

**INFO-COMMUNICATIONS MEDIA DEVELOPMENT AUTHORITY OF SINGAPORE
TELECOMMUNICATIONS ACT 1999
INFO-COMMUNICATIONS MEDIA DEVELOPMENT AUTHORITY ACT 2016**

**ADVISORY GUIDELINES GOVERNING ABUSE OF DOMINANT POSITION,
ANTI-COMPETITIVE PREFERENCES/LEVERAGING, UNFAIR METHODS OF
COMPETITION AND AGREEMENTS, ETC., PREVENTING, RESTRICTING OR
DISTORTING COMPETITION**

**UNDER SECTIONS 8 AND 9 OF THE CODE OF PRACTICE FOR COMPETITION IN
THE PROVISION OF TELECOMMUNICATION AND MEDIA SERVICES 2022**

DATE OF ISSUE: [XX]

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ADVISORY GUIDELINES GOVERNING ABUSE OF DOMINANT POSITION, ANTI-COMPETITIVE PREFERENCES/LEVERAGING, UNFAIR METHODS OF COMPETITION AND AGREEMENTS, ETC., PREVENTING, RESTRICTING OR DISTORTING COMPETITION

UNDER SECTIONS 8 AND 9 OF THE CODE OF PRACTICE FOR COMPETITION IN THE PROVISION OF TELECOMMUNICATION AND MEDIA SERVICES 2022

The Info-communications Media Development Authority of Singapore (“**IMDA**”), pursuant to Section 32 of the Telecommunications Act 1999 (“**Telecommunications Act**”) and Section 61 of the Info-communications Media Development Authority Act 2016 (“**IMDA Act**”), hereby issues these Advisory Guidelines (“**Guidelines**”) Governing Abuse of Dominant Position, Anti-Competitive Preferences/Leveraging, Unfair Methods of Competition and Agreements, etc., Preventing, Restricting or Distorting Competition under Sections 8 and 9 of the Code of Practice for Competition in the Provision of Telecommunication and Media Services 2022 (“**Code**”).

1. INTRODUCTION

1.1 Scope of These Guidelines

- (a) These Guidelines set out the framework that IMDA will use to determine whether a Telecommunication Licensee or Regulated Person has contravened any of the prohibitions contained in Sections 8 and 9 of the Code.
- (b) Sections 8 and 9 of the Code prohibit:
 - (i) one or more Telecommunication Licensees or Regulated Persons that has / have Significant Market Power in any market in Singapore from using its / their dominant position in a manner that unreasonably restricts or is likely to unreasonably restrict, competition in any telecommunication or media market in Singapore (Sub-section 8.1 of the Code);
 - (ii) a Telecommunication Licensee or Regulated Person from accepting anti-competitive preferences or leveraging (Sub-section 8.2 of the Code);
 - (iii) a Telecommunication Licensee or Regulated Person from engaging in unfair methods of competition (Sub-section 8.3 of the Code); and
 - (iv) a Telecommunication Licensee or Regulated Person from entering into agreements 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 (Section 9 of the Code).

1.2 Guidelines are Advisory

The provisions in these Guidelines are advisory. They do not impose any binding legal obligation on IMDA. Neither do they seek to provide definitive answers as to whether any conduct may fall within the prohibitions contained in Sections 8 and 9 of the Code. Rather, these Guidelines are intended to describe the procedures that IMDA will generally use, and the standards that IMDA will generally apply, in implementing those provisions.

While these Guidelines are not legally binding, IMDA will not depart from them without good cause. To provide a single document addressing all issues relevant to the implementation of these provisions, certain sections of the Code have been summarised or repeated in these Guidelines. In the event of any conflict between the Code and these Guidelines, the provisions of the Code will prevail.

1.3 Rule of Construction

Capitalised terms used in these Guidelines have the same meaning as in the Code.

1.4 Effective Date of these Guidelines

These Guidelines will take effect on the date of issue of these Guidelines.

1.5 Short Title

These Guidelines may be referred to as the "Telecom and Media Competition Guidelines".

2. OVERVIEW

2.1 Relationship of Competition Rules to *Ex Ante* Regulation

While Sections 3 through 7 of the Code impose *ex ante* regulatory obligations on Telecommunication Licensees or Regulated Persons, Sections 8 and 9 of the Code provide a basis for IMDA to take enforcement action if a Telecommunication Licensee or Regulated Person has engaged in conduct that unreasonably restricts, or is likely to unreasonably restrict, competition (*ex post* enforcement). *Ex ante* regulation and *ex post* enforcement serve as complementary instruments in ensuring effective competition in the telecommunication and media markets. As a baseline, *ex post* enforcement of the prohibitions in Sections 8 and 9 of the Code generally serves to guard against anti-competitive market conduct. However, in the case of Dominant Entities who are not subject to effective competitive market forces, they are subject to

additional *ex ante* regulatory duties to, for instance, provide services at fair and reasonable prices, terms and conditions and on a non-discriminatory basis, to ensure that they do not behave anti-competitively by exploiting their market power.

2.2 Flexible Implementation

In order to determine whether any particular conduct contravenes these prohibitions, IMDA will consider the specific facts of each case. In making such a determination, IMDA will implement Sections 8 and 9 of the Code flexibly, especially when it addresses complex and novel issues. In all cases, IMDA will seek to ensure that Telecommunication Licensees or Regulated Persons do not engage in conduct that unreasonably restricts, or is likely to unreasonably restrict, competition in any telecommunication or media market in Singapore, or enter into agreements with the object or effect of preventing, restricting or distorting competition in, or in any part of, Singapore's telecommunication or media industry. At the same time, however, IMDA will strive to ensure that it applies these provisions in a manner that does not deter the vigorous competition that the Code is intended to foster – even if such competition may sometimes have an adverse impact on an individual Telecommunication Licensee or Regulated Person.

2.3 Standard of Proof

In any enforcement action taken under Section 12 of the Code for alleged contraventions of Sections 8 and 9 of the Code, IMDA will apply the “balance of probabilities” standard. Thus, for IMDA to find that a contravention of Section 8 or 9 has occurred and to take enforcement measures, IMDA must conclude, based on the totality of the evidence, that it is more likely than not that the Telecommunication Licensee or Regulated Person has engaged in conduct that constitutes a contravention of Sections 8 and 9 of the Code.

2.4 Relevance of Practices by Competition Authorities and Other Sectoral Regulators

Sections 8 and 9 of the Code are grounded in well-established principles of competition law, and are consistent with “best practices” in other jurisdictions. Therefore, in applying these provisions, where IMDA considers appropriate, IMDA may have regard to practices in other jurisdictions, as well as practices of the Competition and Consumer Commission of Singapore. However, IMDA may adopt standards or methodologies that are designed to address any local or unique conditions of Singapore's telecommunication and/or media market.

2.5 The “Unreasonably Restricts Competition” Standard for Abuse of a Dominant Position or Anti-competitive Preferences/Leveraging

Sections 8.1 and 8.2 of the Code prohibit Telecommunication Licensees or Regulated Persons from engaging in an abuse of a dominant position or anti-competitive preferences/leveraging that unreasonably restricts, or is likely to unreasonably restrict, competition in any telecommunication or media market in Singapore.

- (a) There is no single “test” for assessing whether one or more Telecommunication Licensees or Regulated Persons has / have engaged in conduct that has, or is likely to, unreasonably restrict competition. Rather, the specific approaches that IMDA will use to apply the “unreasonably restricts competition” standard to different types of conduct are described in Paragraph 3 of these Guidelines. Generally, however, IMDA will conduct a fact-specific assessment of the Telecommunication Licensees’ or Regulated Persons’ conduct and the structure of the relevant market.
- (b) Not every action that restricts competition constitutes an *unreasonable* restriction. For example, conduct that has a minimal or insignificant impact on competition generally does not contravene the Code. Similarly, conduct which may be objectively justified will not be prohibited. In assessing cases of alleged abuse of dominance, IMDA may consider if the Telecommunication Licensee(s) or Regulated Person(s) with Significant Market Power is / are able to objectively justify its / their conduct. For example, a refusal to supply a service may be justified by poor creditworthiness of the Customer. IMDA may also consider if the Telecommunication Licensee(s) or Regulated Person(s) is / are able to demonstrate any benefits arising from its / their conduct that outweigh the anti-competitive effects. However, the Telecommunication Licensee(s) or Regulated Person(s) must show that it / they has / have behaved in a proportionate manner in defending its / their legitimate commercial interest.
- (c) IMDA does not need to wait until one or more Telecommunication Licensees’ or Regulated Person’s conduct has caused actual competitive injury. Rather, IMDA can take enforcement action if it determines that one or more Telecommunication Licensees or Regulated Persons has / have engaged in abusive conduct that is likely to unreasonably restrict competition.
- (d) In seeking to determine whether one or more Telecommunication Licensees’ or Regulated Persons’ conduct contravenes Section 8 of the Code, IMDA generally will focus on the actual or likely competitive effects of the Telecommunication Licensees’ or Regulated Persons’ actions, rather than the Telecommunication Licensees’ or Regulated Persons’ subjective intent (i.e., what the Telecommunication Licensee(s) or

Regulated Person(s) hoped to accomplish). Most market participants want to increase their market share at the expense of their rivals. So long as a Telecommunication Licensee or Regulated Person seeks to do so by meeting End Users' needs more efficiently and effectively than its rivals, its subjective intent does not contravene the Code. IMDA will only consider evidence regarding a Telecommunication Licensee's or Regulated Person's subjective intent to the extent that it assists IMDA in assessing the likely effect of the Telecommunication Licensee's or Regulated Person's conduct. For example, if the evidence indicates that a Telecommunication Licensee or Regulated Person undertook an action in order to force a competing Telecommunication Licensee or Regulated Person from the market, IMDA might consider this evidence as relevant to its assessment of the likely competitive effect of the Telecommunication Licensee's or Regulated Person's action. However, the mere fact that the Telecommunication Licensee or Regulated Person intended to force the competing Telecommunication Licensee or Regulated Person from the market would not, in itself, provide a basis on which to find that the Telecommunication Licensee or Regulated Person had contravened the Code.

- (e) The "unreasonably restricts competition" standard differs from the standard used in Section 10 of the Code, which provides that IMDA will only reject a Consolidation Application if IMDA concludes that it is "likely to substantially lessen competition." IMDA believes that it generally should have to satisfy a "higher" standard before rejecting a Consolidation Application. In assessing the likely competitive impact of a proposed Consolidation, IMDA necessarily will have to make a predictive judgment. Because most Consolidations are either competitively neutral or pro-competitive, IMDA will not reject a Consolidation Application unless the evidence demonstrates that it is likely to substantially lessen competition.

3. ABUSE OF DOMINANT POSITION, RECEIPT OF ANTI-COMPETITIVE PREFERENCES/LEVERAGING AND UNFAIR METHODS OF COMPETITION (SECTION 8 OF THE CODE)

3.1 Introduction

Generally, once a Telecommunication Licensee or Regulated Person has complied with the obligations contained in its licence and in the Code and any *ex ante* obligations under Sections 3 to 7 of the Code, it is free to act independently. However, Section 8 of the Code prohibits one or more Telecommunication Licensee or Regulated Person from acting in a manner that impedes competition and sets out examples of conduct that would generally be considered to contravene the Code:

- (a) action by one or more Telecommunication Licensee or Regulated Person that has / have Significant Market Power in any telecommunication or media market in Singapore that unreasonably restricts, or is likely to unreasonably restrict, competition (Sub-section 8.1 of the Code);
- (b) the receipt of an anti-competitive preference by a Telecommunication Licensee or Regulated Person that is affiliated with an entity that has Significant Market Power, in a manner that enables it to, or is likely to enable it to, unreasonably restrict competition (Sub-section 8.2 of the Code); and
- (c) action by a Telecommunication Licensee or Regulated Person that constitutes an unfair method of competition (Sub-section 8.3 of the Code).

3.2 Abuse of a Dominant Position (Sub-section 8.1 of the Code)

- (a) One or more Telecommunication Licensees or Regulated Persons that has / have Significant Market Power in any telecommunication or media market in Singapore must not engage in conduct that unreasonably restricts, or is likely to unreasonably restrict, competition. Such conduct is referred to as an abuse of dominant position in any telecommunication or media market in Singapore.
- (b) Specifically, Sub-section 8.1.3 of the Code contains a general prohibition against the abuse of a dominant position by one or more Telecommunication Licensees or Regulated Persons that has / have Significant Market Power in any telecommunication or media market in Singapore. Thus, Sub-section 8.1 provides a basis for IMDA to undertake enforcement action in any case in which it determines that one or more Telecommunication Licensees or Regulated Persons that has / have Significant Market Power engaged in a type of conduct – including the specific practices addressed in Sub-sections 8.1.4 of the Code – that constitutes an abuse of dominant position.
- (c) In assessing whether one or more Telecommunication Licensees or Regulated Persons has / have Significant Market Power in a telecommunication or media market in Singapore, IMDA will generally first determine the relevant service, geographic and functional markets (i.e., relevant market(s)) within which the Telecommunication Licensee(s) or Regulated Person(s) provide their service or equipment. Thereafter IMDA will conduct a competitiveness assessment, including assessing the level of existing competition, the extent of barriers to entry, the existence of supply substitutability and countervailing buyer power. See Paragraphs [2.4.1] and [2.4.2] of IMDA's Reclassification and Exemption Guidelines.
- (d) IMDA will find that one or more Telecommunication Licensees or Regulated Persons that has / have Significant Market Power contravened the general

prohibition against abusing its / their dominant position where IMDA determines that:

- (i) the Telecommunication Licensee(s) or Regulated Person(s) has / have Significant Market Power, in a telecommunication or media market; and
 - (ii) the Telecommunication Licensee(s) or Regulated Person(s) has / have used its / their Significant Market Power in a manner that has unreasonably restricted, or is likely to unreasonably restrict, competition in any telecommunication or media market in Singapore.
- (e) IMDA will presume that a Telecommunication Licensee or Regulated Person that has been classified as a Dominant Entity under Section 2 of the Code has Significant Market Power in all telecommunication or media markets in which it has been designated as a Dominant Entity, subject to the exceptions set out in (f) below.
- (f) The Dominant Entity may rebut this presumption for a specific telecommunication or media market by:
- (i) showing that, prior to the time at which the alleged abuse occurred, IMDA had granted it an exemption from all Dominant Entity obligations prescribed in Section 4 of the Code; or
 - (ii) demonstrating – using the methodology and principles specified in Paragraphs [2.4.1] and [2.4.2] of IMDA’s Reclassification and Exemption Guidelines – that, at the time the alleged abuse occurred, it no longer had Significant Market Power in the relevant market.

