

**CODE OF PRACTICE FOR COMPETITION IN THE PROVISION OF
TELECOMMUNICATION AND MEDIA SERVICES 2020**

In exercise of the powers conferred by Section 61(1) of the Info-communications Media Development Authority Act 2016 (No. 22 of 2016) and Section 26(1) of the Telecommunications Act (Cap. 323), the Info-communications Media Development Authority hereby issues the following Code:

TABLE OF CONTENTS

1.	PRELIMINARY	5
1.1	Citation and Commencement	5
1.2	Goals of this Code.....	5
1.3	Legal Effect of this Code	5
1.4	Persons Subject to this Code.....	5
1.5	Regulatory Principles	10
1.6	Modification and Elimination of Provisions	11
1.7	Exemptions, Waivers and Suspensions.....	12
1.8	Rule of Construction.....	12
1.9	Definitions	12
2.	CONCEPT OF DOMINANCE - CLASSIFICATION OF TELECOMMUNICATION LICENSEES/REGULATED PERSONS	17
2.1	Introduction	17
2.2	Application.....	17
2.3	Dominant Entities	17
2.4	Classification and Reclassification of Telecommunication Licensees or Regulated Persons	18
2.5	No Presumption of Dominance for New Markets.....	18
2.6	Transfers of Facilities and Business by Dominant Entities	19
2.7	Exemption from Application of Obligations Applicable to Dominant Entities	19
2.8	Duties of Dominant Entities.....	21
3.	DUTIES/OBLIGATIONS OF DOMINANT ENTITIES.....	22
3.1	Introduction	22
3.2	Application.....	22
3.3	Duties of Dominant Entities.....	22
3.4	Additional Duties of Dominant Entities in the Telecommunication Market	22
4.	CONSUMER PROTECTION	25
4.1	Introduction	25
4.2	General Duties of Telecommunication Licensees and Regulated Persons.....	26
4.3	Duties of Telecommunication Licensees	33
4.4	Duties of Regulated Persons Providing Subscription Television Services	33
4.5	Mandatory Contractual Provisions of Telecommunication Licensees and Regulated Persons	37

5.	REQUIRED COOPERATION AMONGST TELECOMMUNICATION LICENSEES TO PROMOTE COMPETITION.....	40
5.1	Introduction	40
5.2	Duty to Interconnect With Other Telecommunication Licensees	40
5.3	Duty to Submit to IMDA All Interconnection Agreements	40
5.4	Minimum Duties for Interconnection Agreements	41
5.5	Enforcement of Interconnection Agreements	42
5.6	Modification, Suspension or Termination of Interconnection Agreements	43
5.7	Other Duties	44
6.	INTERCONNECTION WITH DOMINANT TELECOMMUNICATION LICENSEES....	46
6.1	Introduction	46
6.2	Options for Entering into an Interconnection Agreement.....	46
6.3	The Reference Interconnection Offer.....	47
6.4	Interconnection Pursuant to an Individualised Interconnection Agreement.....	52
6.5	Publication of Interconnection Agreements	54
6.6	Enforcement of Agreements	55
7.	RESOURCE SHARING	56
7.1	Introduction	56
7.2	Definition of Sharing.....	56
7.3	Standards for Determining Critical Support Infrastructure or Essential Resources....	57
7.4	Procedures for Requesting Sharing.....	57
7.5	Designation by IMDA of Critical Support Infrastructure or Essential Resources	59
7.6	Implementation of IMDA’s Decisions	60
8.	PROHIBITION OF AGREEMENTS, ETC., PREVENTING, RESTRICTING OR DISTORTING COMPETITION.....	61
8.1	Introduction	61
8.2	Determining the Existence of an Agreement	61
8.3	Horizontal Agreements – Agreements Between Entities Providing Competing Services and/or Equipment in the Telecommunication or Media Industry.....	62
8.4	Other Agreements Between Competing Entities	63
8.5	Non-horizontal Agreements - Agreements Between Non-Competing Entities	65
9.	ABUSE OF A DOMINANT POSITION, ANTI-COMPETITIVE LEVERAGING, AND UNFAIR METHODS OF COMPETITION.....	66
9.1	Abuse of a Dominant Position.....	66
9.2	Anti-competitive Preferences/Leveraging	69
9.3	Unfair Methods of Competition – Specific Prohibited Practices	70
10.	MERGERS AND ACQUISITIONS	72
10.1	Introduction	72
10.2	Declaration and Designation of Designated Telecommunication Licensees, Designated Business Trusts, and Designated Trusts.....	79

10.3	Designated Telecommunication Licensees: Acquisitions of Voting Shares or Voting Power in a Designated Telecommunication Licensee	81
10.4	Designated Business Trusts or Designated Trusts: Acquisitions of Units, Equity Interests, or Voting Power in a Designated Business Trust or Designated Trust.....	97
10.5	Acquisitions of Voting Shares or Voting Power in a Regulated Person.....	114
10.6	Consolidation Review Period	124
10.7	Disposition of Requests and Consolidation Applications.....	125
10.8	Validity of IMDA's Approval.....	126
10.9	Informal Guidance Prior to Filing of Consolidation Application.....	127
10.10	Requests for Information and Consultations.....	127
10.11	Failure to Seek IMDA's Approval for 12% Controller and Consolidation.....	128
10.12	IMDA's Power to Issue Directions.....	129
10.13	Consolidation and Tender Offer Guidelines.....	131
11.	PUBLIC INTEREST OBLIGATIONS IN THE MEDIA MARKET	132
11.1	Introduction	132
11.2	Application.....	132
11.3	Definitions	132
11.4	Duty of Free-to-Air Television Licensees and Free-to-Air Radio Licensees to Broadcast Specified Events of National Significance	134
11.5	Public Access to Specified Programmes	137
11.6	Obligation to Cross-Carry Qualified Content	140
11.7	Enforcement Measures.....	146
12.	ADMINISTRATIVE AND ENFORCEMENT PROCEDURES.....	147
12.1	Introduction	147
12.2	Application.....	147
12.3	Request for Informal Guidance	147
12.4	Conciliation.....	148
12.5	Dispute Resolution	149
12.6	Enforcement Action for Contravention of this Code.....	150
12.7	Binding Effect of Initial Submissions.....	157
12.8	Request for Information	157
12.9	Confidential Treatment of Information.....	159
12.10	Review of IMDA's Decisions	160
APPENDIX 1 – PRINCIPLES GOVERNING THE PRICING OF INTERCONNECTION RELATED SERVICES, MANDATED WHOLESALE SERVICES, CRITICAL SUPPORT INFRASTRUCTURE AND ESSENTIAL RESOURCES.....		163
APPENDIX 2 – SCHEDULE OF INTERCONNECTION RELATED SERVICES AND MANDATED WHOLESALE SERVICES		166
APPENDIX 3 – MATTERS RELATING TO CROSS-CARRIAGE.....		173
APPENDIX 4 – DEFAULT PRICING PRINCIPLES FOR USE IN DISPUTE RESOLUTION.....		176

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1. PRELIMINARY

1.1 Citation and Commencement

This Code may be cited as the [Telecom and Media Competition Code] and shall come into operation on [date] at [time].

1.2 Goals of this Code

This Code is intended to:

- (a) promote the efficiency and competitiveness of the information, communications and media industry in Singapore;
- (b) ensure that telecommunication and media services are reasonably accessible to all people in Singapore, and the availability of a comprehensive range of quality telecommunication and media services in Singapore;
- (c) promote and maintain fair and efficient market conduct and effective competition between persons engaged in commercial activities connected with telecommunication technology and media in Singapore;
- (d) promote the effective participation of all sectors of the Singapore information, communications and media industry (in markets whether in Singapore or elsewhere);
- (e) encourage, facilitate and promote industry self-regulation in the information, communications and media industry in Singapore;
- (f) encourage, facilitate and promote investment in and the establishment, development and expansion of the information, communications and media industry in Singapore; and
- (g) safeguard the public interest.

1.3 Legal Effect of this Code

- (a) This Code imposes binding legal obligations on the persons to which it applies.
- (b) The obligations contained in this Code are in addition to those contained in the Info-communications Media Development Authority of Singapore Act 2016 (No. 22 of 2016) (“**IMDA Act**”), the Telecommunications Act, other statutes, as well as other regulations, licences or codes of practice issued by the Info-communications Media Development Authority (“**IMDA**”). To the extent that any provision of this Code is inconsistent with the terms of the IMDA Act, Telecommunications Act, any other statute, or the terms of any licence issued by IMDA, the provisions of the IMDA Act, Telecommunications Act, other statute or licences shall prevail. To the extent that this Code is inconsistent with the provision of any advisory guidelines (which are not legally binding) issued by IMDA, the terms of this Code shall prevail. If any provision of this Code is held to be unlawful, all other provisions will remain in full force and effect.

1.4 Persons Subject to this Code

This Code applies to Telecommunication Licensees, Regulated Persons and other persons as specified herein. The following chart indicates the applicability of various provisions of this Code to different persons.

Category of Licensee	Dominant Entity (Telecommunication Licensees)	Dominant Entity (Regulated Persons)	Non-Dominant Regulated Persons	Persons Controlling Media Resources	Non-Dominant Facilities-based Licensees	Non-Dominant Services-based Licensees that use Switching or routing Equipment to provide Telecommunication Services to the Public	Services-based Licensees that do not use Switching or Routing Equipment to provide Telecommunication Services to the Public	Telecommunication Equipment Dealer Licensees
Dominant / Non-Dominant Classification (Section 2)	All Provisions	All Provisions	All Provisions	Not Applicable	All Provisions	All Provisions	Not Applicable	Not Applicable
Duties / Obligations of Dominant Entities (Section 3)	All Provisions	All Provisions (except Subsections 3.4 through 3.4.4)	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Consumer Protection (Section 4)	All Provisions (except Subsections 4.4 through 4.4.7)	All Provisions (except Subsections 4.3 through 4.3.2)	All Provisions (except Subsections 4.3 through 4.3.2)	Not Applicable	All Provisions (except Subsections 4.4 through 4.4.7)	All Provisions (except Subsections 4.4 through 4.4.7)	All Provisions (except Subsections 4.4 through 4.4.7)	Not Applicable
Interconnection (Sections 5 and 6)	All Provisions	Not Applicable	Not Applicable	Not Applicable	All Provisions (except Subsections 6.3 through 6.3.7)	All Provisions (except Subsections 5.4.2, 5.4.3, 5.7.5,	Not Applicable	Not Applicable

Category of Licensee	Dominant Entity (Telecommunication Licensees)	Dominant Entity (Regulated Persons)	Non-Dominant Regulated Persons	Persons Controlling Media Resources	Non-Dominant Facilities-based Licensees	Non-Dominant Services-based Licensees that use Switching or routing Equipment to provide Telecommunication Services to the Public	Services-based Licensees that do not use Switching or Routing Equipment to provide Telecommunication Services to the Public	Telecommunication Equipment Dealer Licensees
						5.7.6, 6.3 through 6.3.7)		
Resource Sharing (Section 7)	All Provisions	All Provisions (apply to Regulated Persons who are Persons Controlling Media Resources)	All Provisions (apply to Regulated Persons who are Persons Controlling Media Resources)	All Provisions	All Provisions	All Provisions	All Provisions	Not Applicable
Competition (Sections 8 to 9)	All Provisions	All Provisions	All Provisions	Not Applicable	All Provisions	All Provisions	All Provisions	All Provisions
Consolidations (Section 10)	All Provisions (except Subsections 10.5 through 10.5.6), which apply to	All Provisions (except Subsections 10.2 through 10.2.3, 10.3 through	All Provisions (except Subsections 10.2 through 10.2.3, 10.3 through	Not Applicable	All Provisions (except Subsections 10.5 through 10.5.6), which apply to	All Provisions (except Subsections 10.5 through 10.5.6), which apply to	All Provisions (except Subsections 10.5 through 10.5.6), which apply to	Not Applicable

Category of Licensee	Dominant Entity (Telecommunication Licensees)	Dominant Entity (Regulated Persons)	Non-Dominant Regulated Persons	Persons Controlling Media Resources	Non-Dominant Facilities-based Licensees	Non-Dominant Services-based Licensees that use Switching or routing Equipment to provide Telecommunication Services to the Public	Services-based Licensees that do not use Switching or Routing Equipment to provide Telecommunication Services to the Public	Telecommunication Equipment Dealer Licensees
	Designated Telecommunication Licensees, Designated Business Trusts, and Designated Trusts as may be relevant	10.3.8, 10.4 through 10.4.8)	10.3.8, 10.4 through 10.4.8)		Designated Telecommunication Licensees, Designated Business Trusts, and Designated Trusts as may be relevant	Designated Telecommunication Licensees, Designated Business Trusts, and Designated Trusts as may be relevant	Designated Telecommunication Licensees, Designated Business Trusts, and Designated Trusts as may be relevant	
Public Interest Obligations (Section 11)	Not Applicable	All Provisions (apply to Regulated Persons providing Free-to-Air Television Services, Free-to-Air Radio Services, or Subscription Television	All Provisions (apply to Regulated Persons providing Free-to-Air Television Services, Free-to-Air Radio Services, or Subscription Television	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable

Category of Licensee	Dominant Entity (Telecommunication Licensees)	Dominant Entity (Regulated Persons)	Non-Dominant Regulated Persons	Persons Controlling Media Resources	Non-Dominant Facilities-based Licensees	Non-Dominant Services-based Licensees that use Switching or routing Equipment to provide Telecommunication Services to the Public	Services-based Licensees that do not use Switching or Routing Equipment to provide Telecommunication Services to the Public	Telecommunication Equipment Dealer Licensees
		Services, and to the extent applicable, any person who has been appointed or designated by IMDA as a Lead Broadcaster)	Services, and to the extent applicable, any person who has been appointed or designated by IMDA as a Lead Broadcaster)					
Administrative Procedures (Section 12)	All Provisions	All Provisions	All Provisions	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 IMDA's implementation of its provisions.

1.5.1 Reliance on Market Forces, Private Negotiations and Industry Self-Regulation

- (a) 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, IMDA will place primary reliance on private negotiations and industry self-regulation, subject to minimum requirements designed to protect consumers and prevent anti-competitive conduct. As a general principle, private negotiations undertaken by persons to whom the Code applies should be undertaken in good faith.
- (b) Various provisions of this Code impose a duty on specified persons to negotiate in "good faith". The duty of good faith requires that such persons must take diligent measures to maximise the chance of reaching an agreement, on commercially reasonable terms, where feasible.

1.5.2 Promotion of Effective and Sustainable Competition

Recognising the effectiveness of market forces in promoting consumer welfare, IMDA will intervene where necessary to promote and maintain effective and sustainable competition and to safeguard the public interest. The measures that IMDA may take 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 and unfair methods of competition by industry participants;
- (d) prohibiting Consolidations that are likely to substantially lessen competition in the information, communications and media industry of Singapore and considering whether Consolidations are in the public interest;
- (e) ensuring that industry participants and consumers have access to information on market conditions; and
- (f) ensuring that there is inter-operability of and, where necessary, reasonable access to, networks to prevent impediments to effective competition and market growth.

1.5.3 Promotion of Facilities-based Competition in the Telecommunication Industry

Effective and sustainable competition in the telecommunication industry will be best achieved through facilities-based competition. However, where there are technological, market or other impediments that will hamper competing Telecommunication Licensees' ability to deploy telecommunication facilities, IMDA will seek to strike a balance between providing the economic incentives to deploy telecommunication facilities and taking pro-active measures to facilitate services-based competition.

1.5.4 Proportionate Regulation

To the extent that *ex ante* regulation is necessary, IMDA will seek to impose regulatory requirements that are carefully crafted to achieve clearly articulated objectives. Such requirements will be no broader than necessary to achieve IMDA's stated goals.

1.5.5 Technological Neutrality

IMDA's regulatory requirements will reflect the phenomenon of convergence, which is eroding historical differences among telecommunication platforms such as wireline, cable, wireless and satellite, as well as media platforms such as broadcasting, print and on-line services. Regulatory requirements will be based on clear policy objectives and sound economic principles and, to the extent feasible, will be technology-neutral. As the phenomenon of convergence continues to evolve, with different platforms subject to differing degrees of competition, the objective application of these principles and/or public interest concerns, may result in the imposition of different regulatory obligations on service providers that use different platforms.

1.5.6 Open, Transparent and Reasoned Decision Making

IMDA will endeavour to apply the provisions of the Code in a transparent manner. IMDA will generally provide an opportunity for public comment in connection with material issues. Comments will generally be made available to the public, except to the extent that information submitted to IMDA is confidential, proprietary, commercially sensitive, or raises law enforcement, national security or public interest concerns. In arriving at its decisions, IMDA will give full consideration to the comments received. IMDA will generally make available to the public decisions that it has adopted pursuant to the Code and the basis for its decisions. IMDA may also make public information related to any enforcement action taken pursuant to the Code. Where appropriate, IMDA may also issue guidelines clarifying the procedures and standards that it will use to implement the Code.

1.5.7 Avoidance of Unnecessary Delay

Recognising the need for market participants to respond rapidly to changing market forces, IMDA will endeavour to make all decisions pursuant to the Code within the timeframes specified herein and, in any case, as soon as reasonably possible.

1.5.8 Non-discrimination

IMDA's decisions will be non-discriminatory. IMDA will treat similarly situated persons on an equivalent basis. Where appropriate, IMDA's decisions will reflect relevant differences between such persons.

1.5.9 Consultation with Other Regulatory Authorities

Where feasible and appropriate, IMDA 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

IMDA will modify and, where appropriate, eliminate the provisions of this Code to reflect changing market conditions. In general, IMDA will seek to provide interested parties with an opportunity to comment prior to adopting any modification. The Code may be modified in the following three ways:

1.6.1 Regulatory Review

IMDA will review this Code at least once every five years after the issuance of the Code to ensure that it remains effective in light of IMDA's regulatory objectives. IMDA intends to conduct the next review five years after the Effective Date of this Code, whereby IMDA will eliminate or modify provisions that it determines to be no longer necessary. IMDA also will make any other changes necessary to achieve its regulatory objectives.

1.6.2 Petitions for Elimination or Modification of Provisions of this Code

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

1.6.3 Right to Modify

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

1.7 Exemptions, Waivers and Suspensions

- (a) IMDA may exempt any person or class of persons from, or waive the application of, all or any provisions of this Code. An exemption or waiver may be subject to such terms and conditions as IMDA may specify and may, without limitation, be on a one-time basis, temporary, permanent, for a fixed period or effective until the occurrence of a specific event. Where appropriate, IMDA will seek to provide interested parties with an opportunity to comment prior to granting any exemption or waiver.
- (b) IMDA may waive or suspend any provision of this Code that imposes an obligation on IMDA in any situation where such waiver or suspension is necessary to achieve the goals of this Code or is otherwise necessary in the public interest.

1.8 Rule of Construction

IMDA will interpret this Code in a manner that is consistent with the ordinary meaning of the terms used. In case of any ambiguity, IMDA will interpret this Code in the manner most consistent with the regulatory principles specified in Sub-sections 1.5.1 to 1.5.9 of this Code.

1.9 Definitions

Unless otherwise specifically provided, the following definitions shall apply throughout this Code:

- (a) "Acquiring Party" has the meaning specified in Sub-section 10.1.2(c) of this Code;
- (b) "Affiliate" in relation to a Designated Telecommunication Licensee, Designated Business Trust, Designated Trust, Regulated Person, party or an Acquiring Party, means an entity —
 - (i) that has an attributable interest in the Designated Telecommunication Licensee, Designated Business Trust, Designated Trust, Regulated Person, party or Acquiring Party of 5% or more (*parent*);

- (ii) in which the Designated Telecommunication Licensee, Designated Business Trust, Designated Trust, Regulated Person, party or Acquiring Party has an attributable interest of 5% or more (*subsidiary*); or
- (iii) in which any parent of the Designated Telecommunication Licensee, Designated Business Trust, Designated Trust, Regulated Person, party or Acquiring Party has an attributable interest of 5% or more (*sibling*), provided that one party will not be deemed an Affiliate of another based solely on the fact that both parties' ultimate parent has a passive interest in both of them;

For the purposes of this definition, "interest" means any right or interest, whether legal or equitable, which gives the holder of that right or interest voting power. This includes shares in a Corporation, units in a business trust and equitable interest in a trust.

(In determining a relevant party's attributable interest, IMDA 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% of the shares or units or equity interest of entity A, and entity A has legal or beneficial ownership of 50% of the shares or units or equity interest of entity B, and entity B has legal or beneficial ownership of 50% of the shares or units or equity interest of entity C, then the relevant party will be deemed to have a 25% attributable shares or units or equity 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.)

- (c) "business", means —
 - (i) in relation to a Designated Telecommunication Licensee, the business of the Designated Telecommunication Licensee conducted pursuant to a telecommunication licence granted by IMDA;
 - (ii) in relation to a Designated Business Trust, the business relating to the trust property of the Designated Business Trust and managed and operated by the Trustee-Manager of the Designated Business Trust in its capacity as Trustee-Manager of the Designated Business Trust;
 - (iii) in relation to a Designated Trust, such business relating to the trust property of the Designated Trust; or
 - (iv) in relation to a Regulated Person, the business of the Regulated Person conducted pursuant to a licence granted by the IMDA;
- (d) "Business Trust" has the meaning specified in Sub-section 10.1.2(f) of this Code;
- (e) "Conciliation" means conciliation in accordance with the IMDA conciliation procedures specified in Sub-section 12.4 of this Code;
- (f) "Consolidation" has the meaning specified in Sub-section 10.1.2(g) of this Code;
- (g) "Corporation" has the same meaning as in Section 4(1) of the Companies Act (Cap. 50);
- (h) "Critical Support Infrastructure" has the meaning specified in Sub-section 7.1.1(b)(i) of this Code;

- (i) “Customer” means either an End User or another Telecommunication Licensee or Regulated Person that purchases a Service;
- (j) “Designated Business Trust” has the meaning specified in Sub-section 10.1.2(j) of this Code;
- (k) “Designated Telecommunication Licensee” has the meaning specified in Sub-section 10.1.2(k) of this Code;
- (l) “Designated Trust” has the meaning specified in Sub-section 10.1.2(l) of this Code;
- (m) “Dispute Resolution” means the dispute resolution procedure specified in Sub-section 12.5 of this Code;
- (n) “Effective Control” has the meaning specified in Sub-section 10.1.2(m) of this Code;
- (o) “Effective Date” means the date this Code comes into effect;
- (p) “End User” means a business or residential subscriber of any Service in Singapore;
- (q) “End User Service Agreement” means an agreement under which a Telecommunication Licensee or Regulated Person provides Services to an End User;
- (r) “Essential Resource” has the meaning specified in Sub-section 7.1.1(b)(ii) of this Code;
- (s) “Events of National Significance” has the meaning specified in Sub-section 11.3(c) of this Code;
- (t) “Facilities-based Licensee” means a Telecommunication Licensee to which IMDA has granted a licence to provide Facilities-based Operations under Section 5 of the Telecommunications Act;
- (u) “Free-to-Air Radio Licensee” refers to any person licensed under the Broadcasting Act (Cap. 28) to provide a Free-to-Air Radio Service;
- (v) “Free-to-Air Radio Service” means any free-to-air radio service or special interest radio service which is made available to the audience for whom it is intended without payment of a subscription fee;
- (w) “Free-to-Air Television Licensee” refers to any person licensed under the Broadcasting Act to provide a Free-to-Air Television Service;
- (x) “Free-to-Air Television Service” means any free-to-air television service or special interest television service which is made available to the audience for whom it is intended without payment of a subscription fee;
- (y) “Interconnection Agreement” means a written agreement between Telecommunication Licensees governing interconnection and related arrangements;
- (z) “Interconnection Related Services” means services specified by IMDA under Sub-section 6.3.2 of this Code;

- (aa) “Lead Broadcaster” refers to the broadcaster appointed under Sub-section 11.4.2 of this Code;
- (ab) “Licensee” means, unless otherwise specified in the relevant Sections of this Code, a Telecommunication Licensee or a Media Licensee;
- (ac) “Mandated Wholesale Services” means services specified by IMDA under Sub-section 6.3.2 of this Code;
- (ad) “Media Licensee” means any person granted a newspaper permit under the Newspaper and Printing Presses Act (Cap. 206) or who holds a broadcasting licence under the Broadcasting Act (Cap. 28);
- (ae) “media market” includes any product or geographic market segment within a media market.
- (af) “Media Resource” has the meaning specified in Sub-section 7.1.1(b)(v) of this Code;
- (ag) “Minimum Interconnection Duties” means the duties specified in Sub-sections 5.4.1 through 5.4.8 of this Code;
- (ah) “Minister” means the Minister for Communications and Information.
- (ai) “person” includes any individual, any company, partnership or association, and any body of persons, corporate or unincorporated;
- (aj) “Person Controlling Media Resources” has the meaning specified in Sub-section 7.1.1(b)(vi) of this Code;
- (ak) “Reference Interconnection Offer” (“**RIO**”) means the offer that the Dominant Telecommunication Licensee is required to make under Sub-section 6.2.1 of this Code;
- (al) “Regulated Person” refers to any person defined under Section 2 of the Information Communications Media Development Authority Act 2016;
- (am) “Service” means any service for telecommunications (including services relating to the use of telecommunication systems) or media (as the case may be), and shall, unless the context requires otherwise, include any equipment associated with the use of such service that has been provided by a Telecommunication Licensee and/or Regulated Person to the End User.
- (an) “Services-based Licensee” means a Telecommunication Licensee to which IMDA has granted a licence to provide Services-based Operations under Section 5 of the Telecommunications Act.
- (ao) “Share” has the meaning specified in Sub-section 10.1.2(w) of this Code;
- (ap) “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;
- (aq) “Subscriber” means an end user who agrees to purchase or who has purchased a Subscription Service from a Regulated Person;
- (ar) “Subscription Service” has the meaning specified in Sub-section 4.1.1(x) of this Code;

- (as) “Subscription Television Licensee” refers to any person licensed under the Broadcasting Act to provide a Subscription Television Service;
- (at) “Subscription Television Service” has the meaning specified in Sub-section 4.1.1(b)(xi) of this Code; and
- (au) “Telecommunication Licensee” means, unless otherwise specified in the relevant Sections of this Code, Facilities-based Licensees, Services-based Licensees and Telecommunication Equipment Dealer Licensees.

2. CONCEPT OF DOMINANCE - CLASSIFICATION OF TELECOMMUNICATION LICENSEES/REGULATED PERSONS

2.1 Introduction

- (a) This Code distinguishes between Telecommunication Licensees or Regulated Persons who are able to act without significant competitive restraints from competitors and are therefore subject to regulatory obligations given their dominant positions, and those Telecommunication Licensees or Regulated Persons who are not able to act without significant competitive restraints from competitors and are therefore subject to a lesser degree of regulation given their non-dominant position.
- (b) Most Telecommunication Licensees or Regulated Persons are subject to competitive market forces. Therefore, IMDA will impose minimum regulatory “rules of the road”, coupled with the *ex post* enforcement of general prohibitions on anti-competitive conduct, on these Telecommunication Licensees or Regulated Persons. By contrast, where a Telecommunication Licensee or Regulated Person’s conduct is not constrained by significant competitive constraints, IMDA will require it to comply with more stringent regulatory requirements.

2.2 Application

This Section applies to all Facilities-based Licensees and Services-based Licensees that use switching or routing equipment to provide Services to the public and all Regulated Persons. In this Section, the term “Telecommunication Licensee” refers to a Facilities-based Licensee or a Services-based Licensee that uses switching or routing equipment to provide Services to the public.

2.3 Dominant Entities

- (a) A Telecommunication Licensee or Regulated Person will be classified as a Dominant Entity, if the Telecommunication Licensee or Regulated Person is an entity that either:
 - (i) operates facilities used for the provision of telecommunication or media services that are sufficiently costly or difficult to replicate such that requiring new entrants to do so would create a significant barrier to rapid and successful entry into the telecommunication or media market in Singapore by an efficient competitor; or
 - (ii) has the ability to exercise Significant Market Power in any market in which it provides services pursuant to its telecommunication or media licence.
- (b) IMDA may issue advisory guidelines to describe and elaborate on the standards that IMDA will apply in assessing whether a Telecommunication Licensee or Regulated Person has Significant Market Power under Sub-section 2.3(a)(ii) of the Code.
- (c) Subject to Sub-section 2.4.2 and Sub-section 2.5 of this Code, a Telecommunication Licensee or Regulated Person who was previously classified as a Dominant Licensee under the Code of Practice for Competition in the Provision of Telecommunication Services 2012, or a Dominant Person under the Code of Practice for Market Conduct in the Provision of Media Services, will continue to be considered a Dominant Entity in markets in which it already operates at the date on which this Code enters into force.

2.4 Classification and Reclassification of Telecommunication Licensees or Regulated Persons

2.4.1 Classification of Dominant Entities

IMDA may, in its discretion and at any time, classify any Telecommunication Licensee or Regulated Person whom it considers to have a dominant position in any telecommunication or media market, as a Dominant Entity.

2.4.2 Reclassification of Telecommunication Licensees or Regulated Persons

- (a) IMDA may, in its discretion and at any time, make an assessment as to whether any Telecommunication Licensee or Regulated Person classified as a Dominant Entity in Sub-section 2.3(c) or under Sub-section 2.4.1 of this Code should be reclassified as non-dominant. Before doing so, IMDA will request the relevant Telecommunication Licensee or Regulated Person or other interested party to provide information that will assist IMDA in determining whether or not the Telecommunication Licensee or Regulated Person meets the criteria for reclassification as specified in Sub-section 2.4.3 of this Code.
- (b) Reclassification can occur in any of the following ways:
 - (i) IMDA may make a determination that a Telecommunication Licensee or Regulated Person ought to be reclassified in the course of IMDA's investigation, guidance, regulatory intervention or where IMDA deems necessary to achieve its stated objectives in this Code; or
 - (ii) a Telecommunication Licensee or Regulated Person or other interested party may petition IMDA to have a Telecommunication Licensee or Regulated Person reclassified.
- (c) IMDA will reclassify a Dominant Entity as non-dominant if IMDA concludes, based on relevant evidence, that the Telecommunication Licensee or Regulated Person no longer satisfies the conditions for dominant classification specified under Sub-sections 2.3(a)(i) and 2.3(a)(ii) of the Code.
- (d) IMDA may seek public comments prior to reclassifying a Telecommunication Licensee or Regulated Person.
- (e) Where IMDA reclassifies a Telecommunication Licensee or Regulated Person, IMDA will issue a notice on the IMDA website (www.imda.gov.sg) or by any other means of publication as IMDA considers appropriate.

2.4.3 Criteria for Reclassification of Telecommunication Licensees or Regulated Persons

Where the Telecommunication Licensee/Regulated Person is currently classified as a Dominant Entity, IMDA may reclassify it as a non-Dominant Entity if it determines that the Telecommunication Licensee/Regulated Person does not satisfy the criteria under Sub-sections 2.3(a)(i) and 2.3(a)(ii) of the Code.

2.5 No Presumption of Dominance for New Markets

Designated Dominant Entities will not be presumed to be dominant for new services offered in new markets. Dominant Entities will be required to demonstrate to IMDA that the new services do not fall within existing markets in which the Dominant Entities are currently participating in and in which they are classified as dominant.

2.6 Transfers of Facilities and Business by Dominant Entities

- (a) A Dominant Entity may not avoid the provisions applicable to Dominant Entities specified in this Code by transferring to another entity the following:
 - (i) ownership or operational control of facilities that IMDA has licensed the Dominant Entity to use to provide telecommunication or media services in Singapore; and/or
 - (ii) any business of the Dominant Entity, as a going concern, relating to the provision of telecommunication or media services that IMDA has licensed the Dominant Entity to provide in Singapore.
- (b) Where a Dominant Entity wishes to transfer to another entity ownership or operational control of its facilities, and/or its business as a going concern, the Dominant Entity must obtain IMDA's approval prior to effecting the transfer. IMDA may approve the transfer request in full or in part, and subject the approval to any appropriate condition that IMDA may impose (including reclassifying the transferee as dominant where the criteria for dominant classification set out in Sub-sections 2.3(a)(i) and 2.3(a)(ii) of the Code are satisfied).
- (c) Where a Dominant Entity transfers to another entity ownership or operational control of its facilities, and/or its business as a going concern, without first obtaining IMDA's approval, in addition to the enforcement measures that IMDA may take against the Dominant Entity for contravention of this Code, the transferee will be required to comply with the provisions applicable to Dominant Entities under this Code in relation to the transferred facilities and/or business.

2.7 Exemption from Application of Obligations Applicable to Dominant Entities

- (a) Dominant Entities are subject to a number of obligations in this Code. IMDA recognises, however, that as competition develops, it may no longer be necessary to apply each of these obligations to every facility operated or service provided by the Dominant Entity. Therefore, a Dominant Entity may seek an exemption from the obligations applicable to Dominant Entities by way of an exemption request.
- (b) Where IMDA grants a Dominant Entity an exemption, IMDA will issue a notice on the IMDA website (www.imda.gov.sg) or by any other means of publication as IMDA considers appropriate.

2.7.1 Exemption Request

A Dominant Entity seeking exemption from the obligations applicable to Dominant Entities must submit an exemption request to IMDA. The exemption request must identify the obligations from which the Dominant Entity seeks to be exempted and the telecommunication or media markets involved. The Dominant Entity must demonstrate that it satisfies the requirements specified in Sub-sections 2.7.1.1 or 2.7.1.2 of the Code, and must also provide verifiable data to support its exemption request, as set out in Sub-sections 2.7.3.1 or 2.7.3.2 of the Code.

2.7.1.1 Exemptions Applicable to Specific Markets

IMDA will exempt a Dominant Entity from complying with the special obligations applicable to Dominant Entities in any telecommunication or media market in which the Dominant Entity demonstrates that it lacks Significant Market Power in that telecommunication or media market.

2.7.1.2 Exemption from Specific Obligations

IMDA will exempt a Dominant Entity from specific obligations applicable to Dominant Entities in some or all telecommunication or media markets in which the Dominant Entity participates, in any case in which the Dominant Entity demonstrates that the continued application of the provision to a specific facility or service is not necessary to protect Customers or to promote and preserve effective competition amongst Telecommunication Licensees or Regulated Persons.

2.7.2 Review by IMDA

- (a) IMDA will not accept a request for exemption from any provision applicable to Dominant Entities until the Dominant Entity has provided the information required under Sub-section 2.7.1 of this Code.
- (b) After receiving a request for exemption, IMDA will notify the Dominant Entity whether it must provide additional information before the request can be accepted.
- (c) IMDA will notify the Dominant Entity of the date on which it accepts the request.
- (d) IMDA will provide an opportunity for industry comments before issuing a preliminary decision and a final decision granting or denying the exemption request. In each case, IMDA will generally issue its preliminary and final decision within 90 days from the close of the public consultation.
- (e) IMDA may grant the request in full or in part, and subject to any appropriate conditions that IMDA may impose.
- (f) Where appropriate, IMDA may extend the time by which IMDA will issue its preliminary and final decision by providing a written notice to the Dominant Entity before the end of each 90-day period.

2.7.3 Evidence to be Submitted

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

2.7.3.1 Ability of Competitors to Replicate Facilities

A party seeking to demonstrate whether or not a Telecommunication Licensee or Regulated Person meets the conditions specified under Sub-section 2.3(a)(i) of the Code, and a Dominant Entity seeking to be exempted from the application of any special provision applicable to Dominant Entities in connection with a specific facility should submit verifiable data regarding:

- (a) the facilities that the Telecommunication Licensee or Regulated Person has deployed to provide Services in Singapore;
- (b) the cost to a new entrant to deploy facilities that perform a comparable function;
- (c) the extent to which such facilities are commercially available;
- (d) the extent to which there are technical, economic or regulatory obstacles to the competitive deployment of such facilities; and
- (e) the extent to which competitive deployment has occurred and is likely to occur within the foreseeable future.

2.7.3.2 Ability of Telecommunication Licensee/Regulated Person To Exercise Significant Market Power

A party seeking to demonstrate whether or not a Telecommunication Licensee or Regulated Person meets the conditions specified under Sub-section 2.3(a)(ii) of the Code, and a Dominant Entity seeking an exemption from any special provision applicable to Dominant Entities in connection with a specific service, should submit verifiable data regarding the Telecommunication Licensee or Regulated Person's ability to exercise Significant Market Power. This should generally include:

- (a) the relevant market(s) in which the Telecommunication Licensee or Regulated Person provides the services, all services that the Telecommunication Licensee or Regulated Person believes are in the same market and the basis on which the Telecommunication Licensee or Regulated Person has formed this opinion;
- (b) the participants in the market;
- (c) the Telecommunication Licensee or Regulated Person's market share;
- (d) the estimated market shares of other major market participants;
- (e) the level of concentration in the market;
- (f) the barriers to entry into the market;
- (g) 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 Telecommunication Licensee or Regulated Person;
- (h) the likelihood that End Users would respond to a significant and non-transitory price increase by switching to a competing service provider;
- (i) evidence of actual market competition – including new entry, changes in market share over time, price changes, introduction of new services and non-price competition; and
- (j) any other relevant factors that could enhance or diminish the Dominant Entity's ability to act anti-competitively.

2.8 Duties of Dominant Entities

A Telecommunication Licensee or Regulated Person who is classified as a Dominant Entity must comply with the special obligations applicable to Dominant Entities contained in Section 3 of this Code, as well as the general prohibitions against the abuse of dominant position contained in Section 9 of this Code.

3. DUTIES/OBLIGATIONS OF DOMINANT ENTITIES

3.1 Introduction

To the extent that Dominant Entities are not subject to competitive market forces, additional regulatory intervention is necessary to ensure that Dominant Entities provide services, both to End Users and to other Telecommunication Licensees or Regulated Persons, on fair, reasonable and non-discriminatory prices, terms and conditions. This Section sets out the requirements with which Dominant Entities must comply.

3.2 Application

This Section applies to all Dominant Entities.

3.3 Duties of Dominant Entities

The following duties are applicable to the provision of all Services by a Dominant Entity.

3.3.1 Duty to Provide Service at Fair and Reasonable Prices, Terms and Conditions

A Dominant Entity must provide Services to Customers at prices, terms and conditions that are fair and reasonable.

3.3.2 Duty to Provide Service on a Non-Discriminatory Basis

A Dominant Entity:

- (a) must provide Services to Customers at prices, terms and conditions that are not discriminatory; and
- (b) must not discriminate in favour of itself, an Affiliate, or any other related entity in the provision of any Service that it provides pursuant to an effective tariff.

This requires that, except where otherwise permitted or required by IMDA, differences in the prices, terms and conditions for comparable Services 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.

3.3.3 Duty to Provide Unbundled Services

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

3.3.4 Duty to Provide Service on Reasonable Request

A Dominant Entity must provide Service to any End User upon reasonable request.

3.4 Additional Duties of Dominant Entities in the Telecommunication Market

Sub-section 3.4 of this Code is only applicable to Dominant Entities in respect of the specific telecommunication markets in which they are considered to be Dominant Entities.

3.4.1 Duty to Allow Resale of End User Services

- (a) A Dominant Entity must allow any Telecommunication Licensee to purchase any Service that the Dominant Entity makes available to End Users, on the same prices, terms and conditions that the Dominant Entity makes such Service available to End Users. The Dominant Entity may not prevent the Telecommunication Licensee from reselling the Service to other Telecommunication Licensees or End Users, and using the Service as an input for its provision of Services to other Telecommunication Licensees or End Users.
 - (i) A Dominant Entity may comply with this obligation by filing tariffs for End User Services that do not expressly restrict resale and use as an input (or eliminating any restriction on resale and use as an input contained in its existing tariffs for End User Services).
 - (ii) Where an effective tariff for an End User Service restricts resale or use as an input, upon request by a Telecommunication Licensee, the Dominant Entity must, within a reasonable time period, file a tariff that allows the Telecommunication Licensee to purchase the Service on the same (or, at the request of the Telecommunication 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 Entity must not require a Telecommunication Licensee that uses its End User Services as an input into other services to disclose that it is using the Dominant Entity's Services.

3.4.2 Duty to Allow Sales Agency

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

3.4.3 Duty for Wholesale Services

Unless directed to do so by IMDA, a Dominant Entity is not required to offer any Service on a wholesale basis. If the Dominant Entity chooses to do so, however, the Dominant Entity:

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

3.4.4 Duties in relation to Tariffs

- (a) A Dominant Entity must file a tariff with IMDA and obtain IMDA's written approval prior to offering, or modifying the terms on which it offers, any of the following Services (including any offer on a trial basis):
 - (i) resale Services offered under Sub-section 3.4.1 of this Code;
 - (ii) wholesale Services offered under Sub-section 3.4.3 of this Code; and
 - (iii) any other Service that IMDA directs the Dominant Entity to offer pursuant to a tariff.
- (b) For retail Services:
 - (i) A Dominant Entity must apply to IMDA to obtain IMDA's views on whether a new retail Service offered by the Dominant Entity in any market in which it is dominant is classified as a Service which is subject to IMDA's approval; and
 - (ii) a Dominant Entity must notify IMDA of:
 - (A) new retail tariffs offered to End Users;
 - (B) modifications to the approved tariffs of existing retail Services; and
 - (C) offerings of Services designed for specific customers ("**Customised Tariffs**") or promotional schemes on these retail Services,

(collectively known as, "**Info-Tariffs**"),

upon the publication of the Info-Tariff.
- (c) A Dominant Entity must obtain IMDA's written approval prior to withdrawing any existing retail tariffs or any Service that it provides pursuant to an effective tariff.

4. CONSUMER PROTECTION

4.1 Introduction

4.1.1 Application

- (a) All provisions in this Section apply to all Telecommunication Licensees and Regulated Persons.
- (b) In this Section, the term:
 - (i) “Basic Telephone Service” means a fundamentally plain telephony service as may be identified by IMDA in a Telecommunication Licensee’s licence, which service enables an End User to make and receive voice calls within Singapore;
 - (ii) “Business End User” refers to a business subscriber of any Service in Singapore, and for purposes of Sub-section 4.2.6.1(a)(vi), includes a user of any Service in Singapore;
 - (iii) “End User” excludes any person who purchases telecommunication or media goods, services and/or access (as the case may be) as inputs for that person’s production, resale or provision of any telecommunication or media service;
 - (iv) “End User Service Information” or “EUSI” refers to all information that a Telecommunication Licensee or Regulated Person obtains as a result of an End User’s use of a Service provided by the Telecommunication Licensee or Regulated Person. This includes, but is not limited to, information regarding:
 - (A) the End User’s usage of the Service, including usage patterns (including number of calls, times of calls, duration of calls and parties called);
 - (B) the Services and/or equipment used and/or ordered 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 information and history.
 - (v) “Personal Data” shall have the same meaning as in the Personal Data Protection Act 2012 (No. 26 of 2012) as may be amended from time to time;
 - (vi) “Residential End User” refers to a residential or individual subscriber of any Service in Singapore, and for purposes of Sub-section 4.2.6.1(c)(iii), includes a user of any Service in Singapore;
 - (vii) “Roaming-related information” includes (i) roaming partners in the foreign jurisdiction; (ii) charges for voice, messaging, data and other roaming-related ancillary services to the in-bound roamer’s home country, in Singapore and to any other country; and (iii) alternative roaming options available to the subscriber such as alternative call-back options or roaming rate-capped bundles;

- (viii) “Service” shall, unless the context requires otherwise, include any equipment associated with the use of such service that has been provided by a Telecommunication Licensee or Regulated Person to the End User;
 - (ix) “subscription fee” means any form of consideration;
 - (x) “Subscription Service” means a Service provided by a Regulated Person to an End User upon the payment of a subscription fee;
 - (xi) “Subscription Television Service” means any subscription television service, video-on-demand service or special interest television service which is made available to the audience for whom it is intended only upon payment of a subscription fee; and
 - (xii) “Telecommunication Licensee” refers to a Facilities-based Licensee or a Services-based Licensee.
- (c) This Section governs the relationship between Telecommunication Licensees and/or Regulated Persons on the one hand, and their End Users on the other. This Section does not govern the relationship between a Telecommunication Licensee or Regulated Person that purchases Services from another Telecommunication Licensee or Regulated Person to provide Services to third parties. Nothing in this Section is intended to limit any right that an End User may have under any applicable legislation.

4.1.2 Overview

The growth of competition provides End Users with increased choice amongst service providers. To the extent that Telecommunication Licensees and Regulated Persons 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 Telecommunication Licensees and Regulated Persons provide Services to End Users on fair, reasonable and non-discriminatory terms. This Section sets out general duties of Telecommunication Licensees and Regulated Persons to End Users, as well as duties specific to Telecommunication Licensees and Regulated Persons respectively.

4.2 General Duties of Telecommunication Licensees and Regulated Persons

Telecommunication Licensees and Regulated Persons must comply with the following consumer protection provisions:

4.2.1 Duty to Comply with Quality of Service Standards

- (a) Telecommunication Licensees and Regulated Persons must comply with any applicable minimum quality of service standards issued by IMDA from time to time.
- (b) However, a Telecommunication Licensee or Regulated Person, and an End User, may agree to a lower quality of service standard. In such cases, the Telecommunication Licensee or Regulated Person must clearly inform the End User of the service level that it will provide and the fact that it does not comply with IMDA's minimum quality of service standards.

4.2.2 Duty to Disclose and Publish Information on Service

- (a) Prior to providing any Service to an End User, a Telecommunication Licensee or Regulated Person must disclose to that End User the prices, terms and conditions on which the Telecommunication Licensee or Regulated Person

provides such Service, including a Service provided on a free trial or complimentary basis.

