales, capacity or other relevant units of measurement.

[3] Refer to the Advisory Guidelines Governing Petitions for Reclassification and Requests for Exemption Under Sub-Sections 2.3 and 2.5 of the Code of Practice for Competition in the Provision of Telecommunication Services 2012.

and sought comments on an appropriate market share threshold to be used for the initial presumption of SMP.

29. IMDA received divergent views over the common market share threshold to adopt for the presumption of SMP. There were also mixed comments over the significance of using market share figures in SMP evaluations. Some respondents questioned the basis for raising the current threshold from 40% market share for the telecommunication markets, while others opposed a lowering of the market share threshold for the media markets in the face of increasing competition from OTT media service providers.

*IMDA's Assessment and Decision*

30. IMDA notes that the market share threshold continues to serve as a relevant indicator adopted by international competition authorities (e.g. United States' Federal Trade Commission ("**FTC**"), the European Union's ("**EU**") European Commission ("**EC**"), United Kingdom's ("**UK**") Competition and Markets Authority ("**CMA**") and the Competition and Consumer Commission of Singapore. IMDA also notes that there is no agreement on a market share threshold that would address all concerns raised by the respondents. IMDA is nonetheless of the view that retaining the separate SMP thresholds for the two markets (i.e., 40% market share for the telecommunication markets and 60% market share for the media markets) will not contribute to creating regulatory consistency and certainty in an increasingly converged telecommunication and media landscape.

31. When the telecommunication markets were first liberalised in 2000, IMDA had adopted a lower SMP Presumption Threshold of 40% market share as the markets were still evolving from monopolistic to competitive markets. Adopting a higher market share threshold then might relieve a Dominant Telecommunication Licensee from being classified as dominant prematurely even though the market was not in fact effectively competitive. However, the landscape has since evolved with more than 70 Facilities-Based Operations ("**FBO**") Telecommunication Licensees and more than 200 Services-Based Operations ("**SBO**") Telecommunication Licensees as of 2020. Given the increased competitiveness of the telecommunication markets, and the continued shift in competition dynamics as highlighted in the First Public Consultation, the 40% SMP Presumption Threshold may now be too low and may unnecessarily trigger a presumption of SMP when the market is in fact competitive. Therefore, IMDA remains of the view that raising the market share threshold for the presumption of SMP from 40% to 50% for the telecommunication markets would be appropriate in light of the above developments and would bring Singapore in line with international standards for the presumption of SMP.

32. For the media markets, a higher SMP Presumption Threshold of 60% market share was adopted in 2007 as there were few key players in the mass media services markets then. IMDA took the view back then that an RP with a market share of less than 40% was unlikely to be considered as an RP with SMP. If the RP had a market share of between 40% and 60%, IMDA might initiate a closer review to determine whether SMP existed. However, IMDA notes that more players have since entered the media markets and the current 60% market share threshold remains high when compared against other jurisdictions internationally.

33. Given the above, IMDA will adopt a 50% market share threshold as the SMP Presumption Threshold for both the telecommunication and media markets. IMDA would like to reiterate that the SMP Presumption Threshold is a rebuttable presumption meant to inform competition assessments and is not an end in itself. IMDA will consider other factors, such as barriers to entry and the existence of countervailing buyer power, in determining whether competition in the telecommunication and media markets has been restricted.

"Market-by-Market" versus "Licensed Entity" Approach to Dominance Classification

34. Under the MMCC, an RP is classified as a Dominant Person if it is found to have SMP in specific media markets (referred to as the "Market-by-Market" approach). Whereas under the TCC, a Dominant Telecommunication Licensee is assumed to be dominant in all telecommunication markets it participates in unless proven otherwise (referred to as the "Licensed Entity" approach)[4]. In the First Public Consultation, IMDA proposed to adopt a "Market-by-Market" dominance classification approach for Telecommunication Licensees moving forward, whereby a Telecommunication Licensee will be classified as a Dominant Telecommunication Licensee based on the specific market(s) or facility(ies), as it may no longer be reasonable to presume that a Dominant Telecommunication Licensee would automatically be dominant in these new markets given the level of competition that has developed over the years and the convergence and emergence of new markets. The approach will be aligned with that adopted under the MMCC.

35. Under the proposal, designated Dominant Telecommunication Licensees would not be presumed to be dominant for new services offered in new markets. This would provide greater flexibility and certainty for Dominant Telecommunication Licensees entering new markets and incentivise Dominant Telecommunication Licensees to innovate and offer new services, potentially bringing about greater benefits for consumers. IMDA also proposed to require the same from

[4] A Dominant Telecommunication Licensee can seek IMDA's approval to be exempted from Dominant Telecommunication Licensee obligations in certain markets which the Dominant Telecommunication Licensee views it is not dominant in.

designated Dominant Persons for the media markets. Hence Dominant Entities are required to demonstrate to IMDA that the new services do not fall within any existing markets in which the Dominant Entities are currently participating in and in which they are classified as dominant.

36. Most respondents supported the "Market-by-Market" approach for dominance classification for the telecommunication and media markets. Some respondents argued that IMDA should not only apply the approach to new markets, but also review the basis for the classification of Dominant Entities in existing markets. One respondent, while supporting the proposal, suggested that IMDA should review the existing advisory guidelines and added that while the Small but Significant, Non-transitory Increase in Price ("**SSNIP**") and the Small but Significant, Non-transitory Decrease in Quality ("**SSNDQ**") tests may serve as complementary tools for defining relevant market(s), it is important to conduct market-specific analysis. One respondent disagreed with the requirement that Dominant Entities would need to prove that new service(s) that they introduce do not fall within the market(s) in which they are dominant.

*IMDA's Assessment and Decision*

37. Given that the respondents were supportive of the "Market-by-Market" approach, IMDA will adopt the approach for dominance classification for the telecommunication markets. For the avoidance of doubt, the "Market-by-Market" approach will continue to apply for dominance classification for the media markets. Additionally, these Dominant Entities are required to demonstrate whether the new service(s) they introduce fall within the markets in which they are dominant. As provided under both the current telecommunication and media regulatory regimes, a Dominant Entity may file a request for exemption with IMDA if it considers that it is no longer dominant in an existing market. IMDA considers this to be a reasonable approach as many of the existing telecommunication markets have been reviewed over the years, arising from requests for Dominant Telecommunication Licensee exemption. For markets which are found to be effectively competitive, IMDA has relieved the relevant Dominant Telecommunication Licensee of the obligations[5], while markets for which IMDA has not granted relief are those that IMDA has found the Dominant Telecommunication Licensee to continue to be dominant in. Hence, IMDA is of the view that the "Market-by-Market" approach is reasonable and provides the Dominant Entity with the opportunity to demonstrate that it is no longer dominant in any existing market before its Dominant Entity obligations are relieved.

[5] Markets that were assessed to be competitive include International Telephone Services market, Backhaul market, Terrestrial IPLC market, IMDS market, International IP Transit market, Leased Satellite Bandwidth market, VSAT market, DVB-IP market, Satellite TV Uplink market, Satellite TV Downlink market and Satellite IPLC market.

Duties to be Applied to Dominant Entities in Both Telecommunication and Media Industries

38. As Dominant Entities are not subject to effective competitive market forces, additional regulatory requirements are imposed on them including specific duties imposed on an *ex ante* basis to ensure that they do not behave in an anti-competitive manner. *Ex ante* duties are currently set out under both the TCC and MMCC for the provision of services to either End Users or other Telecommunication Licensees. In the First Public Consultation, IMDA proposed to align the current duties of Dominant Entities under the Code. To this end, IMDA proposed to continue applying four general *ex-ante* Dominant Entity duties (i.e., A to D of Table 1) to all Dominant Entities under the Code. These *ex ante* duties have been effective in ensuring that Dominant Entities do not abuse their dominance in the respective telecommunication or media market(s), to the detriment of the industry and End Users. Additionally, IMDA proposed to retain duties that are unique to either the telecommunication or media industries and cannot be applied to the other industry, as summarised in Table 1 below.

<table>
<tr><th colspan="4">Table 1: Duties Applicable to Dominant Entities</th></tr>
<tr><th>S/N</th><th>Description of Duties</th><th>Telecommunication</th><th>Media</th></tr>
<tr><td colspan="4">General Ex Ante Duties</td></tr>
<tr><td>A</td><td>Duty to provide service at just and reasonable prices, terms and conditions</td><td colspan="2">✓</td></tr>
<tr><td>B</td><td>Non-discrimination</td><td colspan="2">✓</td></tr>
<tr><td>C</td><td>Service Unbundling</td><td colspan="2">✓</td></tr>
<tr><td>D</td><td>Duty to provide service on reasonable request</td><td colspan="2">✓</td></tr>
<tr><td colspan="4">Industry-specific Ex Ante Duties</td></tr>
<tr><td>E</td><td>Duty to allow resale of End User[6] services</td><td>✓</td><td>X</td></tr>
<tr><td>F</td><td>Duty to allow sales agency</td><td>✓</td><td>X</td></tr>
<tr><td>G</td><td>Duty for Wholesale Services</td><td>✓</td><td>X</td></tr>
<tr><td>H</td><td>Duties in relation to tariff</td><td>✓</td><td>X</td></tr>
<tr><td>I</td><td>Duty to provide fair access to programme lists</td><td>X</td><td>✓</td></tr>
<tr><td>J</td><td>Duty to provide access to advertising capacity</td><td>X</td><td>✓</td></tr>
</table>

39. Most respondents supported the proposal to apply the four general *ex-ante* Dominant Entity duties across the telecommunication and media markets. A few respondents suggested for the duties to be reviewed as they place traditional media companies at a significant regulatory disadvantage compared to unregulated digital platforms. One respondent singled out the duty to provide access to advertising capacity and asked that IMDA remove this requirement as it was outdated and unnecessary given that the advertising landscape had changed significantly over the past years.

[6] "End User" means a business or residential subscriber of any Service in Singapore.

*IMDA's Assessment and Decision*

40. In relation to the comment on the duty to provide access to advertising capacity and the duty to provide fair access to programme lists, IMDA notes that the original intent of the duty was to prevent Dominant Persons from limiting or denying other entities the ability to purchase advertising capacity to promote their media service(s) on reasonable and non-discriminatory prices, terms and conditions and fair coverage of the programmes provided by other entities. IMDA recognised that the advertising landscape has evolved with the Internet having become a key advertising platform. Hence, the requirement to provide access to advertising capacity and fair access to programme lists by Dominant Persons in the media markets might no longer be essential. In view of the above and to provide the industry with clarity, IMDA will remove both the duty to provide access to advertising capacity and the duty to provide fair access to programme lists in the Code.

41. The revised duties that will apply to Dominant Entities under the Code is summarised in Table 2 for clarity.

**Table 2: Revised Duties Applicable to Dominant Entities**

| S/N | Description of Duties | Telecommunication | Media |
|---|---|---|---|
| General *Ex Ante* Duties | | | |
| A | Duty to provide service at just and reasonable prices, terms and conditions | ✓ | |
| B | Non-discrimination | ✓ | |
| C | Service Unbundling | ✓ | |
| D | Duty to provide service on reasonable request | ✓ | |
| Industry-specific *Ex Ante* Duties | | | |
| E | Duty to allow resale of End User services | ✓ | X |
| F | Duty to allow sales agency | ✓ | X |
| G | Duty for Wholesale Services | ✓ | X |
| H | Duties in relation to tariff | ✓ | X |
| I | Duty to provide fair access to programme lists | X | X |
| J | Duty to provide access to advertising capacity | X | X |

Specific Proposals for Tariff Filing for Telecommunication Services

42. Dominant Telecommunication Licensees are subject to the tariff filing, review and publication obligations for provision of services in markets which they are found to be dominant in. While the existing tariff regime has served the telecommunication industry well, IMDA noted that there have been few competition concerns raised with respect to the existing Dominant Telecommunication Licensees' service offerings at the retail level, compared to the early days of market liberalisation. There also appears to be healthy competition at the retail level with the nationwide rollout of the NBN, and more than 25 Telecommunication Licensees offering retail broadband services to End

Users over the NBN infrastructure. As such, IMDA proposed to modify the current tariff-filing review regime imposed on Dominant Telecommunication Licensees to focus more on wholesale and resale tariffs offered to other Telecommunication Licensees, and less on retail tariffs offered to End Users. Specifically, IMDA proposed that Dominant Telecommunication Licensees no longer need to seek IMDA's prior approval for most retail service tariffs, including modifications made to tariffs of existing retail services and the offering of promotions or customised schemes involving these services. Instead, IMDA proposed that a Dominant Telecommunication Licensee only need to:

(a) **notify** IMDA regarding new retail tariffs offered to End Users, modifications to approved tariffs of existing retail services, and offerings of customised or promotional schemes on these services ("**Info-tariffs**");

(b) publish the Info-tariffs; and

(c) seek IMDA's approval to withdraw any of the existing retail tariffs.

43. IMDA will require certain telecommunication services, which the public may view as basic services, to continue to be submitted to IMDA for tariff approval. IMDA will issue a notice on the list of these services following the issuance of the Code.

44. IMDA considered that there continue to be a need to monitor the wholesale and resale tariffs provided by Dominant Telecommunication Licensees as they operate facilities that are sufficiently costly or difficult to replicate which other Telecommunication Licensees may have to rely on to provide downstream services. The filing of wholesale and resale tariffs will help ensure that Dominant Telecommunication Licensees do not discriminate in favour of their downstream entities.

45. While most respondents supported the relaxation of the tariff filing obligation, one suggested that IMDA completely remove the tariff filing obligation. One respondent took the view that having a notification obligation would continue to impose significant regulatory burdens on telecommunication operators, without any material countervailing benefit to End Users. On the other hand, some respondents cautioned against relaxing the tariff filing obligation and requested that IMDA be ready to re-introduce stricter controls if needed.

*IMDA's Assessment and Decision*

46. IMDA notes that the divergent views over the proposed modifications to the tariff-filing review regime; one respondent felt that the notification obligation for retail tariffs would still impose a significant regulatory burden on Dominant Telecommunication Licensees while others were of the view that it might be

difficult to reverse any errant behaviour with ex-post enforcement. IMDA's view is that the approach proposed by IMDA is a balanced one that addresses both concerns. The move from an approval regime to a notification regime for most retail tariffs will provide more regulatory relief for Dominant Telecommunication Licensees as compared to the current regime while still retaining the approval regime for wholesale and resale tariffs would ensure sufficient safeguards against anti-competitive behaviour in the markets.

47. IMDA would also like to clarify that the notification and publication regime for most retail tariffs will not require any approval or confirmation from IMDA before a customised scheme can be offered to the customer. IMDA only needs to be notified upon publication of the tariff. IMDA reserves the right to review, amend, reduce or add to the list of services to be included, and will notify the affected Dominant Telecommunication Licensees of any such action, along with accompanying reason(s). As such, IMDA will shift to a notification and publication regime for most retail tariffs (other than for withdrawal of such tariffs), while retaining the approval regime for wholesale and resale tariffs, and retail tariffs of basic services.

## PART IV: ANTI-COMPETITIVE CONDUCT

48. Part V of the First Public Consultation outlined IMDA's proposals for ex-post competition provisions. IMDA proposed to merge provisions that are substantively similar in effect and drafting, and either remove or extend sector-specific provisions. In addition, IMDA proposed to introduce other concepts regarding anti-competitive conduct in the Code.

### Abuse of Dominant Position

General Prohibition on Abuse of a Dominant Position

49. The general prohibition against the abuse of a dominant position by a Telecommunication Licensee or RP is provided under Sub-section 8.2 of the TCC and Sub-section 6.4.1 of the MMCC. IMDA noted that while the general prohibition envisaged an abuse of a dominant position by a single party, it is possible for one or more parties to leverage their collective market power to conduct an abuse, and that this concept of joint dominance is not unique to Singapore nor the telecommunication and media industries. IMDA assessed that it would be reasonable and relevant to include provisions that specifically prevent the abuse of a dominant position by one or more Telecommunication Licensees and/or RPs in the Code so as to provide clarity to industry players on the treatment of the abuse of joint dominance.

50. IMDA also noted that the concept of joint dominance is not new. Both the EU's competition law and Singapore's competition law prohibit abuse of a joint dominant position. The MMCC also provided for the concept of joint dominance in relation to the media markets. In this regard, IMDA had proposed to introduce the concept of joint dominance in the Code.

51. One respondent commented that the concept of joint dominance was complex and difficult to implement, citing that there was no detailed doctrine on the application of the concept in the EU's and Singapore's general competition laws.

*IMDA's Assessment and Decision*

52. IMDA is cognisant of the complexity involved in applying the concept of joint dominance in any assessment related to an abuse of dominance. However, IMDA takes the view that complexity in applying the concept of joint dominance is not a sufficient justification for not acknowledging and including the concept. This is in consideration of the potential harm when two or more Telecommunication Licensees and/or RPs, that are jointly dominant, abuse their dominance. In this regard, IMDA will include the concept of joint dominance in the Code.

53. In addition, IMDA will be introducing a separate advisory guideline to provide clarity on the implementation of the concept of joint dominance. IMDA believes that this will alleviate the industry's concerns about the complexity in implementing the concept of joint dominance in any assessment related to the abuse of dominance. IMDA will separately seek industry feedback on the proposed advisory guideline for the application of the concept of joint dominance.

Discrimination

54. A discrimination of access happens when a Telecommunication Licensee or RP with SMP provides access to infrastructure, systems, services, equipment or information (as the case may be) to its downstream affiliate on discriminatory prices, terms and conditions without any objective justification. To adopt a consistent approach for the assessment of discrimination by Telecommunication Licensees and RPs in the Code, IMDA proposed to adopt the effects-based test, adopted currently under the TCC, to determine if a Dominant Entity had abused its dominance by engaging in discriminatory conduct. This means that evidence is required to show that the discriminatory conduct by the Dominant Entity had an effect of restricting or impeding other Telecommunication Licensees or RPs' ability to compete. IMDA viewed that the effects-based test would be a more reasonable and appropriate test to adopt than the object-based test adopted currently under the MMCC, which only requires evidence of discriminatory prices, terms, and conditions to provide the presence of discrimination.

55. Only one respondent took the view that IMDA should adopt the object-based test currently applied under MMCC instead, as the discriminatory conduct in and of itself should constitute an abuse of dominance. Other respondents agreed with IMDA's proposal, and most of them noted that IMDA's proposal is in line with international best practices and Singapore's competition law. One respondent suggested that IMDA should impose explicit requirements to govern the contractual terms signed by upstream and downstream providers, including but not limited to, requiring upstream supplier to provide access at reasonable prices, terms and conditions. The same respondent also suggested that IMDA should ensure that enforcement actions could be taken should an upstream provider fail to comply with the explicit requirements.

*IMDA's Assessment and Decision*

56. IMDA notes that discriminatory conduct can be of concern when it has exploitative, exclusionary or distortionary effects. However, some discriminatory conducts have been found to generate substantial efficiencies or benefits such as efficient recovery of fixed costs, substantial expansion of demand or opening up of new market segments and incentivising Telecommunication Licensees and RPs to compete and serve more customers. Such efficiencies or benefits from

the discriminatory conduct may outweigh any harm to competition. Hence, the discriminatory conduct per se should not constitute an abuse of dominance, unless it is assessed to have the effect of net harm in the market. Furthermore, an effects-based test will result in the application of a higher threshold for IMDA to determine whether the alleged discriminatory conduct constitutes an abuse of dominance. This would also allow IMDA to address all possible discrimination cases regardless of whether the downstream Telecommunication Licensee or RP uses the access as an input. In this regard, IMDA will adopt the effects-based analysis for determining whether a Dominant Entity has abused its dominance by engaging in discriminatory conduct.