The Dominant Entity bears the burden of demonstrating that it did not have Significant Market Power in the relevant telecommunication or media market.

- (g) In relation to the specific telecommunication or media market(s) where a Telecommunication Licensee or Regulated Person has previously been exempted from all Dominant Entity obligations prescribed in Section 4 of the Code, the Telecommunication Licensee or Regulated Person will still be subject to Sub-section 8.1 of the Code should it be found to have Significant Market Power in that market(s) subsequently. In such a case, IMDA may re-classify the Telecommunication Licensee or Regulated Person as a Dominant Entity pursuant to Section 2 of the Code following an enforcement action under Sub-section 8.1.
- (h) IMDA will find that one or more Telecommunication Licensees’ or Regulated Persons’ use of Significant Market Power has unreasonably restricted competition, or is likely to unreasonably restrict competition, in a Singapore

telecommunication or media market where the Telecommunication Licensee(s) or Regulated Person(s) has / have engaged in conduct that has, or is likely to:

- (i) significantly:
 - (A) restrict output below the competitive level;
 - (B) increase prices above cost;
 - (C) reduce quality below the level that End Users seek; or
 - (D) reduce End Users' choice or deter innovation; or
 - (ii) preserve or enhance its / their dominant position by engaging in conduct that deters or restricts efficient companies from participating in the market by means unrelated to competitive merits.
- (i) If, after IMDA initiates an enforcement proceeding alleging that one or more Telecommunication Licensees or Regulated Persons with Significant Market Power has / have abused its / their dominant position in a telecommunication or media market, the Telecommunication Licensee(s) or Regulated Person(s) provide credible evidence that:
- (i) conclusively demonstrates that it / they did not have Significant Market Power in the relevant market;
 - (ii) demonstrates to IMDA's satisfaction that its / their conduct is or may be objectively justified; or
 - (iii) demonstrates to IMDA's satisfaction that its / their conduct gives rise to benefits that outweigh the potential anti-competitive effects and that the Telecommunication Licensee(s) or Regulated Person(s) has / have behaved in a proportionate manner in defending its / their legitimate commercial interest;

then IMDA may dismiss the enforcement proceeding, seek additional relevant information from the Telecommunication Licensee(s) or Regulated Person(s) and/or other market participants; and/or conduct a public consultation, particularly in instances where complex and novel issues are raised. Telecommunication Licensees or Regulated Persons who intend to rely on any of the provisions in Paragraphs 3.2(i), (ii) or (iii) above bears the burden of demonstrating these assertions to IMDA's satisfaction.

3.2.1 Abuse of a Collective Dominant Position

- (a) Where several Telecommunication Licensees and/or Regulated Persons have, collectively, Significant Market Power in any telecommunication or

media market, they must not engage in conduct that unreasonably restricts, or is likely to unreasonably restrict, competition. Such conduct is referred to as an abuse of a collective dominant position in a telecommunication or media market in Singapore.

- (b) For the avoidance of doubt, IMDA will apply the same “unreasonably restricts competition” standard for both abuses of individual and collective dominant positions, taking into account the nature and market structures of the telecommunications and media markets.
- (c) IMDA will generally determine whether there has been an abuse of a collective dominant position using the following framework:
 - (i) whether the Telecommunication Licensees and/or Regulated Persons constitute a collective entity;
 - (ii) whether the collective entity is dominant in a relevant market; and
 - (iii) whether there was an abuse of that collective dominant position.
- (d) Two or more Telecommunication Licensees and/or Regulated Persons constitute a collective entity if they are able to sustainably coordinate their conduct or adopt a common policy on the market. It is not necessary that they adopt identical conduct on the market in every respect. IMDA may determine whether coordination of conduct or adoption of a common policy is sustainable by identifying and analysing any links or connecting factors between the Telecommunication Licensees and/or Regulated Persons concerned. For example, IMDA may find that an agreement between the Telecommunication Licensees and/or Regulated Persons, or the way in which an agreement is designed or implemented, allows them to sustainably coordinate their conduct or adopt a common policy on the market. Connecting factors may also be structural; they may arise from ownership interests and other links in law. However, the existence of an agreement or of ownership interests is not indispensable to a finding that the entities concerned constitute a collective entity.
- (e) The structure of the market(s) as well as the way in which the Telecommunication Licensees and/or Regulated Persons concerned interact on the market(s) may also lead to a finding that the entities are able to sustainably coordinate their conduct or adopt a common policy on the market. For instance, there might be a relationship of economic interdependence between Telecommunication Licensees and/or Regulated Persons in an oligopolistic market, where those parties become aware of common interests and consider it economically rational to adopt a common policy.

- (f) Once it is assessed that the Telecommunication Licensees and/or Regulated Persons together constitute a collective entity, IMDA will assess whether the collective entity has Significant Market Power in accordance with Paragraph 3.2(c) of these Guidelines. In this context, Significant Market Power means the ability of the collective entity to restrict output, raise prices, reduce quality or otherwise act, to a significant extent, independently of competitive market forces outside the collective entity. IMDA will also give due consideration to the special features of the telecommunications and media markets. IMDA will consider, in particular, the presence of network effects, significant regulatory entry barriers and the historical bundling of services.

3.2.2 Pricing Abuses (Sub-section 8.1.4.1 of the Code)

Sub-section 8.1.4.1 of the Code discusses three types of pricing abuses as examples – predatory pricing, price squeezes and cross-subsidisation – that constitute abuses of a dominant position. IMDA will assess allegations that one or more Telecommunication Licensee or Regulated Person with Significant Market Power has / have engaged in any of such practices using the specific standards described below.

In relation to Dominant Entities in the specific telecommunication market(s) in which they are considered to be Dominant Entities, it should be noted that, even if IMDA has allowed a tariff to go into effect under Sub-section 4.4 of the Code, IMDA may subsequently determine that the Dominant Entity has priced its services in a manner that constitutes an abuse of its dominant position.

3.2.2.1 Predatory Pricing (Sub-section 8.1.4.1.1 of the Code)

- (a) Telecommunication Licensees or Regulated Persons – including Telecommunication Licensees or Regulated Persons with Significant Market Power – are expected to engage in vigorous price competition. There are many potentially pro-competitive and efficiency-enhancing motivations for lowering prices. For example, a Telecommunication Licensee or Regulated Person may reduce price as a result of excess supply, decreased demand, increased competition, or as part of a short-term promotion designed to increase its market share. In some cases, this may drive less efficient participants from the market. However, a Telecommunication Licensee or Regulated Person with Significant Market Power must not sell its services or equipment below its cost for a sustained period in order to drive efficient rivals from the market, so as to be able to charge higher prices in the longer run following the exit of one or more of its rivals. Such conduct, which is often referred to as predatory pricing, does not benefit End Users in the long-term. While IMDA will seek to ensure that it does not inadvertently deny End Users the benefit of low prices that result

from vigorous price competition, IMDA will not permit a Telecommunication Licensee or Regulated Person with Significant Market Power to engage in predatory pricing.

- (b) IMDA will find that a Telecommunication Licensee or Regulated Person with Significant Market Power has engaged in predatory pricing and, therefore, has unreasonably restricted competition, or is likely to unreasonably restrict competition, in the Singapore telecommunication or media market by abusing its dominant position, if the evidence demonstrates that:
- (i) the Telecommunication Licensee or Regulated Person is selling a service or equipment at a price that is less than the average incremental cost of the service or equipment;
 - (ii) the Telecommunication Licensee's or Regulated Person's sales at prices below average incremental cost have driven, or are 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 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 incurred during the period of price cutting.
- (c) In seeking to determine whether a Telecommunication Licensee or Regulated Person with Significant Market Power is selling its service or equipment at less than average incremental cost, IMDA will determine the average cost that the Telecommunication Licensee or Regulated Person with Significant Market Power would have avoided if it had not produced the allegedly predatory increment of sales over the period during which the sales occurred. To identify predatory pricing, the relevant increment is defined as the additional volume of service or equipment produced by that Telecommunication Licensee or Regulated Person over the period during which it is alleged to have engaged in predatory pricing. For example, if predatory pricing is alleged to have occurred over a 6-month period, then the average incremental cost is the cost incurred by the Telecommunication Licensee or Regulated Person with Significant Market Power in producing the incremental level of service or equipment over that 6-month period divided by the volume of service or equipment. The average incremental cost standard (which is also referred to as the avoidable cost standard) is a short-run measure, and differs from two other standards that are sometimes used in other jurisdictions: Average Variable Cost ("**AVC**") and Long Run Incremental Cost ("**LRIC**").

- (i) Under the AVC standard, the Telecommunication Licensee's or Regulated Person's "cost" includes only those costs that vary with output. Because telecommunication operators typically have significant common costs, which are fixed over a large range and volume of services or equipment, IMDA believes that AVC sets too low a cost "floor," thereby allowing anti-competitive price cutting in certain cases.
- (ii) Under the LRIC standard, the Telecommunication Licensee's or Regulated Person's "costs" include the long run forward looking cost of the Telecommunication Licensee's or Regulated Person's networks assets. IMDA believes that the use of the LRIC standard would be too restrictive and, therefore, could deter efficient price cutting in certain cases. There are a number of situations in which pricing below LRIC can be efficient. For example, when a Telecommunication Licensee or Regulated Person is seeking to enter a new market, or has significant excess network capacity, sales below LRIC (but above average incremental cost) are appropriate in order to stimulate demand.

IMDA believes that use of the average incremental cost standard will ensure that IMDA's implementation of the predatory pricing prohibition will prohibit anti-competitive conduct, while allowing competitive price cutting. As such, IMDA will generally adopt the average incremental cost standard for predatory pricing assessments. However, where there are other policy considerations or where otherwise appropriate, IMDA may adopt other cost benchmarks (e.g., Historical Cost) for predatory pricing assessment. Where IMDA adopts an alternative cost standard for any predatory pricing assessment, IMDA will be transparent about the rationale for deviation, and the alternative standard that will be used for each case.

- (d) In seeking to determine whether the pricing of a Telecommunication Licensee or Regulated Person with Significant Market Power is likely to drive efficient rivals out of the market or deter future efficient rivals from entering the market, IMDA will consider all relevant factors, including:
 - (i) the duration of the sales of the Telecommunication Licensee or Regulated Person with Significant Market Power at prices below its average incremental cost;
 - (ii) the ability of other Telecommunication Licensees or Regulated Persons to provide service or equipment at an average incremental cost that is comparable to that of the Telecommunication Licensee or Regulated Person with Significant Market Power; and
 - (iii) the effect of any comparable prior price cutting in the market.

- (e) In seeking to determine whether entry barriers are significant, IMDA will consider the history of entry into the relevant market and the extent to which market conditions are likely to impede the entry (or re-entry) of competitors. IMDA will have regard to all relevant factors including:
- (i) technical barriers (such as the need to use specialised or proprietary technology);
 - (ii) access barriers (such as the need to obtain access to another entity's infrastructure in order to provide service or equipment, and any difficulty in doing so, or significant economies of scale and scope);
 - (iii) financial barriers (such as the need to incur significant "sunk costs" in order to enter the market);
 - (iv) commercial barriers (such as high advertising costs or high consumer switching costs); and
 - (v) regulatory barriers (such as limitations on the number of licences or on the entities eligible to provide a service or equipment).

A further discussion of IMDA's assessment of barriers to entry is set forth in Appendix 1.