- (b) A Telecommunication Licensee and Regulated Person must, without charge, make available to the public up-to-date information about its Services, including:
 - (i) a description of and the prices of the Services;
 - (ii) the terms and conditions upon which the Services are offered, including:
 - (A) where the Service offered is or includes a broadcasting service provided by a Regulated Person, the channels in the Service;
 - (B) the specifications of any discount or other promotion offered, including the period(s) during which such discount or other promotion will be offered and the applicable charge(s) payable after such period(s); and
 - (C) whether any of the terms and conditions may be unilaterally varied by the Telecommunication Licensee or Regulated Person. For the avoidance of doubt, a Telecommunication Licensee must disclose the prohibition against detrimental or disadvantageous mid-contract changes as set out in Sub-section 4.3.2 below.
- (c) The information referred to in Sub-section 4.2.2(b) must be published:
 - (i) within such time and in such form and manner as IMDA may direct; or
 - (ii) in the absence of any such direction, as soon as practicable and in a form and manner that is readily available, current and easy to understand.

4.2.3 Duty to Inform End User of Certain Matters Before Contracting

- (a) Without prejudice to Sub-section 4.2.2 of this Code, prior to entering into an End User Service Agreement, a Telecommunication Licensee or Regulated Person must provide and draw the End User's attention to critical information about the End User Service Agreement including the following information:
 - (i) a clear description of the Service (including key Service features and their limitations);
 - (ii) a clear description of any value-added service and optional service, including:
 - (A) any Service provided on a promotional basis – being any Service provided at a discounted rate for a period of time specified by the Telecommunication Licensee or Regulated Person, after which the Telecommunication Licensee or Regulated Person continues to provide the Service at the applicable subscription fee without any election by the End User;
 - (B) any Service provided on a free trial basis – being any Service provided without charge for a period of time specified by the

- Telecommunication Licensee or Regulated Person, after which the End User may elect to subscribe to the Service;
- (iii) the terms and conditions upon which the Services and any value-added services and optional services are offered, including:
 - (A) the key charges (including but not limited to subscription charges, the standard prices after promotional prices end, excess usage charges and any early termination charges, if applicable);
 - (B) payment terms (including the frequency of billing and the form in which the bills will be sent to End Users);
 - (C) any minimum period of contract;
 - (D) where the End User Service Agreement is for or includes a broadcasting service, the channels provided under the End User Service Agreement;
 - (E) where an End User is provided with a Subscription Television Service and some other Service(s) as a bundle or package of Services, and the End User terminates the Subscription Television Service pursuant to Sub-section 4.4.4 of this Code, the subscription fee payable for the other Service(s) and the payment date;
 - (F) where an End User is provided with a Subscription Television Service with or without any other Service(s), whether the End User will be subject to any early termination charges permitted under Sub-sections 4.2.4 and 4.4.4 of this Code in the event the End User terminates the Subscription Television Service prior to the expiry of the minimum contract period applicable to the Subscription Television Service; and
 - (G) whether the End User Service Agreement or any part thereof may be unilaterally varied by the Telecommunication Licensee and/or Regulated Person. For the avoidance of doubt, a Telecommunication Licensee must disclose the prohibition against detrimental or disadvantageous mid-contract changes as set out in Sub-section 4.3.2 below.
 - (iv) the specifications of any Service provided under the End User Service Agreement on a continuous basis – being any Service which the End User elects or is deemed to elect for the Telecommunication Licensee or Regulated Person to continue to provide after the expiry of the minimum contract period specified by the Telecommunication Licensee or Regulated Person for the Service;
 - (v) the specification of any Service provided by the Telecommunication Licensee or Regulated Person on a complimentary basis – being any Service which is not part of the End User Service Agreement but is provided without consideration for a period of time specified by the Telecommunication Licensee or Regulated Person, after which the End User may elect to subscribe to the Service; and
 - (vi) the terms and conditions which will apply upon the expiry of the minimum contract period or period of time (as the case may be referred to in Sub-section 4.2.3(a)(iii) or (iv) of this Code, including:

- (A) in the case of a Service provided on a continuous basis:
 - (AA) the subscription fee for the Service; and
 - (AB) whether, and the circumstances in which, the End User will be deemed to have elected for the continued provision of the Service upon the expiry of the minimum contract period; and
 - (B) in the case of a Service provided on a promotional basis or free trial basis, the subscription fee for the Service;
- (b) Within five days after entering into a fixed term End User Service Agreement with a Residential End User that is of a duration longer than one month, a Telecommunication Licensee or Regulated Person must provide to the Residential End User a physical or electronic copy of:
- (i) an accurate, clear and easy to understand summary of the critical information referred to in Sub-section 4.2.3(a) of this Code (referred to as the “**Critical Information Summary**” in this Code); and
 - (ii) the End User Service Agreement.

The Telecommunication Licensee or Regulated Person must also obtain and keep evidence of the Residential End User’s confirmation that the Residential End User has read and understood the Critical Information Summary.

4.2.4 Prohibition on Disproportionate Early Termination Liability

A Telecommunication Licensee or Regulated Person may enter into an agreement pursuant to which it provides an End User with a discount or special consideration in return for the End User’s agreement to commit to a minimum contract period for a Service or a minimum revenue commitment. Subject to Sub-section 4.4.4 of this Code, such agreements may contain provisions providing for termination liability in the event that the End User terminates the agreement prior to the expiry of the minimum contract period or meeting the minimum revenue commitment, as the case may be. However, the amount of any such early termination liability must be reasonably proportionate to:

- (a) the value of the discount or special consideration provided by the Telecommunication Licensee or Regulated Person; and
- (b) the duration of the period for which the End User had consumed the Service.

4.2.5 Restrictions on Service Termination or Suspension

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

4.2.5.1 Service Termination or Suspension With Prior Notice

In any case in which a Telecommunication Licensee or Regulated Person seeks to terminate an End User Service Agreement, or suspend the provision of Service to an End User, on the grounds that the End User has breached any of the terms and conditions in that End User Service Agreement, the Telecommunication Licensee or Regulated Person may do so, if:

- (a) the Telecommunication Licensee or Regulated Person has provided the End User with advance notice and a reasonable opportunity to remedy the breach; and

- (b) the End User has failed to remedy the breach.

4.2.5.2 Service Termination or Suspension Without Prior Notice

A Telecommunication Licensee or Regulated Person may terminate an End User Service Agreement, or suspend the provision of 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 Telecommunication Licensee's or Regulated Person's network or has defrauded the Telecommunication Licensee or Regulated Person;
- (b) the Telecommunication Licensee or Regulated Person 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 becomes incompetent to contract by reason of mental incapacity; or
- (d) where the End User is a Corporation or another entity other than an individual, the End User ceases to carry on its business or otherwise ceases to exist.

4.2.5.3 Termination or Suspension For Illegal or Improper Activities

Notwithstanding Sub-sections 4.2.5.1 and 4.2.5.2 of this Code, a Telecommunication Licensee or Regulated Person may not terminate an End User Service Agreement, or suspend the provision of 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 Telecommunication Licensee or Regulated Person should inform the relevant authority and act in conformity with that authority's directions or guidelines.

4.2.5.4 Restrictions on Termination or Suspension due to Breach of Another End User Service Agreement

Notwithstanding Sub-sections 4.2.5.1 and 4.2.5.2 of this Code, a Telecommunication Licensee or Regulated Person may not terminate an End User Service Agreement, or suspend the provision of Service to an End User, on the grounds that the End User has breached any of the terms and conditions in another End User Service Agreement, where:

- (a) the Service to be terminated or suspended is a Basic Telephone Service; or
- (b) the other End User Service Agreement that has been breached is with a different Telecommunication Licensee or Regulated Person.

4.2.5.5 Service Termination due to a Telecommunication Licensee or Regulated Person's Discontinuance of Operations or Specific Services

A Telecommunication Licensee or Regulated Person that intends to discontinue operations or a specific Service must give reasonable advance notice in writing to all affected End Users, which in any event shall be given at least three months in advance or such other period as IMDA may otherwise specify. In such cases, the Telecommunication Licensee or Regulated Person must take all reasonable measures to avoid any service interruption to its End Users, including complying with any requirement specified by IMDA. Where feasible, this may include giving End Users the option to transition service to another Telecommunication Licensee or Regulated Person specified by the terminating Telecommunication Licensee or Regulated Person

or to another Telecommunication Licensee or Regulated Person specified by the End Users. In any case in which an End User has made an advance payment for Services provided by a Telecommunication Licensee or Regulated Person, and the Telecommunication Licensee or Regulated Person subsequently decides to discontinue operation or the specific Service, the Telecommunication Licensee or Regulated Person must allocate a proportionate share of the advance payment for refund to the End User.

4.2.6 Duty to Prevent Unauthorised Use of EUSI

Telecommunication Licensees and Regulated Persons must take reasonable measures to prevent the unauthorised use of EUSI.

4.2.6.1 Use of EUSI

Business End User

- (a) Notwithstanding whether a Business End User's consent has been obtained, a Telecommunication Licensee or Regulated Person may collect, use or disclose, as the case may be, the EUSI of a Business End User for any of the following purposes:
 - (i) for planning requirements in relation to network operations or network maintenance for any Service provided by the Telecommunication Licensee or Regulated Person, excluding activities which are commercial in nature such as business, market or product research or development;
 - (ii) for facilitating interconnection and inter-operability between Telecommunication Licensees and/or Regulated Persons for the provision of Services, or for facilitating any co-operation between Telecommunication Licensees and/or Regulated Persons which may be required by any governmental or regulatory authority;
 - (iii) for the provision of assistance to law enforcement, judicial or other government agencies;
 - (iv) for compliance with any regulatory requirement imposed by IMDA authorising the use of EUSI (for example, for the provision of directory assistance services);
 - (v) for managing bad debt and preventing fraud related to the provision of Services; and/or
 - (vi) for the provision of mobile Roaming-related Information to in-bound mobile roaming customers in Singapore.
- (b) The Telecommunication Licensee or Regulated Person must further ensure that, unless the Business End User has provided consent, the Telecommunication Licensee or Regulated Person will not provide the EUSI of the Business End User to any third party (including its Affiliates) for the purposes of developing and marketing any goods or services.

Residential End User

- (c) Notwithstanding whether a Residential End User's consent has been obtained, a Telecommunication Licensee or Regulated Person may collect, use or disclose, as the case may be, the EUSI of a Residential End User for any of the following purposes:

- (i) collection or use of Residential End User's EUSI as may be reasonably necessary for planning requirements in relation to network operations or network maintenance for any Service provided by the Telecommunication Licensee or Regulated Person, excluding activities which are commercial in nature such as business, market or product research or development;
 - (ii) collection, use or disclosure of Residential End User's EUSI as may be reasonably necessary for facilitating interconnection and interoperability between Telecommunication Licensees and/or Regulated Persons, or for facilitating any co-operation between Telecommunication Licensees and/or Regulated Persons which may be required by any governmental or regulatory authority; and/or
 - (iii) collection, use or disclosure of Residential End User's EUSI as may be reasonably necessary for the provision of mobile Roaming-related Information to in-bound mobile roaming customers in Singapore.
- (d) For the avoidance of doubt, the Telecommunication Licensee or Regulated Person shall act in accordance with, or as permitted under, any applicable laws relating to the use of Personal Data for all other purposes.

4.2.6.2 End User Authorisation

At the time a Telecommunication Licensee or Regulated Person enters into an End User Service Agreement, the Telecommunication Licensee or Regulated Person must obtain the consent of the End User if it intends to use its EUSI for any purpose not specifically permitted under this Code or any applicable laws relating to the use of Personal Data. All Telecommunication Licensees and Regulated Persons must develop and inform their End Users of easy-to-use procedures by which such End Users can subsequently grant or withdraw consent to the use of their EUSI.

4.2.6.3 Joint Marketing

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

4.2.7 Prohibition on Charging for Unsolicited Services

- (a) Telecommunication Licensees and Regulated Persons are prohibited from charging an End User for any Service that the End User has not received or consented to receive.
- (b) For the purposes of Sub-sections 4.2.7 and 4.2.8, "charge" refers to any act which conveys the impression to the End User that he is liable to pay for a service such as the issuance of a bill, and "charging" shall be similarly construed.

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

If a Telecommunication Licensee or Regulated Person has provided an End User with Services on a free trial basis (referred to in Sub-section 4.2.3(a)(ii)(B) of this Code) or complimentary basis (referred to in Sub-section 4.2.3(a)(v) of this Code), the Telecommunication Licensee or Regulated Person may not charge the End User for such Services after the end of the period of time referred to in Sub-sections 4.2.3(a)(ii)(B) or 4.2.3(a)(v) of this Code, as the case may be, unless:

- (a) the Telecommunication Licensee or Regulated Person has notified the End User of the date on which the free trial or complimentary period will end. Such notification shall be provided by the Telecommunication Licensee or Regulated Person to the End User at least three days (but not earlier than 14 days) before the expiry of the free trial or complimentary period; and
- (b) the Telecommunication Licensee or Regulated Person has obtained the express agreement of the End User to continue the Service after the expiry of the free trial or complimentary period, on the applicable prices, terms and conditions notified to the End User under Sub-section 4.2.3(b) of this Code.

4.2.9 Duty to Notify of Certain Changes to Services

A Telecommunication Licensee or Regulated Person must give its End Users advance notice in writing before making any change to the Services provided to End Users that would be advantageous to End Users, unless the change has limited or short-term impact.

4.2.10 Duty to Provide Minimum Billing Information

A Telecommunication Licensee or Regulated Person must minimally specify the following information in bills issued to End Users:

- (a) the billing period;
- (b) the Services subscribed;
- (c) the respective value-added services and ad-hoc services and their charges, and any third party charges (including roaming charges, international calls charges, global SMS/MMS charges, premium rate service charges, billing-on-behalf charges and excess usage charges);
- (d) indications as to whether Services are provided on a free trial or complimentary basis; and
- (e) the expiry date of the Services provided on a free trial or complimentary basis.

4.3 Duties of Telecommunication Licensees

4.3.1 Prohibition on “Slamming”

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

4.3.2 Prohibition of Detrimental or Disadvantageous Mid-contract Changes

A Telecommunication Licensee must not make any change in the terms and conditions (including pricing) of any fixed term service contract that is disadvantageous or detrimental to the End User during the term of the contract.

4.4 Duties of Regulated Persons Providing Subscription Television Services

Regulated Persons providing Subscription Television Services must comply with the following consumer protection provisions:

4.4.1 Duty to Offer Option of Short Term Agreements

- (a) A Regulated Person must not offer to provide to any Residential End User a Subscription Television Service only on the basis of a term exceeding 12 months (referred to in Sub-section 4.4.1 of this Code as a “**Long Term Agreement**”).
- (b) For the avoidance of doubt, the channels on a Subscription Television Service offered to a Residential End User for a term of 12 months or less (referred to in Sub-section 4.4.1 of this Code as a “**Short Term Agreement**”) must be the same in all aspects as the channels on a Subscription Television Service offered to that Residential End User under a Long Term Agreement by the Regulated Person; and the Regulated Person must comply with all requirements contained in this Section, including in Sub-sections 4.2.3 and 4.4.2 of this Code, whether the Regulated Person enters into a Long Term Agreement or a Short Term Agreement with the Residential End User.

4.4.2 Duty Not to Act Unreasonably in Contracting

- (a) Subject to Sub-sections 4.4.2(b) and 4.4.2(c) of this Code, a Regulated Person must not require a Residential End User to agree to amend the terms of or to terminate any existing agreement for the provision by the Regulated Person of any non-Subscription Television Service to the Subscriber, before the Regulated Person will:
 - (i) enter into a new agreement with the Residential End User for the provision by the Regulated Person of any Subscription Television Service to the Residential End User; or
 - (ii) amend the terms of an existing agreement with the Residential End User for the provision by the Regulated Person of any Subscription Television Service to the Residential End User.
- (b) Sub-section 4.4.2(a) of this Code applies only during the minimum contract period which the Residential End User has committed to for the provision of the non-Subscription Television Service.
- (c) Sub-section 4.4.2(a) of this Code does not apply if:
 - (i) it is the Residential End User who requests for the amendment to the terms of the existing agreement for the provision of the Subscription Television Service; and
 - (ii) the amendment requested for is an addition (comprising one or more channels or any content package) to the Subscription Television Service of the Residential End User, which is not already offered by the Regulated Person to End Users as an addition to their existing Subscription Television Service.

4.4.3 Records of Marketing Materials, Agreement, etc.

- (a) A Regulated Person must maintain a record of every marketing material which it uses for marketing activities involving Residential End Users, for not less than two years after the Regulated Person ceases to use such material.
- (b) A Regulated Person must maintain a record of all the details of an agreement brought to the attention of a Residential End User in compliance with Sub-section 4.2.3 of this Code, for not less than two years after the Regulated Person enters into the agreement with the Residential End User.

- (c) The record in Sub-section 4.4.3(b) of this Code must include:
 - (i) a physical or electronic copy of the agreement;
 - (ii) the Critical Information Summary referred to in Sub-section 4.2.3 of this Code relating to the agreement; and
 - (iii) call centre recordings relating to the agreement.

4.4.4 Prohibition on Early Termination Charges in Certain Cases

- (a) Subject to Sub-section 4.4.4 of this Code, a Regulated Person must not require a Residential End User to pay any amount for terminating a Subscription Television Service provided to the Residential End User before the expiry of any minimum contract period referred to in Sub-section 4.2.4 of this Code applicable to the Subscription Television Service, where:
 - (i) the termination is consequent upon any one of the following events:
 - (A) the Regulated Person exercises or seeks to exercise its right to unilaterally increase the subscription fee, or to cease the provision of any material channel, under the agreement;
 - (B) the Regulated Person ceases to provide or removes 20% or more of the total channels in the Subscription Television Service;
 - (C) the Regulated Person ceases to provide or removes any material sports content in any channel from the Subscription Television Service, except where the cessation or removal satisfies all of the following:
 - (CA) the period of availability or available season for the material sports content comes to an end;
 - (CB) the Regulated Person notified the Residential End User of such period or season prior to the Residential End User contracting for the provision of the material sports content; and
 - (ii) the Residential End User terminates the Subscription Television Service or the agreement within 30 days after the occurrence of any of the events referred to in Sub-section 4.4.4(a) of this Code.
- (b) A termination under Sub-section 4.4.4(a) of this Code does not permit the Regulated Person to require the Residential End User to pay any amount that pertains to equipment which was not necessary for the provision of the Subscription Television Service, but which was provided to the Residential End User in addition to and on account of the Subscription Television Service, unless:
 - (i) prior to the Residential End User contracting for the Subscription Television Service, the Regulated Person:
 - (A) brought to the attention of the Residential End User the Residential End User's liability to pay such amount in the event of such a termination; and

- (B) offered to provide to the Residential End User the same Subscription Television Service without the provision of the equipment; and
- (ii) the amount satisfies the requirements of Sub-section 4.2.4 of this Code for early termination liability.

4.4.5 Prohibition on Excessive Charges in Certain Cases

Where a Regulated Person provides a Residential End User with a Subscription Television Service and one or more other Subscription Service(s) as a bundle or package of services, and the Residential End User terminates the Subscription Television Service in the bundle or package of services pursuant to Sub-section 4.4.4 of this Code, the subscription fee payable for the other Subscription Service(s) must not exceed the subscription fee which the Residential End User paid for both the Subscription Television Service and the other Subscription Service(s) before the termination of the Subscription Television Service.

4.4.6 Duty to Notify of Cessation of Channel, Material Content or Change in Subscription Fee

- (a) A Regulated Person must give all its affected Residential End Users not less than one month's notice in writing before any of the following changes are implemented:
 - (i) a Regulated Person intends to cease providing any channel or material sports content; or
 - (ii) a Regulated Person intends to increase any subscription fee for any Subscription Television Service it provides other than any Subscription Television Service provided on an interactive basis.
- (b) Before increasing the subscription fee for any Subscription Television Service provided on an interactive basis, a Regulated Person must give all its Residential End Users to whom it provides the Service reasonable notice in writing of its intention to do so.

4.4.7 Determining Material Channel and Material Sports Content

- (a) For the purposes of this Section, the factors to be taken into consideration (except where irrelevant) in determining whether any channel is a material channel include, but are not limited to, the following:
 - (i) the viewership of the channel;
 - (ii) the level of consumer interest in the channel;
 - (iii) the actual or potential value of the channel to the Regulated Person; and
 - (iv) the degree to which the channel has been marketed and advertised.
- (b) For the purposes of this Section, the factors to be taken into consideration (except where irrelevant) in determining whether any sports content of a channel is material sports content include, but are not limited to, the following:
 - (i) the viewership of the sports content;
 - (ii) the level of consumer interest in the sports content;

- (iii) the actual or potential value of the sports content to the Regulated Person; and
 - (iv) the degree to which the sports content has been marketed and advertised.
- (c) The Authority may issue advisory guidelines as to how the factors listed in Sub-sections 4.4.7(a) and 4.4.7(b) and of this Code should be applied.
- (d) In the event of any dispute between a Regulated Person and a Residential End User as to whether a channel or any sports content is material, either party may write to IMDA to express its opinion on the same. Any position taken by the Regulated Person or a Residential End User and expressed to IMDA under Sub-section 4.4.7(d) of this Code must specify the considerations on which the position is based.

4.5 Mandatory Contractual Provisions of Telecommunication Licensees and Regulated Persons

Telecommunication Licensees and Regulated Persons must include the provisions specified in Sub-sections 4.5.1 to 4.5.7 of this Code in their End User Service Agreements. An End User may bring a private legal action against a Telecommunication Licensee or Regulated Person to enforce these contractual obligations pursuant to its End User Service Agreement with that Telecommunication Licensee or Regulated Person. In addition, IMDA will treat a Telecommunication Licensee or Regulated Person's wilful, reckless, or repeated failure to fulfil these obligations as a contravention of this Code.

4.5.1 Billing Period

The End User Service Agreement must specify how often the Telecommunication Licensee or Regulated Person 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 Telecommunication Licensee or Regulated Person will send the bill monthly. The End User Service Agreement must also commit the Telecommunication Licensee or Regulated Person to providing clear, timely and accurate bills.

4.5.2 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 Telecommunication Licensee or Regulated Person 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) subject to Sub-sections 4.3.2 and 4.4.4 of this Code, the End User Service Agreement clearly states that the Telecommunication Licensee or Regulated Person may revise the prices, terms and conditions by providing reasonable advance notice to the End User.

4.5.3 No Charging for Unsolicited Services

In addition to the obligations set out in Sub-section 4.2.7, the End User Service Agreement must provide that the End User will not be liable to pay for any Service that the End User did not receive or consent to receive.

4.5.4 Procedure to Contest Charges

The End User Service Agreement must clearly indicate the procedures by which an End User can dispute any charge for 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 Telecommunication Licensee or Regulated Person has not provided the Service that it has agreed to provide. At a minimum, the Telecommunication Licensee or Regulated Person must require that:

- (a) in the event of a dispute, the End User shall not be required to pay any reasonably disputed amounts pending the resolution of the dispute, provided that the End User informs the Telecommunication Licensee or Regulated Person of any disputed charge prior to the date on which the payment becomes due. If the End User ultimately is found liable for the disputed amounts, any interest that the Telecommunication Licensee or Regulated Person wants to recover from the End User must be set at a commercially reasonable rate. The End User Service Agreement must either specify the exact rate to be charged, or the methodology that the Telecommunication Licensee or Regulated Person will use to establish the rate to be charged;
- (b) an End User that pays a bill and subsequently chooses to contest the bill will have one year (starting from the date of the bill) to do so;
- (c) an End User that purchases a pre-paid service who chooses to contest any charge will have one year (starting from the date on which the charge was deducted) to do so; and
- (d) the Telecommunication Licensee or Regulated Person 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.

4.5.5 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 adjudication;
- (c) submit the dispute to any court of competent jurisdiction; or
- (d) submit the dispute to an alternative dispute resolution centre recognised by IMDA.

4.5.6 Termination or Suspension of Service by Licensee

Consistent with Sub-section 4.2.5 of this Code, the End User Service Agreement must specify prominently:

- (a) any basis on which the Telecommunication Licensee or Regulated Person reserves the right to terminate or suspend the End User Service Agreement; and
- (b) the procedures by which the Telecommunication Licensee or Regulated Person 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.

4.5.7 Use of Business End User's EUSI

The End User Service Agreement must contain procedures regarding the Telecommunication Licensee or Regulated Person's use of the EUSI of a Business End User. In particular:

- (a) The End User Service Agreement must provide that, unless the Business End User has provided consent, the Telecommunication Licensee or Regulated Person will use the EUSI of the Business End User only for the purposes specified in Sub-section 4.2.6.1(a) of this Code.
- (b) The End User Service Agreement must specify:
 - (i) the means by which a Business End User can grant the Telecommunication Licensee or Regulated Person consent to use its EUSI for purposes other than those specified in Sub-section 4.2.6.1(a) of this Code;
 - (ii) the additional purposes for which, if granted consent, the Telecommunication Licensee or Regulated Person may use the Business End User's EUSI; and
 - (iii) the means by which a Business End User can subsequently withdraw consent to use its EUSI for purposes other than those specified in Sub-section 4.2.6.1(a) of this Code. Any such procedures must be clear and minimally burdensome. The Telecommunication Licensee or Regulated Person must not impose any fee on a Business End User as a result of the Business End User's withdrawal of consent.

5. REQUIRED COOPERATION AMONGST TELECOMMUNICATION 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 Services to the public.
- (b) In this Section, the term:
 - (i) “Dominant Telecommunication Licensee” refers to a Facilities-based Licensee that IMDA has classified as dominant; and
 - (ii) “Telecommunication Licensee” refers to a Facilities-based Licensee or a Services-based Licensee that uses switching or routing equipment to provide Services to the public.

5.1.2 Overview

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

5.2 Duty to Interconnect With Other Telecommunication Licensees

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

5.3 Duty to Submit to IMDA All Interconnection Agreements

- (a) Telecommunication Licensees must submit to IMDA a copy of all Interconnection Agreements into which they enter.
 - (i) Where one of the parties is a Dominant Telecommunication Licensee, the Telecommunication Licensees must provide that their Interconnection Agreement will not be effective until approved by IMDA.
 - (ii) Where neither party is a Dominant Telecommunication Licensee, the Telecommunication Licensees must provide that their Interconnection Agreement will be effective upon submission to IMDA. The Telecommunication Licensees must further provide that the Interconnection Agreement will remain effective unless IMDA informs the Telecommunication Licensees that it requires modifications to be made to the Interconnection Agreement in accordance with Sub-section 5.3(b).
- (b) For an Interconnection Agreement where neither party is a Dominant Telecommunication Licensee, should IMDA determine, within 21 days of the date of submission of the Interconnection Agreement, that there is any non-compliance with the Minimum Interconnection Duties (as set out in Sub-section 5.4) in the submitted Interconnection Agreement, IMDA may require the parties to make changes to the Interconnection Agreement to comply with the

Minimum Interconnection Duties. (The process for review of Interconnection Agreements where one of the parties is a Dominant Telecommunication Licensee is set out in Sub-section 6.4.)

- (c) IMDA will not publicly disclose Interconnection Agreements between Non-dominant Telecommunication Licensees.

5.4 Minimum Duties for Interconnection Agreements

- (a) Where neither party is a Dominant Telecommunication Licensee, the parties must ensure that their Interconnection Agreement fulfils the Minimum Interconnection Duties specified in Sub-sections 5.4.1 through 5.4.8 of this Code (additional requirements applicable to Interconnection Agreements involving a Dominant Telecommunication Licensee are contained in Section 6 of this Code).
- (b) In any case in which IMDA determines that an Interconnection Agreement does not fulfil the requirements of this Code, it will require the Telecommunication Licensees to make the necessary changes. Where one of the Telecommunication Licensees is a Dominant Telecommunication Licensee, the Telecommunication Licensees must make the required changes, unless both Telecommunication Licensees agree to withdraw the Interconnection Agreement. Where neither of the Telecommunication Licensees is a Dominant Telecommunication Licensee, the Telecommunication 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 Telecommunication 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 Telecommunication Licensee, unless the Telecommunication 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 Telecommunication 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 any other Telecommunication 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 Telecommunication Licensee, the Interconnection Agreement must provide that the interconnecting Telecommunication 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 Telecommunication 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 Telecommunication Licensees

The Interconnection Agreement must provide that each Telecommunication Licensee will:

- (a) protect from disclosure any confidential or proprietary information provided by the other Telecommunication 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 Telecommunication Licensee; and
- (c) adopt appropriate procedures to ensure that the information is not used for the development or marketing of other Services or telecommunication equipment by the Telecommunication Licensee, its Affiliates or third parties.

5.4.6 Duty to Obtain IMDA 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 IMDA.

5.4.7 Duty to Amend

The Interconnection Agreement must provide that the Telecommunication Licensees will amend the Interconnection Agreement to incorporate any additional or modified Minimum Interconnection Duty that IMDA 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 Singapore.

5.5 Enforcement of Interconnection Agreements

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

5.5.1 Duty to Co-operate

Telecommunication 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 Telecommunication Licensees. IMDA will not resolve disputes arising out of Interconnection Agreements between Non-dominant Telecommunication Licensees. If the Non-dominant Telecommunication 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 IMDA, or any provision of this Code, the Non-dominant Telecommunication Licensees may ask IMDA to provide an interpretation.

5.6 Modification, Suspension or Termination of Interconnection Agreements

Whilst Interconnection Agreements will generally remain effective throughout their specified term, IMDA 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 Telecommunication Licensees.
 - (i) Where one of the parties is a Dominant Telecommunication Licensee, the Telecommunication Licensees must provide that the modification will not be effective unless approved by IMDA.
 - (ii) Where neither party is a Dominant Telecommunication Licensee, the Telecommunication Licensees must provide that the modification will be effective upon submission to IMDA. The Telecommunication Licensees must further provide that the modification will remain effective unless IMDA informs the Telecommunication Licensees in accordance with Sub-section 5.6.1.1(b) that the Interconnection Agreement, as modified, no longer complies with the Minimum Interconnection Duties specified in Sub-sections 5.4.1 through 5.4.8 of this Code.
- (b) For an Interconnection Agreement where neither party is a Dominant Telecommunication Licensee, should IMDA determine, within 21 days of the date of submission of the modified Interconnection Agreement, that there is any non-compliance with the Minimum Interconnection Duties (as set out in Sub-section 5.4) in the submitted modified Interconnection Agreement, IMDA may require the parties to make changes to the Interconnection Agreement to comply with the Minimum Interconnection Duties. (The process for review of modification to Interconnection Agreements where one of the parties is a Dominant Telecommunication Licensee is set out in Sub-section 6.4.)

- (c) Should IMDA require the Telecommunication Licensees to make the necessary changes to the modified Interconnection Agreement:
 - (i) where one of the Telecommunication Licensees is a Dominant Telecommunication Licensee, the Telecommunication Licensees must make the required changes, unless both Telecommunication Licensees agree to withdraw the modification.
 - (ii) where neither of the Telecommunication Licensees is a Dominant Telecommunication Licensee, the Telecommunication Licensees must make the required changes, unless either Telecommunication 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 Telecommunication Licensees. Upon any such suspension or termination, the Telecommunication Licensees must immediately notify IMDA 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 Telecommunication Licensee that seeks to take such action must seek IMDA's written approval of the action it proposes to take and provide the reason why it believes such action is appropriate. Upon reviewing such proposal, IMDA will provide the other Telecommunication Licensee with an opportunity to submit its views regarding the proposed suspension or termination of the Interconnection Agreement. IMDA will within 45 days of the initial notification, issue its decision, granting or denying, in whole or in part, the request or require the Telecommunication Licensees to provide additional information within such time specified by IMDA. Where IMDA requires additional information, the review period shall be extended by another 21 days from the date on which complete information is provided to IMDA. Any unilateral suspension or termination will only become effective when, and to the extent that, it is approved by IMDA.

5.7 Other Duties

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

5.7.1 Duty to Disclose Information on Interfaces

A Telecommunication Licensee must make publicly available, in a clear format and in sufficient detail, information on all physical and logical interfaces of its network necessary to allow the development and deployment of Services and telecommunication equipment that can interconnect to, and interoperate with, that Telecommunication Licensee's network. A Telecommunication Licensee must also make publicly available, not less than six months prior to deployment, information on any change in logical or physical interfaces that could materially affect existing interconnection arrangements. A Telecommunication Licensee must not disclose this information to any Affiliate, whether licensed or not, prior to the time that the Telecommunication Licensee makes this information available to the public.

5.7.2 Duty to Comply With Mandatory Technical Standards

IMDA recognises the potential benefits of adoption of technical standards. IMDA will consult with the telecommunication industry to determine when such technical standards should be made mandatory. Telecommunication Licensees must

comply, within a reasonable period, with any applicable mandatory technical standard adopted by IMDA or, in the absence of such technical standards, with the technical standards adopted by the International Telecommunication Union (“ITU”). In the absence of an IMDA or ITU technical standard, Telecommunication 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 Telecommunication Licensee without resulting in operational or other harm.

5.7.3 Duty to Facilitate Change of Service Providers

Telecommunication Licensees must take any reasonable action necessary to allow an End User that chooses to obtain Service from a different Telecommunication 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 Directories and Directory Enquiry Service

A Telecommunication Licensee that provides voice telephony service over a wireline network must exchange the names, addresses and telephone numbers of its End Users with other wireline Telecommunication Licensees for the purpose of providing integrated directories and directory enquiry service. Telecommunication Licensees must update this information periodically. Telecommunication Licensees receiving this information may use it solely for the purpose of providing integrated directories or directory enquiry services. In particular, Telecommunication 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 Services to the building occupants. In addition, a Facilities-based Licensee that places in the common space of a building equipment used to provide 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 Services. This may include reconfiguring its equipment in a manner that optimises the use of the common space

6. INTERCONNECTION WITH DOMINANT TELECOMMUNICATION LICENSEES

6.1 Introduction

6.1.1 Application

- (a) 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 of this Code, apply to Non-dominant Facilities-based Licensees and Services-based Licensees that use switching or routing equipment to provide Services to the public.
- (b) In this Section, the term:
 - (i) “Dominant Telecommunication Licensee” refers to a Facilities-based Licensee that IMDA has classified as dominant;
 - (ii) “Requesting Telecommunication Licensee” means a Telecommunication Licensee that seeks to obtain Interconnection Related Services and/or Mandated Wholesale Services from a Dominant Telecommunication Licensee; and
 - (iii) “Telecommunication Licensee” refers to a Facilities-based or a Services-based Licensee that uses switching or routing equipment to provide Services to the public.

6.1.2 Overview

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

6.2 Options for Entering into an Interconnection Agreement

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

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

A Requesting Telecommunication Licensee may obtain Interconnection Related Services and Mandated Wholesale Services from a Dominant Telecommunication Licensee on the terms specified in a Reference Interconnection Offer (“**RIO**”) developed by the Dominant Telecommunication Licensee and approved by IMDA. The Dominant Telecommunication Licensee must offer the RIO for a period of five years. By notice on the IMDA website (www.imda.gov.sg) or by any other means of publication as IMDA considers appropriate, IMDA will specify the commencement date for the five-year period. Thereafter, prior to the expiry of the five-year period, IMDA may by notice on the IMDA website (www.imda.gov.sg) or by any other means of publication as IMDA considers appropriate, specify any further five-year period for which the Dominant Telecommunication Licensee must offer the RIO to Requesting Telecommunication Licensees. The general requirements of the RIO are specified in Sub-sections 6.3.1 through 6.3.5 of this Code. IMDA may require the Dominant Telecommunication Licensee to modify the RIO prior to the expiry of the five-year period following the five-

yearly review of this Code pursuant to Sub-section 1.6.1 of this Code 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 Telecommunication Licensee on the same prices, terms and conditions that the Dominant Telecommunication Licensee has agreed to with another similarly situated Telecommunication 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 Telecommunication Licensee and the Dominant Telecommunication Licensee will terminate on the day the agreement that the Requesting Telecommunication Licensee “opted-into” terminates.

6.2.3 Option 3: Interconnection Pursuant to an Individualised Interconnection Agreement

A Telecommunication Licensee may obtain Interconnection Related Services and Mandated Wholesale Services from a Dominant Telecommunication Licensee pursuant to the prices, terms and conditions of an Individualised Interconnection Agreement between the two 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 Telecommunication Licensee’s RIO:

6.3.1 Duty to Develop a Reference Interconnection Offer

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

6.3.2 Services That Must be Offered under RIO

- (a) IMDA will specify, in Appendix 2 of this Code, the Interconnection Related Services and Mandated Wholesale Services that the Dominant Telecommunication Licensee must offer under the RIO, and their applicable requirements by which the Dominant Telecommunication Licensee must provide these services. IMDA may specify a limited period during which the Dominant Telecommunication Licensee must offer these services.
- (b) IMDA 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 specified in Appendix 2 of this Code. In each case, IMDA will seek public comment prior to adopting any modification.
- (c) IMDA will require a Dominant Telecommunication Licensee to offer a service as a Mandated Wholesale Service where IMDA concludes that:
 - (i) the service is a necessary input for the provision of competitive Services in Singapore; and
 - (ii) providing the service is sufficiently costly or difficult that requiring other Telecommunication Licensees to do so would create a significant barrier to the provision of competitive 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 Telecommunication Licensee must offer to provide all Interconnection Related Services and Mandated Wholesale Services to Requesting Telecommunication 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 Telecommunication Licensee is prepared to provide Interconnection Related Services and Mandated Wholesale Services to any Requesting Telecommunication 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 organised in a logical and consistent manner;
 - (iii) be modular, allowing a Requesting Telecommunication 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 Telecommunication 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 Telecommunication Licensee; and
 - (v) comply with the specific requirements specified in Appendix 1 and Appendix 2 of this Code.
- (b) If a Requesting Telecommunication 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 Telecommunication Licensee will provide — including the means by which quality of service will be measured, the timeframe within which any short-comings will be corrected, and the amount and manner in which the Requesting Telecommunication Licensee will be compensated for any failure by the Dominant Telecommunication Licensee to meet the quality of service standards;
- (b) a description of any operational and technical requirements that the Requesting Telecommunication Licensee must comply with to avoid harm to the Dominant Telecommunication Licensee's network;

- (c) a description of the means by which the Dominant Telecommunication Licensee will provide information (including call type, duration, and points of origination and termination) necessary to allow the Requesting Telecommunication Licensee to bill for Services that it provides to its End Users;
- (d) a statement of the terms on which the Dominant Telecommunication Licensee will protect confidential information provided by the Requesting Telecommunication Licensee, and the terms on which the Dominant Telecommunication Licensee requires the Requesting Telecommunication 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 Telecommunication Licensee will work with the Requesting Telecommunication Licensee to enable its End Users to keep their current telephone numbers or network addresses if they switch to the Services provided by the Requesting Telecommunication Licensee;
- (f) a description of the means by which a Requesting Telecommunication 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 amount and means by which the Dominant Telecommunication Licensee will compensate the Requesting Telecommunication Licensee for any unreasonable provisioning 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 Telecommunication Licensee will use to notify the Requesting Telecommunication Licensee in the event any Interconnection Related Service ceases to become available at any location;
- (h) the means by which the Requesting Telecommunication Licensee can request additional Interconnection Related Services not currently specified in the RIO — including the timeframe, procedures, processes and standards that the Dominant Telecommunication Licensee will use to assess such requests;
- (i) a list and description of any reasonable restriction or condition that the Dominant Telecommunication 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 Telecommunication Licensee to meet requests for Interconnection Related Services and Mandated Wholesale Services, and any situation in which a Dominant Telecommunication Licensee will not offer (or will limit or condition an offer of) interconnection to a Telecommunication Licensee or class of Telecommunication Licensees;
- (j) a provision stating that the Telecommunication Licensees will refer disputes regarding interconnection arising from the implementation of the Interconnection Agreement to IMDA for resolution and will seek IMDA'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 Telecommunication Licensees;
 - (ii) if any provision of the Interconnection Agreement is held to be unlawful or is required to be amended, all other provisions of the Interconnection Agreement will survive;
 - (iii) any disputes between the Telecommunication Licensees will be governed by the laws of Singapore, including this Code;
 - (iv) the Dominant Telecommunication Licensee will not unreasonably withhold consent from a Telecommunication Licensee seeking to assign its rights and obligations to another Telecommunication Licensee; and
- (l) any other provision required to be included in an Interconnection Agreement to satisfy the Minimum Interconnection Duties specified in Sub-sections 5.4.1 through 5.4.8 of this Code.

6.3.4 Pricing of Interconnection Related Services and Mandated Wholesale Services

- (a) IMDA shall review and may require the Dominant Telecommunication Licensee to modify the price(s) of Interconnection Related Services as set out in the RIO or price(s) of Mandated Wholesale Service:
 - (i) every five years following the last price review; or
 - (ii) at such time as IMDA may consider appropriate, which may include but shall not be limited to a mid-term review in the third year from the last price review,where each of (i) and (ii) shall be referred to as a **“Price Review Point”** and the period between each Price Review Point shall be referred to as a **“Price Control Period”**.
- (b) The relevant guiding pricing principles and pricing methodologies are described in Appendix 1 of this Code. In particular:
 - (i) the prices at which a Dominant Telecommunication Licensee offers to provide all Interconnection Related Services pursuant to its RIO must be cost-based. The Dominant Telecommunication Licensee must use the pricing methodology specified by IMDA, pursuant to Appendix 1 of this Code.
 - (ii) where a Dominant Telecommunication Licensee is required by IMDA to provide a Mandatory Wholesale Service, IMDA will specify the applicable pricing methodology to be adopted by the Dominant Telecommunication Licensee, pursuant to Appendix 1 of this Code.
- (c) Subject to Sub-section 6.3.4(d) of this Code, the Licensee shall:
 - (i) publish any changes to the prices of the Interconnection Related Services or Mandated Wholesale Services within seven days of IMDA’s approval under Sub-section 6.3.6 of this Code; and
 - (ii) effect all price changes within six months of the date of IMDA’s approval unless otherwise directed by IMDA.

- (d) IMDA reserves the right to require the Licensee to effect any price changes in an incremental and phased manner where, in IMDA's opinion, there is a material change in prices that may have an adverse effect on any segment of the industry or End-Users, or both. By way of example and without any limitation, where the determined price of a widely subscribed Interconnection Related Service or Mandated Wholesale Service at a Price Review Point is more than 20% higher than the corresponding price offered by the Licensee at that Price Review Point, IMDA may consider this to be a material change in price that may have an adverse effect on the industry and/or End-Users.

6.3.5 Modification and Duration of RIO Agreement

The Dominant Telecommunication Licensee must provide that:

- (a) unless IMDA authorises the Dominant Telecommunication 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 Telecommunication Licensee is required to offer the RIO to Requesting Telecommunication 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 Telecommunication 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) IMDA directs the Dominant Telecommunication Licensee to modify any provision of its RIO, or approves a modification proposed by the Dominant Telecommunication Licensee, in which case the Telecommunication Licensees must amend the Interconnection Agreement to conform to the modifications in the RIO.

6.3.6 IMDA Review of the Proposed RIO

- (a) IMDA 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 in Appendix 2 of this Code pursuant to Sub-section 6.3.2 of this Code), and serves the public interest. IMDA will promptly seek public comments regarding the proposed RIO, which must be filed within 30 days from the date on which IMDA seeks comments. Within 60 days from the date on which IMDA receives the proposed RIO, IMDA will notify the Dominant Telecommunication Licensee of its approval or rejection of the proposed RIO, or that IMDA requires an additional 30 days for its review.
- (b) If IMDA rejects any portion of the proposed RIO, it will provide the Dominant Telecommunication Licensee with a written explanation of the basis for the rejection and the modifications required to bring the proposed RIO into compliance with IMDA's requirements. The Dominant Telecommunication Licensee will have 30 days from the date on which IMDA provides notification to submit a revised proposed RIO that incorporates the modifications required by IMDA. IMDA will have 30 days from the date on which it receives the revised proposed RIO to approve the RIO or direct the Dominant Telecommunication Licensee to incorporate specific language.

- (c) A Dominant Telecommunication Licensee must notify IMDA and obtain IMDA'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 IMDA, the Dominant Telecommunication Licensee must submit a Model Confidentiality Agreement to IMDA for approval. The Model Confidentiality Agreement must contain provisions, which must be no broader than necessary to protect the Telecommunication Licensees' legitimate commercial interests, governing preservation of proprietary or commercially sensitive information disclosed by either Telecommunication Licensee during any negotiation related to the adoption of an Individualised Interconnection Agreement. This must include provisions barring either Telecommunication 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) IMDA 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 Telecommunication Licensee will have seven days from the date IMDA provides notification to submit a revised proposed Model Confidentiality Agreement that incorporates the modifications required by IMDA. IMDA will have seven days from the date on which it receives the revised proposed Model Confidentiality Agreement to approve the Model Confidentiality Agreement or direct the Dominant Telecommunication Licensee to incorporate specific language.
- (c) A Dominant Telecommunication Licensee must notify IMDA and obtain IMDA's written approval before making any changes to its Model Confidentiality Agreement.

6.4 Interconnection Pursuant to an Individualised Interconnection Agreement

A Requesting Telecommunication Licensee may seek to enter into an Individualised Interconnection Agreement with a Dominant Telecommunication 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 Telecommunication Licensees' voluntary negotiations:

6.4.1.1 Request for Negotiation

The Requesting Telecommunication Licensee must submit to the Dominant Telecommunication 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, a contact person and a time and place for initial negotiations.

6.4.1.2 Notification to IMDA

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

6.4.1.3 Confidentiality Agreement

The Telecommunication Licensees must enter into a confidentiality agreement governing the negotiation process. If they fail to agree to a confidentiality agreement within seven days of the receipt of the Request, both Telecommunication Licensees must adopt the Model Confidentiality Agreement referred to in Sub-section 6.3.7 of this Code.

6.4.1.4 Initiation of Negotiations

Unless the Telecommunication Licensees agree otherwise, they must begin negotiations for an Individualised Interconnection Agreement within seven days after entering into a confidentiality agreement.

