

## **Draft For Public Consultation – 11 May 2004**

In exercise of the powers conferred by Section 26(1) of the Telecommunications Act (Chapter 323), the Info-communications Development Authority of Singapore hereby issues the following Code:

# **TELECOMMUNICATIONS ACT (CHAPTER 323) CODE OF PRACTICE FOR COMPETITION IN THE PROVISION OF TELECOMMUNICATION SERVICES (2004)**

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# **1. INTRODUCTION**

## **1.1 Goals of this Code**

This Code is intended to:

- (a) promote the efficiency and competitiveness of the information and communications industry in Singapore;
- (b) ensure that telecommunication services are reasonably accessible to all people in Singapore, and are supplied as efficiently and economically as practicable and at performance standards that reasonably meet the social, industrial and commercial needs of Singapore;
- (c) promote and maintain fair and efficient market conduct and effective competition between persons engaged in commercial activities connected with telecommunication technology in Singapore;
- (d) promote the effective participation of all sectors of the Singapore information and communications industry (in markets whether in Singapore or elsewhere);
- (e) encourage, facilitate and promote industry self-regulation in the information and communications industry in Singapore; and
- (f) encourage, facilitate and promote investment in and the establishment, development and expansion of the information and communications industry in Singapore.

## **1.2 Legal Authority to Promulgate this Code**

IDA, in the exercise of its functions under Section 6 of the Info-communications Development Authority of Singapore Act (Chapter 137A) (“IDA Act”), issues this Code pursuant to its authority under Section 26 (1) of the Telecommunications Act (Chapter 323) (“Telecommunications Act”), and Section 7 (1) and Second Schedule of the IDA Act.

## **1.3 Legal Effect of this Code**

- (a) Every entity to which IDA grants a licence under Section 5 of the Telecommunications Act (“Licensee”) is required, pursuant to Section 26 (4) of the Telecommunications Act, to comply with the applicable provisions contained in this Code. In addition, any non-

licensed entity that seeks to engage in a transaction that results in a Consolidation must comply with the applicable provisions in Section 10 of this Code.

- (b) The obligations contained in this Code are in addition to those contained in the Telecommunications Act, other statutes, regulations, licences or codes of practice. To the extent that any provision of this Code is inconsistent with the terms of the Telecommunications Act, other statutes, regulations or the terms of any licence, the provisions of those statutes, regulations or licences shall prevail. To the extent that this Code is inconsistent with the provision of any prior codes of practice issued by IDA or its predecessor, the Telecommunication Authority of Singapore, the terms of this Code will prevail. If any provision of this Code is held to be unlawful, all other provisions will remain in full force and effect.

#### **1.4 Application of this Code to Specific Categories of Licensees**

The following chart indicates the applicability of various provisions of this Code to different categories of Licensees:

<b>CATEGORY OF LICENSEE</b>	<b>Dominant Licensees</b>	<b>Non-Dominant Facilities-based Licensees</b>	<b>Services-based Licensees that use Switching or Routing Equipment to Provide Telecommunication Services to the Public</b>	<b>Services-based Licensees that do not use Switching or Routing Equipment to Provide Telecommunication Services to the Public</b>	<b>Telecommunication Equipment Dealer Licensees</b>
<b>DOMINANT/ NON-DOMINANT CLASSIFICATION (SECTION 2)</b>	All Provisions	All Provisions	All Provisions	Not Applicable	Not Applicable
<b>CONSUMER PROTECTION RULES (SECTION 3)</b>	All Provisions	All Provisions	All Provisions	All Provisions	Not Applicable
<b>TARIFF REGIME (SECTION 4)</b>	All Provisions	Not Applicable	Not Applicable	Not Applicable	Not Applicable
<b>INTERCONNECTION AND SHARING (SECTIONS 5-7)</b>	All Provisions	All Provisions (except Sub-sections 6.3 through 6.3.7)	Section 5 (except Sub-sections 5.4.2, 5.4.3, 5.7.5 and 5.7.6) and Section 6 (except Sub-sections 6.3 through 6.3.7) only	Not Applicable	Not Applicable
<b>COMPETITION (SECTIONS 8-9)</b>	All Provisions	Sub-sections 8.1.1, 8.1.2, 8.3 through 8.4.2.3, and Section 9 only	Sub-sections 8.1.1, 8.1.2, 8.3 through 8.4.2.3, and Section 9 only	Sub-sections 8.1.1, 8.1.2, 8.3 through 8.4.2.3, and Section 9 only	Sub-sections 8.1.1, 8.1.2, 8.3 through 8.4.2.3, and Section 9 only
<b>CONSOLIDATION (SECTION 10)</b>	All Provisions (apply to Designated Telecommunication Licensees)	All Provisions (apply to Designated Telecommunication Licensees)	All Provisions (apply to Designated Telecommunication Licensees)	All provisions (apply to Designated Telecommunication Licensees)	Not Applicable
<b>ADMINISTRATIVE PROCEDURES (SECTION 11)</b>	All Provisions	All Provisions	All Provisions	All Provisions	All Provisions

## **1.5 Regulatory Principles**

The following regulatory principles provide the foundation for this Code, and will guide IDA's implementation of its provisions:

### **1.5.1 Reliance on Market Forces**

Market forces are generally far more effective than regulation in promoting consumer welfare. Competitive markets are most likely to provide consumers with a wide choice of services at just and reasonable prices. Therefore, to the extent that markets or market segments are competitive, IDA will place primary reliance on private negotiations and industry self-regulation, subject to minimum requirements designed to protect consumers and prevent anti-competitive conduct.

### **1.5.2 Promotion of Effective and Sustainable Competition**

Recognising the effectiveness of market forces in promoting consumer welfare, IDA will take resolute measures to promote and maintain effective and sustainable competition. Such measures will include:

- (a) removing or minimising any artificial form of impediment to market entry and exit;
- (b) curtailing any concentration of Significant Market Power that has the effect of unreasonably restricting competition;
- (c) eliminating anti-competitive behaviour by industry participants;
- (d) ensuring that industry participants and consumers have easy access to information on market conditions; and
- (e) ensuring that there is inter-operability and, where necessary, reasonable access to networks to prevent impediments to effective competition and market growth.

### **1.5.3 Promotion of Facilities-based Competition**

IDA believes that effective and sustainable competition will be best achieved through facilities-based competition. However, where there are technological, market or other impediments that would hamper competing licensees' ability to build facilities, IDA will seek to strike a balance between providing the economic incentives to build facilities and permitting services-based competition to take place for the benefit of consumers.

#### **1.5.4 Proportionate Regulation**

To the extent that a given market is not yet competitive, significant *ex ante* regulatory intervention is likely to remain necessary. Where this is the case, IDA will seek to impose regulatory requirements that are carefully crafted to achieve clearly articulated results. Such requirements will be no broader than necessary to achieve IDA's stated goals.

#### **1.5.5 Technological Neutrality**

IDA's regulatory requirements will reflect the phenomenon of convergence, which is eroding historic differences among platforms such as wireline, cable, wireless and satellite. Regulatory requirements will be based on sound economic principles and, to the extent feasible, will be technology-neutral. As the phenomenon of convergence is in its early stages, with different platforms subject to differing degrees of competition, the objective application of these principles may result initially in the imposition of different regulatory obligations on service providers that use different platforms.

#### **1.5.6 Transparent and Reasoned Decision Making**

IDA will apply the provisions of this Code in a transparent manner. IDA will provide an opportunity for public comment in connection with material issues. Except to the extent that information submitted to IDA is confidential, proprietary, commercially sensitive or raises law enforcement or national security concerns, comments will be made available to the public. In arriving at its decisions, IDA will give full consideration to the comments received. IDA will generally make available to the public its decisions adopted pursuant to this Code, and will clearly explain the basis for its actions. IDA will generally also make public any enforcement action taken pursuant to this Code. Where feasible and appropriate, IDA will make available its decisions on its website ([www.ida.gov.sg](http://www.ida.gov.sg)). IDA will also issue guidelines, where appropriate, clarifying the procedures and standards that it will use to implement this Code.

#### **1.5.7 Avoidance of Unnecessary Delay**

Recognising the need for Licensees to respond rapidly to changing market forces, IDA will strive to make all decisions pursuant to this Code within the timeframes specified herein and, in any case, as quickly as reasonably possible.



### **1.5.8 Non-discrimination**

IDA's decisions will be non-discriminatory. IDA will treat similarly situated Licensees on an equivalent basis. Where appropriate, IDA's decisions will reflect relevant differences between Licensees or categories of Licensees.

### **1.5.9 Consultation With Other Regulatory Authorities**

IDA, where feasible and appropriate, will consult with other regulatory authorities in Singapore in order to facilitate the development of a consistent regulatory policy that promotes fair and effective competition and serves the public interest.

## **1.6 Modification and Elimination of Provisions**

IDA will modify and, where appropriate, eliminate the provisions of this Code to reflect changing market conditions. There are 3 ways in which the Code may be modified. In each case, IDA will seek public comment prior to adopting any modification.

### **1.6.1 Regulatory Review**

At least once every 3 years, IDA will review this Code. IDA will eliminate or modify provisions that it determines, based on experience and the growth and development of competition, are no longer necessary. IDA also will make any other changes necessary to achieve the goals of this Code.

### **1.6.2 Petitions for Elimination or Modification of Provisions of this Code**

Licensees may petition IDA to eliminate or modify any provision of this Code. The Licensee must specify the provisions of this Code that it seeks to have eliminated or modified and must provide a clear statement of the reasons why the Licensee believes that such action is justified. The Licensee may propose alternative approaches that, if adopted, would achieve IDA's regulatory objectives in a less burdensome manner.

### **1.6.3 Right to Modify**

IDA may modify this Code on its own initiative at any time.

## **1.7 Reservations of Authority**

IDA reserves, without limitation, the following rights:

### **1.7.1 Right to Grant Exemptions**

Where good cause is shown, IDA may grant exemptions from specific provisions of this Code. Such exemptions may be applied to individual Licensees or to specified categories of Licensees. An exemption may be permanent, temporary (either for a fixed period or effective until the occurrence of a specific event) or on a one-time basis. Where appropriate, IDA may grant exemptions subject to compliance with specified conditions. IDA will seek public comment prior to granting any exemption.

### **1.7.2 Right to Waive or Suspend Code Provisions Where Necessary in the Public Interest**

IDA may waive or suspend any provision of this Code that imposes an obligation on IDA in any situation in which such action is necessary in the public interest.

### **1.8 Rule of Construction**

This Code is written in “plain English”. IDA will interpret this Code in a manner that is consistent with the ordinary meaning of the terms used. In case of any ambiguity, IDA will interpret this Code in the manner most consistent with the regulatory principles specified in Sub-sections 1.5 to 1.5.9 of this Code.

### **1.9 Definitions**

This Sub-section defines specialised terms that are used in more than one Section of this Code. Specialised terms that are used in only one Section of this Code are defined at the start of the relevant Section. As used in this Code:

- (a) An “Affiliate” of a Licensee, party or Acquiring Party (as defined in Section 10) means an entity:
  - (i) that has an attributable interest in any Licensee, party or Acquiring Party of 5 percent or more (parent);
  - (ii) in which a Licensee, party or Acquiring Party has an attributable interest of 5 percent or more (subsidiary); or
  - (iii) in which any parent of the Licensee, party or Acquiring Party has an attributable interest of 5 percent or more (sibling); provided, however, that a Licensee will not be deemed an Affiliate of another Licensee based solely on the

fact that both Licensees' ultimate parent has a passive ownership interest in both Licensees.

In determining a relevant party's attributable interest, IDA will use the "sum-the-percentages" methodology. This methodology will be applied successively at each level of the "ownership chain". For example, if the relevant party has legal or beneficial ownership of 100 percent of the voting shares of Entity A, and Entity A has legal or beneficial ownership of 50 percent of the voting shares of Entity B, and Entity B has legal or beneficial ownership of 50 percent of the voting shares of Entity C, then the relevant party will be deemed to have a 25 percent attributable interest in Entity C. In this case, Entity C will be deemed to be an "Affiliate" of the relevant party. Correspondingly, where a party is said to be "affiliated" with another party, the first party is an "Affiliate" of the second party.

- (b) "Conciliation" means conciliation in accordance with the IDA conciliation procedures specified in Sub-section 11.2 of this Code;
- (c) "Customer" means either an End User or another Licensee that purchases a Licensee's telecommunication service;
- (d) "Dispute Resolution Procedure" means the IDA dispute resolution procedures specified in Sub-section 11.3 of this Code;
- (e) "Dominant Licensee" means a Licensee that IDA has classified as dominant pursuant to Sub-section 2.2.1 of this Code;
- (f) "Effective Date" means the date this revised edition of the Code comes into effect;
- (g) "End User" means business or residential subscribers of any telecommunication service in Singapore;
- (h) "End User Service Agreement" means an agreement under which a Licensee provides telecommunication services to an End User;
- (i) "Facilities-based Licensee" means a Licensee to which IDA has granted a Licence to provide Facilities-based Operations under Section 5 of the Telecommunications Act;
- (j) "Interconnection Agreement" means a written agreement between Licensees governing interconnection and related arrangements;

- (k) “Interconnection Related Services” means those services specified by IDA, by separate notice in the *Government Gazette*, pursuant to Sub-section 6.3.2 of this Code;
- (l) “Mandated Wholesale Services” means those services specified by IDA, by separate notice in the *Government Gazette*, pursuant to Sub-section 6.3.2 of this Code;
- (m) “Minimum Interconnection Duties” means the duties as specified in Sub-sections 5.4 through 5.4.8 of this Code;
- (n) “Reference Interconnection Offer” (“RIO”) means the offer that the Dominant Licensee is required to make pursuant to Sub-section 6.2.1 of this Code;
- (o) “Services-based Licensee” means a Licensee to which IDA has granted a Licence to provide Services-based Operations under Section 5 of the Telecommunications Act; and
- (p) “Significant Market Power” means the ability to unilaterally restrict output, raise prices, reduce quality or otherwise act, to a significant extent, independently of competitive market forces.

#### **1.10 Effective Date of this Code**

This revised edition of the Code will come into effect 14 days after the date on which it is published in the *Government Gazette*.

#### **1.11 Short Title**

This Code may be referred to as the “Telecom Competition Code (2004)”.

## **2. CLASSIFICATION OF LICENSEES**

### **2.1 Introduction**

#### **2.1.1 Application**

This Section applies only to Facilities-based Licensees and Services-based Licensees that use switching or routing equipment to provide telecommunication services to the public. In this Section, the term “Licensee” refers to Facilities-based Licensees and Services-based Licensees that use switching or routing equipment to provide telecommunication services to the public.

#### **2.1.2 Over-view**

This Code distinguishes between Licensees that are subject to competitive market forces and Licensees whose conduct are not constrained adequately by competitive market forces. Most Licensees are subject to competitive market forces. Therefore, IDA will impose minimum regulatory “rules of the road”, coupled with the *ex post* enforcement of general prohibitions on anti-competitive conduct, on these Licensees. By contrast, where a Licensee’s conduct is not constrained by competitive market forces, IDA will require it to comply with more stringent regulatory requirements.

### **2.2 Initial Classification of Licensees**

- (a) At the time when IDA grants a licence, IDA will classify a Licensee as either a:
  - (i) Non-dominant Licensee; or
  - (ii) Dominant Licensee.
- (b) The classification will be applied on a “licensed entity” basis. Thus, absent an exemption, a Licensee classified as dominant will be subject to Dominant Licensee obligations for all facilities that it operates, and for all services that it provides, pursuant to its licence.
- (c) In any case in which IDA classifies a Licensee as a Dominant Licensee, IDA will issue a notice in the *Government Gazette*.

#### **2.2.1 Dominant Licensees**

A Licensee will be classified as dominant if:

- (a) it is licensed to operate facilities used for the provision of telecommunication services in Singapore that are sufficiently costly or difficult to replicate such that requiring new entrants to do so would create a significant barrier to rapid and successful entry into the telecommunication market in Singapore by an efficient competitor; or
- (b) it has the ability to exercise Significant Market Power in any market in which it provides telecommunication services pursuant to its licence.

### **2.2.2 Non-dominant Licensees**

In the absence of evidence to the contrary, IDA will presume that all Licensees are non-dominant.

### **2.3 Reclassification of Licensees**

- (a) IDA will reclassify a Dominant Licensee as non-dominant if IDA concludes, based on relevant evidence, that the Licensee no longer satisfies the conditions for dominant classification specified in Sub-section 2.2.1(a) and 2.2.1(b) of this Code. IDA will reclassify a Non-dominant Licensee as dominant if IDA concludes, based on relevant evidence, that the Licensee satisfies any one of the conditions for dominant classification specified in Sub-section 2.2.1(a) or 2.2.1(b) of this Code.
- (b) Reclassification can occur in any of the following ways:
  - (i) At the time when IDA renews a Licensee's licence, IDA will make an assessment as to whether the Licensee should be reclassified.
  - (ii) Where appropriate, IDA may initiate a proceeding to reclassify a Licensee. In such cases, IDA will request the Licensee to provide information that will assist IDA in determining whether or not the Licensee meets the conditions specified in Sub-section 2.2.1(a) and/or 2.2.1(b) of this Code.
  - (iii) A Licensee or other interested party may petition IDA to have a Licensee reclassified. A party seeking to have a Licensee reclassified must provide information demonstrating whether or not the Licensee meets the

conditions specified in Sub-section 2.2.1(a) and/or 2.2.1(b) of this Code.

- (c) IDA will seek public comments prior to reclassifying a Licensee.
- (d) IDA will issue a notice in the *Government Gazette* in any case in which it reclassifies a Non-dominant Licensee as dominant or a Dominant Licensee as non-dominant.

## **2.4 Transfers of Facilities and Business by Dominant Licensees**

- (a) A Dominant Licensee may not avoid the special provisions applicable to Dominant Licensees specified in this Code by transferring to another entity the following:
  - (i) ownership or operational control of facilities that IDA has licensed the Dominant Licensee to use to provide telecommunication services in Singapore; and/or
  - (ii) any business of the Dominant Licensee, as a going concern, relating to the provision of telecommunication services that IDA has licensed the Dominant Licensee to provide in Singapore.
- (b) Where a Dominant Licensee wishes to transfer to another entity ownership or operational control of its facilities, and/or its business as a going concern, the Dominant Licensee must obtain IDA's approval prior to effecting the transfer. IDA may approve the transfer request in full or in part, and subject the approval to any appropriate condition that IDA may impose (including reclassifying the transferee as a Dominant Licensee where the criteria for dominant classification set out in Sub-section 2.2.1 is satisfied).
- (c) Where a Dominant Licensee transfers to another entity ownership or operational control of its facilities, and/or its business as a going concern, without first obtaining IDA's approval, in addition to the enforcement measures that IDA may take against the Dominant Licensee for contravention of this Code, the transferee will be required to comply with the special provisions applicable to Dominant Licensees under this Code in relation to the transferred facilities and/or business.

## **2.5 Exemption from Application of Special Dominant Licensee Provisions**

Dominant Licensees are subject to a number of special provisions. IDA recognises, however, that as competition develops, it may no longer be necessary to apply each of these provisions to every facility operated or service provided by the Dominant Licensee. IDA therefore will consider requests from Dominant Licensees to exempt them from specific provisions. Where IDA grants a Dominant Licensee an exemption, IDA will issue a notice in the *Government Gazette*.

### **2.5.1 Request for Exemption**

A Dominant Licensee that seeks exemption from any special provisions applicable to Dominant Licensees must submit an application to IDA that identifies the specific provisions (with Sub-section numbers) of this Code from which the Dominant Licensee seeks exemption. The Dominant Licensee must demonstrate that the continued application of the provision to a specific facility or service is not necessary to protect End Users or to promote and preserve effective competition amongst Licensees. The Dominant Licensee must provide verifiable data to support its request.

### **2.5.2 IDA Review**

IDA will not accept a request for exemption from any provision applicable to Dominant Licensees until the Dominant Licensee has provided the information required pursuant to Sub-section 2.5.1 of this Code. After receiving any request for exemption, IDA will notify the Dominant Licensee whether it must provide additional information before the request can be accepted. IDA will notify the Dominant Licensee of the date on which it accepts the request. IDA will provide an opportunity for public comment before issuing a preliminary decision and a final decision granting or denying the request. In each case, IDA will seek to issue its preliminary and final decision within 90 days from the close of public consultation. IDA may grant the request in full or in part, and subject to any appropriate condition that IDA may impose. Where appropriate, IDA may extend the time by which IDA will issue its preliminary and final decision by providing a written notice to the Dominant Licensee before the end of each 90-day period.

## **2.6 Evidence to be Considered**

A party seeking to demonstrate that a Licensee should, or should not, be classified as a Dominant Licensee, and a Dominant Licensee seeking exemption from any special provision applicable to Dominant Licensees should submit the following evidence:



### **2.6.1 Ability of Competitors to Replicate Facilities**

A party seeking to demonstrate whether or not a Licensee meets the conditions specified in Sub-section 2.2.1(a) of this Code, and a Dominant Licensee seeking to be exempted from the application of any special provision applicable to Dominant Licensees in connection with a specific facility, should submit verifiable data regarding:

- (a) the facilities that the Licensee has deployed to provide telecommunication 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.

### **2.6.2 Ability of Licensee to Exercise Significant Market Power**

A party seeking to demonstrate whether or not a Licensee meets the conditions specified in Sub-section 2.2.1(b) of this Code, and a Dominant Licensee seeking an exemption from any special provision applicable to Dominant Licensees in connection with a specific service, should submit verifiable data regarding the Licensee's ability to exercise Significant Market Power. This should generally include:

- (a) the relevant market(s) for the telecommunication services that the Licensee provides;
- (b) the participants in the market;
- (c) the Licensee's market share;
- (d) the level of concentration in the market;
- (e) the barriers to entry into the market;
- (f) the likelihood of timely and sufficient increases in output (either through new entry or the provision of additional services by current market participants) in response to a significant and non-transitory price increase by the Licensee; and

- (g) the likelihood that End Users would respond to a significant and non-transitory price increase by switching to a competing service provider.

### **3. DUTY OF LICENSEES TO THEIR END USERS**

#### **3.1 Introduction**

##### **3.1.1 Application**

- (a) All provisions in this Section apply to Facilities-based and Services-based Licensees. In this Section, the term:
  - (i) “Licensee” refers to Facilities-based and Services-based Licensees; and
  - (ii) “Dominant Licensee” refers to Licensees that IDA has classified as dominant.
- (b) This Section governs the relationship between Licensees and their End Users. This Section does not govern the relationship between a Licensee that purchases telecommunication services from another Licensee to provide telecommunication services to third parties. Nothing in this Section is intended to limit any right that an End User may have under any applicable legislation.

##### **3.1.2 Over-view**

The growth of competition provides End Users with increased choice amongst telecommunication service providers. To the extent that Licensees are subject to effective competition, market forces, augmented by the minimal requirements and prohibitions contained in this Section, will generally be sufficient to ensure that Licensees provide telecommunication services to End Users on just, reasonable and non-discriminatory terms.

#### **3.2 General Duties of All Licensees**

All Licensees must comply with the following consumer protection provisions:

##### **3.2.1 Duty to Comply with IDA’s Quality of Service Standards**

Licensees must comply with any applicable minimum quality of service standards issued by IDA. However, a Licensee and an End User may agree to a lower quality of service standard. In such cases, the Licensee must clearly inform the End User of the service level that it will provide and the fact that it does not comply with IDA’s minimum quality of service standards.