3.2.2.2 Price Squeezes (Sub-section 8.1.4.1.2 of the Code)

- (a) A Telecommunication Licensee or Regulated Person with Significant Market Power will often control facilities, and provide services, equipment, inputs and/or access to a distribution channel that are required inputs into "downstream" business offerings that it (or its Affiliate) provides to End Users. In many cases, other Telecommunication Licensees or Regulated Persons have no practical alternative to accessing the services, equipment, facilities, inputs or distribution channel of the Telecommunication Licensee or Regulated Person with Significant Market Power to provide a competing downstream business offering to their End Users. If a Telecommunication Licensee or Regulated Person has Significant Market Power in the market for the input service, equipment, facility, or access to a distribution channel, it could unreasonably restrict competition by charging a price well in excess of its cost for the input such that competing downstream Telecommunication Licensees or Regulated Persons that are equally efficient would not be able to make a commercially reasonable profit, thereby impeding the downstream Telecommunication Licensees' or Regulated Persons' ability to compete.
- (b) IMDA will find that a Telecommunication Licensee or Regulated Person with Significant Market Power has engaged in a price squeeze and,

therefore, has unreasonably restricted competition in the Singapore telecommunication or media market by abusing its dominant position, if the evidence demonstrates that:

- (i) the Telecommunication Licensee or Regulated Person has Significant Market Power in providing a telecommunication or media service, equipment, facility, input and/or access to a distribution channel that is required for a downstream Telecommunication Licensee or Regulated Person to provide a telecommunication or media business offering; and
 - (ii) the price that the Telecommunication Licensee or Regulated Person with Significant Market Power charges for the telecommunication or media service, equipment, facility, input and/or access to a distribution channel is so high that its 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's or Regulated Person's telecommunication or media service, equipment, facility, input and/or access to a distribution channel at such prices.
- (c) IMDA will find that a service, equipment, facility, input or access to a distribution channel is required to provide a downstream business offering when, as a practical matter, Telecommunication Licensees or Regulated Persons could not participate in a downstream telecommunication or media market without access to the service, equipment, facility, input or distribution channel and cannot obtain access to a service, equipment, facility, input or distribution channel that is a reasonable substitute for the service, equipment, facility, input or distribution channel of the Telecommunication Licensee or Regulated Person with Significant Market Power. In making this determination, IMDA will consider the ability of Telecommunication Licensees or Regulated Persons to:
- (i) self-provide comparable services, equipment, facilities, inputs or access to distribution channels at a cost that would enable an efficient Licensee to provide a competitive business offering; or
 - (ii) obtain comparable services, equipment, facilities, inputs or access to distribution channels from providers other than the Telecommunication Licensee or Regulated Person with Significant Market Power on prices, terms and conditions that would enable it to provide a competitive business offering.
- (d) IMDA will conclude that a service, equipment, facility, input or access to a distribution channel performs the same (or comparable) function as the

service, equipment, facility, input or access to a distribution channel of a Telecommunication Licensee or Regulated Person with Significant Market Power, regardless of the technology used, if a Customer would view the service, equipment, facility, input or access to a distribution channel as a reasonable substitute, given both price and non-price factors.

- (e) IMDA generally will assess whether the input price imposed by a Telecommunication Licensee or Regulated Person with Significant Market Power is so high that its downstream business or Affiliate or an equally efficient competing non-affiliated person could not profitably sell its business offering by using one of the following methodologies:
 - (i) IMDA may impute to the downstream business of the Telecommunication Licensee or Regulated Person with Significant Market Power or Affiliate the price that the Telecommunication Licensee or Regulated Person with Significant Market Power charges downstream competitors for the input, to determine if such downstream business or Affiliate is able to make a commercially reasonable profit if it were required to purchase the input from the Telecommunication Licensee or Regulated Person at such price; or
 - (ii) IMDA may assess whether the price that the Telecommunication Licensee or Regulated Person with Significant Market Power charges downstream competitors for the input allows an equally efficient competing non-affiliated person in the downstream market to obtain a commercially reasonable profit for such activity.
- (f) IMDA will not find that a price squeeze has occurred based solely on evidence that the downstream business or Affiliate of a Telecommunication Licensee or Regulated Person with Significant Market Power or an equally efficient competing non-affiliated person has sold a business offering at a price that results in it realising a profit that is below competitive levels, provided that the price is not predatory. So long as the price that the Telecommunication Licensee or Regulated Person with Significant Market Power charges for the input is not significantly above cost, the Telecommunication Licensee or Regulated Person, its Affiliates and any equally efficient competing non-affiliated person, like all Telecommunication Licensees or Regulated Persons, are free to accept a low rate of profit in the retail market.

3.2.2.3 Cross-subsidisation (Sub-section 8.1.4.1.3 of the Code)

- (a) A Telecommunication Licensee or Regulated Person with Significant Market Power can use the revenue that it receives from services, equipment, facilities, inputs or access to distribution channels that it

provides in markets which are not subject to effective competition, to reduce the prices of services, equipment, facilities, inputs or access to distribution channels that it provides in markets that are subject to a greater degree of competition. Such conduct, which is referred to as cross-subsidisation, can have several distinct effects:

- (i) cross-subsidisation may harm End Users who purchase the service, equipment, facility, input or access to a distribution channel that is not subject to effective competition because they are required to pay higher prices to enable cross-subsidisation by the Telecommunication Licensee or Regulated Person with Significant Market Power;
 - (ii) cross-subsidisation may also harm competition in the market for the service, equipment, facility, input or access to a distribution channel that is subject to effective competition, because competing Telecommunication Licensees or Regulated Persons often may not be able to profitably reduce prices to the level charged by the same Telecommunication Licensee or Regulated Person with Significant Market Power; and
 - (iii) where the pricing of the Telecommunication Licensee or Regulated Person with Significant Market Power in the market that is subject to effective competition constitutes predatory pricing, cross-subsidisation also unreasonably restricts competition in the market for the service, equipment, facility, input or access to a distribution channel that is subject to effective competition.
- (b) IMDA will find that a Telecommunication Licensee or Regulated Person with Significant Market Power has engaged in cross-subsidisation and, therefore, has abused its dominant position, where the evidence demonstrates that:
- (i) it has used 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; and
 - (ii) its conduct has unreasonably restricted, or is likely to unreasonably restrict, competition in any telecommunication or media market in Singapore.
- (c) IMDA may conduct cost allocation studies to determine whether cross-

subsidisation has occurred. IMDA will find that cross-subsidisation has occurred where:

- (i) the Telecommunication Licensee or Regulated Person with Significant Market Power offers multiple services, equipment, facilities, inputs or access to distribution channels, some of which are not subject to effective competition, that use common facilities or have other common costs; and
 - (ii) it has improperly allocated costs to, or used revenues from, those services, equipment, facilities, inputs or access to distribution channels that are not subject to effective competition.
- (d) IMDA will find that the conduct of a Telecommunication Licensee or Regulated Person with Significant Market Power has unreasonably restricted, or is likely to unreasonably restrict, competition where:
- (i) it is selling the service, equipment, facility, input or access to a distribution channel that is subject to effective competition at a price that is less than average incremental cost;
 - (ii) its sales of the service, equipment, facility, input or access to a distribution channel at prices below average incremental cost are 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 rivals from the market or deterring entry, it could impose an increase in the price of the service, equipment, facility, input or access to a distribution channel sufficient (in amount and duration) to enable the recoupment of the full amount of the loss that it incurred during the period of price cutting.

3.2.3 Other Abuses (Sub-section 8.1.4.2 of the Code)

Sub-section 8.1.4.2 of the Code specifically addresses three other types of conduct by a Telecommunication Licensee or Regulated Person with Significant Market Power that can unreasonably restrict competition in the Singapore telecommunication or media market and, therefore, constitute an abuse of a dominant position. IMDA will assess allegations that a Telecommunication Licensee or Regulated Person with Significant Market Power engaged in any of such practices using the specific standards described below.

3.2.3.1 Discrimination (Sub-section 8.1.4.2.1 of the Code)

- (a) A Telecommunication Licensee or Regulated Person with Significant Market Power may control inputs that, as a practical matter, other

Telecommunication Licensees or Regulated Persons must use in order to provide “downstream” services or equipment. These inputs include infrastructure, systems, services, equipment, information, distribution channels or other inputs. A Telecommunication Licensee or Regulated Person with Significant Market Power can unreasonably restrict competition in the downstream market by providing access to these inputs to its downstream Affiliate on discriminatory prices, terms and conditions.

- (b) IMDA will find that a Telecommunication Licensee or Regulated Person with Significant Market Power has engaged in discrimination that has unreasonably restricted competition, or is likely to unreasonably restrict competition, in the Singapore telecommunication or media market by abusing its dominant position, if the evidence demonstrates that:
 - (i) it has provided its Affiliate with access to infrastructure, systems, services, equipment, information, input or distribution channels;
 - (ii) access to its infrastructure, systems, services, equipment, information, input or distribution channels is necessary to enable a non-affiliated Telecommunication Licensee or Regulated Person to provide telecommunication or media services and/or equipment; and
 - (iii) it provided its Affiliate with access to the infrastructure, systems, services, equipment, information, input or distribution channels, on prices, terms or conditions that are more favourable than the prices, terms and conditions provided to Telecommunication Licensees or Regulated Persons that are not Affiliates without any objective justification, such as a verifiable difference in the cost of providing access, variations in the quantity or quality of service and/or equipment provided or variations in the duration of the service or product agreement period, which will or is likely to restrict or impede other Telecommunication Licensees’ or Regulated Persons’ ability to compete.
- (c) In determining whether access to infrastructure, systems, services, equipment, information, input or distribution channels is necessary, IMDA will consider the ability of an efficient Telecommunication Licensee or Regulated Person to:
 - (i) self-provide comparable infrastructure, systems, services, equipment, information, input or distribution channels at a cost that would enable it to provide a competitive telecommunication or media service; and
 - (ii) obtain comparable infrastructure, systems, services, equipment, information, input or distribution channels from providers other than

the Telecommunication Licensee or Regulated Person with Significant Market Power on prices, terms and conditions that would enable it to provide a competitive telecommunication or media service.

- (d) The refusal by a Telecommunication Licensee or Regulated Person with Significant Market Power to provide a non-affiliated Telecommunication Licensee or Regulated Person with access to infrastructure, systems, services, equipment, information, input or distribution channels that are necessary to enable the non-affiliated Telecommunication Licensee or Regulated Person to provide services or equipment on *any* terms, when the Telecommunication Licensee or Regulated Person with Significant Market Power provides access to such infrastructure, systems, services, equipment, information, input or distribution channels to any Affiliate, but has no objective and reasonable justification for refusing to do so, also constitutes discrimination.

3.2.3.2 Predatory Network Alteration (Sub-section 8.1.4.2.2 of the Code)

- (a) Telecommunication Licensees or Regulated Persons will often need to physically and logically interconnect their networks with the network of a Telecommunication Licensee or Regulated Person with Significant Market Power. While a Telecommunication Licensee or Regulated Person with Significant Market Power may often have a legitimate reason for altering its network interfaces, it could unreasonably restrict competition by altering its network interface in a manner which has the primary effect of imposing costs on other Telecommunication Licensees or Regulated Persons and/or impeding other Telecommunication Licensees' or Regulated Persons' ability to interconnect and interoperate. This is commonly referred to as predatory network alteration.
- (b) IMDA will find that a Telecommunication Licensee or Regulated Person with Significant Market Power has engaged in predatory network alteration and, therefore, has unreasonably restricted competition, or is likely to unreasonably restrict competition, in the Singapore telecommunication or media market, by abusing its dominant position, if the evidence demonstrates that it:
 - (i) has altered the physical or logical interfaces of its network in a manner that imposes significant costs on any interconnected Telecommunication Licensee or Regulated Person; and
 - (ii) has no legitimate business, operational or technical justification for doing so.
- (c) IMDA will find that a Telecommunication Licensee or Regulated Person with

Significant Market Power has no legitimate business, operational or technical reason for altering its network interface when:

- (i) the alteration was not a commercially reasonable means for it to reduce its costs, offer a new service, improve service quality or otherwise benefit its End Users; and
- (ii) the adverse impact of its actions on interconnected Telecommunication Licensees or Regulated Persons was grossly disproportionate to the benefit to itself and its End Users.

3.2.3.3 Tying and Bundling (Sub-section 8.1.4.2.3 of the Code)

- (a) Tying typically refers to a scenario where the purchase of a product or service is made conditional on the purchase of another product or service. Under Sub-section 4.3.3 of the Code, a 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 (i.e. bundling).
- (b) Bundling typically refers to a scenario where different products, e.g., A and B, are combined and offered as a single package such as triple- and quadruple-play packages, often at a discount. An example of triple-play package is the provision of fixed-line telephony, broadband and Pay TV services through a single package. Telecommunication Licensees or Regulated Persons may provide Customers with the option of purchasing separate services and equipment in a single package, which may be offered at a reasonable discount. As such, bundling can be beneficial to End Users as an additional option, especially if they already have the intention to purchase the services from one single operator, as they may enjoy higher discounts. IMDA notes that such practices are relatively common today and expects them to continue in a converged environment.
- (c) While bundling does not typically result in anti-competitive effects, it may give rise to competition concerns in certain situations, particularly where a Telecommunication Licensee or Regulated Person with Significant Market Power requires a Customer that purchases a telecommunication or media service or product that is not subject to effective competition to purchase other telecommunication or media services or products that are subject to effective competition. Such requirements, even if offered as an option, may constitute an abuse of a dominant position if they result in, or are likely to result in, the anti-competitive foreclosure of telecommunication or media

market(s) to competitors and cannot be objectively justified.

- (d) IMDA will find that a Telecommunication Licensee or Regulated Person with Significant Market Power has engaged in unreasonable bundling and, therefore, has unreasonably restricted competition, or is likely to unreasonably restrict competition, in the Singapore telecommunication or media market, by abusing its dominant position, if the evidence demonstrates that it:
 - (i) has Significant Market Power in the market for a telecommunication or media service or product (“A”);
 - (ii) does not have Significant Market Power in the market for another telecommunication or media service or product (“B”);
 - (iii) has tied or bundled A together with B in a manner which results in, or is likely to result in, the anti-competitive foreclosure of any telecommunication or media market(s) in Singapore (including market(s) A and/or B) to competitors; and
 - (iv) has no objective justification for doing so.
- (e) IMDA will consider the following factors, amongst others, in determining whether the tying or bundling results in, or is likely to result in, the anti-competitive foreclosure of telecommunication or media market(s) to competitors:
 - (i) whether the services/products that are sold in a tie or bundle are distinct services/products;
 - (ii) whether the Telecommunication Licensee or Regulated Person with Significant Market Power makes its tying or bundling strategy a lasting one; and
 - (iii) in the case of bundling, the number of services/products in the bundle that the Telecommunication Licensee or Regulated Person may have a dominant position in.
- (f) In assessing whether unreasonable bundling has occurred, IMDA may also examine the price of the discounted bundle to determine whether such bundle will result in, or is likely to result in, the anti-competitive foreclosure of telecommunication or media market(s) to competitors.