6.4.1.5 Duty to Negotiate in Good Faith

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

6.4.1.6 Interim Interconnection Pursuant to the RIO

At the time it submits its Request, the Requesting Telecommunication Licensee may require the Dominant Telecommunication Licensee to provide interconnection pursuant to the prices, terms and conditions of the RIO, pending the outcome of the requested negotiations. The Telecommunication 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 IMDA Conciliation

For the purposes of facilitating the parties' negotiation in reaching a voluntary Individualised Interconnection Agreement, the Telecommunication Licensees may request IMDA to provide Conciliation pursuant to Sub-section 12.4 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 Telecommunication 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 5.4.1 through 5.4.8 of this Code and do not unreasonably discriminate against any other Licensee.

6.4.2.2 IMDA Review

- (a) The Individualised Interconnection Agreement must specify that it will be submitted to, and will not become effective until approved by, IMDA.
- (b) IMDA may within 21 days of the date of submission, reject the Individualised Interconnection Agreement or require the Telecommunication Licensees to provide additional information within such time specified by IMDA. Where

IMDA requires additional information, the review period shall be extended by another 21 days from the date on which complete information is provided to IMDA. If IMDA does not take any action upon expiry of the review period, the Individualised Interconnection Agreement shall be deemed approved. Where the Telecommunication Licensees fail to provide complete information to IMDA within the specified time, IMDA may reject the Individualised Interconnection Agreement. IMDA will also reject an Individualised Interconnection Agreement if it determines that the agreement does not fulfil the Minimum Interconnection Duties specified in Sub-sections 5.4.1 through 5.4.8 of this Code, or discriminates unreasonably against any other Licensee.

- (c) In any case in which IMDA rejects an Individualised Interconnection Agreement, it may direct the Telecommunication Licensees to make the necessary changes. In such cases, the Telecommunication Licensees must make the required changes, unless both Telecommunication Licensees agree to withdraw the Individualised Interconnection Agreement.

6.4.3 Agreements Arrived at via Dispute Resolution

If the Dominant and Requesting Telecommunication Licensees fail to voluntarily reach agreement regarding the Individualised Interconnection Agreement within 90 days of the date on which the Requesting Telecommunication Licensee submitted its Request, either Telecommunication Licensee may request IMDA to resolve the dispute pursuant to the Dispute Resolution Procedure specified in Sub-section 12.5 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 5.4.1 through 5.4.8 of this Code, and do not unreasonably discriminate against any other Licensee, IMDA will not re-open any issue on which the Telecommunication Licensees have reached agreement. Instead, the dispute resolution will be limited to those issues on which the Telecommunication Licensees are unable to reach agreement.

6.4.3.2 Standards to be Applied

Any decision resolving a dispute referred by the Telecommunication Licensees will require compliance with the Minimum Interconnection Duties specified in Sub-sections 5.4.1 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 Telecommunication Licensee's approved RIO, IMDA will apply those provisions. To the extent that an issue in dispute is not addressed by the RIO, IMDA 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 Telecommunication Licensees

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

6.5 Publication of Interconnection Agreements

All Interconnection Agreements involving a Dominant Telecommunication Licensee will be published by IMDA. However, IMDA may, on its own motion or at the request of either of the Telecommunication Licensees, withhold from publication any portion of an

Interconnection Agreement if IMDA 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 Telecommunication Licensee:

- (a) both parties may request IMDA to provide Conciliation, pursuant to Sub-section 12.4 of this Code; and
- (b) either party may request IMDA to resolve the dispute pursuant to the Dispute Resolution Procedure specified in Sub-section 12.5 of this Code. If IMDA declines to intervene, the Telecommunication Licensees may resolve the dispute in any mutually agreeable manner.

7. RESOURCE SHARING

7.1 Introduction

7.1.1 Application

- (a) All provisions in this Section apply to Telecommunication Licensees and Persons Controlling Media Resources.
- (b) In this Section, the term:
 - (i) “Critical Support Infrastructure” means any Telecommunication Infrastructure that satisfies the criteria set out in Section 7.3 of this Code and is designated by IMDA to be Critical Support Infrastructure;
 - (ii) “Essential Resource” means any Media Resource that satisfies the criteria set out in Section 7.3 of this Code and is designated by IMDA to be an Essential Resource;
 - (iii) “Licensee” refers to a Telecommunication Licensee or a Media Licensee;
 - (iv) “Media Licensee” refers to any person granted a newspaper permit under the Newspaper and Printing Presses Act (Cap. 206) or who holds a broadcasting licence under the Broadcasting Act (Cap. 28);
 - (v) “Media Resource” means any infrastructure that is used or intended to be used in connection with the provision of any Media Service;
 - (vi) “Person Controlling Media Resources” means a Media Licensee that owns or controls any Media Resource;
 - (vii) “Telecommunication Infrastructure” means any infrastructure that is used or intended to be used in connection with the provision of any Telecommunication Service; and
 - (viii) “Telecommunication Licensee” refers to a Facilities-based Licensee or a Services-based Licensee;

7.1.2 Overview

In general, a Licensee is not required to “share” the use of any Telecommunication Infrastructure or Media Resources that it owns or controls with its competitors. Instead, each Licensee is expected to produce, acquire, lease or build any Telecommunication Infrastructure or Media Resources that it requires.

However, where IMDA determines that any specific Telecommunication Infrastructure or Media Resource constitutes Critical Support Infrastructure or an Essential Resource (as the case may be), IMDA may mandate that the Licensee that owns or controls the Critical Support Infrastructure or Essential Resource share the same with other Licensees.

7.2 Definition of Sharing

Sharing refers to an arrangement under which a Licensee that owns or controls Telecommunication Infrastructure or a Media Resource allows other Licensees to jointly use the same, at cost-based prices, and on non-discriminatory terms and conditions.

7.3 Standards for Determining Critical Support Infrastructure or Essential Resources

IMDA will require sharing of any Telecommunication Infrastructure or Media Resource that it determines is Critical Support Infrastructure or an Essential Resource (as the case may be). For avoidance of doubt, a Telecommunication Infrastructure can be designated as a Critical Support Infrastructure before, during or after its construction. IMDA will use the following standards to determine whether any Telecommunication Infrastructure or Media Resource is to be designated to be Critical Support Infrastructure or Essential Resource that must be shared:

7.3.1 Criteria to be Applied

IMDA will not determine any Telecommunication Infrastructure or Media Resource to be Critical Support Infrastructure or an Essential Resource (as the case may be) based solely on evidence that allowing a Licensee to share would reduce its costs, or allow it to provide Telecommunication Services or Media Services more expeditiously. Instead, IMDA will only deem that the Telecommunication Infrastructure or Media Resource constitutes Critical Support Infrastructure or an Essential Resource (as the case may be) if it concludes that:

- (a) the Telecommunication Infrastructure or Media Resource is required to provide a Telecommunication Service or Media Service (as the case may be);
- (b) an efficient new entrant would neither be able to replicate the Telecommunication Infrastructure or Media Resource in the foreseeable future, nor obtain the Telecommunication Infrastructure or Media Resource from a third party at costs that would allow market entry;
- (c) the Telecommunication Infrastructure or Media Resource is not fully utilised and the Licensee who owns or controls the Telecommunication Infrastructure or Media Resource has sufficient current capacity to share with other Licensees;
- (d) the owner or controller of the Telecommunication Infrastructure or Media Resource has no legitimate justification to refuse sharing; and
- (e) failure to share the Telecommunication Infrastructure or Media Resource would unreasonably restrict competition in any telecommunication or media market in Singapore.

7.3.2 Public Interest

IMDA will generally not require a Telecommunication Licensee or Person Controlling Media Resources to share Telecommunication Infrastructure or Media Resources that do not satisfy the criteria specified in Sub-section 7.3.1 of this Code. In exceptional cases, however, IMDA may determine that the public interest requires certain Telecommunication Infrastructure or Media Resources to be shared. In such cases, IMDA may specify such Telecommunication Infrastructure or Media Resources to be Critical Support Infrastructure or Essential Resources (as the case may be) to be shared notwithstanding that such Telecommunication Infrastructure or Media Resource do not satisfy the criteria specified in Sub-section 7.3.1 of this Code.

7.4 Procedures for Requesting Sharing

The following procedures govern requests by a Licensee (“**Licensee Requesting Sharing**”) to share Telecommunication Infrastructure or Media Resources owned or controlled by another Licensee:

7.4.1 Request to Telecommunication Licensee or Person Controlling Media Resource

The Licensee Requesting Sharing must first submit to the Telecommunication Licensee or Person Controlling Media Resources that owns or controls the Telecommunication Infrastructure or Media Resource a written request to negotiate an agreement to share the Telecommunication Infrastructure or Media Resource (“**Sharing Agreement**”). Licensees must seek to negotiate a Sharing Agreement in good faith. If they are unable to reach agreement, they may jointly request IMDA to provide Conciliation, pursuant to Sub-section 12.4 of this Code.

7.4.2 Request to IMDA to Designate Critical Support Infrastructure or Essential Resources

- (a) 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 IMDA to designate the Telecommunication Infrastructure or Media Resource to be Critical Support Infrastructure or an Essential Resource (as the case may be) (“**Sharing Request**”).
- (b) The Licensee Requesting Sharing must provide the following to IMDA in its Sharing Request:
 - (i) a clear explanation of the specific Telecommunication Infrastructure or Media Resource that it seeks to share;
 - (ii) a clear explanation of the means, physical or otherwise, by which it proposes to share the Telecommunication Infrastructure or Media Resource; and
 - (iii) the reasons why it believes it should be given a right to share the Telecommunication Infrastructure or Media Resource at cost-based prices, and on non-discriminatory terms and conditions.
- (c) The Licensee Requesting Sharing must provide the Telecommunication Licensee or Person Controlling Media Resources that owns or controls the Telecommunication Infrastructure or Media Resource (as the case may be) with a copy of the Sharing Request at the same time that the Licensee Requesting Sharing submits the Sharing Request to IMDA.

7.4.3 Response by Licensee

- (a) Unless IMDA dismisses the Sharing Request on its own motion, the Telecommunication Licensee or Person Controlling Media Resources that owns or controls the Telecommunication Infrastructure or Media Resource (as the case may be) will have 15 days from the date on which the Sharing Request is filed with IMDA to:
 - (i) submit to IMDA a written reply; and
 - (ii) simultaneously provide a copy of the reply to the Licensee Requesting Sharing.
- (b) The Telecommunication Licensee or Person Controlling Media Resources (as the case may be) must respond to all points made by the Licensee Requesting Sharing, and must include in its reply:
 - (i) a full explanation as to the reasons why it does not believe it should be required to share the requested Telecommunication Infrastructure

or Media Resource (as the case may be) at cost-based prices, and on non-discriminatory terms and conditions; or

- (ii) if the Telecommunication Licensee or Person Controlling Media Resources acknowledges that it should be required to share the requested Telecommunication Infrastructure or Media Resource (as the case may be) at cost-based prices, and on non-discriminatory terms and conditions, 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 IMDA Decision

- (a) IMDA may, at any time, request either Licensee to submit additional information, pursuant to the information gathering and confidentiality provisions contained in Sub-sections 12.8 and 12.9 of this Code. IMDA may also seek industry and/or public comments.
- (b) Within 60 days of receiving all necessary information, IMDA will consider whether the standards specified in Sub-sections 7.3.1 or 7.3.2 of this Code are met, and will issue its decision on whether the Telecommunication Infrastructure or Media Resource constitutes Critical Support Infrastructure or an Essential Resource (as the case may be) that is required to be shared with other Licensees.
- (c) Where IMDA determines that a Media Resource constitutes an Essential Resource, IMDA will publish, by notification on the IMDA website (www.imda.gov.sg) or by any other means of publication as IMDA considers appropriate, its decision specifying the Media Resource to be an Essential Resource.

7.5 Designation by IMDA of Critical Support Infrastructure or Essential Resources

- (a) IMDA may, at any time and on its own initiative, designate any Telecommunication Infrastructure or Media Resource to be Critical Support Infrastructure or an Essential Resource that must be shared with other Licensees if IMDA determines that the standards specified in Sub-sections 7.3.1 or 7.3.2 of this Code are met. Prior to making such a determination, IMDA will:
 - (i) provide the Telecommunication Licensee or Person Controlling Media Resources (as the case may be) with notice of the proposed obligation to be imposed and the basis on which IMDA will impose this obligation; and
 - (ii) provide the Telecommunication Licensee or Person Controlling Media Resources (as the case may be) with an opportunity to make representations regarding the need for imposing a sharing requirement on which the Critical Support Infrastructure or Essential Resource must be shared with other Licensees.
- (b) IMDA may also seek industry and/or public comment prior to making its determination.
- (c) Where IMDA determines that a Media Resource constitutes an Essential Resource, IMDA will publish, by notification on the IMDA website (www.imda.gov.sg) or by any other means of publication as IMDA considers appropriate, its decision specifying the Media Resource to be an Essential Resource.

7.5.1 Designation of Certain Critical Support Infrastructure

The following types of Telecommunication Infrastructure are designated to be Critical Support Infrastructure and 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 Telecommunication Service from another service provider);
- (c) lead-in ducts and associated manholes;
- (d) monopoles; and
- (e) radio towers (excluding towers used for the operation of any broadcasting service)

7.6 Implementation of IMDA's Decisions

The following procedures must be used to implement IMDA's decision to require sharing:

7.6.1 Voluntary Negotiations

Once IMDA has designated any Telecommunication Infrastructure or Media Resource to be Critical Support Infrastructure or an Essential Resource (as the case may be) that is required to be shared, the Telecommunication Licensee or Person Controlling Media Resources that owns or controls such Critical Support Infrastructure or Essential Resource must, when requested by any Licensee, negotiate a Sharing Agreement ("**Negotiation Request**"). The Licensees must negotiate such a Sharing Agreement in good faith.

7.6.2 Dispute Resolution

If the Licensees are unable to reach a mutually acceptable Sharing Agreement within 60 days of the date on which the Negotiation Request was made, either Licensee may request IMDA to resolve the dispute in accordance with the Dispute Resolution Procedure specified in Sub-section 12.5 of this Code. Pending resolution of the dispute, IMDA may require sharing on an interim basis.

7.6.3 Compensation for Sharing

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

8. PROHIBITION OF AGREEMENTS, ETC., PREVENTING, RESTRICTING OR DISTORTING COMPETITION

8.1 Introduction

8.1.1 Application

All provisions in this Section apply to all Telecommunication Licensees and Regulated Persons.

8.1.2 General Prohibition

Any Agreement which has as its object or effect the prevention, restriction or distortion of competition in, or in any part of, Singapore's telecommunication or media industry is prohibited.

8.1.3 Overview

- (a) IMDA will not routinely review agreements entered into by Telecommunication Licensees or Regulated Persons (other than Interconnection Agreements). However, IMDA may take enforcement action (either pursuant to a request from any person or on its own motion as the regulator) against any Telecommunication Licensee or Regulated Person who is party to any agreement, decision or concerted practice (collectively and individually referred to in this Section as an "**Agreement**" unless the context otherwise applies) with another Telecommunication Licensee, Regulated Person or any other person which has as its object or effect the prevention, restriction or distortion of competition in Singapore's telecommunication or media industry. Certain types of Agreements are anti-competitive by object i.e. by their very nature anti-competitive, such that IMDA may determine that a Telecommunication Licensee or Regulated Person that has entered into such an Agreement has contravened the Code, regardless of the actual competitive effect of the agreement. IMDA will assess whether other Agreements contravene the Code based on their likely competitive effects.
- (b) If IMDA determines that an Agreement contravenes the Code, IMDA may:
 - (i) give the Telecommunication Licensee or Regulated Person such directions as it considers appropriate to bring the contravention to an end, where necessary, require the Telecommunication Licensee or Regulated Person to take such action as is specified in the direction to remedy, mitigate or eliminate any adverse effects of the contravention or circumstances and to prevent the recurrence of such infringement or circumstances, including but not limited to requiring the Telecommunication Licensee or Regulated Person to modify or terminate the Agreement; and/or
 - (ii) take any other appropriate enforcement action.

8.2 Determining the Existence of an Agreement

- (a) For the purposes of this Section, an Agreement may exist or can be established in any of three ways:
 - (i) an Agreement can be established through direct evidence of an express agreement e.g. a signed document;
 - (ii) an Agreement can be established using circumstantial evidence that demonstrates the existence of an express agreement; or

- (iii) an Agreement may be tacit such that even in the absence of an express Agreement, persons may co-ordinate their production, supply and pricing decisions in order to prevent, restrict or distort competition in Singapore's telecommunication or media industry. The existence of similar output and pricing decisions is not, on its own, proof that a tacit Agreement is in place, as this could reflect an efficient response to changing market conditions. However, the use of "signalling devices" to share prices and output information which facilitate coordinated behaviour, can indicate that a tacit Agreement is in place.
- (b) This Section does not apply to an arrangement between a Telecommunication Licensee or Regulated Person and an Affiliate where the Telecommunication Licensee or Regulated Person exercises Effective Control over the Affiliate or where the Affiliate exercises Effective Control over the Telecommunication Licensee or Regulated Person. "**Effective Control**" in this Section means the ability of a person to exercise decisive influence over the activities of another person whether existing by reason of rights, contracts or any other means, or any combination of rights, contracts or other means.
- (c) This Section does not apply to an arrangement between a Telecommunication Licensee or Regulated Person and another entity in which the entity acts as a *bona fide* agent of the Telecommunication Licensee or Regulated Person.

8.3 Horizontal Agreements – Agreements Between Entities Providing Competing Services and/or Equipment in the Telecommunication or Media Industry

The following provisions apply to agreements between or amongst Telecommunication Licensees or Regulated Persons ("**Competing Entities**").

8.3.1 General Prohibition

Competing Entities are prohibited from entering into agreements which will prevent, restrict, or distort competition in, or in any part of, Singapore's telecommunication or media industry.

8.3.2 Examples of Agreements which have the Object of Preventing, Restricting or Distorting Competition

The following types of agreements between or amongst Competing Entities are examples of agreements which have the object of preventing, restricting, or distorting competition in, or in any part of, Singapore's telecommunication or media industry and are specifically prohibited:

8.3.2.1 Price Fixing

Competing Entities must not enter into agreements to fix prices for, or restrict output of, any telecommunication or media services and/or equipment, regardless of the levels to which the Competing Entities agreed to.

8.3.2.2 Bid Rigging

Competing Entities must not enter into agreements to co-ordinate responses to any tender, including the co-ordination of separate or independent bids, for any assets, resources or rights that may be auctioned by IMDA, or for any asset, resource, good and/or service in the telecommunication or media industry (e.g. for any input into the Telecommunication Licensees' or Regulated Persons' telecommunication or media services and/or equipment, or for the provision of any telecommunication or media services), regardless of the price levels agreed to.

8.3.2.3 Market and Consumer Divisions

Competing Entities must not enter into agreements not to compete to provide any (or part of any) telecommunication or media services, and equipment:

- (a) to specific Customers or a group of Customers;
- (b) during specific time periods; or
- (c) in specific geographic areas.

8.3.2.4 Group Boycotts

Competing Entities must not agree to refuse to do business with a specific supplier, competitor or Customer. However, an exemption may be granted by IMDA, on a basis as may be determined by IMDA (e.g. temporary, permanent, for a fixed period or effective until the occurrence of a specific event) to a Telecommunication Licensee or Regulated Person who is required to comply with other codes that authorise group boycotts (e.g. the Singapore Code of Advertising Practice). Where appropriate, IMDA may grant exemptions subject to compliance with certain conditions.

8.3.3 Agreements Not Prohibited if Ancillary to Legitimate Collaborative Ventures

- (a) Nothing in Sub-sections 8.3.2.1 to 8.3.2.4 of this Code prohibits an Agreement from being entered into amongst Competing Entities that are ancillary to efficiency-enhancing integration of economic activity, provided that the Agreement does not impose restrictions, which have as their object or effect the prevention, restriction or distortion of competition in the telecommunication or media industry that are broader than necessary for the attainment of such efficiency-enhancing integration.
- (b) Examples of efficiency-enhancing integration activities include the establishment of joint purchasing or production ventures designed to develop new services, increase the availability, reduce prices and improve the quality of telecommunication or media services and/or equipment provided within Singapore.
- (c) IMDA will assess the permissibility of such an Agreement, pursuant to Sub-sections 8.4 to 8.4.3 of this Code, based on its likely or actual competitive effect.

8.4 Other Agreements Between Competing Entities

- (a) Unlike the types of Agreements in Sub-sections 8.3.2.1 to 8.3.2.4 of this Code which typically have, as their object, the prevention, restriction or distortion of competition in, or in any part of, Singapore's telecommunication or media industry, many Agreements between competitors have the potential to benefit consumers through, for instance, the lowering of costs of telecommunication or media services and/or equipment, the joint production and marketing of telecommunication or media services and/or equipment; and the development of new or improved telecommunication or media services and/or equipment through joint research and development activities.
- (b) In assessing whether such Agreements have, or may have, the effect of preventing, restricting or distorting competition in or in any part of, Singapore's telecommunication or media industry, IMDA will consider all relevant factors which may include, but are not limited to, the following:

8.4.1 Business Purpose of the Agreement

IMDA will conduct a preliminary assessment to determine the likely competitive impact of the Agreement and the genuine business purpose of the Agreement. If the Agreement is between or amongst a small number of Competing Entities who do not possess Significant Market Power in the relevant market(s) and is likely to lead to an increase in the availability and quality in output of telecommunication or media services and/or equipment and a reduction in prices of telecommunication or media services and/or equipment, IMDA will generally conclude that the Agreement does not contravene this Code.

8.4.2 Likelihood of Competitive Harm

- (a) Where an Agreement involves a more significant number of Competing Entities or person(s) with Significant Market Power or where it has the potential to result in an increase in prices of telecommunication or media services and/or equipment, and a reduction in the availability and quality in output of telecommunication or media services and/or equipment, IMDA will conduct a more detailed assessment. In particular, IMDA will consider all relevant factors which may include, but are not limited to the following:
 - (i) whether (and, if so, to what extent), the persons to the Agreement retain the ability to act independently of the agreed-upon venture;
 - (ii) the duration of the Agreement;
 - (iii) whether, in the event the persons act anti-competitively, new entry into the market would be likely, sufficient and timely enough to deter or counter-act any competitive harm; and
 - (iv) any other factors that help predict the likely competitive effect of the Agreement.
- (b) If, after assessing these factors, IMDA concludes that the Agreement poses no risk of preventing, restricting or distorting competition in the telecommunication or media industry, IMDA will generally conclude that the Agreement does not contravene this Code.

8.4.3 Efficiencies

- (a) Where IMDA's review demonstrates that the Agreement has the potential to result in a reduction in the availability and quality in output, or an increase in prices of telecommunication or media services and/or equipment, IMDA will consider whether the Agreement is necessary to achieve significant efficiencies, which are likely to be passed on to Customers. Such efficiencies could include, but are not limited to, reductions in the cost of developing, producing, marketing and delivering telecommunication or media services and/or equipment.
- (b) If such efficiencies are significant and their potential anti-competitive effect is not significant and relatively limited, and such efficiencies could not reasonably be achieved through measures that reduce competition to a lesser extent, IMDA will generally conclude that the Agreement does not contravene this Code. However, if such efficiencies are not significant and are relatively limited, and their potential anti-competitive effects are significant, IMDA will generally conclude that the Agreement contravenes this Code.

8.5 Non-horizontal Agreements - Agreements Between Non-Competing Entities

The following provisions apply to Agreements between a Telecommunication Licensee or Regulated Person and other entities (whether licensed or not) that are not competitors or potential competitors, such as suppliers and distributors.

8.5.1 General Prohibition

Telecommunication Licensees and Regulated Persons are prohibited from entering into Agreements with entities (whether licensed or not) that are not Competing Entities, which, have as their object or effect, the prevention, restriction, or distortion of competition in, or in any part of, Singapore's telecommunication or media industry.

8.5.2 Agreements That Will be Assessed Based on Competitive Effect

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

8.5.2.1 Resale Price Maintenance

A Telecommunication Licensee or Regulated Person must not agree with another Telecommunication Licensee or Regulated Person as to the price at which the Telecommunication Licensee or Regulated Person or the other entity can charge its customers where this will prevent, restrict, or distort competition in, or in any part of, Singapore's telecommunication or media industry.

8.5.2.2 Foreclosure of Access

A Telecommunication Licensee or Regulated Person must not enter into an Agreement which substantially forecloses access to an input, or a channel of distribution, where this would prevent, restrict or distort competition in any telecommunication or media industry. Whether a foreclosure is "substantial" will depend on an assessment of all relevant factors including, but not limited to:

- (a) the percentage of the relevant telecommunication or media industry for the subject services that is foreclosed;
- (b) the duration of the Agreement;
- (c) whether the Agreement serves any legitimate business purpose;
- (d) whether the principal effect of the Agreement is to foreclose competitors' access to inputs or distribution channels; and
- (e) whether as a practical matter, the Telecommunication Licensee or Regulated Person's competitors can gain access to substitutable inputs or methods of distribution from other providers on reasonable and non-discriminatory prices, terms and conditions.

8.5.2.3 Vertical Market Allocation

A Telecommunication Licensee or Regulated Person must not assign specific customers to, or allocate specific markets amongst, other entities that resell its services and/or equipment, where this has the effect of preventing, restricting or distorting competition in, or in any part of, Singapore's telecommunication or media industry.

9. ABUSE OF A DOMINANT POSITION, ANTI-COMPETITIVE LEVERAGING, AND UNFAIR METHODS OF COMPETITION

9.1 Abuse of a Dominant Position

9.1.1 Application

- (a) All provisions in this Section apply to all Telecommunication Licensees and Regulated Persons.
- (b) In this Section, a Telecommunication Licensee or Regulated Person's dominant position in a market refers to the Telecommunication Licensee or Regulated Person's Significant Market Power in that market. Such a Telecommunication Licensee or Regulated Person need not be pre-classified as dominant under Section 2 of this Code.
- (c) A Telecommunication Licensee or Regulated Person that has been classified as a Dominant Entity under Section 2 of this Code shall be presumed to have Significant Market Power in all telecommunication or media markets in which it has been designated as a Dominant Entity, except in any specific telecommunication or media markets where it has been exempted from all Dominant Entity obligations as set out in Section 3 of this Code in relation to that market.

9.1.2 Overview

Once a Telecommunication Licensee or Regulated Person has complied with the applicable provisions contained in Sections 3 through 7 of this Code, IMDA generally will not intervene in a Telecommunication Licensee or Regulated Person's day-to-day operations. However, Telecommunication Licensees or Regulated Persons must not act in a manner that can impede competition. Where this occurs, IMDA may stop any actual or potential infringement or to correct any situation in which there is potential for competition within the telecommunication or media markets to be distorted by taking such enforcement action as it considers appropriate pursuant to Section 27 of the Telecommunications Act, or Section 66 of the IMDA Act. This Section of the Code provides standards that IMDA will use to determine whether Dominant Entities have contravened this Code by abusing their dominant position, engaging in anti-competitive leveraging or engaging in unfair methods of competition.

9.1.3 General Prohibition of Abuse of a Dominant Position

Telecommunication Licensees or Regulated Persons that have Significant Market Power, individually or collectively, in any market in Singapore must not use that dominant position in a manner that unreasonably restricts, or is likely to unreasonably restrict, competition in any telecommunication or media market in Singapore.

9.1.4 Examples of Abuse of a Dominant Position

The following Sub-sections provide examples of practices that would constitute an abuse of a dominant position in any telecommunication or media market in Singapore by Telecommunication Licensees or Regulated Persons that have Significant Market Power. As the following Sub-sections do not constitute an exhaustive list of practices that would constitute an abuse of a dominant position, IMDA will consider any complaints regarding abuse of a dominant position on a case-by-case basis.

9.1.4.1 Pricing Abuses

Sub-sections 9.1.4.1.1 to 9.1.4.1.3 provide examples of pricing practices that would constitute an abuse of a dominant position in any telecommunication or media market

in Singapore by Telecommunication Licensees or Regulated Persons that have Significant Market Power.

9.1.4.1.1 Predatory Pricing

- (a) While vigorous price competition is a hallmark of a competitive market, Telecommunication Licensees or Regulated Persons that have Significant Market Power must not abuse their dominant position in any telecommunication or media market in Singapore by engaging in predatory pricing.
- (b) IMDA will find that a Telecommunication Licensee or Regulated Person that has Significant Market Power has engaged in predatory pricing, and therefore, has abused its dominant position in a manner that restrict or is likely to unreasonably restrict competition, if:
 - (i) the Telecommunication Licensee or Regulated Person is selling its service and/or equipment at a price that is less than average incremental cost;
 - (ii) the Telecommunication Licensee or Regulated Person's pricing is likely to drive efficient rivals from the market or deter future efficient rivals from entering the market; and
 - (iii) entry barriers are so significant that, after driving efficient rivals from the market or deterring entry, the Telecommunication Licensee or Regulated Person could impose an increase in prices sufficient (in amount and duration) to enable the Telecommunication Licensee or Regulated Person to recoup the full amount of the loss that it occurred during the period of such price cutting.
- (c) For Sub-section 9.1.4.1.1(b)(i), IMDA may consider other cost standards should circumstances be appropriate and justified.

9.1.4.1.2 Price Squeezes

- (a) Telecommunication Licensees or Regulated Persons that have Significant Market Power must not abuse their dominant position in any telecommunication or media market in Singapore by engaging in price squeezing.
- (b) IMDA will find that the Telecommunication Licensee or Regulated Person has engaged in a price squeeze, and, therefore, has abused its dominant position in a manner that restricts or is likely to unreasonably restrict competition, if the Telecommunication Licensee or Regulated Person provides a telecommunication or media service, equipment, facility, input and/or access to a distribution channel that a down-stream entity requires at a price that is so high that the Telecommunication Licensee or Regulated Person's downstream business or Affiliate or an equally efficient competing non-affiliated person could not profitably sell, or obtain a commercially reasonable profit for, its business offerings if they were required to purchase the Telecommunication Licensee or Regulated Person's telecommunication or media service, equipment, facility, input or access to a distribution channel at such prices.
- (c) IMDA may make reasonable adjustments to the above test, should circumstances be appropriate and justified.

9.1.4.1.3 Cross-subsidisation

- (a) A Telecommunication Licensee or Regulated Person that has Significant Market Power must not abuse its dominant position in any telecommunication or media market in Singapore by engaging in cross-subsidisation.
- (b) IMDA will find that the Telecommunication Licensee or Regulated Person has engaged in cross-subsidisation and, therefore, has abused its dominant position in a manner that restricts or is likely to unreasonably restrict competition, if the Telecommunication Licensee or Regulated Person uses revenues from the provision of a telecommunication or media service, equipment, facility, input or access to a distribution channel that is not subject to effective competition to cross-subsidise the price of any telecommunication or media service, equipment, facility, input or access to a distribution channel that is subject to effective competition where this would unreasonably restrict competition in any telecommunication or media market in Singapore.

9.1.4.2 Other Abuses

Telecommunication Licensees or Regulated Persons that have Significant Market Power are also precluded from taking any other action that abuses their dominant position in any telecommunication or media market in Singapore.

Sub-sections 9.1.4.2.1 to 9.1.4.2.3 provide examples of the other types of action which may constitute abuses of a dominant position in any telecommunication or media market in Singapore by Telecommunication Licensees or Regulated Persons that have Significant Market Power.

9.1.4.2.1 Discrimination

- (a) Telecommunication Licensees or Regulated Persons that have Significant Market Power must not abuse their dominant position in any telecommunication or media market in Singapore by engaging in discrimination.
- (b) IMDA will find that a Telecommunication Licensee or Regulated Person has engaged in discrimination, and therefore has abused its dominant position in a manner that restricts or is likely to unreasonably restrict competition, if the Telecommunication Licensee or Regulated Person provides its Affiliate with access to infrastructure, systems, services, equipment, information, input or distribution channels that, as a practical matter, are necessary for non-affiliated Telecommunication Licensees or Regulated Persons to provide telecommunication or media services and/or equipment, on prices, terms and conditions that are more favourable than the prices, terms and conditions on which the Telecommunication Licensee or Regulated Person provides those infrastructure, systems, services, equipment, information, input and/or distribution channels to non-affiliated Telecommunication Licensees or Regulated Persons.

9.1.4.2.2 Predatory Network Alteration

- (a) A Telecommunication Licensee or Regulated Person that has Significant Market Power must not abuse its dominant position in any telecommunication or media market in Singapore by engaging in predatory network alteration.
- (b) IMDA will find that a Telecommunication Licensee or Regulated Person has engaged in predatory network alteration and, therefore, has abused its dominant position in a manner that restricts or is likely to unreasonably restrict competition, if the Telecommunication Licensee or Regulated Person alters the physical or logical interfaces of its network in a manner that imposes significant

costs on interconnected Telecommunication Licensees or Regulated Persons, without a legitimate business, operational or technical justification.

9.1.4.2.3 Unreasonable Bundling

- (a) Telecommunication Licensees or Regulated Persons that have Significant Market Power must not abuse their dominant position by engaging in unreasonable bundling in any telecommunication or media market in Singapore.
- (b) Unreasonable bundling refers to the tying or bundling of two or more products and services for sale which results in, or which is likely to result in, the anti-competitive foreclosure of market(s) to competitors and which cannot be objectively justified.

9.1.4.3 Exclusive Dealing

Telecommunication Licensees or Regulated Persons that have Significant Market Power must not abuse their dominant position by engaging in exclusive dealing 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 will harm consumers or unreasonably restrict competition in any telecommunication or media market in Singapore.

9.1.5 Imposition of Non-Structural Safeguards

To prevent a Telecommunication Licensee or Regulated Person or its Affiliate(s) from using its market position to unreasonably restrict competition in Singapore's telecommunication or media industry within the jurisdiction of IMDA, IMDA may, but is not obliged to, require any Telecommunication Licensee or Regulated Person to:

- (a) deal with its Affiliate(s) on commercial terms and at arm's length; or
- (b) adopt accounting separation, cost allocation rules and other forms of behavioural safeguard governing its relationship with its Affiliate(s).

9.2 Anti-competitive Preferences/Leveraging

- (a) A Telecommunication Licensee or Regulated Person that is affiliated with an entity that has Significant Market Power (whether in the provision of telecommunication or media services, and/or equipment), or that has Significant Market Power in a non-telecommunication or non-media market, is prohibited from using the market position of its Affiliate, or of its non-telecommunication or non-media market business, in a manner that enables it to, or is likely to enable it to, unreasonably restrict competition in any telecommunication or media market in Singapore.
- (b) Entities with Significant Market Power may include:
 - (i) Telecommunication Licensees or Regulated Persons;
 - (ii) Non-licensed entities within Singapore; and
 - (iii) Non-licensed entities located outside Singapore.

- (c) Sub-sections 9.2(c)(i) to (iii) provide examples of practices of anti-competitive preferences or leveraging that a Telecommunication Licensee or Regulated Person must not engage in:
- (i) A Telecommunication Licensee or Regulated Person that uses an input that is provided by an Affiliate that has Significant Market Power in the market for an input that other Telecommunication Licensees or Regulated Persons require in order to provide telecommunication or media service and/or equipment, must not obtain the input at a price that is so high that equally efficient competing non-affiliated entities could not profitably sell, or obtain a commercially reasonable profit for, their end-product if they were required to purchase the input at the same price as the Telecommunication Licensee or Regulated Person.
 - (ii) A Telecommunication Licensee or Regulated Person may not accept any cross-subsidisation from an Affiliate that has Significant Market Power, where this would enable the Telecommunication Licensee or Regulated Person to engage in predatory pricing. IMDA will find that a Telecommunication Licensee or Regulated Person has engaged in predatory pricing based on the standards specified in Sub-section 9.1.4.1.1 of this Code.
 - (iii) A Telecommunication Licensee or Regulated Person that is affiliated with an entity that has Significant Market Power and that controls infrastructure, systems, services, equipment and/or information that, as a practical matter, are necessary to provide telecommunication or media service and/or equipment, may not accept access to the infrastructure, systems, services, equipment and/or information unless the Affiliate offers to the Telecommunication Licensee or Regulated Person's competitors access to those infrastructure, systems, services, equipment and/or information on non-discriminatory prices, terms and conditions.
- (d) For the purposes of this Sub-section, IMDA will assess each incidence of potential anti-competitive preferences or leveraging on a case-by-case basis. Following IMDA's assessment, IMDA will pursue only the relevant Telecommunication Licensee or Regulated Person involved in the prohibited act as set out in Sub-section 12.6 of the Code.

9.3 Unfair Methods of Competition – Specific Prohibited Practices

9.3.1 Unfair Methods of Competition – Introduction

This Section sets out the standards that IMDA will use to determine whether a Telecommunication Licensee or Regulated Person has contravened this Code by engaging in specific unfair methods of competition. Where this occurs, IMDA (either upon its own initiative or at the request of a private person) may take such enforcement actions as it considers appropriate pursuant to Section 66 of the IMDA Act or Section 27 of the Telecommunications Act.

9.3.2 Application

This Section applies to all Telecommunication Licensees or Regulated Persons.

9.3.3 General Prohibition

A Telecommunication Licensee or Regulated Person must not engage in unfair methods of competition. An unfair method of competition is a practice by which a Telecommunication Licensee or Regulated Person seeks to obtain a competitive

advantage for itself or an Affiliate in any telecommunication or media market in Singapore, by adopting or utilising methods unrelated to the availability, price or quality of the telecommunication or media service and/or equipment that the Telecommunication Licensee or Regulated Person or Affiliate offers.

The following Sub-sections provide examples of practices that would constitute unfair methods of competition.

9.3.4 Specific Prohibited Practices

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

9.3.4.1 Degradation of Service Availability or Quality

A Telecommunication Licensee or Regulated Person must not take any action, or induce any other person to take any action, that has the effect of either:

- (a) degrading the availability or quality of any telecommunication or media service and/or equipment provided by another Telecommunication Licensee or Regulated Person; or
- (b) raising another Telecommunication Licensee or Regulated Person's costs of providing any telecommunication or media service and/or equipment,

without a legitimate business, operational or technical justification.

9.3.4.2 Provision of False or Misleading Information to Competing Telecommunication Licensees or Regulated Persons

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

9.3.4.3 Improper Use of Information Regarding a Competing Telecommunication Licensee or Regulated Person's Customers

A Telecommunication Licensee or Regulated Person that receives information about another Telecommunication Licensee or Regulated Person'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 Telecommunication Licensee or Regulated Person must not use the information that it receives to market services and/or equipment to the other Telecommunication Licensee's or Regulated Person's Customers or otherwise interfere in the other Telecommunication Licensee or Regulated Person's existing relationship with its Customers.

10. MERGERS AND ACQUISITIONS

10.1 Introduction

In competitive markets, enterprises often seek to acquire, merge with, or otherwise consolidate with other enterprises. 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, Consolidations could create or strengthen a Dominant Entity or could facilitate unlawful collusion amongst competing persons.

Parties seeking to enter into such transactions must comply with this Section 10, which requires such parties to submit Requests or Consolidation Applications (as the case may be) in certain defined situations. Where IMDA concludes, based on the evidence, that a proposed Request or Consolidation is likely to result in a substantial lessening of competition or is against the public interest, IMDA will reject the Request or Consolidation Application or will impose appropriate conditions.

10.1.1 Application

- (a) This Section applies to all:
 - (i) Facilities-based Licensees and Services-based Licensees that IMDA has declared to be Designated Telecommunication Licensees pursuant to Section 32A(2) of the Telecommunications Act;
 - (ii) Trustee-Managers of Designated Business Trusts;
 - (iii) trustees of Designated Trusts;
 - (iv) Regulated Persons;
 - (v) any person, and such person's Associates, that will acquire Voting Shares, Units, Equity Interests, or Voting Power in a Designated Telecommunication Licensee, Designated Business Trust, or Designated Trust; and
 - (vi) any person, and such person's Associates, that will enter into a Consolidation with a Designated Telecommunication Licensee, Designated Business Trust, Designated Trust, or Regulated Person.
- (b) Among other matters, this Section describes —
 - (i) the procedures for a Designated Telecommunication Licensee to notify IMDA in connection with transactions resulting in a person holding Voting Shares or being in control of Voting Power in the Designated Telecommunication Licensee of at least 5% but less than 12%;
 - (ii) the procedures for every Acquiring Party and a Designated Telecommunication Licensee to obtain IMDA's approval for such Acquiring Party to become a 12% Controller of the Designated Telecommunication Licensee;
 - (iii) the procedures for every Acquiring Party and a Designated Telecommunication Licensee to obtain IMDA's approval for such Acquiring Party to become a 30% Controller of the Designated Telecommunication Licensee or otherwise enter into a Consolidation with the Designated Telecommunication Licensee;

- (iv) the procedures for a Designated Telecommunication Licensee to notify IMDA in connection with a *pro forma* change in the Voting Shares or Voting Power of the Designated Telecommunication Licensee;
- (v) the procedures for the Trustee-Manager of a Designated Business Trust to notify IMDA in connection with transactions resulting in a person holding Units or being in control of Voting Power in the Designated Business Trust of at least 5% but less than 12%;
- (vi) the procedures for every Acquiring Party, the Trustee-Manager and the Designated Telecommunication Licensee of a Designated Business Trust to obtain IMDA's approval for such Acquiring Party to become a 12% Controller of the Designated Business Trust;
- (vii) the procedures for every Acquiring Party, the Trustee-Manager and the Designated Telecommunication Licensee of a Designated Business Trust to obtain IMDA's approval for such Acquiring Party to become a 30% Controller of the Designated Business Trust or otherwise enter into a Consolidation with the Designated Business Trust;
- (viii) the procedures for the Trustee-Manager of a Designated Business Trust to notify IMDA in connection with a *pro forma* change in the Units or Voting Power of the Designated Business Trust;
- (ix) the procedures for the trustee of a Designated Trust to notify IMDA in connection with transactions resulting in a person holding Equity Interests, or being in control of Voting Power in the Designated Trust of at least 5% but less than 12%;
- (x) the procedures for every Acquiring Party, the trustee and the Designated Telecommunication Licensee of a Designated Trust to obtain IMDA's approval for such Acquiring Party to become a 12% Controller of the Designated Trust;
- (xi) the procedures for every Acquiring Party, the trustee and the Designated Telecommunication Licensee of a Designated Trust to obtain IMDA's approval for such Acquiring Party to become a 30% Controller of the Designated Trust or otherwise enter into a Consolidation with the Designated Trust;
- (xii) the procedures for the trustee of a Designated Trust to notify IMDA in connection with a *pro forma* change in the Equity Interests or Voting Power of the Designated Trust;
- (xiii) the procedures for every Acquiring Party and Regulated Person to obtain IMDA's approval for such Acquiring Party to become a 30% Controller of the Regulated Person or otherwise enter into a Consolidation with the Regulated Person;
- (xiv) the procedures for every Regulated Person to notify IMDA in connection with a *pro forma* change in the Voting Shares or Voting Power of the Regulated Person;
- (xv) the conditions that IMDA may impose in granting approval for a Request or Consolidation Application; and

- (xvi) the enforcement actions and remedial measures that IMDA may take against the parties in the event of any breach of the provisions of this Section 10 and to address any competitive concerns.
- (c) IMDA may issue advisory guidelines under Section 28 of the Telecommunications Act and Section 61 of the IMDA Act to describe and elaborate on the standards and procedures that IMDA will apply in reviewing, and deciding whether to approve or deny, a Request or Consolidation Application.