57. For the avoidance of doubt, IMDA would like to clarify that the *'unreasonable restriction of competition'* drafting is in line with the effects-based policy discussed above, and IMDA will apply the effects-based test when assessing whether a Dominant Entity has abused its dominance by engaging in discriminatory conduct.

58. On the suggestion for IMDA to impose explicit requirements to govern the contractual relationship between upstream and downstream providers, IMDA would like to clarify that not all vertical relationships involve a dominant upstream provider. IMDA also considers the suggested requirements governing the contractual relationship between upstream and downstream providers to be over-and-above the general anti-competitive agreement prohibitions and should be commercially negotiated by the parties instead. Furthermore, anti-competitive agreements will be discussed in detail in the "Anti-Competitive Agreements" section below.

Price Squeezes

59. The TCC and MMCC adopt slightly different tests in assessing price squeezes. The TCC considers whether the input price affects the ability of a Dominant Telecommunication Licensee's downstream affiliate or equally efficient competitor to obtain a commercially reasonable profit for their end service and/or product (i.e., the equally efficient operator ("**EEO**") test); whereas the MMCC considers whether the input price affects the ability of an efficient non-affiliated competitor to profitably provide such media services or Ancillary Media Services to their consumers (i.e., the reasonably efficient operator ("**REO**") test).

60. IMDA proposed to adopt the EEO test for determining price squeezes under the Code to align with that adopted under Singapore's competition law. More importantly, IMDA took the view that the EEO test is a more objective and reasonable benchmark when assessing whether a Dominant Entity has abused its dominance by engaging in price squeezes.

61. Additionally, IMDA proposed not to include a “pass-on” criterion in the test for price squeeze, to align with international best practices and Singapore’s competition law.

62. Four respondents agreed with IMDA’s proposal. One respondent added that the REO test currently adopted by the MMCC would introduce more uncertainty which would in turn impede the ability of the Telecommunication Licensee or RP possessing SMP to price their service precisely as the Telecommunication Licensee or RP has to second-guess a reasonably efficient operator’s cost to prevent an accusation in relation to price squeeze.

63. One respondent suggested for IMDA to adopt the REO benchmark as dominant operators are expected to operate at a much larger scale, i.e., benefitting from economies of scale. It is not reasonable to expect smaller competitors to compete as efficiently as a dominant operator. Hence, applying the EEO benchmark might unnecessarily hinder anti-competitive investigations.

*IMDA’s Assessment and Decision*

64. IMDA would like to clarify that a price squeeze occurs when the vertically integrated Telecommunication Licensee or RP sets such a low margin between its wholesale price and the retail price that the downstream competitor is forced to exit the market or is unable to compete effectively. In other words, price squeezes occur when the vertically integrated Telecommunication Licensee or RP that is dominant at the wholesale market sets the price of an input so high that other downstream equally efficient competing retailers that require the input to provide their service or equipment are unable to profitably sell their service or equipment. Hence, using the EEO benchmark, i.e., determining the business viability of the dominant operator at the retail level, will best test the dominant operator’s intent to sacrifice profit at the retail level and engage in price squeeze.

65. Under the REO test, a price squeeze is demonstrated by showing that the margin between the price charged to retail competitors for access and the price which the vertically integrated, Dominant Entity charges in the retail market is insufficient to allow a reasonably efficient retailer to obtain a normal profit. Using a REO test relative to an EEO test may result in false positives (i.e. falsely concluding that the Dominant Entity has engaged in a price squeeze) as the reasonably efficient, non-affiliated downstream retailer may have higher operating costs due to its smaller scale compared to the integrated Dominant Entity. IMDA further notes that the exit of a market player might also be caused by its own inefficiency.

66. In consideration of the above, IMDA maintains its view that the EEO test is a more objective and reasonable benchmark when assessing whether a Dominant

Entity has abused its dominance by engaging in price squeezes and will adopt the EEO benchmark for the test of price squeezes under the Code.

Predatory Pricing

67. While both the TCC and the MMCC contain provisions relating to predatory pricing, the MMCC prohibits predatory pricing by all RPs, including those who are not Dominant Persons. IMDA took the view that a Telecommunication Licensee or an RP with no SMP engaging in "predatory pricing" for a sustained period would not be in a position to restrict competition by driving efficient competitors out of the market and has proposed to limit the application of the provision prohibiting predatory pricing only to Telecommunication Licensees and RPs that have SMP. IMDA also proposed to adopt the Average Incremental Cost ("**AIC**") standard under the Code for its investigations and to retain the flexibility to consider other cost standards if the circumstance of the case justifies the use of an alternative cost standard.

68. All respondents supported IMDA's proposal to apply the test for predatory pricing only to Telecommunication Licensees and RPs that possess SMP and to adopt the AIC standard to determine cost. However, one respondent cautioned that IMDA's proposal to retain flexibility would create confusion, unless IMDA lists out the circumstances under which it would deviate from the AIC standard. Another respondent agreed that the AIC standard may not uniformly apply across all telecommunication and media markets and sought IMDA's clarification on how it would approach those smaller and more unique markets, like the newspapers and magazines markets.

*IMDA's Assessment and Decision*

69. IMDA acknowledges that the same cost standard may not be applicable for all cases. As proposed in the First Public Consultation, IMDA will generally adopt the AIC standard for predatory pricing assessments, but where there are other policy considerations, IMDA may adopt other cost benchmarks (e.g., Historical Cost or Weighted Average Cost of Capital) for assessment. Where IMDA adopts an alternative cost standard for any predatory pricing assessment, IMDA will be transparent about the rationale for deviation, and the alternative standard that will be used for each case. Given the above, IMDA will generally adopt the AIC standard for predatory pricing assessments, but where appropriate, IMDA may adopt other cost benchmarks for assessment.

Cross-subsidisation

70. Cross-subsidisation generally refers to a situation where a company uses the profit it generated from a market in which it has SMP, to subsidise the services,

facilities or equipment that it provides in markets that are subject to a greater degree of competition. Such conduct may harm End Users and/or other company's ability to compete. As noted in the First Public Consultation, there is no provision relating to cross-subsidisation for the media markets. In order to apply a uniform code to the telecommunication and media markets, IMDA proposed to extend the cross-subsidisation provision currently applied under the TCC to the media markets, so as to provide clarity to the industry that the leveraging of an RP's SMP in one market to cross-subsidise its operations in another market where it faces greater competition may constitute an abuse of a dominant position.

71. While three respondents were supportive of IMDA's proposal, two other respondents commented that cross-subsidising is common in the media business and it was not recognised as a specific type of abuse in other jurisdictions like the EU. One respondent added that the prohibition against cross-subsidisation by Telecommunication Licensee or RP with SMP might dis-incentivise the Telecommunication Licensee or RP from competing fiercely in the markets where it did not possess SMP, as it might be considered an abuse of dominance. Two respondents suggested that IMDA should not impose the prohibition relating to cross-subsidisation in the Code, as they opined that cross-subsidisation would be prohibited under other existing provisions, e.g., the general prohibition against abuse of dominance, unreasonable bundling, anti-competitive preferences or leveraging.

*IMDA's Assessment and Decision*

72. IMDA would like to clarify that the existence of cross-subsidisation in the absence of SMP will not constitute an abuse of dominance. However, cross-subsidisation by the Telecommunication Licensee or RP with SMP should be prohibited if it involves the Dominant Entity leveraging its dominance in one market to unreasonably restrict competition in another market. Globally, telecommunication and media markets are typically characterised by a few dominant entities that compete in more than one market. IMDA notes that within the telecommunication and media markets in Singapore, there are a number of such multi-market Telecommunication Licensees and RPs and is of the view that there is a need to specifically impose a prohibition on cross-subsidisation if it is a result of an abuse of dominance. IMDA would also like to clarify that the prohibition on cross-subsidisation by a Telecommunication Licensee or an RP with SMP is not a restriction for a Telecommunication Licensee or an RP to participate and compete in more than one telecommunication and/or media markets.

73. IMDA notes that intra-market cross-subsidisation, e.g., subsidising within TV content packages, is an industry practice in the media market. IMDA recognises

that the media markets are largely characterised by two-sided markets and thus network effects need to be taken into consideration in any assessment. However, IMDA would like to clarify that the proposed prohibition is related to the use of revenues from the provision of service in a market that is not subject to effective competition to cross-subsidise the price of any service in another market that is subject to effective competition. Accordingly, the proposed prohibition on cross-subsidisation by a Telecommunication Licensee or an RP with SMP will only apply to inter-market subsidising as opposed to intra-market subsidising as per the scenarios raised by the respondents.

74. Given the above, IMDA will extend the cross-subsidisation provision currently applied under the TCC to the media markets. IMDA will find that the Telecommunication Licensee or RP with SMP has engaged in cross-subsidisation and therefore has abused its dominant position, if the Telecommunication Licensee or RP uses revenues from the provision of a service in a telecommunication or media market that is not subject to effective competition to cross-subsidise the price of a service in another telecommunication or media market that is subject to effective competition, and this has unreasonably restricted competition in the latter telecommunication or media market.

Predatory Network Alteration

75. IMDA noted in the First Public Consultation that telecommunication Telecommunication Licensees generally interconnect their networks with one another so as to allow End Users of one telecommunication network to communicate with the End Users of another telecommunication network. IMDA also noted that there was no equivalent provision for the media industry as, historically, minimal network interconnection is required for the provision of media services. Nonetheless, IMDA proposed to extend the TCC provision on prohibiting predatory network alteration to the media industry, so as to apply a consistent approach to both the telecommunication and media markets.

76. Other than one respondent that had given general support, four other respondents disagreed with IMDA's proposal. In general, the four respondents noted that network alteration is a specific type of abusive practice that will only be employed in telecommunication markets. Furthermore, there was minimal network interconnection for the provision of media services and therefore, the general prohibition on abuse of dominance provision would suffice in preventing such predatory practices. In this vein, there was no real need to apply the prohibition on predatory network alteration to the media markets.

77. One respondent added that IMDA's proposal introduces a curtailment on commercial freedom and limits the flexibility of the Telecommunication Licensee

or RP with SMP to design and operate its network. Another respondent gave the feedback that an outright prohibition is potentially too blunt an instrument. The respondent suggested that a better approach would be to review the application of the prohibition as and when there is development in the media market that suggested that such a prohibition is necessary as this has the benefit of enabling IMDA to craft a nuanced solution based on the state of development of the media market.

*IMDA's Assessment and Decision*

78. IMDA is cognisant of the limited network interconnection arrangements in the media markets and is of the view that there should not be any significant impact if the prohibition is extended to the media markets as set out in the First Public Consultation. IMDA maintains its preference for a consistent approach to be applied across the telecommunication and media markets as far as possible.

79. While most respondents were concerned that the application might create potential hurdles in the media markets, IMDA would like to clarify that network alternation in and of itself is not prohibited. Such an act is prohibited only if the Telecommunication Licensee or RP is (a) considered to have SMP and (b) the conduct is considered predatory, i.e., the act was carried out with the intent of imposing costs on other Telecommunication Licensees or RPs and/or impeding other Telecommunication Licensees' or RPs' ability to interconnect and interoperate, which would harm competition in the market.

80. In consideration of the above, IMDA will extend the prohibition on predatory network alteration, as a form of abuse of dominance, to both the telecommunication and media markets under the Code.

Bundling

81. Bundling typically refers to a scenario where different products, e.g., A and B, are combined and offered as a single package such as triple- and quadruple-play packages. An example of triple-play package is the provision of fixed-line telephony, broadband and Pay TV services through a single package. IMDA notes that such practices are relatively common today and expects them to continue in a converged environment. While bundling does not typically result in anti-competitive effects, it may give rise to competition concerns in certain situations when implemented by an entity with SMP and may be considered as an abuse of a dominant position where it forecloses a Dominant Entity's competitors from markets. IMDA highlighted in the First Public Consultation that while it could take enforcement action against any bundling that constitutes an abuse of dominant position under the TCC and the MMCC, bundling that results in anti-competitive effects was not expressly prohibited. As such, IMDA proposed

to include unreasonable bundling as a specific prohibition under the Code for greater clarity. The specific prohibition would be applicable to all Telecommunication Licensees and RPs with SMP.

82. Most respondents agreed with IMDA's proposal to include a specific prohibition on unreasonable bundling given that it is broadly in line with international regulatory practices and accords with the approach used in the EU. One respondent commented that there was merit for IMDA to provide further explanation and hypothetical examples to illustrate unreasonable bundling. One respondent disagreed with IMDA's proposal, explaining that it is unlikely that any other types of bundling could be considered unreasonable, other than tying, which was already classified as an abuse. IMDA had also not provided details to substantiate the definition of unreasonable bundling.

*IMDA's Assessment and Decision*

83. IMDA had clarified in the First Public Consultation that "unreasonable bundling" refers to the tying or bundling of two or more products and services for sale, which results in the foreclosure of markets to competitors and which cannot be objectively justified. One example is when a Telecommunication Licensee or an RP, which competes in Markets A and B at the retail level and has SMP in Market A, sells its services from Markets A and B as a bundle only or requires consumers who wish to purchase its services from Market A to purchase its services from Market B in which it is not dominant, making it more difficult for its competitors in Market B to compete. Such practices are considered as unreasonable bundling, considering that such actions would restrict competition and limit choices for consumers.

84. IMDA observed that bundle-play is increasingly offered by telecommunication and media service providers in Singapore. In this regard, IMDA is of the view that it is important to introduce such a safeguard to prevent providers from leveraging their dominance in one market to distort competition in other relatively competitive markets. IMDA will include unreasonable bundling as a form of abuse of dominance under the Code, where IMDA will consider that the act of bundling by a Dominant Entity unreasonably restricts competition in any telecommunication and/or media market in Singapore.

**Anti-competitive Leveraging/ Anti-competitive Preferences**

85. Anti-competitive leveraging and anti-competitive preferences broadly involve the use of a Telecommunication Licensee's or RP's SMP or its Affiliate's SMP in a market to unreasonably restrict competition in another market. IMDA mentioned in the First Public Consultation that the provisions relating to anti-competitive leveraging or preferences were present in both the TCC and MMCC and were

broadly similar in their application. However, the specific prohibition on cross-subsidisation, which prohibits an RP from engaging in predatory pricing using the dominant position of its affiliate was not applied under the MMCC. Hence, IMDA proposed to merge the provisions relating to anti-competitive leveraging or preferences.

86. Respondents were either supportive of, or did not object to, IMDA's proposal as there was essentially no difference in the application of the provisions under TCC and MMCC previously. Out of the six respondents, one respondent suggested adopting the EEO test for assessment of anti-competitive leveraging to ensure consistency. Another suggested that given the likely increased prevalence of service bundling across industries, including that beyond the telecommunication and media markets, IMDA should consider a holistic review of whether the current sectoral carve-out for ex-post competition regulation in the telecommunication and media market would remain effective.

*IMDA's Assessment and Decision*

87. As there were no objections raised by the respondents to the proposal, IMDA will align the anti-competitive leverage or preferences provisions to that currently applied in the TCC and apply the aligned provisions to the Code. IMDA will consider the suggestion for IMDA to adopt the EEO test in anti-competitive leveraging assessments for consistency and may conduct a review of whether the current sectoral carve-out for ex-post competition regulation in the telecommunication and media markets remains effective in subsequent reviews.

**Anti-competitive Agreements**

<u>Anti-Competitive Agreements</u>

88. Anti-competitive agreements broadly refer to arrangements (e.g., written, verbal, formal or informal) between two independent economic entities to coordinate their market conduct with the object or effect of restricting competition.

89. IMDA noted that under the TCC and MMCC, certain horizontal anti-competitive agreements are prohibited outright without requiring assessment of their actual or likely effect on competition (i.e., "**Per Se Prohibitions**"). Except for these outright prohibitions, all other agreements would be assessed based on their actual or likely effect on competition, with positive efficiencies being taken into consideration as part of the assessment. Hence, IMDA proposed that an "object or effect" test should be adopted under the Code, given the consistency with the TCC and MMCC as well as international approaches adopted in the EU, UK, Canada, and Singapore's competition law. Further, there is merit in adopting a

consistent nomenclature for the list of Per Se Prohibitions. It was thus proposed to refer the Per Se Prohibitions as “by object” agreements under the Code.

90. Five respondents agreed with IMDA’s proposal and supported the renaming of the Per Se prohibitions as “by object” agreements. One respondent suggested that IMDA assess all anti-competitive agreements based on their actual or likely effect on competition. The respondent highlighted that an effects-based test for assessing anti-competitive agreements would be consistent with the test for abuse of dominance.

91. One respondent added that the efficiency defence argument should be allowed for all types of agreements, including the “by object” agreements as currently applied under the TCC. Another respondent sought clarity on what “efficiency enhancing integration of economic activity” entails and requested for ambiguity of exclusion to be removed from the Code.

*IMDA’s Assessment and Decision*

92. IMDA would like to highlight that as part of the assessment of anti-competitive agreements, IMDA will take into consideration whether the agreements would result in efficiencies that will likely be passed on to consumers. This is applicable to all agreements that are assessed to be anti-competitive by object and by effect. Such allowance for efficiency claims is consistent with international and domestic practices for the test for anti-competitive agreements. Based on the above, IMDA will adopt the “object or effect” approach for the general prohibition of anti-competitive agreements and rename the Per Se Prohibitions under the TCC as “by object” agreements under the Code.

93. In response to the request to clarify on what “efficiency enhancing integration of economic activity” referred to, these refer to agreements that are necessary for achieving significant efficiencies which are likely to be passed on to End Users. Such efficiencies could include, but are not limited to, reductions in the cost of developing, producing, marketing and delivering telecommunication and/or media services and/or equipment.

94. IMDA takes the view that if the efficiencies arising from these agreements are significant such that they offset any actual or potential anti-competitive effects, IMDA will generally conclude that these agreements do not contravene the Code. However, if the efficiencies are not significant and are relatively limited, and their potential anti-competitive effects are significant, IMDA will generally conclude that these agreements contravene the Code. In this regard, it is necessary to allow the efficiency defence in all anti-competitive agreement assessments.

Other Administrative Amendments

95. As per the fundamental aim of the Code, IMDA proposed several administrative and/or policy changes to the following specific anti-competitive agreements to ensure a uniform application of the Code to both the telecommunication and media markets in a converged setting:

    (a) Group Boycott Agreements – adopt the drafting of the TCC provision and to provide exemptions for Telecommunication Licensees/ RPs who are also required to comply with other codes that authorise group boycotts;

    (b) Foreclosure of Access – extend provision to the telecommunication industry;

    (c) Vertical Market Allocation – extend provision to the media industry; and

    (d) Exclusive Dealing – shift the provision on exclusive dealing to the abuse of dominant position section and to extend its applicability to the media industry.

96. IMDA also proposed that for agreements that are assessed to contravene the Code, only the restrictive terms within the agreements need to be removed instead of voiding the agreement in its entirety. This is the approach currently adopted in the TCC and is regarded as the more reasonable and practical approach which is consistent with the general competition law. Currently, under the MMCC, the entire agreement would be voided.