### **3.2.2 Duty to Disclose Prices, Terms and Conditions**

Prior to providing any telecommunication service to an End User, a Licensee must disclose to that End User the prices, terms and conditions on which the Licensee provides such telecommunication service. In addition, a Licensee must also publish, in a form available to the public, the prices, terms and conditions of its standard telecommunication services. The information must be published in a manner that is readily available, current and easy-to-understand.

### **3.2.3 Prohibition on Disproportionate Early Termination Charges**

Licensees may enter into agreements under which they provide an End User with a discount or special considerations in return for the End User's agreement to commit to a minimum service period or a minimum revenue commitment. Such agreements may contain provisions providing for termination liability in the event that the End User ends the agreement prior to the agreed upon termination date. However, the amount of any early termination liability must be reasonably proportionate to the extent of the discount or special considerations that the Licensee has provided and the duration of the period during which the End User took service.

### **3.2.4 Restrictions on Service Termination or Suspension**

The following procedures apply when a Licensee seeks to terminate an End User Service Agreement, or suspend the provision of telecommunication service to an End User:

#### **3.2.4.1 Service Termination or Suspension With Prior Notice**

- (a) Subject to sub-section (b) below, in any case in which a Licensee seeks to terminate the End User Service Agreement, or suspend the provision of telecommunication service to an End User, on the grounds that the End User has breached any of the terms and conditions in the End User Service Agreement, the Licensee may do so, if:
  - (i) the Licensee has provided the End User with advance notice and a reasonable opportunity to remedy the breach; and
  - (ii) the End User has failed to do so.
- (b) In any case in which a Licensee seeks to terminate an End User Service Agreement, or suspend the provision of telecommunication service to an End User on the grounds that:

- (i) an End User who is an individual is declared a bankrupt; or
- (ii) an End User that is a corporation enters into any compromise or arrangement with its creditors, a receiver, trustee or judicial manager is validly appointed over the whole or part of the undertaking of the End User,

the Licensee may do so if the Licensee has provided the End User with prior notice and the opportunity to provide, within a reasonable period specified by the Licensee, a reasonable security deposit or other adequate assurances that the End User will pay for the services provided and the End User has failed to do so.

#### **3.2.4.2 Service Termination or Suspension Without Prior Notice**

A Licensee may terminate an End User Service Agreement, or suspend the provision of telecommunication service to an End User, without providing prior notice only in the following circumstances:

- (a) the End User has created, or is likely to create, imminent physical harm (such as interruption, disruption or congestion) to the Licensee's network or has defrauded the Licensee;
- (b) the Licensee is acting in compliance with a requirement of any relevant regulatory authority or law enforcement body;
- (c) where the End User is an individual, the End User dies; or
- (d) where the End User is a corporation, the End User ceases to carry on its business.

#### **3.2.4.3 Termination or Suspension For Illegal or Improper Activities**

Notwithstanding Sub-sections 3.2.4.1 and 3.2.4.2 of this Code, a Licensee may not terminate an End User Service Agreement, or suspend the provision of telecommunication service to an End User under the Agreement on the ground that the End User is using the service to engage in illegal or improper activities. Instead, in such a situation, the Licensee should inform the relevant authority and act in conformity with that authority's directions or guidelines.

#### **3.2.4.4 Service Termination Due to a Licensee's Discontinuance of Operations or Specific Services**

A Licensee that intends to discontinue operation, or discontinues a specific telecommunication service, must give reasonable advance notice to all affected End Users. In such cases, the Licensee must take all reasonable measures to avoid any service interruption to its End Users, including complying with any requirement specified by IDA. Where feasible, this may include giving End Users the option to transition service to another Licensee specified by the terminating Licensee or to another Licensee specified by the End Users. In any case in which an End User has made an advanced payment for services provided by a Licensee, and the Licensee subsequently decides to discontinue operation, or discontinue a specific telecommunication service, the Licensee must allocate a proportionate share of the advanced payment for refund to the End User.

#### **3.2.5 Prohibition on "Slamming"**

No Licensee may switch an End User from one Licensee's telecommunication service to another Licensee's telecommunication service without the prior consent of the End User. No Licensee may collect or retain any payments from an End User for any telecommunication service that the End User did not consent to receiving. In such cases, the Licensee that performed the unauthorised switching must also bear any cost necessary to switch the End User back to the End User's original telecommunication service provider.

#### **3.2.6 Duty to Prevent Unauthorised Use of End User Service Information**

Licensees must take reasonable measures to prevent the unauthorised use of End User Service Information ("EUSI").

##### **3.2.6.1 Definition of EUSI**

EUSI consists of all information that a Licensee obtains as a result of an End User's use of a telecommunication service provided by the Licensee. This includes, but is not limited to, information regarding:

- (a) the End User's usage patterns (including number of calls, times of calls, duration of calls and parties called);
- (b) the services used by the End User;
- (c) the End User's telephone number and network configuration;
- (d) the End User's location information; and

- (e) the End User's billing name, address and credit history.

### **3.2.6.2 Prohibition on Unauthorised Use**

- (a) A Licensee must adopt appropriate procedures to ensure that, unless the End User has provided prior consent, the Licensee will not use EUSI for any purpose other than:
  - (i) planning, provisioning and billing for any telecommunication service provided by the Licensee;
  - (ii) managing bad debt and preventing fraud related to the provision of telecommunication services;
  - (iii) facilitating interconnection and inter-operability between Licensees for the provision of telecommunication services;
  - (iv) providing assistance to law enforcement, judicial or other government agencies; and/or
  - (v) complying with any regulatory requirement imposed by IDA authorising the use of EUSI (for example, for the provision of directory assistance services).
- (b) The Licensee must further ensure that, unless the End User has provided consent, the Licensee will not provide EUSI to any third party (including its Affiliates) for the purposes of developing and marketing any goods and services.

### **3.2.6.3 Joint Marketing**

Nothing in this Code prohibits a Licensee from allowing other entities to include promotional or other material in any mass mailing that the Licensee makes to all or a selected portion of its End Users, provided that the Licensee does not disclose the EUSI of any End User that has not provided consent.

### **3.2.7 Service Quality Information Disclosure Requirements**

- (a) Licensees must make publicly available, in a format that can be understood easily by End Users, a report indicating the number and type of complaints that the Licensee has received from its End Users and a statement as to the extent to which the Licensee has met all applicable IDA quality of service standards.

- (b) The Licensee must update this information at least once each year. The Licensee may satisfy the obligation to make this information publicly available by posting the information on its website.

### **3.3 Mandatory Contractual Provisions**

Licensees must include the provisions specified in Sub-sections 3.3.1 through 3.3.7 of this Code in their End User Service Agreements. An End User may bring a private legal action against a Licensee to enforce these contractual obligations pursuant to its End User Service Agreement with that Licensee. In addition, IDA will treat a Licensee's wilful, reckless, or repeated failure to fulfil these obligations as a contravention of this Code.

#### **3.3.1 Billing Period**

The End User Service Agreement must specify how often the Licensee will send a bill. Where the End User Service Agreement does not specify a recurrent period, the End User Service Agreement will be construed to provide that the Licensee will send the bill monthly. The End User Service Agreement must also commit the Licensee to providing clear and accurate bills.

#### **3.3.2 Prices, Terms and Conditions on Which Service Will be Provided**

The End User Service Agreement must clearly and comprehensively specify the prices, terms and conditions on which the Licensee will provide its service. The End User Service Agreement may make reference to any tariffs, price lists, or similar documents that are readily available to the public. The End User Service Agreement must further provide that the End User will not be bound by any price, term and condition that varies from those specified in the End User Service Agreement, unless:

- (a) the End User provides prior written approval; or
- (b) the End User Service Agreement clearly states that the Licensee may revise the prices, terms and conditions by providing reasonable advance notice to the End User.

#### **3.3.3 No Charges for Unsolicited Telecommunication Services**

The End User Service Agreement must provide that the End User will not be required to pay for any telecommunication service that the End User did not consent to receiving.



### 3.3.4 Procedures to Contest Charges

The End User Service Agreement must clearly indicate the procedures by which an End User can dispute any charge for telecommunication services that the End User reasonably believes to be incorrect. This includes situations in which the End User reasonably believes that the charge was improperly calculated as well as situations in which the End User reasonably believes that the Licensee has not provided the service that it has agreed to provide. These procedures must, at a minimum, include the following:

- (a) The Licensee may require that:
  - (i) in the event of a dispute, the End User must pay any undisputed charge specified on the bill, but need not pay any reasonably disputed amounts pending the resolution of the dispute;
  - (ii) if the End User intends to withhold payment, the End User must inform the Licensee of any disputed charge prior to the date on which the payment becomes due; and
  - (iii) if the End User ultimately is found liable for the payment, the End User must pay the amount due and reasonable compensation for the Licensee's arbitration, litigation and collection expenses, plus interest. The rate of interest must be set at a commercially reasonable amount. The End User Service Agreement must either specify the exact rate to be charged, or the methodology that the Licensee will use to establish the rate to be charged.
- (b) The Licensee must provide that:
  - (i) an End User that pays a bill and subsequently chooses to contest the bill will have 1 year (starting from the date of the bill) to do so;
  - (ii) an End User that purchases a pre-paid service who chooses to contest any charge will have 1 year (starting from the date on which the charge was deducted) to do so; and
  - (iii) the Licensee will conduct a complete and objective review of the End User's complaint, and will provide a written response, within 30 days of receiving notification that the End User is contesting a charge.

### **3.3.5 Private Dispute Resolution**

The End User Service Agreement must provide that, if the parties are unable to resolve any dispute, they may:

- (a) refer the matter to the Small Claims Tribunal, if the matter is within that body's jurisdiction;
- (b) jointly submit the dispute to arbitration; or
- (c) submit the dispute to any court of competent jurisdiction.

### **3.3.6 Termination or Suspension of Service by Licensee**

Consistent with Sub-sections 3.2.4.1 through 3.2.4.4 of this Code, the End User Service Agreement must specify prominently:

- (a) any basis on which the Licensee reserves the right to terminate or suspend the End User Service Agreement; and
- (b) the procedures by which the Licensee will provide the End User with advance notice of any proposed termination or suspension, the basis for the action and the means by which the End User can avoid such termination or suspension.

### **3.3.7 Use of End User Service Information**

The End User Service Agreement must contain procedures regarding the Licensee's use of the End User's EUSI. In particular:

- (a) The End User Service Agreement must provide that, unless the End User has provided consent, the Licensee will use the EUSI only for the purposes specified in Sub-section 3.2.6.2 of this Code.
- (b) The End User Service Agreement must specify:
  - (i) the means by which an End User can grant the Licensee consent to use its EUSI for purposes other than those specified in Sub-section 3.2.6.2 of this Code;
  - (ii) the additional purposes for which, if granted consent, the Licensee may use the EUSI; and
  - (iii) the means by which an End User can subsequently withdraw consent to use its EUSI for purposes other than those specified in Sub-section 3.2.6.2 of this Code. Any

such procedures must be clear and minimally burdensome. The Licensee must not impose any fee on an End User as a result of the End User's withdrawal of consent.

**4. DUTY OF DOMINANT LICENSEES TO PROVIDE TELECOMMUNICATION SERVICES ON JUST, REASONABLE AND NON-DISCRIMINATORY TERMS**

**4.1 Introduction**

**4.1.1 Application**

All provisions in this Section apply to Dominant Licensees.

**4.1.2 Over-view**

To the extent that Licensees are not subject to competitive market forces, regulatory intervention is necessary to ensure that such Licensees provide services, both to End Users and to other Licensees, on just, reasonable and non-discriminatory prices, terms and conditions. This Section sets out the requirements with which Dominant Licensees must comply. This Section also establishes a tariff filing, review and publication regime designed to ensure compliance.

**4.2 Duties of Dominant Licensees**

**4.2.1 Duties Applicable to the Provision of All Telecommunication Services**

The following duties are applicable to the provision of all telecommunication services by a Dominant Licensee:

**4.2.1.1 Duty to Provide Service at Just and Reasonable Prices, Terms and Conditions**

A Dominant Licensee must provide telecommunication services to Customers at prices, terms and conditions that are just and reasonable.

**4.2.1.2 Duty to Provide Service on a Non-discriminatory Basis**

- (a) A Dominant Licensee must provide telecommunication services required to be tariffed pursuant to Sub-section 4.4.1 of this Code ("Tariffed Telecommunication Services") to Customers at prices, terms and conditions that are not discriminatory. This requires that, except where otherwise permitted or required by IDA, differences in the prices, terms and conditions for comparable services provided to different Customers must be based on objective differences, such as but not limited to variations in the cost of the service provided, variations in the quantity or quality of service provided or variations in the duration of the service agreement period.

- (b) A Dominant Licensee must not discriminate in favour of itself, an Affiliate, or any other related entity in the provision of Tariffed Telecommunication Services. In particular, the Dominant Licensee must provide these services to such entities pursuant to the prices, terms and conditions contained in its tariffs.

#### **4.2.1.3 Duty to Provide Unbundled Telecommunication Services**

A Dominant Licensee must provide Tariffed Telecommunication Services on an unbundled basis. Specifically, the Dominant Licensee must not require a Customer that wants to purchase a specific Tariffed Telecommunication Service to also purchase any other telecommunication service or non-telecommunication service or equipment, as a condition for purchasing that telecommunication service. However, the Dominant Licensee may offer Customers the option of purchasing a package that contains multiple telecommunication and non-telecommunication services or equipment.

#### **4.2.2 Specific Duties Applicable to the Provision of End User Telecommunication Services**

The following duties are applicable to the provision of End User telecommunication services by a Dominant Licensee:

##### **4.2.2.1 Duty to Provide Service on Reasonable Request**

A Dominant Licensee must provide telecommunication service to any End User upon reasonable request.

##### **4.2.2.2 Duty to Allow Resale of End User Telecommunication Services**

- (a) A Dominant Licensee must allow any Licensee to purchase any Tariffed Telecommunication Service that the Dominant Licensee makes available to End Users pursuant to a tariff, on the same prices, terms and conditions that the Dominant Licensee makes such service available to End Users. The Dominant Licensee may not prevent the Licensee from reselling the service to other Licensees or End Users, and using the service as an input for its provision of telecommunication services to other Licensees or End Users.
  - (i) A Dominant Licensee may comply with this obligation by filing tariffs for End User telecommunication services that do not expressly restrict resale and use as an input (or eliminating any restrictions on resale and use as an input contained in its existing End User tariffs).

- (ii) Where an effective tariff for an End User telecommunication service restricts resale or use as an input, upon request by a Licensee, the Dominant Licensee must file a tariff that allows the Licensee to purchase the service on the same (or, at the request of the Licensee seeking to acquire the service, on substantially equivalent) prices, terms and conditions as End Users for the purpose of resale or use as an input.
- (b) A Dominant Licensee must not require a Licensee that uses its Tariffed Telecommunication Services as an input into other services to disclose that it is using the Dominant Licensee's telecommunication services.

#### **4.2.2.3 Duty to Allow Sales Agency**

If a Dominant Licensee provides a commission or fee or other consideration to any other Licensee (whether or not affiliated with the Dominant Licensee) that resells any of the Dominant Licensee's End User Tariffed Telecommunication Services, the Dominant Licensee must, upon request, provide the same opportunity to any other Licensee on the same prices, terms and conditions.

#### **4.3 Wholesale Services**

Unless directed to do so by IDA, a Dominant Licensee is not required to offer any telecommunication service on a wholesale basis. If the Dominant Licensee chooses to do so, however, the Dominant Licensee:

- (a) must offer the wholesale telecommunication service at prices, terms and conditions that are just, reasonable and non-discriminatory;
- (b) must allow any Licensee to purchase the wholesale telecommunication service;
- (c) must not restrict the ability of another Licensee to use the wholesale telecommunication service as an input into another service; and
- (d) must not require the Licensee to disclose that it is using the Dominant Licensee's wholesale telecommunication service as an input.

## **4.4 Tariffing**

### **4.4.1 Services for Which A Dominant Licensee Must File Tariffs**

A Dominant Licensee must file a tariff with IDA and obtain IDA's written approval prior to offering (or modifying the terms on which it offers) any of the following telecommunication services:

- (a) End User telecommunication services, including standardised services designed for residential customers, standardised services designed for business customers, services designed for specific customers ("Customised Tariff") and promotional services;
- (b) Resale telecommunication services offered pursuant to Sub-section 4.2.2.2 of this Code;
- (c) Wholesale telecommunication services that the Dominant Licensee offers pursuant to Sub-section 4.3 of this Code; and
- (d) Any other telecommunication service that IDA directs the Dominant Licensee to offer pursuant to a tariff.

### **4.4.2 Tariff Filing and Review**

IDA will use the following process to review a Dominant Licensee's tariff filing:

#### **4.4.2.1 Information to be Included**

Any tariff filed by a Dominant Licensee must:

- (a) fully and clearly describe the telecommunication service to be offered;
- (b) contain a clear statement of the prices, terms and conditions (including any eligibility requirements) on which the Dominant Licensee offers to provide the service;
- (c) list any discounts or special considerations that the Dominant Licensee will offer and the requirements that must be satisfied (such as minimum volume or term requirements) to obtain those discounts;
- (d) list the minimum period of time during which the service will be available and the minimum period of time, if any, during which the Dominant Licensee will not increase the filed rates;

- (e) be self-contained and must include charges for any telecommunication service or equipment not generally subject to tariff regulation when offered as part of a package; and
- (f) be accompanied by a memorandum that describes the proposed offering or modification and provides sufficient information to demonstrate that the proposed offering or modification satisfies the relevant criteria specified in Sub-section 4.4.3.1 of this Code.

### **4.4.3 IDA Tariff Review Process**

#### **4.4.3.1 Review Criteria**

In assessing whether a proposed tariff is just and reasonable, IDA will apply the following criteria:

- (a) In the case of a tariff for an End User telecommunication service, IDA will assess whether the proposed prices, terms and conditions are either excessive or inadequate. To assess whether the proposed prices are excessive, IDA will determine whether the prices are competitive with those in a “basket” of jurisdictions, including neighbouring countries, newly industrialised countries, and major financial markets. To determine whether the proposed prices are inadequate, IDA will assess whether the proposed prices are either above average variable cost or not less than those offered by Licensees that provide a comparable service. IDA will also seek to determine whether the proposed prices, terms and conditions are not discriminatory by comparing the proposed prices, terms and conditions to those that the Dominant Licensee offers in other tariffs for comparable telecommunication services. In cases in which IDA determines that a telecommunication service has a widespread public impact, IDA may also consider other relevant factors.
- (b) In the case of a resale tariff for an End User telecommunication service, IDA will seek to determine whether the Dominant Licensee is offering the service on the same (or, where the tariff is filed to meet the request of a Licensee seeking to acquire the service, on substantially equivalent) prices, terms and conditions as the Dominant Licensee’s corresponding tariff for that End User telecommunication service.
- (c) In the case of a tariff for wholesale telecommunication service offered under Sub-section 4.3 of this Code, IDA will seek to determine whether the prices, terms and conditions are no less favourable than the prices, terms and conditions on which the



Dominant Licensee offers any comparable retail service to its End Users.

#### **4.4.3.2 Review Procedures**

In general, within 7 working days, IDA will either accept or reject the tariff. This period is shortened to 5 working days for joint promotional offerings or 3 working days for stand-alone promotions. A working day means Monday through Friday, except public holidays. If IDA rejects the filing, it will provide a statement of the basis for its rejection. Where IDA determines that it would be appropriate, however, it may take any of the following actions:

- (a) extend the review period;
- (b) seek additional information from the Dominant Licensee (including inspecting the accounts and other documents of the Dominant Licensee);
- (c) conduct an audit on the Dominant Licensee;
- (d) seek public comments;
- (e) allow the tariff to go into effect on an interim basis, subject to retroactive adjustment if IDA concludes that any price, term or condition in the tariff contravenes this Code; and/or
- (f) allow the tariff to go into effect, subject to the Dominant Licensee's acceptance of specific conditions that IDA may impose.

#### **4.5 Duty to Publish Tariffs**

Prior to providing service, the Dominant Licensee must disclose, by publishing in a form available to the public, the applicable tariff for the telecommunication service approved by IDA. The information must at the minimum include prices (including any discount structures), service suspension and termination (including any early termination charges), and service availability and eligibility requirements.

#### **4.6 Duty to Provide Service Consistent With Effective Tariffs**

- (a) Dominant Licensees must provide telecommunication services on the prices, terms and conditions specified in the applicable effective tariffs.
- (b) In any case in which IDA allows a tariff to become effective, and a Dominant Licensee subsequently enters into an agreement on terms that differ from those in its effective tariff, IDA may:

- (i) take enforcement action against the Dominant Licensee pursuant to Section 11 of this Code;
  - (ii) direct the Dominant Licensee to amend its agreement to comply with the prices, terms and conditions in its effective tariff; and/or
  - (iii) direct the Dominant Licensee to file a new tariff embodying the terms of the agreement.
- (c) In any case in which a Dominant Licensee enters into an agreement based on the terms of an effective tariff, and IDA subsequently allows (or directs) the Dominant Licensee to modify the terms of the tariff, the Dominant Licensee must amend the agreement to be consistent with the modified tariff.

#### **4.7 Review of Effective Tariffs**

Once IDA allows a tariff to go into effect, IDA will presume that the prices, terms and conditions are just, reasonable and non-discriminatory. IDA may review the tariff periodically to determine whether the prices, terms and conditions remain just, reasonable and non-discriminatory, and may direct the Dominant Licensee to make appropriate modifications. In addition, any person that believes that the prices, terms and conditions on which a Dominant Licensee is providing Tariffed Telecommunication Services are unjust, unreasonable or discriminatory may petition IDA to review those provisions. The petitioner must provide the basis for its belief. IDA may also take enforcement action if it concludes that an effective tariff or the Dominant Licensee's implementation of the tariff contravenes any other provision of this Code.

## **5. REQUIRED COOPERATION AMONGST LICENSEES TO PROMOTE COMPETITION**

### **5.1 Introduction**

#### **5.1.1 Application**

- (a) All provisions in this Section apply to Facilities-based Licensees. All provisions in this Section except Sub-sections 5.4.2, 5.4.3, 5.7.5 and 5.7.6 apply to Services-based Licensees that use switching or routing equipment to provide telecommunication services to the public.
- (b) In this Section, the term:
  - (i) “Licensee” refers to Facilities-based Licensees and Services-based Licensees that use switching or routing equipment to provide telecommunication services to the public; and
  - (ii) “Dominant Licensee” refers to Facilities-based Licensees that IDA has classified as dominant.

#### **5.1.2 Over-view**

In order to ensure the deployment of an integrated “network of networks” that provides seamless any-to-any communications throughout Singapore, Licensees are required to co-operate with each other in the manner specified in this Section.

### **5.2 Duty to Interconnect With Other Licensees**

Licensees have a duty to interconnect with other Licensees. Interconnection may be either direct or indirect. IDA generally will not involve itself in interconnection negotiations between Non-dominant Licensees. Every Interconnection Agreement must be in writing.

### **5.3 Duty to Submit to IDA All Interconnection Agreements**

- (a) Licensees must submit to IDA a copy of all Interconnection Agreements into which they enter.
  - (i) Where one of the parties is a Dominant Licensee, the Licensees must provide that their Interconnection Agreement will not be effective until approved by IDA.