10.1.2 Definitions

In this Section, unless the context otherwise requires —

- (a) “12% Controller” means —
 - (i) in relation to a Designated Telecommunication Licensee, a person who, alone or together with his Associates —
 - (A) holds 12% or more but less than 30% of the total number of Voting Shares in the Designated Telecommunication Licensee; or
 - (B) is in a position to control 12% or more but less than 30% of the Voting Power in the Designated Telecommunication Licensee;
 - (ii) in relation to a Designated Business Trust, a person who, alone or together with his Associates —
 - (A) holds 12% or more but less than 30% of the total number of Units in the Designated Business Trust; or
 - (B) is in a position to control 12% or more but less than 30% of the Voting Power in the Designated Business Trust; or
 - (iii) in relation to a Designated Trust, a person who, alone or together with his Associates —
 - (A) holds 12% or more but less than 30% of the Equity Interests in the Designated Trust; or
 - (B) is in a position to control 12% or more but less than 30% of the Voting Power in the Designated Trust;
- (b) “30% Controller” means —
 - (i) in relation to a Designated Telecommunication Licensee, a person who, alone or together with his Associates —
 - (A) holds 30% or more of the total number of Voting Shares in the Designated Telecommunication Licensee; or
 - (B) is in a position to control 30% or more of the Voting Power in the Designated Telecommunication Licensee;
 - (ii) in relation to a Designated Business Trust, a person who, alone or together with his Associates —

- (A) holds 30% or more of the total number of Units in the Designated Business Trust; or
 - (B) is in a position to control 30% or more of the Voting Power in the Designated Business Trust;
- (iii) in relation to a Designated Trust, a person who, alone or together with his Associates —
 - (A) holds 30% or more of the Equity Interests in the Designated Trust; or
 - (B) is in a position to control 30% or more of the Voting Power in the Designated Trust; or
- (iv) in relation to a Regulated Person, a person who, alone or together with his Associates —
 - (A) holds 30% or more of the Voting Shares in the Regulated Person; or
 - (B) is in a position to control 30% or more of the Voting Power in the Regulated Person;
- (c) “Acquiring Party” means any party, whether alone or together with its Associates, that acquires Equity Interest or Voting Power in a Designated Telecommunication Licensee, Designated Business Trust, Designated Trust, or Regulated Person;
- (d) “Applicant” means a party that is required to submit an application for IMDA’s approval in respect of transactions identified at Sections 32B(5), (6) and (7) of the Telecommunications Act or Section 65 of the IMDA Act and includes every Acquiring Party, the Designated Telecommunication Licensee, Regulated Person, and, as the case may be, the Trustee-Manager of the Designated Business Trust or the trustee of the Designated Trust;
- (e) “Associate” has the same meaning as in Section 32A(4) of the Telecommunications Act, Section 36(4) of the Broadcasting Act, or Section 12(4) of the Newspaper and Printing Presses Act (as the case may be);
- (f) “Business Trust” has the same meaning as in Section 2 of the Business Trusts Act (Cap. 31A);
- (g) “Consolidation” means any transaction —
 - (i) that results in a person —
 - (A) becoming a 30% Controller of a Designated Telecommunication Licensee, Designated Business Trust, Designated Trust, or Regulated Person;
 - (B) acquiring any business of a Designated Telecommunication Licensee, Designated Business Trust, Designated Trust, or Regulated Person, conducted pursuant to a licence granted by IMDA (or any part thereof) as a going concern; or
 - (C) obtaining Effective Control over a Designated Telecommunication Licensee, Designated Business Trust, Designated Trust, or Regulated Person; or

- (ii) that is prescribed by regulations made under Section 74 of the Telecommunications Act or Section 81 of the IMDA Act, or that falls within a class of transactions prescribed in such regulations;
- (h) “Consolidation Agreement” means an agreement for a transaction that constitutes a Consolidation;
- (i) “Consolidation Application” means an application for approval to enter into a Consolidation, submitted pursuant to Sub-sections 10.3.6, 10.4.6, or 10.5.4 of this Code;
- (j) “Designated Business Trust” means a Business Trust that —
 - (i) is established wholly or partly in respect of a telecommunication system (or any part thereof) operated by a telecommunication system licensee; and
 - (ii) has been declared by IMDA to be a Designated Business Trust;
- (k) “Designated Telecommunication Licensee” means a telecommunication licensee that is a Corporation and that —
 - (i) has been declared by IMDA to be a Designated Telecommunication Licensee; or
 - (ii) belongs to a class of telecommunication licensees which has been declared by IMDA to be a class of Designated Telecommunication Licensees;
- (l) “Designated Trust” means a trust that —
 - (i) is prescribed, or belongs to a class of trusts prescribed, by any regulations made under Section 74 of the Telecommunications Act;
 - (ii) is established wholly or partly in respect of a telecommunication system (or any part thereof) operated by a telecommunication system licensee; and
 - (iii) has been declared by IMDA to be a Designated Trust;
- (m) “Effective Control” means —
 - (i) in relation to a Designated Telecommunication Licensee, the ability to cause the Designated Telecommunication Licensee to take, or to refrain from taking, a major decision regarding the management or operations of the Designated Telecommunication Licensee;
 - (ii) in relation to a Designated Business Trust, the ability to cause the Trustee-Manager to take, or to refrain from taking, a major decision regarding the management or operations of the Designated Business Trust;
 - (iii) in relation to a Designated Trust, the ability to cause the trustee to take, or to refrain from taking, a major decision regarding the management or operations of the Designated Trust; or
 - (iv) in relation to a Regulated Person, the ability to cause the Regulated Person to take, or to refrain from taking, a major decision regarding the management or operations of the Regulated Person;

For the avoidance of doubt, Effective Control includes such control as may be acquired via any combination of contracts, agreements or any other arrangements, or control exercised over the telecommunication licensee, Regulated Person, or independent entity (as the case may be) by a 30% Controller of the telecommunication licensee, Regulated Person, or independent entity (as the case may be).

- (n) “Equity Interest” means —
 - (i) in relation to a Corporation, a Voting Share in that Corporation;
 - (ii) in relation to a Designated Business Trust, a Unit in that Designated Business Trust; or
 - (iii) in relation to a Designated Trust, any right or interest, whether legal or equitable, in that Designated Trust which gives the holder of that right or interest Voting Power in that Designated Trust;
- (o) “Equity Interest Buyback” means a purchase by a trustee of a Designated Trust of any portion of its Equity Interest held by holders of Equity Interest, regardless of whether those Equity Interests are traded on a securities exchange;
- (p) “holder” of Equity Interest has the same meaning as in Section 32A(5) of the Telecommunications Act;
- (q) “Horizontal Consolidation” means a Consolidation that involves two or more persons who are current competing providers of the same Service (or Services that are close substitutes), at least one of whom is a Designated Telecommunication Licensee, Designated Business Trust, Designated Trust, or Regulated Person;
- (r) “Licence Assignment” means any transaction that results in a Designated Telecommunication Licensee or Regulated Person assigning, transferring, sub-letting or otherwise disposing of any of its rights, duties, liabilities, obligations or privileges under a licence granted by IMDA to the Designated Telecommunication Licensee or Regulated Person under the Telecommunications Act, Broadcasting Act or Newspaper and Printing Presses Act (as may be applicable);
- (s) “Non-Horizontal Consolidation” means a Consolidation that involves two or more persons who are not current competing providers of the same Service (or Services that are close substitutes), at least one of whom is a Designated Telecommunication Licensee, Designated Business Trust, Designated Trust, or Regulated Person;
- (t) “Open Market Transaction” means a purchase of Equity Interest via a securities exchange, whether located in Singapore or elsewhere, and includes an acquisition of Equity Interest by means of a Tender Offer;
- (u) “Post-Consolidation Entity” means the economic entity that will be created as a result of a Consolidation;
- (v) “Request” means any application for approval for every Acquiring Party to become a 12% Controller of a Designated Telecommunication Licensee, Designated Business Trust, or Designated Trust, submitted pursuant to Sub-section 10.3.5 or 10.4.5 of this Code;
- (w) “Share” has the same meaning as in Section 4(1) of the Companies Act;

- (x) “Share Buyback” means a purchase by a Designated Telecommunication Licensee or Regulated Person of any portion of its issued Shares held by its shareholders, regardless of whether those Shares are traded on a securities exchange;
- (y) “Take-Over Code” means the Singapore Code on Take-Overs and Mergers issued by the Monetary Authority of Singapore under Section 321 of the Securities and Futures Act (Cap. 289);
- (z) “Tender Offer” means an offer made to the public to acquire some or all of the Equity Interests of a Designated Telecommunication Licensee, a Designated Business Trust Designated Trust, or Regulated Person (as the case may be), via a securities exchange;
- (aa) “Treasury Share” has the same meaning as in Section 4(1) of the Companies Act;
- (ab) “Trustee-Manager” has the same meaning as in Section 2 of the Business Trusts Act;
- (ac) “Unit” has the same meaning as in Section 2 of the Business Trusts Act;
- (ad) “Unitholder” has the same meaning as in Section 2 of the Business Trusts Act;
- (ae) “Unit Buyback” means a purchase by a Trustee-Manager of a Designated Business Trust of any portion of its issued Units held by its Unitholders, regardless of whether those Units are traded on a securities exchange;
- (af) “Voting Power” and a reference to control of a percentage of voting power in an entity is a reference to control that is direct or indirect, including control that is exercisable as a result of or by means of arrangements or practices, whether or not having legal or equitable force and whether or not based on legal or equitable rights, of that percentage of the total number of votes that may be cast in a general meeting of that entity, as the case may be; and
- (ag) “Voting Share” has the same meaning as in Section 4(1) of the Companies Act;

For the purposes of this Section 10, unless the context otherwise requires, words importing the singular include the plural and vice versa.

10.1.3 Compliance with Licence Conditions for Licence Assignments

In addition to the requirements specified in this Section 10 of this Code, if an acquisition of Equity Interests or Voting Power in a Designated Telecommunication Licensee, Designated Business Trust, Designated Trust, or Regulated Person involves a Licence Assignment, the Designated Telecommunication Licensee or Regulated Person must also comply with the applicable provisions relating to Licence Assignments in the licence granted by IMDA.

10.1.4 Presumption of Effective Control

- (a) For the purposes of this Section 10 of this Code, IMDA will presume that any person who holds 30% or more of the Voting Shares/Units/Equity Interests, or is in a position to control 30% or more of the Voting Power in an entity will be able to exercise Effective Control over that entity.
- (b) In this regard, IMDA will presume that —
 - (i) any person who holds 30% or more of the Voting Shares or is in a position to control 30% or more of the Voting Power in the Designated

Telecommunication Licensee will be in a position to exercise Effective Control over the Designated Telecommunication Licensee;

- (ii) any person who holds 30% or more of the Units or is in a position to control 30% or more of the Voting Power in the Designated Business Trust will be in a position to exercise Effective Control over the Designated Business Trust;
 - (iii) any person who holds 30% or more of the Equity Interests or is in a position to control 30% or more of the Voting Power in the Designated Trust will be in a position to exercise Effective Control over the Designated Trust; and
 - (iv) any person who holds 30% or more of the Voting Shares or is in a position to control 30% or more of the Voting Power in the Regulated Person will be in a position to exercise Effective Control over the Regulated Person.
- (c) Where a person holds 30% or more of the Voting Shares/Units/Equity Interest, or is in a position to control 30% or more of the Voting Power in entity A, in the situation where entity A is in the position to control X% of Voting Power in another entity B, that person will be presumed to control that same X% of Voting Power in entity B.
- (d) In addition, where a person holds 30% or more of the Voting Shares/Units/Equity Interest, or is in a position to control 30% or more of the Voting Power in entity A, in the situation where IMDA has presumed entity A to be able to exercise Effective Control over another entity B, that person will be presumed to be able to exercise Effective Control over entity B.

10.2 Declaration and Designation of Designated Telecommunication Licensees, Designated Business Trusts, and Designated Trusts

10.2.1 Declaration of Designated Telecommunication Licensees, Designated Business Trusts, and Designated Trusts

IMDA may, in accordance with Section 32A(2) of the Telecommunications Act, do any of the following —

- (a) declare any telecommunication licensee to be a Designated Telecommunication Licensee;
- (b) declare any class of telecommunication licensees to be a class of Designated Telecommunication Licensees;
- (c) declare any business trust to be a Designated Business Trust, if the business trust is established wholly or partly in respect of a telecommunication system (or any part thereof) operated by a telecommunication system licensee;
- (d) declare any trust to be a Designated Trust, if the trust —
 - (i) is prescribed, or belongs to a class of trusts prescribed, by any regulations made under Section 74 of the Telecommunications Act; and
 - (ii) is established wholly or partly in respect of a telecommunication system (or any part thereof) operated by a telecommunication system licensee;

- (e) vary or revoke any declaration of a Designated Telecommunication Licensee, a Designated Business Trust, or a Designated Trust; and
- (f) vary or revoke any declaration of a class of Designated Telecommunication Licensees.

10.2.2 Designation of Designated Telecommunication Licensees, Designated Business Trusts, and Designated Trusts

- (a) Pursuant to Section 32A(2) of the Telecommunications Act, by notice in the *Gazette*, IMDA will declare:
 - (i) all Facilities-based Licensees and certain Services-based Licensees as Designated Telecommunication Licensees; and
 - (ii) a Business Trust as a Designated Business Trust, or a trust as a Designated Trust respectively, if such a Business Trust or trust is established wholly or partly in respect of a telecommunication system (or any part thereof) operated by a Designated Telecommunication Licensee.
- (b) IMDA will designate a Services-based Licensee as a Designated Telecommunication Licensee in those cases in which IMDA determines that the Services-based Licensee is a significant participant in a concentrated market. In a case where there is a Business Trust or trust established in respect of a telecommunication system (or any part thereof) operated by such a Services-based Licensee, IMDA will also correspondingly designate such a Business Trust or trust as a Designated Business Trust or Designated Trust respectively.
- (c) IMDA 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 IMDA has licensed it to provide, and if the three largest participants in that market collectively have a market share in excess of 75 percent.

10.2.3 Procedures for Designation of certain Services-based Licensees and any corresponding Business Trusts or trusts

- (a) Prior to designating any —
 - (i) Services-based Licensee; and
 - (ii) Business Trust or trust (established in respect of a telecommunication system operated by a Services-based Licensee),as a Designated Telecommunication Licensee, Designated Business Trust or a Designated Trust respectively, IMDA will provide such party with written notice regarding the basis on which IMDA proposes to designate it as a Designated Telecommunication Licensee, Designated Business Trust, or Designated Trust.
- (b) Such party will have 30 days from the date of IMDA's written notice to submit a written representation to IMDA with supporting evidence as to why IMDA should not make such a designation. Where appropriate, IMDA may request such party to submit additional information. Within 30 days of receiving all the necessary information, IMDA will notify such party of its determination.

- (c) If IMDA decides to designate such party as a Designated Telecommunication Licensee, Designated Business Trust, or Designated Trust, IMDA will publish the designation in the *Gazette*.
- (d) A Designated Telecommunication Licensee, Designated Business Trust, or Designated Trust may petition IMDA, at any time, for removal of its designated status. To do so, the party must provide information demonstrating that it no longer meets the criteria specified in Sub-section 10.2.2 of this Code.
- (e) In all other cases involving Facilities-based Licensees and Business Trusts or trusts (established in respect of a telecommunication system operated by a Facilities-based Licensee), no action needs to be taken by IMDA as they will be, or will have been, designated by notice in the *Gazette* with effect from such date as may be specified therein.

10.3 Designated Telecommunication Licensees: Acquisitions of Voting Shares or Voting Power in a Designated Telecommunication Licensee

10.3.1 Duty of Acquiring Party and Designated Telecommunication Licensee in Connection with Acquisition of Voting Shares or Voting Power

Every Acquiring Party and the Designated Telecommunication Licensee must comply with this Sub-section 10.3 in connection with the acquisitions of Voting Shares or Voting Power in the Designated Telecommunication Licensee.

10.3.1.1 General Duty to Notify and Seek Approval for Acquisitions of Voting Shares or Voting Power in Designated Telecommunication Licensee and Consolidation with Designated Telecommunication Licensee

- (a) Every Designated Telecommunication Licensee must give notice in writing to IMDA on the occasion when a person, whether by a series of transactions over a period of time or otherwise —
 - (i) first holds 5% or more but less than 12% of the Voting Shares in the Designated Telecommunication Licensee; or
 - (ii) first is in a position to control 5% or more but less than 12% of the Voting Power in the Designated Telecommunication Licensee.
- (b) Every Acquiring Party and the Designated Telecommunication Licensee must seek IMDA's approval in connection with the acquisition of Voting Shares or Voting Power in the Designated Telecommunication Licensee that would result in such Acquiring Party becoming a 12% Controller of the Designated Telecommunication Licensee.
- (c) Every Acquiring Party and the Designated Telecommunication Licensee must seek IMDA's approval in connection with the acquisition of Voting Shares or Voting Power in the Designated Telecommunication Licensee that would result in a Consolidation with the Designated Telecommunication Licensee, or any other transaction that results in a Consolidation with the Designated Telecommunication Licensee.
- (d) In respect of Sub-sections 10.3.1.1(b) and 10.3.1.1(c), in the situation where as a result of a transaction, persons acquire sufficient Voting Shares or Voting Power thereby requiring IMDA's approval under Sections 32B(5), 32B(6), or 32B(7) of the Telecommunications Act, every Acquiring Party and the Designated Telecommunication Licensee must jointly submit a single Request or Consolidation Application (as the case may be) to IMDA.

10.3.1.2 Procedures in Connection with Prescribed Transactions Involving *Pro Forma* Changes in Voting Shares or Voting Power in a Designated Telecommunication Licensee

As set out in Section 32B(9), (10) and (11) of the Telecommunications Act, as well as Regulation 2 of the Telecommunications (Prescribed Transactions) Order 2012 —

(a) A notice in writing need not be given to IMDA under Section 32B(1) of the Telecommunications Act in the event where any person, whether by a series of transactions over a period of time or otherwise —

(i) holds 5% or more but less than 12% of the total number of Voting Shares in the Designated Telecommunication Licensee; or

(ii) is in a position to control 5% or more but less than 12% of the Voting Power in the Designated Telecommunication Licensee,

if the event occurs by virtue only of any of the transactions prescribed by the Minister by order published in the *Gazette*.

(b) Any person may, without obtaining the prior written approval of IMDA, become, whether through a series of transactions over a period of time or otherwise, a 12% Controller of a Designated Telecommunication Licensee or a 30% Controller of a Designated Telecommunication Licensee if that event occurs by virtue only of any transaction prescribed by the Minister by order published in the *Gazette*.

(c) A Designated Telecommunication Licensee shall give notice in writing to IMDA, within seven days after the Designated Telecommunication Licensee first becomes aware of the event, in the event that any person —

(i) becomes, whether through a series of transactions over a period of time or otherwise, a 12% Controller or a 30% Controller of the Designated Telecommunication Licensee;

(ii) acquires any business of the Designated Telecommunication Licensee that is conducted pursuant to a telecommunication licence granted under Section 5 of the Telecommunications Act, or any part of any such business, as a going concern; or

(iii) obtains Effective Control over the Designated Telecommunication Licensee,

by virtue only of any transaction prescribed by the Minister for the purposes of this Sub-section by order published in the *Gazette*.

(d) The transactions prescribed by the Minister and published in the *Gazette* include the transactions which —

(i) result in the transfer of Shares in a Designated Telecommunication Licensee —

(A) from any person to a Corporation, any Shares in which are owned or any Voting Power in which is controlled by that person, without any change in the percentage of the Voting Power in the Designated Telecommunication Licensee controlled by that person;

(B) from a Corporation to any shareholder of the Corporation, without any change in the percentage of the Voting Power in

the Designated Telecommunication Licensee controlled by that shareholder;

- (C) from a Corporation to its wholly owned subsidiary, or to a Corporation from its wholly owned subsidiary, whether or not the subsidiary is a direct subsidiary of the Corporation; or
 - (D) from one Corporation, any Shares in which are owned or any Voting Power in which is controlled by any person, to another Corporation, any Shares in which are owned or any Voting Power in which is controlled by that person, without any change in the percentage of the Voting Power in the Designated Telecommunication Licensee controlled by that person; or
- (ii) do not change the percentage of the Voting Power in the Designated Telecommunication Licensee controlled by every person who controlled any Voting Power in the Designated Telecommunication Licensee immediately before the transaction.

The above transactions would be deemed to have constituted a *pro forma* change.

- (e) The written notice given under Sections 32B(11) of the Telecommunications Act must include a brief description of the transaction and the basis on which the Designated Telecommunication Licensee believes the transaction falls within Regulation 2 of the Telecommunications (Prescribed Transactions) Order 2012.

10.3.1.3 Deemed and Disregarded Interests

- (a) As set out in Section 32A(5)(a) of the Telecommunications Act, a person holds a Voting Share in a Corporation if he has any legal or equitable interest in that Share, other than an interest that is to be disregarded under Section 32A(7) of the Telecommunications Act.
- (b) As set out in Section 32A(6) of the Telecommunications Act, a person shall be deemed to have an interest in a Share if —
 - (i) the person has entered into a contract to purchase that Share; or
 - (ii) the person, not being the registered holder of that Share, is entitled (otherwise than by reason of his having been appointed a proxy or representative to vote at a meeting of members of a Corporation or of a class of its members) to exercise or control the exercise of a right attached to that Share.
- (c) As set out in Section 32A(7) of the Telecommunications Act, there shall be disregarded —
 - (i) an interest in a Share if the interest is that of a person who holds the Share as bare trustee;
 - (ii) an interest in a Share of a person whose ordinary business includes the lending of money, if he holds the interest only by way of security for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money;
 - (iii) an interest in a Share of a person whose ordinary business includes the underwriting of securities, if he holds the interest only as an

underwriter or sub-underwriter to any offering of shares of a Designated Telecommunication Licensee;

- (iv) an interest in a Share held by a person —
 - (A) in his capacity as a liquidator, the Official Receiver, the Official Assignee or the Public Trustee; or
 - (B) by a person by reason of his holding such other office as may be prescribed for the purposes of Section 7(9)(c) of the Companies Act;
- (v) an interest of a Corporation in its own Shares purchased or otherwise acquired in accordance with Sections 76B to 76G of the Companies Act (including Treasury Shares); and
- (vi) such interest in a Share as may be prescribed for the purposes of Section 7(9)(d) of the Companies Act, being an interest of such person, or of a person belonging to such class of persons, as may be prescribed for the purposes of that provision.

10.3.2 Obligation of Designated Telecommunication Licensee to Monitor Changes in Voting Shares and Voting Power

Every Designated Telecommunication Licensee must adopt reasonable procedures for monitoring changes in the Voting Shares and Voting Power in the Designated Telecommunication Licensee.

10.3.3 Acquisition resulting in a person holding Voting Shares or being in control of Voting Power of less than 5% in a Designated Telecommunication Licensee Not Subject to Notification or Approval

IMDA will presume that a person that holds Voting Shares or is in a position to control Voting Power of less than 5% in a Designated Telecommunication Licensee does not have the ability to use such interest in a manner that would substantially lessen competition or in a manner that is contrary to public interest. Therefore, IMDA will not subject such transaction to any notification or approval requirement.

10.3.4 Procedures for Notifying Acquisitions resulting in a person holding Voting Shares or being in control of Voting Power of 5% or More but Less than 12% in a Designated Telecommunication Licensee

10.3.4.1 Presumption

IMDA will presume that a person that holds Voting Shares or is in a position to control Voting Power in a Designated Telecommunication Licensee of at least 5%, but less than 12%, is not likely to have the ability to use such interest in a manner that would substantially lessen competition or in a manner that would be contrary to public interest. However, IMDA must be notified of the acquisition, as such level of interest is not insignificant and there is the possibility that such person may seek to further increase its interest.

10.3.4.2 Duty to Notify IMDA

- (a) Pursuant to Section 32(B)(1) of the Telecommunications Act, a Designated Telecommunication Licensee shall give notice in writing to IMDA within seven days after the Designated Telecommunication Licensee first becomes aware that any person, whether by a series of transactions over a period of time or otherwise —

- (i) holds 5% or more but less than 12% of the total number of Voting Shares in the Designated Telecommunication Licensee; or
 - (ii) is in a position to control 5% or more but less than 12% of the Voting Power in the Designated Telecommunication Licensee.
- (b) For the purposes of Sub-section 10.3.4.2(b), the notice must include the name (and, if known, the address and contact information) of the person, the percentage of Voting Shares or Voting Power that the person held or controlled prior to the acquisition, and the percentage of Voting Shares or Voting Power that the person has acquired.
- (c) If requested by IMDA in writing, the Designated Telecommunication Licensee shall provide further notification of each increase in that person's Voting Shares or Voting Power.

10.3.5 Procedures in Connection with Acquisitions resulting in a person becoming a 12% Controller of a Designated Telecommunication Licensee

10.3.5.1 Presumption

IMDA will presume that an Acquiring Party that becomes a 12% Controller of a Designated Telecommunication Licensee is not likely to have the ability to exercise Effective Control over that Designated Telecommunication Licensee. Therefore, IMDA will presume that such an acquisition is not likely to constitute a Consolidation. However, in certain circumstances, an Acquiring Party that becomes a 12% Controller of a Designated Telecommunication Licensee could have the ability to use its Voting Shares or Voting Power in a manner that would substantially lessen competition or in a manner that is contrary to the public interest. For example, an Acquiring Party that becomes a 12% Controller in two competing Designated Telecommunication Licensees could use its Voting Shares or Voting Power to facilitate anti-competitive coordination between the two competing Designated Telecommunication Licensees.

10.3.5.2 Duty to Seek Approval and to Notify IMDA

- (a) Pursuant to Section 32B(5) of the Telecommunications Act, no person shall, without obtaining the prior written approval of IMDA to do so, become, whether through a series of transactions over a period of time or otherwise, a 12% Controller of a Designated Telecommunication Licensee.

For this purpose, every Acquiring Party and the Designated Telecommunication Licensee must seek IMDA's approval in connection with such Acquiring Party acquiring Voting Shares or Voting Power that results in such Acquiring Party becoming a 12% Controller of the Designated Telecommunication Licensee.

- (b) Where written approval has been granted by IMDA to a person to become a 12% Controller of a Designated Telecommunication Licensee, such person is not required to seek IMDA's approval for any further acquisition of Voting Shares or Voting Power unless such an acquisition results in such person becoming a 30% Controller of the Designated Telecommunication Licensee, or otherwise constitutes a Consolidation with the Designated Telecommunication Licensee. If requested by IMDA in writing, the Designated Telecommunication Licensee must notify IMDA within seven days of each further acquisition of Voting Shares or Voting Power by such person, provided that such person does not become a 30% Controller of the Designated Telecommunication Licensee, or otherwise enters into a Consolidation with the Designated Telecommunication Licensee. The written notifications must state the percentage of Voting Shares or Voting Power in the Designated Telecommunication Licensee that such person held or controlled prior to the

acquisition and the percentage of Voting Shares or Voting Power in the Designated Telecommunication Licensee that such person has further acquired.

10.3.5.3 Procedures to Seek Prior Approval

- (a) An Acquiring Party may acquire Voting Shares or Voting Power in a Designated Telecommunication Licensee that would result in the Acquiring Party becoming a 12% Controller of the Designated Telecommunication Licensee by various means. Without limitation, this may occur when —
 - (i) an Acquiring Party acquires Voting Shares in a Designated Telecommunication Licensee by —
 - (A) purchasing Voting Shares in the Designated Telecommunication Licensee an Open Market Transaction;
 - (B) entering into a privately negotiated agreement with the Designated Telecommunication Licensee that allows the Acquiring Party to acquire Voting Shares in the Designated Telecommunication Licensee;
 - (C) entering into a privately negotiated agreement with an entity that holds Voting Shares;
 - (D) exercising an option to acquire, or a right to transfer to itself or to its order, Voting Shares in the Designated Telecommunication Licensee; or
 - (E) entering into any other transaction that results in the acquisition of Voting Shares in the Designated Telecommunication Licensee.
 - (ii) an Acquiring Party acquires Voting Power in a Designated Telecommunication Licensee by —
 - (A) purchasing, through an Open Market Transaction, Voting Shares in an entity that controls Voting Power in the Designated Telecommunication Licensee;
 - (B) entering into a privately negotiated agreement with an entity that controls Voting Power in the Designated Telecommunication Licensee;
 - (C) exercising an option to acquire, or right to transfer, Voting Shares in an entity that controls Voting Power in the Designated Telecommunication Licensee; or
 - (D) entering into any other transaction that results in the acquisition of Voting Power in the Designated Telecommunication Licensee.
- (b) Every Acquiring Party and Designated Telecommunication Licensee must *jointly* submit a Request to IMDA in respect of such Acquiring Party becoming a 12% Controller of the Designated Telecommunication Licensee. The Request shall contain the information and documents specified in Sub-section 10.3.5.4 of this Code and, except for Requests relating to a Tender Offer, shall be submitted in accordance with the following time frames —

- (i) in cases where the Acquiring Party intends to acquire Voting Shares of the Designated Telecommunication Licensee in an Open Market Transaction, not less than 60 days before the Acquiring Party proceeds to make an offer for the Voting Shares;
 - (ii) in other cases where the Acquiring Party intends to acquire Voting Shares in the Designated Telecommunication Licensee, within 30 days from the day on which the Acquiring Party enters into the agreement for the acquisition and not less than 60 days before the day upon which the Acquiring Party completes the acquisition;
 - (iii) in cases where the Acquiring Party intends to exercise an option to acquire Voting Shares of the Designated Telecommunication Licensee or to exercise a right to have Voting Shares of the Designated Telecommunication Licensee transferred to it or to its order, not less than 60 days before the Acquiring Party exercises such an option or right; or
 - (iv) in all other cases where the Acquiring Party enters into any transaction that results in the Acquiring Party becoming a 12% Controller of the Designated Telecommunication Licensee, not less than 60 days before the Acquiring Party completes the transaction.
- (c) IMDA will seek to make a determination within 30 days of receiving all the information necessary to enable IMDA to review the Request. In exceptional cases, IMDA may extend the review period and may, where appropriate, conduct consultations on the Request in accordance with Sub-section 10.10.2 of this Code. In the event that IMDA extends the review period, no Acquiring Party shall proceed to become a 12% Controller of a Designated Telecommunication Licensee unless IMDA has granted its approval upon completion of its determination.
- (d) For transactions relating to a Tender Offer, every Acquiring Party and Designated Telecommunication Licensee must submit a Request in accordance with Sub-section 10.3.7 of this Code.

10.3.5.4 Information and Documents to be Included in a Request

- (a) Each Request shall contain all the required information reasonably necessary for IMDA to determine the likely impact of the acquisition on competition and the public interest, including (without limitation) the following documents and information (based on the Applicants' reasonable and diligent efforts to collect and provide such information) —
- (i) the name, address and contact information of every Acquiring Party;
 - (ii) the names of all Associates and Affiliates of the Designated Telecommunication Licensee, and all Associates and Affiliates of every Acquiring Party;
 - (iii) the percentage of Voting Shares or Voting Power in the Designated Telecommunication Licensee that every Acquiring Party, and all Associates of every Acquiring Party, holds or held (if any) prior to the proposed acquisition or acquisition, respectively;
 - (iv) the percentage of Voting Shares or Voting Power in the Designated Telecommunication Licensee that every Acquiring Party proposes to acquire or has acquired;

- (v) the Services provided by every Acquiring Party, the Designated Telecommunication Licensee, and their respective Associates and Affiliates, and the estimated market shares thereof;
 - (vi) any special or preferential rights granted to every Acquiring Party and its Associates; and
 - (vii) any anticipated significant changes in the management or operations of the Designated Telecommunication Licensee.
- (b) Until IMDA issues its written decision on whether to approve or deny a Request, the Applicants must promptly inform IMDA in writing of any new or different fact or matter that is reasonably likely to have a material impact on IMDA's consideration of the Request.

10.3.5.5 Request for Separate Filing and Direct Submission of Information

- (a) Without prejudice to Sub-sections 10.3.1.1(d) and 10.3.5.3(b) of this Code, an Applicant may apply in writing to IMDA for a waiver of the requirement for the Applicant to submit a joint Request with other Applicants if the Applicant can establish that —
- (i) it is unable to comply with the requirement due to circumstances beyond its reasonable control; or
 - (ii) requiring it to comply with the requirement would be unduly burdensome or would prejudice its legitimate commercial interests.
- (b) Circumstances under which IMDA may grant a waiver under Sub-section 10.3.5.5(a) include (without limitation) the following —
- (i) where an Acquiring Party reasonably believes that the Designated Telecommunication Licensee is likely to be opposed to its acquisition of Voting Shares or Voting Power in the Designated Telecommunication Licensee;
 - (ii) where an Applicant reasonably believes that the submission of a joint Request would be unduly burdensome or infeasible; or
 - (iii) where an Applicant can demonstrate that another Applicant has refused to cooperate with it to submit a joint Request.
- (c) Where an Applicant does not want to disclose confidential, commercially sensitive or proprietary information to another Applicant for inclusion in a Request, IMDA may allow the Applicant to submit its confidential, commercially sensitive or proprietary information directly to IMDA but the Applicant shall otherwise submit a joint Request with other Applicants containing such other information as may be required under this Code.

10.3.6 Procedures in Connection with Acquisitions resulting in a person becoming a 30% Controller of a Designated Telecommunication Licensee and Other Transactions that Constitute a Consolidation with a Designated Telecommunication Licensee

10.3.6.1 Determining the Existence of a Consolidation

- (a) A Consolidation may involve —
- (i) the dissolution of an existing legal entity, the creation of a new legal entity or a Licence Assignment;

- (ii) an acquisition of Voting Shares or Voting Power that results in the Acquiring Party becoming a 30% Controller in a Designated Telecommunication Licensee, whether by a series of transactions over a period of time or otherwise;
 - (iii) the obtaining of the ability to exercise Effective Control over a Designated Telecommunication Licensee;
 - (iv) the acquisition of any business of a Designated Telecommunication Licensee conducted pursuant to a licence granted by IMDA (or any part thereof) as a going concern; or
 - (v) any transaction or class of transactions that is prescribed by regulations made under Section 74 of the Telecommunications Act, or that falls within a class of transactions prescribed in such regulations.
- (b) An Acquiring Party may obtain Effective Control over a Designated Telecommunication Licensee through a transaction where, for example, the transaction confers on the Acquiring Party the right to appoint a majority of the board of directors of the Designated Telecommunication Licensee or to veto certain management or major operating decisions of the Designated Telecommunication Licensee.
- (c) The acquisition of any business of a Designated Telecommunication Licensee conducted pursuant to a licence granted by IMDA (or any part thereof) as a going concern may occur where —
- (i) an Acquiring Party acquires all or substantially all of the assets (including goodwill) of the Designated Telecommunication Licensee used for such business;
 - (ii) an Acquiring Party enters into an agreement pursuant to which it acquires the right to provide Services to, and receive compensation from, the substantial majority of the Designated Telecommunication Licensee's customers in respect of such business; or
 - (iii) there is a transfer to a new legal person of significant assets (including goodwill) from two or more persons (i.e. corporate joint ventures).

10.3.6.2 Duty to Seek Approval and to Notify IMDA

- (a) Under Sections 32B and 32C of the Telecommunications Act, every Acquiring Party and the Designated Telecommunication Licensee must seek IMDA's approval in connection with such Acquiring Party acquiring Voting Shares or Voting Power that results in any such Acquiring Party becoming a 30% Controller of the Designated Telecommunication Licensee or entering into any transaction that constitutes a Consolidation with the Designated Telecommunication Licensee via a Consolidation Application.
- (b) While IMDA is reviewing the Consolidation Application, no Acquiring Party shall enter into a Consolidation with the Designated Telecommunication Licensee unless IMDA has granted its written approval upon completion of its determination.
- (c) Where written approval has been granted by IMDA to a person to enter into a Consolidation with a Designated Telecommunication Licensee, such person is not required to seek IMDA's approval for any further acquisition of Voting Shares or Voting Power in the Designated Telecommunication Licensee. If requested by IMDA in writing, the Designated Telecommunication Licensee

must notify IMDA within seven days of each further acquisition of Voting Shares or Voting Power in the Designated Telecommunication Licensee by such person. The written notifications must state the percentage of Voting Shares or Voting Power in the Designated Telecommunication Licensee that such person held or controlled prior to the acquisition and the percentage of Voting Shares or Voting Power in the Designated Telecommunication Licensee that such person has further acquired.

10.3.6.3 Procedures to Seek Prior Approval

- (a) An Acquiring Party may enter into an agreement or a transaction that constitutes a Consolidation by various means. Without limitation, this may occur when —
 - (i) an Acquiring Party acquires Voting Shares in a Designated Telecommunication Licensee by —
 - (A) purchasing Voting Shares of the Designated Telecommunication Licensee in an Open Market Transaction;
 - (B) entering into a privately negotiated agreement with the Designated Telecommunication Licensee that allows the Acquiring Party to acquire Voting Shares in the Designated Telecommunication Licensee;
 - (C) entering into a privately negotiated agreement with an entity that holds Voting Shares in the Designated Telecommunication Licensee;
 - (D) exercising an option to acquire, or a right to transfer to itself or to its order, Voting Shares in the Designated Telecommunication Licensee; or
 - (E) entering into any other transaction that results in the acquisition of Voting Shares in the Designated Telecommunication Licensee.
 - (ii) an Acquiring Party acquires Voting Power in a Designated Telecommunication Licensee by —
 - (A) purchasing, through an Open Market Transaction, Voting Shares in an entity that controls Voting Power in the Designated Telecommunication Licensee;
 - (B) entering into a privately negotiated agreement with an entity that controls Voting Power in the Designated Telecommunication Licensee;
 - (C) exercising an option to acquire, or right to transfer to itself or to its order, Voting Shares in an entity that controls Voting Power in the Designated Telecommunication Licensee; or
 - (D) entering into any other transaction that results in the acquisition of Voting Power in the Designated Telecommunication Licensee.
 - (iii) an Acquiring Party acquires any business of a Designated Telecommunication Licensee conducted pursuant to a telecommunication licence granted by IMDA (or any part thereof) as a going concern.

- (b) Every Acquiring Party and the Designated Telecommunication Licensee must *jointly* file a Consolidation Application in respect of such Acquiring Party becoming a 30% Controller of the Designated Telecommunication Licensee or otherwise entering into a Consolidation with the Designated Telecommunication Licensee. Each Consolidation Application shall contain the information and documents specified in Sub-sections 10.3.6.4 or 10.3.6.5 of this Code (as the case may be) and, except for Consolidation Applications relating to a Tender Offer, shall be submitted in accordance with the following time frames —
- (i) in cases where the Acquiring Party intends to acquire Voting Shares of the Designated Telecommunication Licensee in an Open Market Transaction, not less than 60 days before the Acquiring Party proceeds to make an offer for the Voting Shares;
 - (ii) in other cases where the Acquiring Party intends to acquire Voting Shares of the Designated Telecommunication Licensee, within 30 days from the day on which the Acquiring Party enters into the agreement and not less than 60 days before the day upon which the Acquiring Party completes the acquisition;
 - (iii) in cases where the Acquiring Party intends to acquire any business of the Designated Telecommunication Licensee conducted pursuant to a telecommunication licence granted by IMDA (or any part thereof) as a going concern, within 30 days from the day on which the Acquiring Party enters into the agreement for the acquisition and not less than 60 days before the day upon which the Acquiring Party completes the acquisition;
 - (iv) in cases where the Acquiring Party intends to exercise an option to acquire, or a right to transfer to itself or to its order, Voting Shares in the Designated Telecommunication Licensee, not less than 60 days before the Acquiring Party exercises such an option or right; or
 - (v) in all other cases where the Acquiring Party enters into any transaction that results in a Consolidation with the Designated Telecommunication Licensee, not less than 60 days before the Acquiring Party completes the transaction.
- (c) For transactions relating to a Tender Offer, every Acquiring Party and the Designated Telecommunication Licensee must submit a Consolidation Application in accordance with Sub-section 10.3.7 of this Code.

10.3.6.4 Information and Documents to be Included in a Short Form Consolidation Application

- (a) Where a Consolidation meets any of the requirements set out in Sub-section 10.3.6.4(b), the Applicants may submit a Short Form Consolidation Application as set out in this Sub-section 10.3.6.4.
- (b) A Short Form Consolidation Application may be submitted where none of the Applicants have, and/or the Post-Consolidation Entity will not have —
- (i) a market share of 30 percent or more of any telecommunication market in Singapore; or
 - (ii) a market share of between 20 percent to 30 percent of any telecommunication market in Singapore, and the post-Consolidation combined market share of the three largest Designated

Telecommunication Licensees, Designated Business Trusts, Designated Trusts or a combination thereof, is 70 percent or more of any telecommunication market in Singapore.

- (c) In submitting a Short Form Consolidation Application, Applicants should 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 (the “**Abbreviated Statement**”). The competitive assessment generally should include information regarding —
- (i) the name, address and contact information of the Applicants and their Associates and Affiliates;
 - (ii) a chart indicating the relationship between each Applicant and its respective Associates and Affiliates and the relevant interest in the Designated Telecommunication Licensee;
 - (iii) information about any situation in which the Voting Shares in the Designated Telecommunication Licensee grant 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;
 - (iv) the telecommunication markets in which the Applicants and their Affiliates and Associates participate;
 - (v) the market participants; and
 - (vi) 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. If the Consolidation Application contains proprietary or commercially sensitive information, the Applicants should put such information in a separate appendix and request for confidential treatment pursuant to Sub-section 12.9 of this Code.

- (d) Each Short Form Consolidation Application must be accompanied by payment of an application fee of \$2,500 to IMDA, to be paid by the Applicants via electronic bank transfer (or any other modes that IMDA may specify).
- (e) Until IMDA issues its written decision on whether to approve or deny a Consolidation Application, the Applicants must promptly inform IMDA in writing of any new or different fact or matter that is reasonably likely to have a material impact on IMDA’s consideration of the Consolidation Application.

10.3.6.5 Information and Documents to be Included in a Long Form Consolidation Application

- (a) Where a Consolidation is not eligible for a Short Form Consolidation Application based on the scenarios set out at Sub-section 10.3.6.4(b) above, the Applicants are required to file a Long Form Consolidation Application following the procedure as set out in this Sub-section 10.3.6.5.

- (b) Each Long Form Consolidation Application shall contain all the required information reasonably necessary for IMDA to determine the likely impact of the Consolidation on competition and the public interest, including (without limitation) the following documents and information (based on the Applicants' reasonable and diligent efforts to collect and provide such information) —
 - (i) the name, address and contact information of the Applicants and their Associates and Affiliates;
 - (ii) a copy of each of the following agreements —
 - (A) the Consolidation Agreement, including any appendices, side letters and supporting documents; and
 - (B) 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 IMDA to fully assess the likely competitive impact of the Consolidation, provided that in any case in which the Designated Telecommunication Licensee is not a party to the Consolidation Agreement or any other agreement specified in this Sub-section 10.3.6.5(b)(ii)(B), the Acquiring Party shall provide these materials directly to IMDA (in the case where the acquisition will trigger a mandatory offer under the Take-Over Code, the Applicants must submit information based on the assumption that the mandatory offer will be successful);
 - (iii) any supporting document that would assist IMDA in assessing the likely competitive effect of the Consolidation including, at the minimum —
 - (A) a copy of the Applicants' current annual reports or audited financial statements;
 - (B) a chart indicating the relationship between each Applicant and its respective Associates and Affiliates and their relevant interest in the Designated Telecommunication Licensee;
 - (C) information about any situation in which the Voting Shares in the Designated Telecommunication Licensee grant 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;
 - (D) any anticipated significant changes in management or operations of the Designated Telecommunication Licensee;
 - (E) a copy of the Applicants' business plans for the current and previous years; and
 - (F) a copy of all reports, studies or analyses prepared for the shareholders, Unitholders or holders of Equity Interests, beneficiaries of a trust, directors, or executive officers of the Applicants assessing the proposed Consolidation and describing the proposed operation of the Post-Consolidation Entity;

- (iv) a detailed 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 any telecommunication market in which the Applicants and their Associates and Affiliates participate, and a discussion of why approval of the Consolidation would serve the public interest. The competitive assessment should generally include information regarding —
 - (A) the telecommunication markets in which the Applicants and their Associates and 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 markets (and the extent to which they facilitate 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 customers switching to a competing service provider in response to a significant and non-transitory price increase; and
 - (G) any efficiency that would likely result from the Consolidation; and
 - (v) any conditions that the Applicants may wish to propose for IMDA'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.
- (c) Each Long Form Consolidation Application must be accompanied by payment of an application fee of \$10,000 to IMDA, to be paid by the Applicants via electronic bank transfer (or any other modes that IMDA may specify).
 - (d) Until IMDA issues its written decision on whether to approve or deny a Consolidation Application, the Applicants must promptly inform IMDA in writing of any new or different fact or matter that is reasonably likely to have a material impact on IMDA's consideration of the Consolidation Application.

10.3.6.6 Request for Separate Filing and Direct Submission of Information

- (a) Without prejudice to Sub-sections 10.3.1.1(d) and 10.3.6.3(b) of this Code, an Applicant may apply in writing to IMDA for a waiver of the requirement for the Applicant to submit a joint Consolidation Application with other Applicants if the Applicant can establish that —
 - (i) it is unable to comply with the requirement due to circumstances beyond its reasonable control; or

- (ii) requiring it to comply with the requirement would be unduly burdensome or would prejudice its legitimate commercial interests.
- (b) Circumstances under which IMDA may grant a waiver under Sub-section 10.3.6.6(a) include (without limitation) the following —
 - (i) where an Acquiring Party reasonably believes that the Designated Telecommunication Licensee is likely to be opposed to its acquisition of Voting Shares or Voting Power in the Designated Telecommunication Licensee, or to the Acquiring Party entering into a Consolidation with the Designated Telecommunication Licensee;
 - (ii) where an Applicant reasonably believes that the filing of a joint Consolidation Application would be unduly burdensome or infeasible; or
 - (iii) where an Applicant can demonstrate that another party has refused to cooperate with it to file a joint Consolidation Application.
- (c) Where an Applicant does not want to disclose confidential, commercially sensitive or proprietary information to another Applicant for inclusion in a Consolidation Application, IMDA may allow the Applicant to submit its confidential, commercially sensitive or proprietary information directly to IMDA but the Applicant shall otherwise submit a joint Consolidation Application with other Applicants containing such other information as may be required under this Code.
- (d) Where IMDA grants permission for separate filing of a Consolidation Application under Sub-section 10.3.6.6(a) in cases where more than one Acquiring Party requires IMDA's approval for a particular transaction, no additional application fee shall be payable but all Acquiring Parties shall be *jointly* liable for the stipulated application fee.

10.3.7 Additional Procedures Relating to Tender Offers

10.3.7.1 Partial Offers That Do Not Amount to a Consolidation

- (a) Where an Acquiring Party intends to make a partial offer under Rule 16 of the Take-Over Code that would result in the Acquiring Party becoming a 12% Controller of a Designated Telecommunication Licensee, the Acquiring Party and Designated Telecommunication Licensee shall, after the Acquiring Party announces its pre-conditional offer (i.e. makes an announcement that a partial offer will be made only after IMDA's approval has been obtained) and not less than 60 days before making the offer, submit a Request to IMDA in accordance with Sub-section 10.3.5 of this Code.
- (b) IMDA will seek to make a determination within 30 days of receiving all the information necessary to enable IMDA to review the Request. In exceptional cases, IMDA may extend the review period and may, where appropriate, conduct consultations on the Request in accordance with Sub-section 10.10.2 of this Code. In the event that IMDA extends the review period, the Acquiring Party shall not proceed to become a 12% Controller of a Designated Telecommunication Licensee unless IMDA has granted its approval upon completion of its determination.

10.3.7.2 Voluntary Offers or Partial Offers That Amount to a Consolidation

- (a) Where an Acquiring Party intends to make a voluntary offer or a partial offer under Rules 15 and 16 respectively of the Take-Over Code that would result in the Acquiring Party entering into a Consolidation with a Designated

Telecommunication Licensee, the Acquiring Party and the Designated Telecommunication Licensee shall, after the Acquiring Party announces its offer (i.e. makes an announcement that a voluntary offer or partial offer will be made only after IMDA's approval has been obtained) and not less than 60 days before it makes its offer, submit a Consolidation Application in accordance with Sub-section 10.3.6 of this Code.

- (b) IMDA will seek to make a determination within 30 days of receiving all information necessary to enable IMDA to review the Consolidation Application. In exceptional cases, IMDA may extend the review period and may, where appropriate, conduct consultations on the Consolidation in accordance with Sub-section 10.10.2 of this Code. In the event that IMDA extends the review period, the Acquiring Party shall not proceed to become a 30% Controller of a Designated Telecommunication Licensee or otherwise enter into a Consolidation with the Designated Telecommunication Licensee, unless IMDA has granted its approval upon completion of its determination.