97. Respondents generally did not raise any objection to the aforementioned proposals to apply the specific anti-competitive agreement prohibitions to both the telecommunication and media markets. However, two respondents objected to the following changes:

    (a) extend the foreclosure of access prohibition to the telecommunication markets; and

    (b) extend the vertical market allocation prohibition to the media markets.

98. On the prohibition against foreclosure of access, one respondent highlighted that it was not necessary to extend the prohibition to the telecommunication markets as the general prohibition on anti-competitive agreements would be sufficient to prevent such conduct.

99. On the prohibition against vertical market allocation, one respondent commented that on the contrary, vertical market allocation should be allowed as they would

be recognised as pro-competitive in nature. The respondent said that under Singapore's competition law, vertical agreements would entirely be exempted from the anti-competitive agreement prohibition, and that IMDA should adopt the same approach for consistency and to minimise compliance cost.

*IMDA's Assessment and Decision*

100. IMDA would like to highlight that there are unique features of the telecommunication and media markets that are different from the general market. Specifically, access to upstream service and/or product is of particular importance to the telecommunication and media markets. Hence, IMDA is of the view that there is merit in specifying prohibition on the aforementioned types of anti-competitive agreement, especially since they are likely to unreasonably restrict competition.

101. IMDA also notes that there were no objections raised against applying the prohibition on the other types of specific anti-competitive agreements i.e., group boycott and exclusive dealing, as well as the remedy to agreements that are assessed to be anti-competitive under the Code.

102. Given the above, IMDA will apply prohibitions on the following anti-competitive agreements to both the telecommunication and media markets under the Code:

(a) Group Boycott Agreements;
(b) Foreclosure of Access;
(c) Vertical Market Allocation; and
(d) Exclusive Dealing.

103. In terms of remediation of anti-competitive agreements, IMDA would only require the specific anti-competitive provisions to be voided, instead of voiding the agreements in their entirety. IMDA would also like to highlight that the proposed changes may entail amendments to the IMDA Act.

**Unfair Methods of Competition**

104. Sub-section 8.4 of the TCC and Section 4 of the MMCC set forth rules prohibiting conduct that constitutes an unfair method of competition. These provisions are applicable to all Telecommunication Licensees and RPs. IMDA will retain the general prohibition of unfair methods of competition and is proposing changes to the following specific methods of unfair competition for both the telecommunication and media markets under the Code:

(a) Degradation of service availability or quality;

(b) Provision of false or misleading information to competitors; and

(c) Improper use of information regarding competing Telecommunication Licensee's customers.

105. The following types of unfair methods of competition that were implemented under the MMCC would also be removed:

(a) Use of media services to disseminate false or misleading claims; and

(b) Interference with relationships involving consumers, advertisers and ancillary media service providers ("**AMSP**") in the media industry.

106. There were generally no objections to IMDA's proposals except for one respondent who commented that there was no need to specify the "Provision of false or misleading information to competitors" and "Improper use of information regarding competing Telecommunication Licensee's customers" as unfair methods of competition because there had not been a case involving either method. Further, such methods would have already been prohibited under the Personal Data Protection Act ("**PDPA**").

*IMDA's Assessment and Decision*

107. IMDA would like to clarify that the absence of past cases does not imply that safeguards are unwarranted. The imposition of the rules is meant to provide clarity on what methods constitute unfair methods and ensure that unfair methods of competition are not adopted. Further, the provision governing the improper use of information on competing Telecommunication Licensee's customers does not contradict the policy considerations under the PDPA. IMDA is of the view that it is necessary to specify such unfair methods of competition to provide clear guidance to the industry and the public.

108. As such, IMDA will impose the following specific types of unfair methods of competition to both the telecommunication and media markets under the Code:

(a) Degradation of service availability or quality;

(b) Provision of false or misleading information to competitors; and

(c) Improper use of information regarding competing Telecommunication Licensee's customers.

## PART V: CONSUMER PROTECTION

109. Part VI of the First Public Consultation outlined the proposals relating to consumer protection. Sections 3 of the TCC and the MMCC ("**Consumer Protection Provisions**") set out the duties of Telecommunication Licensees and RPs to residential or business End Users and Consumers (collectively "**End Users**" in this Part V) for the provision of telecommunication and media services respectively. The Consumer Protection Provisions are meant to protect consumer interests and ensure that entities provide services to End Users on fair, reasonable, and non-discriminatory terms.

110. IMDA proposed to align the Consumer Protection Provisions in the TCC and MMCC and structure them in the Code as follows:

    (a) Application of Consumer Protection Provisions;
    (b) Common provisions to be merged;
    (c) Provisions to be extended from one market to the other;
    (d) Provisions to be retained or introduced to a specific market; and
    (e) Provisions to be removed.

### Application of Consumer Protection Provisions

111. IMDA proposed to:

    (a) exclude Resellers[7] from the application of the Consumer Protection Provisions in the Code;

    (b) apply all the Consumer Protection Provisions in the Code to both residential and business End Users, in both telecommunication and media markets, except for the provisions specific to the Pay TV market (i.e., Sub-sections 3.2B, 3.2C 3.2E, 3.5A and 3.5B in the MMCC), and the Critical Information Summary ("**CIS**") requirement, which will only be applied to residential End Users; and

    (c) continue not to apply the Consumer Protection Provisions in the Code to OTT TV or content services.

112. Respondents agreed with the proposed exclusion of Resellers from being protected by the Consumer Protection Provisions in the Code, as Resellers tend to have a sophisticated understanding of the terms of service and are able to protect themselves.

[7] Business users who purchase goods, services or access as inputs for their production, resale or provision of any media service.

113. Most of the respondents agreed to apply all the Consumer Protection Provisions in the Code to both residential and business End Users. Two respondents proposed that instead of extending the Consumer Protection Provisions to all business End Users, the application to business End Users ought to be limited to the small and micro- or medium-sized enterprises, as large business and enterprise End Users would typically be sophisticated End Users who would have the necessary information and experience to protect themselves in commercial transactions with their service providers. One respondent suggested to define "small enterprise" as business End Users who employ fewer than 20 employees, in line with Australia's approach on unfair contract prohibitions. Another respondent opined that business Pay TV End Users would fundamentally be different from residential Pay TV End Users, as business Pay TV End Users (such as hotels) would not be reliant on Pay TV service providers for content services. Furthermore, media services would not be essential services and there were no significant number of complaints from business End Users about the provision of Pay TV services.

114. On the proposal to continue not applying the Consumer Protection Provisions in the Code to OTT TV or content services, all of the respondents who responded to this proposal were supportive, in order to retain a light touch approach to OTT TV or content services. One respondent opined that to ensure a level playing field, should the Telecommunication Licensees and RPs offer OTT TV or content service, their OTT TV or content service should similarly be exempted from the Consumer Protection Provisions even though they are IMDA's Telecommunication Licensees. Another respondent suggested that if OTT TV or content services are recognised to be competing directly with linear Pay TV services, then the same light touch approach should apply to linear Pay TV service providers to enable a level playing field for Telecommunication Licensees and RPs.

*IMDA's Assessment and Decision*

115. IMDA has taken note of the respondents' concerns on applying all the Consumer Protection Provisions in the Code to business End Users (except for the Pay TV market-specific provisions), as unlike residential End Users, business End Users are typically able to negotiate fair terms on their own when contracting with RPs. IMDA would like to clarify that currently all the provisions under Section 3 of the TCC generally protects both residential and business End Users, and hence it is likely that the current standard business practices of RPs are already in compliance with these provisions, since many of the RPs are also Telecommunication Licensees in the telecommunication markets.

116. IMDA has also studied the potential impact on RPs if all the Consumer Protection Provisions in the Code apply to business End Users (except for the Pay TV market-specific provisions), and noted that the additional obligations on RPs would be:

(a) Sub-section 3.2A of the MMCC which requires RPs to publish information on subscription service;

(b) Sub-section 3.2D(a) of the MMCC which requires RPs to inform certain matters before contracting; and

(c) Sub-section 3.2F of the MMCC which requires RPs to obtain express agreement for continued provision of services provided on free trial/complimentary basis.

117. IMDA views these additional obligations as incremental to the ones already imposed on the RPs, and these are good practices which should benefit all End Users in the residential and business markets. IMDA will therefore retain the application of these provisions to business End Users.

118. With regard to OTT TV or content services, IMDA would like to clarify that all OTT TV and content services are currently exempted from the Consumer Protection Provisions regardless of whether the service providers are IMDA's Telecommunication Licensees. IMDA is also of the view that the OTT media landscape in Singapore is highly fragmented compared to linear Pay TV services that are more pervasive and mainstream. Hence, OTT TV or content service providers will benefit from having greater flexibility to innovate and compete. Having carefully considered the respondents' comments, IMDA will retain a light-touch approach for the OTT media landscape.

## Common Provisions to be Merged

Duty to Comply with Quality of Service ("**QoS**") Standards

119. Sub-sections 3.2.1 of the TCC and 3.3 of the MMCC provide that Telecommunication Licensees and RPs must comply with the minimum QoS standards set by IMDA. However, the TCC allows for an agreement between the End User and Telecommunication Licensee on a QoS that is lower than IMDA's standards. The intent was to provide Telecommunication Licensees with greater flexibility to provide services that catered to End Users' needs, possibly at lower quality but also at lower prices, subject to the End Users' agreement.

120. IMDA took the view that such flexibility would be beneficial for business End Users who may wish to negotiate for services to be provided at service standards

that are catered to their business needs, notwithstanding that the QoS is lower than IMDA's standards. IMDA had proposed to merge the two requirements and extend the TCC's flexibility for lower QoS standards to the media markets. Nevertheless, IMDA would emphasise that in getting the End Users to agree to the lower QoS, Telecommunication Licensees and RPs must clearly inform End Users of the service level that they will provide, and that the service level does not comply with IMDA's minimum QoS standards.

121. Most of the respondents agreed with the proposal as it would not impose additional regulatory requirements on RPs. One respondent, however, proposed to remove QoS standards for Pay TV services, as OTT service providers who were competing with linear Pay TV service providers were not subject to QoS standards. Furthermore, Pay TV services were not essential services and had not attracted a significant number of End User complaints.

*IMDA's Assessment and Decision*

122. IMDA would like to highlight that the intention for QoS standards is to protect consumers by ensuring that the services are provided at minimum acceptable service levels. IMDA does not agree that non-essential services should not be subject to QoS standards. In addition, IMDA recognises the benefits of providing RPs with the flexibility to provide customised Pay TV services catered to End Users' needs at lower prices. Therefore, IMDA will align the requirement on QoS standards for the telecommunication and media markets and extend the flexibility for Telecommunication Licensees and End Users to agree to a lower QoS to the media markets.

<u>Restrictions on Service Termination or Suspension</u>

123. Given the similar intent of the TCC and MMCC to ensure that Telecommunication Licensees and RPs provide advance notice and a reasonable opportunity to resolve disputes before terminating or suspending the provision of service to any End User, IMDA proposed to align the requirements and adopt the procedures under the TCC for service terminations or suspensions for both markets.

124. While most of the respondents had no objections to the proposal, one respondent expressed concerns that there are provisions in Sub-section 3.2.4 of the TCC that might not be applicable to providers or End Users of media services. For instance, termination or suspension for illegal or improper activities, and service termination due to a Telecommunication Licensee's discontinuation of operations or specific services might not be applicable, since it might not be feasible to offer the option to transition service to another service provider.

*IMDA's Assessment and Decision*

125. IMDA shares the respondent's concern that some of the provisions in Sub-section 3.2.4 of the TCC may not be applicable to providers or End Users of media services in certain situations. For termination or suspension for illegal or improper activities, IMDA acknowledges that there could be limited circumstances under which End Users of media services, unlike telecommunication services, could conceivably use such services to engage in illegal or immoral activities. As for service termination due to a Telecommunication Licensee's discontinuation of operations or specific services, both the TCC and MMCC currently require the Telecommunication Licensees and RPs to provide advance notice and take all reasonable measures to assist the End Users before service termination. While it is not mandatory to offer the option to transition service to another service provider, this option should be offered to End Users where feasible. Therefore, IMDA would like to clarify that the service termination or suspension provisions will only apply where applicable and feasible.

126. In view of the above, IMDA will align the requirements and adopt the procedures under the TCC for service terminations or suspensions for both markets.

Duty to Prevent Unauthorised Use of End User Service Information ("**EUSI**")

127. Sub-sections 3.2.6 of the TCC and 3.6 of the MMCC currently provide that Telecommunication Licensees and RPs must take reasonable measures to prevent the unauthorised use of EUSI or Subscriber Service Information ("**SSI**") of both residential and business End Users. The EUSI and SSI include but are not limited to information regarding the End User's usage patterns, services and equipment used, telephone number and network configuration, location information, billing name, address and credit history.

128. After the PDPA came into force in July 2014, the TCC was reviewed in 2014 to streamline the data protection provisions to reduce overlap with the PDPA and to provide clarity on the requirements that apply to the telecommunication markets. As part of this review, then-IDA removed the requirement for Telecommunication Licensees to obtain residential End Users' consent to collect, use or disclose their EUSI for three specific purposes[8], as they were already covered under the PDPA. The purposes for which Telecommunication Licensees do not need to obtain business End User's consent to collect, use or disclose

[8] The three specific purposes are: (i) providing assistance to law enforcement, judicial or other government agencies; (ii) managing bad debt and preventing fraud related to the provision of telecommunication services; and (iii) complying with any regulatory requirements imposed by then-IDA.

their EUSI remained unchanged as business EUSI may not fall clearly within the PDPA framework.

129. IMDA proposed to adopt the TCC's approach for data protection provisions for both telecommunication and media markets, and at the same time extend to the telecommunication markets the MMCC requirement for Telecommunication Licensees to develop and inform End Users of easy-to-use procedures via which they could subsequently grant or withdraw consent to the use of their EUSI.

130. Most of the respondents agreed with IMDA's proposals, but two respondents highlighted that data protection and the use of EUSI are already covered under the PDPA, and IMDA's proposed requirements would create confusion.

*IMDA's Assessment and Decision*

131. IMDA wishes to clarify that the PDPA only governs the personal data of individuals, not the EUSI of business End Users. Therefore, solely relying on the provisions of the PDPA as it currently stands will not fully give effect to IMDA's policy intent to protect EUSI of all End Users.

132. Therefore, IMDA will adopt the TCC's approach for data protection provisions for both telecommunication and media markets, and at the same time extend to the telecommunication markets, the MMCC requirement for Telecommunication Licensees to develop and inform End Users of easy-to-use procedures via which they could subsequently grant or withdraw consent to the use of their EUSI.

<u>Disclosure Requirements including CIS</u>

133. Given the similar intent in both the TCC and MMCC to enhance transparency and understanding of the service terms and conditions to End Users at the point of subscription, IMDA proposed to:

(a) merge the disclosure requirements in the TCC and MMCC;
(b) extend the CIS requirement to all Telecommunication Licensees;
(c) reduce the timeframe from 14 days to 5 working days for RPs to provide End Users with the CIS and service agreements; and
(d) extend the reduction of timeframe to the telecommunication markets to enhance consumer awareness of the terms and conditions in their service agreements.

134. To be clear, the CIS requirement will only apply to fixed term contracts that are longer than one month, such as 12-month and 24-month contracts, as End Users who sign up for these longer contracts would usually need to pay Early Termination Charges ("**ETCs**") if they terminate their contracts before the expiry

of the minimum service period, so they ought to be adequately informed of these critical terms and conditions before entering into the contract.

135. All respondents to this question supported IMDA's proposal.

*IMDA's Assessment and Decision*

136. IMDA notes that there are no objections to its proposal and will implement the changes set out in paragraph 133.

Prohibition on Charging for Services Supplied on Free Trial or Complimentary Basis

137. IMDA has proposed to merge Sub-sections 3.2.9 of the TCC and 3.2F of the MMCC as both provisions share the same intent to prohibit Telecommunication Licensees and RPs from charging End Users for services provided on free trial or complimentary basis after the end of the free trial or complimentary period, unless Telecommunication Licensees and RPs have obtained the End Users' express consent that they are agreeable to continue subscribing to the services after the expiry of the free trial or complimentary period on the agreed terms and conditions. IMDA also notes that the requirement to expressly notify the End User of the date on which the free trial period will end, as stated in Sub-section 3.2.9 of the TCC, can be similarly applicable to the media markets under the Code.

138. IMDA has observed, through feedback received from End Users, that many End Users do not remember the end date of the free trial or complimentary services offered to them and will very often be caught by surprise when they are charged for these previously complimentary services. To further protect the consumers, IMDA will introduce a new requirement to require Telecommunication Licensees and RPs to provide a reminder notice to End Users, before the end of the free trial or complimentary services, to notify the End User of the date on which the free trial or complimentary period will end. While Telecommunication Licensees and RPs will have flexibility regarding how to remind the End Users, Telecommunication Licensees and RPs shall send the reminder notice at least 3 days before and not earlier than 14 days before the end of the free trial or complimentary services. IMDA views that it is in Telecommunication Licensees' and RPs' interest to send a reminder notice, as this will help to minimise unnecessary disputes.

139. For avoidance of doubt, complimentary services include free value-added services ("**VASes**") or waivers on certain services that Telecommunication Licensees and RPs sometimes offer to End Users during the contract term of the fixed term contract. To illustrate, Telco A offers End User X free Caller ID service for the first 12 months for a 24-month mobile line contract, and End User X will have to pay for the Caller ID from 13$^{th}$ month onwards. In this case, Telco A will

have to send a reminder notice to End User X before it starts charging End User X for the Caller ID.

**Provisions to be Extended from One Market to the Other**

Mandatory Contract Provisions

140. IMDA has proposed to extend the approach in the TCC, which requires Telecommunication Licensees to include the following provisions in their service agreements, to the media markets:

   (a) Billing period;
   (b) Prices, terms and conditions on which service will be provided;
   (c) No charges for unsolicited services;
   (d) Procedures to contest charges;
   (e) Procedures for private dispute resolution;
   (f) Bases and procedures for termination or suspension of service by Telecommunication Licensee; and
   (g) Purposes for which EUSI of the business End Users may be used, and the means of granting and withdrawing consent.

141. The intent is to enhance transparency, commit the Telecommunication Licensees to the contractual obligations, and enable End Users to enforce the contractual obligations should the Telecommunication Licensees fail to fulfil them. There is currently no such requirement in the MMCC for the media markets.

142. Most of the respondents agreed with IMDA's proposal, except one respondent who opined that the EUSI provision should be covered under the PDPA, and not under separate regulatory requirements by IMDA.

*IMDA's Assessment and Decision*

143. IMDA would like to reiterate that the PDPA will not give full effect to IMDA's policy intent. Moreover, it currently only governs personal data of individuals, not EUSI of business End Users. Therefore, IMDA will extend the approach in the TCC, which require Telecommunication Licensees to include the abovementioned provisions in their service agreements, to the media markets.

Billing Period

144. To increase transparency and facilitate the resolution of billing disputes, IMDA proposed to introduce a new requirement for both telecommunication and media markets to include the following minimum billing information in their bills:

(a) the services subscribed;
(b) the respective value-added and ad-hoc services and their charges, and third-party charges (e.g., roaming charges, international calls charges, global SMS/MMS charges, Premium Rate Service ("**PRS**") charges, billing-on-behalf charges, excess usage charges etc.);
(c) the billing period;
(d) indications where services are provided on a free trial or complimentary basis; and
(e) the expiry date of the trial or complimentary service.