- (ii) Where neither party is a Dominant Licensee, the Licensees may provide that their Interconnection Agreement will be effective upon submission to IDA. If the Licensees include such a provision, they must further provide that the Interconnection Agreement will remain effective unless IDA informs the Licensees in writing, within 21 days of the date of submission, that it rejects the Interconnection Agreement. If the Licensees do not want to include the above provisions, they must provide that their Interconnection Agreement will not be effective until approved by IDA.
- (b) IDA will not publicly disclose Interconnection Agreements between Non-dominant Licensees.

#### **5.4 Minimum Duties for Interconnection Agreements**

- (a) Where neither party is a Dominant Licensee, IDA will not reject any Interconnection Agreement that fulfils the Minimum Interconnection Duties specified in Sub-sections 5.4 through 5.4.8 of this Code (additional requirements applicable to Interconnection Agreements involving a Dominant Licensee are contained in Section 6 of this Code).
- (b) In any case in which IDA rejects an Interconnection Agreement, it will direct the Licensees to make the necessary changes. Where one of the Licensees is a Dominant Licensee, the Licensees must make the required changes, unless both Licensees agree to withdraw the Interconnection Agreement. Where neither of the Licensees is a Dominant Licensee, the Licensees must make the required changes, unless either Licensee determines that it wants to withdraw the Interconnection Agreement.

##### **5.4.1 Duty to Establish Compensation Agreements for the Origination, Transit and Termination of Telecommunication Traffic**

The Interconnection Agreement must establish compensation arrangements governing the origination, transit and/or termination of telecommunication traffic. The Licensees may enter into any mutually acceptable compensation arrangement.

##### **5.4.2 Duty to Provide Non-discriminatory Interconnection Quality**

Where the Interconnection Agreement obligates a Facilities-based Licensee to provide direct interconnection to another Licensee, unless the Licensees expressly agree otherwise, the Interconnection Agreement must

provide that the Facilities-based Licensee will provide sufficient points of interconnection and take other measures to ensure that, on a service-by-service basis, the services that the Facilities-based Licensee provides to other Licensees pursuant to any Interconnection Agreement are at least equivalent in quality to the quality that the Facilities-based Licensee provides to itself, its Affiliates or to any other Licensee.

#### **5.4.3 Duty to Prevent Technical Harm to the Network**

Where the Interconnection Agreement obligates a Facilities-based Licensee to directly interconnect with another Licensee, the Interconnection Agreement must provide that the interconnecting Licensees will take reasonable measures to ensure that the interconnection does not cause physical or technical harm to each other's network.

#### **5.4.4 Duty to Provide Billing Information**

The Interconnection Agreement must provide that the Licensees will provide each other with information within their possession that is necessary to allow them to provide accurate and timely billing to each other and to any other Licensee.

#### **5.4.5 Duty to Preserve Confidential Information Provided by Other Licensees**

The Interconnection Agreement must provide that each Licensee will:

- (a) protect from disclosure any confidential or proprietary information provided by the other Licensee in the course of negotiating or implementing an Interconnection Agreement;
- (b) use such information only for the provision of the specific Interconnection Related Services requested by the other Licensee; and
- (c) adopt appropriate procedures to ensure that the information is not used for the development or marketing of other telecommunication services or equipment by the Licensee, its Affiliates or third parties.

#### **5.4.6 Duty to Obtain IDA Approval for Suspension or Termination**

- (a) The Interconnection Agreement must include a statement of the bases, if any, for which unilateral suspension or termination will be permitted. This can include situations where:

- (i) one party has materially breached the agreement including, but not limited to, repeated failure to make required payments;
  - (ii) one party has become insolvent;
  - (iii) continued operation of the agreement would be unlawful;  
or
  - (iv) continued operation of the agreement would pose an imminent threat to life or property.
- (b) The Interconnection Agreement also must provide that any unilateral suspension or termination, unless by operation of law, will only become effective when, and to the extent that, it is approved by IDA.

#### **5.4.7 Duty to Amend**

The Interconnection Agreement must provide that the Licensees will amend the Interconnection Agreement to incorporate any additional or modified Minimum Interconnection Duty that IDA adopts during the term of the Interconnection Agreement.

#### **5.4.8 Duty to Comply with Singapore Law**

The Interconnection Agreement must provide that it will be governed by the laws of the Republic of Singapore.

### **5.5 Enforcement of Interconnection Agreements**

Once an Interconnection Agreement becomes effective, IDA generally will not involve itself in the day-to-day implementation of the Interconnection Agreement.

#### **5.5.1 Duty to Co-operate**

Licensees have a duty to co-operate, in good faith and in a commercially reasonable manner, in implementing the terms of their Interconnection Agreements, avoiding unnecessary disputes and resolving disputes promptly and fairly.

#### **5.5.2 Private Enforcement**

Interconnection Agreements are private contracts between the Licensees. IDA will not resolve disputes arising out of Interconnection Agreements

between Non-dominant Licensees. If the Non-dominant Licensees are unable to resolve any dispute regarding the implementation of their Interconnection Agreements, they may agree to binding arbitration or may seek relief from a court of competent jurisdiction. However, to the extent that the dispute turns on an interpretation of the Telecommunications Act, any subsidiary legislation made under it, any decision of IDA, or any provision of this Code, the Non-dominant Licensees may ask IDA to provide an interpretation.

## **5.6 Modification, Suspension or Termination of Interconnection Agreements**

Whilst Interconnection Agreements will generally remain effective throughout their specified term, IDA recognises that there may be situations in which the parties will agree to modify, suspend or terminate such Interconnection Agreements.

### **5.6.1 Modification, Suspension or Termination by Mutual Agreement**

The following provisions govern the modification, suspension or termination of Interconnection Agreements by mutual agreement:

#### **5.6.1.1 Modification by Mutual Agreement**

- (a) An Interconnection Agreement may be modified at any time by mutual agreement of the Licensees.
  - (i) Where one of the parties is a Dominant Licensee, the Licensees must provide that the modification will not be effective unless approved by IDA.
  - (ii) Where neither party is a Dominant Licensee, the Licensees may provide that the modification will be effective upon submission to IDA. If the Licensees include such a provision, they must further provide that the modification will remain effective unless IDA informs the Licensees within 21 days from the date of submission that the Interconnection Agreement, as modified, no longer complies with the Minimum Interconnection Duties specified in Sub-sections 5.4 through 5.4.8 of this Code. If the Licensees do not want to include the above provisions, they must provide that the modification will not be effective unless approved by IDA.
- (b) In any case in which IDA rejects a modification, it will direct the Licensees to make the necessary changes. Where one of the

Licensees is a Dominant Licensee, the Licensees must make the required changes, unless both Licensees agree to withdraw the modification. Where neither of the Licensees is a Dominant Licensee, the Licensees must make the required changes, unless either Licensee determines that it wants to withdraw the modification.

#### **5.6.1.2 Suspension or Termination by Mutual Agreement**

An Interconnection Agreement may be suspended or terminated at any time by the mutual agreement of the Licensees. Upon any such suspension or termination, the Licensees must immediately notify IDA in writing and provide the reasons for the suspension or termination.

#### **5.6.2 Unilateral Suspension or Termination of Interconnection Agreements**

Except where imminent threats to life or property or compliance with other legal or regulatory obligations require immediate action, prior to unilaterally suspending or terminating an Interconnection Agreement, the Licensee that seeks to take such action must seek IDA's prior written approval of the action it proposes to take and provide the reason why it believes such action is appropriate. Upon reviewing such proposal, IDA will provide the other Licensee with an opportunity to submit its view regarding the proposed suspension or termination of the Interconnection Agreement. IDA will issue its decision, within 45 days of the initial notification, granting or denying, in whole or in part, the request. Any unilateral suspension or termination will only become effective when, and to the extent that, it is approved by IDA.

### **5.7 Other Duties**

Even in the absence of an Interconnection Agreement, all Licensees have the following duties:

#### **5.7.1 Duty to Disclose Interfaces**

A Licensee must make publicly available, in a clear format and in sufficient detail, any physical and logical interfaces of its network necessary to allow the development and deployment of telecommunication services, value-added services and telecommunication equipment that can interconnect to, and interoperate with, that Licensee's network. A Licensee must also make publicly available, not less than 6 months prior to deployment, any changes in logical or physical interfaces that could materially affect existing interconnection arrangements. A Licensee must not disclose this information to any Affiliate, whether licensed or not,



prior to the time that the Licensee makes this information available to the public.

### **5.7.2 Duty to Comply With Mandatory Technical Standards**

IDA recognises the potential benefits of adoption of technical standards. IDA will consult with the telecommunication industry to determine when such technical standards should be made mandatory. Licensees must comply, within a reasonable period, with any applicable mandatory technical standard adopted by IDA or, in the absence of such technical standards, with the technical standards adopted by the International Telecommunication Union (“ITU”). In the absence of an IDA or ITU technical standard, Licensees may provide any service or deploy any equipment that complies with a technical standard adopted by an official standards setting body, or that complies with an established industry specification or has been deployed by another Licensee without resulting in operational or other harm.

### **5.7.3 Duty to Facilitate Change of Service Providers**

Licensees must take any reasonable action necessary to allow an End User that chooses to obtain service from a different Licensee to do so with minimum difficulty. This includes the duty, where technically feasible, to allow the End User to retain the same telephone number or network address and to continue to receive service using the same local loop.

### **5.7.4 Duty to Assist in the Provision of Integrated Printed Directories and Directory Enquiry Service**

A Licensee that provides voice telephony service over a wireline network must exchange the name, address and telephone number of its End Users with other wireline Licensees for the purpose of providing an integrated printed directory and directory enquiry service. Licensees must update this information periodically. Licensees receiving this information may use it solely for the purpose of providing printed directory or directory enquiry services. In particular, Licensees receiving this information may not use this information for marketing or other competitive purposes.

### **5.7.5 Duty to Reject Discriminatory Preferences Regarding Support Facilities**

A Facilities-based Licensee that is affiliated, directly or indirectly, with a non-licensed entity that controls towers, ducts or similar support facilities may not request or accept access to those facilities and any related services on prices, terms and conditions that are not available to all Facilities-based Licensees.

### **5.7.6 Duty to Reject Discriminatory Preferences Regarding Space and Support at End User Premises**

A Facilities-based Licensee may not request or accept any special preference from a building owner or manager regarding the provision of space or support facilities for the Facilities-based Licensee's network equipment, where such preference would as a practical matter preclude additional Facilities-based Licensees from providing competing telecommunication services to the building occupants. In addition, a Facilities-based Licensee that places in the common space of a building equipment used to provide telecommunication services must, upon request from another Facilities-based Licensee that wants to place its equipment in the same space, take reasonable measures to allow the other Facilities-based Licensee to share the available space, when necessary to allow the competitive provision of telecommunication services. This may include reconfiguring its equipment in a manner that optimises the use of the common space.

## **6. INTERCONNECTION WITH DOMINANT LICENSEES**

### **6.1 Introduction**

#### **6.1.1 Application**

All provisions in this Section apply to Dominant Facilities-based Licensees. All provisions in this Section except Sub-sections 6.3 through 6.3.7 apply to Non-dominant Facilities-based Licensees and Services-based Licensees that use switching or routing equipment to provide telecommunication services to the public. In this Section, the term:

- (a) “Licensee” refers to Facilities-based and Services-based Licensees that use switching or routing equipment to provide telecommunication services to the public; and
- (b) “Dominant Licensee” refers to Facilities-based Licensees that IDA has classified as dominant.

#### **6.1.2 Over-view**

IDA strongly encourages Licensees to enter into Interconnection Agreements through commercial negotiations. IDA recognises, however, that it cannot rely solely on market forces to ensure that Dominant Licensees enter into Interconnection Agreements. IDA, therefore, will take a more active role in ensuring the adoption of just, reasonable and non-discriminatory Interconnection Agreements involving a Dominant Licensee.

### **6.2 Options for Entering into an Interconnection Agreement**

A Dominant Licensee must provide Interconnection Related Services and Mandated Wholesale Services to other Licensees. A Licensee (“Requesting Licensee”) that seeks to obtain these services from a Dominant Licensee may do so by using any of the following 3 options:

#### **6.2.1 Option 1: Interconnection Pursuant to an Approved Reference Interconnection Offer**

A Requesting Licensee may obtain Interconnection Related Services and Mandated Wholesale Services from a Dominant Licensee on the terms specified in a Reference Interconnection Offer (“RIO”) developed by the Dominant Licensee and approved by IDA. The Dominant Licensee must offer the RIO for a period of 3 years. By separate notice in the *Government Gazette*, IDA will specify the commencement date for the 3-year period. Thereafter, prior to the expiry of the 3-year period, IDA may

by notice in the *Government Gazette* specify any further 3-year period for which the Dominant Licensee must offer the RIO to Requesting Licensees. The general requirements of the RIO are specified in Sub-sections 6.3.1 through 6.3.6 of this Code. IDA may require the Dominant Licensee to modify the RIO prior to the expiry of the 3-year period following the triennial review of this Code pursuant to Sub-section 1.6.1 or at any other appropriate time.

### **6.2.2 Option 2: Interconnection Pursuant to an Existing Interconnection Agreement**

A Licensee may obtain Interconnection Related Services and Mandated Wholesale Services from a Dominant Licensee on the same prices, terms and conditions that the Dominant Licensee has agreed to with another similarly situated Licensee in any Interconnection Agreement. For the purposes of this Section, a Services-based Licensee and a Facilities-based Licensee will not be deemed to be similarly situated. The Interconnection Agreement between the Requesting Licensee and the Dominant Licensee will terminate on the day the agreement that the Requesting Licensee “opted-into” terminates.

### **6.2.3 Option 3: Interconnection Pursuant to an Individualised Interconnection Agreement**

A Licensee may obtain Interconnection Related Services and Mandated Wholesale Services from a Dominant Licensee pursuant to the prices, terms and conditions of an Individualised Interconnection Agreement between the 2 parties. Such agreements may be arrived at through voluntary negotiations or via the dispute resolution process specified in Sub-sections 6.4.3 through 6.4.3.3 of this Code.

## **6.3 The Reference Interconnection Offer**

The following provisions govern a Dominant Licensee’s RIO:

### **6.3.1 Duty to Develop a Reference Interconnection Offer**

Within 60 days of being directed to do so by IDA, Dominant Licensees must submit a proposed RIO to IDA for approval.

### **6.3.2 Services That Must be Offered under RIO**

- (a) By separate notice in the *Government Gazette*, IDA will specify the Interconnection Related Services and Mandated Wholesale Services that the Dominant Licensee must offer under the RIO, including the applicable requirements by which the Dominant

Licensee must provide these services. IDA may specify a limited period during which the Dominant Licensee must offer these services.

- (b) IDA may, at any appropriate time, review and revise (by adding to, eliminating from or modifying) the list of Interconnection Related Services and Mandated Wholesale Services, and their applicable requirements (including prices, terms and conditions), by issuing a notice in the *Government Gazette*. In each case, IDA will seek public comment prior to adopting any modification.
- (c) IDA will require a Dominant Licensee to offer a service as a Mandated Wholesale Service where IDA concludes that:
  - (i) the service is a necessary input for the provision of competitive telecommunication services in Singapore; and
  - (ii) providing the service is sufficiently costly or difficult that requiring other Licensees to do so would create a significant barrier to the provision of competitive telecommunication services in Singapore by an efficient competitor.

### **6.3.3 Substantive Requirements of RIO**

The RIO must comply with the following substantive requirements:

#### **6.3.3.1 Absolute Prohibition on Discrimination**

A Dominant Licensee must offer to provide all Interconnection Related Services and Mandated Wholesale Services to Requesting Licensees on prices, terms and conditions that are no less favourable than the prices, terms and conditions on which it provides comparable services to itself, its Affiliates or other Customers.

#### **6.3.3.2 RIO Must be Clear, Complete and Modular**

- (a) The RIO must:
  - (i) contain a comprehensive and complete written statement of the prices, terms and conditions on which the Dominant Licensee is prepared to provide Interconnection Related Services and Mandated Wholesale Services to any Requesting Licensee (including a complete technical description of the Interconnection Related Services and Mandated Wholesale Services offered, the procedures that

will be used to order and provide such services, and the timeframes that will apply);

- (ii) be clearly written and must be organised in a logical and consistent manner;
  - (iii) be modular, allowing a Requesting Licensee to purchase only those Interconnection Related Services and Mandated Wholesale Services that it wants to obtain;
  - (iv) be sufficiently detailed to enable a Requesting Licensee that is willing to accept its prices, terms and conditions to obtain Interconnection Related Services and Mandated Wholesale Services without having to engage in negotiations with the Dominant Licensee; and
  - (v) comply with the specific requirements contained in Appendix 1 of this Code.
- (b) If a Requesting Licensee accepts the RIO, further discussions will be limited to implementing the accepted prices, terms and conditions. Such discussions should last no more than 30 days.

### **6.3.3.3 Additional Required Terms**

In addition, the RIO must contain the following:

- (a) a description of the quality of service that the Dominant Licensee will provide – including the means by which quality of service will be measured, any short-comings corrected, and the manner in which the Requesting Licensee will be compensated for any adverse impact resulting from the Dominant Licensee’s material failure to meet the quality of service standards;
- (b) a description of any operational and technical requirements that the Requesting Licensee must comply with to avoid harm to the Dominant Licensee’s network;
- (c) a description of the means by which the Dominant Licensee will provide information (including call type, duration, and points of origination and termination) necessary to allow the Requesting Licensee to bill for telecommunication services that it provides to its End Users;
- (d) a statement of the terms on which the Dominant Licensee will protect confidential information provided by the Requesting

Licensee, and the terms on which the Dominant Licensee requires the Requesting Licensee to protect its confidential information, in connection with any Interconnection Agreement – including a description of the standards to be used to determine whether information is confidential;

- (e) a description of the means by which the Dominant Licensee will work with the Requesting Licensee to enable its End Users to keep their current telephone numbers or network address if they switch to the telecommunication services provided by the Requesting Licensee;
- (f) a description of the means by which a Requesting Licensee can order currently available Interconnection Related Services and Mandated Wholesale Services on an unbundled basis – including the contact person, the expected number of days from order to provisioning, the means by which provisioning will be monitored (including quality of service testing procedures), the procedures for reporting operational and technical problems, the procedures and timeframes for correcting any such problems and the means by which the Dominant Licensee will compensate the Requesting Licensee for any material adverse impact resulting from unreasonable delays;
- (g) where applicable, information regarding the availability of Interconnection Related Services – including the address of each exchange, the geographical boundaries of the area served by each exchange, the extent to which copper loops are available at each exchange – and the procedures that the Dominant Licensee will use to notify the Requesting Licensee in the event any Interconnection Related Service will cease to become available at any location;
- (h) the means by which the Requesting Licensee can request additional Interconnection Related Services not currently specified in the RIO – including the timeframe, procedures, processes and standards that the Dominant Licensee will use to assess such requests;
- (i) a list and description of any reasonable restriction or condition that the Dominant Licensee intends to impose on the terms of the offer contained in the RIO – including any situations in which capacity, technical or operational constraints will limit the ability of the Dominant Licensee to meet requests for Interconnection Related Services and Mandated Wholesale Services, and any situation in which a Dominant Licensee will not offer (or will limit or

condition an offer of) interconnection to a Licensee or class of Licensees;

- (j) a provision stating that the Licensees will refer disputes regarding interconnection arising from the implementation of the Interconnection Agreement to IDA for resolution and will seek IDA's written approval before unilaterally suspending or terminating the Interconnection Agreement;
- (k) statements that:
  - (i) if the RIO is accepted, the Interconnection Agreement will constitute the entire agreement between the Licensees;
  - (ii) if any provision of the Interconnection Agreement is held to be unlawful or is required to be amended, that all other provisions of the agreement will survive;
  - (iii) any disputes between the Licensees will be governed by the laws of Singapore, including this Code;
  - (iv) the Dominant Licensee will not unreasonably withhold consent from a Licensee seeking to assign its rights and obligations to another Licensee; and
- (l) any other provision required to be included in an Interconnection Agreement to satisfy the Minimum Interconnection Duties specified in Sub-sections 5.4 through 5.4.8.

#### **6.3.4 Pricing of Interconnection Related Services and Mandated Wholesale Services**

The relevant pricing methodologies are described in Appendix 1 of this Code. In particular:

- (a) The prices at which a Dominant Licensee offers to provide all Interconnection Related Services pursuant to its RIO must be cost-based. The Dominant Licensee must use the pricing methodology specified by IDA, pursuant to Appendix 1 of this Code.
- (b) Where a Dominant Licensee is required by IDA to provide a Mandatory Wholesale Service, IDA will specify the applicable pricing methodology to be adopted by the Dominant Licensee, pursuant to Appendix 1 of this Code.



### **6.3.5 Modification and Duration of RIO Agreement**

The Dominant Licensee must provide that:

- (a) unless IDA authorises the Dominant Licensee to withdraw its RIO and terminate any Interconnection Agreement adopted pursuant to its RIO, any Interconnection Agreement arrived at by accepting the RIO shall be effective for such period as the Dominant Licensee is required to offer the RIO to Requesting Licensees under Sub-section 6.2.1 of this Code; and
- (b) the prices, terms and conditions contained in any Interconnection Agreement arrived at by accepting the RIO will be effective for the duration of the Interconnection Agreement unless either:
  - (i) the Dominant and Requesting Licensees agree to modify their Interconnection Agreement pursuant to Sub-section 5.6.1.1 of this Code (in which case, the parties' Interconnection Agreement will be treated as an Individualised Interconnection Agreement for the purposes of this Code); or
  - (ii) IDA directs the Dominant Licensee to modify any provision of its RIO, in which case the Licensees must amend the Interconnection Agreement to conform to the modifications in the RIO.

### **6.3.6 IDA Review of the Proposed RIO**

- (a) IDA will review the proposed RIO to determine whether it satisfies the requirements specified in Sub-sections 6.3.2 through 6.3.5 of this Code (including the requirements specified by IDA in the *Government Gazette* pursuant to Sub-section 6.3.2 of this Code), and serves the public interest. IDA will promptly seek public comments regarding the proposed RIO, which must be filed within 30 days from the date on which IDA seeks comments. If IDA does not act within 60 days from the date on which it received the proposed RIO, the proposed RIO will be deemed approved unless, prior to the 75<sup>th</sup> day, IDA notifies the Dominant Licensee that it requires an additional 30 days for its review.
- (b) If IDA rejects any portion of the proposed RIO, it will provide the Dominant Licensee with a written explanation of the basis for the rejection and the modifications required to bring the proposed RIO into compliance with IDA's requirements. The Dominant Licensee will have 30 days from the date on which IDA provides

notification to submit a revised proposed RIO that incorporates the modifications required by IDA. IDA will have 30 days from the date on which it receives the revised proposed RIO to approve the RIO or direct the Dominant Licensee to incorporate specific language.

- (c) A Dominant Licensee must notify IDA and obtain IDA's written approval before making any changes to its RIO.

### **6.3.7 Model Confidentiality Agreement**

- (a) Within 15 days of being directed to do so by IDA, the Dominant Licensee must submit a Model Confidentiality Agreement to IDA for approval. The Model Confidentiality Agreement must contain provisions, which must be no broader than necessary to protect the Licensees' legitimate commercial interests, governing preservation of proprietary or commercially sensitive information disclosed by either Licensee during any negotiation related to the adoption of an Individualised Interconnection Agreement. This must include provisions barring either Licensee from disclosing confidential information to Affiliates or third parties, except to the extent necessary to adopt and implement the Individualised Interconnection Agreement under negotiation.
- (b) IDA will provide 10 days for public comment and, within 21 days from the submission of the proposed Model Confidentiality Agreement, will accept, reject or require modification to the proposed Model Confidentiality Agreement. The Dominant Licensee will have 7 days from the date IDA provides notification to submit a revised proposed Model Confidentiality Agreement that incorporates the modifications required by IDA. IDA will have 7 days from the date on which it receives the revised proposed Model Confidentiality Agreement to approve the Model Confidentiality Agreement or direct the Dominant Licensee to incorporate specific language.
- (c) A Dominant Licensee must notify IDA and obtain IDA's written approval before making any changes to its Model Confidentiality Agreement.