10.3.7.3 Mandatory Offers

No Acquiring Party shall enter into any transaction for the acquisition of Voting Shares in a Designated Telecommunication Licensee that will trigger a mandatory offer under Rule 14 of the Take-Over Code, unless the completion of such transaction is conditional upon the Acquiring Party and the Designated Telecommunication Licensee obtaining IMDA's prior written approval under Section 32B of the Telecommunications Act.

10.3.7.4 Other Tender Offers

Where the rules of the securities exchange on which the Voting Shares in a Designated Telecommunication Licensee are traded conflict with the procedures specified in Sub-section 10.3.7 of this Code, or where the provisions of Sub-section 10.3.7 do not address any specific situation in connection with a Tender Offer, the Acquiring Party must seek IMDA's guidance as to the appropriate course of action and procedures to be followed to obtain IMDA's approval. Nothing in this Sub-section 10.3.7.4 shall exempt an Acquiring Party from complying with the requirements to obtain IMDA's prior written approval under Section 32B of the Telecommunications Act.

10.3.8 Additional Procedures Relating to Share Buybacks by a Designated Telecommunication Licensee

- (a) Subject to Sub-section 10.3.8(b), a Designated Telecommunication Licensee need not seek IMDA's approval to carry out a Share Buyback.
- (b) Before entering into any transaction for a Share Buyback, a Designated Telecommunication Licensee must calculate the percentage of Voting Shares held by each shareholder following completion of the Share Buyback. If, as a result of the Share Buyback —
 - (i) any person who previously held less than 5% of the total number of Voting Shares or Voting Power in the Designated Telecommunication Licensee would, after the transaction, hold 5% or more, but less than 12% of the total Voting Shares or Voting Power in the Designated Telecommunication Licensee, the Designated Telecommunication Licensee may proceed with the Share Buyback, and shall file the appropriate notification under Sub-section 10.3.4 of this Code;
 - (ii) any person will become a 12% Controller of the Designated Telecommunication Licensee, such person, together with the Designated Telecommunication Licensee must seek IMDA's approval

pursuant to Sub-section 10.3.5 before proceeding with the Share Buyback; and

- (iii) any person will become a 30% Controller of the Designated Telecommunication Licensee, or otherwise enters into a Consolidation with the Designated Telecommunication Licensee, such person and the Designated Telecommunication Licensee must seek IMDA's approval pursuant to Sub-section 10.3.6 before proceeding with the Share Buyback.
- (c) For the purposes of Sub-sections 10.3.8(b)(ii) and (iii), the Designated Telecommunication Licensee shall notify those parties who are required to seek IMDA's approval in accordance with that Sub-section, and the Designated Telecommunication Licensee and such parties shall submit a Request in accordance with Sub-section 10.3.5 or a Consolidation Application in accordance with Sub-section 10.3.6 of this Code.

10.4 Designated Business Trusts or Designated Trusts: Acquisitions of Units, Equity Interests, or Voting Power in a Designated Business Trust or Designated Trust

- (a) This Sub-section 10.4 deals with —
- (i) acquisitions of Units or Voting Power in a Designated Business Trust; and
 - (ii) acquisitions of Equity Interests or Voting Power in a Designated Trust.
- (b) Every Acquiring Party, the Designated Telecommunication Licensee, and the Trustee-Manager or the trustee, must comply with the following provisions in connection with acquisition of Units or Voting Power in the Designated Business Trust, or Equity Interests or Voting Power in the Designated Trust.
- (c) For acquisitions involving Voting Shares or Voting Power in either the Trustee-Manager or the trustee, the parties must comply with Sub-section 10.3 in the situation where the Trustee-Manager or trustee is a Designated Telecommunication Licensee.
- (d) In this Sub-section 10.4, unless otherwise stated —
- (i) "Trustee-Manager" refers to Trustee-Manager of a Designated Business Trust;
 - (ii) "trustee" refers to trustee of a Designated Trust;
 - (iii) "Units" refer to Units in a Designated Business Trust;
 - (iv) "Equity Interest" refers to such interest in a Designated Trust; and
 - (v) "Voting Power" refers to Voting Power in a Designated Business Trust or Designated Trust (as the case may be).
- (e) Where any provision in this Sub-section 10.4 specifies an obligation, or otherwise makes reference to a Trustee-Manager, such provision shall apply to the Trustee-Manager in relation to the Units or Voting Power in a Designated Business Trust. Similarly, where any provision specifies an obligation, or otherwise makes reference to a trustee, such provision shall apply to the trustee in relation to the Equity Interests or Voting Power in a Designated Trust.

10.4.1 Duty of Acquiring Party, Designated Telecommunication Licensee, Trustee-Manager and Trustee in Connection with Acquisition of Units, Equity Interests, or Voting Power

Every Acquiring Party, the Designated Telecommunication Licensee, and the Trustee-Manager or trustee must comply with this Sub-section 10.4 in connection with the acquisitions of Units, Equity Interests, or Voting Power in a Designated Business Trust or Designated Trust.

10.4.1.1 General Duty to Notify and Seek Approval for Acquisitions of Units, Equity Interests, or Voting Power in or Consolidation with a Designated Business Trust or Designated Trust

- (a) Every Trustee-Manager or trustee must give notice in writing to IMDA on the occasion when a person, whether by a series of transactions over a period of time or otherwise —
 - (i) first holds 5% or more but less than 12% of the Units or Equity Interests in the Designated Business Trust or Designated Trust (as the case may be); or
 - (ii) first is in a position to control 5% or more but less than 12% of the Voting Power in the Designated Business Trust or Designated Trust.
- (b) Every Acquiring Party, the Designated Telecommunication Licensee and the Trustee-Manager or trustee must seek IMDA's approval in connection with the acquisition of Units, Equity Interests, or Voting Power in the Designated Business Trust or Designated Trust (as the case may be) that would result in such Acquiring Party becoming a 12% Controller of the Designated Business Trust or Designated Trust.
- (c) Every Acquiring Party, the Designated Telecommunication Licensee, and the Trustee-Manager or trustee, must seek IMDA's approval in connection with the acquisition of Units, Equity Interests, or Voting Power in the Designated Business Trust or Designated Trust (as the case may be) that would result in a Consolidation with the Designated Business Trust or Designated Trust or any other transaction that results in a Consolidation with the Designated Business Trust or Designated Trust.
- (d) In respect of Sub-sections 10.4.1.1(b) and 10.4.1.1(c) of this Code, in the situation where as a result of a transaction, persons acquire sufficient Units, Equity Interests, or Voting Power thereby requiring IMDA's approval under Sections 32B(5), 32B(6), or 32B(7) of the Telecommunications Act, every Acquiring Party, the Designated Telecommunication Licensee, and the Trustee-Manager or trustee must jointly submit a single Request or Consolidation Application (as the case may be) to IMDA.

10.4.1.2 Procedures in Connection with Prescribed Transactions Involving *Pro Forma* Changes in Units, Equity Interests, or Voting Power in a Designated Business Trust or Designated Trust

As set out in Section 32B(9), (10), (12), and (13) of the Telecommunications Act, as well as Regulations 3 and 4 of the Telecommunications (Prescribed Transactions) Order 2012 —

- (a) A notice in writing need not be given to IMDA under Sections 32B(2), or 32B(3) of the Telecommunications Act in the event where any person, whether by a series of transactions over a period of time or otherwise —

- (i) holds 5% or more but less than 12% of the total number of Units or Equity Interests in the Designated Business Trust or Designated Trust (as the case may be); or
- (ii) is in a position to control 5% or more but less than 12% of the Voting Power in the Designated Business Trust or Designated Trust,

if the event occurs by virtue only of any of the transactions prescribed by the Minister by order published in the *Gazette*.

- (b) Any person may, without obtaining the prior written approval of IMDA, become, whether through a series of transactions over a period of time or otherwise, a 12% Controller or a 30% Controller of a Designated Business Trust or Designated Trust if that event occurs by virtue only of any transaction prescribed by the Minister by order published in the *Gazette*.
- (c) A Trustee-Manager or trustee shall give notice in writing to IMDA, within seven days after the Trustee-Manager or trustee first becomes aware of the event, in the event that any person —
 - (i) becomes, whether through a series of transactions over a period of time or otherwise, a 12% Controller or a 30% Controller of the Designated Business Trust or Designated Trust;
 - (ii) acquires any business of the Designated Business Trust or Designated Trust that is conducted pursuant to a telecommunication licence granted under Section 5 of the Telecommunications Act, or any part of any such business, as a going concern; or
 - (iii) obtains Effective Control over the Designated Business Trust or Designated Trust,

by virtue only of any transaction prescribed by the Minister for the purposes of this Sub-section by order published in the *Gazette*.

- (d) The transactions prescribed by the Minister and published in the *Gazette* include the transactions which —
 - (i) result in the transfer of Units or Equity Interests in a Designated Business Trust or Designated Trust (as the case may be) —
 - (A) from any person to a Corporation, any Shares in which are owned or any Voting Power in which is controlled by that person, without any change in the percentage of the Voting Power in the Designated Business Trust or Designated Trust controlled by that person;
 - (B) from a Corporation to any shareholder of the Corporation, without any change in the percentage of the Voting Power in the Designated Business Trust or Designated Trust controlled by that shareholder;
 - (C) from a Corporation to its wholly owned subsidiary, or to a Corporation from its wholly owned subsidiary, whether or not the subsidiary is a direct subsidiary of the Corporation; or
 - (D) from one Corporation, any Shares in which are owned or any Voting Power in which is controlled by any person, to another Corporation, any Shares in which are owned or any Voting Power in which is controlled by that person, without any

change in the percentage of the Voting Power in the Designated Business Trust or Designated Trust controlled by that person; or

- (ii) do not change the percentage of the Voting Power in the Designated Business Trust or Designated Trust controlled by every person who controlled any Voting Power immediately before the transaction.

The above transactions would be deemed to have constituted a *pro forma* change.

- (e) The written notice given under Sections 32B(12) or 32B(13) of the Telecommunications Act must include a brief description of the transaction and the basis on which the Trustee-Manager or trustee believes the transaction falls within Regulations 3 or 4 of the Telecommunications (Prescribed Transactions) Order 2012.

10.4.1.3 Deemed and Disregarded Interests

- (a) As set out in Section 32A(5) of the Telecommunications Act, a person holds a Unit in a Business Trust, or an Equity Interest in a Trust, if he has any legal or equitable interest in that Unit or Equity Interest, other than an interest that is to be disregarded under Section 32A(10), or 32A(12) of the Telecommunications Act.
- (b) As set out in Section 32A(9) of the Telecommunications Act, a person shall be deemed to have an interest in a Unit if —
 - (i) the person has entered into a contract to purchase that Unit; or
 - (ii) the person, not being the registered holder of that Unit, is entitled (otherwise than by reason of his having been appointed a proxy or representative to vote at a meeting of Unitholders of a Business Trust, or of a class of its Unitholders) to exercise or control the exercise of a right attached to that Unit.
- (c) As set out in Section 32A(11) of the Telecommunications Act, a person shall be deemed to have an interest in an Equity Interest if —
 - (i) the person has entered into a contract to purchase that Equity Interest; or
 - (ii) the person, not being the registered holder of that Equity Interest, is entitled (otherwise than by reason of his having been appointed a proxy or representative to vote at a meeting of holders of Equity Interests in the Designated Trust, or of a class of its holders of Equity Interests) to exercise or control the exercise of a right attached to that Equity Interest.
- (d) As set out in Sections 32A(10) and 32A(12) of the Telecommunications Act, there shall be disregarded —
 - (i) an interest in a Unit or Equity Interest if the interest is that of a person who holds the Unit, or Equity Interest as bare trustee;
 - (ii) an interest in a Unit or Equity Interest of a person whose ordinary business includes the lending of money, if he holds the interest only by way of security for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money;

- (iii) an interest in a Unit or Equity Interest of a person whose ordinary business includes the underwriting of securities, if he holds the interest only as an underwriter or sub-underwriter to any offering of Units or Equity Interests of a Designated Business Trust or Designated Trust (as the case may be); and
- (iv) an interest in a Unit or Equity Interest held by a person in his capacity as a liquidator, the Official Receiver, the Official Assignee or the Public Trustee.

10.4.2 Obligation of Trustee-Manager or Trustee to Monitor Changes in Voting Shares, Units, Equity Interests, and Voting Power

Every Trustee-Manager or trustee must adopt reasonable procedures for monitoring changes in the Units, Equity Interests, and Voting Power in the Designated Business Trust or Designated Trust (as the case may be).

10.4.3 Acquisition resulting in a person holding Units, Equity Interests, or control of Voting Power of less than 5% Not Subject to Notification or Approval

IMDA will presume that a person that holds Units, Equity Interests, or is in a position to control Voting Power of less than 5% in a Designated Business Trust or Designated Trust (as the case may be), does not have the ability to use such interest in a manner that would substantially lessen competition or in a manner that is contrary to public interest. Therefore, IMDA will not subject such transaction to any notification or approval requirement.

10.4.4 Procedures for Notifying Acquisitions resulting in a person holding Units, Equity Interests, or being in control of Voting Power of 5% or More but Less than 12% in a Designated Business Trust or Designated Trust

10.4.4.1 Presumption

IMDA will presume that a person that holds Units, Equity Interests, or is in a position to control Voting Power of at least 5%, but less than 12% in a Designated Business Trust or Designated Trust (as the case may be) is not likely to have the ability to use such interest in a manner that would substantially lessen competition or in a manner that would be contrary to public interest. However, IMDA must be notified of the acquisition, as such level of interest is not insignificant and there is the possibility that such person may seek to further increase its interest.

10.4.4.2 Duty to Notify IMDA

- (a) Pursuant to Sections 32B(2) and 32B(3) of the Telecommunications Act, a Trustee-Manager or trustee shall give notice in writing to IMDA within seven days after the Trustee-Manager or trustee first becomes aware that any person, whether by a series of transactions over a period of time or otherwise
 - (i) holds 5% or more but less than 12% of the total number of Units or Equity Interests in the Designated Business Trust or Designated Trust (as the case may be); or
 - (ii) is in a position to control 5% or more but less than 12% of the Voting Power in the Designated Business Trust or Designated Trust.
- (b) For the purposes of Sub-section 10.4.4.2, the notice must include the name (and, if known, the address and contact information) of the person, the percentage of Units, Equity Interests, or Voting Power that the person held or

controlled prior to the acquisition, and the percentage of Units, Equity Interests, or Voting Power that the person has acquired.

- (c) If requested by IMDA in writing, the Trustee-Manager or trustee shall provide further notification of each increase in that person's Units, Equity Interests, or Voting Power.

10.4.5 Procedures in Connection with Acquisitions resulting in a person becoming a 12% Controller of a Designated Business Trust or Designated Trust

10.4.5.1 Presumption

IMDA will presume that an Acquiring Party that becomes a 12% Controller of a Designated Business Trust or Designated Trust is not likely to have the ability to exercise Effective Control over that Designated Business Trust or Designated Trust. Therefore, IMDA will presume that such an acquisition is not likely to constitute a Consolidation. However, in certain circumstances, an Acquiring Party that becomes a 12% Controller of a Designated Business Trust or Designated Trust could have the ability to use its Units, Equity Interests, or Voting Power in a manner that would substantially lessen competition or in a manner that is contrary to the public interest. For example, an Acquiring Party that becomes a 12% Controller in a Designated Business Trust or Designated Trust could use its Units, Equity Interests, or Voting Power to facilitate anti-competitive coordination between the two competing entities.

10.4.5.2 Duty to Seek Approval and to Notify IMDA

- (a) Pursuant to Section 32B(5) of the Telecommunications Act, no person shall, without obtaining the prior written approval of IMDA to do so, become, whether through a series of transactions over a period of time or otherwise, a 12% Controller of a Designated Business Trust or Designated Trust.

For this purpose, every Acquiring Party, the Designated Telecommunication Licensee, and the Trustee-Manager or trustee must seek IMDA's approval where such Acquiring Party acquires Units, Equity Interests, or Voting Power that results in such Acquiring Party becoming a 12% Controller of the Designated Business Trust or Designated Trust.

- (b) Where written approval has been granted by IMDA to a person to become a 12% Controller of a Designated Business Trust or Designated Trust, such person is not required to seek IMDA's approval for any further acquisition of Units, Equity Interests, or Voting Power unless such an acquisition results in such person becoming a 30% Controller of the Designated Business Trust or Designated Trust, or otherwise constitutes a Consolidation with the Designated Business Trust or Designated Trust. If requested by IMDA in writing, the Trustee-Manager or trustee must notify IMDA within seven days of each further acquisition of Units, Equity Interests, or Voting Power by such person, provided that such person does not become a 30% Controller of the Designated Business Trust or Designated Trust, or otherwise enters into a Consolidation with the Designated Business Trust or Designated Trust. The written notifications must state the percentage of Units, Equity Interests, or Voting Power in the Designated Business Trust or Designated Trust (as the case may be) that such person held or controlled prior to the acquisition and the percentage of Units, Equity Interests, or Voting Power in the Designated Business Trust or Designated Trust (as the case may be) that such person has further acquired.

10.4.5.3 Procedures to Seek Prior Approval

- (a) An Acquiring Party may acquire Units, Equity Interests, or Voting Power that would result in the Acquiring Party becoming a 12% Controller of the

Designated Business Trust or Designated Trust (as the case may be) by various means. Without limitation, this may occur when —

- (i) an Acquiring Party acquires Units or Equity Interests in a Designated Business Trust or Designated Trust (as the case may be) by —
 - (A) purchasing, Units or Equity Interests in an Open Market Transaction;
 - (B) entering into a privately negotiated agreement with the Trustee-Manager or trustee that allows the Acquiring Party to acquire Units or Equity Interests;
 - (C) entering into a privately negotiated agreement with an entity that holds Units or Equity Interests;
 - (D) exercising an option to acquire, or a right to transfer to itself or to its order, Units or Equity Interests; or
 - (E) entering into any other transaction that results in the acquisition of Units or Equity Interests.
 - (ii) an Acquiring Party acquires Voting Power in a Designated Business Trust or Designated Trust by —
 - (A) purchasing, through an Open Market Transaction, Voting Shares in an entity that controls Voting Power in the Designated Business Trust or Designated Trust;
 - (B) entering into a privately negotiated agreement with an entity that controls Voting Power in the Designated Business Trust or Designated Trust;
 - (C) exercising an option to acquire, or right to transfer, Voting Shares in an entity that controls Voting Power in the Designated Business Trust or Designated Trust; or
 - (D) entering into any other transaction that results in the acquisition of Voting Power in the Designated Business Trust or Designated Trust.
- (b) Every Acquiring Party, the Designated Telecommunication Licensee, and the Trustee-Manager or trustee must *jointly* submit a Request to IMDA in respect of such Acquiring Party becoming a 12% Controller of the Designated Business Trust or Designated Trust. The Request shall contain the information and documents specified in Sub-section 10.4.5.4 of this Code and, except for Requests relating to a Tender Offer, shall be submitted in accordance with the following time frames —
- (i) in cases where the Acquiring Party intends to acquire Units or Equity Interests in the Designated Business Trust or Designated Trust (as the case may be) in an Open Market Transaction, not less than 60 days before the Acquiring Party proceeds to make an offer for the Units or Equity Interests;
 - (ii) in other cases where the Acquiring Party intends to acquire Units or Equity Interests in the Designated Business Trust or Designated Trust (as the case may be), within 30 days from the day on which the Acquiring Party enters into the agreement for the acquisition and not

- less than 60 days before the day upon which the Acquiring Party completes the acquisition;
- (iii) in cases where the Acquiring Party intends to exercise an option to acquire, or a right to transfer to itself or to its order, Units or Equity Interests in the Designated Business Trust or Designated Trust (as the case may be), not less than 60 days before the Acquiring Party exercises such an option or right; or
 - (iv) in all other cases where the Acquiring Party enters into any transaction that results in the Acquiring Party becoming a 12% Controller of the Designated Business Trust or Designated Trust, not less than 60 days before the Acquiring Party completes the transaction.
- (c) IMDA will seek to make a determination within 30 days of receiving all the information necessary to enable IMDA to review the Request. In exceptional cases, IMDA may extend the review period and may, where appropriate, conduct consultations on the Request in accordance with Sub-section 10.10.2 of this Code. In the event that IMDA extends the review period, no Acquiring Party shall proceed to become a 12% Controller of a Designated Business Trust or Designated Trust, unless IMDA has granted its approval upon completion of its determination.
- (d) For transactions relating to a Tender Offer, every Acquiring Party, Designated Telecommunication Licensee, and Trustee-Manager or trustee must submit a Request in accordance with Sub-section 10.4.7 of this Code.

10.4.5.4 Information and Documents to be Included in a Request

- (a) Each Request shall contain all the required information reasonably necessary for IMDA to determine the likely impact of the acquisition on competition and the public interest, including (without limitation) the following documents and information (based on the Applicants' reasonable and diligent efforts to collect and provide such information) —
- (i) the name, address and contact information of every Acquiring Party;
 - (ii) the names of all Associates and Affiliates of the Trustee-Manager or trustee and the Designated Telecommunication Licensee, and all Associates and Affiliates of every Acquiring Party;
 - (iii) the percentage of Units, Equity Interests, or Voting Power in the Designated Business Trust or Designated Trust (as the case may be) that every Acquiring Party and its Associates holds or held (if any) prior to the proposed acquisition or acquisition, respectively;
 - (iv) the percentage of Units, Equity Interests, or Voting Power in the Designated Business Trust or Designated Trust (as the case may be) that every Acquiring Party proposes to acquire or has acquired;
 - (v) the Services provided by every Acquiring Party, the Designated Telecommunication Licensee, the Trustee-Manager or trustee and their respective Associates and Affiliates, and the estimated market shares thereof;
 - (vi) any special or preferential rights granted to every Acquiring Party and its Associates prior to the proposed acquisition or acquisition respectively; and

- (vii) any anticipated significant changes in the management or operations of the Designated Business Trust or Designated Trust.
- (b) Until IMDA issues its written decision on whether to approve or deny a Request, the Applicants must promptly inform IMDA in writing of any new or different fact or matter that is reasonably likely to have a material impact on IMDA's consideration of the Request.

10.4.5.5 Request for Separate Filing and Direct Submission of Information

- (a) Without prejudice to Sub-sections 10.4.1.1(d) and 10.4.5.3(b) of this Code, an Applicant may apply in writing to IMDA for a waiver of the requirement for the Applicant to submit a joint Request with other Applicants if the Applicant can establish that —
 - (i) it is unable to comply with the requirement due to circumstances beyond its reasonable control; or
 - (ii) requiring it to comply with the requirement would be unduly burdensome or would prejudice its legitimate commercial interests.
- (b) Circumstances under which IMDA may grant a waiver under Sub-section 10.4.5.5(a) include (without limitation) the following —
 - (i) where an Acquiring Party reasonably believes that the Designated Telecommunication Licensee and/or the Trustee-Manager or trustee is likely to be opposed to its acquisition of Units, Equity Interests, or Voting Power;
 - (ii) where an Applicant reasonably believes that the submission of a joint Request would be unduly burdensome or infeasible; or
 - (iii) where an Applicant can demonstrate that another Applicant has refused to cooperate with it to submit a joint Request.
- (c) Where an Applicant does not want to disclose confidential, commercially sensitive or proprietary information to another Applicant for inclusion in a Request, IMDA may allow the Applicant to submit its confidential, commercially sensitive or proprietary information directly to IMDA but the Applicant shall otherwise submit a joint Request with other Applicants containing such other information as may be required under this Code.

10.4.6 Procedures in Connection with Acquisitions resulting in a person becoming a 30% Controller of a Designated Business Trust or Designated Trust and other Transactions that Constitute a Consolidation with a Designated Business Trust or Designated Trust

10.4.6.1 Determining the Existence of a Consolidation

- (a) A Consolidation may involve —
 - (i) the dissolution of an existing legal entity, the creation of a new legal entity or a Licence Assignment;
 - (ii) an acquisition of Units, Equity Interests, or Voting Power that results in the Acquiring Party becoming a 30% Controller in a Designated Business Trust or Designated Trust (as the case may be), whether by a series of transactions over a period of time or otherwise;

- (iii) the obtaining of the ability to exercise Effective Control over a Designated Business Trust or Designated Trust;
 - (iv) the acquisition of any business of a Designated Business Trust or Designated Trust conducted pursuant to a licence granted by IMDA (or any part thereof) as a going concern; or
 - (v) any transaction or class of transactions that is prescribed by regulations made under Section 74 of the Telecommunications Act, or that falls within a class of transactions prescribed in such regulations.
- (b) An Acquiring Party may obtain Effective Control over a Designated Business Trust or Designated Trust through a transaction where, for example, the transaction confers on the Acquiring Party the right to appoint a majority of the board of directors of the Trustee-Manager or trustee or the Designated Telecommunication Licensee, or to veto certain management or major operating decisions of the Designated Business Trust or Designated Trust.
- (c) The acquisition of any business of a Designated Business Trust or Designated Trust conducted pursuant to a telecommunication licence granted by IMDA (or any part thereof) as a going concern may occur where —
 - (i) an Acquiring Party acquires all or substantially all of the assets of the Designated Business Trust or Designated Trust used for such business;
 - (ii) an Acquiring Party enters into an agreement pursuant to which it acquires the right to provide Services to, and receive compensation from, the substantial majority of the customers in respect of such business; or
 - (iii) there is a transfer to a new legal person of significant assets (including goodwill) from two or more persons (i.e. corporate joint ventures).

10.4.6.2 Duty to Seek Approval and to Notify IMDA

- (a) Under Sections 32B and 32C of the Telecommunications Act, every Acquiring Party, the Designated Telecommunication Licensee and the Trustee-Manager or trustee must seek IMDA's approval in connection with such Acquiring Party acquiring Units, Equity Interests, or Voting Power that results in such Acquiring Party becoming a 30% Controller of the Designated Business Trust or Designated Trust or entering into any other transaction that constitutes a Consolidation with the Designated Business Trust or Designated Trust via a Consolidation Application.
- (b) While IMDA is reviewing the Consolidation Application, no Acquiring Party shall enter into a Consolidation with the Designated Business Trust or Designated Trust unless IMDA has granted its written approval upon completion of its determination.
- (c) Where written approval has been granted by IMDA to a person to enter into a Consolidation with a Designated Business Trust or Designated Trust, such person is not required to seek IMDA's approval for any further acquisition of Units, Equity Interests, or Voting Power in the Designated Business Trust or Designated Trust (as the case may be). If requested by IMDA in writing, the Trustee-Manager or trustee must notify IMDA within seven days of each further acquisition of Units, Equity Interests, or Voting Power in the Designated Business Trust or Designated Trust by such person. The written notifications must state the percentage of Units, Equity Interests, or Voting Power in the Designated Business Trust or Designated Trust (as the case may be) that such

person held or controlled prior to the acquisition and the percentage of Units, Equity Interests, or Voting Power in the Designated Business Trust or Designated Trust that such person has further acquired.

10.4.6.3 Procedures to Seek Prior Approval

- (a) An Acquiring Party may enter into an agreement or a transaction that constitutes a Consolidation by various means. Without limitation, this may occur when —
 - (i) an Acquiring Party acquires Units or Equity Interests in a Designated Business Trust or Designated Trust by —
 - (A) purchasing Units or Equity Interests in an Open Market Transaction;
 - (B) entering into a privately negotiated agreement with the Trustee-Manager or trustee that allows the Acquiring Party to acquire Units or Equity Interests;
 - (C) entering into a privately negotiated agreement with an entity that holds Units or Equity Interests;
 - (D) exercising an option to acquire, or a right to transfer to itself or to its order, Units or Equity Interests; or
 - (E) entering into any other transaction that results in the acquisition of Units or Equity Interests.
 - (ii) an Acquiring Party acquires Voting Power in a Designated Business Trust or Designated Trust by —
 - (A) purchasing, through an Open Market Transaction, Voting Shares in an entity that controls Voting Power;
 - (B) entering into a privately negotiated agreement with an entity that controls Voting Power;
 - (C) exercising an option to acquire, or right to transfer to itself or to its order, Voting Shares in an entity that controls Voting Power; or
 - (D) entering into any other transaction that results in the acquisition of Voting Power.
 - (iii) an Acquiring Party acquires any business of a Designated Business Trust or Designated Trust conducted pursuant to a licence granted by IMDA (or any part thereof) as a going concern.
- (b) Every Acquiring Party, the Designated Telecommunication Licensee and the Trustee-Manager or trustee must jointly file a Consolidation Application in respect of such Consolidation with the Designated Business Trust or Designated Trust. Each Consolidation Application shall contain the information and documents specified in Sub-sections 10.4.6.4 or 10.4.6.5 of this Code (as the case may be) and, except for Consolidation Applications relating to a Tender Offer, shall be submitted in accordance with the following time frames —
 - (i) in cases where the Acquiring Party intends to acquire Units or Equity Interests in an Open Market Transaction, not less than 60 days before

- the Acquiring Party proceeds to make an offer for the Units or Equity Interests;
- (ii) in other cases where the Acquiring Party intends to acquire Units or Equity Interests, within 30 days from the day on which the Acquiring Party enters into the agreement and not less than 60 days before the day upon which the Acquiring Party completes the acquisition;
 - (iii) in cases where the Acquiring Party intends to acquire any business of the Designated Business Trust or Designated Trust conducted pursuant to a licence granted by IMDA (or any part thereof) as a going concern, within 30 days from the day on which the Acquiring Party enters into the agreement for the acquisition and not less than 60 days before the day upon which the Acquiring Party completes the acquisition;
 - (iv) in cases where the Acquiring Party intends to exercise an option to acquire, or a right to transfer to itself or to its order, Units or Equity Interests in the Designated Business Trust or Designated Trust (as the case may be), not less than 60 days before the Acquiring Party exercises such an option or right; or
 - (v) in all other cases where the Acquiring Party enters into any transaction that results in a Consolidation with the Designated Business Trust or Designated Trust, not less than 60 days before the Acquiring Party completes the transaction.
- (c) For transactions relating to a Tender Offer, every Acquiring Party, the Designated Telecommunication Licensee and the Trustee-Manager or trustee must submit a Consolidation Application in accordance with Sub-section 10.4.7 of this Code.

10.4.6.4 Information and Documents to be Included in a Short Form Consolidation Application

- (a) Where a Consolidation meets any of the requirements set out in Sub-section 10.4.6.4(b), the Applicants may submit a Short Form Consolidation Application as set out in this Sub-section 10.4.6.4.
- (b) A Short Form Consolidation Application may be submitted when none of the Applicants have, and/or the Post-Consolidation Entity will not have —
 - (i) a market share of 30 percent or more of any telecommunication market in Singapore; or
 - (ii) a market share of between 20 percent to 30 percent of any telecommunication market in Singapore, and the post-Consolidation combined market share of the three largest Designated Telecommunication Licensees, Designated Business Trusts, Designated Trusts or a combination thereof, is 70 percent or more of any telecommunication market in Singapore.
- (c) In submitting a Short Form Consolidation Application, Applicants should 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 (the “**Abbreviated Statement**”). The competitive assessment generally should include information regarding —

- (i) the name, address and contact information of the Applicants and their Associates and Affiliates;
- (ii) a chart indicating the relationship between each Applicant and its respective Associates and Affiliates and the relevant interest in the Designated Business Trust or Designated Trust;
- (iii) information about any situation in which the Units or Equity Interests in the Designated Business Trust or Designated Trust (as the case may be) grant 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;
- (iv) a copy of the trust deed of the Designated Business Trust or Designated Trust, as applicable;
- (v) the telecommunication markets in which the Applicants and their Affiliates and Associates participate;
- (vi) the market participants; and
- (vii) the estimated market shares of the participants and the level of concentration in those markets.

Applicants may 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. If the Consolidation Application contains proprietary or commercially sensitive information, the Applicants should put such information in a separate appendix and request for confidential treatment pursuant to Sub-section 12.9 of this Code.

- (d) Each Short Form Consolidation Application must be accompanied by payment of an application fee of \$2,500 to IMDA, to be paid by the Applicants via electronic bank transfer (or any other modes that IMDA may specify).
- (e) Until IMDA issues its written decision on whether to approve or deny a Consolidation Application, the Applicants must promptly inform IMDA in writing of any new or different fact or matter that is reasonably likely to have a material impact on IMDA's consideration of the Consolidation Application.

10.4.6.5 Information and Documents to be Included in a Long Form Consolidation Application

- (a) Where a Consolidation is not eligible for a Short Form Consolidation Application based on the scenarios set out at Sub-section 10.4.6.4(b) above, the Applicants are required to file a Long Form Consolidation Application following the procedure as set out in this Sub-section 10.4.6.5.
- (b) Each Long Form Consolidation Application shall contain all the required information reasonably necessary for IMDA to determine the likely impact of the Consolidation on competition and the public interest, including (without limitation) the following documents and information (based on the Applicants' reasonable and diligent efforts to collect and provide such information) —
 - (i) the name, address and contact information of the Applicants and their Associates and Affiliates;

- (ii) a copy of each of the following agreements —
 - (A) the Consolidation Agreement, including any appendices, side letters and supporting documents; and
 - (B) 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 IMDA to fully assess the likely competitive impact of the Consolidation, provided that in any case in which the Trustee-Manager or trustee and the Designated Telecommunication Licensee is not a party to the Consolidation Agreement or any other agreement specified in this Sub-section 10.4.6.5(b)(ii)(B), the Acquiring Party shall provide these materials directly to IMDA (in the case where the acquisition will trigger a mandatory offer under the Take-Over Code, the Applicants must submit information based on the assumption that the mandatory offer will be successful);
- (iii) any supporting document that would assist IMDA in assessing the likely competitive effect of the Consolidation including, at the minimum —
 - (A) a copy of the Applicants' current annual reports or audited financial statements;
 - (B) a chart indicating the relationship between each Applicant and its respective Associates and Affiliates and their relevant interest in the Designated Business Trust or Designated Trust;
 - (C) information about any situation in which the Units or Equity Interests in the Designated Business Trust or Designated Trust (as the case may be) grant 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;
 - (D) a copy of the trust deed of the Designated Business Trust or Designated Trust, as applicable;
 - (E) any anticipated significant changes in management or operations of the Designated Business Trust or Designated Trust;
 - (F) a copy of the Applicants' business plans for the current and previous years; and
 - (G) a copy of all reports, studies or analyses prepared for the shareholders, Unitholders or holders of Equity Interests, beneficiaries of a trust, directors, or executive officers of the Applicants assessing the proposed Consolidation and describing the proposed operation of the Post-Consolidation Entity;
- (iv) a detailed 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 any telecommunication market in which the Applicants and their Associates and Affiliates participate, and a discussion of why approval

of the Consolidation would serve the public interest. The competitive assessment should generally include information regarding —

- (A) the telecommunication markets in which the Applicants and their Associates and 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 markets (and the extent to which they facilitate 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 customers switching to a competing service provider in response to a significant and non-transitory price increase; and
 - (G) any efficiency that would likely result from the Consolidation; and
- (v) any conditions that the Applicants may wish to propose for IMDA'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.
- (c) Each Long Form Consolidation Application must be accompanied by payment of an application fee of \$10,000 to IMDA, to be paid by the Applicants via electronic bank transfer (or any other modes that IMDA may specify).
- (d) Until IMDA issues its written decision on whether to approve or deny a Consolidation Application, the Applicants must promptly inform IMDA in writing of any new or different fact or matter that is reasonably likely to have a material impact on IMDA's consideration of the Consolidation Application.

10.4.6.6 Request for Separate Filing and Direct Submission of Information

- (a) Without prejudice to Sub-sections 10.4.1.1(d) and 10.4.6.3(b) of this Code, an Applicant may apply in writing to IMDA for a waiver of the requirement for the Applicant to submit a joint Consolidation Application with other Applicants if the Applicant can establish that —
- (i) it is unable to comply with the requirement due to circumstances beyond its reasonable control; or
 - (ii) requiring it to comply with the requirement would be unduly burdensome or would prejudice its legitimate commercial interests.
- (b) Circumstances under which IMDA may grant a waiver under Sub-section 10.4.6.6(a) include (without limitation) the following —

- (i) where an Acquiring Party reasonably believes that the Designated Telecommunication Licensee and/or the Trustee-Manager or trustee is likely to be opposed to its acquisition of Units, Equity Interests, or Voting Power, or to the Acquiring Party entering into a Consolidation with the Designated Business Trust or Designated Trust;
 - (ii) where an Applicant reasonably believes that the filing of a joint Consolidation Application would be unduly burdensome or infeasible; or
 - (iii) where an Applicant can demonstrate that another party has refused to cooperate with it to file a joint Consolidation Application.
- (c) Where an Applicant does not want to disclose confidential, commercially sensitive or proprietary information to another Applicant for inclusion in a Consolidation Application, IMDA may allow the Applicant to submit its confidential, commercially sensitive or proprietary information directly to IMDA but the Applicant shall otherwise submit a joint Consolidation Application with other Applicants containing such other information as may be required under this Code.
- (d) Where IMDA grants permission for separate filing of a Consolidation Application under Sub-section 10.4.6.6(a) in cases where more than one Acquiring Party requires IMDA's approval for a particular transaction, no additional application fee shall be payable but all Acquiring Parties shall be *jointly* liable for the stipulated application fee.

10.4.7 Additional Procedures Relating to Tender Offers

10.4.7.1 Partial Offers That Do Not Amount to a Consolidation

- (a) Where an Acquiring Party intends to make a partial offer under Rule 16 of the Take-Over Code that would result in the Acquiring Party becoming a 12% Controller of a Designated Business Trust or Designated Trust, the Acquiring Party, the Designated Telecommunication Licensee and the Trustee-Manager or trustee) shall, after the Acquiring Party announces its pre-conditional offer (i.e. makes an announcement that a partial offer will be made only after IMDA's approval has been obtained) and not less than 60 days before making the offer, submit a Request to IMDA in accordance with Sub-section 10.4.5 of this Code.
- (b) IMDA will seek to make a determination within 30 days of receiving all the information necessary to enable IMDA to review the Request. In exceptional cases, IMDA may extend the review period and may, where appropriate, conduct consultations on the Request in accordance with Sub-section 10.10.2 of this Code. In the event that IMDA extends the review period, the Acquiring Party shall not proceed to become a 12% Controller of a Designated Business Trust or Designated Trust unless IMDA has granted its approval upon completion of its determination.

10.4.7.2 Voluntary Offers or Partial Offers That Amount to a Consolidation

- (a) Where an Acquiring Party intends to make a voluntary offer or a partial offer under Rules 15 and 16 respectively of the Take-Over Code that would result in the Acquiring Party entering into a Consolidation with a Designated Business Trust or Designated Trust, the Acquiring Party, the Designated Telecommunication Licensee and the Trustee-Manager or trustee shall, after the Acquiring Party announces its offer (i.e. makes an announcement that a voluntary offer or partial offer will be made only after IMDA's approval has been obtained) and not less than 60 days before it makes its offer, submit a Consolidation Application in accordance with Sub-section 10.4.6 of this Code.

- (b) IMDA will seek to make a determination within 30 days of receiving all information necessary to enable IMDA to review the Consolidation Application. In exceptional cases, IMDA may extend the review period and may, where appropriate, conduct consultations on the Consolidation in accordance with Sub-section 10.10.2 of this Code. In the event that IMDA extends the review period, the Acquiring Party shall not proceed to become a 30% Controller of a Designated Business Trust or Designated Trust, or otherwise enter into a Consolidation with the Designated Business Trust or Designated Trust unless IMDA has granted its approval upon completion of its determination.

10.4.7.3 Mandatory Offers

No Acquiring Party shall enter into any transaction for the acquisition of Units or Equity Interests in a Designated Business Trust or Designated Trust that will trigger a mandatory offer under Rule 14 of the Take-Over Code, unless the completion of such transaction is conditional upon the Acquiring Party and the Trustee-Manager or trustee obtaining IMDA's prior written approval under Section 32B of the Telecommunications Act.

10.4.7.4 Other Tender Offers

Where the rules of the securities exchange on which the Units or Equity Interests in a Designated Business Trust or Designated Trust (as the case may be) are traded conflict with the procedures specified in Sub-section 10.4.7 of this Code, or where the provisions of Sub-section 10.4.7 do not address any specific situation in connection with a Tender Offer, the Acquiring Party must seek IMDA's guidance as to the appropriate course of action and procedures to be followed to obtain IMDA's approval. Nothing in this Sub-section 10.4.7.4 shall exempt an Acquiring Party from complying with the requirements to obtain IMDA's prior written approval under Section 32B of the Telecommunications Act.

10.4.8 Additional Procedures Relating to Unit or Equity Interest Buybacks

- (a) Subject to Sub-section 10.4.8(b), a Designated Telecommunication Licensee and Trustee-Manager or trustee need not seek IMDA's approval to carry out a Unit Buyback or Equity Interest Buyback.
- (b) Before entering into any transaction for a Unit Buyback or Equity Interest Buyback, a Designated Telecommunication Licensee and Trustee-Manager or trustee must calculate the percentage of Units or Equity Interests held by each Unitholder or holder of Equity Interests in the Designated Business Trust or Designated Trust (as the case may be) following completion of the Unit Buyback or Equity Interest Buyback. If, as a result of the Unit Buyback or Equity Interest Buyback —
 - (i) any person who previously held less than 5% of the total number of Units, Equity Interests, or Voting Power would, after the transaction, hold 5% or more, but less than 12% of the total Units, Equity Interests, or Voting Power, the Trustee-Manager or trustee may proceed with the Unit Buyback or Equity Interest Buyback, and shall file the appropriate notification under Sub-section 10.4.4 of this Code;
 - (ii) any person will become a 12% Controller of the Designated Business Trust or Designated Trust, such person, the Designated Telecommunication Licensee, and the Trustee-Manager or trustee must seek IMDA's approval pursuant to Sub-section 10.4.5 before proceeding with the Unit Buyback or Equity Interest Buyback; and

- (iii) any person enters into a Consolidation with the Designated Business Trust or Designated Trust, such person, the Designated Telecommunication Licensee, and the Trustee-Manager or trustee must seek IMDA's approval pursuant to Sub-section 10.4.6 before proceeding with the Unit Buyback or Equity Interest Buyback.
- (c) For the purposes of Sub-sections 10.4.8(b)(ii) and (iii), the Designated Telecommunication Licensee and the Trustee-Manager or trustee shall notify those parties who are required to seek IMDA's approval in accordance with that Sub-section, and the Designated Telecommunication Licensee, the Trustee-Manager or trustee and such parties shall submit a Request in accordance with Sub-section 10.4.5 or a Consolidation Application in accordance with Sub-section 10.4.6 of this Code.

10.5 Acquisitions of Voting Shares or Voting Power in a Regulated Person

10.5.1 Duty of Acquiring Party and Regulated Person in Connection with Acquisition of Voting Shares or Voting Power

Every Acquiring Party and Regulated Person must comply with this Sub-section 10.5.1 in connection with the acquisitions of Voting Shares or Voting Power in the Regulated Person.

10.5.1.1 General Duty to Seek Approval for Consolidation with Regulated Person

- (a) Every Acquiring Party and Regulated Person must seek IMDA's approval in connection with the acquisition of Voting Shares or Voting Power in the Regulated Person that would result in a Consolidation, or any other transaction that results in a Consolidation with the Regulated Person.
- (b) In respect of Sub-section 10.5.1.1(a), in the situation where as a result of a transaction, persons acquire sufficient Voting Shares or Voting Power thereby requiring IMDA's approval under Section 65(1) of the IMDA Act, every Acquiring Party and the Regulated Person must *jointly* submit a single Consolidation Application to IMDA.

10.5.1.2 Procedures in Connection with Prescribed Transactions Involving *Pro Forma* Changes in Voting Shares or Voting Power in a Regulated Person

As set out in Section [XX] of the IMDA Act [/ IMDA Subsidiary Legislation] —

- (a) Any person may, without obtaining the prior written approval of IMDA, become, whether through a series of transactions over a period of time or otherwise, a 30% Controller of the Regulated Person if that event occurs by virtue only of any transaction prescribed by the Minister by order published in the *Gazette*.
- (b) A Regulated Person shall give notice in writing to IMDA, within seven days after the Regulated Person first becomes aware of the event, in the event that any person —
 - (i) becomes, whether through a series of transactions over a period of time or otherwise, a 30% Controller of the Regulated Person;
 - (ii) acquires any business of the Regulated Person that is conducted pursuant to a newspaper permit under the Newspaper and Printing Presses Act (Cap. 206) or a broadcasting licence under the Broadcasting Act (Cap. 28), or any part of any such business, as a going concern; or
 - (iii) obtains Effective Control over the Regulated Person,

by virtue only of any transaction prescribed by the Minister for the purposes of this Sub-section by order published in the *Gazette*.

- (c) The transactions prescribed by the Minister and published in the *Gazette* include the transactions which —
 - (i) result in the transfer of Shares in a Regulated Person —
 - (A) from any person to a Corporation, any Shares in which are owned or any Voting Power in which is controlled by that person, without any change in the percentage of the Voting Power in the Regulated Person controlled by that person;
 - (B) from a Corporation to any shareholder of the Corporation, without any change in the percentage of the Voting Power in the Regulated Person controlled by that shareholder;
 - (C) from a Corporation to its wholly owned subsidiary, or to a Corporation from its wholly owned subsidiary, whether or not the subsidiary is a direct subsidiary of the Corporation; or
 - (D) from one Corporation, any Shares in which are owned or any Voting Power in which is controlled by any person, to another Corporation, any Shares in which are owned or any Voting Power in which is controlled by that person, without any change in the percentage of the Voting Power in the Regulated Person controlled by that person; or
 - (ii) do not change the percentage of the Voting Power in the Regulated Person controlled by every person who controlled any Voting Power immediately before the transaction.

The above transactions would be deemed to have constituted a *pro forma* change.