3.2.4 Exclusive Dealing (Sub-section 8.1.4.3 of the Code)

- (a) An exclusive dealing agreement is an agreement in which one entity agrees with another entity to, on an exclusive basis:

- (i) supply goods or services to the other entity;
- (ii) purchase goods or services from the other entity; or
- (iii) distribute goods or services produced by the other entity

For example, a telecommunications equipment manufacturer could designate an entity that holds a telecommunications equipment dealer licence as its exclusive distributor in Singapore. Similarly, a Telecommunication Licensee or Regulated Person could designate another Telecommunication Licensee or Regulated Person as its exclusive reseller.

- (b) Exclusive dealing agreements can promote competition by providing an assured supply and by creating strong incentives for a distributor to promote a product. However, exclusive dealing agreements can also raise competitive concerns where they foreclose a substantial portion of the supply, or a substantial portion of the distribution outlets, for a product. For example, if an entity has Significant Market Power in the telecommunication equipment market, an exclusive agreement with one distributor could preclude other distributors from participating in that market. Alternatively, if an entity that has Significant Market Power in the telecommunication equipment market requires its distributors to distribute its products exclusively, such exclusive agreements could foreclose a substantial portion of the distribution outlets from other equipment suppliers.
- (c) IMDA will find that a Telecommunication Licensee or Regulated Person that has Significant Market Power has abused its dominant position by engaging in exclusive dealing in contravention of the Code, where the evidence demonstrates that it has entered into an exclusive dealing agreement which has, or is likely to, unreasonably restrict competition in any telecommunication or media market in Singapore.

3.2.5 Other Types of Conduct That May Constitute an Abuse of Dominant Position

Additional unilateral actions by a Telecommunication Licensee or Regulated Person with Significant Market Power, not specifically listed in Section 8 of the Code, that may raise competitive or policy concerns include:

- (a) *Refusal to supply.* A Telecommunication Licensee or Regulated Person generally is not required to deal with its competitors. Indeed, allowing a Telecommunication Licensee or Regulated Person to decline to offer a service or equipment to a competitor may often be necessary to provide it with incentives to offer new services or equipment.

However, in some circumstances, the refusal to supply a service or equipment by a Telecommunication Licensee or Regulated Person with Significant Market Power to a competing Telecommunication Licensee or Regulated Person may constitute an abuse of dominant position. This may occur, for example, where a Dominant Entity controls an input that is required to provide a competing service or equipment and the competing Telecommunication Licensees or Regulated Persons have no feasible alternatives (for example, where duplication is impossible or extremely difficult owing to physical, geographic, economic or legal constraints) to obtaining the input from the Dominant Entity. A refusal to supply in this case will constitute an abuse of dominant position if there is evidence of (likely) substantial harm to competition and there is no objective justification for the behaviour of the Telecommunication Licensee or Regulated Person with Significant Market Power.

The Code, also, contains provisions that require a Dominant Entity to provide its competitors with access to telecommunication or media facilities, services or equipment in certain circumstances. For instance, Sub-sections 6.3.2(a) and 6.3.2(c) of the Code, a Dominant Entity to provide specific Interconnection Related Services, pursuant to its Reference Interconnection Offer and Mandated Wholesale Services designated by IMDA. Additionally, under Sub-section 7 of the Code, 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 Telecommunication Licensee or Regulated Person that owns or controls the Critical Support Infrastructure or Essential Resource shares the same with other Telecommunication Licensees or Regulated Persons.

- (b) *Anti-competitive discounts.* Discounts are a legitimate form of price competition and are generally encouraged. In many cases, discounts reflect objective cost savings resulting from lower input costs, greater efficiencies or other savings arising from the size or duration of a Customer's commitment.

In some circumstances, a discount by a Telecommunication Licensee or Regulated Person with Significant Market Power may constitute an abuse of a dominant position. Typically, this will occur where it offers a significant discount, not justified by any objective factor, which has the effect of foreclosing competing Telecommunication Licensees or Regulated Persons from a significant portion of the market. Certain types of discounts offered by a Telecommunication Licensee or Regulated Person with Significant Market Power that may raise competitive concerns include:

- (i) loyalty discounts, in which it offers a discount on the condition that

the Customer not purchase services or equipment from competing Telecommunication Licensees or Regulated Persons;

- (ii) volume discounts that are based on a Customer's total expenditure, but that are applied only to charges for services or equipment that are subject to effective competition; and
- (iii) discounts that are available only to Customers that have the greatest ability to switch to alternate suppliers.

The permissibility of any discount will depend on the specific facts, especially the extent to which they result in significant market foreclosure.

In addition, Section 4 of the Code contains several provisions, including the prohibition on discrimination, that a Dominant Entity will have to comply with in providing discounts.

3.3 Anti-competitive Preferences/Leveraging (Sub-section 8.2 of the Code)

A Telecommunication Licensee or Regulated Person may have Significant Market Power in a non-telecommunication or non-media market. A Telecommunication Licensee or Regulated Person may also have an Affiliate that has Significant Market Power (whether in the provision of a telecommunication or media service or equipment, or a non-telecommunication or non-media service). For example, a Telecommunication Licensee or Regulated Person may be owned by a foreign parent company that enjoys monopoly rights in its home market. The Affiliate may seek to assist the Telecommunication Licensee or Regulated Person by using its market position to provide the Telecommunication Licensee or Regulated Person with an anti-competitive preference that enables the Telecommunication Licensee or Regulated Person to unreasonably restrict competition in a telecommunication or media market in Singapore. For example, an Affiliate with Significant Market Power in Country X may charge a Telecommunication Licensee a lower rate for terminating international traffic in Country X, thereby preventing other Telecommunication Licensees from providing a competitively priced telecommunication service on the route between Singapore and Country X.

3.3.1 General Prohibition (Sub-section 8.2(a) of the Code)

- (a) Sub-section 8.2(a) of the Code contains a general prohibition against a Telecommunication Licensee or Regulated Person using the Significant Market Power of an Affiliate, or its Significant Market Power in a non-telecommunication or non-media market, to unreasonably restrict competition in any Singapore telecommunication or media market. Thus, Sub-section 8.2(a) provides a basis for IMDA to undertake enforcement action in any case in which it determines that a Telecommunication

Licensee or Regulated Person has engaged in a type of conduct – other than the specific practices addressed in Sub-section 8.2(c) of the Code – that constitutes receipt of an anti-competitive preference.

- (b) IMDA will find that a Telecommunication Licensee or Regulated Person has contravened the general prohibition against using the Significant Market Power of an Affiliate, or of itself in a non-telecommunication or non-media market, to unreasonably restrict competition in any Singapore telecommunication or media market if the evidence demonstrates that:
 - (i) the Telecommunication Licensee or Regulated Person has an Affiliate that has Significant Market Power in any telecommunication, media, non-telecommunication or non-media market; or
 - (ii) the Telecommunication Licensee or Regulated Person has Significant Market Power in a non-telecommunication or non-media market; and
 - (iii) the Telecommunication Licensee or Regulated Person has accepted an anti-competitive preference from the Affiliate or has used its market position in the non-telecommunication or non-media market in a manner that has enabled, or is likely to enable, the Telecommunication Licensee or Regulated Person to unreasonably restrict competition in any telecommunication or media market in Singapore.
- (c) 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.
- (d) IMDA will use the following approach to determine if an entity has Significant Market Power:
 - (i) if the entity is a Telecommunication Licensee or Regulated Person, IMDA will use the methodology specified in Paragraphs [2.4.1] and [2.4.2] of IMDA's Reclassification and Exemption Guidelines; or
 - (ii) if the entity is not a Telecommunication Licensee or Regulated Person, IMDA will use the best available information. In appropriate cases, IMDA may rely on the determination by a competition authority or another sectoral regulator that the entity has Significant Market Power.

- (e) IMDA will find that a Telecommunication Licensee or Regulated Person has accepted an anti-competitive preference that has unreasonably restricted, or is likely to unreasonably restrict, competition in any Singapore telecommunication or media market if the Telecommunication Licensee or Regulated Person has benefited from any action by an Affiliate, or by its non-telecommunication or non-media business to:
 - (i) significantly:
 - (A) restrict output below the competitive level;
 - (B) increase prices above cost;
 - (C) reduce quality below the level that End Users seek; or
 - (D) reduce End Users' choice or deter innovation; or
 - (ii) engage in conduct that deters or restricts efficient companies from participating in the market by means unrelated to competitive merits.

3.3.2 Specific Practices (Sub-section 8.2(c) of the Code)

Sub-section 8.2(c) of the Code prohibits a Telecommunication Licensee or Regulated Person from accepting specific types of discriminatory preferences from an Affiliate that has Significant Market Power. IMDA will assess allegations that a Telecommunication Licensee or Regulated Person has accepted such a preference using the specific standards described below.

3.3.3 Price Squeeze (Sub-section 8.2(c)(i) of the Code)

- (a) A Telecommunication Licensee or Regulated Person that has an Affiliate with Significant Market Power must not benefit from conduct by the Affiliate that constitutes a price squeeze.
- (b) IMDA will find that a Telecommunication Licensee or Regulated Person has contravened the Code by benefiting from a price squeeze when the evidence demonstrates that:
 - (i) the Telecommunication Licensee or Regulated Person has an Affiliate that has Significant Market Power in the market for a telecommunication or media service, equipment, facility, input and/or access to a distribution channel that is required for downstream Telecommunication Licensees or Regulated Persons to provide a telecommunication or media service or equipment;
 - (ii) the Telecommunication Licensee or Regulated Person used the telecommunication or media service, equipment, facility, input and/or access to a distribution channel to provide its telecommunication or

media service or equipment; and

- (iii) the Telecommunication Licensee or Regulated Person obtained the telecommunication or media service, equipment, facility, input and/or access to a distribution channel from the Affiliate at a price that is so high that equally efficient competing non-affiliated Telecommunication Licensees or Regulated Persons could not profitably sell, or obtain a commercially reasonable profit for, their end-product or service if they were required to purchase the Affiliate's telecommunication or media service, equipment, facility, input and/or access to a distribution channel at the same price.
- (c) IMDA will determine whether an input is required using the methodology specified in Paragraphs 3.2.2.2(c) and (d) of these Guidelines.
- (d) IMDA will determine whether the price of the input is so high that equally efficient competing non-affiliated Telecommunication Licensees or Regulated Persons could not profitably sell their end-product or service if they were required to purchase the input at the same price as the Telecommunication Licensee or Regulated Person using one of the following methodologies:
 - (i) IMDA may impute to the Telecommunication Licensee or Regulated Person the price that the Affiliate charges downstream competitors for the input, to determine if the Telecommunication Licensee or Regulated Person is able to make a commercially reasonable profit if it were required to purchase the input from the Telecommunication Licensee or Regulated Person at such price; or
 - (ii) IMDA may assess whether the price that the Affiliate charges downstream competitors for the input allows an equally efficient non-affiliated service provider in the downstream market to obtain a commercially reasonable profit for such activity.
- (e) IMDA will not find that a price squeeze has occurred based solely on evidence that the Telecommunication Licensee or Regulated Person has sold a service or equipment at a price that results in it realising a profit that is below competitive levels, provided that the price is not predatory. So long as the price that the Affiliate charges for the input service or product is not significantly above cost, the Telecommunication Licensee or Regulated Person is free to accept a low rate of profit in the retail market.

3.3.4 Cross-subsidisation (Sub-section 8.2(c)(ii) of the Code)

- (a) A Telecommunication Licensee or Regulated Person that has an Affiliate that has Significant Market Power must not benefit from conduct by the

Affiliate that constitutes anti-competitive cross-subsidisation.

- (b) IMDA will find that a Telecommunication Licensee or Regulated Person has contravened the Code by benefiting from anti-competitive cross-subsidisation when the evidence demonstrates that:
 - (i) the Telecommunication Licensee or Regulated Person has an Affiliate that has Significant Market Power in any market;
 - (ii) the Telecommunication Licensee or Regulated Person accepted a subsidy from the Affiliate; and
 - (iii) the subsidy enabled the Telecommunication Licensee or Regulated Person to provide a service or equipment at a price that has unreasonably restricted, or is likely to unreasonably restrict, competition in any telecommunication or media market in Singapore.

- (c) The following is a non-exhaustive list of circumstances where IMDA will conclude that a Telecommunication Licensee or Regulated Person has accepted a subsidy from its Affiliate:
 - (i) the Telecommunication Licensee or Regulated Person received revenue from its Affiliate;
 - (ii) the Telecommunication Licensee or Regulated Person accepted any service and/or equipment from its Affiliate at less than market value; or
 - (iii) the Telecommunication Licensee or Regulated Person did not assume a reasonable share of any common cost incurred by it and its Affiliate.