145. While most respondents supported IMDA's proposal to introduce the list of minimum billing information, one respondent opined that such a requirement would be unnecessary as there was no evidence of market failure or pressing need to provide such information. The requirement to indicate trial or complimentary service in the bill might also deter entities from offering such free trials, which would be to the detriment of End Users. In addition, there was no other sector in Singapore in which businesses were required to provide End Users with information on trial or complimentary services in the manner proposed.

*IMDA's Assessment and Decision*

146. IMDA is mindful of the industry's view that this requirement might add to the industry's regulatory compliance cost and could be onerous. IMDA's proposed list of minimum billing information is limited to key information that most service providers already provide in their bills today, such as a description of the services contracted, the charges for value-added services or ad-hoc services, billing period, and indications where services are provided on a free trial or complimentary basis. IMDA is of the view that while the requirement to provide clarity on the expiry date of the free trial or complimentary service might be new, it will help the End Users to monitor the expiry date and make an informed decision on whether to continue subscribing to the service after the free trial or complimentary period. As such, IMDA's view is that it is in the interest of both the End Users, Telecommunication Licensees and RPs to have transparency and consistency in providing minimum information in the bills. Doing so will also reduce the likelihood of billing disputes. IMDA will introduce the list of minimum billing information to be included in End Users' bills for both markets. Telecommunication Licensees and RPs may seek guidance from IMDA should they require clarifications on the type of information to be included in End Users' bills.

Procedures to Contest Charges and for Private Dispute Resolution

147. Given that a large proportion of consumer complaints relate to billing disputes, IMDA took the view that End Users should be made aware of the available avenues to contest errant charges and resolve disputes. As such, IMDA proposed to extend, to the media markets, the TCC requirement on the inclusion of procedures to contest charges and dispute resolution in the End User Service Agreement ("**EUSA**"), including the circumstances under which an End User might withhold payment, the timeframe for contesting the disputed charges, and the setting of the interest rates or methodology for establishing the interest rates.

148. Most of the respondents supported IMDA's proposal. One respondent, however, opined that this requirement was not relevant to newspaper or magazine subscriptions, and that it would be unduly onerous to provide a one-year timeframe for End Users to dispute the charges.

*IMDA's Assessment and Decision*

149. IMDA disagrees that the procedures to contest charges and resolve disputes are not relevant to newspaper or magazine subscriptions. Currently, RPs are already required to adopt reasonable and effective procedures that allow End Users to withhold and dispute any charges they believe to be incorrect. The proposed inclusions provide greater clarity and certainty to Telecommunication Licensees, RPs and consumers by further specifying a timeframe for disputing charges. Doing so would allow End Users to be aware of the available avenues to contest errant charges and resolve disputes. In view of this, IMDA will extend, to the media markets, the TCC requirement on the inclusion of procedures to contest charges and dispute resolution in the EUSA.

Duty to Notify of Certain Events – Advance Notice for Advantageous Service Changes

150. Currently there is no requirement for Telecommunication Licensees and RPs to provide any advance notice to End Users on advantageous changes to their telecommunication and media services. There have been instances where Telecommunication Licensees and RPs unilaterally made changes that they perceived to be advantageous to End Users without informing them in advance. While the definition of advantageous is subjective, IMDA has received feedback from End Users who have expressed dissatisfaction that they were not informed before the changes were made or given an option to accept or reject the changes.

151. IMDA proposed to introduce an advance notice requirement for any advantageous change that may have a long-term impact on the End User's service for both telecommunication and media markets.

152. Most respondents had no objections except for a few who disagreed. One respondent commented that the compliance cost may outweigh the benefits and sought clarification on the term "long-term impact". Another respondent suggested that Telecommunication Licensees and RPs should be accorded flexibility in deciding whether to inform End Users, based on the materiality of the change, instead of a requirement for all advantageous change.

*IMDA's Assessment and Decision*

153. IMDA notes that most respondents had no objections to the proposal. IMDA is cognisant that the definition of advantageous may be subjective and notes that there have been instances where Telecommunication Licensees and RPs unilaterally made changes which they perceived to be advantageous without informing End Users in advance, only for End Users to disagree with the change. As such, while IMDA understands that some cost might be incurred by Telecommunication Licensees and RPs in informing End Users of such changes, IMDA is of the view that it is necessary as it is a good customer service practice to be transparent and upfront about service changes, by keeping End Users informed of such changes in advance. IMDA would like to clarify that flexibility would be provided for how and when Telecommunication Licensees and RPs could notify users regarding advantageous changes that may have a long-term impact on End Users. On the request for clarity on the term "long-term impact", IMDA would like to clarify that it is referring to any unilateral changes that is perceived as advantageous by Telecommunication Licensees and RPs, and will result in a permanent change in service features or terms and conditions of the telecommunication and media services subscribed by End Users until they take action to change or terminate the subscription. In contrast, the requirement need not apply to changes with limited or short-term impact, such as free trial service or free TV channel provided for a specified period of time. Considering the reasons above, IMDA will proceed to impose the proposed requirement.

<u>Duty to Notify of Certain Events – Advance Notice for Cessation of Service or Operations</u>

154. Sub-section 3.5C.1(b) of the MMCC provides that RPs must provide at least six months' notice in writing *to End Users* of their intention to cease operations or the provision of any broadcasting service. The TCC has no equivalent requirement but Telecommunication Licensees, under their respective telecommunication licence conditions, are required to seek IMDA's approval in advance of the termination of their operations or services. The advance notice period under the MMCC is intended to give End Users sufficient time to find alternative services, where possible, in view that the cessation of a broadcasting service such as a Free-to-Air ("**FTA**") TV/ Radio channel or Pay TV service is

likely to affect a large segment of End Users. As the intent is still relevant and the provision is beneficial for End Users, IMDA proposed to retain the advance notification requirement for cessation of service or operations for the media markets.

155. In view of the current market environment where there is a myriad of service providers and service offerings in active competition for subscribers to choose from, IMDA had proposed to extend the requirement to provide advance notice to End Users for the termination of operations or services, to the telecommunication markets and to provide a 3-month advance notice in writing for cessation of operations or provision of any telecommunication and media services, while allowing IMDA the right to require this period to be extended to better protect End Users' interest under certain circumstances.

156. There were no objections to the proposal for advance notice before cessation of service or operation. One respondent suggested that the advance notice period need not be prescribed but could be based on a reasonableness approach and assessed on a case-by-case basis to cater to cases where the customer base was very small and there were various alternatives which customers could easily switch to. Another respondent shared that while it understood the need for ample notice if an entire service is to be terminated, it was of the view that it would be burdensome if the service involved was a subset of a service, such as VAS, and shared that the usage of some of such services may be negligible. One respondent also shared that it might not always be viable to provide 3 months' notice, as business decisions might make it necessary for cessations to be effective immediately or after a shorter notice period and suggested for IMDA to classify the services which require 3 months' or more notice and services which can be terminated with a month's notice.

*IMDA's Assessment and Decision*

157. IMDA would like to clarify that while the requirement will be applicable to all services, the Telecommunication Licensees or RPs have flexibility to decide how notification is provided to the affected End Users. For instance, for VASes with a small group of affected End Users, service providers could choose to use SMS and announcements on their websites to inform the End Users.

158. IMDA also considered the comments on the length of the notice period and would like to highlight that the proposed 3 months' notice was proposed as a general baseline notice period for both the telecommunication and media markets, in order to give End Users sufficient time to find alternative service providers. IMDA views that the 3 months' advance notice is not only important for cessation of service that would affect a large segment of End Users, but also for those that would affect a small group of End Users, such as cessation of VASes. This is

because affected End Users would need time to look for and switch to alternative service providers. For instance, a Telecommunication Licensee may be ceasing its Unlimited Data Roaming VAS, and while the cessation will not affect a large segment of its End Users, business travellers who rely heavily on data roaming service would be impacted and need sufficient time to find an alternative service provider that best suits their needs. Given that End Users rely on media and telecommunication services as important sources of information and modes of communication, IMDA is of the view that it is essential to provide sufficient notification to End Users for any cessation of operation or services, with service providers factoring in the required notice period in their decisions and customer engagement plans.

159. Nonetheless, IMDA notes the respondents' views that in some instances, it may not be viable to provide 3 months' notice. Considering the above, IMDA will still proceed to retain the requirement to provide 3 months' advance notice in writing to End Users who will be affected by the cessation of operations or provision of any telecommunication and media services. However, IMDA will reserve the flexibility to specify a reasonable notice period should there be good reasons for making an exception.

**Provisions to be Retained or Included for a Specific Market**

Prohibition on "Slamming"[9]

160. IMDA has so far not taken any enforcement action against any Telecommunication Licensee for the breach of this provision and, on this basis, IMDA had considered whether this provision should be removed. However, IMDA also observed that there were instances where telecommunication service providers offer service plans, such as free service trials, that automatically switch End Users from their existing service provider to another at the end of the free trial period. IMDA is of the view that as competition in the telecommunication markets intensifies, there remains a risk that End Users are switched from one service provider to another without their explicit consent.

161. Given that the practice of "slamming" may still be relevant in the telecommunication markets, IMDA had proposed to retain the prohibition on "slamming" for the telecommunication markets in the Code to protect End Users against such unfair practices.

[9] No Telecommunication Licensee may switch an End User from one Telecommunication Licensee's Service to another Telecommunication Licensee's Service without prior consent of the End User. In addition, no Telecommunication Licensee may collect or retain any payment from an End User for any Service that the End User did not consent to receiving.

162. All respondents had no objections to the proposal to retain the prohibition on "slamming" for the telecommunication markets and did not have further comments.

*IMDA's Assessment and Decision*

163. IMDA notes that there were no objections and will retain the prohibition, given that the practice of "slamming" may still be relevant in the telecommunication markets and that End Users should be protected against such unfair practices.

Prohibition of Detrimental or Disadvantageous Mid-contract Changes for the Telecommunications Markets

164. Key Telecommunication Licensees[10] providing mobile and broadband services to End Users are currently prohibited from making any changes to the prices, terms and conditions of any fixed term service agreement that are disadvantageous or detrimental to the End User during the contract term. This requirement was imposed by way of a Direction issued by then-IDA in 2015. This prohibition is intended to protect End Users against unilateral contract variations that are detrimental to them, in view that End Users typically do not have the power to reject such changes and are liable to pay ETCs if they opt to terminate their service agreements before the expiry of the minimum service period.

165. IMDA had proposed to include the prohibition on mid-contract detrimental changes in the Code and extend its application to all Telecommunication Licensees.

166. Most respondents had no objection to the proposal, with a few respondents commenting that the requirement would put forth a fair and reasonable standard across the industry. One respondent disagreed with the extension of the prohibition beyond the Key Telecommunication Licensees to all Telecommunication Licensees and commented that non-Key Telecommunication Licensees had not engaged in such conduct. The respondent asserted that the competitive market condition adequately disciplines non-Key Telecommunications Licensees if such conduct exists. Another respondent commented that such requirements amplified the disparity between the heavy regulation of Telecommunication Licensees, as compared to the lack of regulation on OTT players, and further shared that if such a requirement is to be implemented, it should be applied to all players, including parties based outside of Singapore, to ensure a level playing field.

[10] Under the then-IDA's Direction in 2015, key Telecommunication Licensees include M1 Limited, M1 Net Ltd, Singapore Telecommunications Limited, Singtel Mobile Singapore Pte Ltd, SingNet Pte Ltd, StarHub Ltd, StarHub Mobile Pte Ltd, StarHub Online Pte Ltd and StarHub Internet Pte Ltd.

*IMDA's Assessment and Decision*

167. IMDA noted that majority of the respondents had no objections to the proposal. IMDA is of the view that the extension of the prohibition on mid-contract detrimental changes to all Telecommunication Licensees would set a fair and reasonable standard across the telecommunication markets, and it would protect the interest of consumers who are tied to service agreements for their services regardless of the Telecommunication Licensees that they sign up with. On the disparity between Telecommunication Licensees and OTT players, IMDA would like to clarify that this provision will only apply to the telecommunication markets and not the media markets as there are similar provisions for the media market, such as material channel provision, which are more suited to protect consumers' interest and will be discussed in the sections below. Considering the above, IMDA will prohibit mid-contract detrimental changes and extend its application to all Telecommunication Licensees.

<u>One-month Advance Notice for Detrimental Mid-contract Changes for the Media Markets</u>

168. Sub-sections 3.5C.1(a) and 3.5C.2 of the MMCC currently provide that RPs must give at least 1-month advance notice in writing to End Users for any increase in subscription fees, or cessation of any channel or material sports content. IMDA had proposed to retain the current requirement, and notes that there was no objection to the proposal.

*IMDA's Assessment and Decision*

169. IMDA notes that respondents had no objections to the proposal and hence will retain the requirement in view of the likely detrimental effects on End Users arising from any increase in subscription fees, or cessation of any channel or material sports content, which may also affect their decision on whether to continue the subscription. The notification period would give End Users time to make changes to their subscription or look for alternatives.

<u>Prohibition on Early Termination Charges ("**ETCs**") in Certain Cases for the Media Markets</u>

170. For Pay TV services, IMDA noted that changes to content and channel line-ups are inevitable as Pay TV service providers typically do not have full control over the outcome of their negotiations with content owners for the continued provision of content or channels and contract periods for content are usually not in sync with consumer service subscription periods. Therefore, IMDA will refrain from an absolute prohibition on unilateral mid-contract changes in the Pay TV market.

171. Nevertheless, to address the impact of detrimental mid-contract changes on End Users, Sub-section 3.5A of the MMCC requires Pay TV service providers to give End Users the option to exit their Pay TV service agreements without ETCs under certain instances.

172. IMDA proposed to retain the requirement for Pay TV service providers to allow End Users to exit their service agreements without ETC for specific instances, and the enabling provisions (i.e., Sub-sections 3.2E, 3.5B and 3.8 of the MMCC) for this requirement.

173. Most respondents had no objections to the proposal and did not have further comments. However, one respondent commented that the obligation should be removed in view of the increasing importance of OTT services and rapid changes in the media markets.

*IMDA's Assessment and Decision*

174. While IMDA acknowledges that the media markets are evolving, the OTT media landscape in Singapore is highly fragmented as compared to linear Pay TV services that are more pervasive and mainstream. As such, IMDA will continue to maintain a light-touch approach for the OTT media services. IMDA is also of the view that it is necessary to protect End Users by allowing them to exit from a Pay TV service agreement without ETC under certain instances, especially if the original material channels or content that they signed up for at the beginning of the service agreement have been removed from their Pay TV packages. IMDA notes that most respondents had no objection to the proposal.

<u>Duty to Offer Option of Short-Term Agreements</u>

175. IMDA noted that there could be instances where an End User may not be able to exit Pay TV service agreement without ETC because the ceased channel or sports content is not a "material" channel or sports content. To address such concerns, Sub-section 3.2B of the MMCC provides that Pay TV service providers shall provide End Users with options of shorter-term service agreements of not more than 12 months for all Pay TV service packages. This is to ensure that End Users have more options and are empowered to make trade-offs between the promotional price benefits that come with longer contracts, and the risks of mid-contract channel cessations and being bound to a long-term service agreement.

176. IMDA had proposed to retain the requirement for Pay TV service providers to offer short term agreements for all Pay TV service packages. Most respondents had no objections to the proposal. One respondent, however, made the same comments that the obligation does not reflect the changes in the media markets.

*IMDA's Assessment and Decision*

177. IMDA notes that majority of the respondents had no objection to the proposal. IMDA disagrees with the comment that the obligation does not take into account the increasing importance of OTT services and changes in the media markets. Unlike Pay TV service agreements which are typically sold with a minimum contract period, subscriptions to OTT services are typically on a monthly or pay-per-use basis. Hence, End Users are usually not bound for long contractual periods for OTT services, and may terminate the service agreement at any time with incurring ETCs. IMDA would like to clarify that the intent of this provision is to ensure that End Users have the option of short-term service agreements when making purchasing decisions and are able to make trade-offs between promotional price benefits that come with longer contracts, and the risks of mid-contract channel cessations and being bound to a long-term service agreement. In consideration of the above, IMDA will retain the requirement for Pay TV service providers to offer short-term agreements for all Pay TV service packages.

<u>Duty Not to Act Unreasonably in Contracting</u>

178. IMDA noted that it is common practice for service providers to bundle their Pay TV services with telecommunication services, such as fixed-line telephone and broadband services, at promotional monthly subscription fees. However, there have been instances whereby End Users were made to upgrade their telecommunication services in order to purchase additional Pay TV services.

179. Sub-section 3.2C of the MMCC currently prohibits Pay TV service providers from leveraging an End User's Pay TV service agreement to impose changes on a non-Pay TV service agreement that the End User has from the same service provider, if it is not a technical requirement for the provision of the Pay TV service.

180. IMDA had proposed to retain the prohibition on Pay TV service providers from leveraging an End User's Pay TV service agreement to impose changes on a non-Pay TV service agreement that the End User has from the same service provider.

181. There were no objections or further comments made by respondents to the proposal.

*IMDA's Assessment and Decision*

182. IMDA will retain the prohibition to prevent such unfair practices against End Users. The prohibition will not be extended to the telecommunication markets, as the provision prohibiting detrimental mid-contract changes should provide sufficient safeguard against such behaviour.

**Provisions to be Removed**

Service Quality Information Disclosure Requirements

183. Sub-section 3.2.7 of the TCC requires Telecommunication Licensees to disclose information on service quality. Telecommunication Licensees must publish reports indicating the number and types of complaints that the Telecommunication Licensee has received from its End Users and a statement of the extent to which the Telecommunication Licensee has met all applicable QoS standards issued by IMDA. There is no equivalent requirement under the MMCC.

184. IMDA had proposed to remove these requirements because IMDA already consolidates and publishes such information on its website.

185. Most respondents had no objection to the proposal and shared that the requirements are no longer relevant. One respondent, however, requested IMDA to retain the current service quality information disclosure and if possible, expand the requirement to capture emerging market trends, as the information was of great assistance for new service providers entering the market to navigate mandated requirements applicable in the industry.

*IMDA's Assessment and Decision*

186. IMDA notes that most respondents had no objection to the proposal to remove the current TCC service quality information disclosure requirements. While IMDA notes the comment on the usefulness of the information, IMDA will remove this requirement from the Code since IMDA already consolidates complaint statistics and publishes QoS data on its website for interested parties to refer to.

Anti-avoidance of Obligations

187. Sub-section 3.7 of the MMCC currently prohibits any arrangement by RPs in the media markets to avoid the application of regulatory requirements under the Consumer Protection Provisions. The TCC has no equivalent prohibition. IMDA views that Telecommunication Licensees and RPs should be aware of their regulatory obligations for consumer protection and legally, the Telecommunication Licensees and RPs cannot avoid their licensing and regulatory obligations. IMDA had proposed to remove the anti-avoidance provisions for the media markets as IMDA has the necessary regulatory powers to take enforcement actions against such behaviour.

188. None of the respondents raised objections to the proposal, and one respondent commented that the provision was no longer relevant.

*IMDA's Assessment and Decision*

189. IMDA will remove the anti-avoidance provisions for the media markets. IMDA has the necessary regulatory powers to correct and take enforcement actions against such behaviour.

## PART VI: MERGERS AND ACQUISITIONS

190. The primary objective of the mergers and acquisitions ("**M&A**") provisions is to ensure that any acquisition or consolidation involving telecommunication or media licensees does not substantially lessen competition in the telecommunication or media markets respectively. This part of the document covers the provisions governing acquisitions and consolidations contained under section 10 of the TCC and section 8 of the MMCC.