- (d) The written notice given under Section [XX] of the IMDA Act must include a brief description of the transaction and the basis on which the Regulated Person believes the transaction falls within [IMDA Subsidiary Legislation].

10.5.1.3 Deemed and Disregarded Interests

- (a) As set out in Section [XX] of the IMDA Act, a person holds a Voting Share in a Corporation if he has any legal or equitable interest in that Share, other than an interest that is to be disregarded under Section [XX] of the IMDA Act.
- (b) As set out in Section [XX] of the IMDA Act, a person shall be deemed to have an interest in a Share if —
 - (i) the person has entered into a contract to purchase that Share; or
 - (ii) the person, not being the registered holder of that Share, is entitled (otherwise than by reason of his having been appointed a proxy or representative to vote at a meeting of members of a Corporation, to exercise or control the exercise of a right attached to that Share.
- (c) As set out in Section [XX] of the IMDA Act, there shall be disregarded —
 - (i) an interest in a Share if the interest is that of a person who holds the Share as bare trustee;

- (ii) an interest in a Share of a person whose ordinary business includes the lending of money, if he holds the interest only by way of security for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money;
- (iii) an interest in a Share of a person whose ordinary business includes the underwriting of securities, if he holds the interest only as an underwriter or sub-underwriter to any offering of Voting Shares of a Regulated Person;
- (iv) an interest in a Share held by a person in his capacity as a liquidator, the Official Receiver, the Official Assignee or the Public Trustee;
- (v) an interest in a Share held by a person by reason of his holding such other office as may be prescribed for the purposes of Section 7(9)(c) of the Companies Act;
- (vi) an interest of a Corporation in its own Shares purchased or otherwise acquired in accordance with Sections 76B to 76G of the Companies Act (including Treasury Shares); and
- (vii) such interest in a Share as may be prescribed for the purposes of Section 7(9)(d) of the Companies Act, being an interest of such person, or of a person belonging to such class of persons, as may be prescribed for the purposes of that provision.

10.5.2 Obligation of Regulated Person to Monitor Changes in Voting Shares and Voting Power

Every Regulated Person must adopt reasonable procedures for monitoring changes in the Voting Shares and Voting Power in the Regulated Person.

10.5.3 Acquisition resulting in a person holding Voting Shares or being in control of Voting Power of less than 30% in a Regulated Person Not Subject to Notification or Approval for the purposes of Section 65(1) of the IMDA Act

For the avoidance of doubt, while IMDA will not subject transactions involving acquisitions that result in a person holding Voting Shares or being in a position to control Voting Power of less than 30% in a Regulated Person to any notification or approval requirement for the purposes of Section 65(1) of the IMDA Act, nothing in this Code shall be deemed to absolve such persons from compliance with the requirements of any other written law to notify or seek approval for such transactions.

10.5.4 Procedures in Connection with Acquisitions resulting in a person becoming a 30% Controller of a Regulated Person and other Transactions that Constitute a Consolidation with a Regulated Person

10.5.4.1 Determining the Existence of a Consolidation

- (a) A Consolidation may involve —
 - (i) the dissolution of an existing legal entity, the creation of a new legal entity or a Licence Assignment;
 - (ii) an acquisition of Voting Shares or Voting Power that results in the Acquiring Party becoming a 30% Controller in a Regulated Person, whether by a series of transactions over a period of time or otherwise;

- (iii) the obtaining of the ability to exercise Effective Control over a Regulated Person;
 - (iv) the acquisition of any business of a Regulated Person conducted pursuant to a licence granted by IMDA (or any part thereof) as a going concern; or
 - (v) any transaction or class of transactions that is prescribed by regulations made under Section 81 of the IMDA Act, or that falls within a class of transactions prescribed in such regulations.
- (b) An Acquiring Party may obtain Effective Control over a Regulated Person through a transaction where, for example, the transaction confers on the Acquiring Party the right to appoint a majority of the board of directors of the Regulated Person, or to veto certain management or major operating decisions of the Regulated Person.
- (c) The acquisition of any business of a Regulated Person conducted pursuant to a licence granted by IMDA (or any part thereof) as a going concern, as set out in Sub-section 10.5.4.1(a)(iv), may occur where —
 - (i) an Acquiring Party acquires all or substantially all of the assets of the Regulated Person used for such business;
 - (ii) an Acquiring Party enters into an agreement pursuant to which it acquires the right to provide Services to, and receive compensation from, the substantial majority of the customers in respect of such business; or
 - (iii) there is a transfer to a new legal person of significant assets (including goodwill) from two or more persons (i.e. corporate joint ventures).

10.5.4.2 Duty to Seek Approval and to Notify IMDA

- (a) Under Section 65 of the IMDA Act, every Acquiring Party and Regulated Person must seek IMDA's approval in connection with any transaction in connection with such Acquiring Party acquiring Voting Shares or Voting Power that results in such Acquiring Party becoming a 30% Controller of the Regulated Person or entering into any transaction that constitutes a Consolidation with the Regulated Person via a Consolidation Application.
- (b) While IMDA is reviewing the Consolidation Application, no Regulated Person shall enter into the Consolidation unless IMDA has granted its written approval upon completion of its determination.
- (c) Where written approval has been granted by IMDA to a person to enter into a Consolidation with a Regulated Person, such person is not required to seek IMDA's approval for any further acquisition of Voting Shares or Voting Power in the same Regulated Person. However, if requested by IMDA in writing, the Regulated Person must notify IMDA within seven days of each further acquisition of Voting Shares or Voting Power in the Regulated Person by such person. The written notifications must state the percentage of Voting Shares or Voting Power in the Regulated Person that such person held or controlled prior to such acquisition, and the percentage of Voting Shares or Voting Power in the Regulated Person that such person has further acquired.

10.5.4.3 Procedures to Seek Prior Approval

- (a) An Acquiring Party may enter into an agreement or a transaction that constitutes a Consolidation by various means. Without limitation, this may occur when —
 - (i) An Acquiring Party acquires Voting Shares in a Regulated Person by —
 - (A) purchasing Voting Shares in an Open Market Transaction;
 - (B) entering into a privately negotiated agreement with the Regulated Person that allows the Acquiring Party to acquire Voting Shares in the Regulated Person;
 - (C) entering into a privately negotiated agreement with an entity that holds Voting Shares;
 - (D) exercising an option to acquire, or a right to transfer to itself or to its order, Voting Shares; or
 - (E) entering into any other transaction that results in the acquisition of Voting Shares.
 - (ii) an Acquiring Party acquires Voting Power in a Regulated Person by —
 - (A) purchasing, through an Open Market Transaction, Voting Shares in an entity that controls Voting Power;
 - (B) entering into a privately negotiated agreement with an entity that controls Voting Power;
 - (C) exercising an option to acquire, or right to transfer to itself or to its order, Voting Shares in an entity that controls Voting Power; or
 - (D) entering into any other transaction that results in the acquisition of Voting Power.
 - (iii) an Acquiring Party acquires any business of a Regulated Person conducted pursuant to a licence granted by IMDA (or any part thereof) as a going concern.
- (b) Every party to the Consolidation must *jointly* file a Consolidation Application in respect of such Consolidation with a Regulated Person. Each Consolidation Application shall contain the information and documents specified in Sub-sections 10.5.4.4 or 10.5.4.5 of this Code (as the case may be) and, except for Consolidation Applications relating to a Tender Offer, shall be submitted in accordance with the following time frames —
 - (i) in cases where the Acquiring Party intends to acquire Voting Shares in an Open Market Transaction, not less than 60 days before the Acquiring Party proceeds to make an offer for the Voting Shares;
 - (ii) in other cases where Acquiring Party intends to acquire Voting Shares, within 30 days from the day on which the Acquiring Party enters into the agreement and not less than 60 days before the day upon which the Acquiring Party completes the acquisition;

- (iii) in cases where the Acquiring Party intends to acquire any business of a Regulated Person conducted pursuant to a licence granted by IMDA (or any part thereof) as a going concern, within 30 days from the day on which the Acquiring Party enters into the agreement for the acquisition and not less than 60 days before the day upon which the Acquiring Party completes the acquisition;
 - (iv) in cases where the Acquiring Party intends to exercise an option to acquire, or a right to transfer to itself or to its order, Voting Shares in a Regulated Person (as the case may be), not less than 60 days before the Acquiring Party exercises such an option or right; or
 - (v) in all other cases where the Acquiring Party enters into any transaction that results in a Consolidation with a Regulated Person, not less than 60 days before the Acquiring Party completes the transaction.
- (c) For transactions relating to a Tender Offer, every party to the transaction must submit a Consolidation Application in accordance with Sub-section 10.5.5 of this Code.

10.5.4.4 Information and Documents to be Included in a Short Form Consolidation Application

- (a) Where a Consolidation meets any of the requirements set out in Sub-section 10.5.4.4(b), the Applicants may submit a Short Form Consolidation Application as set out in this Sub-section 10.5.4.4.
- (b) A Short Form Consolidation Application may be submitted when none of the Applicants have, and/or the Post-Consolidation Entity will not have —
 - (i) a market share of 30 percent or more of any media market in Singapore; or
 - (ii) a market share of between 20 percent to 30 percent of any media market in Singapore, and the post-Consolidation combined market share of the three largest Regulated Persons is 70 percent or more of any media market in Singapore.
- (c) In submitting a Short Form Consolidation Application, Applicants should 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 (the “**Abbreviated Statement**”). The competitive assessment generally should include information regarding —
 - (i) the name, address and contact information of the Applicants and their Associates and Affiliates;
 - (ii) a chart indicating the relationship between each Applicant and its respective Associates and Affiliates and the relevant interest in the Regulated Person;
 - (iii) information about any situation in which the Voting Shares in the Regulated Person grant 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;
 - (iv) a copy of the trust deed of the Regulated Person, if applicable;

- (v) the media markets in which the Applicants and their Affiliates and Associates participate;
- (vi) the market participants; and
- (vii) the estimated market shares of the participants and the level of concentration in those markets.

Applicants may 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. If the Consolidation Application contains proprietary or commercially sensitive information, the Applicants should put such information in a separate appendix and request for confidential treatment pursuant to Sub-section 12.9 of this Code.

- (d) Each Short Form Consolidation Application must be accompanied by payment of an application fee of \$2,500 to IMDA, to be paid by the Applicants via electronic bank transfer (or any other modes that IMDA may specify).
- (e) Until IMDA issues its written decision on whether to approve or deny a Consolidation Application, the Applicants must promptly inform IMDA in writing of any new or different fact or matter that is reasonably likely to have a material impact on IMDA's consideration of the Consolidation Application.

10.5.4.5 Information and Documents to be Included in a Long Form Consolidation Application

- (a) Where a Consolidation is not eligible for a Short Form Consolidation Application based on the scenarios set out at Sub-section 10.5.4.4(b) above, the Applicants are required to file a Long Form Consolidation Application following the procedure as set out in this Sub-section 10.5.4.5.
- (b) Each Long Form Consolidation Application shall contain all the required information reasonably necessary for IMDA to determine the likely impact of the Consolidation on competition and the public interest, including (without limitation) the following documents and information (based on the Applicants' reasonable and diligent efforts to collect and provide such information) —
 - (i) the name, address and contact information of the Applicants and their Associates and Affiliates;
 - (ii) a copy of each of the following agreements —
 - (A) the Consolidation Agreement, including any appendices, side letters and supporting documents; and
 - (B) 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 IMDA to fully assess the likely competitive impact of the Consolidation, provided that in any case in which the Regulated Person is not a party to the Consolidation Agreement or any other agreement specified in this Sub-section 10.5.4.5(b)(ii)(B), the Acquiring Party shall provide these materials directly to IMDA (in the case where the acquisition will trigger a mandatory offer under the Take-

Over Code, the Applicants must submit information based on the assumption that the mandatory offer will be successful);

- (iii) any supporting document that would assist IMDA in assessing the likely competitive effect of the Consolidation including, at the minimum —
 - (A) a copy of the Applicants' current annual reports or audited financial statements;
 - (B) a chart indicating the relationship between each Applicant and its respective Associates and Affiliates and their relevant interest in the Regulated Person;
 - (C) information about any situation in which the Voting Shares in the Regulated Person grant 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;
 - (D) a copy of the trust deed of the Regulated Person, if applicable;
 - (E) any anticipated significant changes in management or operations of the Regulated Person;
 - (F) a copy of the Applicants' business plans for the current and previous years; and
 - (G) a copy of all reports, studies or analyses prepared for the shareholders, Unitholders or holders of Voting Shares, beneficiaries of a trust, directors, or executive officers of the Applicants assessing the proposed Consolidation and describing the proposed operation of the Post-Consolidation Entity;
- (iv) a detailed 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 any media market in which the Applicants and their Associates and Affiliates participate, and a discussion of why approval of the Consolidation would serve the public interest. The competitive assessment should generally include information regarding —
 - (A) the media markets in which the Applicants and their Associates and 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 markets (and the extent to which they facilitate 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 customers switching to a competing service provider in response to a significant and non-transitory price increase; and
- (G) any efficiency that would likely result from the Consolidation; and
- (v) any conditions that the Applicants may wish to propose for IMDA'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.
- (c) Each Long Form Consolidation Application must be accompanied by payment of an application fee of \$10,000 to IMDA, to be paid by the Applicants via electronic bank transfer (or any other modes that IMDA may specify).
- (d) Until IMDA issues its written decision on whether to approve or deny a Consolidation Application, the Applicants must promptly inform IMDA in writing of any new or different fact or matter that is reasonably likely to have a material impact on IMDA's consideration of the Consolidation Application.

10.5.4.6 Request for Separate Filing and Direct Submission of Information

- (a) Without prejudice to Sub-sections 10.5.1.1(b) and 10.5.4.3(b) of this Code, an Applicant may apply in writing to IMDA for a waiver of the requirement for the Applicant to submit a joint Consolidation Application with other Applicants if the Applicant can establish that —
 - (i) it is unable to comply with the requirement due to circumstances beyond its reasonable control; or
 - (ii) requiring it to comply with the requirement would be unduly burdensome or would prejudice its legitimate commercial interests.
- (b) Circumstances under which IMDA may grant a waiver under Sub-section 10.5.4.6(a) include (without limitation) the following —
 - (i) where an Acquiring Party reasonably believes that the Regulated Person entering into the Consolidation is likely to be opposed to the Acquiring Party's acquisition of Voting Shares or Voting Power, or to the Acquiring Party entering into a Consolidation with the Regulated Person;
 - (ii) where an Applicant reasonably believes that the filing of a joint Consolidation Application would be unduly burdensome or infeasible; or
 - (iii) where an Applicant can demonstrate that another party has refused to cooperate with it to file a joint Consolidation Application.
- (c) Where an Applicant does not want to disclose confidential, commercially sensitive or proprietary information to another Applicant for inclusion in a Consolidation Application, IMDA may allow the Applicant to submit its confidential, commercially sensitive or proprietary information directly to IMDA but the Applicant shall otherwise submit a joint Consolidation Application with

other Applicants containing such other information as may be required under this Code.

- (d) Where IMDA grants permission for separate filing of a Consolidation Application under Sub-section 10.5.4.6(a) in cases where more than one Acquiring Party requires IMDA's approval for a particular transaction, no additional application fee shall be payable but all Acquiring Parties shall be *jointly* liable for the stipulated application fee.

10.5.5 Additional Procedures Relating to Tender Offers

10.5.5.1 Voluntary Offers or Partial Offers That Amount to a Consolidation

- (a) Where an Acquiring Party intends to make a voluntary offer or a partial offer under Rules 15 and 16 respectively of the Take-Over Code that would result in the Acquiring Party entering into a Consolidation with a Regulated Person, the parties shall, after the Acquiring Party announces its offer (i.e. makes an announcement that a voluntary offer or partial offer will be made only after IMDA's approval has been obtained) and not less than 60 days before it makes its offer, submit a Consolidation Application in accordance with Sub-section 10.5.4 of this Code.
- (b) IMDA will seek to make a determination within 30 days of receiving all information necessary to enable IMDA to review the Consolidation Application. In exceptional cases, IMDA may extend the review period and may, where appropriate, conduct consultations on the Consolidation in accordance with Sub-section 10.10.2 of this Code. In the event that IMDA extends the review period, the Acquiring Party shall not proceed to become a 30% Controller of the Regulated Person, or otherwise enter into a Consolidation with the Regulated Person, unless IMDA has granted its approval upon completion of its determination.

10.5.5.2 Mandatory Offers

No Acquiring Party shall enter into any transaction for the acquisition of Voting Shares in a Regulated Person that will trigger a mandatory offer under Rule 14 of the Take-Over Code, unless the completion of such transaction is conditional upon the Acquiring Party and the Regulated Person obtaining IMDA's prior written approval under Section 65(1) of the IMDA Act.

10.5.5.3 Other Tender Offers

Where the rules of the securities exchange on which the Voting Shares in a Regulated Person are traded conflict with the procedures specified in Sub-section 10.5.5 of this Code, or where the provisions of Sub-section 10.5.5 do not address any specific situation in connection with a Tender Offer, the Acquiring Party must seek IMDA's guidance as to the appropriate course of action and procedures to be followed to obtain IMDA's approval. Nothing in this Sub-section 10.5.5.3 shall exempt an Acquiring Party from complying with the requirements to obtain IMDA's prior written approval under Section 65(1) of the IMDA Act.

10.5.6 Additional Procedures Relating to Share Buybacks by a Regulated Person

- (a) Subject to Sub-section 10.5.6(b), a Regulated Person need not seek IMDA's approval to carry out a Share Buyback.
- (b) Before entering into any transaction for a Share Buyback, a Regulated Person must calculate the percentage of Voting Shares held by each shareholder following completion of the Share Buyback. If, as a result of the Share Buyback, any person enters into a Consolidation with the Regulated Person,

such person, together with the Regulated Person, must seek IMDA's approval pursuant to Sub-section 10.5.4 before proceeding with the Share Buyback.

- (c) For the purposes of Sub-section 10.5.6(b), the Regulated Person shall notify those parties who are required to seek IMDA's approval in accordance with that Sub-section, and the Regulated Person and such parties shall submit a Consolidation Application in accordance with Sub-section 10.5.4 of this Code.

10.6 Consolidation Review Period

10.6.1 Commencement of Consolidation Review Period

The Consolidation Review Period will be deemed to have begun —

- (a) in the case of a Designated Telecommunication Licensee, on the day on which the Applicants first satisfy the applicable requirements specified in Sub-sections 10.3.6.3, and 10.3.6.4 or 10.3.6.5 of this Code;
- (b) in the case of a Designated Business Trust or Designated Trust, on the day on which the Applicants first satisfy the applicable requirements specified in Sub-sections 10.4.6.3, and 10.4.6.4 or 10.4.6.5 of this Code; and
- (c) in the case of a Regulated Person, on the day on which the Applicants first satisfy the applicable requirements specified in Sub-sections 10.5.4.3, and 10.5.4.4 or 10.5.4.5 of this Code.

10.6.2 Length of Consolidation Review Period

- (a) IMDA will ordinarily complete its Consolidation Review within 30 days after the start of the Consolidation Review Period.
- (b) In any case in which IMDA determines that a Consolidation Application raises novel or complex issues, IMDA will notify the Applicants that it intends to extend the Consolidation Review Period by up to 90 days, to a maximum of 120 days, from the start of the Consolidation Review Period. IMDA will seek to provide this notification within 21 days after the start of the Consolidation Review Period.
- (c) In exceptional cases, IMDA may, where appropriate, conduct consultations on the Consolidation in accordance with Sub-section 10.10.2 of this Code. For the avoidance of doubt, IMDA will deem the Consolidation Review Period to have been suspended as of the day on which consultations commence until the next day following the closing date of such consultations.
- (d) IMDA will seek to give expedited consideration to requests made in connection with Consolidations to be achieved through Open Market Transactions.

10.6.3 Failure to Provide Information Requested

- (a) In any case in which IMDA requests for supplemental information, IMDA will specify a reasonable period of time within which the Applicant(s) are to provide supplemental information.
- (b) If the Applicant(s) request additional time to comply with the request for additional information, or if the Applicant(s) do not provide all requested information by the date specified (for reasons including the intentional or reckless destruction, disposal, falsification or concealment of requested documents, or the causing or permitting of the destruction, disposal, falsification or concealment of such documents), IMDA will deem the Consolidation Review Period to have been suspended as of the day on which

the information was due until such time as the Applicants provide all requested information.

10.7 Disposition of Requests and Consolidation Applications

- (a) Once IMDA has concluded its review of the Request or Consolidation Application, it will notify the Applicants, as well as all other parties identified to IMDA by the Applicants as requiring IMDA's approval under Section 32B(5) of the Telecommunications Act or Section 65(1) of the IMDA Act, in writing as to whether their Request or Consolidation Application has been approved in part or in full with or without conditions, or rejected.
- (b) In any case in which IMDA rejects or approves a Request or Consolidation Application in part or in full with conditions, the notification will provide an explanation of the basis on which IMDA made its decision. IMDA's decision will not be effective until conveyed to the Applicants in written form.

10.7.1 Denial of the Request or Consolidation Application

- (a) IMDA will deny the Request or Consolidation Application where IMDA determines that the acquisition to which the Request relates or the Consolidation is likely to result in a substantial lessening of competition in any telecommunication or media market or it is in the public interest to deny the Request or Consolidation Application.
- (b) If IMDA denies a Request or Consolidation Application, IMDA will provide a written statement of the reasons for its denial.
- (c) In those cases in which —
 - (i) every Acquiring Party and —
 - (A) in the case of a Designated Telecommunication Licensee, the Designated Telecommunication Licensee; or
 - (B) in the case of a Designated Business Trust or Designated Trust, the Designated Telecommunication Licensee and the Trustee-Manager or trustee;

have filed a Request in connection with a proposed acquisition of Voting Shares, Units, Equity Interests, or Voting Power that would result in such Acquiring Party becoming a 12% Controller of the Designated Telecommunication Licensee, Designated Business Trust, or Designated Trust; and
 - (ii) IMDA determines that the transaction constitutes a Consolidation,

IMDA shall notify the Applicants of its determination and the Applicants must submit a Consolidation Application in accordance with Sub-section 10.3.6 or 10.4.6 (as the case may be) of this Code. In the event that the Applicants inform IMDA that they do not intend to submit a Consolidation Application or a Consolidation Application is not submitted within 30 days of the date of IMDA's notification to the Applicants, IMDA may deny the Request and, if so, will provide a written statement of the reasons for its denial.

10.7.2 Grant of the Request or Consolidation Application

- (a) IMDA may grant its approval to the Request or Consolidation Application in part or in full, with or without conditions.

- (b) Conditions may be imposed by IMDA either upon IMDA's acceptance of conditions proposed by the Applicants, or on IMDA's own motion. In either case, where IMDA approves a Request or Consolidation Application subject to conditions, IMDA will require the Applicants to notify IMDA as to whether they accept and agree to comply with all the conditions within a timeframe specified by IMDA. IMDA's approval will not be effective until the Applicants submit their written acceptance of the conditions to IMDA.
- (c) The Applicants may, at any time during IMDA's assessment of the Request or Consolidation Application, propose conditions (such as partial divestiture or the imposition of behavioural safeguards) that could reduce any potential adverse competitive impact or to meet public interest objectives. Applicants are encouraged to take the initiative to propose conditions which they think can appropriately resolve competition or public interest concerns that they foresee. 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 transaction. In any case in which IMDA determines that the conditions proposed by the Applicants may raise novel or complex issues, IMDA will notify the Applicants of the additional timeframe (in addition to the length of the Consolidation Review Period) that is required by IMDA to consider and assess the proposed conditions.
- (d) After reviewing the Applicants' proposed conditions, IMDA may either accept the Applicants' proposed conditions, or reject the Applicants' proposed conditions. IMDA will reject the Applicants' proposed conditions if IMDA takes the view that the Applicants' proposed conditions are not appropriate, and would not provide as comprehensive a solution as is reasonable and practicable to address the substantial lessening of competition in any telecommunication or media market and any adverse effects resulting from the acquisition to which the Request relates or the Consolidation.
- (e) The Applicants will have 14 days from the date on which IMDA approves a Request or Consolidation Application subject to conditions to notify IMDA as to whether they accept the conditions imposed or wish to withdraw the Request or Consolidation Application.
- (f) IMDA may issue a direction as described in Sub-section 10.12 of this Code pursuant to Section 32D of the Telecommunications Act, or a direction as described in Section [XX / 66(1)] of the IMDA Act (as the case may be), in the event that any condition is not complied with.
- (g) For the avoidance of doubt, nothing herein shall prevent or restrict IMDA from imposing conditions that IMDA determines in its absolute discretion to be appropriate, in granting any approval in respect of a Request or a Consolidation Application. Furthermore, nothing herein shall require IMDA to formulate or otherwise impose conditions of approval in respect of a Request or Consolidation Application before deciding to deny such Request or Consolidation Application.

10.8

Validity of IMDA's Approval

- (a) IMDA may require the transaction to which a Request or Consolidation Application relates to be legally completed within one year from the date of IMDA's written approval, failing which the approval will cease to be valid. In exceptional cases, IMDA may specify a longer validity period for its approval. IMDA will consider requests from Applicants for an extension of the validity period of its approval on a case-by-case basis. Applicants must provide IMDA with strong justification why they require the extension and must satisfy IMDA

that the basis on which the approval was granted will remain applicable throughout the period of extension.

- (b) If there is any material change affecting any basis on which IMDA previously approved a Request or Consolidation Application and the transaction related to such Request or Consolidation Application remains uncompleted, the Applicants must immediately notify IMDA in writing with full disclosure of the change in circumstances and seek IMDA's decision on the continued validity of the earlier approval granted. In such a situation, IMDA's earlier approval will continue to be valid unless IMDA notifies the Applicants to submit a new Request or Consolidation Application incorporating the changed circumstances.

10.9 Informal Guidance Prior to Filing of Consolidation Application

Any parties considering entering into a Consolidation may ask IMDA to provide Informal Guidance pursuant to Sub-section 12.3 of this Code, prior to the time at which a Consolidation Application must be filed. This may include guidance regarding the likelihood that IMDA will approve or deny the proposed Consolidation, or the type of conditions that IMDA considers would be appropriate and would provide as comprehensive a solution as is reasonable and practicable to address the substantial lessening of competition in any telecommunication or media market and any adverse effects resulting from the Consolidation. Where sufficient information is available, IMDA will seek to provide reliable, but non-binding guidance. However, the Informal Guidance process cannot substitute for a full review following submission of a complete Consolidation Application, and does not amount to a decision for the purposes of Section 69 of the Telecommunications Act and Section 68 of the IMDA Act.

10.10 Requests for Information and Consultations

10.10.1 Request for Information

Without prejudice to Sections 27, 32E and 59 of the Telecommunications Act, and Section 70 of the IMDA Act, where IMDA is of the view that an Applicant has not submitted in its Request or Consolidation Application all information reasonably necessary for IMDA to determine the likely impact of an acquisition on competition and the public interest, IMDA may request for additional information from the Applicant.

10.10.1.1 Reconsideration of Request for Information

- (a) If the Applicant(s) believe that any such information request by IMDA is unnecessary, overly broad, or additional time is necessary in order to provide IMDA with the requisite information, the Applicant(s) may submit a written request to IMDA to reconsider or narrow the scope of the information request, or extend the time for satisfying the information request.
- (b) The Applicant(s) must submit the reconsideration request to IMDA within seven days of receiving the information request, stating the additional time necessary to complete the information request.
- (c) The reconsideration request should describe, in good faith and with specificity:
 - (i) the basis for the Applicant(s) objection and where feasible, propose alternative means by which IMDA can obtain the information necessary to assess the Request or the Consolidation Application; or
 - (ii) the additional time required to complete the information request.
- (d) Upon receiving a reconsideration request, IMDA will deem the Consolidation Review Period to have been suspended on the day on which IMDA initially

makes the information request. IMDA will inform the Applicants of the specific day on which the Consolidation Review Period is deemed to be suspended.

- (e) The Consolidation Review Period will resume —
 - (i) on the day which IMDA either grants or denies the Reconsideration Request; or
 - (ii) on the day on which the Applicants submit the requested information to IMDA.

10.10.2 Consultation

- (a) Without prejudice to Sub-section 1.5.6 of this Code, where appropriate, IMDA will provide the public with an opportunity to comment on a Request or Consolidation Application.
- (b) In those cases in which IMDA seeks public comment in connection with a Request or Consolidation Application, it will release the non-confidential portions of the detailed statement specified in Sub-sections 10.3.5.4, 10.3.6.4, 10.3.6.5, 10.4.5.4, 10.4.6.4, 10.4.6.5, 10.5.4.4, or 10.5.4.5 (as the case may be) of this Code.
- (c) IMDA will consider all comments received to be public documents, and will make them available on the IMDA website. However, a commenting party may seek confidential treatment of specific information that is proprietary or commercially sensitive by submitting a separate confidential appendix.
- (d) In a case in which IMDA does not conduct a public consultation, IMDA may nonetheless request comments from individuals or entities where appropriate, including but not limited to consumers, suppliers and competitors. IMDA does not assume any obligation to consider any unsolicited comments.
- (e) IMDA will consider all properly and timely submitted comments, submitted pursuant to a consultation document. IMDA will generally address the significant points raised by the commenting parties in its decision regarding the Request or Consolidation Application.

10.11 Failure to Seek IMDA's Approval for 12% Controller and Consolidation

- (a) Where an Acquiring Party contravenes the Telecommunications Act or the IMDA Act by failing to obtain IMDA's approval under Sections 32B(5), (6), and (7) of the Telecommunications Act or Section 65 of the IMDA Act, as the case may be, and it was not aware that it had contravened the provision in question, it shall —
 - (i) notify IMDA in writing of the contravention within 14 days of becoming aware of the contravention;
 - (ii) provide IMDA with such information as IMDA may require for the purpose of determining what directions to give to the Acquiring Party under Section 32D of the Telecommunications Act or Section 66 of the IMDA Act, including (without limitation) —
 - (A) an explanation of why it contravened Sections 32B(5), (6), and (7) of the Telecommunications Act or Section 65 of the IMDA Act, as the case may be; and

- (B) the information specified in Sub-sections 10.3.5.4, 10.3.6.4, 10.3.6.5, 10.4.5.4, 10.4.6.4, 10.4.6.5, 10.5.4.4, or 10.5.4.5 (as the case may be) of this Code; and
- (iii) where the Acquiring Party has contravened Sections 32B(5), (6), and (7) of the Telecommunications Act or Section 65 of the IMDA Act by failing to seek IMDA's approval for Consolidation, it shall pay to IMDA the application fee specified in Sub-sections 10.3.6.4(d), 10.3.6.5(c), 10.4.6.4(d), 10.4.6.5(c), 10.5.4.4(d), or 10.5.4.5(c) (as the case may be) of this Code.
- (b) An Acquiring Party specified in Sub-section 10.11(a) shall not acquire any further Voting Shares, Units, Equity Interests, or Voting Power in any Designated Telecommunication Licensee, Designated Business Trust, Designated Trust, or Regulated Person until it has complied with Sub-section 10.11(a) and such directions as IMDA may give under Section 32D of the Telecommunications Act or Section 66 of the IMDA Act.
- (c) Nothing in this Sub-section 10.11 shall constitute any excuse for the Acquiring Party's failure to comply with the requirements of Sections 32B(5), (6), and (7) of the Telecommunications Act or Section 65 of the IMDA Act, nor affect IMDA's right to take enforcement measures against the Acquiring Party for such contravention.

10.12 **IMDA's Power to Issue Directions**

- (a) Pursuant to Section 32D(1) of the Telecommunications Act or Section [XX / 66] of the IMDA Act, IMDA may issue any direction as described in Sub-sections 10.12(b) and 10.12(c) if —
 - (i) a person ("**Specified Person**") —
 - (A) becomes a 12% Controller of a Designated Telecommunication Licensee, Designated Business Trust, or Designated Trust; or
 - (B) has entered into a Consolidation within the meaning of Sub-sections 10.3.6.1, 10.4.6.1 or 10.5.4.1 with a Designated Telecommunication Licensee, Designated Business Trust, Designated Trust, or Regulated Person; and
 - (ii) IMDA is satisfied that —
 - (A) the Specified Person has thereby contravened Sections 32B(5), (6), or (7) of the Telecommunications Act or Section 65 of the IMDA Act;
 - (B) any condition of approval imposed on the Specified Person has not been complied with;
 - (C) the Specified Person has furnished false or misleading information or documents in connection with an application for approval under Sections 32B(5), (6), or (7) of the Telecommunications Act or Section 65 of the IMDA Act;
 - (D) IMDA would not have granted its approval under Sections 32B(5), (6), or (7) of the Telecommunications Act or Section 65 of the IMDA Act had it been aware, at that time, of circumstances relevant to the Specified Person's application for such approval; or

- (E) the applicable matter referred to in Sub-section 10.12(a)(i) is likely to substantially lessen competition or is against the public interest.
- (b) Pursuant to Section 32D(2) of the Telecommunications Act, IMDA may, in the circumstances specified in Sub-section 10.12(a) above, direct —
- (i) the Designated Telecommunication Licensee to do all or any of the following —
 - (A) to restrict the exercise of all or any of the voting rights in respect of the Voting Shares which the Specified Person holds, or which the Specified Person and his Associates together hold, in the Designated Telecommunication Licensee (the “**Specified Shares**”), or to restrict the exercise of the Voting Power which the Specified Person controls, or which the Specified Person and his Associates together control, in the Designated Telecommunication Licensee, unless IMDA expressly permits such rights or power to be exercised;
 - (B) to restrict the issuance or offer of Shares in the Designated Telecommunication Licensee (whether by way of rights, bonus or otherwise) in respect of the Specified Shares, unless IMDA expressly permits such issue or offer;
 - (C) except in a liquidation of the Designated Telecommunication Licensee, to restrict the payment of any amount (whether by way of dividends or otherwise) in respect of the Specified Shares, unless IMDA expressly authorises such payment subject to such conditions as IMDA may specify;
 - (ii) the Trustee-Manager of the Designated Business Trust to do all or any of the following —
 - (A) to restrict the exercise of all or any of the voting rights in respect of the Units which the Specified Person holds, or which the Specified Person and his Associates together hold, in the Designated Business Trust (the “**Specified Units**”), or to restrict the exercise of the Voting Power which the Specified Person controls, or which the Specified Person and his Associates together control, in the Designated Business Trust, unless IMDA expressly permits such rights or power to be exercised;
 - (B) to restrict the issuance or offer of Units in the Designated Business Trust (whether by way of rights, bonus or otherwise) in respect of the Specified Units, unless IMDA expressly permits such issue or offer;
 - (C) except in a winding up of the Designated Business Trust, to restrict the payment of any amount (whether by way of profits, income or otherwise) in respect of the Specified Units, unless IMDA expressly authorises such payment subject to such conditions as IMDA may specify;
 - (iii) the trustee of the Designated Trust to do all or any of the following —
 - (A) to restrict the exercise of all or any of the voting rights in respect of the Equity Interests which the Specified Person

holds, or which the Specified Person and his Associates together hold, in the Designated Trust (the “**Specified Equity Interests**”), or to restrict the exercise of the Voting Power which the Specified Person controls, or which the Specified Person and his Associates together control, in the Designated Trust, unless IMDA expressly permits such rights or power to be exercised;

- (B) to restrict the issuance or offer of Equity Interests in the Designated Trust (whether by way of rights, bonus or otherwise) in respect of the Specified Equity Interests, unless IMDA expressly permits such issue or offer;
 - (C) except in a winding up of the Designated Trust, to restrict the payment of any amount (whether by way of profits, income or otherwise) in respect of the Specified Equity Interests, unless IMDA expressly authorises such payment subject to such conditions as IMDA may specify;
- (iv) the Specified Person, or any Associate of the Specified Person, to transfer or dispose of all or any part of the Specified Shares, Units, or Equity Interests in relation to the Designated Telecommunication Licensee, Designated Business Trust, or Designated Trust, as the case may be, within such time as IMDA may determine and subject to such conditions as IMDA considers appropriate;
 - (v) the Specified Person to transfer or dispose of all or any part of the business or part thereof that is conducted pursuant to a licence granted by IMDA, and that is acquired from the Designated Telecommunication Licensee, Designated Business Trust, or Designated Trust as a going concern, within such time as IMDA may determine and subject to such conditions as IMDA considers appropriate; or
 - (vi) direct the Specified Person to relinquish Effective Control over the Designated Telecommunication Licensee, Designated Business Trust, or Designated Trust, within such time as IMDA may determine and subject to such conditions as IMDA considers appropriate; and
- (c) Pursuant to Section 66 of the IMDA Act, IMDA may, in the circumstances specified in Sub-section 10.12(a) above, direct any Specified Person to take specific remedial action in relation to its Consolidation with a Regulated Person.

10.12.1 Opportunity to Respond to IMDA’s Direction

Prior to issuing a direction under the Telecommunications Act or the IMDA Act for the circumstances stated in Sub-section 10.12 of this Code, IMDA will, unless IMDA decides that it is not practicable or desirable to do so, provide a written notification to the entity to which the direction will be addressed, and will give such person an adequate opportunity to submit written representations in relation to the proposed direction.

10.13 Consolidation and Tender Offer Guidelines

IMDA has adopted, and may periodically revise, the Consolidation and Tender Offer Guidelines. These guidelines are advisory in nature and further elaborate on the principles and standards that IMDA will apply in conducting a Consolidation review as well as explain the procedures that an Acquiring Party must observe before making a Tender Offer where the Take-Over Code applies.

11. PUBLIC INTEREST OBLIGATIONS IN THE MEDIA MARKET

11.1 Introduction

This Section details four major public interest obligations to be undertaken by specific Regulated Persons and other specified persons, as outlined below:

11.1.1 Obligation to Broadcast Events of National Significance

Free-To-Air Television Licensees and Free-To-Air Radio Licensees must broadcast Events of National Significance, in the manner specified by IMDA, as set out at Sub-section 11.4 of this Code.

11.1.2 Prohibition on Obtaining Exclusive Rights as Specified by IMDA

Regulated Persons who are Subscription Television Licensees must not obtain for their own use any exclusive rights to programmes as may be specified by IMDA from time to time.

11.1.3 Prohibition on Hoarding Specified Programmes

Regulated Persons who are Free-To-Air Television Licensees must not “hoard” any programmes as may be specified by IMDA from time to time.

11.1.4 Obligation to Cross-Carry Content

Regulated Persons who are Supplying Qualified Licensees must make all their Qualified Content available for transmission and reception on all Relevant Platforms of the nationwide Subscription Television Service of every Receiving Qualified Licensee. Correspondingly, Regulated Persons who are Receiving Qualified Licensees must carry all Qualified Content made available by Supplying Qualified Licensees on all Relevant Platforms of their respective nationwide Subscription Television Services.

11.2 Application

This Section applies to Regulated Persons providing Free-to-Air Television Services, Free-to-Air Radio Services, or Subscription Television Services and, to the extent expressly specified in this Section, to any person who has been appointed or designated by IMDA as a Lead Broadcaster.

11.3 Definitions

In this Section:

- (a) “Category A Programme” means a programme that is specified by IMDA pursuant to Sub-section 11.5.1.1 of this Code;
- (b) “Category B Programme” means a programme that is specified by IMDA pursuant to Sub-section 11.5.1.2 of this Code;
- (c) “Events of National Significance” means events designated in Sub-section 11.4.1 of this Code as revised from time to time, which Free-to-Air Television Licensees and Free-to-Air Radio Licensees are required to broadcast pursuant to their licences, or which Free-to-Air Television Licensees and Free-to-Air Radio Licensees are required to broadcast pursuant to Sub-section 11.4.1.1 of this Code following the Effective Date of this Code.
- (d) “Group” means a group of two or more persons where one person has Effective Control over the other person or persons, as the case may be, in the group;

- (e) “Lead Broadcaster” refers to the broadcaster appointed under Sub-section 11.4.2 of this Code;
- (f) “Qualified Content” means:
 - (i) any channel or programming content (whether in a linear or non-linear format), including any basic function in support of such channel or programming content that is specified in Part I of Appendix 3 of this Code, where such channel or programming content is:
 - (A) subject to Sub-section 11.3(f)(ii) of this Code, produced or commissioned by a Regulated Person and where, on or after 1st August 2011, the Regulated Person transmits the same on its Subscription Television Service in Singapore over a “live” broadcast and refuses to allow the channel or programming content to be acquired or otherwise obtained from it for transmission on any Relevant Platform in Singapore by:
 - (I) any other Regulated Person; or
 - (II) where the Regulated Person that produced or commissioned the channel or programming content belongs to a Group, any other Regulated Person outside the Group; or
 - (B) acquired or otherwise obtained on or after 8.30 am, 12 March 2010 by a Regulated Person for transmission, on its Subscription Television Service in Singapore over a “live” broadcast and under an arrangement, whether explicit or implicit, which prevents or restricts or is likely to prevent or restrict the channel or programming content from being acquired or otherwise obtained from it for transmission on any Relevant Platform in Singapore by:
 - (I) any other Regulated Person; or
 - (II) where the Regulated Person that acquired or otherwise obtained the channel or programming content belongs to a Group, any other Regulated Person outside the Group; and
 - (ii) any bundled channels or bundled programming content comprising, in whole or in part, any channel or programming content that is referred to in Sub-section 11.3(f)(i) of this Code.

For the avoidance of doubt, any channel or programming content is not Qualified Content by virtue only of the incorporation of any value-added service that is specified in Part II of Appendix 3 of this Code, in the channel or programming content.

For the purposes of Sub-section 11.3(f)(i) of this Code, for the avoidance of doubt, a broadcast of a programme of an event is a “live” broadcast, if the broadcast is: (A) simultaneous with the event or not later than 48 hours after the conclusion of that event as scheduled by the content provider of the broadcast; or (B) where the event comprises separate components determined by the content provider of the broadcast, simultaneous with the component or not later than 48 hours after the conclusion of that component as scheduled by the content provider of the broadcast.

For the purposes of Sub-section 11.3(f)(i)(B) of this Code, for the avoidance of doubt, whilst any channel or programming content that is acquired or otherwise obtained is not Qualified Content if it was acquired or otherwise obtained under or pursuant to an arrangement referred to in that Sub-section before the Effective Date, it is Qualified Content if and from the time such arrangement is extended, renewed, or otherwise re-contracted for on or after the Effective Date.

Illustration A: A Regulated Person bundles five channels as part of its Subscription Service offering to its Subscribers. One of the five channels is Qualified Content. In this case, the entire bundle comprising all five channels shall be deemed to be Qualified Content.

Illustration B: In providing video-on-demand services, a Regulated Person includes one or more movies (which it has acquired as Qualified Content) into its standard video-on-demand "Movie Bundle". In this case, the entire video-on-demand movie bundle offering shall be deemed to be Qualified Content.

Illustration C: A Regulated Person re-contracts with a content provider after the Effective Date, but the new contract does not prevent or restrict (nor is likely to prevent or restrict) another Regulated Person from acquiring or otherwise obtaining channels or programming content. The channels or programming content concerned will not be Qualified Content.

The illustrations set out above are non-exhaustive examples.

For the purposes of Sub-section 11.3(f)(ii) of this Code, for the avoidance of doubt, any channel or programming content is "bundled" with any other channel or programming content if: (A) subscription to one is made a pre-requisite for access to the other; or (B) they are combined and offered as a single package.

- (g) "Receiving Qualified Licensee" means any Regulated Person who is designated by IMDA as a Receiving Qualified Licensee under Sub-section 11.6.2 of this Code.
- (h) "Relevant Platform" means a managed network over or using any one or any combination of the following:
 - (i) optical fibre; and
 - (ii) the Asymmetric Digital Subscriber Line;
- (i) "Supplying Qualified Licensee" means any Regulated Person who:
 - (i) is licensed to provide any Subscription Television Service; and
 - (ii) produces or commissions, or acquires or otherwise obtains, Qualified Content.

11.4 Duty of Free-to-Air Television Licensees and Free-to-Air Radio Licensees to Broadcast Specified Events of National Significance

Free-to-Air Television Licensees and Free-to-Air Radio Licensees must comply with IMDA's requirements regarding the broadcast of Events of National Significance.

11.4.1 Designation of Events of National Significance That Must be Broadcast

IMDA may, by issuing a notice on the IMDA website or by any other means of publication as IMDA considers appropriate, designate events as Events of National Significance. IMDA will only designate events of particular national importance or significance as Events of National Significance. Where necessary, IMDA may from time to time revise the list of Events of National Significance. Upon such revision, IMDA shall provide written notification to Free-to-Air Television Licensees and Free-to-Air Radio Licensees of such revised list.

11.4.1.1 Coverage Requirements

All Free-to-Air Television Licensees and Free-to-Air Radio Licensees must broadcast Events of National Significance, including either or both “live” and “delayed” broadcasts, as IMDA considers appropriate. IMDA may:

- (a) exempt certain Free-to-Air Television Licensees or Free-to-Air Radio Licensees from the duty to broadcast one or more Events of National Significance;
- (b) permit some or all Free-to-Air Television Licensees or Free-to-Air Radio Licensees to broadcast only portions of one or more Events of National Significance; or
- (c) adopt other appropriate requirements as IMDA, in its discretion, considers necessary.

11.4.2 Selection of Lead Broadcaster Where Multiple “Feeds” are not Feasible

- (a) In certain cases, IMDA may determine that it is not technically or operationally feasible, or is otherwise undesirable in IMDA’s opinion, for more than one person to locate cameras and other equipment at the site of an Event of National Significance.
- (b) In such situations, IMDA will select a Lead Broadcaster who will be given the right to locate cameras and other equipment at the site of the Event of National Significance. In such situations, the Lead Broadcaster will be required to make the “feed” available to all Free-to-Air Television Licensees and Free-to-Air Radio Licensees obligated to broadcast the Event of National Significance, and any other person as IMDA may specify as being entitled to obtain access to the “feed” to the Event of National Significance, in accordance with this Code.