### **6.4 Interconnection Pursuant to an Individualised Interconnection Agreement**

A Requesting Licensee may seek to enter into an Individualised Interconnection Agreement with a Dominant Licensee through the parties'

voluntary negotiations, and if unable to do so, via the dispute resolution process specified in Sub-sections 6.4.3 through 6.4.3.3 of this Code.

#### **6.4.1 The Negotiation Process**

The following procedures govern the Licensees' voluntary negotiations:

##### **6.4.1.1 Request for Negotiation**

The Requesting Licensee must submit to the Dominant Licensee a written request to negotiate an Individualised Interconnection Agreement ("Request"). The Request must specify the Interconnection Related Services and/or Mandated Wholesale Services requested, designate a contact person and propose a time and place for initial negotiations.

##### **6.4.1.2 Notification to IDA**

At the time it submits the Request to the Dominant Licensee, the Requesting Licensee must submit a copy of the Request to IDA.

##### **6.4.1.3 Initiation of Negotiations**

Unless the Licensees agree otherwise, they must begin negotiations within 7 days after the submission of the Request.

##### **6.4.1.4 Confidentiality Agreement**

The Licensees may enter into a confidentiality agreement governing the negotiation process. If they fail to agree to a confidentiality agreement within 15 days of the receipt of the Request, both Licensees must adopt the Model Confidentiality Agreement referred to in Sub-section 6.3.7 of this Code, if either Licensee requests to do so.

##### **6.4.1.5 Duty to Negotiate in Good Faith**

The Dominant Licensee and the Requesting Licensee each have a duty to negotiate in good faith. The Dominant Licensee must not refuse to provide any Interconnection Related Service and/or Mandated Wholesale Service. However, the parties may agree that the Dominant Licensee will provide these services on prices, terms and conditions that differ from those in the Dominant Licensee's RIO.

##### **6.4.1.6 Interim Interconnection Pursuant to the RIO**

At the time it submits its Request, the Requesting Licensee may require the Dominant Licensee to provide interconnection pursuant to the prices,

terms and conditions of the RIO, pending the outcome of the requested negotiations. The Licensees must negotiate appropriate arrangements governing the transition from the RIO to the prices, terms and conditions of their Individualised Interconnection Agreement.

#### **6.4.1.7 IDA Conciliation**

For the purposes of facilitating the parties' negotiation in reaching a voluntary Individualised Interconnection Agreement, the Licensees may request IDA to provide Conciliation, pursuant to Sub-section 11.2 of this Code.

#### **6.4.2 Voluntary Agreements**

The following provisions govern the adoption of an Individualised Interconnection Agreement by voluntary agreement:

##### **6.4.2.1 Terms of Agreement**

The Licensees are free to enter into an Individualised Interconnection Agreement on any mutually agreeable price, term and condition, provided that they satisfy the Minimum Interconnection Duties specified in Sub-sections 5.4 through 5.4.8 of this Code and do not unreasonably discriminate against any other Licensee.

##### **6.4.2.2 IDA Review**

- (a) The Individualised Interconnection Agreement must specify that it will be submitted to, and will not become effective until approved by, IDA. If IDA takes no action within 21 days after the agreement is submitted to it, the agreement will be deemed approved. IDA will only reject or modify a voluntary Individualised Interconnection Agreement if it determines that the agreement does not fulfil the Minimum Interconnection Duties specified in Sub-sections 5.4 through 5.4.8 of this Code or discriminates unreasonably against any other Licensee.
- (b) In any case in which IDA rejects an Individualised Interconnection Agreement, it will direct the Licensees to make the necessary changes. In such cases, the Licensees must make the required changes, unless both Licensees agree to withdraw the Individualised Interconnection Agreement.

### **6.4.3 Agreements Arrived at via Dispute Resolution**

If the Dominant and Requesting Licensees fail to voluntarily reach agreement regarding the Individualised Interconnection Agreement within 90 days of the date on which the Requesting Licensee submitted its Request, either Licensee may request IDA to resolve the dispute pursuant to the Dispute Resolution Procedure specified in Sub-section 11.3 of this Code.

#### **6.4.3.1 Scope of the Dispute Resolution Procedure**

Provided that they satisfy the Minimum Interconnection Duties specified in Sub-sections 5.4 through 5.4.8 of this Code, and do not unreasonably discriminate against any other Licensee, IDA will not re-open any issues on which the Licensees have reached agreement. Instead, the dispute resolution will be limited to those issues on which the Licensees are unable to reach agreement.

#### **6.4.3.2 Standards to be Applied**

Any decision resolving a dispute referred by the Licensees will require compliance with the Minimum Interconnection Duties specified in Sub-sections 5.4 through 5.4.8 of this Code. To the extent that an issue in dispute is addressed by the prices, terms and conditions of the Dominant Licensee's approved RIO, IDA will apply those provisions. To the extent that an issue in dispute is not addressed by the RIO, IDA retains full discretion to impose any solution that it deems appropriate (including solutions not advocated by either Licensee).

#### **6.4.3.3 Implementation of Dispute Resolution Decision by Licensees**

Within 15 days of the date on which IDA issues its decision, the Licensees must submit to IDA an Interconnection Agreement that complies with the decision. IDA will have 15 days to either approve the Interconnection Agreement or to direct the parties to amend the agreement by including provisions specified by IDA that fully implement its decision.

### **6.5 Publication of Interconnection Agreements**

All Interconnection Agreements involving a Dominant Licensee will be published by IDA. However, IDA, on its own motion or at the request of either of the Licensees, may withhold from publication any portion of an Interconnection Agreement if IDA determines that it contains proprietary or commercially sensitive information.

## **6.6 Enforcement of Agreements**

In the event of a dispute arising out of any Interconnection Agreement with a Dominant Licensee:

- (a) both parties may request IDA to provide Conciliation, pursuant to Sub-section 11.2 of this Code; and
- (b) either party may request IDA to resolve the dispute pursuant to the Dispute Resolution Procedure specified in Sub-section 11.3 of this Code. If IDA declines to intervene, the Licensees may resolve the dispute in any mutually agreeable manner.

## **7. INFRASTRUCTURE SHARING**

### **7.1 Introduction**

#### **7.1.1 Application**

All provisions in this Section apply to Facilities-based Licensees. In this Section, the term “Licensee” refers to Facilities-based Licensees.

#### **7.1.2 Over-view**

In general, a Licensee is not required to “share” the use of any infrastructure that it controls with its competitors. Instead, each Licensee is expected to build or lease the use of the infrastructure that it requires. However, where IDA finds that specific infrastructure constitutes Critical Support Infrastructure as defined in Sub-section 7.3.1 of this Code, or where IDA concludes that it is in the public interest, IDA may mandate that a Licensee share the use of the infrastructure with other Licensees.

### **7.2 Definition of Sharing**

Infrastructure sharing refers to an arrangement under which a Licensee that controls infrastructure used to support the provision of telecommunication services allows other Licensees to jointly use the same infrastructure, at cost-based prices, on non-discriminatory terms and conditions.

### **7.3 Standards by Which IDA Will Determine Whether to Require Sharing**

IDA will use the following standards to determine whether any infrastructure must be shared:

#### **7.3.1 Critical Support Infrastructure**

IDA will require sharing of any infrastructure that it determines is Critical Support Infrastructure (“CSI”). IDA will not deem an infrastructure to be CSI based solely on evidence that allowing a Licensee that wants to share the infrastructure would reduce its costs, or allow it to provide telecommunication services more expediently. Instead, IDA will only deem the infrastructure to constitute CSI if it concludes that:

- (a) the infrastructure is required to provide telecommunication services;

- (b) an efficient new entrant would neither be able to replicate the infrastructure within the foreseeable future, nor obtain it from a third-party through a commercial transaction, at a cost that would allow market entry;
- (c) the Licensee that controls the infrastructure has sufficient current capacity to share with other Licensees;
- (d) the Licensee that controls the infrastructure has no legitimate justification for refusing to share the infrastructure with other Licensees; and
- (e) failure to share the infrastructure would unreasonably restrict competition in any telecommunication market in Singapore.

### **7.3.2 Public Interest**

In certain cases, IDA may determine that the public interest requires that infrastructure to be shared. For example, the deployment of certain types of infrastructure by multiple Licensees could have significant adverse environmental impact. Therefore, even if such infrastructure does not constitute CSI, IDA in consultation with other government agencies, may require the sharing of such infrastructure where appropriate.

## **7.4 Procedures for Requesting Sharing**

The following procedures govern requests by a Licensee (“Licensee Requesting Sharing”) to share infrastructure controlled by another Licensee:

### **7.4.1 Request to Licensee Controlling the Infrastructure**

The Licensee Requesting Sharing must first submit to the Licensee that controls the infrastructure a written request to negotiate an agreement to share the infrastructure (“Sharing Agreement”). The Licensees may jointly request IDA to provide Conciliation, pursuant to Sub-section 11.2 of this Code.

### **7.4.2 Request to IDA to Designate Infrastructure as Infrastructure That Must be Shared**

If the Licensees are unable to reach a voluntary Sharing Agreement within 60 days after the Licensee Requesting Sharing sends the request to the other Licensee, the Licensee Requesting Sharing may (but is not required to) submit a written request to IDA (“Sharing Request”). The Licensee Requesting Sharing must provide a clear explanation of the specific



infrastructure that it seeks to share, the means by which it proposes to share it, and the reasons why it believes it should be given a right to share the infrastructure at cost-based prices. The Licensee Requesting Sharing must provide the Licensee that controls the infrastructure with a copy of the Sharing Request at the same time that the Licensee Requesting Sharing provides the Sharing Request to IDA. IDA will provide public notice upon receipt of any Sharing Request and, where the Sharing Request raises issues likely to be of concern to other parties, IDA will provide an opportunity for public comments.

#### **7.4.3 Response by Licensee**

Unless IDA dismisses the Sharing Request on its own motion, the Licensee that controls the infrastructure will have 15 days from the date on which the Sharing Request is filed with IDA to submit to IDA a written reply. The Licensee must simultaneously provide a copy of the reply to the Licensee Requesting Sharing. The Licensee must respond to all points made by the Licensee Requesting Sharing, and must provide a full explanation as to the reasons why it does not believe it should be required to share the requested infrastructure at cost-based prices, or, if the Licensee acknowledges that it should be required to share the requested infrastructure at cost-based prices, a full explanation as to the reasons why it has been unable to reach an agreement regarding prices, terms and conditions of sharing.

#### **7.4.4 Timing of IDA Decision**

IDA may request either Licensee to submit additional information, pursuant to the information gathering and confidentiality provisions contained in Sub-sections 11.6 and 11.7 of this Code. Within 60 days of receiving all necessary information, IDA will issue its decision as to whether the Licensee that controls the infrastructure is required to share it with the Licensee Requesting Sharing and any other Licensee. IDA will require the infrastructure to be shared if it concludes that the infrastructure constitutes CSI as defined by Sub-section 7.3.1 of this Code.

#### **7.5 Designation by IDA of Infrastructure That Must be Shared**

- (a) IDA, on its own initiative, may designate infrastructure as infrastructure that must be shared if IDA determines that:
  - (i) the infrastructure constitutes CSI as defined by Sub-section 7.3.1 of this Code; or
  - (ii) the public interest requires the infrastructure to be shared.

- (b) Prior to designating infrastructure as infrastructure that must be shared, IDA will generally seek public comments. IDA will provide notification as to the specific infrastructure (or categories of infrastructure) that must be shared, and the basis on which sharing is imposed.

### **7.5.1 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); and
- (c) lead-in ducts and associated manholes.

### **7.6 Implementation of Decisions of IDA**

The following procedures must be used to implement IDA's decision or designation:

#### **7.6.1 Voluntary Negotiations**

Once IDA has decided or designated a specific infrastructure to be shared, the Licensee that controls such infrastructure must, when requested by any Licensee, negotiate a Sharing Agreement. The parties must negotiate in good faith.

#### **7.6.2 Dispute Resolution Procedure**

If the Licensees are unable to reach a mutually acceptable Sharing Agreement within 60 days after the date on which IDA issues its decision, the Licensee Requesting Sharing may request IDA to resolve the dispute in accordance with the Dispute Resolution Procedure specified in Sub-section 11.3 of this Code. Pending resolution of the dispute, IDA may require infrastructure sharing on an interim basis.

#### **7.6.3 Compensation for Sharing**

Where the Licensees are not able to reach agreement regarding compensation for infrastructure sharing, IDA will establish cost-based, non-discriminatory rates using the costing methodology described in Appendix 1, where appropriate.

## **8. UNFAIR METHODS OF COMPETITION**

### **8.1 Introduction**

#### **8.1.1 Application**

All provisions in this Section apply to Dominant Licensees. Sub-sections 8.1.1 through 8.1.2 and Sub-sections 8.3 through 8.4.2.3 apply to all Licensees. In this Section, the term “Licensee” refers to Facilities-based, Services-based and Telecommunication Equipment Dealer Licensees.

#### **8.1.2 Over-view**

Once a Licensee has complied with the applicable provisions contained in Sections 3 through 7 of this Code, IDA generally will not intervene in a Licensee’s day-to-day operations. However, Licensees must not act in a manner that can impede competition. Where this occurs, IDA (either on its own motion or at the request of a private party) may initiate an enforcement action, pursuant to the procedures set out in Section 11 of this Code. This Section provides standards that IDA will use to determine whether a Licensee has contravened this Code by acting anti-competitively.

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

A Dominant Licensee must not use its position in the telecommunication market in Singapore in a manner that unreasonably restricts, or is likely to unreasonably restrict, competition in any telecommunication market in Singapore. The following Sub-sections provide examples of practices that would constitute an abuse of dominant position:

#### **8.2.1 Pricing Abuses**

A Dominant Licensee must not price services in a manner that is likely to unreasonably restrict competition. In particular, a Dominant Licensee must not engage in the following types of anti-competitive pricing:

##### **8.2.1.1 Predatory Pricing**

A Dominant Licensee must not engage in predatory pricing. IDA will find that a Dominant Licensee has engaged in predatory pricing and, therefore, has abused its dominant position, if:

- (a) the Dominant Licensee is selling its service at a price that is less than average variable cost;

- (b) the Dominant Licensee’s pricing is likely to drive efficient rivals from the market or deter future efficient rivals from entering the market; and
- (c) entry barriers are so significant that, after driving rivals from the market or deterring entry, the Dominant Licensee could impose an increase in prices sufficient (in amount and duration) to enable the Dominant Licensee to recoup the full amount of the loss that it incurred during the period of price cutting.

#### **8.2.1.2 Price Squeezes**

A Dominant Licensee must not engage in price squeezing. IDA will find that a Dominant Licensee has engaged in a price squeeze and, therefore, has abused its dominant position, if the Dominant Licensee provides a telecommunication service or facility that a “down-stream” Licensee requires in order to provide a telecommunication service, at a price that is so high that the Dominant Licensee’s down-stream business or Affiliate could not profitably sell its product if it were required to pass on to its customers the full retail price of the service or facility.

#### **8.2.1.3 Cross-subsidisation**

A Dominant Licensee must not engage in cross-subsidisation. IDA will find that a Dominant Licensee has engaged in cross-subsidisation and, therefore, has abused its dominant position, if the Dominant Licensee uses revenues from the provision of a telecommunication service that is not subject to effective competition to cross-subsidise the price of any telecommunication service and equipment that is subject to effective competition where this would unreasonably restrict competition in any telecommunication market in Singapore. To prevent such abuses, the Dominant Licensee must comply with separate regulations and guidelines issued by IDA requiring accounting separation, the correct allocation of costs between competitive and non-competitive operations, and the use of arm’s length transactions between competitive and non-competitive operations.

#### **8.2.2 Other Abuses**

A Dominant Licensee is also precluded from abusing its position by means other than anti-competitive pricing. In particular, a Dominant Licensee must not engage in the following practices:

### **8.2.2.1 Discrimination**

A Dominant Licensee must not engage in discrimination. IDA will find that a Dominant Licensee has engaged in discrimination and, therefore, has abused its dominant position, if the Dominant Licensee provides its Affiliate with access to infrastructure, systems, services, or information that, as a practical matter, are necessary to non-affiliated Licensees to provide telecommunication services, on prices, terms or conditions that are more favourable than the prices, terms and conditions on which the Dominant Licensee provides those infrastructure, systems, services or information to Licensees that are not Affiliates.

### **8.2.2.2 Predatory Network Alteration**

A Dominant Licensee must not engage in predatory network alteration. IDA will find that a Dominant Licensee has engaged in predatory network alteration and, therefore, has abused its dominant position, if the Dominant Licensee alters the physical or logical interfaces of its network in a manner that imposes significant costs on interconnected Licensees, absent a legitimate business, operational or technical justification.

## **8.3 Anti-competitive Preferences**

- (a) A Licensee that is affiliated with an entity that has Significant Market Power (whether in the provision of a telecommunication service or a non-telecommunication service), or that has Significant Market Power in a non-telecommunication market, is prohibited from using the market position of its Affiliate, or of its non-telecommunication business, in a manner that enables it to, or is likely to enable it to, unreasonably restrict competition in any telecommunication market in Singapore. Entities with Significant Market Power may include:
  - (i) Licensees;
  - (ii) Non-licensed entities within Singapore; and
  - (iii) Non-licensed entities located outside Singapore.
- (b) In particular, a Licensee must not engage in any of the following practices:
  - (i) A Licensee that uses an input, that is provided by an Affiliate that has Significant Market Power in the market for an input that other Licensees require in order to provide a telecommunication service, must not obtain the input at a

price that is so high that efficient competing non-affiliated Licensees could not profitably sell their end-product if they were required to purchase the input at the same price as the Licensee.

- (ii) A Licensee may not accept any cross-subsidisation from an Affiliate that has Significant Market Power, where this would enable the Licensee to engage in predatory pricing, as defined in Sub-section 8.2.1.1 of this Code.
- (iii) A Licensee that is affiliated with an entity that has Significant Market Power and that controls infrastructure, systems, services, or information that, as a practical matter, are necessary to provide telecommunication services, may not accept access to the infrastructure, systems, services, or information unless the Affiliate offers to the Licensee's competitors access to those infrastructure, systems, services, or information on non-discriminatory prices, terms and conditions.

## **8.4 Unfair Methods of Competition**

### **8.4.1 General Prohibition**

A Licensee must not engage in unfair methods of competition. An unfair method of competition is an improper practice by which a Licensee seeks to obtain a competitive advantage for itself or an Affiliate in the telecommunication market in Singapore, for reasons unrelated to the availability, price or quality of the service that the Licensee or its Affiliate offers. The following Sub-sections provide examples of practices that would constitute unfair methods of competition:

### **8.4.2 Specific Prohibited Practices**

The following practices constitute unfair methods of competition and are specifically prohibited:

#### **8.4.2.1 Degradation of Service Availability or Quality**

A Licensee must not take any action, or induce any other party to take any action, that has the effect of degrading the availability or quality of another Licensee's telecommunication service or equipment, or raising the other Licensee's costs, without a legitimate business, operational or technical justification.

#### **8.4.2.2 Provision of False or Misleading Information to Competitors**

Whilst Licensees are not required to disclose proprietary or commercially sensitive information to their competitors, a Licensee must not provide information to other Licensees that is false or misleading.

#### **8.4.2.3 Improper Use of Information Regarding a Competing Licensee's Customers**

A Licensee that receives information from another Licensee about the other Licensee's Customers in order to fulfil any duty under this Code must not use that information for any purpose other than the purpose for which it was provided. In particular, the Licensee must not use the information that it receives to market services to the other Licensee's Customers or otherwise interfere in the other Licensee's existing relationship with its Customers.

## **9. AGREEMENTS INVOLVING LICENSEES THAT UNREASONABLY RESTRICT COMPETITION**

### **9.1 Introduction**

#### **9.1.1 Application**

All provisions in this Section apply to Facilities-based Licensees, Services-based Licensees and Telecommunication Equipment Dealer Licensees. In this Section, the term “Licensee” refers to Facilities-based, Services-based and Telecommunication Equipment Dealer Licensees.

#### **9.1.2 Over-view**

IDA will not routinely review agreements entered into by Licensees (other than Interconnection Agreements). However, pursuant to the procedures in Section 11 of this Code, IDA may take enforcement action (on its own motion or pursuant to a request from a private party) against any Licensee that enters into an agreement with another Licensee or any non-licensed entity that has the effect of unreasonably restricting competition in the telecommunication service or equipment market in Singapore. Certain types of agreements are so clearly anti-competitive that IDA will determine that a Licensee that has entered into such an agreement has contravened the Code, regardless of the actual competitive effects of the agreement. IDA will assess whether other agreements contravene the Code based on their likely competitive effects. If IDA determines that an agreement contravenes the Code, it may:

- (a) direct the Licensee to revise the agreement to eliminate the contravening terms or terminate the agreement; and/or
- (b) take any other appropriate enforcement action.

### **9.2 Determining the Existence of an Agreement**

For the purposes of this Section, an agreement can be established in any of 3 ways. First, an agreement can be established through direct evidence of an express agreement, such as a signed document. Second, an agreement can be established using circumstantial evidence that demonstrates the existence of an express agreement. Finally, an agreement may be tacit (*i.e.*, even in the absence of an actual agreement, Licensees may co-ordinate their production and pricing decisions in order to reduce aggregate output and raise market prices). IDA will not find a tacit agreement where Licensees have done nothing more than make similar output and pricing decisions, which could reflect an efficient response to changing market conditions. Instead, IDA will only find that there has



been a tacit agreement if the Licensees have employed “signalling devices,” such as the sharing of price and output information, and that these devices have facilitated co-ordinated behaviour.

For the purposes of this Section, an arrangement between a Licensee and an Affiliate over which it can exercise effective control (*i.e.* the ability to cause the Affiliate to take, or prevent the Affiliate from taking, a decision regarding the management and major operating decisions of the Licensee) does not constitute an agreement. Nor does this Section restrict the ability of a Licensee to enter into an arrangement with another entity in which the second entity acts as a *bona fide* agent of the Licensee.

### **9.3 Agreements Between Licensees Providing Competing Telecommunication Services and Equipment (Horizontal Agreements)**

The following provisions are applicable to agreements between or amongst Licensees that provide, or have the potential to provide, competing telecommunication services (“Competing Licensees”):

#### **9.3.1 General Prohibition**

Competing Licensees are prohibited from entering into agreements that unreasonably restrict, or are likely to unreasonably restrict, competition in any telecommunication market in Singapore.

#### **9.3.2 Specific Prohibited Agreements**

The following types of agreements between or amongst Competing Licensees constitute unreasonable restrictions of competition and are specifically prohibited, even in the absence of evidence of anti-competitive effect:

##### **9.3.2.1 Price Fixing/Output Restrictions**

Competing Licensees must not enter into agreements to fix prices or restrict output, regardless of the levels to which the Licensees agree.