### Applicability of Consolidation Provisions

<u>Transactions Subject to IMDA's Review</u>

191. At present, all transactions relating to acquisitions of voting shares and power in specified Telecommunication Licensees, i.e., Designated Telecommunication Licensees, Designated Business Trusts and Designated Trusts (collectively, the "**Designated Telecommunication Licensees**") are subject to IMDA's review under the TCC, whereas only transactions in which voting shares or power in an RP are acquired by an RP or AMSP are subject to IMDA's review under the MMCC.

192. Given that transactions where voting shares or power in an RP are acquired by a non-RP or non-AMSP may also potentially raise competition concerns, especially in a converged environment whereby the acquiring party may have SMP in one or more of the telecommunication markets, IMDA had proposed to adopt a consistent approach and subject all transactions that involve acquisition of voting shares or power in a Designated Telecommunication Licensee and/or an RP, by any person, to IMDA's review.

193. IMDA received three responses regarding the proposal. One respondent disagreed with IMDA's proposal to subject all transactions that involve acquisition of voting shares or power in an RP to IMDA's review. The respondent opined that expanding the scope of the M&A Provisions to all transactions would add unnecessary regulatory and compliance cost to industry players. Another respondent added that there was no need to carve out for the M&A Provisions for the telecommunication and media markets from Singapore's competition law, so as to ensure consistency of regulatory regime across Singapore.

*IMDA's Assessment and Decision*

194. IMDA would like to highlight that there are unique features of the telecommunication and media markets that are different from the general market. Specifically, the telecommunication and media markets involve the extensive deployment of infrastructure which creates a higher barrier of entry. In this

regard, there is a need for IMDA to review the proposed transaction prior to its completion to preserve effective and sustainable competition in the telecommunication and media markets.

195. IMDA is also of the view that there is a need for close monitoring of all transactions involving the acquisition of voting shares or power in a Designated Telecommunication Licensee or RP. This is in consideration that Designated Telecommunication Licensees in the telecommunication markets and RPs in the media markets often operate critical and essential services. It will be important for IMDA to monitor the changes to the stakeholders of these key players. Thus, IMDA will apply the M&A Provisions to all transactions that involve acquisition of voting shares or power in a Designated Telecommunication Licensee and/or RP, by any Telecommunication Licensee and/or person, under the Code.

Notification/ Approval Requirements

196. Presently under the TCC, a Designated Telecommunication Licensee is required to notify IMDA if there is a transaction that results in an acquiring party acquiring 5% or more of the voting shares or voting power in the Designated Telecommunication Licensee. The Designated Telecommunication Licensee and the acquiring party are both required to seek IMDA's prior written approval if there is a transaction that results in an acquiring party acquiring 12% or more of the voting shares or voting power in the Designated Telecommunication Licensee, and if there is a transaction that results in an acquiring party becoming a 30% Controller of the Designated Telecommunication Licensee, or obtaining the ability to exercise Effective Control over the Designated Telecommunication Licensee, or acquiring the business of the Designated Telecommunication Licensee as a going concern. Designated Telecommunication Licensee is also required to notify IMDA if there is a transaction that results in pro forma change(s). In comparison, an RP is required to obtain IMDA's prior written approval only for consolidations (transactions that result in an acquiring party acquiring at least 30% direct or indirect ownership interest) with another RP or with any AMSP under the MMCC. Minister's prior approval is required for any acquisition of ownership interest in a broadcasting company and/or newspaper company (who may be an RP) that crosses the 5% and 12% thresholds. The existing notification/ approval requirements for the respective industry are provided in Table 3 below.

**Table 3: Existing notification/ approval requirements under TCC and MMCC**

| Level of ownership interest in relevant Telecommunication Licensee/ RP | Requirement for transactions involving Designated Telecommunication Licensees | Requirement for transactions involving RPs |
|---|---|---|
| <5% | N.A. | N.A. |
| ≥5% and <12% | Notification to IMDA under the TCC | Approval from Minister under the Broadcasting Act or Newspaper and Printing Presses Act[11] |
| ≥12% and <30% | Approval from IMDA under the TCC | |
| ≥30% or effective control | | Approval from IMDA under the MMCC |
| *Pro forma* change | Notification to IMDA under the TCC | N.A. |

197. As noted in Table 3, while the thresholds that trigger the necessary notification or approval are similar for the transactions involving Designated Telecommunication Licensees and RPs, they are subject to approval by different authorities. IMDA had clarified in the First Public Consultation that there was no intention to change the thresholds as the current thresholds are appropriate in allowing IMDA to review acquisitions and consolidations that may give rise to competition concerns and will continue to provide commercial flexibility for market transactions within each band.

198. IMDA also proposed to extend the requirement to notify IMDA of any transactions resulting in *pro forma* change to all RPs, to provide a consistent procedure across both industries that eases the regulatory burden of seeking approval for acquisition/ consolidation transactions involving companies within the same group, that do not give rise to competition concerns.

199. IMDA received two responses to this proposal. Both respondents agreed with IMDA's proposal to extend the requirement to notify IMDA of any *pro forma* change involving an RP.

*IMDA's Assessment and Decision*

200. Given that there were no objections to IMDA's proposal, IMDA will apply the notification requirement for *pro forma* change to all RPs. With this change, an RP

[11] Depending on whether the RP is a broadcasting company or a newspaper agency, the approval from Minister (Communications and Information) will be required under the Broadcasting Act (Cap. 28) or Newspaper and Printing Presses Act (Cap. 206) respectively.

would be required to notify IMDA if there is a transaction that results in *pro forma* change(s), similar to Designated Telecommunication Licensees[12].

201. IMDA would like to clarify that the notification and/or approving authority for telecommunication and media related transactions will remain the same, given the wider considerations involved in the assessment for transactions involving Designated Telecommunication Licensees and RPs. For clarity, the notification/approval requirements to be included under the Code are summarised in Table 4 below:

**Table 4: Revised notification/ approval requirements under the Code**

| Level of ownership interest in relevant Telecommunication Licensee/ RP | Requirement for transactions involving Designated Telecommunication Licensees | Requirement for transactions involving RPs |
|---|---|---|
| <5% | N.A. | N.A. |
| ≥5% and <12% | Notification to IMDA | Approval from Minister under Broadcasting Act or Newspaper and Printing Presses Act[13] |
| ≥12% and <30% | Approval from IMDA | |
| ≥30% or effective control | | Approval from IMDA |
| *Pro forma* change | Notification to IMDA | Notification to IMDA |

**Other Amendments to M&A Provisions**

Short Form and Long Form Consolidation Application

202. At present, the TCC and MMCC set out a “two-track” procedure to be adopted for transactions involving Designated Telecommunication Licensees and RPs in which an application must be filed with IMDA for approval. Specifically, this entails either a short form or long form application form (“**Short Form**” or “**Long Form**” respectively). In general, applicants should adopt the Long Form unless they are eligible to use the Short Form, which is a streamlined application process for transactions in which IMDA believes are less likely to raise competition concerns. IMDA noted that while the current provisions under the TCC and MMCC are largely similar, the criteria for eligibility to use the Short

[12] Under the Telecommunications (Prescribed Transactions) Order 2012, a transaction is a prescribed transaction if it results in the transfer of shares in a designated Telecommunication Licensee from one corporation, any shares in which are owned or any voting power in which is controlled by any person, to another corporation, any shares in which are owned or any voting power in which is controlled by that person, without any change in the percentage of the voting power in the designated Telecommunication Licensee controlled by that person.

[13] Depending on whether the RP is a broadcasting company or a newspaper agency, the approval from Minister will be required under the Broadcasting Act (Cap. 28) or Newspaper and Printing Presses Act (Cap. 206) respectively.

Form were different. Specifically, the market share threshold for use of Short Form for the media industry is 40% or between 20% to 40% where the largest 3 RPs or AMSPs, or a combination thereof, is 70% or more of any media market, whereas the threshold for the telecommunication industry is 15% for horizontal consolidation or 25% for non-horizontal consolidation.

203. To provide a harmonised approach and minimise confusion amongst industry players, IMDA had proposed to adopt the following criteria for determining whether a consolidation application uses a Short Form or Long Form:

(a) A Short Form may be used when none of the applicants have, and/or the post-consolidation entity will not have, a share of:

(i) 30% or more of any telecommunication or media market in Singapore or elsewhere; or

(ii) between 20% to 30% when the combined market share of the largest 3 RPs or AMSP, or a combination thereof, is 70% or more of any telecommunication or media market in Singapore; or

(b) A Long Form shall be used if the consolidation does not fall into the scenarios provided in (a) above.

204. Most respondents welcomed IMDA's proposal to introduce a uniform set of rules for applying the Short Form or Long Form in the telecommunication and media markets. However, two respondents were concerned that the proposed criteria for determining whether a consolidation application uses a Short Form was not appropriate for the media markets. Both respondents were of the view that there was no rationale or in-principle basis to support IMDA's proposal to reduce the market share threshold for the media markets from 40% to 30% under the Code. The current 40% market share threshold under the MMCC was also used under Singapore's competition law.

*IMDA's Assessment and Decision*

205. As discussed in the First Public Consultation, IMDA's intent is to implement a Code that can be uniformly applied to both the telecommunication and media markets. Adopting a 30% market share as the threshold for use of the Short Form would be a more prudent approach that strikes a good balance between the telecommunication and media markets. The proposed revision for the second criteria from "between 20% to 40%" market share to "between 20% to 30%" market share was also consistent with the unified threshold of 30% market share and would minimise any overlaps between the two criteria.

206. IMDA is cognisant of the concerns raised by the two respondents. However, IMDA does not expect the revision to significantly impact the media markets, particularly as the media markets are currently served by a smaller number of players with large market shares, and a consolidation that results in the post-consolidation entity having a market share of 30% or less is unlikely to raise competition concerns based on IMDA's experiences with the media industry. In this regard, IMDA is of the view that the proposal is unlikely to have a material effect on the media markets.

207. In view of the above, IMDA will adopt a harmonised criterion across the telecommunication and media markets for determining whether a consolidation application should use a Short Form or Long Form.

Consolidation Review Period

208. The TCC and MMCC currently set out, among other things, the timeline in which IMDA will respond to a consolidation application after it has satisfied the minimum information requirements. The existing review periods are set out in Table 5.

| **Table 5: Consolidation review period** | |
|---|---|
| **Review Period under TCC** | **Review Period under MMCC** |
| • Ordinarily complete consolidation review within 30 days after the start of the consolidation review period<br><br>• If a consolidation application is deemed to raise novel or complex issues, IMDA will extend the review period by up to 90 days, to a maximum of 120 days | • Ordinarily complete consolidation review within 30 working days after the start of the consolidation review period<br><br>• If a consolidation application is deemed to raise novel or complex issues, IMDA will extend the review period by 60 working days and will seek to provide notification by the $110^{th}$ day |

209. IMDA noted that the review periods of consolidation applications differ under the TCC and MMCC and that there is merit in having the same review period under the Code. IMDA hence proposed to adopt the shorter review period as follows:

(a) IMDA will ordinarily complete its consolidation review within 30 days after the start of the consolidation review period; and

(b) IMDA may extend the review period by up to 90 days, to a maximum of 120 days if a consolidation application is deemed to raise novel or complex issues.

210. Two respondents welcome the shorter review period as it would promote greater regulatory certainty and minimise procedural barriers to consolidation activities.

One respondent urged IMDA to consider an even shorter review period, in consideration of the current market developments where consolidations would be common and inevitable.

*IMDA's Assessment and Decision*

211. IMDA agrees that the review process for consolidations should not be unduly long given the fast pace of the telecommunication and media industries. IMDA noted that while the respondent had asked for a shorter review period, no duration had been proposed. IMDA will therefore adopt the shorter review timeline under the TCC for the Code as proposed, and will strive to ensure that the review does not take longer than necessary.

## PART VII: RESOURCE SHARING

212. Part VIII of the First Public Consultation covered the provisions in Section 7 of the TCC and Section 9 of the MMCC regarding sharing of resources among Telecommunication Licensees and media licensees that is necessary for the provision of telecommunication and/or media services. Either at the request of the Telecommunication Licensees, or at its own initiative, IMDA will designate a resource which requires sharing as either "**Critical Support Infrastructure**" (under the TCC) or "**Essential Resource**" (under the MMCC). In certain cases, IMDA may also determine that it is in the public interest to require sharing of resources even if such resources do not constitute a Critical Support Infrastructure or Essential Resource.

213. IMDA noted that the intent of both sections is aligned, with the aim of facilitating the sharing of resources (including infrastructure) among media licensees and Telecommunication Licensees, where necessary. The key differences arise from the application of the sections. Under the Code, IMDA sought to harmonise the provisions to the extent possible.

**Applicability**

<u>Types of Resources Applicable</u>

214. IMDA noted that Section 7 of the TCC can apply to any infrastructure, while Section 9 of the MMCC can apply to any apparatus, accessory, system, service, information or such other resource of any kind required to provide media service(s) ("**Media Resource**").

215. IMDA had proposed to limit Media Resource that may be shared to only infrastructure (similar to Section 7 of the TCC), as IMDA foresees that infrastructure is likely to be the only potential resource that a media licensee cannot produce or lease within the foreseeable future in order to provide a media service.

216. Respondents were generally agreeable to IMDA's proposal to limit the definition of Media Resource to only infrastructure for the purposes of sharing amongst media entities. One respondent noted that the resource sharing provision in the TCC covered only infrastructure and agreed that infrastructure would likely be a potential resource that a media licensee could not produce or lease within the foreseeable future in order to provide a media service.

217. Another respondent commented that the scope of “resources required for the effective sharing of infrastructure” stated in paragraph 8.7[14] of the First Public Consultation was unclear and should be clarified. This requirement, in the respondent’s view, could potentially be interpreted in a manner that could be extremely onerous. For example, such resources could be interpreted as the hiring of extra staff, or provision of extra training, to help ensure that there would be an “effective” sharing of infrastructure. The respondent suggested that regulatory and compliance costs should be considered when determining what resources would be required for the effective sharing of infrastructure.

*IMDA’s Assessment and Decision*

218. Given the support from all respondents, IMDA will retain the terms Critical Support Infrastructure for the telecommunication markets and Essential Resource for the media markets. IMDA will also apply the scope of “infrastructure” as listed in Sub-section 7.5.1[15] of the TCC to the “Media Resource” required to be shared. In regards to the comment that the scope of “resources required for the effective sharing of infrastructure” is unclear, IMDA would like to clarify that the intent of this provision is to ensure that a licensee is able to access any supporting infrastructure or resource that is necessary to access a Critical Support Infrastructure or an Essential Resource respectively. An example of such a supporting infrastructure could be a manhole, for which access is necessary in order to access a duct which has been designated as a Critical Support Infrastructure. Capturing this under the scope of the Resource Sharing provision provides certainty to licensees requesting Critical Support Infrastructure or Essential Resource sharing, that the necessary access to all common infrastructure/resources leading to the Critical Support Infrastructure or Essential Resource will be facilitated. As the infrastructure/resources required may differ, IMDA will determine the infrastructure/resources required on a case-by-case basis. In the event that IMDA determines that the infrastructure/resources required for the effective sharing constitute a Critical Support Infrastructure or Essential Resource, IMDA will set out the reasons for its determination in its decision.

[14] For the avoidance of doubt, IMDA would like to clarify that resources required for the effective sharing of the infrastructure may be included in the scope of the provision.

[15] Designation of Specific Infrastructure: The following types of infrastructure must be shared:
(a) radio distribution systems for mobile coverage in train or road tunnels;
(b) in-building cabling (where the occupant elects to take Service from another service provider);
(c) lead-in ducts and associated manholes;
(d) monopoles; and
(e) radio towers (excluding towers used for the operation of any broadcasting service).

Licensees on which the Resource Sharing Provisions Apply

219. IMDA is of the view that restricting the infrastructure sharing obligation to FBO Licensees only no longer meets present-day needs and should be removed because the sharing of infrastructure by SBO Licensees may also be essential for public interest. Therefore, IMDA had proposed to extend the Resource Sharing Provisions applicable to Telecommunication Licensees to include all FBO and SBO Licensees. This would give IMDA the ability to declare any infrastructure, owned by an FBO or SBO Licensee, as a Critical Support Infrastructure which must be shared with other Licensees as long as the said infrastructure fulfils the criteria for the designation of Critical Support Infrastructure.

220. Respondents were generally agreeable to IMDA's proposal to extend the application of the Resource Sharing Provisions to all SBO Licensees under the Code, such that any infrastructure owned by an SBO Licensee and which fulfilled the criteria for designation as a Critical Support Infrastructure would be subject to the infrastructure sharing requirement under the Code. However, one respondent highlighted that the extension of the resource sharing provisions to SBO Licensees would have an impact on company investment and operational decisions.

*IMDA's Assessment and Decision*

221. While IMDA notes that the imposition of sharing obligation on SBO Licensees may have an impact on existing businesses' investments and operational decisions of the licensees, IMDA had encountered cases where SBO Licensees had rolled out infrastructure in a localised area/establishment (e.g., cabling inside a building or facility) which fulfilled the criteria of a Critical Support Infrastructure and IMDA was unable to declare it as a Critical Support Infrastructure as it was owned by an SBO Licensee. Hence, IMDA finds that the sharing of infrastructure owned by SBO Licensees may be required for public interest as these SBO Licensees may roll out infrastructure that constitutes Critical Support Infrastructure for resource sharing with other licensees. IMDA will adopt this proposal in the Code.

**Criteria for Designation**

222. For the designation of Essential Resource or Critical Support Infrastructure, IMDA will determine whether such Media Resource or infrastructure satisfy the criteria as set out under Sub-section 9.3.1.5 of the MMCC and Sub-section 7.3.1 of the TCC respectively. IMDA notes that the criteria are largely similar and had proposed to adopt the same set of criteria as set out under Sub-section 9.3.1.5 of the MMCC and Sub-section 7.3.1 of the TCC for the determination of both

Essential Resource and Critical Support Infrastructure. The proposed criteria are set out below:

(a) the infrastructure / Media Resource is required to provide the telecommunication / media services;

(b) an efficient new entrant would neither be able to replicate or create the infrastructure / Media Resource in the foreseeable future, nor obtain the infrastructure / Media Resource from a third party at costs that would allow market entry;

(c) the infrastructure / Media Resource is not fully and efficiently utilised; and

(d) owners of the infrastructure / Media Resource have no legitimate justification to refuse sharing.

223. IMDA may also require the sharing of both infrastructure (for Telecommunication Licensees) and/or Media Resource (for media licensees) if it is in the public interest to do so.

224. Respondents were generally agreeable for IMDA to apply the above proposed criteria for determining both Essential Resource and Critical Support Infrastructure to provide consistency in application. One respondent, however, commented that the above criteria omitted the consideration that the infrastructure of the Person Controlling Media Resource[16] should be accessed with no technical or operational harm caused to the operations of the Person Controlling Media Resource. The respondent explained that it would not be reasonable to require the Person Controlling Media Resource to share its infrastructure with a third party if it would cause harm to its own operations and compromise its own ability to offer services.

225. The same respondent also commented that the proposed criteria omitted the consideration under Sub-section 9.3.1.5(a)(vi) of the MMCC and Sub-section 7.3.1(e) of the TCC that failure to require access to the Resource would unreasonably restrict competition. The respondent elaborated that the decision to impose the duty to provide access to the Critical Support Infrastructure / Media Resource should be based on objective competition principles, such that access is mandated only when refusal to share or excessive pricing for resources adversely affects competition in the markets for the provision of downstream services.