- (d) IMDA will find that the Telecommunication Licensee's or Regulated Person's receipt of a cross-subsidy has unreasonably restricted, or is likely to unreasonably restrict, competition in any telecommunication or media market in Singapore where:
 - (i) the Telecommunication Licensee or Regulated Person is selling the service or equipment at a price that is less than the average incremental cost of the service;
 - (ii) the Telecommunication Licensee's or Regulated Person's sales of the service or equipment at prices below average incremental cost are 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 rivals from the

market or deterring entry, the Telecommunication Licensee or Regulated Person could impose an increase in the price of the service or equipment sufficient (in amount and duration) to enable the Telecommunication Licensee or Regulated Person to recoup the full amount of the loss that it incurred during the period of price cutting.

3.3.5 Discrimination (Sub-section 8.2(c)(iii) of the Code)

- (a) A Telecommunication Licensee or Regulated Person that has an Affiliate that has Significant Market Power must not benefit from conduct by the Affiliate that constitutes discrimination.
- (b) IMDA will find that a Telecommunication Licensee or Regulated Person has contravened the Code by benefiting from discrimination when the evidence demonstrates that:
 - (i) the Telecommunication Licensee or Regulated Person has an Affiliate that has Significant Market Power in any market for infrastructure, systems, services, equipment and/or information, that is necessary to provide telecommunication or media services or equipment; and
 - (ii) the Telecommunication Licensee or Regulated Person accepted access to the infrastructure, systems, services, equipment and/or information on prices, terms or conditions that are more favourable than the prices, terms and conditions on which the Affiliate provides those infrastructure, systems, services, equipment and/or information to non-affiliated Telecommunication Licensees or Regulated Persons.
- (c) IMDA will determine whether infrastructure, systems, services, equipment and/or information is necessary to provide services or equipment using the methodology specified in Paragraph 3.2.3.1(c) of these Guidelines.
- (d) A Telecommunication Licensee's or Regulated Person's acceptance from its Affiliate of access to infrastructure, systems, services, equipment and/or information that is necessary to provide telecommunication or media services or equipment, when the Affiliate refuses to provide access to such infrastructure, systems, services, equipment, information, input or distribution channels to non-Affiliated Telecommunication Licensees or Regulated Persons on any terms, also constitutes discrimination.

3.4 Unfair Methods of Competition (Sub-section 8.3 of the Code)

The Code prohibits Telecommunication Licensees or Regulated Persons from

engaging in unilateral conduct that constitutes an unfair method of competition.

3.4.1 General Prohibition (Sub-section 8.3.3 of the Code)

Sub-section 8.3.3 of the Code contains a general prohibition against a Telecommunication Licensee or Regulated Person engaging in an unfair method of competition. This provision is applicable to allegations that a Telecommunication Licensee or Regulated Person engaged in unilateral conduct – other than the specific practices addressed in Sub-sections 8.3.4.1 through 8.3.4.3 of the Code – that constitutes an unfair method of competition. IMDA will find that a Telecommunication Licensee or Regulated Person has engaged in an unfair method of competition if the evidence demonstrates that the Telecommunication Licensee or Regulated Person has engaged in an improper practice by which that Telecommunication Licensee or Regulated Person seeks to obtain a competitive advantage for itself or an Affiliate in any telecommunication or media market in Singapore, for reasons unrelated to the availability, price or quality of the telecommunication or media service or equipment that the Telecommunication Licensee or Regulated Person or its Affiliate offers.

3.4.2 Specific Prohibited Practices (Sub-section 8.3.4 of the Code)

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

- (a) A Telecommunication Licensee or Regulated Person must not take any action, or induce any other party to take any action, that has the effect of degrading the availability or quality of another Telecommunication Licensee's or Regulated Person's service and/or equipment, or raising the other Telecommunication Licensee's or Regulated Person's costs of providing any telecommunication or media service and/or equipment, without a legitimate business, operational or technical justification. IMDA will find that a Telecommunication Licensee or Regulated Person has no legitimate business, operational or technical reasons for taking an action when:
 - (i) the action was not a commercially reasonable means for the Telecommunication Licensee or Regulated Person to reduce its costs, offer a new service or equipment, improve service or equipment quality or otherwise benefit its End Users; and
 - (ii) the adverse impact of the Telecommunication Licensee's or Regulated Person's actions on other Telecommunication Licensees or Regulated Persons was grossly disproportionate to the benefit to the Telecommunication Licensee or Regulated Person and its End Users.

- (b) A Telecommunication Licensee or Regulated Person must not provide information to other Telecommunication Licensees or Regulated Persons that is false or misleading. IMDA will find that a person has provided false or misleading information where (i) the person making the statement or providing the information recklessly makes any statement or does not care whether the statement or information provided is true or false; (ii) where the person providing the information knows or ought reasonably to have known that the statement or information is false or misleading in a material particular; or (iii) where a person dishonestly conceals material facts.
- (c) A Telecommunication Licensee or Regulated Person that receives information from another Telecommunication Licensee or Regulated Person about the other Telecommunication Licensee's or Regulated Person's Customers to fulfil any duty under the 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 or equipment to the other Telecommunication Licensee's or Regulated Person's Customers or otherwise interfere in the other Telecommunication Licensee's or Regulated Person's existing relationship with its Customers.

4. **AGREEMENTS, ETC., PREVENTING, RESTRICTING OR DISTORTING COMPETITION (SECTION 9 OF THE CODE)**

4.1 **Introduction**

- (a) In competitive markets, concerted conduct generally raises more significant competitive concerns than unilateral conduct. Therefore, in assessing a claim that a Telecommunication Licensee or Regulated Person has acted anti-competitively, IMDA will first determine whether a Telecommunication Licensee or Regulated Person has entered into an agreement.
- (b) Where IMDA concludes that a Telecommunication Licensee or Regulated Person has engaged in concerted conduct, IMDA will next seek to determine whether the conduct involved an agreement with:
 - (i) any other Telecommunication Licensee or Regulated Person that provides competing telecommunication or media services or equipment ("**horizontal agreement**"); or
 - (ii) any other entity that does not provide a competing telecommunication or media service or equipment ("**non-horizontal agreement**").
- (c) In general, agreements between two Telecommunication Licensees or

Regulated Persons that are (or potentially are) providing competing telecommunication or media services or equipment (“**Competing Entities**”) are far more likely to have as their object or effect the prevention, restriction or distortion of competition than agreements between Non-Competing Entities. For example, an agreement between two Competing Entities in which one agrees to offer its service only in one geographical area, and the other agrees to offer its service only in another area, would reduce the competitive choices open to End Users in both areas. By contrast, an agreement in which a Telecommunication Licensee or Regulated Person grants one reseller the exclusive right to sell the Telecommunication Licensee’s or Regulated Person’s service to End Users in one geographical area, and grants another reseller the right to resell the Telecommunication Licensee’s or Regulated Person’s service to End Users in another geographical area, may promote competition by giving each reseller an increased incentive to try to sell the Telecommunication Licensee’s or Regulated Person’s service to End Users in its respective service area.

- (d) The Code prohibits Telecommunication Licensees or Regulated Persons from entering into any agreement that 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. If IMDA determines that a Telecommunication Licensee or Regulated Person has entered into an agreement that contravenes the Code, IMDA may:
 - (i) direct the Telecommunication Licensee or Regulated Person to revise the agreement to eliminate the contravening terms or terminate the agreement; and/or
 - (ii) take appropriate enforcement action as prescribed under the Code.

4.2 Determining the Existence of an Agreement (Sub-section 9.2 of the Code)

- (a) The prohibitions contained in Section 9 of the Code apply only to “agreements” involving Telecommunication Licensees or Regulated Persons.
- (b) The concept of an “agreement,” as used in Section 9 of the Code, differs from the concept of a “contract,” as used in commercial law. In commercial law, a contract is a legally binding agreement between two separate legal entities. By contrast, for purposes of Section 9 of the Code, an agreement is an arrangement by which two or more independent economic entities coordinate their market conduct, rather than act independently. An agreement under Section 9 of the Code has a wide meaning and includes both legally enforceable and non-enforceable agreements, whether written

or oral. All that is required is that parties arrive at a consensus on the actions each party will, or will not, take.

- (c) In implementing Section 9 of the Code, IMDA will find that a Telecommunication Licensee or Regulated Person has entered into an agreement where the Telecommunication Licensee or Regulated Person has coordinated its activities with another entity that would otherwise act as an *independent economic entity*. Such agreements may be express or tacit. An express agreement is one in which the parties expressly agree to engage in certain activities. A tacit agreement, by contrast, is one in which the parties intentionally coordinate their conduct, without expressly agreeing to do so.
- (d) Section 9 of the Code 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” 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. In such cases, the Telecommunication Licensee or Regulated Person and the Affiliate do not constitute independent economic entities. The Telecommunication Licensee’s or Regulated Person’s actions should not be subject to heightened scrutiny simply because it has chosen to separate its operations into more than one legal entity.
- (e) In seeking to determine whether a Telecommunication Licensee or Regulated Person has entered into an agreement, IMDA will consider the following:
 - (i) whether there is direct evidence that the Telecommunication Licensee or Regulated Person has entered into an express agreement. This could include documents setting forth the terms of the agreement or a statement by a party to the agreement;
 - (ii) circumstantial evidence that provides a reasonable basis to infer that the Telecommunication Licensee or Regulated Person has entered into an express agreement. For example, IMDA may consider evidence that, following a meeting, two Telecommunication Licensees or Regulated Persons stopped competing in certain geographical areas. This circumstantial evidence may provide a reasonable basis for IMDA to conclude that, at the meeting, the Telecommunication Licensees or Regulated Persons expressly entered into an agreement not to compete; and

- (iii) whether the Telecommunication Licensee or Regulated Person has entered into a tacit agreement. A tacit agreement would be found to exist between Telecommunication Licensees or Regulated Persons, even if they did not enter into an actual agreement, if they knowingly substituted the risks of competition with cooperation between them. IMDA will not find that a Telecommunication Licensee or Regulated Person has entered into a tacit agreement based solely on the fact that the Telecommunication Licensee or Regulated Person is making the same (or similar) output and pricing decisions as another Telecommunication Licensee or Regulated Person. Such conduct could reflect each Telecommunication Licensee's or Regulated Person's unilateral response to changing market conditions. For example, if the price of an input used by Competing Entities increases, each Competing Entity is likely to increase its prices. Rather, in determining whether a Telecommunication Licensee or Regulated Person has entered into a tacit agreement that could facilitate concerted practices, IMDA will consider the following:
 - (A) whether the Telecommunication Licensees or Regulated Persons knowingly entered into practical cooperation;
 - (B) whether behaviour in the market is influenced as a result of direct or indirect contact between Telecommunication Licensees or Regulated Persons;
 - (C) whether parallel behaviour results from contact between Telecommunication Licensees or Regulated Persons leading to conditions of competition which do not correspond to normal conditions of the market;
 - (D) the structure of the relevant market and the nature of the product involved; and/or
 - (E) the number of Telecommunication Licensees or Regulated Persons operating in the market, and where there are only a few Telecommunication Licensees or Regulated Persons operating in the market, whether they have similar cost structures and outputs.
- (f) The fact that a Telecommunication Licensee or Regulated Person may have played only a limited part in the setting up of the agreement, or may not be fully committed to its implementation, or participated only under pressure from other parties does not mean that it is not party to the agreement (although these factors may be considered in deciding on the

level of any financial penalty).

4.3 Agreements Between Entities Providing Competing Services and Equipment (Horizontal Agreements) (Sub-section 9.3 of the Code)

- (a) As noted above, horizontal agreements can raise significant competitive concerns. In some cases, however, agreements between competitors – such as voluntary standards-setting agreements – may promote competition. Therefore, the Code does not prohibit Competing Entities from entering into all horizontal agreements. Rather, under the general prohibition specified in Sub-section 9.3.1 of the Code, Competing Entities are only prohibited from entering into horizontal agreements that have as their object or effect the prevention, restriction or distortion of competition.
- (b) However, there are certain horizontal agreements that IMDA recognises that are so likely to cause anti-competitive harm, and/or are so devoid of legitimate business, operational or technical justification, that these agreements should be presumed to have as their object or effect the prevention, restriction or distortion of competition without the need for an individualised determination of their actual or likely competitive effects (“*by object*” prohibitions). In assessing whether an agreement has as its object the restriction of competition, IMDA may consider a number of factors, including, in particular, the content of the agreement and the objective aims pursued by it. IMDA will also consider the context in which the agreement is (to be) applied and the actual conduct and behaviour of the parties on the relevant market(s). For example, IMDA will find that agreements between Competing Entities to fix prices contravene the Code without any assessment of the actual or likely competitive effect of such agreements. In all other cases, however, IMDA will make an individualised assessment of the actual or likely competitive effect of the horizontal agreement. This approach provides business certainty, while conserving administrative resources.

4.3.1 Specific Prohibited Agreements (Sub-section 9.3.2 of the Code)

- (a) The Code identifies four categories of agreements between and amongst Competing Entities that are always presumed to have the object of preventing, restricting or distorting competition in, or in any part of, the Singapore telecommunication or media market and therefore are specifically prohibited, even in the absence of evidence of likely or actual anti-competitive effect:
 - (i) agreements to fix prices or restrict output (“**Price Fixing agreements**”);
 - (ii) agreements to coordinate separate bids (“**Bid Rigging**”);

agreements”);

- (iii) agreements to allocate Customers or geographic markets (“**Customer Allocation agreements**”); and
 - (iv) agreements not to do business with a specific supplier, Telecommunication Licensee or Regulated Person or Customer (“**Group Boycott agreements**”).
- (b) IMDA will find that a Telecommunication Licensee or Regulated Person has contravened the Code if the evidence demonstrates that the Telecommunication Licensee or Regulated Person has entered into any horizontal agreement that falls within one of these categories. IMDA will not undertake any assessment of the actual or likely competitive effect of such an agreement.