##### **9.3.2.2 Bid Rigging**

Competing Licensees must not enter into agreements to co-ordinate separate bids for assets, resources or rights auctioned by IDA, or for any input into the Licensees’ services or for the provision by the Licensee of any telecommunication services or equipment, regardless of the price levels to which the Licensees agree.

### **9.3.2.3 Market and Customer Divisions**

Competing Licensees must not enter into agreements not to compete to provide telecommunication services or equipment to specific Customers or not to compete in specific areas, regardless of the terms and conditions on which the Licensees agree.

### **9.3.2.4 Group Boycotts**

Competing Licensees must not agree to refuse to do business with a specific supplier, competitor or Customer.

### **9.3.3 Agreements Necessary for Legitimate Collaborative Ventures**

Nothing in Sub-sections 9.3.2.1 through 9.3.2.4 of this Code prohibits agreements amongst Competing Licensees that are ancillary to efficiency-enhancing integration of economic activity, where such agreements are no broader than necessary to achieve the pro-competitive benefit. For example, if Licensees establish a joint purchasing or production venture designed to increase total output and lower prices, the permissibility of an agreement between the 2 Licensees regarding the prices to be paid or charged by the joint venture would be assessed, pursuant to Sub-sections 9.4 through 9.4.3 of this Code, based on its likely or actual competitive effects.

### **9.4 Agreements Between Competing Licensees That Will be Assessed Based on Their Actual or Likely Competitive Effects**

Unlike the types of agreements described in Sub-sections 9.3.2.1 through 9.3.2.4 of this Code, many agreements between competitors have the potential to increase competition. Such agreements include joint agreements to produce inputs used by multiple Licensees, to produce telecommunication services and equipment sold to Customers, to jointly market telecommunication services and equipment, to jointly purchase inputs or to engage in joint research and development activities. If such agreements are challenged in an enforcement proceeding, IDA will assess whether the agreements contravene this Code based on their actual or likely effect on competition.

- (a) Where there is evidence that the agreement actually has unreasonably restricted competition, IDA will find it to be in contravention of this Code.
- (b) Where there is no evidence of actual market effect because the agreement is relatively recent, IDA will determine the permissibility of the agreement by seeking to assess whether it is

likely to unreasonably restrict competition. In conducting this assessment, IDA will consider the following factors:

#### **9.4.1 Business Purpose of the Agreement**

In reviewing an agreement, IDA will make a preliminary assessment of its likely competitive impact (*i.e.*, IDA will attempt to determine whether the agreement is likely to lead to reductions in output and increase prices of telecommunication services). If the agreement is between or amongst a small number of Non-dominant Licensees, and the business purpose of the agreement appears to be to increase output and reduce prices, IDA will generally conclude, without conducting any further analysis, that the agreement does not contravene this Code.

#### **9.4.2 Likelihood of Competitive Harm**

Where an agreement involves a more significant number of Non-dominant Licensees, or a Dominant Licensee, or where the agreement has the potential to result in higher prices or reductions in output of telecommunication services or equipment, IDA will conduct a more detailed assessment. In particular, IDA will consider the following factors:

- (a) whether (and, if so, to what extent) the Licensees retain the ability to act independently of the agreed-upon venture;
- (b) the duration of the agreement;
- (c) whether, in the event the Licensees acted anti-competitively, new entry into the market would be likely, sufficient and timely enough to deter or counter-act any competitive harm; and
- (d) any other factors that help predict the likely competitive effect of the agreement.

If, after assessing these factors, IDA concludes that the agreement poses no risk of competitive harm, IDA will conclude that the agreement does not contravene this Code.

#### **9.4.3 Efficiencies**

If IDA's review demonstrates that the agreement has the potential to result in a restriction of output or an increase in prices of telecommunication services and equipment, IDA will consider whether the agreement is necessary to achieve efficiencies, which are likely to be passed on to Customers. Such efficiencies could include reductions in the cost of

developing, producing, marketing and delivering telecommunication services and equipment. If such efficiencies offset the potential anti-competitive effect, and could not reasonably be achieved through measures that reduce competition to a lesser extent, IDA will conclude that the agreement does not contravene this Code. If such efficiencies do not offset the potential anti-competitive effects, or could reasonably be achieved through measures that reduce competition to a lesser extent, IDA will conclude that the agreement contravenes this Code.

## **9.5 Agreements Between Licensees and Entities That Are Not Direct Competitors (Non-horizontal Agreements)**

The following provisions apply to agreements between a Licensee and other entities (whether or not licensed) that are not Competing Licensees, such as suppliers or distributors:

### **9.5.1 General Prohibition**

Licensees are prohibited from entering into agreements with entities (whether licensed or not) that are not Competing Licensees, which unreasonably restrict, or are likely to unreasonably restrict, competition in any telecommunication market in Singapore.

### **9.5.2 Agreements That Will be Assessed Based on Competitive Effects**

The permissibility of the following agreements will be based on their likely effect on competition:

#### **9.5.2.1 Resale Price Maintenance**

A Licensee must not agree with another Licensee as to the price that the second Licensee can charge Customers to which it resells the first Licensee's telecommunication service where this unreasonably restricts, or is likely to unreasonably restrict, competition in any telecommunication market in Singapore.

#### **9.5.2.2 Vertical Market Allocation**

A Licensee must not assign specific Customers to, or allocate specific markets amongst, Licensees that resell its services, where this unreasonably restricts, or is likely to unreasonably restrict, competition in any telecommunication market in Singapore.

### **9.5.2.3 Exclusive Dealing**

A Licensee must not enter into an agreement in which one entity agrees to:

- (a) supply goods or services to;
- (b) purchase goods or services from; or
- (c) distribute goods or services produced by,

the other entity on an exclusive basis, where this unreasonably restricts, or is likely to unreasonably restrict, competition in any telecommunication market in Singapore.

**[IDA has incorporated the following proposed Section 10 in this revised proposed Code 2004 for purposes of completeness only. As IDA has previously conducted two rounds of public consultation regarding changes in ownership and consolidations, IDA will not accept any further comment on this Section 10.]**

**10. CHANGES IN OWNERSHIP AND CONSOLIDATIONS INVOLVING DESIGNATED TELECOMMUNICATION LICENSEES**

**10.1 Introduction**

**10.1.1 Application**

This Section applies to:

- (a) Facilities-based Licensees and Services-based Licensees that IDA has declared to be a Designated Telecommunication Licensee pursuant to Section [XX] of the Telecommunications Act; and
- (b) any Acquiring Party (whether licensed or non-licensed) that engages in a transaction that results in a Consolidation with a Designated Telecommunication Licensee.

**10.1.2 Definitions**

As used in this Section:

- (a) “Acquiring Party” includes an individual, association or legal entity that acquires an Ownership Interest in a Licensee, or otherwise engages in any transaction that results in a Consolidation with a Licensee.
- (b) “Applicant” means a Licensee and an Acquiring Party (whether or not a Licensee) that has filed a Consolidation Application with IDA.
- (c) “Conditions” means those obligations that IDA may require the Applicants to agree to as a pre-requisite for IDA’s approval of their Request or Consolidation Application.
- (d) “Consolidation” means a merger, asset acquisition or any other transaction that results in previously separate economic entities becoming a single economic entity. This may occur where, an Acquiring Party:
  - (i) obtains Effective Control over a Licensee; or

- (ii) acquires the business of a Licensee as a going concern.
- (e) “Effective Control” means the ability to cause the Licensee to take, or prevent the Licensee from taking, a decision regarding the management and major operating decisions of the Licensee. IDA will presume that an Acquiring Party that holds an Ownership Interest of at least 30 percent in a Licensee has the ability to exercise Effective Control over the Licensee.
- (f) “Licensee” means a Facilities-based Licensee or a Services-based Licensee that IDA has declared to be a Designated Telecommunication Licensee pursuant to Section [XX] of the Telecommunications Act.
- (g) “Open Market Transaction” means the purchase of shares traded on a securities exchange, whether located in Singapore or elsewhere, and includes the acquisition of shares by means of a Tender Offer.
- (h) “Ownership Interest” means an Acquiring Party’s Direct Ownership Interest or Indirect Ownership Interest in a Licensee, but does not include any acquisition of Ownership Interest that is exempted pursuant to Sub-section 10.3.2 of this Code:
  - (i) An Acquiring Party’s Direct Ownership Interest in a Licensee will be equal to the percentage of the Licensee’s voting shares in which the Acquiring Party has a legal or equitable ownership interest.
  - (ii) An Acquiring Party’s Indirect Ownership Interest in a Licensee will be determined using the “sum-the-percentages” methodology. This methodology will be applied successively at each level of the “ownership chain”. Thus, if Entity A (the Acquiring Party) has legal or beneficial ownership of 100 percent of the voting shares of Entity B, and Entity B has legal or beneficial ownership of 50 percent of the voting shares of Entity C, and Entity C has legal or beneficial ownership of 50 percent of the voting shares of a Licensee, then Entity A will be deemed to have a 25 percent Indirect Ownership Interest in the voting shares of the Licensee.
- (i) “Request” means any application for approval submitted pursuant to Sub-section 10.3.6.2, 10.3.6.3.1, or 10.3.6.3.2 of this Code.

- (j) “Share Buyback” means a purchase by a Licensee of any portion of its issued shares held by its shareholders pursuant to the necessary shareholder or general meeting authority, regardless of whether those shares are traded on a securities exchange.
- (k) “Tender Offer” means an offer made to the public to acquire some or all of the shares of any Licensee whose shares are traded on a securities exchange.

### **10.1.3 Over-view**

In many cases, parties seek to acquire an Ownership Interest in a Licensee, even if that Ownership Interest would not result in the Acquiring Party being able to exercise Effective Control over the Licensee. In some cases, the Acquiring Party may seek to acquire a sufficiently significant Ownership Interest, or engage in other transactions, that result in the Licensee ceasing to operate as a separate economic entity. In many cases, such transactions can have pro-competitive effects, such as creating economies of scale and scope. In other cases, however, such transactions may harm competition. For example, such transactions could create an entity that is not subject to competitive market forces or could facilitate unlawful collusion amongst competing Licensees.

This Section:

- (a) establishes the criteria and procedure for designating certain Services-based Licensees as Designated Telecommunication Licensees;
- (b) describes a Licensee’s obligation to notify, and/or seek written approval from, IDA in connection with the acquisition of an Ownership Interest in the Licensee that would result in an entity holding an Ownership Interest in the Licensee of at least 5 percent;
- (c) describes a Licensee and an Acquiring Party’s obligation to seek IDA’s written approval in connection with a transaction that results in a Consolidation; and
- (d) describes the means by which IDA can obtain information from a Licensee and/or an Acquiring Party, the Conditions that IDA may impose and the circumstances under which IDA may order divestiture of the voting shares in the Licensee.



#### **10.1.4 Consolidation Review Guidelines and Tender Offer Guidelines**

IDA has adopted, and may periodically revise, the Consolidation Review Guidelines and the Tender Offer Guidelines. The Consolidation Review Guidelines and the Tender Offer Guidelines are advisory in nature. The Consolidation Review Guidelines further elaborate the procedures and standards that IDA will apply in conducting a Consolidation Review. The Tender Offer Guidelines explain the procedures that an Acquiring Party must observe before making a Tender Offer where the Singapore Code on Take-overs and Mergers apply.

#### **10.2 Designation of Licensees**

Pursuant to Section [XX] of the Telecommunications Act, IDA will designate all Facilities-based Licensees and certain Services-based Licensees as Designated Telecommunication Licensees.

##### **10.2.1 Criteria for Designation**

IDA will designate a Services-based Licensee as a Designated Telecommunication Licensee in those cases in which IDA determines that the Services-based Licensee is a significant participant in a concentrated market.

IDA will presume that a Services-based Licensee is a significant participant in a concentrated market if the Licensee has a market share of at least 10 percent in the market for any service which IDA has licensed it to provide, and if the 3 largest participants in that market collectively have a market share in excess of 75 percent.

##### **10.2.2 Procedures for Designation**

Prior to designating any Services-based Licensee as a Designated Telecommunication Licensee, IDA will provide the Services-based Licensee with written notice regarding the basis on which IDA proposes to designate it as a Designated Telecommunication Licensee. The Services-based Licensee will have 30 days from the date of IDA's written notice to submit a written representation to IDA with supporting evidence as to why IDA should not make such a designation. Where appropriate, IDA may request the Services-based Licensee to submit additional information. Within 30 days of receiving all the necessary information, IDA will notify the Services-based Licensee of its determination. If IDA determines to designate the Services-based Licensee as a Designated Telecommunication Licensee, IDA's determination will become effective upon publication of the designation in the *Government Gazette*. A Designated Telecommunication Licensee may petition IDA, at any time,

for removal of its designated status. The Licensee must provide information demonstrating that it no longer meets the criteria specified in Sub-section 10.2.1 of this Code.

### **10.3 Duty of Licensees in Connection With Licence Assignments and Acquisitions of an Ownership Interest**

All Licensees must comply with the following provisions in connection with a Licence Assignment or acquisitions of an Ownership Interest in a Licensee:

#### **10.3.1 General Duty**

Every Licensee must:

- (a) notify IDA in connection with the acquisition of an Ownership Interest in the Licensee that would result in the Acquiring Party holding an Ownership Interest in the Licensee of at least 5 percent; and
- (b) seek IDA's approval in connection with:
  - (i) the assignment, transfer, subletting, or any disposal of its rights, duties, liabilities, obligations and privileges under its licence ("Licence Assignment"); or
  - (ii) the acquisition of an Ownership Interest in the Licensee that would result in the Acquiring Party holding an Ownership Interest in the Licensee of 12 percent or more.

#### **10.3.2 Exempted Transactions**

##### **10.3.2.1 Underwriters, Lenders, and Other Declared Persons**

Notwithstanding the above, an Acquiring Party and/or a Licensee need not provide any notification, Request or file a Consolidation Application in any case in which the Acquiring Party acquires an Ownership Interest in the Licensee or enters into a transaction that results in a Consolidation in its capacity as:

- (a) an underwriter or sub-underwriter, whose ordinary business includes the underwriting of securities, in relation to a public offering of shares in a Licensee;

- (b) a party whose ordinary business includes the lending of money if the Acquiring Party holds the Ownership Interest only as security in connection with a loan; or
- (c) any other category of persons that may be declared by IDA by notification in the *Gazette*.

In any case in which the Ownership Interest in, or the right to operate the business of the Licensee held by an Acquiring Party in one of the capacities specified in this Sub-section is subsequently acquired by another Acquiring Party which does not fall within any of the capacities specified in this Sub-section, the Licensee and/or the other Acquiring Party must comply with the provisions of Section 10 of this Code.

#### **10.3.2.2 Pro Forma Changes, Liquidations and Similar Transactions**

- (a) A Licensee need not seek IDA's approval in connection with:
  - (i) any transaction that constitutes a pro forma change; or
  - (ii) any transaction in which the Acquiring Party acquires an Ownership Interest in the Licensee in its capacity as a liquidator, Official Receiver, Official Assignee or Public Trustee.
- (b) IDA will find that a transaction constitutes a pro forma change where the transaction constitutes:
  - (i) the assignment of an Ownership Interest in a Licensee from an individual, individuals or a partnership to a corporation owned or controlled by the same individual, individuals or partnership without any change in each individual's or partnership's Ownership Interest in the Licensee;
  - (ii) the assignment of an Ownership Interest in a Licensee from a corporation to its individual shareholders without effecting any change in the shareholder's Ownership Interest in the Licensee;
  - (iii) the assignment of an Ownership Interest in a Licensee (or a Licence) from a parent corporation to a wholly owned subsidiary (whether direct or indirect), or from a wholly owned subsidiary (whether direct or indirect) to a parent corporation;

- (iv) the assignment of an Ownership Interest in a Licensee (or a Licence) from one corporation owned or controlled by an individual, individuals or partnerships to another corporation without any change in each individual's or partnership's Ownership Interest in the Licensee; or
  - (v) any similar transaction that does not alter the percentage of Ownership Interest that an individual, individuals, partnership or corporation holds in a Licensee.
- (c) In those cases in which the pro forma transaction involves the assignment of a Licence, the Licensee must comply with the applicable provisions in its Licence.
- (d) In all other cases, the Licensee must provide written notification to IDA within 5 working days of becoming aware of the transaction. The notification must include a brief description of the transaction and, in the case of a pro forma change, the basis on which the Licensee believes the transaction constitutes a pro forma change.

### **10.3.3 General Duty to Monitor**

Every Licensee must adopt reasonable procedures for monitoring changes in Ownership Interests in the Licensee. Licensees must comply with this obligation regardless of whether the changes in Ownership Interests in the Licensee are effected through:

- (a) an agreement with the Licensee;
- (b) an agreement with an entity that has a Direct Ownership Interest in a Licensee;
- (c) an agreement with an entity that has an Indirect Ownership Interest in a Licensee;
- (d) an Open Market Transaction that results in the acquisition of shares in a Licensee, by an entity that has a Direct Ownership Interest in a Licensee or an entity that has an Indirect Ownership Interest in a Licensee; or
- (e) any other transaction.

#### **10.3.4 Procedures in Connection with the Acquisition of an Ownership Interest in a Licensee Resulting in the Holding of an Ownership Interest in the Licensee of Less Than 5 Percent**

The following provisions apply in any case in which an Acquiring Party acquires an Ownership Interest in a Licensee, whether by a series of transactions over a period of time or not, that would result in the Acquiring Party holding an Ownership Interest in the Licensee of less than 5 percent:

##### **10.3.4.1 No Duty to Notify**

A Licensee need not notify IDA of the acquisition of an Ownership Interest in the Licensee that would result in the Acquiring Party holding an Ownership Interest in the Licensee of less than 5 percent.

##### **10.3.4.2 Presumption**

IDA will presume that an Acquiring Party that holds an Ownership Interest in a Licensee of less than 5 percent does not have the ability to use that Ownership Interest in a manner that would substantially lessen competition or in a manner that is contrary to public interest.

#### **10.3.5 Procedures in Connection with the Acquisition of an Ownership Interest in a Licensee Resulting in the Holding of an Ownership Interest in the Licensee of At Least 5 Percent, But Less Than 12 Percent**

A Licensee must comply with the following procedures in any case in which the Licensee becomes aware that an Acquiring Party has acquired an Ownership Interest in the Licensee, whether by a series of transactions over a period of time or not, that results in the Acquiring Party holding an Ownership Interest in the Licensee of at least 5 percent, but less than 12 percent:

##### **10.3.5.1 Duty to Notify IDA**

Within 5 working days of becoming aware that an Acquiring Party has acquired an Ownership Interest resulting in the Acquiring Party holding an Ownership Interest in the Licensee of at least 5 percent, but less than 12 percent, the Licensee must provide written notification to IDA. The notification must include the name (and, if known, the address and contact information) of the Acquiring Party, the percentage of the Ownership Interest that the Acquiring Party owned prior to the acquisition, and the percentage of the Ownership Interest that the Acquiring Party has acquired. Unless requested by IDA, the Licensee need not provide further

notification of any increase in that Acquiring Party's Ownership Interest, provided that the Acquiring Party's Ownership Interest in the Licensee does not equal or exceed 12 percent.

#### **10.3.5.2 Presumption**

IDA will presume that an Acquiring Party that holds an Ownership Interest in the Licensee of at least 5 percent, but less than 12 percent, is not likely to have the ability to use that Ownership Interest in a manner that would substantially lessen competition or in a manner that would be contrary to public interest.

#### **10.3.6 Procedures in Connection with the Acquisition of an Ownership Interest in a Licensee Resulting in the Holding of an Ownership Interest in the Licensee of At Least 12 Percent, But Less Than 30 Percent**

A Licensee must comply with the following procedures in any case in which a Party proposes to acquire, or has acquired, an Ownership Interest in the Licensee, whether by a series of transactions over a period of time or not, that would result in the Acquiring Party holding an Ownership Interest in the Licensee of at least 12 percent, but less than 30 percent.

For the avoidance of doubt, an Acquiring Party that has been granted written approval by IDA pursuant to this Sub-section may subsequently acquire further Ownership Interests in the Licensee without obtaining further written approval from IDA provided that the Acquiring Party's Ownership Interest in the Licensee remains less than 30 percent. In these cases, the Licensee must notify IDA of further acquisitions of any Ownership Interest. The notification must be provided within 5 working days of the acquisition of the Ownership Interest, and must include the name (and, if known, the address and contact information) of the Acquiring Party, the percentage of the Ownership Interest that the Acquiring Party owned prior to the acquisition, and the percentage of the Ownership Interest that the Acquiring Party has acquired.

##### **10.3.6.1 Presumption**

IDA will presume that an Acquiring Party that holds an Ownership Interest in a Licensee of at least 12 percent, but less than 30 percent, does not have the ability to exercise Effective Control over that Licensee. Therefore, IDA will presume that an acquisition of an Ownership Interest that results in the Acquiring Party holding an Ownership Interest in a Licensee of at least 12 percent, but less than 30 percent, would not constitute a Consolidation. However, in certain circumstances, an Acquiring Party that holds an Ownership Interest in this range could have

the ability to use that Ownership Interest in a manner that would substantially lessen competition or in a manner that is contrary to public interest. For example, a Licensee that has an Ownership Interest of at least 12 percent, but less than 30 percent in each of 2 competing Licensees could use its joint ownership to facilitate anti-competitive coordination between the 2 Licensees.

#### **10.3.6.2 Acquisition of Ownership Interest Via Privately Negotiated Agreements to Which the Licensee is a Party**

A Licensee that has entered into a privately negotiated agreement that allows an Acquiring Party to acquire an Ownership Interest in the Licensee that would result in the Acquiring Party holding an Ownership Interest in the Licensee of at least 12 percent, but less than 30 percent, must request for IDA's written approval, after it has entered into the agreement, but not less than 30 days before completion of the acquisition of the Ownership Interest by the Acquiring Party pursuant to that agreement. The agreement must provide that IDA's prior written approval must be obtained before the Acquiring Party can acquire the Ownership Interest. The Request must contain all information reasonably necessary for IDA to determine the likely impact of the acquisition on competition and the public interest, which must include:

- (a) the name, address and contact information of the Acquiring Party;
- (b) the percentage of Ownership Interest that the Acquiring Party:
  - (i) holds (if any) prior to the proposed acquisition; and
  - (ii) proposes to acquire;
- (c) any special or preferential rights granted to the Acquiring Party;
- (d) any anticipated significant changes in management or operations of the Licensee; and
- (e) the names of all Affiliates of the Licensee and the Acquiring Party.

Where the Acquiring Party does not want to provide confidential, commercially sensitive or proprietary information to the Licensee, the Acquiring Party may provide this information to IDA directly. IDA may request for additional information from the Licensee, if necessary. IDA will make a determination within 30 days of receiving all requested information. In exceptional cases, IDA will extend the review period and will provide the public with an opportunity to comment on the acquisition. IDA may approve the Request, reject the Request, or may approve the

Request subject to the imposition of safeguards, as provided for in Sub-sections 10.7.3 through 10.7.3.5 of this Code.

### **10.3.6.3 Acquisition of Ownership Interest by Other Means**

In some cases, an Acquiring Party may acquire an Ownership Interest that would result in the Acquiring Party holding an Ownership Interest in the Licensee of at least 12 percent, but less than 30 percent, by means other than entering into a privately negotiated agreement to which the Licensee is a party. This may occur when:

- (a) an Acquiring Party acquires a Direct Ownership Interest in a Licensee by:
  - (i) entering into a privately negotiated agreement with an entity that has a Direct Ownership Interest in a Licensee;
  - (ii) purchasing shares of the Licensee in an Open Market Transaction; or
- (b) an Acquiring Party acquires an Indirect Ownership Interest in a Licensee by:
  - (i) entering into a privately negotiated agreement with an entity that has an Indirect Ownership Interest in a Licensee; or
  - (ii) purchasing shares in an entity that has an Indirect Ownership Interest in a Licensee in an Open Market Transaction.