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[16] Person Controlling Media Resource refers to a Media licensee that owns or controls any Media Resource.

*IMDA’s Assessment and Decision*

226. IMDA notes that there were no objections to the proposed criteria above and will adopt the criteria in the Code.

227. In relation to the comment that the criteria above omitted the consideration that the Person Controlling Media Resource should be able to provide access without causing technical or operational harm to its own operations, IMDA would like to highlight that IMDA will only designate the resource for sharing if all the standards as set out in paragraph 222 have been met. Hence, if the owner of the infrastructure / Media Resource is able to demonstrate that the sharing of its infrastructure/Media Resource would cause technical or operational harm to its own operations, the owner may raise the concerns for IMDA’s consideration on whether it would constitute legitimate justification to refuse sharing.

228. In relation to the suggestion to reinstate the “failure to require access to the Resource would unreasonably restrict competition” criterion, IMDA notes that the decision to impose the duty to provide access to the Critical Support Infrastructure / Media Resource should be based on objective competition principles. IMDA agrees that there is merit in including such a criterion into the list of criteria in the determination of both Essential Resource and Critical Support Infrastructure. IMDA will include this criterion in the Code.

## PART VIII: PUBLIC INTEREST OBLIGATIONS

229. In the First Public Consultation, IMDA outlined the proposals that relate to the Public Interest Obligations to be observed by specific media entities. While IMDA had proposed to harmonise the provisions under the TCC and the MMCC where possible, IMDA also recognised that there remain some inherent differences between the telecommunication and the media markets, and inevitably, there will be some unique market-specific regulatory conditions that are relevant to, and should apply only to, one market. One key difference is the role media plays in nation building, which necessitates the need to impose certain obligations on specific RPs. Hence, IMDA had mentioned in the First Public Consultation to retain the Public Interest Obligations specific to the media markets only.

### The Cross-Carriage Measure ("CCM")

230. In 2010, then-MDA introduced the CCM to discourage Subscription Television Licensees from pursuing an exclusive content-centric strategy. Such a strategy had resulted in a high degree of content fragmentation and inconvenience to consumers, as well as diverted resources away from other aspects of competition such as content and service innovation. The CCM sought to encourage Pay TV operators to focus competition through other means such as service differentiation, competitive packaging and pricing. Since the introduction of the CCM, IMDA observed that content fragmentation has abated. The number of common channels that can be found on the current Pay TV platforms has increased to more than 100, and there is greater service differentiation and innovation in the Pay TV markets. Hence, IMDA is of the view that the CCM remains relevant.

<u>Restricting the CCM by Content Genre</u>

231. IMDA noted that while the CCM is currently applicable to Pay TV content of any genre, it has only been imposed on certain key sports content thus far. IMDA had taken the view that despite the limited application to-date, the CCM could still be applicable to Pay TV content of any genre, where the relevant conditions for applying the CCM are met. This was in view of the Pay TV survey results discussed in the First Public Consultation which indicated that Pay TV subscribers view different genres as similarly important.

232. One respondent commented that the broadening of the CCM to all types of content was not justifiable in the absence of any demonstrated problem in Singapore, and that a more targeted approach could avoid the infringement of contracting rights of buyers and sellers in the market. The respondent added that online content had become a significant part of Singapore's media ecosystem,

and consumers have alternative channels for the genre of content they wish to watch.

233. Another respondent commented that the CCM disincentivised platforms from investing in exclusive and quality content due to the lower returns from content investment. The respondent also highlighted that the current CCM framework provides pure-OTT players with an unfair advantage over traditional TV platforms as pure-OTT players are not restricted from entering into exclusive deals.

234. Some respondents also suggested for IMDA to restrict the CCM's scope to Sports content only, noting that substitutes for content of other genres are more readily available.

*IMDA's Assessment and Decision*

235. IMDA would like to clarify that under the existing framework, the CCM is already applicable to all exclusive content transmitted on the linear Pay TV platform, regardless of content genre such as drama, movies and sports.

236. Nevertheless, IMDA notes that the CCM has only been applied to sports content thus far[17]. Furthermore, with technological developments and changes in the way media content has been distributed in the industry since the introduction of CCM in 2010, consumers now have more options to access the content and may no longer need to subscribe to multiple Pay TV operators in order to watch the full suite of content. Apart from live sports, most of the TV content, such as dramas and movies, are increasingly being made available to consumers over the Internet.

237. Given the above, IMDA has decided that it is sufficient to limit the application of CCM to only live programmes that are acquired on an exclusive basis. IMDA will continue to monitor the media landscape and will regularly review the relevance of the CCM.

<u>Offering OTT Services that Contain Qualified Content[18] ("**QC**") on a Standalone Basis</u>

238. While IMDA generally does not intervene in how Pay TV operators bundle their service offerings, IMDA is concerned that if the QC, or a portion of the QC, is offered exclusively on an OTT platform that is restricted to only the Supplying

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[17] Since the introduction of the CCM, the content that has been cross-carried to-date are: (a) UEFA Euro 2012; (b) English Premier League Seasons 2013 to 2016, and Seasons 2016 to 2019; and (c) FIFA World Cup 2014.

[18] Qualified Content refers to channels and programming content, acquired by a RP under an arrangement, whether explicit or implicit, which prevents or restricts another RP from acquiring the channels or programming content for transmission on any of the Relevant Platforms.

Qualified Licensee's ("**SQL**") own subscribers, the cross-carried subscribers on the Receiving Qualified Licensees ("**RQL**") platform may be forced to sign up for a Pay TV subscription with the SQL in order to access the full suite of QC. Hence, IMDA proposed to impose a requirement on the SQL to offer cross-carried subscribers access to the QC on the SQL's OTT platform on the same price and terms as those offered to the SQL's customers, if only a portion of the QC is on the Relevant Platform[19]. This is to prevent Pay TV operators from using their OTT platform as a mean to circumvent the CCM.

239. On IMDA's proposal to require SQLs to offer cross-carried subscribers' access to QC on its OTT platform, if part of the QC is on the Relevant Platform, respondents commented that there was no evidence of consumer dissatisfaction with the offering of QC on Pay TV platforms and their associated OTT devices. Furthermore, consumers were not restricted from purchasing content from any online platform.

240. Another respondent commented that there were no justifications to impose CCM on OTT platforms. The respondent commented that with the Internet, consumers were free to access any Internet service. The respondent opined that the appropriate recourse should be applied with respect to bundling instead of expanding the scope of CCM to address IMDA's concerns with Pay TV providers circumventing the CCM.

*IMDA's Assessment and Decision*

241. IMDA would like to clarify that it is not seeking to extend the CCM to OTT platforms but is concerned with cross-carried subscribers on the RQL platform being forced to sign up for a subscription with the SQL, if a portion of the QC is offered exclusively on an OTT platform that is restricted to only the SQL's subscribers. IMDA's intent is to ensure that the subscribers on both the SQL and RQL platforms are treated in a non-discriminatory manner. Hence, if the SQL chooses to offer only a portion of the QC on its Relevant Platform and the other portions of the QC on its OTT platform, IMDA will require the SQL to offer the cross-carried subscribers access to the QC on the SQL's OTT platform on the same price and terms as those offered to the SQL's subscribers so as to prevent Pay TV operators from using their OTT platform as a means to circumvent the CCM.

[19] Under the MMCC, Relevant Platform means a managed network over or using any one, or any combination, of Hybrid fibre-coaxial, Optical fibre, and the Asymmetric Digital Subscriber Line. Given the cessation of Hybrid fibre-coaxial, IMDA will remove Hybrid fibre-coaxial from the definition of Relevant Platform under the Code to reflect changes in broadcasting mediums.

**Anti-Siphoning Scheme ("Scheme")**

242. Under Sub-section 2.6 of the MMCC, Pay TV operators are restricted from acquiring certain exclusive broadcast rights for programmes listed in the anti-siphoning list to increase the opportunities for viewers in Singapore to access programmes of public interest and national significance on FTA TV. The programmes on the anti-siphoning list are determined by the criteria set out in Sub-section 2.6.1.3 of the MMCC and are reviewed on a regular basis. Programmes on the anti-siphoning list are classified into two categories[20]:

    (a) Category A programmes: Pay TV operators cannot acquire both the exclusive "live" and "delayed" rights to broadcast all or part of the programme; and

    (b) Category B programmes: Pay TV operators can acquire exclusive "live" rights, but not exclusive "delayed" rights to broadcast all or part of the programme.

243. IMDA noted that there could be greater clarity in determining unused rights under the existing anti-hoarding provisions, and that the coverage requirements under the existing Scheme could be further enhanced to ensure the timely broadcast of the entire listed programmes by FTA TV operators who have acquired exclusive rights to the listed programmes. As such, IMDA proposed to introduce coverage obligations to complement the existing anti-hoarding provisions set out in Sub-section 2.6.2 of the MMCC. The proposed amendments will require FTA TV Licensees with exclusive rights to Category A programmes to broadcast the entire event live. Delayed broadcast would only be allowed if there are simulcast events or conflicts with regular news bulletins. For Category B programmes, the entire event would have to be broadcast within 48 hours by FTA TV licensees[21].

244. One respondent noted that IMDA's proposal to introduce coverage obligations to complement the existing anti-hoarding provisions would be too onerous and may be near impossible to comply with. The respondent added that major sporting events typically have multiple events taking place concurrently, and there would not be sufficient channels to broadcast all events live, at the same time. The respondent added there would not be sufficient public interest in watching all events live to justify the cost that would be incurred to meet the obligation.

[20] Examples of Category A programmes are Southeast Asian Games and Summer Olympic Games. Examples of Category B programmes are ASEAN Football Federation Suzuki Cup and Summer Youth Olympic Games.
[21] The delay for Category B programmes is to ensure the commercial viability of the "live" broadcast rights for Subscription TV Licensees and "delayed broadcast" rights for FTA TV Licensees, provide flexibility to the Subscription TV Licensees to accommodate the different time zones that the "live" event may be held, and also to provide flexibility for programme scheduling to avoid causing significant disruption to regular programming.

245. Another respondent suggested for IMDA to stop using the term “anti-siphoning” as it has invidious connotations.

*IMDA’s Assessment and Decision*

246. Having considered industry’s feedback, IMDA agrees that it may be too onerous for the FTA TV operators to broadcast the entire event live or delayed given that programmes under the anti-siphoning list, such as the Summer Olympic Games, could have more than 300 events, many of them taking place concurrently. The technical and production costs involved in broadcasting the entire programme would be non-trivial. IMDA notes that currently, any FTA TV Licensee that obtains exclusive broadcast rights in connection with a programme classified as a Category A or B programme must broadcast a reasonable portion of the programme on its service. Given that there had not been any public feedback on the insufficient coverage of such events in the past, IMDA is of the view that there may not be much public interest for the entire event to be broadcast live or delayed to justify the cost of broadcasting the entire event. As such, IMDA will not proceed with its proposal to introduce coverage obligations for the Category A or B programmes if FTA TV operators acquired exclusive rights to these listed programmes.

247. IMDA notes that there are existing obligations on FTA TV Licensees, who obtain exclusive rights to the Category A or B programmes, to provide schedules that will resemble the final schedule as closely as possible for the broadcast of programmes to all other FTA TV Licensees and all Pay TV service providers, as the case may be, as soon as feasible and, where possible, at least 4 months prior to the scheduled broadcast of each Category A or B programme. This would allow any other FTA TV Licensee or Pay TV service provider that wishes to acquire the broadcast right from the FTA TV Licensee to obtain an offer, if the latter is unable to broadcast a reasonable portion of the programme on its service.

248. In relation to the suggestion to stop using the term “anti-siphoning” as it has invidious connotations, IMDA notes that the term “anti-siphoning” has been in use in Singapore for a long time and the industry is familiar with it. There is therefore no need to amend the term now. IMDA also notes that the term “anti-siphoning” is used in overseas jurisdictions such as Australia as well. Nonetheless, IMDA will take note of this suggestion and consider it for subsequent reviews.

**Designated Video and Newspaper Archive Operators**

249. IMDA noted that the national archive management role is currently performed by the National Library Board ("**NLB**") and the National Archives of Singapore ("**NAS**") (collectively known as "**NLB/NAS**"). In view of the above, IMDA proposed to remove Sub-section 2.5 of the MMCC which sets out the obligations of designated video and newspaper archive operators, and Sub-section 10.4(b), which allows Designated Video Archive Operators ("**DVAO**") to request IMDA to provide conciliation services.

250. Respondents were supportive of the proposal to remove Sub-sections 2.5 and 10.4(b) of the MMCC from the Code.

*IMDA's Assessment and Decision*

251. Given that NLB/NAS has taken over the national archive management role, and respondents were supportive, IMDA will remove Sub-sections 2.5 and 10.4(b) of the MMCC from the Code.

## PART IX: TELECOMMUNICATION INTERCONNECTION

252. In the First Public Consultation, IMDA proposed changes to the interconnection regime to ensure that the interconnection frameworks continue to be relevant for the telecommunication markets, in line with the increasing number of deployments and take-up of services on the NBN.

253. Given that these interconnection frameworks are applicable for telecommunication markets, but are not required for the media markets, IMDA will only apply these frameworks to the telecommunication markets in the Code.

**Removal of Services from the Schedule of Interconnection Related Services ("IRS") and Mandated Wholesale Services ("MWS")**

254. The IRS and MWS were developed years ago, and therefore primarily concern the provision of copper-based and other legacy services. However, these are becoming less critical as Telecommunication Licensees now prefer to deliver services mostly over fibre. In addition, IMDA notes that even when copper was the primary network, only a small number, or in some cases none, of these services had been taken up.

255. IMDA hence proposed to remove the following services from the Schedule of IRS and MWS:

(a) unbundled network elements, namely local loops, sub-loops, line sharing, distribution frame access and internal wiring[22];

(b) unbundled network service, namely tail local leased circuits[23]; and

(c) support facilities, namely co-location at roof sites[24],

(collectively, the "**Services With No Take-up**").

256. Respondents were generally supportive of the proposed removal of the above services from the Schedule of IRS and MWS. Some of the respondents commented that copper-based interconnection services were no longer being used by licensees due to the transition to fibre-based networks, with zero take-up over the past five years. Accordingly, there would no longer be any basis to

[22] Specific to Singtel's Reference Interconnection Offer ("**RIO**") only, the relevant schedules that would be removed are: Schedule 3A – Licensing of Local loop/Sub-loop, Schedule 3B – Line Sharing, Schedule 3C – Sale of Internal Wiring, Schedule 3D – Licensing of Building MDF Distribution Frame and Schedule 3E – Licensing of Outdoor Cabinet Distribution Frame.

[23] Specific to Singtel's RIO only, the relevant schedule that would be removed is Schedule 4C – IRS Tail Circuit Service.

[24] Specific to Singtel's RIO only, the relevant schedule that would be removed is Schedule 5C – Licensing of Roof Space and Co-location Space at Roof Sites.

continue regulating the supply of such services through inclusion in the IRS Schedule.

257. However, two respondents disagreed with the proposed removal of the said services. One of them submitted that IMDA's regulation of the said services would remedy a severe and entrenched market imperfection and a premature removal would then encourage any reasonable Dominant Telecommunication Licensee to revert to pre-IRS and MWS implementation practices. The other respondent opined that local loop and unbundled network service delivered over fibre should not be part of this removal, as such removal could affect licensees' ability to provide services in certain buildings pre-wired by a Dominant Telecommunication Licensee.

*IMDA's Assessment and Decision*

258. IMDA wishes to clarify that the services proposed for removal are copper-based services, and do not include fibre-based services. IMDA is of the view that the zero take-up over the years for the abovementioned services is an indication that these services are not necessary for market development and competition. Considering the above, IMDA will remove the above services from the Schedule of IRS and MWS.

**Relevance of Interconnection Related Services Regulated under the Code**

259. Besides the Services With No Take-up, a Dominant Telecommunication Licensee is also required to provide the following IRS under the Code in its reference interconnection offer:

(a) Physical and Logical Interconnection;
(b) Origination, Transit and Termination;
(c) Essential Support Facilities; and
(d) Unbundled Network Services,

(collectively, the "**Regulated Services**").

Given the general shift in the telecommunication landscape from traditional copper and hybrid fibre-coaxial-based networks to the IP-based NBN, IMDA had sought views and comments on whether these Regulated Services would still be relevant for today's telecommunications market.

260. The respondents were generally agreeable for IMDA to continue to require Dominant Telecommunication Licensees to offer the Regulated Services. One of the respondents opined that the Regulated Services would still be relied on by many operators in the market, thus requiring Dominant Telecommunication Licensees to offer such services would be needed to promote competition in the

market. Another respondent commented that mandated interconnection was essential to ensure equal access to bottleneck facilities, on a competitive basis. The same respondent also submitted that regulated access to co-location, and lead-in ducts and manholes were fundamental to entry, efficient investment decisions, and facilities-based competition in Singapore.

261. However, another respondent submitted that physical interconnection which was regulated under Singtel's RIO, should be removed from regulation as no Telecommunication Licensee had implemented physical interconnection with Singtel since 2002. The industry had generally opted to interconnect with Singtel's network based on a virtual (distance) interconnection arrangement. As such, the same respondent was of the view that physical interconnection was no longer a critical input that Telecommunication Licensees rely on to compete in downstream markets or to achieve any-to-any connectivity. The respondent thus submitted that there would no longer be any regulatory basis to regulate physical interconnection.

262. The same respondent also commented that Essential Support Facilities ("**ESF**"), such as (i) co-location at exchange buildings and submarine cable landing stations, and (ii) access to lead-in ducts and lead-in manholes, should be removed from the IRS Schedule and re-designated as a type of Critical Support Infrastructure ("**CSI**"). The existing TCC criteria for CSI (e.g., cannot be efficiently replicated, no legitimate justification to refuse sharing) were characteristics applicable to these ESF. As such, the respondent was of the view that the identity or market power of a facility owner should not be relevant to whether the facility should be a CSI and whether there was any regulatory basis to mandate access to such facility. The respondent further opined that the current approach, where only Dominant Telecommunication Licensees had an obligation to provide access to ESF, would create economic distortions and would hinder competition as ESF owned by non-dominant entities were not subject to any access obligations.

263. The same respondent further submitted that the basis for imposing access obligations for submarine cable landing stations would depend on whether the facility itself would be an economic "bottleneck". The respondent was of the view that an economic bottleneck would not exist in the context of new submarine cable systems which were now being built on an open-access basis/architecture that would permit Submarine Line Terminating Equipment ("**SLTE**") housing at locations outside of the cable landing station. The respondent commented that a case for regulating access to cable landing stations for new cable systems would no longer exist. Consequently, cable landing station access for new cable systems should now be removed from the regulatory framework, whether as CSI or IRS.

264. In addition to above comments, the same respondent had commented that the services that would be subject to interconnection-related obligations should be determined through periodic market reviews, rather than through a static Schedule of IRS and MWS. The respondent noted that the current approach of directly specifying IRS and MWS in a schedule to the TCC was a consequence of the "Licensed Entity" approach to regulation adopted in the TCC, where Telecommunication Licensees who were designated as Dominant Telecommunication Licensees would be presumed to be dominant in respect of all of their services. The respondent thus opined that directly listing IRS and MWS in the Code would not be well suited to a market-by-market approach, where dominance would be assessed through a periodic review of each relevant market and the services subjected to access regulation would flow from these market reviews. The respondent thus submitted that the Schedule of IRS and MWS should not be a static instrument that "locked in" access obligations for the life of the Code or that could only be amended through a review of the Code. Such an approach would be contrary to a true market-by-market approach to access regulation and would not allow regulation to dynamically respond to evolutions in competition in telecommunication markets.

