

Case Reference	R/E/I/120
Title	IDA's Enforcement Decision against Consistel (Singapore) Pte Ltd for Contraventions of its In-Building Terrestrial Telecommunication System Licence
Date of IDA's Decision	15 August 2016
Licensee	Consistel (Singapore) Pte Ltd (" Consistel ")
Case Summary	<p>IDA granted Consistel an In-Building Terrestrial Telecommunication System ("IBTTS")¹ licence in March 2013 to own, establish, install, maintain and operate a distributed antenna system at the Singapore Sports Hub (the "System"). The IBTTS licence was granted to Consistel based on its express representation and confirmation that it would own the System.</p> <p>In June 2014, Consistel applied to IDA for regulatory approval to transfer its IBTTS licence to Consistel Sprint Pte Ltd ("Sprint"), a joint venture company owned by Consistel's parent company and an investor, Asia Networks.</p> <p>To evaluate Consistel's licence transfer application, IDA required Consistel to submit the business transfer agreement between Consistel and Sprint on no less than four occasions, in June, July and August of 2014. IDA had also made clear to Consistel that if there was an executed agreement for the transfer of the System, then Consistel was required to provide IDA with the executed agreement. Consistel was to provide IDA with a draft agreement <i>only if</i> the agreement had yet to be executed. In November 2014, Consistel submitted to IDA a draft business transfer agreement to be executed between Consistel and Sprint.</p> <p>Based on the draft business transfer agreement submitted by Consistel, IDA granted its in-principle approval in May 2015 for Consistel to transfer its IBTTS licence to Sprint, subject to certain conditions to be fulfilled by Consistel. This included the requirement for Consistel and Sprint to enter into a business transfer agreement in substantially the same form as the draft submitted to IDA.</p> <p>In January 2016, IDA learnt that Consistel could have made misrepresentations to IDA in the course of its licence transfer application. Specifically, IDA learnt that Consistel had failed to disclose the fact that it had already executed an Asset Sale Agreement in October 2013 (which was amended and restated on various dates in 2014) and two Deeds of Assignment in February 2014, for the transfer of</p>

¹ IBTTS licence is required if a firm intends to establish, install, maintain and operate a telecommunication network and/or system within a building or development.

	<p>the System to Sprint (collectively, the “Executed Agreements”). By not disclosing the Executed Agreements to IDA and instead submitting the draft business transfer agreement of November 2014 to IDA, Consistel had conveyed the incorrect impression to IDA that there were no executed agreements in place for the transfer of the System.</p> <p>IDA provided Consistel the opportunity to explain its actions. In particular, Consistel was asked to explain:</p> <ul style="list-style-type: none"> (a) why did Consistel not disclose the Executed Agreements to IDA despite IDA having made repeated and specific requests for the executed agreement for the purposes of evaluating Consistel’s licence transfer application; (b) why had Consistel submitted a draft business transfer agreement instead of the Executed Agreements; and (c) why did Consistel not obtain IDA’s prior approval (as required under its IBTTS licence) before entering into the Executed Agreements, which had the purported effect of permitting Sprint to gain the right or privilege in relation to the ownership of the System under Consistel’s IBTTS licence. <p>In its representations to IDA, Consistel submitted, amongst others, that:</p> <ul style="list-style-type: none"> (a) based on its engagements with IDA, Consistel was given to understand that it was only required to provide IDA with a draft business transfer agreement at the material time and that any misunderstanding on this issue arose out of inadvertence, rather than any intention to make misrepresentations to IDA. Further, Consistel had previously disclosed to IDA that there was an agreement in place for the transfer of the System; and (b) the IBTTS licence did not impose any restriction on ownership of the System and hence, Consistel did not require IDA’s prior approval before entering into the Executed Agreements. Additionally, the transfer of the System to Sprint was not completed as certain commercial conditions between them had not been met.
<p>IDA’s Determination</p>	<p>Having carefully considered the full set of representations made by Consistel, IDA does not consider the reasons furnished by Consistel to be satisfactory.</p>

Based on the totality of the evidence, IDA is of the view that Consistel's failure to provide IDA with the Executed Agreements was a deliberate course of action. Throughout the 5-month period of engagement with IDA before submitting its draft business transfer agreement, Consistel had never once made it clear to IDA that it had already entered into the Executed Agreements, and in any case, did not provide the Executed Agreements to IDA despite IDA's specific and repeated requests for the same. IDA had also made it clear to Consistel that it could submit a draft business transfer agreement to IDA *only if it had not* entered into any executed agreement for the transfer of the System. IDA did not dispense with the above requirement at any time in its engagement with Consistel on the matter. IDA is also of the view that Consistel had submitted the draft business transfer agreement solely to procure IDA's regulatory approval, and that it was not prepared for genuine commercial purposes. Collectively, Consistel's actions had misled IDA into believing that there were no executed agreements for the transfer of the System and caused IDA to grant its in-principle approval on an incorrect basis.