In such cases, either of the following procedures will apply:

#### **10.3.6.3.1 Scenario One: Provision of Advance Notice by An Acquiring Party**

The Acquiring Party may provide the Licensee with advance notice that it has entered into an agreement that would allow the Acquiring Party to acquire an Ownership Interest in the Licensee resulting in the Acquiring Party holding an Ownership Interest of at least 12 percent, but less than 30 percent. Where the Licensee receives such advance notice, the Licensee must file a Request for approval within 7 working days of receiving the notification.

In the case of a Tender Offer, the Acquiring Party and the Licensee must comply with the requirements specified in Sub-section 10.8.1 of this Code. In any case, the Licensee's Request must contain the information specified



in Sub-section 10.3.6.2 of this Code. Where the Acquiring Party does not want to provide confidential, commercially sensitive or proprietary information to the Licensee, the Acquiring Party may provide this information to IDA directly. IDA may request additional information from the Licensee, if necessary. IDA will make a determination within 30 days of receiving all requested information. IDA may approve the Request, reject the Request, or may approve the Request subject to the imposition of safeguards, as provided for in Sub-sections 10.7.3 through 10.7.3.5 of this Code. If IDA rejects the Request, IDA may require divestiture or take any action set out in Sub-section 10.9 of the Code.

#### **10.3.6.3.2 Scenario Two: Acquisition Without Provision of Advance Notice by An Acquiring Party**

If the Acquiring Party does not provide the Licensee with advance notice of its intent to acquire an Ownership Interest in the Licensee that would result in the Acquiring Party holding an Ownership Interest in the Licensee of at least 12 percent, but less than 30 percent, then, the Licensee must submit to IDA a Request for approval within 7 working days from the day on which the Licensee becomes aware of the acquisition of the Ownership Interest. The Request must contain the following information:

- (a) the name, address and contact information of the Acquiring Party;
- (b) the percentage of Ownership Interest that the Acquiring Party:
  - (i) held (if any) prior to the acquisition; and
  - (ii) has acquired;
- (c) any special or preferential rights granted to the Acquiring Party;
- (d) any anticipated significant changes in management or operations of the Licensee; and
- (e) the names of all Affiliates of the Licensee and the Acquiring Party.

Where the Acquiring Party does not want to provide confidential, commercially sensitive or proprietary information to the Licensee, the Acquiring Party may provide that information directly to IDA. IDA may request additional information from the Licensee, if necessary. IDA will make a determination within 30 days of receiving all requested information. IDA may approve the Request, reject the Request, or may approve the Request subject to the imposition of safeguards, as provided for in Sub-sections 10.7.3 through 10.7.3.5 of this Code. If IDA rejects the

Request, IDA may require divestiture or take any action set out in Sub-section 10.9 of this Code.

**10.3.6.4 Standard for Approval of a Request to Acquire an Ownership Interest Resulting in the Holding of an Ownership Interest in the Licensee of At Least 12 Percent But Less Than 30 Percent**

IDA will not approve a Request to acquire an Ownership Interest that would result in the Acquiring Party holding an Ownership Interest in the Licensee of at least 12 percent but less than 30 percent where IDA determines that the acquisition is likely to substantially lessen competition in any telecommunication market in Singapore or harm the public interest.

**10.3.6.5 Acquisition of an Ownership Interest in a Licensee Resulting in the Holding of an Ownership Interest in the Licensee of At Least 12 Percent, But Less Than 30 Percent, with Effective Control**

Notwithstanding the provisions of Sub-sections 10.3.6 through 10.3.6.3.2 of this Code, in any case in which an Acquiring Party seeks to acquire (or has acquired) an Ownership Interest that would result in the Acquiring Party holding an Ownership Interest in the Licensee of at least 12 percent, but less than 30 percent, and as a result, would be able (or is able) to exercise Effective Control over a Licensee, the Licensee and the Acquiring Party must jointly file a Consolidation Application. This may occur, for example, where an Acquiring Party would have the right to appoint a majority of the Licensee's Board of Directors or to veto certain management and major operating decisions of the Licensee. Where either party does not want to disclose confidential, commercially sensitive or proprietary information to the other party, the party may provide this information to IDA directly. However, in any case in which:

- (a) the Acquiring Party reasonably believes that the Licensee is likely to be opposed to the Consolidation;
- (b) either Party reasonably believes that the filing of a joint Consolidation Application would be unreasonably burdensome or infeasible; or
- (c) either Party can demonstrate that the other Party has refused to cooperate with it to file a joint Consolidation Application,

the Party may petition IDA for permission to file a separate Consolidation Application and IDA will inform both Parties of its decision. Where IDA grants permission, both Parties must file a separate Consolidation Application. Both Parties must comply with the provisions contained in Sub-sections 10.5 through 10.5.3 of this Code. If the Acquiring Party

acquires the Ownership Interest prior to such time, if ever, as IDA provides written approval, IDA may require divestiture or take any action set out in Sub-section 10.9 of this Code.

For the avoidance of doubt, an Acquiring Party that has been granted written approval by IDA pursuant to this Sub-section may subsequently acquire further Ownership Interests in the Licensee without obtaining further written approval from IDA. In these cases, the Licensee shall notify IDA of further acquisitions of any Ownership Interest. The notification must be provided within 5 working days of the acquisition of the Ownership Interest, and include the name (and, if known, the address and contact information) of the Acquiring Party, the percentage of the Ownership Interest that the Acquiring Party owned prior to the acquisition, and the percentage of the Ownership Interest that the Acquiring Party has acquired.

#### **10.4 Procedures in Connection with a Consolidation**

Except as provided in Sub-section 10.4.4 of this Code, the following procedures apply to any Consolidation involving a Licensee:

##### **10.4.1 IDA's Right to Approve All Consolidations**

- (a) IDA's approval must be obtained in connection with any Consolidation, whether effected through:
  - (i) the acquisition of an Ownership Interest in a Licensee, whether by a series of transactions over a period of time or not, that would result in the Acquiring Party holding an Ownership Interest in the Licensee of at least 30 percent;
  - (ii) the acquisition of the ability to exercise Effective Control of a Licensee with the acquisition of an Ownership Interest in the Licensee, that would result in the Acquiring Party holding an Ownership Interest of at least 12 percent, but less than 30 percent; or
  - (iii) the acquisition of the business of a Licensee as a going concern.
- (b) IDA will find that an Acquiring Party has acquired the business of a Licensee as a "going concern" where the Acquiring Party:
  - (i) acquires all or substantially all of the assets of the Licensee; and/or

- (ii) enters into an agreement pursuant to which it acquires the right to provide service to, and receive compensation from, the substantial majority of the Licensee's End Users.
- (c) A Consolidation may, but need not, result in the dissolution of an existing legal entity, the creation of a new legal entity or a Licence Assignment.
- (d) For the avoidance of doubt, an Acquiring Party that has been granted written approval by IDA in connection with any Consolidation effected through an acquisition of an Ownership Interest in the Licensee, may subsequently acquire further Ownership Interests in the Licensee without obtaining further written approval from IDA. In these cases, the Licensee shall notify IDA of further acquisitions of any Ownership Interest. The notification must be provided within 5 working days of the acquisition of the Ownership Interest, and include the name (and, if known, the address and contact information) of the Acquiring Party, the percentage of the Ownership Interest that the Acquiring Party owned prior to the acquisition, and the percentage of the Ownership Interest that the Acquiring Party has acquired.

#### **10.4.2 Consolidations Via Privately Negotiated Agreements to Which the Licensee is a Party**

In any case in which a Licensee that has entered into a privately negotiated agreement that results in a Consolidation with the Licensee, the Licensee and the Acquiring Party must jointly submit a Consolidation Application to IDA not prior to, but within 30 days after, the day on which they enter into a Consolidation Agreement. Where either party does not want to disclose confidential, commercially sensitive or proprietary information to the other party, the party may provide this information to IDA directly. The Consolidation Agreement must provide that IDA's prior written approval has to be obtained before the acquisition of the Ownership Interest, or the completion of any other transaction that would constitute a Consolidation, by the Acquiring Party. Both parties must comply with the provisions contained in Sub-sections 10.5 through 10.5.3 of this Code. The Licensee must not allow the acquisition of the Ownership Interest, or the completion of the transaction, until such time, as ever, as IDA provides its written approval.

#### **10.4.3 Consolidations By Other Means**

In some cases, an Acquiring Party may enter into an agreement that results in a Consolidation by means other than entering into a privately negotiated agreement to which the Licensee is a Party. This may occur when:

- (a) an Acquiring Party acquires a Direct Ownership Interest in a Licensee by:
  - (i) entering into a privately negotiated agreement with an entity that has a Direct Ownership Interest in a Licensee;
  - (ii) purchasing shares of the Licensee in an Open Market Transaction; or
- (b) an Acquiring Party acquires an Indirect Ownership Interest in a Licensee by:
  - (i) entering into a privately negotiated agreement with an entity that has an Indirect Ownership Interest in a Licensee; or
  - (ii) purchasing shares in an entity that has an Indirect Ownership Interest in a Licensee in an Open Market Transaction.

In such cases, either of the following procedures shall apply:

#### **10.4.3.1 Scenario One: Provision of Advance Notice by An Acquiring Party**

The Acquiring Party may provide the Licensee with advance notice that it has entered into an agreement that would allow the Acquiring Party to acquire an Ownership Interest in the Licensee resulting in the Acquiring Party holding an Ownership Interest of at least 30 percent. The Licensee and the Acquiring Party must jointly file a Consolidation Application within 30 days from the day on which the Acquiring Party provides the notification to the Licensee. Where either party does not want to disclose confidential, commercially sensitive or proprietary information to the other party, the party may provide this information to IDA directly.

In the case of a Tender Offer, the Acquiring Party and the Licensee must comply with the requirements specified in Sub-section 10.8.1 of this Code. However, in any case in which:

- (a) the Acquiring Party reasonably believes that the Licensee is likely to be opposed to the Consolidation;
- (b) either party reasonably believes that the filing of a joint Consolidation Application would be unreasonably burdensome or infeasible; or

- (c) either Party can demonstrate that the other Party has refused to cooperate with it to file a joint Consolidation Application,

the Party may petition IDA for permission to file a separate Consolidation Application and IDA will inform both Parties of its decision. Where IDA grants permission, both Parties must file a separate Consolidation Application. Both parties must comply with the provisions contained in Sub-section 10.5 through 10.5.3 of this Code. If the Acquiring Party acquires the Ownership Interest prior to such time, if ever, as IDA provides written approval, IDA may require divestiture or take any action set out in Sub-section 10.9 of this Code.

#### **10.4.3.2 Scenario Two: Acquisition Without Provision of Advanced Notice by An Acquiring Party**

If the Acquiring Party does not provide the Licensee with advance notice of its intent to acquire an Ownership Interest in the Licensee that would result in the Acquiring Party holding an Ownership Interest in the Licensee of at least 30 percent, then, within 5 working days of becoming aware that the Acquiring Party has acquired the Ownership Interest, the Licensee must notify the Acquiring Party regarding its obligation to file a Consolidation Application. The Licensee and the Acquiring Party must jointly file a Consolidation Application within 30 days of the day on which the Licensee becomes aware of the acquisition of the Ownership Interest by the Acquiring Party. Where either party does not want to disclose confidential, commercially sensitive or proprietary information to the other party, the party may provide this information to IDA directly. However, in any case in which:

- (a) the Acquiring Party reasonably believes that the Licensee is likely to be opposed to the Consolidation;
- (b) either Party reasonably believes that the filing of a joint Consolidation Application would be unreasonably burdensome or infeasible; or
- (c) either Party can demonstrate that the other Party has refused to cooperate with it to file a joint Consolidation Application,

the Party may petition IDA for permission to file a separate Consolidation Application and IDA will inform both Parties of its decision. Where IDA grants permission, both Parties must file a separate Consolidation Application. Both parties must comply with the provisions contained in Sub-sections 10.5 through 10.5.3 of this Code. If IDA rejects the Consolidation Application, IDA may require divestiture or take action set out in Sub-section 10.9 of this Code.

#### **10.4.4 Acquisition of an Ownership Interest of 30 Percent or More without Effective Control**

IDA will not find that a transaction constitutes a Consolidation in any case in which the Licensee demonstrates that the Acquiring Party cannot exercise Effective Control over the Licensee. In such cases, the Licensee and the Acquiring Party need not file a Consolidation Application. Instead, the Licensee must comply with the procedures specified in Sub-section 10.3.6.2 of this Code.

#### **10.4.5 Standard For Approval of A Consolidation Application**

IDA will not approve a Consolidation Application where IDA determines that the Consolidation is likely to substantially lessen competition in any telecommunication market in Singapore or harm the public interest. IDA will provide further guidance regarding the means by which it makes this assessment in its telecommunications Consolidation Review Guidelines.

#### **10.5 Procedures for Review of All Consolidations**

The following procedures are applicable in any case in which, pursuant to Sub-sections 10.3.6.5 through 10.4.3.2 of this Code, a Consolidation Application must be filed:

##### **10.5.1 Long Form Consolidation Application Procedure**

Except as provided in Sub-section 10.5.2.1 of this Code, Applicants required to submit a Consolidation Application must follow the procedure for submitting the Long Form Consolidation Application and must provide the information specified in Sub-sections 10.5.1.1 through 10.5.1.5 of this Code.

##### **10.5.1.1 Long Form Consolidation Application**

Applicants must complete and submit the Long Form Consolidation Application adopted by IDA.

##### **10.5.1.2 Consolidation Agreement and Ancillary Agreements**

Applicants must submit:

- (a) a copy of the Consolidation Agreement, including any appendices, side letters and supporting documents.
- (b) copies of all agreements that, while not directly addressing the Consolidation, are an integral part of the transaction (such as covenants not to compete or licensing agreements) or that are

necessary or useful for IDA to fully assess the likely competitive impact of the Consolidation.

Provided, however, that in any case in which the Licensee is not a party to the Consolidation Agreement or any other agreement as specified in Sub-section 10.5.1.2(b), the Acquiring Party shall provide these materials directly to IDA.

### **10.5.1.3 Description, Competitive Impact and Public Interest Statement**

Applicants must submit a statement that provides a clear, accurate and comprehensive description of the Consolidation, a good faith assessment of the likely impact of the Consolidation on competition in the telecommunication market in Singapore and a discussion of why approval of the Consolidation would serve the public interest (“Statement”). The competitive assessment should generally include information regarding:

- (a) the telecommunication markets in which the Applicants and their Affiliates participate;
- (b) the market participants;
- (c) the estimated market shares of the participants and the level of concentration in those markets;
- (d) the structure of the market (and the extent to which it facilitates unilateral anti-competitive conduct or concerted action by multiple participants);
- (e) the likelihood that output would be increased (either by existing market participants or new entrants) in response to a significant and non-transitory price increase;
- (f) the likelihood of End Users switching in response to a significant and non-transitory price increase; and
- (g) any efficiency that would likely result from the Consolidation.

Applicants should make reasonable and diligent efforts to collect and provide the necessary information.

### **10.5.1.4 Supporting Documentation**

Applicants should submit a copy of any supporting document that would assist IDA in assessing the likely competitive effect of the Consolidation. At the minimum, this must include:



- (a) a copy of the Applicants' current annual reports or audited financial statements;
- (b) a copy of the Applicants' business plans for the current and immediately previous years;
- (c) a copy of all reports, studies or analyses prepared for the shareholders, directors, or executive officers of the Applicants assessing the proposed Consolidation and describing the proposed operation of the economic Party that will be created as a result of IDA's approval of the Consolidation Application ("Post-Consolidation Entity"); and
- (d) a chart indicating the relationship between each Applicant and its Affiliates and the relevant ownership interests.

Applicants should indicate any situation in which the Ownership Interest grants the holder thereof a special or preferential right, and any pending change in the ownership structure of any of the Applicants in addition to the change that is the subject of their Consolidation Application.

#### **10.5.1.5 Proposed Conditions to Address Competitive Concerns**

Applicants must indicate whether they wish to propose any possible conditions for IDA's consideration (such as partial divestiture or the imposition of behavioural safeguards) that could reduce any potential adverse competitive impact of the Consolidation. If the Applicants choose to propose such conditions, they should provide a complete description of the proposed conditions and an assessment of why such conditions would be adequate to address any competitive concern that might arise from the Consolidation.

#### **10.5.2 Short Form Consolidation Application Procedure**

Where a Consolidation has met any of the requirements set out in Sub-section 10.5.2.1 of this Code, the Applicants must follow the procedures for submitting the Short Form Consolidation Application.

##### **10.5.2.1 Situations in Which a Short Form Consolidation Application May be Submitted**

- (a) Applicants required to submit a Consolidation Application may use the Short Form Consolidation Application procedure if:
  - (i) the Consolidation is a Horizontal Consolidation that will not result in the Post-Consolidation Entity having more

than a 15 percent share in the telecommunication market in Singapore; or

- (ii) the Consolidation is a Non-horizontal Consolidation in which none of the Applicants has more than a 25 percent share of any telecommunication market, whether in Singapore or elsewhere, in which it participates.

(b) As used in this Sub-section:

- (i) “Horizontal Consolidation” means a Consolidation involving 2 or more entities that are current competing providers of the same telecommunication services or telecommunication services that are reasonable substitutes; and
- (ii) “Non-horizontal Consolidation” means a Consolidation that involves 2 or more entities that are not current competitors.

#### **10.5.2.2 Short Form Consolidation Application**

Applicants using the Short Form Consolidation Application procedure must complete and submit the Short Form Consolidation Application adopted by IDA.

#### **10.5.2.3 Abbreviated Description, Competitive Impact and Public Interest Statement**

Applicants using the Short Form Consolidation Application procedure must submit an abbreviated statement that provides a clear, accurate and comprehensive description of the Consolidation, a good faith description of the basis on which the Applicants believe that the Consolidation does not raise significant competitive issues and a brief discussion of why the approval of the Consolidation would serve the public interest (“Abbreviated Statement”). The competitive assessment generally should include information regarding:

- (a) the telecommunication markets in which the Applicants and their Affiliates participate;
- (b) the market participants; and
- (c) the estimated market shares of the participants and the level of concentration in those markets.

Applicants should include any additional relevant information that demonstrates that the Consolidation would not be likely to substantially lessen competition and would serve the public interest. Applicants should make reasonable and diligent efforts to collect and provide the necessary information.

### **10.5.3 Consolidation Application Processing Fee**

Each Long Form Consolidation Application and each Short Form Consolidation Application must be accompanied by payment of a Consolidation Application Fee, in an amount to be specified by IDA.

### **10.5.4 Consolidation Review Period**

The following provisions govern the length of the Consolidation Review Period:

#### **10.5.4.1 Consolidation Review Period Does Not Begin Until Receipt of Complete Consolidation Application**

The Consolidation Review Period will be deemed to have begun on the day on which the Applicants first satisfies the applicable requirements specified in either Sub-section 10.5.1 or 10.5.2 of this Code.

#### **10.5.4.2 Length of Consolidation Review Period**

IDA will ordinarily complete its Consolidation Review within 30 days after the start of the Consolidation Review Period. IDA will seek to give expedited consideration to requests made in connection with Consolidations to be achieved through Open Market Transactions. In any case in which IDA determines that a Consolidation Application raises novel or complex issues, IDA will notify the Applicants that it intends to extend the Consolidation Review Period by up to 90 days, to a maximum of 120 days.

#### **10.5.4.3 Suspension of Consolidation Review Period Due to Failure to Adequately Respond to Supplemental Information Requests**

In any case in which IDA requests supplemental information, it will specify a reasonable period of time within which the Applicant(s) are to provide the supplemental information. If the Applicant(s) request additional time to comply with this request, or if they do not provide all supplemental information by the date specified, IDA will deem the Consolidation Review Period to have been suspended until such time as the Applicant(s) provide all specified supplemental information.

## **10.6 Information Gathering Procedures Applicable to Requests and Applications**

The following provisions apply to the gathering of information in connection with IDA's review of any Request to acquire an Ownership Interest that would result in the Acquiring Party holding an Ownership Interest in the Licensee of at least 12 percent or any Consolidation Application:

### **10.6.1 Public Consultation**

Where appropriate, IDA will provide the public with an opportunity to comment on a Request to acquire an Ownership Interest that would result in the Acquiring Party holding an Ownership Interest in the Licensee of at least 12 percent or a Consolidation Application. In those cases in which IDA seeks public comment in connection with a Consolidation, it will release the non-confidential portions of the Statement or Abbreviated Statement submitted by the Applicants. IDA will consider all submissions to be public documents, and will make the submissions available on IDA's website. However, a commenting party may seek confidential treatment of specific information that is proprietary or commercially sensitive by submitting a separate confidential appendix.

### **10.6.2 Duty to Update Pending Requests for Approval or Consolidation Applications to Reflect Material Changes**

During the period between the day on which a Licensee submits a Request, or the Applicants submit a Consolidation Application, and the day on which IDA issues its decision to approve, subject to Conditions or deny the Request or Consolidation Application, the Licensee or Applicants must promptly inform IDA, in writing, of any new or different fact or matter that is reasonably likely to have a material impact on IDA's consideration of the Request or Consolidation Application.

### **10.6.3 Requests for Information**

- (a) IDA may, pursuant to Sub-section 11.6 of this Code, request additional information from the Licensee or an Applicant in connection with IDA's review of the Consolidation Application.
- (b) A Licensee or an Applicant that believes that any such information request by IDA is unnecessary or overly broad, may submit a written request to IDA to reconsider or narrow the scope of the information request. The Licensee or Applicant should submit the reconsideration request to IDA within 5 working days of receiving the information request. The reconsideration request should

describe, in good faith and with specificity, the basis for the Licensee's or Applicant's objection and, where feasible, propose alternative means by which IDA can obtain the information necessary to assess the competitive impact of the Consolidation.

- (c) Upon receiving a request for reconsideration, IDA will deem the applicable period in which it is to take action to have been suspended on the day on which IDA initially makes the information request. The applicable period will resume either on the day on which IDA grants the reconsideration request or the day on which the requested information is submitted to IDA.

## **10.7 Actions by IDA in Connection with Requests and Applications**

In any case in which:

- (a) a Licensee files a Request for approval of the acquisition of an Ownership Interest that would result in the Acquiring Party holding an Ownership Interest in the Licensee of at least 12 percent, but less than 30 percent; or
- (b) a Licensee and an Acquiring Party file a Consolidation Application,

IDA will take one of the following actions, as appropriate:

### **10.7.1 Approval of Request and Consolidation Applications**

IDA may approve the Request or Consolidation Application in full, without Conditions.

### **10.7.2 Denial of Requests and Consolidation Applications**

IDA may deny the Request or Consolidation Application. If IDA does so, IDA will provide a written statement of the reasons for its denial.

In those cases in which:

- (a) a Licensee has filed a Request in connection with the acquisition of an Ownership Interest that would result in the Acquiring Party holding an Ownership Interest in the Licensee of at least 12 percent, but less than 30 percent; and
- (b) IDA concludes that the transaction constitutes a Consolidation,

IDA will deny the Request and will direct the Licensee and the Acquiring Party to submit a Consolidation Application within 30 days after the date on which the Request is denied.