*IMDA's Assessment and Decision*

265. On whether physical interconnection ought to continue to be regulated under Singtel's RIO, given no service take-up since 2002, IMDA is of the view that physical interconnection remains a relevant method of deployment for any FBO who wishes to utilise this option to build its network. IMDA further notes that using a physical interconnection arrangement to deploy networks removes any reliance on third parties to provide the transmission links. Therefore, IMDA will continue to regulate physical interconnection under Singtel's RIO.

266. On the respondent's comments for IMDA to remove ESF from the IRS Schedule and re-designate ESF as a type of CSI, IMDA notes that one of the ESF (i.e., co-location at exchange buildings) may not necessarily fulfil the set of criteria to constitute CSI pursuant to Sub-section 7.3.1 of the TCC. For instance, Non-dominant Telecommunication Licensees generally tend to own and control fewer exchange buildings compared to Dominant Telecommunication Licensees. Thus, with the smaller footprint, any "failure to share the infrastructure" by other Telecommunication Licensees may not necessarily "unreasonably restrict competition in any telecommunication market in Singapore". This would therefore not have fulfilled one of the required criteria to constitute CSI under TCC.

267. For the ESF lead-in ducts and associated manholes, IMDA notes that such "bottleneck" infrastructure is already designated as CSI under existing TCC regulation. As with Dominant Telecommunication Licensees, Non-dominant Telecommunication Licensees similarly have access obligations in relation to

lead-in ducts and associated manholes. Where there is failure by Telecommunication Licensees to reach a mutually acceptable sharing agreement, IMDA can intervene to resolve the dispute, and also determine cost-based, non-discriminatory rates pursuant to section 7 of the TCC.

268. On whether to continue regulating access to submarine cable landing stations (to access existing older submarine cable systems), IMDA notes that for the submarine capacities already landed and deployed at the Dominant Telecommunication Licensee's landing stations, it is still necessary to continue to support fair and reasonable access to these said submarine systems, and to facilitate the deployment of international connectivity infrastructure in land-scarce Singapore.

269. As for the regulation of the access to submarine cable landing stations to access new submarine cable systems, IMDA notes the respondent's comments on the open access nature of new undersea cables which has resulted in a decoupling of the physical cable from the active elements of the submarine system, allowing capacity owners to install their own SLTEs outside of the cable landing station (such as in data centres located in-land). It may thus appear that for newer submarine systems, there no longer exists the same necessity to support fair and reasonable access, as mentioned in the preceding paragraph. However, IMDA also notes that capacity owners of new submarine systems, who have existing arrangements to utilise the regulated services (such as co-location space at a Dominant Telecommunication Licensee's submarine cable landing stations) offered by a Dominant Telecommunication Licensee under its reference interconnection offer may choose to continue to utilise the said regulated services to house their equipment or deploy their networks for the newer submarine systems. IMDA therefore maintains its view that access to Dominant Telecommunication Licensees' submarine cable landing stations shall continue to be regulated so as to provide open access to the relevant cable systems (when necessary).

270. With regard to the respondent's proposed adoption of a dynamic list of regulated services where the interconnection-related obligations are determined through periodic market reviews, following the identification and classification of dominant operators on a market-by-market basis, IMDA reiterates its positions as set out in Part III of this document, to adopt the Market-by-Market approach for dominance classification with the requirement for Dominant Entities to demonstrate whether new service(s) they introduce fall within the markets in which they are dominant. For existing services and facilities that Dominant Telecommunication Licensee operate, IMDA also highlights that as provided under the current telecommunication regulatory regime, a Dominant Telecommunication Licensee may file a request for exemption with IMDA if the Dominant Telecommunication Licensee considers that it is no longer dominant

in an existing market. In this regard, existing Dominant Telecommunication Licensees will continue to be classified as dominant for existing services and facilities that they operate, and subject to ex ante regulation, where applicable. As such, the interconnection obligations of existing Dominant Telecommunication Licensees, including the IRS to be offered by Dominant Telecommunication Licensees, continue to be required, unless exempted or removed from regulation via this review.

**Validity Period of Reference Interconnection Offer**

271. Under the TCC, the Dominant Telecommunication Licensee is required to offer its reference interconnection offer for a period of 3 years. IMDA notes that the passive civil infrastructure and the technology required to provide the regulated copper-based services, ESF, and Unbundled Network Services ("**UNS**") under the Dominant Telecommunication Licensee's reference interconnection offer, are unlikely to change significantly and rapidly within short periods of time, and that the related infrastructure also has a long asset life, i.e., depreciates over a longer period. Given this, IMDA proposed to extend the validity of the Dominant Telecommunication Licensee's reference interconnection offer to 5 years.

272. Respondents were generally neutral to IMDA's proposal to extend the validity period of the reference interconnection offer to 5 years, instead of the current 3 years.

273. One respondent agreed with IMDA's proposed change but suggested that IMDA should reserve the right to trigger a review within a shorter time period, in the event of significant changes in the market environment. Such changes could include the possibility of relieving parts of the reference interconnection offer where they would be no longer required.

274. Another respondent however, held the view that the review period of the reference interconnection offer should remain at the existing 3-year period as it would be crucial in light of the rapid developments in the digital economy. The same respondent thus opined that a 5-year review period would be inadequate.

*IMDA's Assessment and Decision*

275. IMDA notes the respondents' comments. As highlighted by IMDA in the First Public Consultation, generally, there would not be significant changes to the underlying infrastructure and technology required to provide the regulated services under the Dominant Telecommunication Licensee's reference interconnection offer.

276. IMDA further notes that in addition to regular review periods for Dominant Telecommunication Licensee's reference interconnection offer, IMDA may also

conduct ad-hoc reviews to consult industry on specific issues that may be outside of the said regular review periods.

277. Considering the above, IMDA will extend the review period and validity period of the Dominant Telecommunication Licensee's reference interconnection offer to 5 years. For consistency, the review periods of the reference interconnection offer for both copper-based and fibre-based regulated offerings will be aligned and set at a 5-year period, with the option of a mid-term review at the third year from the last price review, if appropriate.

**Harmonisation of the Voice Termination Regime to Bill-and-Keep** ("**BAK**") **and Change of Interconnection Charging Regime for Fixed Call Termination from Calling-Party-Pays ("CPP**") **to BAK**

278. IMDA notes that there have been a number of important developments in the Singapore telecommunications industry in recent years which may impact the current regulation of voice-related interconnection services, such as fixed voice origination, transit and termination. In particular:

(a) the development of access-based competition over the NBN, whereby consumers are offered bundles of services including voice services;

(b) the transition from Time Division Multiplex ("**TDM**")-based voice services to IP-based voice services;

(c) competition from new OTT-based messaging applications that use IP networks;

(d) shift of consumer communication over to mobile networks; and

(e) the declining importance of voice relative to data (in terms of both revenues and volumes).

279. These developments provide scope to propose a change to the current interconnection charging regime for fixed call termination between operators from CPP to BAK, i.e., zero termination rate to the terminating operator. A BAK approach will help to ensure competitive neutrality between the incumbent fixed-line operator and other telecommunication licensees, including those providing services over the NBN, voice and data traffic delivered over mobile networks and all-IP based networks. Furthermore, as operators will bear their own costs in a BAK regime, operators will then be incentivised towards deploying more efficient technologies to minimise their network costs in order to keep their costs low.

280. In light of the above factors, IMDA has proposed to harmonise the voice termination regime and change the interconnection charging regime for fixed voice termination from CPP to BAK.

281. Most respondents were supportive of the proposal to harmonise the voice termination regime and change the interconnection charging regime for fixed voice termination from CPP to BAK. They commented that a BAK regime would be beneficial to the industry, as it would be administratively easier and would reduce potential disputes over charges. This would be in line with the current mobile interconnection charging regime based on a zero mobile termination rate. One respondent was not supportive of the transition, stating that it incurred costs when providing termination over the public switched telephone network ("**PSTN**") network, and such costs could be readily attributable to the termination of calls that originate from other operators. The respondent also stated that a BAK approach would unfairly penalise larger operators and create unfair economic distortions as volume of calls from other operators terminating onto the larger operators' network would be much higher than onto the smaller networks.

*IMDA's Assessment and Decision*

282. IMDA notes that the volume of fixed-line termination traffic has declined significantly since 2010 and will likely to continue declining at a gradual rate in the near future. The imbalance of traffic is less pronounced in recent years, as fixed call traffic is diminishing in conjunction with the increase of data, mobile and OTT traffic. The other operators have also acquired more fixed line customers which has further reduced the disparity of fixed line market share among operators. In addition, IMDA is of the view that the legacy copper-based voice network should be mostly depreciated by now and most operators are migrating or have moved to next generation switches which are more cost effective. Therefore, there is less incentive by the current operator to continue to invest in the legacy fixed network infrastructure. As such, IMDA maintains its proposal to change the interconnection charging regime for fixed voice termination from CPP to BAK. This will allow for a harmonised interconnection charging framework for all domestic telephony services, which would be appropriate, given that these services would eventually be provided over IP-based networks. However, IMDA will allow a 3-year glide path for the industry to effect the change to BAK. For the avoidance of doubt, the 3-year glide path will commence from the effective date of the Code.

**Implementation of IP-based interconnection**

283. In the First Public Consultation, IMDA highlighted the need to review the interconnection regime to take into account the ongoing migration of services and End Users from traditional copper-based networks to IP-based networks.

Given the growing volume of IP-based and VoLTE calls, IMDA would consider interconnection at the IP-level to be the new default, replacing the existing SS7 signalling. IMDA thus sought industry's views on implementing IP-based interconnection.

284. Respondents were broadly supportive of the proposed change to migrate to IP-based interconnection. One respondent agreed that IP-based interconnection would allow efficient exchange of voice traffic, while another respondent submitted that as traffic exchanges would be expected to converge towards a multi-service IP-network, IP-based interconnection should be the way forward for the industry.

285. On how IP-based interconnection should be implemented, one respondent opined that consideration of this change should be undertaken separately from the Code consultation, as it would involve complex technical issues that would have commercial implications to industry. Another respondent agreed that such a migration towards IP-based interconnection would be a major exercise, as significant amounts of effort and resources, as well as implementation lead-time, would be required to replace existing switches and/or interconnect configurations, in addition to co-ordinated efforts amongst all parties.

*IMDA's Assessment and Decision*

286. IMDA notes from the respondents' submissions that minimally, there are a number of technical, operational and commercial concerns that require further discussions and engagements with industry before IP-based interconnection is mandated as the default in Singapore. Such concerns include identifying a common set of technical standards and specifications for IP-based interconnection in Singapore.

287. In this regard, IMDA agrees with industry that a separate in-depth consultation will be more appropriate, to review industry's concerns and address issues relating to the implementation of IP-based interconnection in Singapore. IMDA will issue the said consultation in due time. For the avoidance of doubt, the existing interconnection arrangements and regulations will continue until IP-based interconnection arrangements and regulations are implemented.

**Update of Principles Governing the Pricing of IRS, Critical Support Infrastructure and Essential Resource**

288. IMDA proposed that the following broad principles should apply in assessing which pricing methodology is appropriate for the determination of prices when required in the Code: (a) the nature of the network element that is to be interconnected or accessed, i.e., passive civil infrastructure or active network

elements where there is greater interest to mitigate the inefficiency of past network and technology designs; (b) the contestability of the market segment where build-versus-buy incentives remain; and (c) the replicability of the network element and whether re-use would be encouraged. If the network element is passive and civil based, not easily replicable and re-use is encouraged, then a Historical Cost Accounting ("**HCA**") or a Regulated Asset Base ("**RAB**") methodology may be more appropriate. The Forward-Looking Economic Cost ("**FLEC**") methodology will suit an active network element so that it better reflects rapid technology changes and hence more efficient network pricing. If there is contestability in the market segment but there is also a requirement to interconnect or provide access, a FLEC methodology will also be appropriate.

289. There were three responses to IMDA's proposal. The views shared by the respondents were generally varied. One respondent supported and agreed with IMDA's proposed application and viewed that it was crucial to CSI, including the sharing of road and rail tunnels. Another respondent opined that HCA/RAB might undercut the costs of the CSI (including making historical costs to zero and accounting for depreciation) and would significantly discourage investment in facilities. The third respondent was of the view that development of a RAB would be a complex exercise that would result in significant cost without any commensurate benefits. This respondent further commented that a separate RAB for each operator would result in different regulated prices for each operator, which would ultimately result in pricing disparities. The respondent also highlighted and agreed with IMDA that the pricing methodology adopted by IMDA should be adapted to the specific type of network element being regulated.

*IMDA's Assessment and Decision*

290. IMDA is of the view that the complexity of the price regulation exercise should not be a factor for governing the application of the appropriate pricing methodology for the purpose of price determination. It is important to adopt a pricing methodology that is fair and reasonable such that the determined prices are able to meet the policy objectives of the prescribed regulation while the regulated licensee is able to recover its costs. IMDA is also of the view that it is reasonable for different operators to have different cost structures and respective RAB, which may result in different regulated prices for a similar service.

291. IMDA considers and agrees that the pricing methodology should be adopted according to the specific type of network element that is being regulated and the competitive and market outcomes the regulatory policies seek to achieve. As proposed in the First Public Consultation, if a network element is a more passive and civil-based infrastructure in nature, a HCA/RAB methodology will be more appropriate. If the network element is more of an active network element, a FLEC methodology will be more suitable.

292. As such, IMDA will adopt its proposed broad principles on the choice of pricing methodology:

(a) the nature of the network element that is to be interconnected or accessed, i.e., passive civil infrastructure or active network elements where there is greater interest to mitigate the inefficiency of past network and technology designs;

(b) the contestability of the market segment where build-versus-buy incentives remain; and

(c) the replicability of the network element and whether re-use would be encouraged.

**Administrative Changes**

293. In addition to the above consulted sections, IMDA will make the following administrative changes to the drafting of the proposed Code:

(a) (Appendix 1 of TCC) Update price review processes such as effecting of new prices within 6 months following IMDA's price review of regulated services, and revising the period between price reviews to 5 years with the option for a mid-term review;

(b) (Section 7 of TCC) Provide clarity by specifying that an infrastructure can be designated as a CSI before it is constructed, or before its construction is completed; and

(c) (Section 5.3(b) of TCC) Revision of requirement that Interconnection Agreements between two Non-dominant Licensees shall be submitted for IMDA's information (instead of seeking IMDA's approval). Within 21 days of the date of submission, should IMDA find any non-compliance with Minimum Duties in the submitted Interconnection Agreements, IMDA reserves the right to require licensees to modify the Interconnection Agreements to comply with Minimum Duties.

294. The above changes provide clarity to the Code requirements, as well as streamline the existing administrative processes.

## PART X: ADMINISTRATIVE AND ENFORCEMENT PROCEDURES

295. In the First Public Consultation, IMDA consulted on the proposals that relate to the Administrative and Enforcement procedures contained in Section 11 of the TCC and Section 10 of the MMCC.

### Changes to Decision and Reconsideration Process

296. Under Sub-section 11.9.1 of the TCC, any person who is aggrieved by IMDA's decision or direction, may either request IMDA to reconsider its decision or direction, or appeal to the Minister directly. If the person remains aggrieved by IMDA's decision after the reconsideration process, he may submit an appeal to the Minister. In contrast, under Sub-section 10.6.2 of the MMCC, IMDA will first issue a preliminary decision, followed by draft decision, for licensees' comment before issuing its final decision. There is no process to request for reconsideration of IMDA's final decision under the MMCC. A person who is aggrieved by IMDA's final decision may appeal to the Minister directly.

297. IMDA noted that while the TCC and the MMCC differ in terms of process, the outcome is similar, i.e., under the TCC, Telecommunication Licensees are given opportunities to request for reconsideration of IMDA's decision before submitting an appeal to the Minister. Under the MMCC, persons are similarly given the opportunity to comment on IMDA's preliminary or draft decision before submitting an appeal. IMDA had proposed in the First Public Consultation to align the process by removing the requirement for IMDA to issue preliminary and draft final decisions, and to introduce the reconsideration process for media-related decisions on competition and consumer protection matters. For the avoidance of doubt, there is no change in the process for IMDA's decisions on issues not pertaining to competition and consumer protection. For example, there will be no change to the process for issues related to media content regulation given that these fall under the Broadcasting Act, which has its own set of decision processes.

298. Respondents were generally supportive of IMDA's proposal to introduce the reconsideration process to IMDA's decisions on competition and consumer protection matters in the media markets. One respondent sought IMDA's clarification as to what constituted competition and consumer matters and commented that the reconsideration process should apply equally to all telecommunication and media matters. The respondent added that if the process only applies to specific media-related clauses, it needs to be set out upfront to avoid any misunderstandings or confusion. While IMDA did not consult on the submission timeline for reconsideration, another respondent proposed that the submission timeline for reconsideration should be extended to 21 days, from the current 14 days, from the receipt of IMDA's decision or direction. One other

respondent recommended that IMDA retain the requirement of issuing preliminary and draft final decisions, and the right for Telecommunication Licensees and RPs to request reconsideration of IMDA's decision before making an appeal to Minister.

299. While IMDA did not propose any changes to the factors to consider when assessing whether to stay a decision or direction pending the outcome of a reconsideration review or appeal, one respondent suggested that IMDA should also consider whether the implementation of the decision or direction, pending the outcome of a reconsideration review or appeal, would result in an irreversible impact to the Telecommunication Licensee and/or RP. The respondent added that there might be some cases in which the implementation of IMDA's decision or direction would require substantial investment by the Telecommunication Licensee and/or RP to alter or modify its infrastructure, systems and/or business processes, which might be unwound at additional costs incurred by the Telecommunication Licensee and/or RP.

*IMDA's Assessment and Decision*

300. IMDA would like to clarify that all matters that fall under the Code are considered competition and consumer protection matters and will therefore be subject to the revised process. IMDA's proposal to introduce the reconsideration process and to remove the requirement for IMDA to issue preliminary and draft final decisions for media-related competition and consumer protection issues, seeks to ensure that the processes are harmonised and consistent for both the telecommunication and media markets, and to the extent possible, avoid causing unnecessary confusion to those players who participate in both markets. IMDA would like to give reassurance that while the preliminary and draft final decisions will no longer be issued, entities will still be given the opportunity to comment on a decision, and to request for reconsideration, before appealing to Minister.

301. On the respondent's suggestion to consider the impact of implementing the decision or direction on the Telecommunication Licensee and/or RP while the decision or direction is pending the outcome of a reconsideration review or appeal, IMDA would like to clarify that the considerations on whether to stay a decision or direction pending review under Sub-section 11.9.4(b) of the TCC will continue to apply under the Code i.e., IMDA generally will consider factors including the merits of the reconsideration request or appeal, whether the potential harm to any person outweighs the benefits of allowing the decision or direction to go into effect and public interest.

302. As to the suggestion to extend the submission timeline for reconsideration to 21 days from the receipt of IMDA's decision or direction, IMDA is of the view that 14 days are sufficient time for affected party(ies) to assess and seek a

reconsideration on IMDA's decision or direction based on experiences. We also note that most of the respondents did not comment on the 14-day timeline.