11.4.2.1 Use of Competitive Tender, Where Feasible

If IMDA determines that more than one person is capable of operating as the Lead Broadcaster for one or more Events of National Significance, IMDA may issue a competitive tender. IMDA may conduct an “open tender” in which it will allow any interested person to submit a proposal, or may invite specific persons to submit proposals. IMDA may, at its discretion, include minimum terms that any tender must satisfy. In evaluating any responses, IMDA will consider:

- (a) the price, if any, that the person would charge IMDA or any other person commissioning the coverage to provide the service;
- (b) the prices, if any, that the person would charge Free-to-Air Television Licensees, Free-to-Air Radio Licensees, and any other person whom IMDA may direct as being entitled to access the “feed”;
- (c) the person’s experience;

- (d) the technical and operational feasibility of the person's proposal; and
- (e) any other relevant factor.

11.4.2.2 Appointment of a Lead Broadcaster

If IMDA determines that only one person is capable of operating as the Lead Broadcaster, or that the use of a competitive tender would not be feasible or desirable, IMDA will appoint a person as the Lead Broadcaster without conducting a competitive tender.

11.4.3 Duty of the Lead Broadcaster to Co-operate

The Lead Broadcaster has a duty to co-operate with all Free-to-Air Television Licensees and Free-to-Air Radio Licensees that are obligated to broadcast any Event of National Significance, and any other person as IMDA may direct as being entitled to obtain the "feed" to that Event of National Significance.

11.4.3.1 Duty to Share the "Feed" and Requirements Imposed on the Lead Broadcaster, and the Person Receiving the "Feed" from the Lead Broadcaster, Including Compensation

- (a) The Lead Broadcaster must make the "feed" available to all Free-to-Air Television Licensees and Free-to-Air Radio Licensees that are obligated to broadcast the Event of National Significance, and any other person as IMDA may direct as being entitled to obtain the "feed" to the Event of National Significance.
- (b) IMDA may also direct, on a case-by-case basis, the prices, terms and conditions on which the Lead Broadcaster must make the "feed" available.
- (c) Additionally, the following requirements are imposed on the Lead Broadcaster:
 - (i) the "feed" must be of the same technical quality as the "feed" that the Lead Broadcaster provides to itself or its Affiliates;
 - (ii) the Lead Broadcaster must attempt, in good faith, to satisfy any reasonable technical or operational specification requested by any Free-to-Air Television Licensee, Free-to-Air Radio Licensee or any other person as IMDA may direct as being entitled to receive the "feed"; and
 - (iii) the Lead Broadcaster may not impose any unreasonable restrictions on the ability of a Free-to-Air Television Licensee, Free-to-Air Radio Licensee or any other person as IMDA may direct as being entitled to re-broadcast all or part of the "feed".
- (d) The following requirements are imposed on the party receiving the "feed" from the Lead Broadcaster:
 - (i) the Free-to-Air Television Licensee, Free-to-Air Radio Licensee or such other person as IMDA may direct as being entitled to receive the "feed" has an obligation to compensate the Lead Broadcaster for reasonable costs incurred in providing the "feed" to the said Free-to-Air Television Licensee, Free-to-Air Radio Licensee or other person which are not otherwise compensated; and
 - (ii) the Free-to-Air Television Licensee, Free-to-Air Radio Licensee or such other person as IMDA may direct as being entitled to receive the

“feed” must identify the source of the “feed” in a reasonable and unobtrusive manner.

11.4.3.1.1 Duty on Both Persons to Negotiate in Good Faith

- (a) Unless the prices, terms and conditions on which the Lead Broadcaster will provide the “feed” have been established by IMDA in its acceptance of a competitive tender, the Lead Broadcaster and the Free-to-Air Television Licensee, Free-to-Air Radio Licensee or such other person as IMDA may direct as being entitled to receive the “feed” will have a duty to negotiate in good faith in order to reach an agreement regarding the prices, terms and conditions on which the Lead Broadcaster will provide the “feed” to the said Free-to-Air Television Licensee, Free-to-Air Radio Licensee or other person.
- (b) Where feasible, the relevant persons should initiate such negotiations at least 270 days prior to the date of the Event of National Significance. A copy of any agreement reached pursuant to this Section (if any) must be submitted to IMDA within 45 days after its execution by the relevant persons.

11.4.3.1.2 Confirmation by the Lead Broadcaster of Acceptance of Prices, Terms and Conditions

The Lead Broadcaster must provide confirmation to IMDA and to the Free-to-Air Television Licensee, Free-to-Air Radio Licensee or such other person as IMDA may direct as being entitled to receive the “feed” with whom negotiations have taken place, as to whether the prices, terms and conditions negotiated with the said Free-to-Air Television Licensee, Free-to-Air Radio Licensee or other person and upon which the Lead Broadcaster will provide the “feed” are acceptable, at least 90 days prior to the date of the Event of National Significance.

11.4.3.1.3 Conciliation/Dispute Resolution

Pursuant to the requirement contained in Sub-section 11.4.3.1.2, in any case in which the Lead Broadcaster confirms that the prices, terms and conditions on which the Lead Broadcaster will provide the said “feed” to any Free-to-Air Television Licensee, Free-to-Air Radio Licensee or other person as IMDA may direct as being entitled to receive the “feed” are unacceptable and therefore an agreement cannot be reached, the relevant persons may jointly request IMDA to provide conciliation services pursuant to Sub-section 12.4 of this Code. The Free-to-Air Television Licensee, Free-to-Air Radio Licensee or such other person as IMDA may direct as being entitled to receive the “feed” may also request IMDA to initiate a Dispute Resolution pursuant to Section 12.5 of this Code. In any Dispute Resolution, IMDA will apply the pricing principles as specified in Appendix 4 of this Code.

11.5 Public Access to Specified Programmes

11.5.1 Restriction on Acquisition of Certain Programme Rights by Subscription Television Licensees (“Anti-Siphoning”)

IMDA will provide all Free-to-Air Television Licensees and Subscription Television Licensees with a list of programmes in respect of which Subscription Television Licensees are restricted from obtaining certain exclusive rights. IMDA will update this list through the use of a notice as and when required. The notice will classify the programmes into the following two categories:

11.5.1.1 Category A Programmes: Programmes in Which a Subscription Television Licensee May Not Obtain for Its Own Use Any Exclusive Broadcast Right

Category A will consist of programmes in respect of which a Subscription Television Licensee may not obtain for its own use any exclusive right to broadcast the

programme, or any part thereof, whether including either or both “live” and “delayed” broadcasts, as IMDA considers appropriate.

11.5.1.2 Category B Programmes: Programmes in Which a Subscription Television Licensee May Not Obtain for Its Own Use Exclusive Rights to Any Delayed Broadcast Package

- (a) Category B will consist of programmes in respect of which a Subscription Television Licensee may not obtain for its own use the exclusive right to broadcast any package that the rights holder may offer that allows for the “delayed” broadcast of all or part of the programme.
- (b) When a programme is included in Category B, the Subscription Television Licensee is free to obtain the exclusive right to broadcast the programme “live” or the non-exclusive rights to any “delayed” broadcast package that the rights holder may offer or both.

11.5.1.3 Criteria for Imposing Anti-Siphoning Restrictions

The objective of imposing anti-siphoning restrictions is to increase the opportunities for viewers in Singapore to gain access to certain programmes. In determining whether to restrict Subscription Television Licensees from obtaining rights in certain programming, IMDA will consider all relevant issues which include, but are not limited to:

- (a) whether imposing the proposed restrictions will increase the likelihood that viewers in Singapore will be able to access the programming over free-to-air television;
- (b) whether viewers in Singapore have a reasonable expectation of being able to access the programme over free-to-air television;
- (c) whether a significant portion of the viewers in Singapore would be likely to watch the programme if it was made available on free-to-air television;
- (d) whether the programme involves major international sporting events, international sporting events in which a Singapore team or personality is participating, or significant local sporting events; and
- (e) the extent, if any, to which restricting the ability of Subscription Television Licensees from obtaining certain exclusive rights would be likely to adversely affect the ability of Subscription Television Licensees to provide a commercially viable service.

11.5.1.4 Procedures for Designating Additional Programmes or Removing Designation

Any Free-to-Air Television Licensee may submit a petition to IMDA requesting that additional programmes be added to the list of programmes in which Subscription Television Licensees are restricted from obtaining certain exclusive rights. Similarly, any Subscription Television Licensee may file a petition with IMDA requesting that an event be removed from the list of programmes in which Subscription Television Licensees are restricted from obtaining certain exclusive rights. Any petition should discuss the criteria specified in Sub-section 11.5.1.3 of this Code. If appropriate, IMDA will seek industry comments and will generally make a determination within 90 days of receiving a request.

11.5.2 Prohibition on “Hoarding” of Listed Programmes

11.5.2.1 Obligation of Free-to-Air Television Licensees with Exclusive Rights

A Free-to-Air Television Licensee that obtains any exclusive broadcast right in connection with a programme classified as a Category A Programme or Category B Programme must broadcast a reasonable portion of the programme on its service. IMDA will conclude that a Free-to-Air Television Licensee has failed to broadcast a reasonable portion of the programme:

- (a) if the Free-to-Air Television Licensee fails to broadcast a substantial portion of the programme, including “live” excerpts, for which it purchased the exclusive broadcast rights without a reasonable business justification; and
- (b) if the Free-to-Air Television Licensee had shown a greater portion of the programme, a significant number of viewers would have been likely to watch the programme.

11.5.2.2 Duty to Offer Unused Rights to Other Holders of Television Licences at Cost

- (a) A Free-to-Air Television Licensee that has obtained any exclusive broadcast right in connection with a programme classified as a Category A Programme or Category B Programme is obliged to provide schedules that will resemble the final schedule as closely as possible for the broadcast of Category A Programmes or Category B Programmes to all other Free-to-Air Television Licensees and all Subscription Television Licensees, as the case may be, as soon as feasible and, where possible, at least four months prior to the scheduled broadcast of each Category A Programme or Category B Programme.
- (b) Where a Free-to-Air Television Licensee will not be able to broadcast a reasonable portion of the Category A Programme or Category B Programme on its service in accordance with Sub-section 11.5.2.1 of this Code, to the extent permitted by its agreement with the rights holder, the Free-to-Air Television Licensee must make the exclusive broadcast right available to all other Free-to-Air Television Licensees:
 - (i) as soon as feasible and, where possible, at least four months prior to the time the programme is to be broadcast; and
 - (ii) at a reasonable price that is no greater than the Free-to-Air Television Licensee’s actual cost, or the portion of that Free-to-Air Television Licensee’s total programme acquisition costs reasonably attributable to the programme being sub-licensed.
- (c) If no other Free-to-Air Television Licensee agrees to acquire the rights on these terms within three weeks of the offer, the Free-to-Air Television Licensee must offer to make the rights to broadcast the programme available, on similar terms specified above, to any Subscription Television Licensee.
- (d) The Free-to-Air Television Licensee or any person negotiating on its behalf must use its best efforts to limit the extent to which any licence or licences with any rights holder restricts the ability of the Free-to-Air Television Licensee to comply with the requirements contained in Sub-section 11.5.2 of this Code.

11.5.2.3 Duty to Negotiate in Good Faith

With reference to Sub-section 11.5.2.2 of this Code, the Free-to-Air Television Licensee that has obtained an exclusive broadcast right over a Category A Programme or Category B Programme and the other Free-to-Air Television Licensee or

Subscription Television Licensee, as the case may be, have a duty to negotiate in good faith in order to reach an agreement on the prices, terms and conditions for acquiring the rights to broadcast the subject programme.

11.6 Obligation to Cross-Carry Qualified Content

Every Supplying Qualified Licensee and every Receiving Qualified Licensee must comply with IMDA's requirement to cross-carry Qualified Content.

11.6.1 Duties of Supplying Qualified Licensee

- (a) A Supplying Qualified Licensee must, from and including 1st August 2011, make available all its Qualified Content for transmission and reception on all Relevant Platforms of the nationwide Subscription Television Service of every Receiving Qualified Licensee. For the avoidance of doubt, a Supplying Qualified Licensee must comply with the requirements contained in this Sub-section 11.6.1(a) in respect of Qualified Content under Sub-section 11.3(f)(i)(B) of this Code, regardless of whether the Supplying Qualified Licensee, after having acquired or otherwise obtained such Qualified Content, transmits such Qualified Content on the Relevant Platforms of the Supplying Qualified Licensee's Subscription Television Service or otherwise (including, but not limited to where part of such Qualified Content is transmitted on an 'over-the-top' platform of the Supplying Qualified Licensee, or is not transmitted at all).
- (b) A Supplying Qualified Licensee must ensure:
 - (i) that it has the right to broadcast all its Qualified Content on every Relevant Platform of every Receiving Qualified Licensee for the purpose of enabling the cross-carriage of the Qualified Content on such Relevant Platforms; and
 - (ii) that it can so broadcast all its Qualified Content without violating or infringing any intellectual property rights owned by any of the persons from whom it acquired or otherwise obtained the Qualified Content.
- (c) The Supplying Qualified Licensee:
 - (i) must make its Qualified Content available to Receiving Qualified Licensees:
 - (A) in its entirety and in an unmodified and unedited form;
 - (B) at the same time as the Supplying Qualified Licensee makes the Qualified Content available to its Subscribers; and
 - (C) at a level of quality that is not inferior to the level of quality at which the Qualified Content is made available by the Supplying Qualified Licensee to its Subscribers; and
 - (ii) at all times, must not perform any act, or omit to perform any act, where the performance of or omission to perform the act may diminish, impair or otherwise degrade the viewing or customer service experience of any Subscriber accessing the Supplying Qualified Licensee's Qualified Content through any of the Receiving Qualified Licensee's Relevant Platforms.
- (d) A Supplying Qualified Licensee must not bundle any channel or programming content together with any channel or programming content referred to in Sub-section 11.3(f)(i) of this Code without first having acquired all relevant rights

from the channel or content provider of the first mentioned channel or programming content for the cross-carriage of the same.

- (e) A Supplying Qualified Licensee must:
 - (i) notify IMDA of its Qualified Content in such form and manner as specified by IMDA within five days after a channel or programming content, or bundled channel or bundled programming content, becomes Qualified Content (whether in linear or non-linear format);
 - (ii) notify every Receiving Qualified Licensee of its Qualified Content that is in linear format within the following periods (except that the Supplying Qualified Licensee may, in any particular case, agree with a Receiving Qualified Licensee to a shorter period):
 - (A) where the Receiving Qualified Licensee has yet to receive any Qualified Content from the Supplying Qualified Licensee, no later than 80 days, or, where the Receiving Qualified Licensee needs to acquire equipment to effect the cross-carriage, 120 days, prior to the date that the Qualified Content will be first transmitted by the Supplying Qualified Licensee to Subscribers on its own platform; and
 - (B) where the Receiving Qualified Licensee has previously received Qualified Content from the Supplying Qualified Licensee, no later than 30 days, or, where the Receiving Qualified Licensee needs to acquire equipment to effect the cross-carriage, 60 days, prior to the date that the Qualified Content will be first transmitted by the Supplying Qualified Licensee to Subscribers on its own platform; and
 - (iii) notify every Receiving Qualified Licensee of its Qualified Content that is in non-linear format within the following periods (except that the Supplying Qualified Licensee may, in any particular case, agree with a Receiving Qualified Licensee to a shorter period):
 - (A) where the Receiving Qualified Licensee has yet to receive any Qualified Content from the Supplying Qualified Licensee, no later than 120 days prior to the date that the Qualified Content will be first transmitted by the Supplying Qualified Licensee to Subscribers on its own platform; and
 - (B) where the Receiving Qualified Licensee has previously received Qualified Content from the Supplying Qualified Licensee, no later than 30 days, or, where the Receiving Qualified Licensee needs to acquire equipment to effect the cross-carriage, 60 days, prior to the date that the Qualified Content will be first transmitted by the Supplying Qualified Licensee to Subscribers on its own platform.
- (f) A Supplying Qualified Licensee must publish and maintain a list of its Qualified Content on its website, and on its viewing guide.
- (g) A Supplying Qualified Licensee must:
 - (i) to the extent the Qualified Content comprises any channel or programming content that is produced or commissioned by the Supplying Qualified Licensee, allow every Receiving Qualified Licensee to publish, on the Receiving Qualified Licensee's website and viewing guide, a list of such Qualified Content of the Supplying

- Qualified Licensee carried on the Receiving Qualified Licensee's Relevant Platforms; and
- (ii) to the extent the Qualified Content comprises any channel or programming content that is acquired or otherwise obtained by the Supplying Qualified Licensee, negotiate with the person from whom the Qualified Content was acquired or otherwise obtained to allow every Receiving Qualified Licensee to publish, on the Receiving Qualified Licensee's website and viewing guide, a list of such Qualified Content of the Supplying Qualified Licensee carried on the Receiving Qualified Licensee's Relevant Platforms, for the limited purpose of informing consumers of the Qualified Content available on the Receiving Qualified Licensees' platforms.
- (h) A Supplying Qualified Licensee must:
- (i) enter into a customer service arrangement with and provide Qualified Content to Subscribers accessing such content through any Relevant Platform of a Receiving Qualified Licensee, at prices (including all applicable discounts and promotions), terms and conditions that are the same as the prices, terms and conditions at which the Supplying Qualified Licensee provides such content to Subscribers on its own platform, and not discriminate in any manner in favour of Subscribers viewing Qualified Content on its own platform;
 - (ii) ensure that a Subscriber is able to access the Qualified Content through a Receiving Qualified Licensee's Relevant Platform within five days of receipt of such Subscriber's request; and
 - (iii) in respect of any feedback or complaint received from a Subscriber in respect of any Qualified Content of the Supplying Qualified Licensee, deal with the feedback or complaint on a non-discriminatory basis and as if it were feedback or complaint received by the Supplying Qualified Licensee in respect of any channel or programming content transmitted directly by it to the Subscriber.
- (i) Unless it is able to agree with any Receiving Qualified Licensee otherwise, a Supplying Qualified Licensee shall bear:
- (i) its own cost in complying with its obligation to make its Qualified Content available to the Receiving Qualified Licensee; and
 - (ii) all incremental costs directly incurred by the Receiving Qualified Licensee in providing its Subscribers with access to the Supplying Qualified Licensee's Qualified Content.
- (j) Where any Qualified Content, being cross-carried in accordance with the obligations of this Code, ceases to be Qualified Content, the Supplying Qualified Licensee must provide IMDA, every Receiving Qualified Licensee and every affected Subscriber, with notice that the channel or programming content will no longer be Qualified Content no later than 21 days prior to it ceasing to be Qualified Content.

11.6.2 Designation of Receiving Qualified Licensee

- (a) IMDA may designate any Regulated Person to be a Receiving Qualified Licensee if the Regulated Person:
- (i) is licensed to provide a nationwide Subscription Television Service on any Relevant Platform; and

- (ii) has or had, at any point in time, 10,000 or more Subscribers on any of its Relevant Platforms.
- (b) IMDA will publish a list of Receiving Qualified Licensees on its website.

11.6.3 Duties of Receiving Qualified Licensee

- (a) A Receiving Qualified Licensee must, from and including 1st August 2011, carry all Qualified Content made available by Supplying Qualified Licensees on all Relevant Platforms of its nationwide Subscription Television Service.
- (b) A Receiving Qualified Licensee must ensure that it does not, in receiving and transmitting Qualified Content of a Supplying Qualified Licensee, violate or infringe any intellectual property rights that are owned:
 - (i) to the extent the Qualified Content comprises any channel or programming content produced or commissioned by the Supplying Qualified Licensee, by the Supplying Qualified Licensee; and
 - (ii) to the extent the Qualified Content comprises any channel or programming content acquired or otherwise obtained by the Supplying Qualified Licensee, by the person from whom the Supplying Qualified Licensee acquired or otherwise obtained the Qualified Content.
- (c) A Receiving Qualified Licensee:
 - (i) must carry Qualified Content on all its Relevant Platforms:
 - (A) in its entirety and in an unmodified and unedited form;
 - (B) at the same time as the Supplying Qualified Licensee makes the Qualified Content available to its Subscribers, to the extent technically feasible for the Receiving Qualified Licensee; and
 - (C) at a level of quality that is not inferior to the level of quality at which the Qualified Content is made available to it by the Supplying Qualified Licensee, to the extent technically feasible for the Receiving Qualified Licensee; and
 - (ii) at all times, must not perform any act, or omit to perform any act, where the performance of or omission to perform the act may diminish, impair or otherwise degrade the viewing experience of any Subscriber accessing the Supplying Qualified Licensee's Qualified Content through any of the Receiving Qualified Licensee's Relevant Platforms.
- (d) A Receiving Qualified Licensee must ensure that it has a content protection system for each of its Relevant Platforms that covers the matters specified in Part III of Appendix 3 of this Code which will reasonably prevent the security of all Qualified Content made available to it by any Supplying Qualified Licensee from being compromised.
- (e) A Receiving Qualified Licensee must:
 - (i) in the case of Qualified Content referred to in Sub-section 11.6.1(g)(i) of this Code, publish on its website and viewing guide, a list of all such Qualified Content that is carried on all the Receiving Qualified Licensee's Relevant Platforms; and

- (ii) in the case of Qualified Content referred to in Sub-section 11.6.1(g)(ii) of this Code, where the consent of the person from whom the Supplying Qualified Licensee acquired or otherwise obtained the Qualified Content has been obtained pursuant to that paragraph, publish on its website and viewing guide, a list of such Qualified Content carried on each of the Receiving Qualified Licensee's Relevant Platforms,

for the limited purpose of informing consumers of the Qualified Content available on the Receiving Qualified Licensee's Relevant Platforms.

- (f) A Receiving Qualified Licensee must, upon being notified by a Supplying Qualified Licensee of any feedback or complaint received from a Subscriber in respect of any Qualified Content that the Supplying Qualified Licensee has made available to the Receiving Qualified Licensee, deal with the feedback or complaint on a non-discriminatory basis and as if it were feedback or complaint received by the Receiving Qualified Licensee in respect of any of its own channels or programming content transmitted by it to its Subscriber.
- (g) A Receiving Qualified Licensee must not impose any form of charge on any Subscriber who subscribes to any Qualified Content made available to the Receiving Qualified Licensee by a Supplying Qualified Licensee, in respect of such Qualified Content.
- (h) Where a Subscriber who subscribes to any Qualified Content made available to the Receiving Qualified Licensee by a Supplying Qualified Licensee informs the Receiving Qualified Licensee that it wishes to terminate its subscription to the Qualified Content, the Receiving Qualified Licensee must inform the Subscriber that the Subscriber is to terminate such subscription directly with the Supplying Qualified Licensee.

11.6.4 Agreements for Cross-Carriage of Content and Conciliation/Dispute Resolution

- (a) Nothing in Sub-section 11.6.1 or Sub-section 11.6.3 of this Code prevents a Supplying Qualified Licensee and a Receiving Qualified Licensee from entering into a mutually acceptable cross-carriage agreement in connection with their respective obligations under those Sub-sections, provided that the terms of the agreement are not inconsistent with any such obligations. For this purpose, the terms of the agreement and any such obligations are inconsistent if:
 - (i) it is not possible to comply with both the terms and the obligations; or
 - (ii) the terms and the obligations require the same, or substantially the same, action to be taken at different times or in a different way.
- (b) Where a Supplying Qualified Licensee and a Receiving Qualified Licensee are unable to reach a mutually acceptable cross-carriage agreement referred to in Sub-section 11.6.4(a) of this Code, both parties may jointly request IMDA to provide conciliation services pursuant to Sub-section 12.4 of this Code. The Supplying Qualified Licensee or the Receiving Qualified Licensee may also request IMDA to initiate a Dispute Resolution pursuant to Sub-section 12.5 of this Code.
- (c) In any Dispute Resolution involving the computation of all incremental costs to be borne by the Supplying Qualified Licensee under Sub-section 11.6.1(i)(ii) of this Code, IMDA may adopt the pricing principles specified in Appendix 4 of this Code for the purpose of resolving the dispute.

- (d) Notwithstanding whether the Supplying Qualified Licensee and the Receiving Qualified Licensee are unable to reach a mutually acceptable cross-carriage agreement, and whether or not conciliation services are being provided or a Dispute Resolution has been initiated, the Supplying Qualified Licensee and the Receiving Qualified Licensee must continue to comply with their respective obligations under Sub-sections 11.6.1 and 11.6.3 of this Code.

11.6.5 Applications for Exemption from Obligation under Sub-section 11.6

- (a) A Regulated Person may apply to IMDA to seek exemption from its obligation to make available all its Qualified Content for transmission and reception on every Receiving Qualified Licensee's Relevant Platform, or to carry on its Relevant Platform all Qualified Content made available by Supplying Qualified Licensees, as the case may be. In seeking any such exemption, the Regulated Person must clearly establish to IMDA's satisfaction one or more of the following circumstances:
 - (i) an exemption from the obligations under Sub-section 11.6 of the Code will benefit the public and the media industry (for example, including but not limited to where such exemption will enhance consumer welfare or promote innovation);
 - (ii) technical constraint prevents or restricts a party from fulfilling its obligations under Sub-section 11.6 of this Code and it is not possible to remove such constraint without that party incurring serious and irreparable harm;
 - (iii) in relation to any request for exemption from Sub-section 11.6.1(a) of this Code by a Supplying Qualified Licensee, that the channel or content provider does not have the relevant broadcast rights for Singapore and other neighbouring countries; and
 - (iv) in relation to any request for exemption from Sub-section 11.6.3(a) of this Code by a Receiving Qualified Licensee, that the Supplying Qualified Licensee has failed to comply with Sub-section 11.6.1(b) of this Code.
- (b) After receiving a request for exemption, IMDA will notify the Regulated Person making the request for exemption whether it must provide additional information before the request can be accepted. IMDA reserves the right to provide an opportunity for public comment before issuing its decision to grant or deny the request. IMDA may grant the request in full or in part, and subject to any appropriate condition that IMDA may in its discretion impose.
- (c) Where a Regulated Person provides proprietary or commercially sensitive information in the context of a request for exemption under Sub-section 11.6.5(a) of this Code, the Regulated Person making the request for exemption should enclose such information in a separate appendix and request for confidential treatment in respect of the information, pursuant to Sub-section 12.9 of this Code.
- (d) IMDA reserves the right to publish any decision made in respect of an exemption request.
- (e) This paragraph is without prejudice to the generality of Sub-section 1.7 of this Code with regard to the granting of any exemption by IMDA from any particular obligation imposed on a Regulated Person under Sub-section 11.6 of this Code, including the granting of an exemption for a period of time from the obligation to make available Qualified Content for transmission and reception, or to carry Qualified Content made available, as the case may be.

11.7 Enforcement Measures

In any case where a Lead Broadcaster, a Free-to-Air Television Licensee, a Free-to-Air Radio Licensee, a Subscription Television Licensee, a Supplying Qualified Licensee or a Receiving Qualified Licensee contravenes any provision of this Code or a direction issued by IMDA pursuant to Section 11 of this Code, IMDA may take such enforcement actions as it considers appropriate pursuant to Section 66(2) of the IMDA Act.

12. ADMINISTRATIVE AND ENFORCEMENT PROCEDURES

12.1 Introduction

This Section describes the administrative and enforcement procedures that IMDA will use to implement this Code.

12.2 Application

All provisions in this Section apply to all:

- (a) Telecommunication Licensees;
- (b) Regulated Persons; and
- (c) Persons Controlling Media Resources.

Sub-sections 12.8 through 12.10.4 apply to an Acquiring Party (whether licensed or non-licensed) that submits a Request or seeks to engage in a transaction that results in a Consolidation with a Designated Telecommunication Licensee, Designated Business Trust, Designated Trust, or Regulated Person under Section 10 of this Code.

12.3 Request for Informal Guidance

- (a) All persons are expected to make reasonable efforts to understand their rights and obligations under this Code and, where necessary, seek relevant professional advice. However, in any case in which any person whose commercial interest could be directly and immediately affected, and who has a genuine and substantial question regarding the application of any provision of this Code to its own specific factual situation, the person may ask IMDA to provide informal guidance on the matter (“**Informal Guidance**”).
- (b) Such Informal Guidance can include inquiries as to whether a particular course of action would contravene this Code or to IMDA’s likely response to an application or request made pursuant to this Code.

12.3.1 Procedures for Requesting Informal Guidance

- (a) A person who seeks Informal Guidance shall submit a written request to IMDA that:
 - (i) states that the person has a genuine and substantial question regarding the application of a provision of this Code to its specific factual situation;
 - (ii) demonstrates that the person’s commercial interest would be directly and immediately affected by resolution of the question;
 - (iii) indicates the specific issues on which the person seeks guidance; and
 - (iv) contains all relevant available information.
- (b) IMDA will generally treat all information submitted as confidential. In addition, IMDA will generally not disclose the fact that the person has requested Informal Guidance nor any Informal Guidance it provides unless the person receiving the Informal Guidance chooses to publicly disclose this information. However, IMDA may, with a view to better consider the request, consult with other persons. Where necessary, IMDA may require the person seeking Informal Guidance to provide a non-confidential version of its written request to IMDA within specified time periods as IMDA considers appropriate. Persons seeking

Informal Guidance may also wish to submit a non-confidential version of its written request on its own initiative when submitting the written request for Informal Guidance to IMDA.

12.3.2 Guidance at the Discretion of IMDA

- (a) IMDA will provide Informal Guidance at its discretion. IMDA will not provide Informal Guidance in response to any request if the pre-conditions specified in Sub-section 12.3.1 of this Code have not been met. In addition, IMDA will not provide Informal Guidance in any situation in which the person seeking the Informal Guidance cannot provide, or has not provided, sufficient information for IMDA to make an adequate assessment or in any case in which IMDA concludes that the request is frivolous.
- (b) IMDA may find a request to be frivolous in situations including, but not limited to the following:
 - (i) the request relates to a hypothetical or unlikely situation;
 - (ii) the person making the request does not have any commercial interest that would be affected by the Informal Guidance;
 - (iii) the request relates to a matter in which, through reasonable diligence, the person making the request could ascertain the answer; or
 - (iv) the request does not appear to have been made in good faith in order to resolve a genuine uncertainty.

12.3.3 Informal Guidance Does Not Bind IMDA

The provision of Informal Guidance does not preclude IMDA from subsequently taking actions that are inconsistent with the views contained in the Informal Guidance. This is especially likely, but not limited to instances, where:

- (a) the request for Informal Guidance does not disclose all material facts;
- (b) there are changes to the applicable law or policy after the date on which IMDA provides the Informal Guidance; or
- (c) there are changes to market conditions or other relevant factors after the date on which IMDA provides the Informal Guidance.

12.4 Conciliation

12.4.1 Request for Conciliation

Persons may jointly request IMDA to provide conciliation services to assist them in resolving any dispute, including disputes arising out of the following events:

- (a) the negotiation of a voluntary Individualised Interconnection Agreement, pursuant to Sub-section 6.4.1.7 of this Code;
- (b) the implementation of an Interconnection Agreement by Telecommunication Licensees pursuant to Sub-section 6.6 of this Code;
- (c) a failure to reach an agreement pursuant to a request for a Telecommunication Licensee or Person Controlling Media Resources to share the Telecommunication Infrastructure or Media Resource (as the case may be), pursuant to Sub-section 7.4.1 of this Code;

- (d) a failure to reach an agreement regarding the prices, terms and conditions upon which the Lead Broadcaster will provide access to the “feed” of an event designated as an Event of National Significance pursuant to Sub-section 11.4.3.1.3 of this Code;
- (e) any dispute arising out of the Free-to-Air Television Licensees’ and Subscription Television Licensees’ obligations pursuant to the “anti-siphoning” and “anti-hoarding” provisions specified in Sub-section 11.5 of this Code; or
- (f) a failure to reach a mutually acceptable cross-carriage agreement referred to in Sub-section 11.6.4 of this Code.

12.4.2 Procedure for Requesting Conciliation

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

12.4.3 Role of IMDA in Conciliation

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

12.5 Dispute Resolution

- (a) While all parties are encouraged to resolve disputes through good-faith commercial negotiations, IMDA will provide dispute resolution services at its discretion in connection with the following disputes:
 - (i) disputes between Telecommunication Licensees arising from the implementation of an Interconnection Agreement entered into with a Dominant Telecommunication Licensee;
 - (ii) disputes arising from a Sharing Agreement entered into via IMDA’s dispute resolution for the sharing of Telecommunication Infrastructure or Media Resource that is owned or controlled by Telecommunication Licensees or Persons Controlling Media Resources (as the case may be);
 - (iii) disputes arising from a failure to reach an agreement regarding the prices, terms and conditions upon which the Lead Broadcaster will provide access to the “feed” of an event designated as an Event of National Significance pursuant to Sub-section 11.4.3.1.3 of this Code;
 - (iv) disputes arising out of the Free-to-Air Television Licensees’ and Subscription Television Licensees’ obligations pursuant to the “anti-siphoning” and “anti-hoarding” provisions specified in Sub-section 11.5 of this Code; or
 - (v) disputes arising from a failure to reach a mutually acceptable cross-carriage agreement referred to in Sub-section 11.6.4 of this Code.
- (b) Notwithstanding the above, IMDA will resolve upon request the following disputes:
 - (i) pursuant to Sub-section 6.4.3 of this Code, disputes between Telecommunication Licensees arising from a failure to voluntarily reach an Individualised Interconnection Agreement with a Dominant Telecommunication Licensee; and

- (ii) pursuant to Sub-section 7.6.2 of this Code, disputes arising from a failure to voluntarily reach a Sharing Agreement for the sharing of Telecommunication Infrastructure or Media Resource that is owned or controlled by Telecommunication Licensees or Persons Controlling Media Resources (as the case may be) that IMDA has directed or designated to be shared.
- (c) Except as otherwise specified, IMDA will not intervene in other disputes relating to matters provided for in this Code. Instead, persons 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 IMDA to resolve disputes, the process for submitting petitions and responses to IMDA by the parties in dispute and the standards that IMDA will apply to resolve disputes, are specified in the Dispute Resolution Guidelines issued by IMDA.

12.6 Enforcement Action for Contravention of this Code

- (a) Enforcement actions for contravention of this Code can be brought by IMDA, either at the request of a private party pursuant to Sub-section 12.6.1 of this Code or on its own motion pursuant to Sub-section 12.6.2 of this Code. IMDA has complete discretion to determine whether or not it will initiate any investigation and as to the time and manner in which IMDA will conduct such investigation and any related or consequential enforcement action. Whilst the enforcement process is designed to provide a significant deterrent to impermissible conduct, any enforcement action taken by IMDA will be proportionate to the severity of the contravention.
- (b) In exercising its discretion, IMDA will consider:
 - (i) the seriousness of the alleged contravention;
 - (ii) the availability and verity of evidence to support the allegation; and
 - (iii) all other relevant factors.

12.6.1 Requests for Enforcement by a Private Party

Where any person has been injured, or is likely to be injured, as a direct result of the contravention of any provision of this Code by a Telecommunication Licensee, Regulated Person or Person Controlling Media Resources (as the case may be), such party who has been injured or is likely to be injured may submit a written request asking IMDA to take enforcement action (“**Request for Enforcement**”). Where IMDA receives two or more Requests for Enforcement against the same Telecommunication Licensee, Regulated Person or Person Controlling Media Resources (as the case may be), which arise out of the same action or course of action by that Telecommunication Licensee, Regulated Person or Person Controlling Media Resources (as the case may be), IMDA may consider the Requests for Enforcement in a single consolidated proceeding.

12.6.1.1 Submission of Written Request for Enforcement Action

- (a) Any person who requests IMDA to take enforcement action (“**Party Requesting Enforcement**”) must submit to IMDA a Request for Enforcement. The Request for Enforcement must cite the specific provisions of this Code that the Party Requesting Enforcement claims the Telecommunication Licensee, Regulated Person or Person Controlling Media Resources (as the case may

be) 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 Telecommunication Licensee, Regulated Person or Person Controlling Media Resources (as the case may be) against whom enforcement action is being sought.
- (b) IMDA may require the Party Requesting Enforcement to provide IMDA with a statutory declaration attesting to the facts that provide the basis for the Request for Enforcement within seven days from the date of IMDA's written request.

12.6.1.2 Non-Disclosure of Identity

The Party Requesting Enforcement may request for non-disclosure of its identity to the Telecommunication Licensee or Regulated Person being complained against and the public. IMDA will consider each request on a case-by-case basis, but will not unreasonably refuse such a request.

12.6.1.3 IMDA's Response to Enforcement Request

- (a) IMDA will seek to respond to the Party Requesting Enforcement with its decision as to whether IMDA accepts or declines the Request for Enforcement within 15 days from the date of IMDA's receipt of the Request for Enforcement.
- (b) Where IMDA determines that the Request for Enforcement raises novel or complex issues, IMDA may by written notification to the Party Requesting Enforcement, extend the review period by up to 30 days. The situations where IMDA 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 IMDA to consider an issue that IMDA 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 IMDA 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) IMDA 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 merit;
 - (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) IMDA determines that the Request for Enforcement does not satisfy the requirements specified in Sub-section 12.6.1.1 of this Code; or
 - (v) IMDA concludes that the exercise of its enforcement discretion would not be appropriate.
- (d) Where IMDA declines to take enforcement action, IMDA will notify the Party Requesting Enforcement and provide a written explanation.

12.6.1.4 Deferment of Consideration for Request for Enforcement

In an appropriate case, IMDA may defer its consideration of a Request for Enforcement. Where IMDA defers its consideration of a Request for Enforcement, IMDA will notify the Party Requesting Enforcement and provide a written explanation.

12.6.1.5 Notification of Enforcement Action

If IMDA accepts the Request for Enforcement, IMDA will issue a written notification to the Telecommunication Licensee, Regulated Person or Person Controlling Media Resources (as the case may be) in relation to which enforcement action is initiated (the “**Respondent**”). 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 Respondent has been alleged to contravene and reasonable details of the alleged facts constituting the contravention. IMDA will also provide to the Respondent a copy of the Request for Enforcement and all supporting documents submitted by the Party Requesting Enforcement unless, and to the extent that, IMDA has granted a request for the non-disclosure of the identity of the Party Requesting Enforcement pursuant to Sub-section 12.6.1.2 of this Code and/or an application by the Party Requesting Enforcement for confidential treatment of information pursuant to Sub-section 12.9 of this Code.

12.6.1.6 Opportunity to Respond

Where IMDA accepts the Request for Enforcement and issues a written notification to the Respondent, the Respondent will have 15 days from the date of IMDA’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 Respondent disputes the allegations of contravention. IMDA will provide a copy of the Response to the Party Requesting Enforcement unless, and to the extent that, IMDA has granted an application by the Respondent for treatment of confidential information pursuant to Sub-section 12.9 of the Code.

12.6.1.7 Opportunity for Further Reply

- (a) The Party Requesting Enforcement will have 15 days from the day on which IMDA provides the Response, to submit its further written reply to the Response.
- (b) Where the Party Requesting Enforcement submits a further reply, the Respondent will have 15 days from the day on which IMDA provides the further reply, to submit a final written reply to IMDA.
- (c) In both cases above, IMDA will provide a copy of the party's reply to the other party unless, and to the extent that, IMDA has granted a request for the non-disclosure of the identity of the Party Requesting Enforcement pursuant to Sub-section 12.6.1.2 of this Code and/or an application by the party submitting the reply for confidential treatment of information pursuant to Sub-section 12.9 of the Code.

12.6.1.8 Request for Extension of Time

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

12.6.1.9 Request for Further Information

After reviewing the information submitted by the Party Requesting Enforcement and the Respondent, IMDA may request any person to submit additional information at any time during the course of the enforcement proceedings pursuant to Sub-section 12.8 of the Code. IMDA may provide a copy of the response to the other party unless, and to the extent that, IMDA has granted an application by either party for confidential treatment of information pursuant to Sub-section 12.9 of this Code.

12.6.1.10 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 IMDA in writing of its request for withdrawal and provide reasons for its request (copied to the Respondent).
- (b) The party's decision to withdraw its Request for Enforcement does not preclude IMDA from taking enforcement action on its own initiative in the case where IMDA concludes that it is in the public interest to do so. In such a case, while IMDA will initiate a separate enforcement proceeding pursuant to Sub-section 12.6.2 of this Code, IMDA may continue to rely on the submissions made by the parties in the previous aborted enforcement proceeding.

12.6.1.11 Issuance of IMDA's Decision

- (a) IMDA will seek to issue its decision within 60 days of receiving all necessary information.
- (b) Where appropriate, IMDA may, by written notice to the parties before the expiry of the 60-day review period, extend the time by which IMDA will issue its decision. In such cases, IMDA will specify the number of days by which it is extending the review period.

12.6.2 Enforcement Action Initiated by IMDA

IMDA may commence enforcement action on its own initiative against a Respondent (which may be a Telecommunication Licensee or Regulated Person, as the case may be) that it believes has contravened this Code. IMDA will use the following procedures in any enforcement action initiated by IMDA:

12.6.2.1 Notification of Enforcement Action

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

12.6.2.2 Opportunity to Respond

- (a) The Respondent will have 15 days to respond in writing to IMDA's notification.
- (b) For each allegation which the Respondent disputes, the Respondent's response must contain a clear statement, supported by documents, affidavits, or other relevant materials, providing the basis on which the Respondent disputes the allegation.
- (c) Where the Respondent demonstrates good cause, IMDA may grant an extension of time of up to seven days for making its responses. Any request for an extension of time must be made in writing to IMDA at least three days before the expiration of the specified period for which the Respondent must submit its response. IMDA will seek to inform the Respondent of its decision within two days of the date of receipt of the request for extension.

12.6.2.3 Request for Additional Information

After reviewing the information submitted by the Respondent, IMDA may request any person to submit additional information at any time during the course of the enforcement proceedings pursuant to Sub-section 12.8 of this Code.

12.6.2.4 Issuance of IMDA's Decision

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

12.6.3 Interim Direction to Cease and Desist

At any time during an enforcement proceeding pursuant to Sub-sections 12.6.1 or 12.6.2 of this Code, IMDA may issue an interim direction to the Respondent to cease and desist from any specified conduct. In determining whether to issue such an interim direction, IMDA will consider whether:

- (a) there is prima facie evidence that the Respondent has contravened the provisions of this Code;

- (b) continuation of the Respondent's conduct is likely to cause serious harm to any person;
- (c) the potential anti-competitive harm from allowing the Respondent to continue its conduct outweighs the burden on the Respondent of ceasing the conduct; or
- (d) issuance of the interim direction is in the public interest.

12.6.4 Enforcement Measures

In the event that IMDA concludes that the Telecommunication Licensee, Regulated Person or Person Controlling Media Resources (as the case may be) has contravened, or is likely to (or again likely to) contravene, any provision of this Code, IMDA may take such enforcement measures as it considers appropriate, including but not limited to the following enforcement actions:

12.6.4.1 Warnings

IMDA may issue a warning to the Telecommunication Licensee, Regulated Person or Person Controlling Media Resources. The warning will contain a statement of IMDA's basis for concluding that the Telecommunication Licensee, Regulated Person or Person Controlling Media Resources is acting, has acted or will be acting in contravention of any provision of this Code, but will impose no further sanction.

12.6.4.2 Directions to Cease and Desist

Where appropriate, IMDA will direct the Telecommunication Licensee, Regulated Person or Person Controlling Media Resources to cease engaging in conduct that is, or if continued will constitute, a contravention of any provision of this Code.

12.6.4.3 Remedial Actions

Where appropriate, IMDA will direct the Telecommunication Licensee, Regulated Person or Person Controlling Media Resources to take specific remedial action.

12.6.4.4 Financial Penalties

- (a) Pursuant to Section 8(1) of the Telecommunications Act, or Section 66(3) of the IMDA Act, as the case may be, IMDA may impose financial penalties on a Telecommunication Licensee, Regulated Person or Person Controlling Media Resources that contravenes any provision of this Code.
- (b) In imposing financial penalties, IMDA 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 Telecommunication Licensee, Regulated Person or Person Controlling Media Resources acted wilfully, recklessly or in a grossly negligent manner;
 - (v) whether the Telecommunication Licensee, Regulated Person or Person Controlling Media Resources received or is likely to receive any gain, profit or gratification from the contravention;

- (vi) whether the Telecommunication Licensee, Regulated Person or Person Controlling Media Resources has a previous history of contraventions; and
 - (vii) whether the Telecommunication Licensee, Regulated Person or Person Controlling Media Resources made any effort to conceal the contravention.
- (c) In imposing financial penalties, IMDA 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 Telecommunication Licensee, Regulated Person or Person Controlling Media Resources took prompt action to correct the contravention;
 - (iv) whether the contravention was accidental; and
 - (v) whether the Telecommunication Licensee, Regulated Person or Person Controlling Media Resources voluntarily disclosed the contravention to IMDA and co-operated with IMDA in its investigation.

12.6.4.5 Suspension or Cancellation of the Relevant Licence

In serious cases, IMDA may cancel or suspend the relevant licence pursuant to Section 8 of the Telecommunications Act, or Section 12 of the Broadcasting Act, as the case may be.

12.6.5 Timeliness of Enforcement Action

- (a) The following time limits must be complied with in respect of every enforcement action:
- (i) In any case in which a party files a Request for Enforcement pursuant to Sub-section 12.6.1 of this Code, the party must do so within two years after the date of the occurrence of the action that constitutes the alleged contravention of this Code.
 - (ii) In any case in which IMDA initiates enforcement action on its own motion, IMDA will issue the written notification provided for in Sub-section 12.6.2.1 of this Code within two years after the date of the occurrence of the action that constitutes the alleged contravention of this Code.
- (b) In determining the date of the occurrence of the action that constitutes the alleged contravention of this Code, the following will apply:
- (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 Telecommunication Licensee, Regulated Person or Person Controlling Media Resources 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, IMDA may bring an enforcement action while the conduct is continuing or at the latest, within two years from the date on which the Telecommunication Licensee, Regulated Person or Person Controlling Media Resources ceases its conduct under the agreement.