4.3.1.1 Price Fixing/Output Restrictions (Sub-section 9.3.2.1 of the Code)

- (a) Price fixing agreements are one of the most serious forms of anti-competitive conduct. Such agreements provide no competitive benefits, while potentially leading to artificial reductions in supply and artificial increases in price.
- (b) IMDA will find that a Telecommunication Licensee or Regulated Person has contravened the Code where the evidence demonstrates that the Telecommunication Licensee or Regulated Person has participated in discussions relating to price-fixing/output restrictions and has failed to explicitly distance itself from such discussions, agreement or arrangement and/or entered into an agreement with one or more Competing Entities to:
 - (i) set the price that one or more Telecommunication Licensees or Regulated Persons will charge for any telecommunication or media service or equipment; and/or
 - (ii) restrict the quantity of telecommunication or media services or equipment that one or more Telecommunication Licensees or Regulated Persons will offer.
- (c) Besides directly fixing the end price imposed on Customers, price fixing agreements can also include other ways of fixing prices indirectly. For example:
 - (i) agreeing on or agreeing to recover certain cost components in prices charged;
 - (ii) exchanging or sharing of commercially-sensitive or strategic information between competitors, e.g. circulating lists of current and

- future pricing;
 - (iii) agreeing on the telecommunication or media service or equipment or elements thereof to be charged;
 - (iv) agreeing on the telecommunication or media service or equipment or elements thereof to be included in product offerings;
 - (v) setting percentage or monetary surcharges, pricing targets, margins of profit, price increases;
 - (vi) agreeing to increase prevailing prices and/or the timing thereof;
 - (vii) setting minimum prices, setting maximum prices or agreeing on a price range;
 - (viii) agreeing on the amount of or incidence of discounts, rebates or the value and character of promotional benefits and/or the timing thereof;
 - (ix) regulating the distribution channels for particular service offerings or the mode and extent of product marketing; and
 - (x) fixing of credit terms.
- (d) IMDA will find that such agreements contravene the Code regardless of the price level or output level to which the Telecommunication Licensee or Regulated Person agrees.

4.3.1.2 Bid Rigging (Sub-section 9.3.2.2 of the Code)

- (a) Competitive bidding is an efficient, objective and transparent means to allocate resources. Bid rigging agreements provide no competitive benefits, but have the potential to distort the market by artificially increasing or reducing the price at which telecommunication or media services or equipment are bought and sold.
- (b) IMDA will find that a Telecommunication Licensee or Regulated Person has contravened the Code by entering into a bid rigging agreement where the evidence demonstrates that:
- (i) the Telecommunication Licensee or Regulated Person has entered into an agreement with one or more Competing Entities to coordinate separate bids for:
 - (A) assets, resources or rights auctioned by IMDA;
 - (B) any input into the Telecommunication Licensees' or

Regulated Persons' telecommunication or media services or equipment; or

- (C) the provision by the Telecommunication Licensee or Regulated Person of any telecommunication service or equipment; and
- (ii) the Telecommunication Licensee or Regulated Person has agreed not to bid, to bid at specific prices or on specific terms, or to bid within a specific price range.
- (c) IMDA will find that such agreements contravene the Code regardless of the price level to which the Telecommunication Licensee or Regulated Person agrees.
- (d) Notwithstanding the above, a Telecommunication Licensee or Regulated Person is not always prohibited from submitting a joint bid with one or more other Telecommunication Licensees or Regulated Persons, if the Telecommunication Licensees or Regulated Persons disclose the fact that they are bidding jointly. The permissibility of such joint purchasing arrangements will be assessed pursuant to the methodology described in Paragraph 4.4 of these Guidelines.

4.3.1.3 Market and Customer Divisions (Sub-section 9.3.2.3 of the Code)

- (a) Customer allocation agreements provide no competitive benefits, but have the potential to deprive Customers of the benefits of being able to choose among different telecommunication or media service or equipment providers.
- (b) IMDA will find that a Telecommunication Licensee or Regulated Person has contravened the Code by entering into a Customer allocation agreement where the evidence demonstrates that the Telecommunication Licensee or Regulated Person has entered into an agreement with one or more Competing Entities not to compete to provide telecommunication or media services or equipment:
 - (i) to specific Customers or a group of Customers;
 - (ii) during specific time periods; or
 - (iii) in specific geographical areas.
- (c) Subject to sub-section (e), IMDA will find that such agreements contravene the Code regardless of the terms and conditions to which the Telecommunication Licensees or Regulated Persons agree.

- (d) IMDA will generally not consider arrangements that involve Telecommunication Licensees or Regulated Persons sharing facilities because of, for example, economic efficiency considerations or to address technical constraints or a shortage of facilities, to contravene the Code.
- (e) Sub-section 9.3.2.3 of the Code will not apply to arrangements in which IMDA mandates that a Telecommunication Licensee or Regulated Person shares the use of a Critical Support Infrastructure or Essential Resource with other Telecommunication Licensees or Regulated Persons pursuant to Section 7 of the Code.

4.3.1.4 Group Boycotts (Sub-section 9.3.2.4 of the Code)

- (a) Group boycott agreements provide no competitive benefits, but have the potential to artificially exclude specific buyers and sellers from the market, thereby reducing competition.
- (b) IMDA will find that a Telecommunication Licensee or Regulated Person has contravened the Code by entering into a group boycott agreement where, for example, the evidence demonstrates that the Telecommunication Licensee or Regulated Person has entered into an agreement with one or more Competing Entities:
 - (i) not to provide services or equipment to a specific supplier, Telecommunication Licensee or Regulated Person, or Customer; or
 - (ii) not to obtain an input from a specific supplier, Telecommunication Licensee or Regulated Person, or Customer.
- (c) IMDA will find that such agreements contravene the Code regardless of the justification for the boycott.
- (d) Notwithstanding the above, except where required to provide services or equipment, Telecommunication Licensees or Regulated Persons may make individual decisions not to do business with a specific supplier, Telecommunication Licensee or Regulated Person, or Customer.
- (e) An exemption may also 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.

4.3.2 Agreements Necessary for Legitimate Collaborative Ventures (Sub-section 9.3.3 of the Code)

IMDA will not apply the “*by object*” prohibitions contained in Sub-sections 9.3.2.1 through 9.3.2.4 of the Code to agreements among Telecommunication Licensees or Regulated Persons that are ancillary to efficiency-enhancing integration of economic activity provided that such 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 is broader than necessary for the attainment of such efficiency-enhancing integration.

Efficiency-enhancing integration of economic activity refers to significant efficiencies which are likely to be passed on to End Users, and may include but are not limited to the development of new services, increase in availability, reduction of price and/or improvement in quality of telecommunication or media services and/or equipment provided within Singapore.

Such integration of economic activity typically goes beyond simply coordinating actions; it involves combining capital, technology or other assets and may, (but need not), take the form of a joint venture. For example, Telecommunication Licensees or Regulated Persons may agree to undertake joint marketing, purchasing, production or research ventures. As part of the agreement, the Telecommunication Licensees or Regulated Persons may agree to certain “ancillary restrictions” on competition that are necessary to facilitate the collaboration. For example, Telecommunication Licensees or Regulated Persons could agree to establish a joint venture to develop and provide a service that none of the Telecommunication Licensees or Regulated Persons could offer on its own. As part of the agreement, the Telecommunication Licensees or Regulated Persons might establish the price at which each Telecommunication Licensee or Regulated Person will offer the service. In such cases, IMDA will not classify the ancillary restriction as an agreement to engage in price fixing, bid rigging, Customer allocation or a group boycott because doing so would not accurately reflect the actual or likely competitive effect of the practice and might result in the prohibition of conduct that could promote competition and benefit Customers. Rather, in such cases, IMDA will determine the permissibility of the ancillary restrictions based on an individualised assessment of the entire agreement’s actual or likely effect on competition, using the standards specified in Sub-section 9.4 of the Code. If the efficiencies arising from the agreement are significant such that they offset any actual or potential anti-competitive effects, IMDA will generally conclude that the agreement does not contravene the Code. However, if the efficiencies are not significant and are relatively limited, and their potential anti-competitive effects are significant, IMDA will generally conclude that the agreement contravenes the Code.

4.4 Agreements Between Competing Entities That Will be Assessed Based on Their Actual or Likely Competitive Effects (Sub-section 9.4 of the Code)

- (a) With the exception of the agreements specified in Paragraphs 4.3.1 through 4.3.1.4 of these Guidelines, IMDA will assess all agreements between Competing Entities based on their actual or likely effect on competition.
- (b) Where there is evidence that the agreement actually has the effect of preventing, restricting or distorting competition, IMDA will find it to be in contravention of the Code. IMDA will find that an agreement actually has the effect of preventing, restricting or distorting competition if the evidence of its competitive effect, taken as a whole, demonstrates that the agreement has:
 - (i) significantly:
 - (A) restricted output below the level of demand;
 - (B) increased prices above cost;
 - (C) reduced quality below the level that Customers seek; or
 - (D) reduced Customers' choice or deterred innovation; or
 - (ii) deterred or precluded efficient entities from participating in the market.
- (c) Where there is no conclusive evidence of actual market effect because the agreement is relatively recent, IMDA will determine the permissibility of the agreement by seeking to assess whether it is likely to have the effect of preventing, restricting or distorting competition. In conducting this assessment, IMDA will use a 3-step process consisting of:
 - (i) a preliminary assessment;
 - (ii) where necessary, an assessment of the likelihood that the agreement will restrict competition; and
 - (iii) where necessary, an assessment of any offsetting, pro-competitive efficiencies that are likely to result from the agreement.

4.4.1 Preliminary Assessment (Sub-section 9.4.1 of the Code)

IMDA will first conduct a preliminary review of the agreement. IMDA is not likely to find that an agreement contravenes the Code, and therefore generally will terminate its review, if both of the following conditions are met:

- (a) first, the agreement involves a small number of Competing Entities who do

not possess Significant Market Power in the relevant telecommunication or media market(s). In general, IMDA will find that this is the case if the participating Telecommunication Licensees or Regulated Persons collectively have a market share of less than 20 percent. Where necessary, IMDA will define the relevant market and assess their collective market share using the principles and/or methodology described in Paragraphs [2.4.1] and [2.4.2(a)] of IMDA's Reclassification and Exemption Guidelines; and

- (b) second, the agreement 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.

4.4.2 Likelihood of Competitive Harm (Sub-section 9.4.2 of the Code)

- (a) IMDA will conduct a more detailed assessment where any of the following conditions are met:
 - (i) the agreement involves a significant number of Competing Entities who do not possess Significant Market Power;
 - (ii) the agreement involves a Dominant Entity; or
 - (iii) the agreement has the potential to reduce supply, increase price or otherwise deprive Customers of the benefits of competition in relation to telecommunication or media services or equipment.
- (b) In conducting its assessment of whether the agreement has the potential to deprive Customers of the benefits of competition, IMDA will consider:
 - (i) whether (and, if so, to what extent) the Telecommunication Licensees or Regulated Persons that have entered into the agreement retain the ability to act independently;
 - (ii) the duration of the agreement;
 - (iii) whether, in the event the Telecommunication Licensees or Regulated Persons acted anti-competitively, new entry into the market would be likely, sufficient and timely enough to counteract any competitive harm; and
 - (iv) any other factors that help predict the likely competitive effect of the agreement.
- (c) If, after assessing these factors, IMDA concludes that the agreement is not likely to result in a restriction of output or an increase in prices of telecommunication or media services or equipment, or otherwise

adversely affect Customers, IMDA will conclude that the agreement does not contravene the Code.

4.4.3 Efficiencies (Sub-section 9.4.3 of the Code)

- (a) If IMDA's review demonstrates that the agreement has the potential to result in a restriction of output or an increase in prices of telecommunication or media services or equipment, or otherwise adversely affect Customers, IMDA will consider whether the agreement is likely to achieve any off-setting efficiencies.
- (b) IMDA will find that an agreement is likely to result in efficiencies if the Telecommunication Licensee or Regulated Person demonstrates, with reasonable specificity, that the agreement is likely to result in reductions in the cost of developing, producing, marketing and delivering telecommunication or media services or equipment. IMDA will not consider any cost reductions that result from reductions in output or service.
- (c) IMDA will conclude that the agreement does not contravene the Code if the efficiencies that it identifies:
 - (i) are large enough to offset any potential anti-competitive effect;
 - (ii) could not reasonably be achieved through measures that reduce competition to a lesser extent; and
 - (iii) are likely to be passed on to Customers.

4.5 Agreements Between Telecommunication Licensees or Regulated Persons and Entities That are Not Direct Competitors (Non-Horizontal Agreements) (Sub-section 9.5 of the Code)

- (a) Agreements between a Telecommunication Licensee or Regulated Person and another entity (whether or not licensed) that is not a Competing Entity ("**non-horizontal agreements**") generally do not adversely affect competition. Indeed, in many cases, non-horizontal agreements may promote competition. However, because telecommunication and media markets are often characterised by both significant concentration and vertical integration, agreements that involve entities that are at different levels in the "supply chain", such as agreements between a Telecommunication Licensee or Regulated Person and a supplier or a distributor, may sometimes raise competitive concerns – especially where one of the parties to the agreement has Significant Market Power. Such agreements are often also referred to as "**vertical agreements**".
- (b) Vertical agreements can restrict competition in at least three different

ways.