303. In view of the above, IMDA will introduce the reconsideration process to media-related decisions on competition and consumer protection matters. IMDA would also like to highlight that the changes will require amendments to the IMDA Act.

### Dispute Resolution

304. At present, IMDA's dispute resolution process for Telecommunication Licensees is established under Sub-section 11.3 of the TCC, and further details are provided in a separate Telecom Dispute Resolution Guidelines ("**DR Guidelines**") document. Similarly, under the MMCC, IMDA has the discretion to provide dispute resolution in relation to the following disputes as described in Sub-section 10.4 of the MMCC. However, unlike the TCC, the detailed procedures for requesting dispute resolution are set out within the MMCC itself. IMDA had proposed in the First Public Consultation to align the dispute resolution procedures for the telecommunication and media markets to the TCC approach under the Code and set out the details of dispute resolution in a separate guideline document. Sub-section 10.4(b) of the MMCC which provides for dispute resolution involving a Designated Archive Operator will also be removed as indicated in Part VIII of this consultation document.

305. IMDA noted that there are several areas in which the dispute resolution procedures in the TCC and the MMCC differ, such as the process to request for dispute resolution, and timeline to resolve the dispute. The proposed changes to align the dispute resolution process are summarised in Table 6 below.

| **Table 6: Existing and Changes to Dispute Resolution Process** | | |
|---|---|---|
| **TCC and DR Guidelines** | **MMCC** | **Proposed Changes under the Code** |
| **Request for Intervention** | | |
| A Telecommunication Licensee that wishes to petition IMDA to resolve a dispute ("**Requesting Party**") must submit a written request for intervention and provide a copy of the Request for Intervention to the other Telecommunication Licensee ("**Other Party**"). | While TCC/DR provides a procedure for IMDA to determine if it should intervene, the MMCC does not specify such procedure but provides IMDA with general discretion to decide whether it will intervene to resolve the dispute. | IMDA had proposed to adopt the TCC approach, as this would provide Telecommunication Licensees with greater clarity on the approach that IMDA would take to resolve disputes. |

<table>
<tr><td>The Other Party will be given 5 days to provide its comments on why IMDA should not intervene.<br><br>Where IMDA decides to intervene to resolve the dispute, based on the submitted representations, the Requesting Party will be required to submit its written petition for dispute resolution.</td><td></td><td></td></tr>
<tr><td colspan="3">Submission of Petition</td></tr>
<tr><td>The Requesting Party must submit to IMDA a written petition for dispute resolution (“Petition”). The Other Party will be given 15 days to submit its representation. IMDA may provide both parties an opportunity to submit two rounds of representation at its discretion. Each party will be given 15 days to submit its further reply.</td><td>Persons who fail to reach a voluntary agreement within 90 working days after the date on which a request to negotiate has been made may submit a petition for Dispute Resolution with IMDA. Respondent will have 15 working days from the date it receives the petition to respond.</td><td><u>The dispute resolution process under the TCC and the MMCC are largely similar, except for the following</u>:<br><br>1 The timelines in TCC/DR Guidelines are stated in terms of “days” as opposed to “working days” under the MMCC. IMDA had proposed to adopt the TCC/DR Guidelines approach i.e., to use “days”. This will ensure that applicable timelines are consistent with the IMDA Act and TA.<br><br>2 Under the MMCC, IMDA has the discretion to allow the person who made the request to submit the Petition within 90 working days after the request to negotiate. However, there is no such provision in the TCC/DR Guidelines. Under the Code, IMDA will have</td></tr>
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|---|---|---|
| | | the flexibility to expedite the submission of the Petition.<br><br>Under the TCC/DR Guidelines, IMDA has the discretion to allow the petition party and the respondent the opportunity to submit a second round of representation, as well as to grant an extension of up to 7 days for both parties to submit their representations and may extend the time by which it may issue its decision. We note that these are not provided for under the MMCC. IMDA proposes to adopt the TCC approach so that respondents will have the chance to clarify on the other party's submission, and more time to gather the information required, where necessary. |
| **Settlement Conference** | | |
| IMDA does not have the flexibility to set up a settlement conference. | IMDA has the flexibility of having a settlement conference to resolve outstanding dispute. | IMDA proposes to adopt the MMCC approach, and to retain the flexibility of setting up Settlement Conference in cases where having a Settlement Conference will help to resolve the dispute. |

306. Respondents were largely supportive of IMDA's proposal. One respondent commented that IMDA should impose timelines on itself to respond at every stage of the proposed dispute resolution. Another respondent commented that IMDA should publish its decisions on such disputes, including those disputes where IMDA declined to intervene.

*IMDA's Assessment and Decision*

307. IMDA will take the respondents' suggestions into consideration when drafting the dispute resolution guidelines. In view of the general support from the respondents, IMDA will align the dispute resolution procedures for the telecommunication and media markets under the Code and set out the details of dispute resolution in a separate set of guidelines.

**Informal Guidance**

308. Under the MMCC, any person under the jurisdiction of IMDA may approach IMDA to request for informal guidance regarding the application of any provision of the MMCC, such as whether a particular course of action would contravene the MMCC or IMDA's likely response to an application or request made pursuant to the MMCC. IMDA will provide such informal guidance at its discretion, and the informal guidance is non-binding on IMDA. There is no corresponding procedure under the TCC, though IMDA has been providing Telecommunication Licensees informal guidance on telecommunication regulatory matters in practice.

309. IMDA is of the view that there is merit in extending the informal guidance provisions under the MMCC to the telecommunication markets in the Code. The extension would provide players in the telecommunication industry an opportunity to seek informal guidance if they have genuine and substantial queries on the application of the Code. In this regard, IMDA had proposed to prescribe the criteria and procedures for requesting informal guidance under the Code, and to apply the requirements and procedures stated in the MMCC to Telecommunication Licensees as well.

310. Most respondents were supportive of IMDA's proposal. One respondent asked how entities could seek guidance from IMDA.

*IMDA's Assessment and Decision*

311. IMDA notes that all respondents were supportive of the proposal. As such, IMDA will extend the Informal Guidance provisions to the telecommunication markets. The requirements and procedures for requesting informal guidance under the MMCC will be prescribed under the Code and applied to the telecommunication markets. Entities that wish to seek informal guidance from IMDA should submit a written request to IMDA[25].

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[25] The written request should:

a) states that the person has a genuine and substantial question regarding the application of a provision of the Code to its specific factual situation;
b) demonstrates that the person's commercial interest would be directly and immediately affected by resolution of the question;

**Structural Separation**

312. IMDA recognised that any structural separation requirement imposed on an RP may impose significant costs and should only be exercised in very exceptional circumstances. In this regard, to be consistent with the approach taken for the telecommunication markets, IMDA had proposed to remove IMDA's powers to impose structural separation on an RP under the MMCC, and to vest the powers with the Minister. The Minister will order structural separation of an RP only if he/she considers it necessary in the public interest, and/or where existing and potential regulatory measures may be insufficient to enhance competition in the industry.

313. Except for one respondent, all other respondents supported IMDA's proposal to remove IMDA's powers to impose structural separation on an RP under the MMCC, and to vest the powers with the Minister. The respondent took the view that the powers to impose structural separation should be retained by IMDA. One other respondent, while supportive of IMDA's proposal, suggested that Minister should order structural separation of a Telecommunication Licensee or an RP upon advice by IMDA.

*IMDA's Assessment and Decision*

314. IMDA notes that there is strong support for the proposal to align the structural separation powers for the telecommunication and media markets and for Minister to be the authority to issue a structural separation order for both markets. IMDA would like to highlight that this will require amendments to the IMDA Act.

**Request for Enforcement by a Private Party**

315. Presently under Section 11.4.1 of the TCC, any telecommunication Licensee or End User ("**Party Requesting Enforcement**") that has been injured, or is likely to be injured, as a direct result of the contravention of any provision of the TCC by a Telecommunication Licensee, may submit a Request for Enforcement ("**RFE**") asking IMDA to take enforcement action against that Telecommunication Licensee. Once the RFE is accepted, the responding Telecommunication Licensee ("**Responding Licensee**") will have 15 days to respond to the RFE. Subsequently, the Party Requesting Enforcement and the Responding Licensee will each have 15 days to provide its further reply and final reply respectively on a sequential basis. IMDA will then seek to issue its decision within 60 days of receiving all necessary information. For clear-cut situation where IMDA considers that it has all the necessary information to come to its decision, IMDA is

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c) indicates the specific issues on which the person seeks guidance; and
d) contains all relevant available information.

proposing to include an option for IMDA to dispense with giving both the Party Requesting Enforcement and the Responding Licensee the right to file its further reply and final reply respectively. IMDA is of the view that this will benefit both the Party Requesting Enforcement and the Responding Licensee as it reduces their burden of having to file additional replies and also expedite the entire RFE process by allowing IMDA to come to a decision earlier.

## PART XI: COMPETITION IN A DIGITAL ECONOMY

316. Part XI of the First Public Consultation outlined IMDA's views on the developing digital economy, and the potential impact these developments may have on competition policy and regulation in general. IMDA did not propose any changes to the Code based on these developments, but nonetheless sought industry and public feedback on how these developments might affect the telecommunication and media markets and whether our regulatory frameworks could be dynamically applied within the context of the larger economic shifts and the broader regulatory environment going forward.

### Changes in Business Models in the Digital Economy

317. In the First Public Consultation, IMDA noted that Singapore has ambitions to become a leading digital economy. Digitalisation can help businesses be more productive and expand into other markets, thereby providing more service choices for consumers at competitive prices. At the same time, digitalisation will alter market dynamics and change business models, which will have an impact on how firms choose to compete and grow. IMDA sought respondents' views on their digital economy experience and whether the business models are here to stay or likely to only remain in the short to medium term.

318. Most respondents expressed common views of increasingly prevalent digital platform business models but differed on whether scale and scope advantages that typically characterise digital markets are likely to be transient or more rooted. Key factors that shape competition dynamics in digital markets include the friction associated with switching platforms or multi-homing, which may in turn depend on factors driving use of and stickiness to a platform, e.g., personalised services, available products, service innovations etc.

319. IMDA notes the views on the increasing importance of digital markets and impact of digitalisation on competition in markets. Where there may be valid competition concerns, it is important to account for the new manners in which digital platforms compete in order to reflect actual competition dynamics in the market. This includes accounting for the multi-sided nature of such markets, the role of data, vertical relationships and scope economies amongst others. IMDA notes that this may involve an updated interpretation of competition, moving beyond traditional price and output metrics. IMDA is of the view that the central focus on the impact of competitive restraint and consequent harm to consumers should remain the guidepost for competition assessments.

### Updating Competition Policy Frameworks for the Digital Economy

320. IMDA noted that a number of authorities have started to examine the digital economy related issues more comprehensively. The FTC in the US announced in June 2018 that it plans to hold public hearings on changes required to the role of the FTC, competition policy or antitrust law given evolving business practices motivated by technological advances. In August 2018, the UK announced a panel to look at competition in a digital economy, steering its approach to digital technology.

321. In the longer term, beyond this review of the Code, IMDA notes the need to consider the impact of digitalisation on competition in the telecommunication and media industries to ensure that the Code will remain fit for purpose as Singapore pursues its digital economy ambitions. In this regard, IMDA sought views on the competition policy and philosophy to adopt in a digital economy.

322. Respondents generally advocated a forward-looking posture to designing policy and regulations in a digital economy. This would require that sectoral regulators be nimble and agile in their approach to regulation. Regulation should be light-touch and neutral between traditional players and digital platforms. Other non-regulatory levers such as active industry engagement, increasing market transparency and literacy of consumers can also contribute to positive policy outcomes.

323. The views provided by respondents are in line with IMDA's principles-based, pro-market approach. IMDA is mindful of potential gaps in regulation that may emerge with new business models but also cognisant that regulatory interventions should not overly stifle innovation or distort markets. IMDA will continue to monitor developments to ensure that its frameworks and regulations remain fit for purpose in a digital economy.

### Challenges to Traditional Competition Frameworks in a Digital Economy

324. IMDA observed that in digital platform markets, goods and services may be offered for free or at a heavily discounted prices for long periods, with firms recovering revenues from other sources, for example, advertising. This means that price or output may not provide an informative signal on market competitiveness. By the same note, revenue shares and turnover figures may not reflect true market dynamism and any such analysis would have to consider competition dynamics across multiple sides of a market.

325. At the same time, online channels allow for rapid price changes as well as personalised pricing. This presents challenges to assessing competition issues

such as predatory pricing that rely on price to costs comparisons. Price may well be zero or differentiated across users or time, making it difficult to make systematic comparisons. The relevant cost benchmark may also be less clear for an eco-system platform - it may be hard to attribute common costs to a particular market or service given much of the cost might be argued to be common to the eco-system.

326. These challenges associated with assessing price relative to costs (including for profitability analysis) will also pose challenges to defining relevant markets and assessing market power. More generally, dimensions of competition may increasingly shift away from price and output to other dimensions of quality - for example in relation to the level of data privacy offered; choice and investment. As such, IMDA sought views on the key, traditional competition concepts that need to be reviewed and relooked in a digital economy.

327. There was consensus that price and cost levels alone are not good benchmarks in markets where services are offered at a discounted rate or free. Instead, the increasing role of data, as an input to innovation and a key resource that may afford market power, was raised by several respondents to be particularly pertinent in digital platform markets. This reflects the multi-sided nature of these markets as well as the scope for digital delivery of services to adapt to personalisation or customisation of services. A number of respondents noted that while data portability affords consumers clearer rights to their data, data portability requirements on its own, is unlikely to go far enough to absolve market power from data dominance.

328. Notwithstanding the diminishing role of price in competition assessments, IMDA recognises that the exact competition dynamic relevant to a market will need to be determined and assessed on a case-by-case basis. IMDA notes that digital markets evolve rapidly, and new modes of competition will continue to emerge. IMDA will continue to engage the industry to better understand how new digital business models affect competition dynamics.

**Policy Considerations in a Digital Economy**

329. IMDA notes that there may be other policy considerations associated with data and AI that overlaps but extends beyond competition concerns. This could include for instance, the broader public benefit from freer data flows on innovation; rights and returns to data; and establishing a ‘Duty of Care’ when using data to train AI models. Some of these policy postures could have pro-competitive effects but others might be at tension with improving competitiveness. This implies that considerations of data and AI in updates to competition policy may well benefit from a holistic consideration on the impact of other public policy objectives. IMDA recognises the importance of these

complementary policies and for a coordinated approach to policy formulation. In this regard, IMDA sought views on whether competition assessments be overlaid with broader policy considerations in a digital economy and the relevant policy considerations to consider.

330. Respondents were split in their views on broader policy considerations – a number of responses were for competition policy to focus solely on solving competition issues while some other responses consider that broader considerations relating to quality of news, innovation incentives, certain economic agenda, are relevant considerations.

331. IMDA is of the view that competitive markets can bring about a number of positive side effects, including a pro-innovation environment, productivity improvements, better data privacy standards. Using competition policy to solve non-competition issues however may lead to unintended consequences and risks the cause for intervention becoming less objective. Notwithstanding this, IMDA notes that competition assessments need to keep up with new modes of competition and possible (non-price-based) harms. Possible remedies may therefore also target these harms and result in broader improvements beyond the impact on competition.

**Early Regulatory Intervention in Data and AI Centric Business Models**

332. IMDA noted that a central feature of digitalisation is the explosion of data which has in turn helped propel AI as a key business driver. Data is likely to become a key factor of production as the use of AI become more pervasive. This may introduce 'data network effects' – data generated from consumption improves quality, scope and efficiency of monetisation, offering higher returns to investment, in turn attracting more users to a platform, creating a reinforcing feedback loop. This is over and above other network effects as well as scale and scope economies that may lend to larger platforms and more concentrated markets. This may have the effect of entrenching a first mover advantage in technology platform markets, making a scale advantage enjoyed by an incumbent difficult to overcome. This may mean greater emphasis on early regulatory intervention; a willingness to tolerate false positives; a more pro-active and adaptive approach to antitrust enforcement, while bearing in mind the need to continue to facilitate innovation. Given the above, IMDA invited views on whether there should be early policy or regulatory intervention in data and AI centric business models that lend to significant scale advantages.

333. Most respondents recognised the notable effect of data network effects and AI lock-in loops that generate scale and scope advantages. However, they

cautioned that early intervention should be premised on evidence of likely harm. This is particularly important in fast evolving markets.

334. IMDA notes the key role of data and how increasing use of AI is evolving the importance of data and first mover advantages in digital platform markets. This means that earlier intervention, with a lower burden of proof for intervention may be warranted in some cases. Nonetheless, any potential intervention should be justified and measured.

**Capabilities and Toolkits Required to Assess Competition Dynamics in Digital Markets**

335. Given the challenges to traditional competition framework, new tools and frameworks are likely required, for instance, the application of a SSNDQ test to define relevant markets where the more familiar SSNIP test may not provide an accurate market definition. Recognising the increasing need to assess competition on non-price dimensions, the OECD led a roundtable discussion in June 2018 on non-price effects of mergers including the role of data protection in merger assessments. IMDA invited views on the new capabilities and toolkits that would be necessary to assess competition dynamics in markets where data and AI are central. One respondent commented that the role of big data in providing competitive advantages should be taken into consideration.

336. IMDA notes that discussions on competition matters in the digital economy, though wide-ranging, are still developing and fairly nascent. IMDA's current view is that no further changes are needed to our competition framework. IMDA will continue to monitor developments in this area and should we make changes to our competition framework, we will consult the public at the suitable time.

## SECTION III: PROCEDURE AND TIMELINE FOR SUBMITTING COMMENTS

337. Having given due consideration to the views and comments received during the First Public Consultation, IMDA has finalised its policy positions to adopt in the Code. The finalised policy positions are reflected in the draft Code that accompanies this consultation paper.

338. IMDA would like to seek views and comments from the industry and members of the public on the draft Code in **Annex A** of this consultation paper. Provisions in the Code that are subject to legislative amendments to the IMDA Act are in **Annex B** of this consultation paper.

339. Respondents should organise their submission as follows:

    (a) cover page (should include personal particulars or company details, and contact information);
    (b) table of contents;
    (c) summary of major points (structured to follow the individual parts of the draft Code);
    (d) statement of interest;
    (e) comments (in response to the draft Code and any other comments); and
    (f) conclusion.

    Supporting materials may be placed as annex(es) to the comments raised.

340. All views and comments should be submitted in soft copy (Microsoft Word and PDF format), and should reach IMDA by **12 noon, 2 March 2021**. All views and comments should be addressed to:

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

    **AND**

    Please submit the soft copy of your views and comments, with the email header “Second Public Consultation on the Draft Code of Practice for

Competition in the Provision of Telecommunication and Media Services", via email to consultation@imda.gov.sg.

341. IMDA reserves the right to make public all or parts of any written submission and to disclose the identity of the source. Respondents may request confidential treatment for any part of the submission that the respondent believes to be proprietary, confidential or commercially sensitive, with supporting justification for IMDA's consideration. In such cases, the submission must be provided in a non-confidential form suitable for publication, with any confidential information redacted as necessary and placed in a separate annex.

342. If IMDA grants confidential treatment, it will consider, but will not publicly disclose, the information. If IMDA rejects the request for confidential treatment, it will return the information to the party that submitted it and will not consider the information as part of its review. As far as possible, parties should limit any request for confidential treatment of information submitted. IMDA will not accept any submission that requests confidential treatment for all, or a substantial part, of the submission.