12.7 Binding Effect of Initial Submissions

- (a) Any party to an enforcement or dispute resolution proceeding under this Code must in its initial submission to IMDA:
 - (i) in relation to a Request for Enforcement under Sub-section 12.6.1 of this Code, make all relevant allegations of contravention that the party is aware of at the time of the submission of the Request for Enforcement;
 - (ii) in relation to a Response to a Request for Enforcement under Sub-section 12.6.1.6 of this Code or a response under Sub-section 12.6.2.2 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 12.5 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) IMDA reserves the right to 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 not previously disclosed to dispute the allegations of contravention, which could have been disclosed or raised in its initial submission, and the party cannot demonstrate that it had good cause for failing to do so;
 - (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, which could have been raised in its initial submission, and the party cannot demonstrate that it had good cause for failing to do so;
 - (iii) contains information that could have been submitted in its initial submission; or
 - (iv) takes any position that is inconsistent with its initial submission.

12.8 Request for Information

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

must submit a statement in a form acceptable to IMDA, certifying that it has satisfied this obligation.

12.8.1 Request for Response to Specific Questions

IMDA may submit written questions to any person. To the extent that the person possesses (or through reasonable diligence can obtain) information that will enable it to respond, it must provide accurate and complete written answers.

12.8.2 Request for Reconsideration

- (a) Any person who believes that any information request is unnecessary, burdensome or overly broad may submit a written request to IMDA to reconsider or narrow the information request (“**Information Reconsideration Request**”).
- (b) The person should submit the Information Reconsideration Request to IMDA within 14 days of receiving the information request. The Information Reconsideration Request should specify the basis for the objection of the person and, where feasible, propose alternative means by which IMDA can obtain the information necessary to make any required determination.
- (c) In any case in which a person submits an Information Reconsideration Request, IMDA will deem any applicable review period to have stopped running on the day on which the Information Reconsideration Request was submitted to IMDA. The review period will resume on the day on which IMDA either grants or denies the Information Reconsideration Request, or the person agrees to submit the requested information.

12.8.3 Consultation with Other Interested Persons

In addition to obtaining information directly from the parties to a proceeding under this Code, IMDA may, where appropriate, conduct a consultation exercise to provide interested parties with an opportunity to comment on any proceeding. IMDA may use the following information gathering procedures:

12.8.3.1 Public Consultation

Where appropriate, IMDA will provide the public with an opportunity to comment on any proceeding (a “**Public Consultation**”).

12.8.3.2 Private Consultation

In those cases in which IMDA does not conduct a Public Consultation, it may nonetheless request or accept comments from individuals or entities where appropriate. IMDA does not assume any obligation to consider unsolicited comments, but may choose to do so where these are factually relevant and can be supported with evidence.

12.8.4 Failure to Comply with Information Requests

- (a) In any proceeding under this Code, if a person fails or refuses to submit information required by this Code or requested by IMDA within the timeframe specified, IMDA will base its decision on the information provided by any other party to the proceeding (if any) and on the best information available to IMDA from whatever source derived.
- (b) Where a person requesting IMDA to take a particular action fails to respond accurately and completely to IMDA’s information request within the timeframe specified, IMDA may refuse to take the action requested.

- (c) A failure to comply with IMDA's information requests and the intentional or reckless destruction, disposal, falsification or concealment of requested documents, or the causing or permitting of the destruction, disposal, falsification or concealment of such documents may amount to offences under Section 75 of the IMDA Act and Section 59 of the Telecommunications Act (as the case may be).

12.9 Confidential Treatment of Information

12.9.1 Procedures for Requesting Confidential Information

- (a) Any person submitting information to IMDA, whether voluntarily, or pursuant to the requirements of this Code or a request from IMDA, may request that such information which has been submitted, or any part thereof, be treated as confidential.
- (b) Where feasible, all information for which a person is seeking confidential treatment must be provided in a separate annex. Alternatively, the person requesting confidential treatment of information must identify the specific document, or portion thereof, or other information for which confidential treatment is sought and give reasons why the information is confidential. Such person requesting confidential treatment of information must also submit a non-confidential version of the relevant documents submitted.
- (c) IMDA will generally not accept requests to treat all information submitted as confidential. Persons should take reasonable measures to minimise the amount of information for which they request confidential treatment. Any request for confidential treatment of information must indicate that the request satisfies the standards contained in Sub-section 12.9.2 of this Code.

12.9.2 Standards Governing Grant of Confidential Information

When considering whether to grant a request for confidential treatment, IMDA will have regard to the:

- (a) extent to which the disclosure is necessary for the purposes for which IMDA is proposing to make the disclosure; and
- (b) need for excluding, so far as is practicable, information the disclosure of which, in IMDA's opinion:
 - (i) would be contrary to the public interest;
 - (ii) constitutes commercial information that is not available to the general public;
 - (iii) constitutes commercial information that would or might significantly harm the legitimate business interests of the undertaking to which it relates, or otherwise provide a commercial benefit to that person's competitors;
 - (iv) constitutes information relating to the private affairs of an individual, the disclosure of which would, or might, in IMDA's opinion significantly harm the individual's interest; and
 - (v) constitutes a person's legally protected intellectual property.

12.9.3 Notification of Denial of Confidential Treatment

- (a) If IMDA rejects a request for confidential treatment of any item of information, IMDA will provide the person who submitted the information with a reason for its decision. Within 14 days from the date of IMDA's rejection of the request for confidential treatment of information (the "**Deadline**"), such person shall resubmit a non-confidential version of the relevant document with that item of information (for which confidential treatment was requested) included in an appropriately revised form acceptable to IMDA (referred to in this Sub-section 12.9.3 of this Code as the "**Revised Non-Confidential Version**").
- (b) If a person is unable to resubmit the Revised Non-Confidential Version by the Deadline, such person should submit a request for extension of time to IMDA at least three days in advance prior to the expiry of the Deadline. IMDA will seek to inform the requesting person of its decision within two days of the date of receipt of the request for extension.
- (c) If such person fails to resubmit the Revised Non-Confidential Version within the Deadline (or within any extensions of time granted), IMDA will deem the requesting person to have withdrawn its request for confidential treatment of information, in which case IMDA may immediately cease to review any request or matter in respect of which the information was submitted or in respect of which the IMDA had requested for such information.
- (d) Even if IMDA allows any item of information to be treated as confidential, it may, at any subsequent point of time, require such person to resubmit a Revised Non-Confidential Version. Under such circumstances, Sub-sections 12.9.3(b) and 12.9.3(c) of this Code shall apply.
- (e) IMDA may, where appropriate, disclose to third parties any information submitted by any person in respect of which confidential treatment has not been sought or any information in the Revised Non-Confidential Version resubmitted under Sub-sections 12.9.3(a) and 12.9.3(d) of this Code, whether by publishing such information on the IMDA website or through other means.
- (f) IMDA's decision not to grant confidential treatment of information does not excuse a person from complying fully with any obligation that it may have to provide complete and accurate information to IMDA.
- (g) Any failure by a person to provide IMDA with information required in Sub-section 12.9.3 of this Code may amount to an offence.

12.9.4 IMDA's Powers to Deal with Information

Nothing in this Code shall in any way constrain IMDA's ability to deal with any information required for the purpose of investigations or other enforcement actions undertaken in accordance with the provisions of the Telecommunications Act, the IMDA Act or any other written law.

12.10 Review of IMDA's Decisions

12.10.1 Right to Review

In accordance with Section 69 of the Telecommunications Act and [Section XX of the IMDA Act], the following procedures govern the review of IMDA's decisions under this Code:

- (a) Any Telecommunication Licensee, Regulated Person or Person Controlling Media Resources that is aggrieved by IMDA's decision or direction under this Code, or any person (other than a Telecommunication Licensee, Regulated

Person or Person Controlling Media Resources) that is aggrieved by IMDA's decision or direction made under Section 10 ("**Aggrieved Person**") of this Code, may, within 14 days of the day on which IMDA renders its decision or issues a direction ("**Specified Deadline**"), either:

- (i) request IMDA to reconsider its decision or direction ("**Reconsideration Request**"); or
 - (ii) appeal to the Minister ("**Appeal**").
- (b) Upon the expiry of the 14-day period specified in Sub-section 12.10.1(a) of this Code, IMDA will notify all relevant parties in the event it receives a Reconsideration Request.
- (c) Where a Reconsideration Request to IMDA and an Appeal to the Minister in respect of the same decision or direction made by IMDA under this Code is submitted, the Appeal shall be deemed withdrawn in accordance with Section 69 of the Telecommunications Act or Section [XX] of the IMDA Act (as the case may be), and IMDA will proceed to determine the Reconsideration Request.

12.10.2 Procedures Governing Reconsideration Request

- (a) Telecommunication Licensees, Regulated Persons, Persons Controlling Media Resources and Aggrieved Persons are expected to present all relevant facts, and all relevant arguments, before IMDA renders a decision or issues a direction. A Telecommunication Licensee, Regulated Person, Person Controlling Media Resources or an Aggrieved Person may not present new facts, or raise new arguments, for the first time in a Reconsideration Request if the Telecommunication Licensee, Regulated Person, Person Controlling Media Resources or Aggrieved Person:
- (i) could have presented the fact, or raised the argument before IMDA rendered its decision or issued its direction; and
 - (ii) cannot demonstrate that it had good cause for failing to do so.
- (b) IMDA generally will seek to issue its decision on the Reconsideration Request ("**Decision on Reconsideration**") within 30 days of the Specified Deadline. In appropriate cases, IMDA may provide any interested party with an opportunity to file comments on the Reconsideration Request. In such cases, IMDA will similarly provide the Telecommunication Licensee, Regulated Person, Person Controlling Media Resources or Aggrieved Person that filed the Reconsideration Request with an opportunity to submit a final written response to IMDA. In such cases, IMDA will seek to issue a decision within 30 days of receiving all comments.

12.10.3 Appeal of IMDA Decision on Reconsideration

A Telecommunication Licensee, Regulated Person, Person Controlling Media Resources or Aggrieved Person may not ask IMDA to reconsider a Decision on Reconsideration. However, within 14 days from the day on which IMDA issues a Decision on Reconsideration, any aggrieved Telecommunication Licensee, Regulated Person, Person Controlling Media Resources or any Aggrieved Person (in the case where the Decision on Reconsideration concerns a decision or direction made by IMDA under Section 10, may appeal the Decision on Reconsideration to the Minister.

12.10.4 Compliance Pending Review

- (a) Unless IMDA provides otherwise, where a Reconsideration Request is made to IMDA, the decision or direction which requires reconsideration by

IMDA shall be complied with until such time, if ever, as IMDA or the Minister reverses or modifies the decision or direction.

- (b) In considering whether to stay the effectiveness of a decision or direction pending review, IMDA generally will consider factors including the merits of the Reconsideration Request or Appeal, whether the potential harm to any person outweighs the benefits of allowing the decision or direction to go into effect and public interest.

**APPENDIX 1 –
PRINCIPLES GOVERNING THE PRICING OF INTERCONNECTION RELATED SERVICES,
MANDATED WHOLESALE SERVICES, CRITICAL SUPPORT INFRASTRUCTURE AND
ESSENTIAL RESOURCES**

1. INTRODUCTION

- 1.1. This Appendix specifies the principles that a Dominant Telecommunication Licensee must use to develop the prices for Interconnection Related Services and Mandated Wholesale Services contained in its RIO.
- 1.2. These principles will also be applied in the event when a price determination is required by IMDA for the sharing of Critical Support Infrastructure or Essential Resources.

2. CHARGING STANDARDS FOR INTERCONNECTION RELATED SERVICES

2.1. Pricing Methodologies

- 2.1.1. IMDA will assess in each instance the most appropriate pricing methodology for the determination of prices charged by a Dominant Telecommunication Licensee, and may without limitation select from the following methodologies:

- (a) Forward Looking Economic Cost (“**FLEC**”);
- (b) Historical Cost Accounting (“**HCA**”);
- (c) Regulated Asset Base (“**RAB**”).

- 2.1.2. FLEC are the prospective costs a Dominant Telecommunication 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. HCA and RAB are focussed on actual incurred costs, but differ in terms of the opening valuation of the assets. HCA values all assets based on their actual historical costs. In contrast, RAB re-values the regulated assets pegged to a selected reference year, thereby forming the opening RAB value. Depreciation will start afresh from the selected reference year. Incremental capital expenditure is then added on to the opening RAB at each subsequent review period. The closing RAB value is then carried forward to the next price review.

- 2.1.4. IMDA may require Dominant Telecommunication Licensees to use other pricing methodologies, where appropriate. For example, IMDA may use an alternative methodology to reflect added risk of investment.

2.2. Principles in Assessment of Appropriate Pricing Methodology

- 2.2.1. The following principles will guide IMDA in its assessment of the most appropriate pricing methodology for the determination of prices charged by regulated Telecommunication Licensees:

- (a) the nature of the network element that is to be interconnected or accessed (i.e., passive civil infrastructure or active network elements where there is greater interest to mitigate the inefficiency of past network and technology designs);
- (b) the contestability of the market segment where build-versus-buy incentives remain; and
- (c) the replicability of the network element and whether re-use would be encouraged.

2.2.2. As a starting point, IMDA will consider that, if the network element is passive and civil-based, not easily replicated and re-use is encouraged, a RAB/HCA methodology may be more appropriate. If the network element is active or there is contestability in the market segment, a FLEC methodology may be more appropriate.

2.3. Structure of Charges

2.3.1. In establishing a determined pricing, regulated Telecommunication Licensees must ensure that the structure of charges mirrors the cost behaviour of service 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 a determined pricing must be based on the principle of cost-causality. A Telecommunication Licensee will be responsible for the costs that the other Telecommunication Licensee incurs in order to provide services to it.

3. PRICING FOR MANDATED WHOLESALE SERVICES

At the time IMDA directs a Dominant Telecommunication Licensee to offer a Mandated Wholesale Service, IMDA will specify the basis on which the Dominant Telecommunication Licensee must set the price. Where appropriate, IMDA may either apply the guiding pricing principles and pricing methodology as set out in paragraph 2 of this Appendix 1 or may require the Dominant Telecommunication Licensee to provide the Mandated Wholesale Service in accordance to one of the following:

- (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 Telecommunication 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, IMDA will direct the Dominant Telecommunication Licensee to set the price of the Mandated Wholesale Service at a specific discount (expressed as a percentage) below the price that the Dominant Telecommunication Licensee charges its retail customers for the service.

4. RESPONSIBILITY FOR BEARING INTERCONNECTION RELATED SERVICES CHARGES

4.1. Physical Interconnection and Essential Support Facilities

4.1.1. A Dominant Telecommunication Licensee must comply with the following principles governing responsibilities for the bearing of charges in providing Physical Interconnection and Essential Support Facilities in its RIO. The Dominant Telecommunication Licensee must allocate the costs based on the expected number of users and the duration of use. The Dominant Telecommunication Licensee must allocate costs equally for non-traffic-sensitive facilities. For traffic-sensitive facilities, the Dominant Telecommunication 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 Point of Interconnection (“**POI**”).

4.2. 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 Telecommunication Licensee’s system, thereby enabling the originating Telecommunication Licensee’s End User to use a service offered by the terminating Telecommunication Licensee’s system or provided by a Services-based Licensee connected to the terminating Telecommunication Licensee’s system. The origination charge then compensates the originating Telecommunication Licensee for the incremental cost of access.
- (b) Termination charges result from the costs of conveying the traffic generated by the originating Telecommunication Licensee’s End User to the terminating Telecommunication Licensee’s system, enabling the End User or Services-based Licensee connected to the originating Telecommunication Licensee to establish one-way or interactive communication.
- (c) A Dominant Telecommunication 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 Telecommunication Licensee is responsible for its own costs in setting up a 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 Telecommunication Licensee that originates the traffic, regardless of the payment flows between End Users and Telecommunication Licensees. A Dominant Telecommunication Licensee that acts as the transit Telecommunication Licensee need not be a party to the commercial negotiations between the interconnecting Telecommunication Licensees.
 - (iv) For fixed-mobile interconnection, the Dominant Telecommunication Licensee must pay such applicable charges in accordance with IMDA’s Mobile-Party-Pays and Fixed-Mobile Interconnection (“**MPP-FMI**”) Regime.

**APPENDIX 2 –
SCHEDULE OF INTERCONNECTION RELATED SERVICES AND
MANDATED WHOLESALE SERVICES**

1. INTRODUCTION

- 1.1.** This Schedule describes the terms and conditions on which a Dominant Facilities-based Licensee must offer to provide certain key Interconnection Related Services and Mandated Wholesale Services to Facilities-based Licensees and Services-based Licensees that use switching or routing equipment to provide Services to the public. The Dominant Facilities-based Licensee must include these terms and conditions in its RIO.
- 1.2.** In this Schedule:
- (a) “Dominant Telecommunication Licensee” means a Facilities-based Licensee that IMDA has classified as dominant;
 - (b) “Requesting Telecommunication Licensee” means a Telecommunication Licensee that seeks to obtain Interconnection Related Services and/or Mandated Wholesale Services from a Dominant Telecommunication Licensee; and
 - (c) “Telecommunication Licensee” means a Facilities-based Licensee or a Services-based Licensee that uses switching or routing equipment to provide Services to the public.
- 1.3.** A Dominant Telecommunication Licensee must offer to provide all categories of Interconnection Related Services and Mandated Wholesale Services to Facilities-based Licensees. The Dominant Telecommunication Licensee need only offer to provide specified categories of Interconnection Related Services to Services-based Licensees. The Dominant Telecommunication Licensee must offer the same prices, terms and conditions for such services to all Telecommunication Licensees.
- 1.4.** The terms and conditions specified in this Schedule will remain effective until reviewed and revised by IMDA.
- 1.5.** As part of its review, IMDA will determine whether to:
- (a) require Dominant Telecommunication Licensees to continue to comply with any or all of the requirements specified in this Schedule;
 - (b) require Dominant Telecommunication Licensees to continue to offer Interconnection Related Services and Mandated Wholesale Services, but allow the Dominant Telecommunication Licensees to set the prices within specified price floors and/or ceilings;
 - (c) require Dominant Telecommunication Licensees to continue to offer Interconnection Related Services and Mandated Wholesale Services, without specifying price floors or ceilings; or
 - (d) otherwise add to, modify or eliminate the requirements specified in this Schedule, or take any other appropriate action.
- 1.6.** IMDA reserves the right to review and add to, modify or eliminate the applicable requirements specified in this Schedule at any time.

2. SERVICES THAT MUST BE OFFERED UNDER THE RIO

2.1. The RIO must specify the prices, terms and conditions on which the Dominant Telecommunication Licensee will provide:

(a) the following Interconnection Related Services:

(i) Physical and Logical Interconnection;

(ii) Origination, Transit and Termination;

(iii) Essential Support Facilities;

(iv) Unbundled Network Services; and

(b) Mandated Wholesale Services.

3. PHYSICAL AND LOGICAL INTERCONNECTION

3.1. A Dominant Telecommunication Licensee must offer to allow Facilities-based and Services-based Licensees to physically and logically interconnect their respective networks with the Dominant Telecommunication Licensee's network for the purpose of exchanging telecommunication traffic.

3.2. The RIO must specify the prices, terms and conditions on which the Dominant Telecommunication Licensee will allow interconnection to occur. These must include:

(a) a list and description of the physical locations at which a Requesting Telecommunication Licensee may physically and logically interconnect with the Dominant Telecommunication Licensee's network and the means by which interconnection may be achieved; and

(b) a description of the physical and logical interfaces to the Dominant Telecommunication Licensee's network that are necessary to allow physical and logical interconnection and the procedures to be used if the Dominant Telecommunication Licensee chooses to alter those interfaces.

3.3. Subject to Sub-paragraph 3.4 below, a Dominant Telecommunication Licensee must offer to allow interconnection to occur at any technically feasible point. At a minimum, a Dominant Telecommunication Licensee must offer to allow interconnection to occur at the following Points of Interconnection ("**POI**"):

(a) Interconnect gateway switches ("**IGS**"); and

(b) Local switches (line side and trunk side).

3.4. A Dominant Telecommunication Licensee need only interconnect with a Services-based Licensee on a virtual (distant) basis. In a virtual (distant) interconnection arrangement, the network nodes are not located at the same site. In this arrangement, the Services-based Licensee may obtain the transmission link between the two nodes from either the Dominant Telecommunication Licensee or any other Facilities-based Licensee.

3.5. The transmission links used for interconnection must connect at mutually agreed points and support applicable technical standards and transmission protocols. Unless the Dominant Telecommunication Licensee and Requesting Telecommunication Licensee agree otherwise, the Dominant Telecommunication Licensee and Requesting Telecommunication Licensee will each be responsible for the provision and maintenance of the link on its "side" of the POI.

3.6. A Dominant Telecommunication Licensee must provide, and may require the Requesting Telecommunication Licensee to provide, reasonable capacity to meet forecast traffic flow.

3.7. A Dominant Telecommunication Licensee must provide all relevant signalling plans, including the technical specifications, interconnection test plans and the corresponding test schedules, to any Requesting Telecommunication Licensee.

4. **ORIGINATION/TRANSIT/TERMINATION**

4.1. Origination, transit and termination (“**O/T/T**”) services involve the switching, routing and/or transmission of telecommunication traffic between Telecommunication Licensees. O/T/T services allow traffic originating from one Telecommunication Licensee’s network to terminate on or transit through another Telecommunication Licensee’s network. A Dominant Telecommunication Licensee must offer to provide O/T/T services to Facilities-based and Services-based Licensees.

4.2. The RIO must specify the prices, terms and conditions on which the Dominant Telecommunication Licensee will provide O/T/T services. In particular, the RIO must contain:

- (a) a list and description of all the O/T/T services to be provided; and
- (b) the prices, terms and conditions on which the Dominant Telecommunication Licensee and the Requesting Telecommunication Licensee will be compensated for such services.

4.3. The Dominant Telecommunication Licensee need only offer to provide transit services between Telecommunication Licensees interconnected to the Dominant Telecommunication Licensee’s IGS. The Dominant Telecommunication Licensee need not offer to route transit traffic between the IGS and a local switch. In the case of transit traffic, the Dominant Telecommunication Licensee may require the Telecommunication Licensee originating the call to pay the Dominant Telecommunication Licensee for the cost of transit, irrespective of the type of traffic and payment between the End Users and the Telecommunication Licensees that are using the transit service.

4.4. At a minimum, the Dominant Telecommunication Licensee must provide the following O/T/T services:

- (a) Line side (local exchange) origination;
- (b) Line side (local exchange) termination;
- (c) Trunk side (local exchange) origination;
- (d) Trunk side (local exchange) termination;
- (e) IGS origination;
- (f) IGS termination; and
- (g) IGS transit

5. **ESSENTIAL SUPPORT FACILITIES**

5.1. Essential Support Facilities (“**ESF**”) are passive support structures, for which no practical or viable alternatives exist, that enable the deployment of telecommunication infrastructure. A Dominant Telecommunication Licensee must offer to provide ESF to Facilities-based Licensees:

- 5.2.** The RIO must specify the prices, terms and conditions on which the Dominant Telecommunication Licensee will provide ESF. In particular, the RIO must contain:
- (a) the prices, terms and conditions on which a Facilities-based Licensee can physically co-locate and access its equipment within the Dominant Telecommunication Licensee's network, including:
 - (i) the locations at which physical co-location is available;
 - (ii) any reasonable restrictions or procedures that the Dominant Telecommunication Licensee intends to impose due to space, safety or security concerns; and
 - (iii) the situations in which virtual (distant) co-location will be required.
 - (b) the prices, terms and conditions on which the Dominant Telecommunication Licensee will provide Facilities-based Licensees with access to and the use of lead-in ducts and lead-in manholes.
 - (c) the prices, terms and conditions on which the Dominant Telecommunication Licensee will provide Facilities-based Licensees with access to and the use of ducts and associated manholes in its submarine cable common duct networks.

5.3. Co-Location

- 5.3.1.** A Dominant Telecommunication Licensee must offer to allow Facilities-based Licensees to co-locate equipment at any technically feasible location within its network. In particular, the Dominant Telecommunication Licensee must allow co-location at the following facilities (when controlled by the Dominant Telecommunication Licensee):
- (a) Exchange buildings housing local, interconnection and international switches and facilities; and
 - (b) Submarine cable landing stations.
- 5.3.2.** A Dominant Telecommunication Licensee must offer to provide equipment space, power, security and site maintenance at each co-location site.
- 5.3.3.** A Dominant Telecommunication Licensee may decline to provide co-location space in any currently unused network location if it can demonstrate that, as a result of its reasonably projected growth, the Dominant Telecommunication Licensee will use that space to locate equipment used to provide its own Service.
- 5.3.4.** In cases where the Dominant Telecommunication Licensee cannot offer physical co-location due to space limitations or any other legitimate reasons, the Dominant Telecommunication Licensee must take reasonable measures to find an alternative solution. An alternative solution may include options such as virtual co-location, conditioning additional equipment space, optimising the use of existing space or finding adjacent space. The Dominant Telecommunication Licensee is not required to offer to construct additional buildings to accommodate co-location requests.
- 5.3.5.** A Dominant Telecommunication Licensee must not restrict the type of equipment co-located so long as it is telecommunication equipment of a type customarily located in a telecommunication operator's exchange building or other network locations. However, this space cannot be used for the co-location of a specific End User's equipment (e.g. a PABX) or general purpose computing equipment that is not required for operation or management of the co-located equipment (e.g. a billing system). The equipment footprint space made available by the Dominant Telecommunication Licensee to each Facilities-based Licensee at each exchange building or submarine cable landing station must be no less than one square metre and no more than 10

square metres, provided that where a Facilities-based Licensee reasonably requests for footprint space exceeding 10 square metres, the Dominant Telecommunication Licensee must grant the request unless the Dominant Telecommunication Licensee can demonstrate that the use of more than 10 square metres of footprint space will preclude other Facilities-based Licensees from placing permitted equipment in a given exchange building or submarine cable landing station.

5.3.6. A Dominant Telecommunication Licensee must take all reasonable measures to reduce the costs to be assumed by the Facilities-based Licensees. In particular, the Dominant Telecommunication Licensee may not require the use of co-location cages or equivalent structures or impose any unnecessary or excessive minimum space requirements. The Dominant Telecommunication Licensee must incur the cost of preparing co-location space, which it can recover through non-discriminatory, pro-rata prices to be paid by the Facilities-based Licensees.

5.3.7. A Dominant Telecommunication Licensee must offer Facilities-based Licensees access to their co-located equipment on a seven-days-a-week, 24-hours-a-day basis. The Dominant Telecommunication Licensee can require reasonable security precautions. These can include escorted access, provided the escort is available seven days a week, 24 hours a day. The Dominant Telecommunication Licensee must make escort available on the following basis:

- (a) for service-affecting emergencies, within one hour of notification;
- (b) for non-service affecting emergencies, within four hours of notification; and
- (c) in all other cases, within 24 hours of notification.

5.4. Lead-in ducts and lead-in manholes

5.4.1. Lead-in ducts and lead-in manholes are ESF that house the telecommunication transmission cables (e.g. copper, coaxial and fibre cables) that connect to buildings.

5.4.2. A Dominant Telecommunication Licensee must offer to lease the lead-in ducts and lead-in manholes to Facilities-based Licensees for the purpose of placing their own telecommunication transmission cables. The Dominant Telecommunication Licensee must maintain the lead-in ducts and lead-in manholes, and also be responsible for any right of way fees payable, where applicable.

5.5. Submarine cable common duct networks

5.5.1. Submarine cable common duct networks are ESF that are designed to be used by multiple submarine cable operators to house the submarine cables which they deploy from the beach manhole at landing sites to inland submarine cable termination points.

5.5.2. A Dominant Telecommunication Licensee must offer to lease the ducts and associated manholes in its submarine cable common duct networks to Facilities-based Licensees for the purpose of deploying their own submarine cables.

6. UNBUNDLED NETWORK SERVICES

6.1. Unbundled network services (“**UNS**”) are telecommunication network services that Facilities-based and Services-based Licensees need to have cost-based access to in order to provide a competing Service. IMDA will find that telecommunication network services are UNS if the services:

- (a) are technically or operationally required to provide a competing Service; and
- (b) cannot be self-provisioned, or obtained from a source other than the Dominant Telecommunication Licensee, at commercially reasonable rates.

Dominant Telecommunication Licensees must offer to provide all UNS to Facilities-based Licensees, but only need offer to provide specified UNS to Services-based Licensees.

6.2. The RIO must contain the prices, terms and conditions on which the Dominant Telecommunication Licensee will offer to provide UNS, including:

- (a) a list and description of the UNS to be provided;
- (b) any modification that the Dominant Telecommunication Licensee is prepared to make; and
- (c) the extent to which the Dominant Telecommunication Licensee is prepared to combine individual elements.

6.3. A Dominant Telecommunication Licensee must, at minimum, offer to provide the following UNS to Services-based Licensees:

- (a) Emergency services (as stipulated in Sub-paragraph 6.5 below).

6.4. A Dominant Telecommunication Licensee must offer to provide the following UNS to Facilities-based Licensees:

- (a) Emergency services (as stipulated in Sub-paragraph 6.5 below); and
- (b) Connection services at submarine cable landing stations (as stipulated in Sub-paragraph 6.6 below).

6.5. Emergency Services

A Dominant Telecommunication Licensee must offer to provide Facilities-based and Services-based Licensees with access to emergency services call centres and the ability to add local telephone location data to the emergency services database.

6.6. Connection services at submarine cable landing stations

6.6.1. A Dominant Telecommunication Licensee must offer to provide services at its submarine cable landing stations to Facilities-based Licensees in order for them to connect and access capacity on any submarine cable system that lands at those stations.

6.6.2. A Dominant Telecommunication Licensee must offer to provide Facilities-based Licensees with access to connection services at the following (when controlled by the Dominant Telecommunication Licensee):

- (a) Digital or fibre distribution frames; and
- (b) Digital cross-connect frames.

7. MANDATED WHOLESALE SERVICES

7.1. Mandated Wholesale Services are services that IMDA finds are:

- (a) necessary inputs for the provision of competitive Services in Singapore; and
- (b) sufficiently costly or difficult to provide in that requiring other Telecommunication Licensees to do so would create a significant barrier to the provision of competitive Services in Singapore by an efficient Telecommunication Licensee.

A Dominant Telecommunication Licensee must offer to provide Mandated Wholesale Services to Facilities-based Licensees.

7.2. The RIO must specify the prices, terms and conditions on which the Dominant Telecommunication Licensee will offer to provide Mandated Wholesale Services (where specified by IMDA).

7.3. A Dominant Telecommunication Licensee must offer to provide the following Mandated Wholesale Services:

[Intentionally left blank]

**APPENDIX 3 –
MATTERS RELATING TO CROSS-CARRIAGE**

PART I: BASIC FUNCTIONS

1. The following are the basic functions for the purposes of the definition of “Qualified Content” in Sub-section 11.3(f) of this Code:
 - (a) Electronic programme guide and synopsis;
 - (b) Multiple languages (for example, dual-sound option);
 - (c) Subtitles;
 - (d) Stereo/surround sound formats;
 - (e) Navigational access, including Left, Right, Up, Down, OK, Enter, Exit; and
 - (f) Time elapsed and time remaining.

PART II: VALUE-ADDED SERVICES

1. The following services are the value-added services for the purposes of the definition of “Qualified Content” in Sub-section 11.3(f) of this Code, the incorporation of which in any channel or programming content will not of its own render the channel or programming content Qualified Content:
 - (a) Subtitles;
 - (b) Dubbing;
 - (c) Commentaries, and pre- and post-documentaries which are not standalone programmes;
 - (d) Enhanced interactive features, including contest and voting services, and enhanced television features such as a button feature which allows consumers to view programmed associated data relating to the content (for example, programme synopsis);
 - (e) Promotional trailers, programme advertisements, press conferences, on-screen advertisements and crawler messages produced for and associated with the content;
 - (f) Footages and talkshows, including snippets, interviews (for example, with artistes) and previews and reviews produced for and associated with the content;
 - (g) Programme highlights, including fillers and programme-related previews and reviews of the content;
 - (h) Format upgrades (including upgrades to high definition (HD) format or three-dimensional (3D) format);
 - (i) User generated content, including short message services, multi-media message services, emails, video clips, audio clips and discussion forums relating to the content.

PART III: CONTENT PROTECTION SECURITY REQUIREMENTS

1. General Principles
 - (a) In accordance with Sub-section 11.6.3(d) of this Code, IMDA sets out the following content protection security principles.
 - (b) The Receiving Qualified Licensee must provide end-to-end protection of Qualified Content from the point of handover from the Supplying Qualified Licensee to the Subscriber's premises. In order to do so, the Receiving Qualified Licensee must provide adequate:
 - (i) Headend security, to ensure that Qualified Content is adequately protected from physical or digital theft while in its headend;
 - (ii) Content Protection Delivery System ("**CPDS**") security, to protect Qualified Content while it is transmitted from its own headend to its Subscribers' premises; and
 - (iii) Set-top box security, to protect Qualified Content against unauthorised access once Qualified Content has been decrypted by an authorised set-top box.
2. Security Standards
 - (a) Network operator headend security requirements should include the following elements:
 - (i) A management control environment that defines security policies, procedures and controls for the secure handling of Qualified Content;
 - (ii) Security to prevent the physical theft of Qualified Content while present at the headend; and
 - (iii) Security to prevent the digital theft of Qualified Content while present at the headend.
 - (b) CPDS security should include the following elements:
 - (i) A suitable content encryption algorithm;
 - (ii) The ability to revoke unauthorised devices and to renew the security of the CPDS in case of a breach;
 - (iii) A process to monitor when a compromise of the CPDS has taken place and ability to re-secure the system in case of compromise; and
 - (iv) Security devices to deter piracy.
 - (c) Set-top box content protection security should securely manage the output, storage, copying and recording of decrypted Qualified Content received from the CPDS, including the following elements:
 - (i) Qualified Content should not be transmitted from the set-top box via analogue or digital means unless in a manner which does not breach the requirements specified by the CPDS;
 - (ii) Set-top box receivers should not copy, record, or store decrypted Qualified Content except as permitted under requirements specified by the CPDS; and

- (iii) The set-top box receivers should be robust to effectively frustrate attempts to gain access to decrypted Qualified Content or the keys to gain access to such Qualified Content.

3. Other considerations

- (a) A Receiving Qualified Licensee should ensure its compliance with the principles set forth in this Section and submit a certification, in a form acceptable to IMDA, confirming such compliance.

**APPENDIX 4 –
DEFAULT PRICING PRINCIPLES FOR USE IN DISPUTE RESOLUTION**

1. OVERVIEW

Sub-section 12.5 of this Code provides that, in certain situations in which persons are unable to negotiate a commercial agreement, one person may request IMDA to initiate a Dispute Resolution. This Appendix sets out the procedures and the pricing principles that IMDA will apply when conducting a Dispute Resolution to determine the price or costs to be paid to:

- (a) a Lead Broadcaster that is supplying access to a “feed” of an Event of National Significance as provided for in Sub-section 11.4.3.1.3 of this Code; and
- (b) a Receiving Qualified Licensee, by a Supplying Qualified Licensee, for the purpose of carrying Qualified Content of the Supplying Qualified Licensee on the Receiving Qualified Licensee’s Relevant Platform, as provided for in Sub-section 11.6 of this Code.

2. PRICING OF ACCESS TO “FEEDS” COVERING EVENTS OF NATIONAL SIGNIFICANCE

2.1. Introduction

- (a) In accordance with Sub-section 11.4.2 of this Code, IMDA may select a Lead Broadcaster who will be given the right to locate cameras and other equipment at the site of a specific Event of National Significance. Pursuant to Section 11.4.3.1 of this Code, the Lead Broadcaster must provide access to the “feed” of the Event of National Significance to all Free-to-Air Television Licensees and Free-to-Air Radio Licensees who are obligated to broadcast the Event of National Significance, and any other person as IMDA may direct as being entitled to obtain the “feed” to the Event of National Significance, subject to the discretion of IMDA.
- (b) Sub-section 11.4.3.1 of this Code further provides that any Free-to-Air Television Licensee, Free-to-Air Radio Licensee, or any other person as IMDA may direct, who receives the “feed” from the Lead Broadcaster has an obligation to compensate the Lead Broadcaster for the reasonable costs that the Lead Broadcaster incurred in providing the “feed”.
- (c) Sub-sections 11.4.3.1.1 and 11.4.3.1.3 of this Code further provide that in any case that where despite good-faith negotiations, the Lead Broadcaster and Free-to-Air Television Licensee, Free-to-Air Radio Licensee or any other person as IMDA may direct are unable to reach an agreement regarding the price at which the Lead Broadcaster will provide access to the “feed” of the Event of National Significance, IMDA will apply the following procedures.

2.2. Procedure

- (a) At the time the Lead Broadcaster submits a Response pursuant to the Dispute Resolution Guidelines issued by IMDA, the Lead Broadcaster must specify a proposed price payable for access to the “feed” of the Event of National Significance. In developing its proposed price, the Lead Broadcaster must apply the pricing principles specified in Sub-section 2.3 of this Appendix. The Lead Broadcaster must also provide relevant cost support data. IMDA may subsequently request the Lead Broadcaster to provide additional information to substantiate its proposed price (including, but not limited to, the Lead Broadcaster’s internal management accounts). IMDA will then review the respective persons’ submissions.

- (b) If IMDA concludes that the Lead Broadcaster has appropriately applied the pricing principles specified in Sub-section 2.3 of this Appendix in developing its proposed price, IMDA will accept its proposed price as the determined price payable for access to the “feed” of the Event of National Significance. If IMDA concludes that the Lead Broadcaster has not appropriately applied the pricing principles specified in Sub-section 2.3 of this Appendix in developing its proposed price, IMDA will reject its proposed price and instead specify the determined price payable for access to the “feed” of the Event of National Significance.
- (c) For the avoidance of doubt, the determined price payable will only be binding on the persons to the Dispute Resolution for the specific Event of National Significance that is the subject of the dispute.

2.3. Pricing Principles

2.3.1. Cost Components

The Lead Broadcaster is entitled to recover:

- (a) an appropriate allocated portion of the operating costs attributable to the coverage and production of the Event of National Significance which has not been otherwise compensated by IMDA or by other sources of public funding; and
- (b) the incremental costs associated with providing access to the “feed” of the Event of National Significance to additional persons.

2.3.2. Operating Costs

The appropriate allocated portion of the operating costs attributable to the coverage and production of the Event of National Significance may include the costs of coverage crew (such as cameramen, sound engineers, technicians, support crew, video tape recorder operators, managers and coverage directors), as well as the costs of leasing of fibre optics for “live” events.

2.3.2.1. Treatment of Operating Costs

Operating costs will be calculated on a per day basis, unless another charging basis (such as on an hourly basis) would more accurately reflect the way in which the costs are incurred. Market rental values for specific resources and facilities may be used as an appropriate proxy for the Lead Broadcaster’s operating costs.

2.3.3. Incremental Costs

The Lead Broadcaster is also entitled to recover any incremental cost that it incurs which can be directly attributed to the delivery of the “feed” of an Event of National Significance to a Free-to-Air Television Licensee, Free-to-Air Radio Licensee or any other person as IMDA may direct. These incremental costs may include, but are not limited to:

- (a) costs associated with the transmission of the “feed” to an acceptable interconnection point, including but not limited to, any costs of leasing microwave, fibre optics or satellite capacity;
- (b) costs incurred to physically connect at the point of interconnection; and
- (c) any incremental personnel required to deliver the “feed” of an Event of National Significance to the Free-to-Air Television Licensee, Free-to-Air Radio Licensee or any other person as IMDA may direct.

3. PRICING OF COSTS OF CROSS-CARRIAGE

3.1. General Principle

- (a) In accordance with Sub-section 11.6.4 of this Code, IMDA may adopt the following pricing principles for determining the incremental costs to be borne by the Supplying Qualified Licensee as referred to in Sub-section 11.6.1(i)(ii) of this Code.
- (b) In determining the incremental costs to be borne by the Supplying Qualified Licensee, IMDA will adopt the following broad principles:
 - (i) the incremental costs must be costs incurred by the Receiving Qualified Licensee as a direct result of its compliance with its cross-carriage obligation in relation to Qualified Content of the Supplying Qualified Licensee; and
 - (ii) the pricing principles are to be applied in a transparent, fair and non-discriminatory manner.
- (c) Following IMDA's determination of the incremental costs to be borne by the Supplying Qualified Licensee, IMDA reserves the right to publish its determination on its website for the industry's reference.

3.2. Charging Methodology

- (a) Subject to Sub-section 3.2(c) of this Appendix, to ensure efficient transmission of Qualified Content, IMDA will determine the incremental costs to be borne by the Supplying Qualified Licensee based on the rate of the most cost-efficient Relevant Platform in the Singapore market.
- (b) To determine the rate of the most cost-efficient Relevant Platform in the Singapore market, IMDA will compare the efficiencies of all Relevant Platforms of all Receiving Qualified Licensees, using for each either the Directly Attributable Incremental Cost Methodology or the Long Run Incremental Cost Methodology; and will, in using either methodology, take into account any leasing costs payable by the Receiving Qualified Licensee based on such rates as at 21st June 2012 in respect of that Relevant Platform for leasing:
 - (i) optical dark fibre strands in Singapore Telecommunications Limited's network of optical fibre cables; and
 - (ii) duct space in Singapore Telecommunications Limited's underground ducting network,

which are attributable to enabling the Receiving Qualified Licensee to cross-carry the Qualified Content of the Supplying Qualified Licensee for the purpose of fulfilling its duties under Sub-section 11.6 of this Code, under any arrangement with Singapore Telecommunications Limited entered into before 2nd July 2011 and any subsequent amendment or variation to the arrangement, provided that such leasing costs are incurred before the first of the following dates which applies:

- (i) 1st April 2020;
- (ii) 1st April 2017, if any change is made (directly or indirectly) before that date to the provision as at 2nd July 2011 in respect of the automatic renewal of the arrangement for the period from 1st April 2017 to 31st March 2020; or

- (iii) the date of termination of the arrangement.

For the avoidance of doubt, any leasing costs payable by the Receiving Qualified Licensee to Singapore Telecommunications Limited to enable the Receiving Qualified Licensee to cross-carry the Qualified Content of the Supplying Qualified Licensee shall be passed through to the Supplying Qualified Licensee by the Receiving Qualified Licensee without any mark-up, variation or additional charge.

- (c) Where:
 - (i) a Relevant Platform of a Receiving Qualified Licensee is not the most cost-efficient Relevant Platform; and
 - (ii) the Receiving Qualified Licensee incurs leasing costs in respect of its Relevant Platform referred to in Sub-section 3.2(b) of this Appendix,

the Authority will take into account, as the incremental costs to be borne by the Supplying Qualified Licensee in respect of that Relevant Platform, the lower of the following:

- (i) the rate of the most cost-efficient Relevant Platform, and the leasing costs referred to in Sub-section 3.2(b) of this Appendix; or
- (ii) the rate for its Relevant Platform determined in accordance with Sub-section 3.2(b) of this Appendix.

3.3. Directly Attributable Incremental Cost (DAIC) Methodology

- (a) Where the Supplying Qualified Licensee is also designated as a Receiving Qualified Licensee, IMDA will determine the incremental costs to be borne by the Supplying Qualified Licensee based on the DAIC methodology.
- (b) In calculating the incremental costs, IMDA will include the incremental capital expenses and operating expenses of the Receiving Qualified Licensee directly attributable to the cross-carriage of the Qualified Content of the Supplying Qualified Licensee including the leasing costs incurred by the Receiving Qualified Licensee that is referred to in Sub-section 3.2(b) of this Appendix.
- (c) Under the DAIC methodology, IMDA will determine the incremental costs in a manner which captures only the costs directly attributable to the Qualified Content of the Supplying Qualified Licensee. Therefore, the relevant increments in the DAIC methodology will exclude other TV-related services (for example, the transmission by the Receiving Qualified Licensee of content other than Qualified Content of the Supplying Qualified Licensee) and any other non TV-related services.

3.4. Long Run Incremental Cost (LRIC) Methodology

- (a) Where the Supplying Qualified Licensee is not designated as a Receiving Qualified Licensee, IMDA will determine the incremental costs to be borne by the Supplying Qualified Licensee based on the LRIC methodology.
- (b) In calculating the incremental costs, IMDA will include the incremental capital expenses and the operating expenses of the Receiving Qualified Licensee directly attributable to the cross-carriage of the Qualified Content, as well as such portion of the costs as relates to the use of the transmission network of the Receiving Qualified Licensee for the transmission of the Qualified Content of the Supplying Qualified Licensee including the leasing costs incurred by the

Receiving Qualified Licensee that is referred to in Sub-section 3.2(b) of this Appendix.

- (c) For the LRIC methodology, IMDA will determine the relevant increments in a manner which includes the carriage of the TV services provided by the Receiving Qualified Licensees. Increments in the LRIC methodology will exclude any other non-TV related services.

3.5. Cost Standards

IMDA will endeavour to undertake the following approach to determine the actual value of the incremental capital expenses:

- (a) In determining the actual value of the incremental capital expenses of the Receiving Qualified Licensee, IMDA will use replacement costs of the transmission network of the Receiving Qualified Licensee to reflect the forward-looking nature of the obligation to cross-carry Qualified Content. This will ensure that replacement costs would be achievable by a new entrant seeking to compete with established Receiving Qualified Licensees.
- (b) To annualise the replacement costs, IMDA will adopt such tilted annuities approach as IMDA believes best suits the circumstances of the Receiving Qualified Licensee and the Supplying Qualified Licensee. IMDA believes that a tilted annuities approach will allow market conditions such as the expectations of new technologies and changes in asset prices, to better reflect the depreciation and replacement costs of the relevant assets. IMDA will adopt as the annualised costs of the transmission network of the Receiving Qualified Licensee, such annualised costs as is represented by the most cost-efficient Relevant Platform in the Singapore market.
- (c) For the purpose of the tilted annuities approach, IMDA will use the Weighted Average Cost of Capital specific to the Receiving Qualified Licensee's subscription nationwide television business.