- (i) Vertical agreements can reduce or eliminate “intra-brand” competition, such as competition between two resellers of the same Telecommunication Licensee’s or Regulated Person’s service or equipment. For example, an agreement in which a Telecommunication Licensee or Regulated Person grants Reseller A the exclusive right to resell the Telecommunication Licensee’s or Regulated Person’s service in one geographical area, and Reseller B the right to resell the Telecommunication Licensee’s or Regulated Person’s service in another geographical area, will eliminate competition among providers of the Telecommunication Licensee’s or Regulated Person’s service in both geographical areas. If the Telecommunication Licensee or Regulated Person has Significant Market Power, this could significantly reduce the competitive choices available to End Users in both geographical areas.
 - (ii) Vertical agreements can also facilitate a horizontal Customer allocation agreement between two distributors, which would also raise competitive concerns (see Paragraph 4.3.1.3 of these Guidelines).
 - (iii) Vertical agreements may also deter new entry by foreclosing significant sources of supply or distribution. For example, an agreement between an equipment dealer and an equipment manufacturer that has Significant Market Power, in which the manufacturer gives the dealer the exclusive right to distribute its equipment in Singapore, could foreclose competition in the equipment distribution market.
- (c) At the same time, vertical agreements can give rise to significant pro-competitive benefits.
- (i) Vertical agreements may promote “inter-brand” competition between two Telecommunication Licensees’ or Regulated Persons’ services or equipment. For example, where a Telecommunication Licensee or Regulated Person does not have Significant Market Power, an agreement in which the Telecommunication Licensee or Regulated Person grants Reseller A the exclusive right to resell the Telecommunication Licensee’s or Regulated Person’s service in one geographical area, and another agreement in which the Telecommunication Licensee or Regulated Person grants Reseller B the right to resell the Telecommunication Licensee’s or Regulated Person’s service in another geographical area will reduce intra-brand competition. However, the two agreements may facilitate inter-brand

competition in both geographical areas by giving each reseller an increased incentive to resell the Telecommunication Licensee's or Regulated Person's service to End Users in its respective service area.

- (ii) Vertical agreements may also benefit End Users by eliminating market failures, such as the "free rider" problem. For example, telecommunication equipment Dealer A may provide a high level of customer service (such as provision of detailed product information) and, as a result, charge a higher price for the equipment to recover its higher costs of operation. At the same time, competing telecommunication equipment dealers may provide little or no customer service, but in turn are able to charge lower prices due to their lower costs of operation. If many End Users obtain information from Dealer A, but make their purchase from one of the other dealers, Dealer A will eventually stop providing good customer service in order to lower its costs to compete with the other dealers, thereby depriving End Users of a valued service. By granting Dealer A an exclusive dealership, a telecommunication equipment manufacturer may provide Dealer A with an incentive to continue to provide this service without fear of competitors "free riding" on its efforts.

4.5.1 General Prohibition (Sub-section 9.5.1 of the Code)

- (a) IMDA will assess the permissibility of any non-horizontal agreement based on its actual, or likely, effect on competition. In assessing whether a vertical agreement has the effect of preventing, restricting or distorting competition in a Singapore telecommunication or media market, IMDA will consider both the pro-competitive and anti-competitive effects of the agreement. IMDA will only find that a vertical agreement has the effect of preventing, restricting or distorting competition in a Singapore telecommunication or media market, if IMDA concludes that the actual or likely anti-competitive effects of the agreement outweigh the actual or likely pro-competitive effects of the agreement.
- (b) In considering whether an agreement is pro-competitive, IMDA will consider whether the agreement:
 - (i) has increased, or is likely to increase, inter-brand competition;
 - (ii) has reduced, or is likely to reduce, market failures, such as "free riding";
 - (iii) has facilitated, or is likely to facilitate, new entry; or

- (iv) has provided, or is likely to provide, other pro-competitive benefits.
- (c) In considering whether an agreement is anti-competitive, IMDA will consider whether the agreement:
 - (i) has substantially eliminated, or is likely to substantially eliminate, intra-brand competition;
 - (ii) has facilitated, or is likely to facilitate, collusion among competitors;
 - (iii) has foreclosed, or is likely to foreclose, other Telecommunication Licensees or Regulated Persons from being able to access a significant source of supply or a significant channel of distribution, thereby impeding its ability to compete against other Telecommunication Licensees or Regulated Persons; or
 - (iv) has had, or is likely to have, any other anti-competitive effect.
- (d) A vertical agreement is more likely to contravene the Code if it involves an entity, whether or not a Telecommunication Licensee or Regulated Person, that has Significant Market Power.

4.5.2 Agreements That Will be Assessed Based on Competitive Effects (Sub-section 9.5.2 of the Code)

Paragraphs 4.5.2.1 through 4.5.2.3 of these Guidelines describe three common types of vertical agreements, and their potential pro-competitive and anti-competitive effects. In determining whether these types of agreements have the effect of preventing, restricting or distorting competition, IMDA will use the methodology described in Paragraph 4.5.1 of these Guidelines.

4.5.2.1 Resale Price Maintenance (Sub-section 9.5.2.1 of the Code)

- (a) A resale price maintenance agreement is an agreement in which one entity agrees with another entity that distributes its product on the price that the second entity will charge Customers for the product. For example, a telecommunications equipment manufacturer could agree with a telecommunications equipment dealer as to the price that the dealer will charge for the equipment. Similarly, a Telecommunication Licensee or Regulated Person could agree with a reseller as to the price at which the reseller will resell the Telecommunication Licensee's or Regulated Person's telecommunications or media service.
- (b) There is increasing economic evidence that resale price maintenance agreements often are competitively neutral and, in some cases, may enhance competition. For example, such agreements may allow dealers to provide significant customer services, without incurring the risk that

competing dealers will “free ride” (see Paragraph 4.5(c)(ii) of these Guidelines). Nonetheless, resale price maintenance agreements may raise competitive concerns when they foreclose price competition in a significant portion of the market. For example, where an entity has Significant Market Power in a given product market, price competition among distributors of the product may provide a significant source of price competition in the market, which would be eliminated if the distributor entered into a resale price maintenance agreement.

- (c) IMDA will find that a Telecommunication Licensee or Regulated Person that has entered into a resale price maintenance agreement has contravened the Code, where the evidence demonstrates that the agreement has, or is likely to have, the effect of preventing, restricting or distorting competition in any telecommunication or media market in Singapore.

4.5.2.2 Foreclosure of Access (Sub-section 9.5.2.2 of the Code)

- (a) 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 will, or is likely to prevent, restrict or distort competition in any telecommunication or media industry.
- (b) Whether a foreclosure is “substantial” will depend on an assessment of all relevant factors including, but not limited to:
 - (i) the percentage of the relevant telecommunication or media industry for the subject services that is foreclosed. In general foreclosure is not likely to be “substantial” if the market share of each of the parties to the Agreement does not exceed [25%] in the market for inputs or channels of distribution¹;
 - (ii) the duration of the Agreement;
 - (iii) whether the Agreement serves any legitimate business purpose;
 - (iv) whether the principal effect of the Agreement is to foreclose competitors’ access to inputs or distribution channels, considering in particular:
 - (A) whether the Agreement results in exclusive arrangements, which are generally worse for competition than non-exclusive arrangements;
 - (B) whether the Agreement imposes a combination of vertical

¹This is aligned with the Appreciable Adverse Effect on Competition Test as stated in paragraph 2.25 of the Competition and Consumer Commission of Singapore Guidelines on Section 34 Prohibitions 2016.

restraints that aggravates the negative effect on competition in the market; or

- (C) whether the negative effects arising from the vertical restraints are reinforced by several Telecommunication Licensees or Regulated Persons and their respective buyers organising their trade in a similar way, leading to cumulative effects within the market; and
- (v) 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.

4.5.2.3 Vertical Market Allocation (Sub-section 9.5.2.3 of the Code)

- (a) A vertical market allocation agreement is an agreement in which an entity that produces a product, and distributes that product through more than one distributor, allocates different Customers or markets to different distributors. For example, a telecommunications or media equipment manufacturer could agree with one telecommunications or media equipment dealer that the dealer will sell the manufacturer's products only to business Customers, and could agree with another dealer that the dealer will sell the manufacturer's products only to residential Customers. Similarly, a Telecommunication Licensee or Regulated Person could agree with one reseller that the reseller will resell the Telecommunication Licensee's or Regulated Person's service to End Users in one geographical area, and could agree with another reseller that the reseller will resell the Telecommunication Licensee's or Regulated Person's service to End Users in another geographical area.
- (b) Vertical market allocation can promote competition by providing a distributor with a strong incentive to market a specific Telecommunication Licensee's or Regulated Person's service or equipment. Doing so may help a new entrant establish itself in the market. However, vertical market allocation agreements can raise competitive concerns where they foreclose competition in a significant portion of the market. For example, where an entity has Significant Market Power in a given product market, competition among distributors of the entity's product may provide a significant source of competition in the market, which would be eliminated if the distributor entered into a vertical market allocation agreement.
- (c) IMDA will find that a Telecommunication Licensee or Regulated Person that has entered into a vertical market allocation agreement has contravened the Code, where the evidence demonstrates that the

agreement has, or is likely to have, the effect of preventing, restricting or distorting competition in any telecommunication or media market in Singapore.

5. LENIENCY PROGRAMME: LENIENT TREATMENT FOR TELECOMMUNICATION LICENSEES OR REGULATED PERSONS COMING FORWARD WITH INFORMATION ON CARTEL ACTIVITY

5.1 Introduction

5.1.1 Under Section 9 of the Code, agreements between Competing Entities that have as their object or effect the prevention, restriction or distortion of competition in any telecommunication or media market in Singapore are prohibited.

5.1.2 The following types of “cartel” agreements between or amongst Competing Entities constitute unreasonable restrictions of competition and are specifically prohibited under Section 9 of the Code, even in the absence of evidence of anti-competitive effect:

- (a) Price Fixing/Output Restrictions;
- (b) Bid Rigging;
- (c) Market and Customer Divisions; and
- (d) Group Boycotts.

5.1.3 Due to the secret nature of cartels, Telecommunication Licensees or Regulated Persons participating or which have participated in cartels should be given an incentive to come forward and inform IMDA of the cartel’s activities. Telecommunication Licensees or Regulated Persons who come forward and inform IMDA of the cartel and its activities may benefit from lenient treatment for coming forward with vital information on the cartel. The benefits of granting lenient treatment to Telecommunication Licensees or Regulated Persons who cooperate with IMDA outweigh the need to impose financial penalties on these Telecommunication Licensees or Regulated Persons.

5.1.4 As leniency programmes have been found to be effective in competition law regimes, IMDA will similarly adopt a leniency programme as part of its enforcement strategy. The following Paragraphs 5.2 to 5.9 of these Guidelines outline the Leniency Programme that IMDA will adopt.

5.2 Total Immunity for the First to Come Forward before an Investigation has Commenced

5.2.1 IMDA may impose financial penalties not exceeding the higher of the following amounts on a Telecommunication Licensee or Regulated Person that contravenes any provision of the Code:

- (a) under Section 10(1) of the Telecommunications Act, 10% of the annual turnover of that part of the Telecommunication Licensee's business in respect of which the Telecommunication Licensee is granted the licence, as ascertained from the Telecommunication Licensee's latest audited accounts, or \$1 million; and
- (b) under Section 66(3) of the IMDA Act, 10% of the annual turnover of that part of the business of that Regulated Person in respect of which the contravention occurred, as ascertained from the latest audited accounts of that Regulated Person, or \$1 million.

5.2.2 IMDA will nevertheless grant a Telecommunication Licensee or Regulated Person the benefit of total immunity from financial penalties if both of the following two conditions are satisfied:

- (a) the Telecommunication Licensee or Regulated Person is the first to provide IMDA with evidence of the cartel activity before an investigation has commenced by IMDA, provided that IMDA does not already have sufficient information to establish the existence of the alleged cartel activity; and
- (b) the Telecommunication Licensee or Regulated Person:
 - (i) provides IMDA with all the information, documents and evidence available to it regarding the cartel activity and the information provided by the Telecommunication Licensee or Regulated Person must be such as to provide IMDA with a sufficient basis for taking forward a credible investigation or to add significant value to IMDA's investigation. Where it is not immediately able to provide all the information, documents and evidence available to it regarding the cartel activity, a reasonable time frame for the provision of this information can be agreed to by IMDA. In practice, this means that the information is sufficient to allow IMDA to genuinely advance an investigation;
 - (ii) maintains continuous and complete cooperation throughout the investigation and until the conclusion of any action by IMDA arising as a result of the investigation;
 - (iii) refrains from further participation in the cartel activity from the time of disclosure of the cartel activity to IMDA (except as may be directed by IMDA);

- (iv) unconditionally admits to the conduct for which leniency is sought and details the extent to which this had an impact in Singapore by preventing, restricting or distorting competition within Singapore; and
- (v) grants an appropriate waiver of confidentiality to IMDA in respect of any jurisdiction where the applicant has also applied for leniency, or any other regulatory authority for which it has informed of the conduct.

5.2.3 If a Telecommunication Licensee or Regulated Person does not qualify for total immunity under Paragraph 5.2.2 of these Guidelines, it may still benefit from a reduction in the financial penalty of up to 100 percent under Paragraphs 5.3.1 and 5.3.2 of these Guidelines.