### **10.7.3 Approval of Requests and Consolidation Application, Subject to Conditions**

IDA may approve the Request or Consolidation Application, subject to Conditions designed to reduce any anti-competitive harm or effect. Where IDA imposes Conditions, the Licensee or any of the Applicants will have 14 days from the date of IDA's decision to notify IDA as to whether they accept the Conditions or wish to withdraw their Request or Consolidation Application. Conditions that IDA may impose include:

#### **10.7.3.1 Non-discrimination Requirements**

As a condition of its approval of the Request or Consolidation Application, IDA may require the Licensee to agree that it will, or the Applicants to agree that the Post-Consolidation Entity will:

- (a) provide access to infrastructure, information or services to other Licensees, other entities or End Users on a reasonable and non-discriminatory basis; or
- (b) reject any preferential access to infrastructure, information or services from any specified entity.

IDA may also require the Licensee to agree that it will, or Applicants to agree that the Post-Consolidation Entity will, contract for independent audits to confirm compliance or to periodically self-certify its compliance.

#### **10.7.3.2 Accounting Separation**

As a condition of its approval of a Request or a Consolidation Application, IDA may require the Licensee to agree that it will, or Applicants to agree that the Post-Consolidation Entity will, account separately for revenues from operations that are subject to effective competition and operations that are not subject to effective competition, and to comply with rules governing allocation of joint costs and transactions between the competitive and non-competitive operations, in order to deter cross-subsidisation. IDA may require a Licensee to agree that it will, or Applicants to agree that the Post-Consolidation Entity will, contract for independent audits to confirm compliance or to periodically self-certify its compliance.

### **10.7.3.3 Structural Separation**

As a condition of its approval of a Request or Consolidation Application, IDA may require the Licensee to agree that it will, or the Applicants to agree that the Post-Consolidation Entity will, conduct certain operations through a structurally separate entity. The separate entity may be required to have separate books of accounts, separate facilities, separate officers, separate personnel, separate credit lines, and other appropriate forms of separation.

### **10.7.3.4 Voluntary Partial Divestiture of Assets to an Acceptable Purchaser**

As a condition of its approval of a Request or Consolidation Application, IDA may require any of the Applicants to agree to divest certain assets to an acceptable purchaser, in an arm's length transaction. In order for a voluntary partial divestiture to constitute an adequate remedy, the Applicants must agree to the following provisions. First, the divestiture must involve the sale of sufficient assets to eliminate the risk that the Consolidation will create, preserve or increase the Post-Consolidation Entity's ability to substantially lessen competition. Second, the divestiture must be made to an entity that, in IDA's reasonable opinion, has the ability and incentive to operate the divested assets as a viable, competitive business.

### **10.7.3.5 Other Pro-competitive Conditions**

IDA may impose other Conditions on approval of a Request or Consolidation Application that are designed to increase competition. These include Conditions designed to increase entry into telecommunication markets that are not yet fully competitive.

## **10.8 Special Provisions Applicable to Tender Offers and Share Buybacks**

The following provisions are applicable to an acquisition of an Ownership Interest of 12 percent or more through a:

- (a) Tender Offer; or
- (b) Share Buyback.

### **10.8.1 Tender Offers**

- (a) In the case where an Acquiring Party proposes to acquire a Direct Ownership Interest in a Licensee by a Tender Offer, which would result in that Acquiring Party holding an Ownership Interest of:

- (i) at least 12 percent but less than 30 percent, and the proposed acquisition does not constitute a Consolidation, the Acquiring Party must notify the Licensee that it proposes to acquire a Direct Ownership Interest in the Licensee by a Tender Offer. The Licensee must file a Request for approval with IDA in accordance with the process specified in Sub-section 10.3.6.3.1 of this Code and obtain IDA's written approval before the Acquiring Party makes the Tender Offer;
- (ii) at least 12 percent but less than 30 percent, and such acquisition amounts to a Consolidation, the Acquiring Party must notify the Licensee that it proposes to acquire a Direct Ownership Interest in the Licensee by a Tender Offer and that the acquisition amounts to a Consolidation. The Acquiring Party and the Licensee must jointly file a Consolidation Application with IDA in accordance with the process specified in Sub-section 10.4.3.1 of this Code and obtain IDA's prior written approval before the Acquiring Party makes the Tender Offer; or
- (iii) more than 30 percent, the Acquiring Party must notify the Licensee that it proposes to acquire a Direct Ownership Interest in the Licensee by a Tender Offer and that the acquisition amounts to a Consolidation. The Acquiring Party and the Licensee must jointly file a Consolidation Application with IDA in accordance with the process specified in Sub-section 10.4.3.1 of this Code and obtain IDA's written approval before the Acquiring Party makes the Tender Offer.

For the avoidance of doubt, the phrase "making the Tender Offer" shall include the making of any initial public announcement by the Acquiring Party relating to the Tender Offer.

- (b) Where either party does not want to disclose confidential, commercially sensitive or proprietary information to the other party, the party may provide this information to IDA directly.
- (c) In addition to the obligations specified in Sub-section 10.8.1(a) of this Code, the Tender Offer Guidelines will specify the procedures applicable to voluntary offers, mandatory offers and partial offers made pursuant to the Singapore Code on Take-overs and Mergers.
- (d) If the parties fail to obtain IDA's prior written approval in accordance with Sub-section 10.8.1(a) of this Code or in any other



case where an Acquiring Party acquires a Direct Ownership Interest in a Licensee that would result in the Acquiring Party holding an Ownership Interest in the Licensee of 12 percent or more pursuant to a Tender Offer without IDA's prior written approval, IDA may require divestiture or take any action set out in Sub-section 10.9 of this Code.

- (e) Where it is not possible for the Acquiring Party to comply with the provisions of this Sub-section 10.8.1 because doing so would conflict with the rules of the securities exchange on which the Licensee's shares are traded or where the provisions of this Sub-section 10.8.1 does not address any specific situations in connection with a Tender Offer, the Acquiring Party must seek IDA's guidance as to the appropriate course of action and procedures.

## **10.8.2 Share Buybacks**

The following procedures will apply in any case in which a Licensee engages in a Share Buyback:

- (a) The Licensee shall carry out a Share Buyback without first seeking IDA's prior approval.
- (b) The Licensee must calculate the Ownership Interests of each shareholder following conclusion of the Share Buyback.
- (c) If, as a result of the Share Buyback:
  - (i) any shareholder's Ownership Interest that previously was less than 5 percent has increased to 5 percent or more, but remains less than 12 percent, the Licensee shall file the appropriate notification as provided for in Sub-section 10.3.5.1 of this Code;
  - (ii) any shareholder's Ownership Interest that previously was less than 12 percent has increased to 12 percent or more, but remains less than 30 percent, the Licensee shall file the appropriate Request as provided for in Sub-section 10.3.6.2 of this Code;
  - (iii) any shareholder's Ownership Interest that previously was less than 12 percent has increased to 12 percent or more, but remains less than 30 percent, and the shareholder is able to exercise Effective Control over the Licensee, the Licensee and the shareholder shall jointly file the

appropriate Consolidation Application as provided for in Sub-section 10.3.6.5 of this Code; or

- (iv) any shareholder's Ownership Interest that previously was less than 30 percent has increased to 30 percent or more, the Licensee and the shareholder shall jointly file the appropriate Consolidation Application as provided for in Sub-section 10.4.2 of this Code.
- (d) In any case in which a Request or Consolidation Application is filed as a result of a Share Buyback, IDA may:
- (i) approve the Request or Consolidation Application;
  - (ii) reject the Request or Consolidation Application, and issue such directions as provided for in Sub-sections 10.7.2 and 10.9.1(a) of this Code; or
  - (iii) approve the Request or Consolidation Application subject to Conditions, including:
    - (A) any Condition specified in Sub-section 10.7.3 of this Code; or
    - (B) the imposition of a condition that a shareholder whose Ownership Interest has increased as a result of a Share Buyback may not further increase its percentage of Ownership Interest in the Licensee without obtaining IDA's prior written approval.

**10.9 Special Provisions Applicable to Acquisitions of Ownership Interests Without IDA's Prior Written Approval**

The following provisions are applicable in any case in which an Acquiring Party:

- (a) acquires an Ownership Interest in a Licensee, whether by a series of transactions over a period of time or not, that would result in the Acquiring Party holding an Ownership Interest in the Licensee of 12 percent or more; or
  - (b) enters into a transaction that results in a Consolidation,
- without obtaining IDA's prior written approval.

## 10.9.1

### **Acquisition of an Ownership Interest Resulting in the Holding of an Ownership Interest in the Licensee of 12 percent or more Without IDA's Prior Written Approval**

Pursuant to Section [XX] of the Telecommunications Act:

- (a) In any case in which an Acquiring Party has acquired a Direct Ownership Interest in a Licensee, whether by a series of transactions over a period of time or not, that would result in the Acquiring Party holding an Ownership Interest in the Licensee of 12 percent or more without obtaining IDA's prior written approval, and IDA subsequently determines that the Acquiring Party's acquisition of this Direct Ownership Interest is likely to substantially lessen competition or harm the public interest, IDA may do any or all of the following:
  - (i) direct the Acquiring Party to divest some or all of the voting shares in the Licensee that the Acquiring Party has by reason of its Direct Ownership Interest in the Licensee ("Specified Shares");
  - (ii) direct the Licensee to restrict the exercise of some or all of the voting rights in the Specified Shares, unless IDA expressly permits such rights to be exercised;
  - (iii) direct the Licensee to restrict the issue or offer of shares (whether by way of rights, bonus or otherwise) in respect of the Specified Shares, unless IDA expressly permits such issue or offer; and
  - (iv) except in a liquidation of the Licensee, direct the Licensee to restrict the payment of any amount (whether by way of dividends or otherwise) in respect of the Specified Shares unless IDA expressly authorizes such payment subject to such conditions as IDA may specify.
- (b) Where an Acquiring Party has acquired an Indirect Ownership Interest in a Licensee, whether by a series of transactions over a period of time or not, that would result in the Acquiring Party holding an Ownership Interest in the Licensee of 12 percent or more without obtaining IDA's prior written approval, and IDA subsequently determines that the Acquiring Party's acquisition of this Direct Ownership Interest is likely to substantially lessen competition or harm the public interest, IDA may do any or all of the following:

- (i) request the Acquiring Party to divest some or all of its Indirect Ownership Interest in the Licensee;
- (ii) direct the Licensee to restrict the exercise of some or all of the voting rights in the voting shares in the Licensee that the Acquiring Party has by reason of its Indirect Ownership Interest in the Licensee (“Specified Shares”), unless IDA expressly permits such rights to be exercised;
- (iii) direct the Licensee to restrict the issue or offer of shares (whether by way of rights, bonus or otherwise) in respect of the Specified Shares, unless IDA expressly permits such issue or offer;
- (iv) except in a liquidation of the Licensee, direct the Licensee to restrict the payment of any amount (whether by way of dividends or otherwise) in respect of the Specified Shares unless IDA expressly authorizes such payment subject to such conditions as IDA may specify; and
- (v) direct the Acquiring Party’s Affiliate that holds a Direct Ownership Interest in the Licensee, to divest some or all of the voting shares that it has in the Licensee.

**10.9.2 Acquisition of a Business of a Licensee as a Going Concern Without Prior IDA Approval**

Pursuant to Section [XX] of the Telecommunications Act, in any case in which an Acquiring Party has acquired a business of a Licensee as a going concern without receiving IDA’s prior written approval, IDA may direct the Acquiring Party to transfer or dispose of all or any part of the business within such time and subject to such conditions as IDA considers appropriate.

**10.9.3 Opportunity to Respond to IDA’s Direction**

Prior to issuing a direction under the Telecommunications Act for the circumstances stated in either Sub-section 10.9.1 or 10.9.2 of this Code, IDA will provide a written notification to the entity to which the direction will be addressed to, and will give such person an adequate opportunity to submit written representations in relation to the proposed direction.

## **11. ADMINISTRATIVE PROCEDURES**

### **11.1 Introduction**

#### **11.1.1 Application**

All provisions of this Section apply to Facilities-based, Service-based and Telecommunication Equipment Dealer Licensees. In this Section, the term ‘‘Licensee’’ refers to Facilities-based, Services-based and Telecommunication Equipment Dealer Licensees.

#### **11.1.2 Over-view**

This Section describes the administrative procedures that IDA will use to implement this Code.

### **11.2 Conciliation**

Licensees may jointly request IDA to provide conciliation to assist them in resolving any dispute arising out of the following events:

- (a) pursuant to Sub-section 6.4.1.7 of this Code, the negotiation of a voluntary Individualised Interconnection Agreement;
- (b) pursuant to Sub-section 6.6 of this Code, the Licensees’ implementation of an Interconnection Agreement; and
- (c) pursuant to Sub-section 7.4.1 of this Code, a Licensee’s infrastructure Sharing Request.

#### **11.2.1 Procedures for Requesting Conciliation**

Licensees requesting conciliation must submit to IDA a joint statement describing the disputed issues and the position of each party on the disputed issues.

#### **11.2.2 Role of IDA in Conciliation**

IDA will provide conciliation at its discretion. IDA’s role in any conciliation will be to assist the parties to reach a mutually acceptable solution that is consistent with this Code. IDA will not advocate any specific position or impose any solution on the parties.

### **11.3 Dispute Resolution Procedure**

- (a) Upon request, IDA will resolve disputes between Licensees arising

from the following events:

- (i) failure to voluntarily reach an Individualised Interconnection Agreement with a Dominant Licensee; and
  - (ii) failure to voluntarily reach a Sharing Agreement for the sharing of infrastructure that IDA has directed or designated to be shared.
- (b) IDA may, at its discretion, resolve disputes between Licensees arising from the implementation of:
- (i) an Interconnection Agreement entered into with a Dominant Licensee; and
  - (ii) a Sharing Agreement entered into via IDA's dispute resolution.
- (c) Except as otherwise specified, IDA will not intervene in other disputes relating to matters provided for in this Code. Instead, Licensees are required to resolve their disputes in accordance with the dispute resolution provisions of their respective agreements, or in the absence of any agreement, through good-faith commercial negotiations.
- (d) The procedures for requesting IDA to resolve disputes, the process for submitting petitions and responses to IDA by the parties in dispute and the standards that IDA will apply to resolve disputes, are specified in the Dispute Resolution Guidelines issued by IDA.

## **11.4 Enforcement Action for Contravention of this Code**

Enforcement actions for contravention of this Code can be brought by IDA, either at the request of a private party pursuant to Sub-section 11.4.1 of this Code or on its own motion pursuant to Sub-section 11.4.2 of this Code. IDA has discretion to determine whether, and in what manner it will conduct any enforcement action. Whilst the enforcement process is designed to provide a significant deterrent to impermissible conduct, any enforcement action taken by IDA will be proportionate to the severity of the contravention.

### **11.4.1 Requests for Enforcement by a Private Party**

Any Licensee or End User that has been injured, or is likely to be injured, as a direct result of the contravention of any provision of this Code by a Licensee may submit a written request asking IDA to take enforcement

action against that Licensee (“Request for Enforcement”). Where IDA receives two or more Requests for Enforcement against the same Licensee, which arise out of the same action or course of action by that Licensee, IDA may consider the Requests for Enforcement in a single consolidated proceeding.

#### **11.4.1.1 Submission of Written Request for Enforcement Action**

- (a) Any party that requests IDA to take enforcement action (“Party Requesting Enforcement”) must submit to IDA a Request for Enforcement. The Request for Enforcement must cite the specific provisions of this Code that the Party Requesting Enforcement claims the Licensee has contravened and must allege facts that, if proven to be true, would demonstrate a contravention. Whenever possible, the Party Requesting Enforcement should attach to the Request for Enforcement copies of all relevant documents necessary to prove the allegations of fact contained in the request. Where this is not possible, the Party Requesting Enforcement must provide a statement explaining why it cannot provide the supporting documentation. The Request for Enforcement must include a signed statement that:
  - (i) the Party Requesting Enforcement has used reasonable diligence in collecting the facts;
  - (ii) the facts alleged are true to the best of the Party Requesting Enforcement’s knowledge;
  - (iii) the Party Requesting Enforcement believes in good faith that the facts alleged, if proven, would constitute a contravention of the provisions of this Code as cited in the Request for Enforcement;
  - (iv) describes the manner in which the Party Requesting Enforcement has been injured, or is likely to be injured, as a direct result of the alleged contravention; and
  - (v) the Party Requesting Enforcement has made an effort in good faith to resolve the underlying dispute through direct negotiations with the Licensee against whom enforcement action is being sought.
- (b) IDA may require the Party Requesting Enforcement to provide IDA with a statutory declaration attesting to the facts that provide the basis for the Request for Enforcement within 7 days from the date of IDA’s written request.

#### **11.4.1.2 IDA's Response to Enforcement Request**

- (a) IDA will seek to revert to the Party Requesting Enforcement with its decision as to whether IDA accepts or declines the Request for Enforcement within 15 days from the date of IDA's receipt of the Request for Enforcement.
- (b) Where IDA determines that the Request for Enforcement raises novel or complex issues, IDA may by written notification to the Party Requesting Enforcement, extend the review period by up to 30 days. The situations wherein IDA may deem a Request for Enforcement to raise novel or complex issues include but are not limited to the following:
  - (i) a novel issue when disposition of the request requires IDA to consider an issue that IDA has not previously addressed, either under this Code or in a prior enforcement request; or
  - (ii) a complex issue when disposition of the request requires IDA to obtain significant factual information to resolve difficult legal, factual or policy issues that cannot be adequately resolved within the ordinary 15-day period.
- (c) IDA will decline the Request for Enforcement if:
  - (i) the Party Requesting Enforcement fails to show that it has been injured, or is likely to be injured, as a direct result of the alleged contravention of the provisions of this Code as cited in the Request for Enforcement;
  - (ii) the factual allegations are unsupported or clearly without merits;
  - (iii) the factual allegations contained in the Request for Enforcement, even if proven to be true, would not constitute a contravention of this Code;
  - (iv) IDA determines that the Request for Enforcement does not satisfy the requirements specified in Sub-section 11.4.1.1 of this Code; or
  - (v) IDA concludes that the exercise of its enforcement discretion would not be appropriate.



#### **11.4.1.3 Deferment of Consideration for Request for Enforcement**

In an appropriate case, IDA may defer its consideration of a Request for Enforcement. Where IDA decides to defer its consideration of a Request for Enforcement, IDA will notify the Party Requesting Enforcement and provide the reason for its decision to do so.

#### **11.4.1.4 Notification of Enforcement Action**

If IDA accepts the Request for Enforcement, IDA will issue a written notification to the Licensee in relation to which enforcement action is initiated (“Responding Licensee”). A copy of the written notification will be made available to the Party Requesting Enforcement. The written notification will clearly indicate the specific provisions of this Code that the Responding Licensee has been alleged to contravene and reasonable details of the alleged facts constituting the contravention. IDA will also provide to the Responding Licensee a copy of the Request for Enforcement and all supporting documents submitted by the Party Requesting Enforcement, unless (and to the extent that) IDA has granted an application by the Party Requesting Enforcement for confidential treatment of information pursuant to Sub-section 11.7 of this Code.

#### **11.4.1.5 Opportunity to Respond**

Where IDA accepts the Request for Enforcement and issues a written notification to the Responding Licensee, the Responding Licensee will have 15 days from the date of IDA’s written notification to respond in writing to the written notification (“Response”). The Response must provide a clear statement, supported by documents, affidavits, or other relevant materials, providing the basis on which the Responding Licensee disputes the allegations of contravention. IDA will provide a copy of the Response to the Party Requesting Enforcement, unless (and to the extent that) IDA has granted an application by the Responding Licensee for treatment of confidential information pursuant to Sub-section 11.7 of this Code.

#### **11.4.1.6 Opportunity For Further Reply**

- (a) The Party Requesting Enforcement will have 15 days from the day on which IDA provides the Response, to submit its further written reply to the Response.
- (b) Where the Party Requesting Enforcement submits a further reply, the Responding Licensee will have 15 days from the day on which IDA provides the further reply, to submit a final written reply to IDA.

- (c) In both cases above, IDA will provide a copy of the party's reply to the other party, unless (and to the extent that) IDA has granted an application by the party submitting the reply for confidential treatment of information pursuant to Sub-section 11.7 of this Code.

#### **11.4.1.7 Request for Extension of Time**

Where a party demonstrates good cause, IDA may grant a further extension of time of up to 7 days for making its submissions. Any request for an extension of time must be made in writing to IDA at least 3 days before the expiration of the specified period for which the party must submit its response. IDA will seek to inform both the Responding Licensee and the Party Requesting Enforcement of its decision within 2 days of the date of receipt of the request for extension.

#### **11.4.1.8 Request for Further Information**

After reviewing the information submitted by the Party Requesting Enforcement and the Responding Licensee, IDA may request either or both parties to submit additional information at any time during the course of the enforcement proceedings pursuant to Sub-section 11.6 of this Code. IDA may provide a copy of the response to the other party unless (and to the extent that) IDA has granted an application by either party for confidential treatment of information pursuant to Sub-section 11.7 of this Code.

#### **11.4.1.9 Withdrawal of Request for Enforcement**

- (a) The Party Requesting Enforcement may, at any time, withdraw its Request for Enforcement. To withdraw its Request for Enforcement, the Party Requesting Enforcement must notify IDA in writing of its request for withdrawal and provide reasons for its request (copied to the Responding Licensee).
- (b) The party's decision to withdraw its Request for Enforcement does not preclude IDA from taking enforcement action on its own initiative in the case where IDA concludes that it is in the public interest to do so. In such a case, while IDA will initiate a separate enforcement proceeding pursuant to Sub-section 11.4.2 of this Code, IDA may continue to rely on the submissions made by the parties in the previous aborted enforcement proceeding.

#### **11.4.1.10 Issuance of IDA's Decision**

IDA will seek to issue its decision within 60 days of receiving all necessary information. Where appropriate, IDA may, by written notice to

the parties before the expiry of the 60-day review period, extend the time by which IDA will issue its decision. In such cases, IDA will specify the number of days by which it is extending the review period.

#### **11.4.2 Enforcement Action Initiated by IDA**

IDA may commence enforcement action on its own initiative against a Licensee that it believes has contravened this Code. IDA will use the following procedures in any enforcement action initiated by IDA:

##### **11.4.2.1 Notification to Licensee of Enforcement Action**

IDA will provide a written notification to the Licensee that IDA is initiating enforcement action against that Licensee. The notification will clearly indicate the specific provisions of this Code that IDA believes the Licensee has contravened, and will describe in reasonable detail the basis for IDA's belief.

##### **11.4.2.2 Opportunity to Respond**

The Licensee will have 15 days to respond in writing to IDA's notification. IDA may extend this period in appropriate cases. For each allegation which the Licensee disputes, the Licensee's response must provide a clear statement, supported by documents, affidavits, or other relevant materials, providing the basis on which the Licensee disputes the allegation.

##### **11.4.2.3 Request for Additional Information**

After reviewing the response submitted by the Licensee, IDA may request the Licensee to provide additional information pursuant to Sub-section 11.6 of this Code.

##### **11.4.2.4 Issuance of IDA's Decision**

IDA will carefully consider the matters set out in the responses submitted by the Licensee before issuing its decision. IDA will seek to issue its decision within 60 days of receiving all necessary information required by IDA. Where appropriate, IDA may, by written notice to the Licensee before the expiry of the 60-day period, extend the time by which IDA will issue its decision. In such cases, IDA will specify the number of days by which it is extending the review period.