In addition, based on IDA's examination of the Executed Agreements, IDA is of the view that these agreements had the purported effect of permitting Sprint to gain the right or privilege in relation to the ownership of the System under Consistel's IBTTS licence. Ownership of the System was a key factor for IDA in assessing whether to grant Consistel the IBTTS licence and formed part of the basis on which the IBTTS licence was granted to Consistel. The IBTTS licence created an obligation on, as well as the right and privilege, for Consistel to continue to own the System. Under its IBTTS licence, Consistel was required to obtain IDA's prior approval before entering into arrangements to transfer the System. However, it had failed to do so. This is a serious matter given the importance of the System for the provisioning of telecommunication services to the public at the Singapore Sports Hub.

Based on IDA's investigations, IDA finds that Consistel has committed the following contraventions of its IBTTS licence:

- (a) Contravention of Condition 25.1 by failing to provide IDA with true, accurate and complete documents and information in relation to Consistel's failure to provide IDA with the Executed Agreements, and Consistel's submission of the draft business transfer agreement to IDA; and

- (b) Contravention of Condition 22.1 by failing to seek IDA's prior written approval before entering into the Executed Agreements, the purported effect of which was to permit Sprint to gain the right or privilege in relation to the ownership of the System under Consistel's IBTTS licence.

In determining the appropriate enforcement action to be taken against Consistel, IDA gave due consideration to all relevant factors, including the circumstances and manner in which Consistel had committed the contraventions. Amongst others, IDA had relied on the truthfulness, accuracy and completeness of Consistel's disclosures to IDA for the purposes of granting IDA's regulatory approval for its licence transfer application. The financial penalty imposed reflects the egregious nature of the contraventions, in particular –

- (a) Consistel's failure to provide IDA with the Executed Agreements was not due to an accidental omission or inadvertence. Instead, it was a deliberate course of action that resulted in material information being withheld from IDA and IDA granting its regulatory approval based on misleading information.
- (b) IDA had made repeated and specific requests for Consistel to provide the executed agreement for the transfer of the System in order for IDA to evaluate its licence transfer application. Consistel had multiple opportunities over the entire 5-month period of engagement with IDA on the matter to clarify and explain the true state of affairs, and to provide the Executed Agreements to IDA. Consistel did not do so at any point in time.
- (c) Despite the Executed Agreements being in force at the material time, Consistel went to the extent of preparing a draft business transfer agreement to procure IDA's regulatory approval for its licence transfer application. This was notwithstanding IDA's clear requirement for Consistel to provide any executed agreement for the transfer of the System and for a draft to be submitted if it had not yet entered into any executed agreement. To IDA's understanding, the draft business transfer agreement was never negotiated at any time before its submission to IDA and was never executed. To-date, Consistel has failed to provide a convincing and credible explanation to satisfy IDA that the draft business transfer agreement was a genuine commercial document. This leads IDA to the

conclusion that it was prepared solely for the purpose of obtaining IDA's regulatory approval without having any genuine commercial purpose.

- (d) By not informing IDA of the Executed Agreements at the material time, Consistel had caused IDA to omit to take regulatory actions that IDA would otherwise have taken (i.e., to investigate into the arrangements concerning the System to ascertain if Consistel had contravened any regulatory obligations and to take further measures to safeguard the continuity of services at the Singapore Sports Hub as required) and to take regulatory actions which IDA would otherwise not have taken (i.e., to have granted its in-principle approval for the licence transfer application on the basis of the draft business transfer agreement).
- (e) The Executed Agreements purported to transfer the ownership of the System from Consistel to Sprint without IDA's approval, which is a particularly serious matter in this context given the importance of the System for the provisioning of telecommunication services at the Singapore Sports Hub. In view of the importance of the System, IDA had to issue directions to Consistel and Sprint to ensure that any arrangements between them must not result in disruption of telecommunication services at the Singapore Sports Hub.

Taking into account all relevant considerations, IDA has imposed a financial penalty of \$300,000 on Consistel for the contraventions of its IBTTS licence conditions. The financial penalty is just and appropriate taking into account the serious nature of the contravention. It underscores IDA's position that it is important for licensees to act with integrity, honesty and transparency in all their dealings with IDA as a regulator.

Arising from IDA's assessment in this enforcement decision, the in-principle approval granted to Consistel in May 2015 to transfer its IBTTS licence to Sprint is void as it had been granted based on misleading information submitted by Consistel.

Under the Telecommunications Act (Cap. 323), Consistel has the right to make a request to IDA to reconsider its decision against Consistel or to appeal to the Minister in respect of IDA's decision.