5.2.4 A Telecommunication Licensee or Regulated Person which has initiated or coerced another Telecommunication Licensee or Regulated Person to participate in the cartel will not be eligible for total immunity or receive a reduction in the financial penalty of up to 100 percent under Paragraphs 5.2 and 5.3 of these Guidelines. However, such a Telecommunication Licensee or Regulated Person can still apply for leniency and benefit from a reduction in the financial penalty of up to 50 percent subject to the conditions set out in Paragraph 5.4. In determining whether a Telecommunication Licensee or Regulated Person has initiated or coerced another to participate in the cartel, IMDA would consider the surrounding circumstances of each case carefully, including but not limited to whether the Telecommunication Licensee or Regulated Person took positive and successful steps to either initiate a cartel (in the case of an initiator) or pressured an unwilling participant to take part in the cartel (in the case of a coercer).

5.3 Reduction of Up To 100 Percent in the Level of Financial Penalties where the Telecommunication Licensee or Regulated Person is the First to Come Forward, but which does so only After an Investigation has Commenced

5.3.1 A Telecommunication Licensee or Regulated Person may benefit from a reduction in the financial penalty of up to 100 percent if:

- (a) the Telecommunication Licensee or Regulated Person seeking immunity is the first to provide IMDA with evidence of the cartel activity;
- (b) this information is given to IMDA after IMDA has started an investigation but before IMDA has sufficient information to issue a decision that Section 9 of the Code has been contravened;
- (c) the conditions set out in Paragraph 5.2.2(b) of these Guidelines are satisfied;

- (d) the Telecommunication Licensee or Regulated Person was not the one to initiate the cartel; and
- (e) the Telecommunication Licensee or Regulated Person must not have coerced another Telecommunication Licensee or Regulated Person to participate in the cartel.

5.3.2 Any reduction in the level of the financial penalty under these circumstances is entirely at the discretion of IMDA. In exercising this discretion, IMDA will consider:

- (a) the stage of the investigation at which the Telecommunication Licensee or Regulated Person comes forward;
- (b) the evidence already in IMDA's possession; and
- (c) the quality of the information provided by the Telecommunication Licensee or Regulated Person.

5.4 Subsequent Leniency Applicants: Reduction of Up To 50 Percent in the Level of Financial Penalties

5.4.1 Telecommunication Licensees or Regulated Persons which are not the first to come forward but which provide evidence of cartel activity before IMDA issues a decision that Section 9 of the Code has been contravened may be granted a reduction of up to 50 percent in the amount of the financial penalty which would otherwise be imposed, if the conditions set out in Paragraph 5.2.2(b) of these Guidelines are satisfied.

5.4.2 Any reduction in the level of the financial penalty under these circumstances is entirely at the discretion of IMDA. In exercising this discretion, IMDA will consider:

- (a) the stage of investigation at which the Telecommunication Licensee or Regulated Person comes forward;
- (b) the evidence already in IMDA's possession; and
- (c) the quality of the information provided by the Telecommunication Licensee or Regulated Person.

5.5 Procedure for Requesting Immunity or a Reduction in the Level of Penalties

5.5.1 A Telecommunication Licensee or Regulated Person which wishes to take advantage of the lenient treatment detailed in these guidelines must contact IMDA. Applications for leniency can be made orally or in writing. Anyone contacting IMDA on the Telecommunication Licensee's or Regulated Person's behalf must be authorised or empowered to represent the Telecommunication Licensee or Regulated Person.

- 5.5.2 Initial contact with or “feelers” to IMDA may be made anonymously to find out if leniency is available in respect of a particular alleged cartel activity or for any information on the Leniency Programme. However, for the leniency application proper to be recorded and proceeded with, the Telecommunication Licensee’s or Regulated Person’s name must be disclosed to IMDA.
- 5.5.3 The Telecommunication Licensee or Regulated Person making a leniency application should immediately provide IMDA with all the evidence relating to the suspected infringement available to it at the time of the submission.
- 5.5.4 IMDA will provide a marker system for leniency applications under Paragraphs 5.2 and 5.3 of these Guidelines. If the Telecommunication Licensee or Regulated Person is unable to satisfy Paragraph 5.5.3 above, the Telecommunication Licensee or Regulated Person may, alternatively, apply for a marker to secure a position in the queue and IMDA will provide instructions to the Telecommunication Licensee or Regulated Person on the process and timing by which the marker must be perfected by the prompt provision of relevant information. For a Telecommunication Licensee or Regulated Person to secure a marker, the Telecommunication Licensee or Regulated Person must provide its name and a description of the cartel conduct in sufficient detail, including the estimated duration of the cartel activity and the parties to the cartel, to allow IMDA to determine that no other Telecommunication Licensee or Regulated Person has applied for leniency for such similar conduct. The Telecommunication Licensee or Regulated Person is also expected to define the relevant market(s) in which the cartel activity occurred and detail the impact of the conduct on the identified relevant markets in Singapore.
- 5.5.5 A marker protects a Telecommunication Licensee’s or Regulated Person’s place in the queue for a given limited period of time and allows it to gather the necessary information and evidence in order to perfect the marker.
- 5.5.6 To perfect a marker, the Telecommunication Licensee or Regulated Person must, within the period specified by IMDA, provide information, documents and evidence that meet the requirements for a grant of conditional immunity or leniency (see Paragraph 5.6 of these Guidelines below). Where an extension of time is required by the Telecommunication Licensee or Regulated Person for the perfection of the marker, this will be considered by IMDA on a case-by-case basis. Applications for an extension of time should be made at least five working days before the expiry of the deadline set.
- 5.5.7 If the Telecommunication Licensee or Regulated Person fails to perfect the marker, the next Telecommunication Licensee or Regulated Person in the marker queue will be allowed to perfect its marker, to obtain immunity or a reduction of up to 100 percent in financial penalties. If the marker is perfected, the other Telecommunication Licensees or Regulated Persons in the marker queue will be

informed so that they can decide whether to submit leniency applications for consideration under Paragraph 5.4 of these Guidelines. The marker system will not apply to leniency applications under Paragraph 5.4 of these Guidelines and such applicants should immediately provide IMDA with all the evidence relating to the suspected infringement available to it at the time of the submission. However, where a Telecommunication Licensee or Regulated Person is not immediately able to provide all the information, documents and evidence available to it regarding the cartel activity for a leniency application under Paragraph 5.4 of these Guidelines, a reasonable time frame for the provision of this information can be agreed to by IMDA. An applicant will be required when applying for leniency to provide its name and a description of the cartel activity. The applicant is also expected to define the market(s) in which the infringing conduct occurred and detail the impact of the conduct on the identified relevant markets in Singapore. This will assist IMDA in determining a reasonable time frame for furnishing all information, documents and evidence to IMDA.

- 5.5.8 The grant of a marker is entirely within IMDA's discretion, although its grant is expected to be the norm rather than the exception. At the time of application for a marker, an applicant will only be informed whether it has been the first to come forward and IMDA will subsequently inform the applicant whether a marker has been granted.

5.6 Grant of Conditional Immunity or Leniency

For the grant of conditional immunity or leniency, an applicant must provide IMDA with all the information, documents and evidence available to it regarding the cartel activity, and such information, documents and evidence must provide IMDA with a sufficient basis for taking forward an investigation or add significant value to IMDA's investigation. In practice, this means that the information is sufficient to allow IMDA to genuinely advance an investigation. Examples of the types of information and documents required by IMDA would include documentary records evidencing the existence of cartel activity, the identification of personnel formerly and currently employed by the Telecommunication Licensee or Regulated Person who had engaged in the conduct for which leniency is sought and the provision of information by these personnel about the cartel activity in an interview with IMDA.

When IMDA considers that the conditions for conditional immunity or leniency have been met, IMDA will issue a letter to the applicant confirming the grant of conditional immunity or leniency. The letter will state the conditions and continuing obligations that the applicant has to meet to maintain its conditional immunity or leniency. Failure to abide with the conditions and obligations may lead to IMDA revoking the grant of conditional immunity or leniency.

5.7 Grant of Immunity or Leniency

Before issuing a decision that Section 9 of the Code has been infringed, IMDA will inform an applicant in writing whether immunity or leniency will be granted. The letter will record the scope of the immunity or leniency to be granted. The decision will subsequently set out the grant of immunity or leniency and its scope.

5.8 Confidentiality

A Telecommunication Licensee or Regulated Person coming forward with evidence of cartel activity may be concerned about the disclosure of its identity as a Telecommunication Licensee or Regulated Person which has volunteered information. IMDA will therefore endeavour, to the extent that doing so is consistent with IMDA's legal obligations to disclose or exchange information, to keep the identity of such Telecommunication Licensees or Regulated Persons confidential throughout the course of its investigation, until IMDA issues a decision that Section 9 of the Code has been infringed.

5.9 Effect of Leniency

Leniency given by IMDA under this Leniency Programme applies only in respect of any penalty which may be imposed for a breach of Section 9 of the Code and does not provide immunity from any penalty that may be imposed on the Telecommunication Licensee or Regulated Person under any other laws.

5.10 Withdrawal of Leniency Marker / Revocation of Immunity / Leniency

If at any time after the grant of a leniency marker, IMDA has concerns that an applicant has acted or is acting in a way that puts its leniency status at risk, it will raise those concerns with the applicant and give the applicant an opportunity to respond, and if possible, to address IMDA's concerns, prior to withdrawing the leniency marker. In the event that the applicant has not complied with the terms on which conditional immunity/ leniency or leniency has been granted or that the applicant has made a false declaration or given false information to IMDA at any point in time, IMDA may revoke the grant of conditional immunity/ leniency or leniency. If IMDA is minded to revoke the grant of conditional immunity/leniency or leniency, the applicant will be notified in writing and given an opportunity to make representations.

Appendix 1 - Entry Barriers

1. IMDA's Competition Guidelines specify a number of situations in which IMDA must make an assessment regarding the existence, and significance, of barriers to entry. In general, the more significant the barriers to entry, the more likely it is that IMDA will need to intervene in a market or find that an anti-competitive action has occurred.
2. In assessing barriers to entry, IMDA will seek to identify those factors that could preclude an efficient Telecommunication Licensee or Regulated Person from being able to market or provide a service.
3. In conducting its assessment, IMDA may seek information regarding the cost of, and barriers to, entry from: Telecommunication Licensees or Regulated Persons that are currently in the market; Telecommunication Licensees or Regulated Persons or other entities that have sought to enter the market; and Telecommunication Licensees or Regulated Persons or other entities that may seek to enter the market. Where appropriate, IMDA will consider whether changes over time have increased or decreased the difficulty of entry.
4. IMDA has identified five broad, but non-exclusive, categories of barriers to entry:
 - (a) technical barriers;
 - (b) access barriers;
 - (c) financial barriers;
 - (d) commercial barriers; and
 - (e) regulatory barriers.
5. Technical barriers exist when a new entrant must use technology that is costly or difficult to develop or obtain from third parties. This may occur, for example, where a new entrant must obtain a licence to use proprietary technology, especially where the rights are controlled by a competitor. In assessing the existence of technical barriers, IMDA will consider the extent to which new entrants must use such technology, and the cost and difficulty of doing so.
6. Access barriers exist when a new entrant must access a competitor's infrastructure to provide a service to End Users, and doing so is costly or difficult. For example, where a competitor controls a facility that constitutes a "bottleneck" or "essential" facility, its refusal to provide access to this facility may create an absolute barrier to entry. Access barriers are potentially significant in the telecommunication market, which is characterised by both economies of scale and network effects. Economies of scale refers to the situation in which the average cost of providing services decreases as the volume of services

increases.

7. Network effects arise when the value a consumer places on connecting to a network depends on the number of others already connected to it. A new entrant into the telecommunication market typically must be able to provide End Users with the ability to communicate with all other End Users. Once an entrant has done so, the cost of serving any individual Customer is relatively low. However, due to the high cost of infrastructure deployment, it is often not economically feasible for a new entrant to deploy a ubiquitous infrastructure. Therefore, to provide a service, the new entrant may need to access infrastructure controlled by a competing operator that is currently in the market. In assessing the existence of access barriers, IMDA will consider the extent to which existing regulation ensures that new entrants have access to infrastructure that is required to provide a competitive service on just, reasonable and non-discriminatory prices, terms and conditions.
8. Financial barriers exist when a new entrant must incur significant costs to enter the market. For instance, new entrants into the telecommunication market may often have to incur significant costs to roll-out their network. Such costs cannot be recovered quickly. Neither can the entrant readily recoup these costs if it decides to exit the market within a short period. Such barriers will be especially significant if there are high "sunk costs". Sunk costs refer to the cost of acquiring capital and other assets that are incurred in order to enter the market and supply services, where the costs cannot be recovered and assets cannot be redeployed in another market when the service provider exits the market or ceases service supply. Therefore, in assessing financial barriers, IMDA will consider the costs that a new entrant must incur, as well as the extent to which such costs constitute sunk costs.
9. Commercial barriers exist when a new entrant must incur significant costs to obtain, retain, and serve End Users. For example, a new entrant to a market may need to incur significant costs including: advertising costs in order to obtain brand recognition; additional costs to get individual End Users to switch from their current service or equipment provider; and high on-going "customer care" costs in order to retain the End User's "brand loyalty". In assessing the existence of commercial barriers, IMDA will consider the need for, and cost of, such expenditures.
10. Regulatory barriers exist when a new entrant must obtain regulatory approval to enter, or participate in, a market. Such barriers may be especially significant in markets in which resource constraints – such as limited amounts of spectrum – require regulatory authorities to impose an absolute numeric limit on the number of entrants.
11. IMDA will consider any other barrier to entry that is identified by a party. Parties

seeking to do so should provide verifiable data about the nature of the barriers, the costs that a new entrant would have to incur, and the other obstacles a new entrant would have to overcome to surmount the barrier.