#### **11.4.3 Interim Direction to Cease and Desist**

At any time during an enforcement proceeding pursuant to Sub-section

11.4.1 or 11.4.2 of this Code, IDA may issue an interim direction to the Licensee to cease and desist from any specified conduct. In determining whether to issue such an interim direction, IDA will consider whether:

- (a) there is prima facie evidence that the Licensee has contravened the provision of this Code;
- (b) continuation of the Licensee's conduct is likely to cause serious harm to other Licensees, End Users or the general public;
- (c) the potential anti-competitive harm from allowing the Licensee to continue its conduct outweighs the burden on the Licensee of ceasing the conduct; or
- (d) issuance of the interim direction is in the public interest.

#### **11.4.4 Enforcement Measures**

In the event that IDA concludes that the Licensee has contravened any provision of this Code, IDA may take such enforcement measures as it considers appropriate, including the following enforcement actions:

##### **11.4.4.1 Warnings**

IDA may issue a warning to the Licensee. The warning will contain a statement of IDA's basis for concluding that the Licensee has acted in contravention of any provision of this Code, but will impose no further sanction.

##### **11.4.4.2 Direction to Cease and Desist**

Where appropriate, IDA will direct the Licensee to cease engaging in conduct that is, or if continued will constitute, a contravention of any provision of this Code.

##### **11.4.4.3 Remedial Action**

Where appropriate, IDA will direct the Licensee to take specific remedial action.

##### **11.4.4.4 Financial Penalties**

- (a) IDA may impose financial penalties of up to S\$1 million per contravention on a Licensee that contravenes any provision of this Code.

- (b) In imposing financial penalties, IDA will consider any aggravating factors. These factors include:
  - (i) whether the contravention was serious;
  - (ii) whether the contravention continued for an extended period;
  - (iii) whether the contravention resulted in harm to third parties;
  - (iv) whether the Licensee acted wilfully, recklessly or in a grossly negligent manner;
  - (v) whether the Licensee has a previous history of contraventions; and
  - (vi) whether the Licensee made any effort to conceal the contravention.
  
- (c) In imposing financial penalties, IDA will also consider any mitigating factors. These factors include:
  - (i) whether the contravention was minor;
  - (ii) whether the adverse consequences to third parties from the contravention were minor;
  - (iii) whether the Licensee took prompt action to correct the contravention;
  - (iv) whether the contravention was accidental; and
  - (v) whether the Licensee voluntarily disclosed the contravention to IDA and co-operated with IDA in its investigation.

#### **11.4.5 Suspension or Cancellation of the Licence under the Telecommunications Act**

In serious cases in which IDA is satisfied that a Licensee has contravened, and is likely to again contravene, any provision of this Code, IDA may, instead of taking any of the enforcement action specified in Sub-section 11.4.4 of this Code, cancel or suspend the relevant licence under Section 8 of the Telecommunications Act.

#### **11.4.6 Timeliness of Enforcement Action**

- (a) Any enforcement action, whether taken by IDA on its own motion or pursuant to a request for enforcement, must be initiated within the following time limits:
  - (i) In any case in which a party files a Request for Enforcement pursuant to Sub-section 11.4.1 of this Code, the party must do so within 2 years after the date of the occurrence of the action that constitutes the alleged contravention of this Code.
  - (ii) In any case in which IDA initiates enforcement action on its own motion, IDA will issue the written notification provided for in Sub-section 11.4.2.1 of this Code within 2 years after the date of the occurrence of the action that constitutes the alleged contravention of this Code.
- (b) In determining the period for taking the enforcement action:
  - (i) Where the alleged contravention could not reasonably have been discovered at the time it was committed, the earlier of the date on which the conduct was, or reasonably should have been, discovered will constitute the date on which the alleged contravention occurred.
  - (ii) Where a Licensee engages in an on-going course of conduct that allegedly contravenes this Code, the date of the most recent action taken as part of that course of conduct will constitute the date on which the alleged contravention occurred. For example, where conduct undertaken pursuant to an agreement is continuing, IDA may bring an enforcement action while the conduct is continuing or at the latest, within 2 years from the date on which the Licensee ceases its conduct under the Agreement.

#### **11.5 Binding Effect of Initial Submissions**

- (a) Any party to an enforcement or dispute resolution proceeding under this Code must in its initial submission to IDA:
  - (i) in relation to a Request for Enforcement under Sub-section 11.4.1 of this Code, make all relevant allegations of contravention;

- (ii) in relation to a Response to a Request for Enforcement under Sub-section 11.4.1.5 of this Code or a response under Sub-section 11.4.2.2 of this Code, raise all relevant grounds to dispute the allegations of contravention; and
  - (iii) in relation to a petition for dispute resolution and a response to a petition for dispute resolution under Sub-section 11.3 of this Code and the Dispute Resolution Guidelines, raise all relevant issues in dispute and submit all relevant information to substantiate the party's position taken on the issues in dispute.
- (b) IDA will reject the relevant portion of any subsequent submission made by the party in the course of the relevant proceeding that:
- (i) in relation to an enforcement proceeding, makes any new allegation of contravention not previously disclosed in the Request for Enforcement or raises any new ground to dispute the allegations of contravention not previously disclosed in the response;
  - (ii) in relation to a dispute resolution proceeding, raises any new issue in dispute not previously disclosed in the petition for dispute resolution or response to the petition for dispute resolution;
  - (iii) contains information that could have been submitted in its initial submission; or
  - (iv) takes any position that is inconsistent with its initial submission.

## **11.6 Request for Information**

- (a) In carrying out its duties and functions under this Code, IDA, by notice in writing, may require a Licensee or other party specified in this Code to produce specified documents or to provide specified information by a specified timeframe. IDA may also request a party to participate in an interview or require a party to allow IDA to physically inspect its accounts, documents, records, facilities and operations.
- (b) All information submitted to IDA by any Licensee or other party pursuant to the provisions of this Code must, to the best of that Licensee's or party's ability and knowledge, be accurate, complete and responsive. At the time it submits the information, the

Licensee or party must submit a statement in a form acceptable to IDA, certifying that it has satisfied this obligation.

### **11.6.1 Effect of Failure to Submit Required Information**

- (a) In any proceeding under this Code, if a party fails or refuses to submit information required by this Code, or requested by IDA, within the timeframe specified, IDA will base its decision on the information provided by any other party to the proceeding (if any) and on the best information available to IDA from whatever source derived.
- (b) Where a party requesting IDA to take a particular action fails to respond, accurately and completely, to IDA's information request within the timeframe specified, IDA may refuse to take the action requested.
- (c) Any failure by a Licensee to comply with IDA's information requests, and the destruction, disposal, falsification or concealment of requested documents constitute a contravention of this Code for which IDA can take enforcement action pursuant to Sub-section 11.4.4 of this Code.

### **11.7 Confidential Treatment of Information**

A party submitting information to IDA, whether voluntarily, or pursuant to the requirements of this Code or a request from IDA, may request that the information submitted be treated as confidential. The party requesting confidential treatment must identify the specific document, or portion thereof, or other information for which confidential treatment is sought. IDA generally will not accept requests to treat all information submitted as confidential. Parties should take reasonable measures to minimise the amount of information for which they request confidential treatment.

#### **11.7.1 Standards Governing Grant of Confidential Treatment**

- (a) IDA will grant a request for confidential treatment if the Requesting Party demonstrates, with reasonable specificity, that the information for which it requests confidential treatment contains commercially sensitive information (including information that is subject to a pre-existing non-disclosure agreement with a third party), or that disclosure would otherwise have a material adverse impact.



- (b) IDA considers information to be commercially sensitive if:
  - (i) it is not otherwise available to the public; or
  - (ii) there is a reasonable possibility that disclosure would cause harm to the party or otherwise provide a commercial benefit to the party's competitors.

For example, information that describes the disclosing party's business procedures, practices, plans or its assessment of market conditions or similar matters may be commercially sensitive.

### **11.7.2 Notification of Denial of Confidential Treatment**

- (a) If IDA rejects a request for confidential treatment, IDA will provide the party that submitted the information with the reason for its decision. Within 7 days from the date of IDA's rejection of the request for confidential treatment of information, the Requesting Party may either:
  - (i) request IDA in writing to return the information, in which case unless the information is otherwise generally available to the public, IDA will not consider this information in relation to the proceeding; or
  - (ii) withdraw in writing its request for confidential treatment of information, in which case IDA may consider, and where appropriate, disclose the information provided.
- (b) If the Requesting Party fails to do either of the above within the specified period, IDA will deem the Requesting Party to have withdrawn its request for confidential treatment of information, in which case IDA may consider, and where appropriate disclose, the information provided.
- (c) IDA's decision not to grant confidential treatment does not excuse a party from complying fully with any obligation that it may have to provide complete and accurate information to IDA.

### **11.8 Consultation with Other Interested Parties**

In addition to obtaining information directly from the parties to a proceeding under this Code, where appropriate, IDA may conduct a public consultation to provide interested parties with an opportunity to comment on any proceeding. In those cases in which IDA does not conduct a public consultation, IDA may nonetheless request comments from individuals or

entities, where appropriate. IDA does not assume any obligation to consider any unsolicited comments.

## **11.9 Review of IDA's Decisions**

The following procedures govern the review of IDA's decisions:

### **11.9.1 Right to Review**

- (a) Within 14 days of the day on which IDA renders its decision or issues a direction pursuant to this Code ("Reconsideration Deadline"), any party that it adversely affects may request IDA to reconsider its decision or direction ("Reconsideration Request").
- (b) IDA will provide notice of the Reconsideration Request.
- (c) No Reconsideration Request submitted after the Reconsideration Deadline will be considered.

### **11.9.2 Issues That May be Raised for Reconsideration**

Parties are expected to present all relevant facts, and all relevant arguments, before IDA renders a decision or issues a direction. A party may not present any new facts, or raise any new arguments, for the first time in a Reconsideration Request if the party:

- (a) could have presented the fact, or raised the argument before IDA rendered its decision or issued its direction; and
- (b) cannot demonstrate that it had good cause for failing to do so.

### **11.9.3 Decision on Reconsideration**

- (a) If one or more parties files a Reconsideration Request, IDA will seek to issue its decision on the Reconsideration Request ("Decision on Reconsideration") within 30 days from the date of the Reconsideration Deadline.
- (b) In appropriate cases, IDA may provide any interested party with an opportunity to file comments on the Reconsideration Request. In such cases, IDA will similarly allow the party that files the Reconsideration Request with an opportunity to submit a final written response to IDA. In such cases, IDA will seek to issue a decision within 30 days of receiving all comments.

#### **11.9.4 Appeal of IDA Decision on Reconsideration**

- (a) A party may not ask IDA to reconsider a Decision on Reconsideration. However, within 14 days from the day on which IDA issues a Decision on Reconsideration, the aggrieved party that filed a Reconsideration Request may appeal the Decision on Reconsideration to the Minister pursuant to Section [XX] of the Telecommunications Act.
- (b) For the avoidance of doubt, no party may file an appeal to the Minister on IDA's decision or direction until IDA has issued a Decision on Reconsideration.

#### **11.9.5 Compliance Pending Review**

Unless IDA directs otherwise, a Licensee must comply with IDA's decision or direction until such time, if ever, as IDA or the Minister reverses or modifies the decision or direction.

#### **11.9.6 Suspension Pending Reconsideration or Appeal**

A party that seeks to have IDA suspend the effectiveness of a decision or direction pending Reconsideration or Appeal must file a request for suspension with IDA on or before the last day on which the party may file its Reconsideration Request or Appeal. The party filing the request for suspension must demonstrate why the potential harm to the party outweighs the benefits of allowing the decision or direction to go into effect.

## **12. TRANSITIONAL PROVISIONS**

### **12.1 Savings and Transitional Provisions**

The following rules govern the implementation of the provisions of this Code. For the purposes of this Section, “Code (2000)” means the Code of Practice for Competition in the Provision of Telecommunication Services issued on 15 September 2000.

### **12.2 Savings Provisions**

Except as otherwise expressly provided in this Code, and so far as it is not inconsistent with the provisions of this Code, any action, approval, designation, direction, exemption and notification taken, granted, issued, made, published or approved by IDA in relation to any matter under the Code (2000), will continue in effect and will be deemed to have been taken, granted, issued, made, published or approved by IDA under the corresponding provisions of this Code.

### **12.3 General Transitional Rules**

#### **12.3.1 Status of Pre-Code Agreements**

Any agreement for the purpose of physically connecting telecommunication networks, exchanging telecommunication traffic and/or providing related services entered into prior to the effective date of the Code (2000) (“Pre-Code Agreement”) will remain in force. To the extent that any Pre-Code Agreement provides that the parties will modify the Pre-Code Agreement if IDA adopts a new code, issues a direction or takes any action that alters the rights and obligations of the Licensees regarding the matters addressed by the Pre-Code Agreement, IDA intends the adoption of this Code and the issuance of the accompanying direction to Licensees to comply with this Code, constitutes the requisite action.

#### **12.3.2 Contraventions before the Effective Date of this Code**

- (a) Subject to Sub-section 12.3.3 of this Code, a Licensee will not be found to be in contravention of any provision of this Code in respect of any agreement entered into, or act or conduct that occurred, before the Effective Date of this Code. Rather, the Licensee shall remain liable for any contravention under the Code (2000) in respect of such agreement, act or conduct, as if the Code (2000) had not been superseded. Any such enforcement action is subject to the time limitation set out in Sub-section 10.2.1 of the Code (2000).

- (b) However, where the enforcement action is commenced after the Effective Date of this Code, the procedures set out in Sub-sections 11.4 through 11.9 (except Sub-section 11.4.6) of this Code shall apply to the enforcement action.

### **12.3.3 Application of this Code to Continuing Agreement, Act and Conduct**

Subject to Sub-section 12.3.1, any agreement entered into or act or conduct that occurred prior to the Effective Date of this Code but which continues after the Effective Date of this Code, will be governed by the terms of this Code from the Effective Date of this Code. IDA will not take enforcement action against a Licensee under both the Code (2000) and this Code for the same contravening agreement, act or conduct.

### **12.3.4 Uncompleted Proceedings under the Code (2000)**

Any proceeding commenced before the Effective Date of this Code may be continued and completed, and any right of appeal in relation to that proceeding may be exercised and the appeal heard and determined under the provisions of the Code (2000), as if the Code (2000) had not been superseded.

## **12.4 Specific Transitional Rules**

### **12.4.1 Exemptions From Special Provisions Applicable to Dominant Licensees**

Any exemption from a special provision applicable to Dominant Licensees granted by IDA to any Dominant Licensee pursuant to Code (2000) will be deemed to constitute an exemption from any corresponding provision in this Code. For the avoidance of doubt, IDA will publish a list specifying the special provisions of this Code from which any Dominant Licensee is exempted.

### **12.4.2 Conforming of Restrictions under End User Service Agreements**

Where a Licensee's End User Service Agreements contain terms and conditions that give effect to Section 3 of the Code (2000), such licensees must modify these End User Service Agreements so that they are consistent with the terms of Sub-sections 3.3 through 3.3.7 of this Code within 90 days of the Effective Date of this Code.

### **12.4.3 Tariff Obligations**

#### **12.4.3.1 Existing Effective Tariffs**

All existing effective tariffs filed by any Dominant Licensee will remain in effect until such time as the Dominant Licensee modifies or withdraws the tariff, or IDA directs the Dominant Licensee to modify or withdraw the tariff.

#### **12.4.3.2 Obligation to Tariff Existing Services**

Where a Dominant Licensee provides an existing service for which it has not filed a tariff, but the Dominant Licensee is required to file a tariff under this Code, the Dominant Licensee must file a tariff for that service in accordance with the procedures contained in Sub-section 4.4 of this Code within 90 days of the Effective Date of this Code, and comply with the tariff regime contained in Sub-sections 4.4 through 4.6 of this Code. For the avoidance of doubt, nothing in this Sub-section shall be construed as a waiver of IDA's right to take enforcement action against any Licensee for any breach of its obligation to file a tariff for any service for which it is under an obligation to file such tariff.

#### **12.4.3.3 Obligation to Publish Tariffs**

Within 90 days of the Effective Date of this Code, a Dominant Licensee must publish all existing tariffs that are in effect. Where IDA has directed the Dominant Licensee to review a tariff, the Dominant Licensee shall publish the tariff at such time as specified by IDA upon completion of the tariff review.

### **12.4.4 Interconnection Agreements**

Subject to Sub-section 12.3.1, all Interconnection Agreements entered into between Non-dominant Licensees before the Effective Date of this Code, shall conform to Sub-sections 5.4 through 5.4.8 of this Code within 180 days from the Effective Date of this Code.

### **12.4.5 RIO and RIO-based Agreements**

In relation to a Dominant Licensee's RIO that has been approved by IDA based on the requirements of the Code (2000), within 30 days from the Effective Date of this Code, the Dominant Licensee must submit to IDA for approval the proposed modifications to its RIO to conform with the requirements of this Code. In reviewing the proposed modifications, IDA will apply the procedures specified in Sub-section 6.3.6 of this Code.

Upon approval by IDA of the proposed modifications to the Dominant Licensee's RIO:

- (a) pursuant to Sub-section 6.2.1 of this Code, IDA will issue a notice in the *Government Gazette* to specify a further 3-year period, commencing from the date of approval, for which the Dominant Licensee must offer the RIO to Requesting Licensees; and
- (b) as required by Sub-section 6.3.5(b)(ii) of this Code, the modifications made to the Dominant Licensee's RIO must be incorporated into every Interconnection Agreement entered into with the Dominant Licensee by accepting its RIO. For this purpose, where necessary, IDA may issue directions to the parties of these agreements to specify transitional provisions for the purpose of effecting any modification to their agreements to conform with the requirements of this Code.

## APPENDIX 1

### PRINCIPLES GOVERNING THE PRICING OF INTERCONNECTION RELATED SERVICES AND MANDATED WHOLESALE SERVICES

#### 1. INTRODUCTION

This Appendix specifies the principles that a Dominant Licensee must use to develop the prices for Interconnection Related Services and Mandated Wholesale Services contained in its RIO.

#### 2. CHARGING STANDARDS FOR INTERCONNECTION RELATED SERVICES

##### 2.1 Cost Bases

2.1.1 Unless otherwise directed by IDA, a Dominant Licensee must use a Forward Looking Economic Cost (“FLEC”) methodology to determine the costs of Interconnection Related Services.

2.1.2 FLEC are the prospective costs a Licensee would incur in producing a service using best-in-use technology and product practices. In establishing FLEC-based costs:

- (a) Capital assets employed in providing Interconnection Related Services must be valued at the current replacement cost of an asset with the same or better functionality; and
- (b) Costs incurred must reflect best-in-use technology and product practices based on that of an efficient network architecture, but may include “inefficiencies” that could only have been avoided in retrospect.

2.1.3 IDA may require Dominant Licensees to use other pricing methodologies, where appropriate. For example, IDA may use an alternative methodology to reflect added risk of investment.

##### 2.2 Cost Standards

2.2.1 In any case in which IDA requires a Dominant Licensee to use a FLEC methodology to establish the cost of an Interconnection Related Service, the Dominant Licensee must use Long Run Average Incremental Cost



("LRAIC") for the computation of the price of that Interconnection Related Service.

- 2.2.2 LRAIC consists of all variable costs and those fixed costs that are directly attributable to the incremental change in the Interconnection Related Services and the share of indirect costs that are discernibly caused by the provision of those services.

### **2.3 Structure of Charges**

- 2.3.1 In establishing Interconnection Related Services charges, a Dominant Licensee must ensure that the structure of charges mirrors the cost behaviour of Interconnection Related Services provision, where material. This means that costs that behave differently must remain segregated in the charging structure and must be recovered differently.

- 2.3.2 Responsibility for Interconnection Related Services charges must be based on the principle of cost-causality. A Licensee will be responsible for the costs that the other Licensee incurs in order to provide Interconnection Related Services to it.

## **3. RESPONSIBILITY FOR BEARING INTERCONNECTION RELATED SERVICES CHARGES**

### **3.1 Physical Interconnection, Unbundled Network Elements, and Essential Support Facilities**

- 3.1.1 A Dominant Licensee must comply with the following principles governing responsibilities for the bearing of charges in providing Physical Interconnection, Unbundled Network Elements and Essential Support Facilities in its RIO. A Dominant Licensee must offer to pay the initial costs of establishing a Point of Access ("POA"). The Dominant Licensee may recover the costs incurred in establishing a POA through the prices that it charges Requesting Licensees to which it provides Essential Support Facilities and Unbundled Network Elements. The Dominant Licensee may require Requesting Licensees to compensate it for the costs incurred in establishing and maintaining POAs, or in using facilities, based on relative use. The Dominant Licensee must allocate the costs based on the expected number of users and the duration of use. The Dominant Licensee must allocate costs equally for non-traffic-sensitive facilities. For traffic-sensitive facilities, the Dominant Licensee must allocate costs based on the number of connections, actual usage and capacity requested. Unless Facilities-based Licensees agree otherwise, each Facilities-based Licensee is responsible for the provision and maintenance of the transmission links on its "side" of the POI.

### 3.2.

#### **Origination/Transit/Termination Services**

- (a) Origination charges result from the costs of conveying the traffic generated by the originating Licensee's End User to the terminating Licensee's system, thereby enabling the originating Licensee's End User to use a service offered by the terminating Licensee's system or provided by a Services-based Licensee connected to the terminating Licensee's system. The origination charge compensates the originating Licensee when the terminating Licensee, or the Services-based Licensee connected to the terminating Licensee, bills the End User directly. The origination charge then compensates the originating Licensee for the incremental cost of access.
- (b) Termination charges result from the costs of conveying the traffic generated by the originating Licensee's End User to the terminating Licensee's system, enabling the End User or Services-based Licensee connected to the originating Licensee to establish 1-way or interactive communication.
- (c) A Dominant Licensee must comply with the following principles governing responsibilities for the bearing of charges in the provision of Origination, Transit and Termination services:
  - (i) Unless the parties agree otherwise, each Licensee is responsible for its own costs in setting up a Point of Interconnection ("POI").
  - (ii) For fixed-to-fixed interconnection, origination and termination charges must be applied on a symmetrical basis.
  - (iii) Transit charges must be paid by the Licensee that originates the traffic, regardless of the payment flows between End Users and Licensees. A Dominant Licensee that acts as the transit Licensee need not be a party to the commercial negotiations between the interconnecting Licensees.
  - (iv) For fixed-mobile interconnection, the Dominant Licensee must pay such applicable charges in accordance with IDA's Mobile-Party-Pays and Fixed-Mobile Interconnection (MPP-FMI) Regime.

#### **4. PRICING FOR MANDATED WHOLESALE SERVICES**

- 4.1 At the time IDA directs a Dominant Licensee to offer a Mandated Wholesale Service, IDA will specify the basis on which the Dominant Licensee must set the price. Where appropriate, IDA may require the Dominant Licensee to provide the Mandated Wholesale Service:
- (a) at cost-oriented rates (i.e. based on cost, which may include a reasonable profit to reflect the risk of investment);
  - (b) at retail-minus prices based on “avoidable cost” study, which determines the actual costs that the Dominant Licensee will avoid by providing the service on a wholesale, rather than retail basis; or
  - (c) at retail-minus prices based on a “proxy discount”. In this case, IDA will direct the Dominant Licensee to set the price of the Mandated Wholesale Service at a specific discount (expressed as a percentage) below the price that the Dominant Licensee charges its retail customers for the service.