COMPETITION FRAMEWORK FOR THE TELECOMMUNICATION INDUSTRY IN SINGAPORE

INTRODUCTION

1 A competition framework has been set in place for the Telecommunications Industry in Singapore. A similar framework is being developed and is expected to be ready sometime in 2002 for the Broadcasting and Print Industry. Concurrent efforts are being undertaken to develop a comprehensive generic competition framework, which is expected to be ready in two to three years. This report sets out in brief Singapore’s competition framework for the telecommunication industry in Singapore and its experience with the framework.

BACKGROUND

2 The Code of Practice for Competition on the Provision of Telecom Services (or Telecom Competition Code), which was released by the Infocomm Development Authority of Singapore (IDA) on 15 September 2000, came into force with effect from 29 September 2000.

3 With the full liberalisation of the telecommunication industry on 1 April 2000, the number of operators increased from a handful of operators prior full liberalisation to more than 60 facilities and
services based operators overnight. The intensity and complexity of the competition in the market correspondingly increased. There was a need for a more comprehensive and robust competition framework, which would facilitate the growth of fair, effective and sustainable competition. The Telecom Competition Code sought to define the boundaries for the conduct of competition in a fully liberalised telecommunications environment. Its objective is to identify the appropriate regulatory regime conducive to the development of a competitive market place while allowing flexibility for operators to respond quickly to market developments. The Code also aims to facilitate the rapid entry of new competition and the deployment of innovative services, while ensuring a strong incentive for companies to invest in infrastructure. It will do this by ensuring that operators' build-or-buy decisions are based on reasonable and appropriate economic pricing signals.

**LEGAL AUTHORITY TO PROMULGATE THE CODE**

LEGAL EFFECT OF THE CODE

5 Every entity to which IDA grants a licence under section 5 of the Telecommunications Act is required, under section 26 (4) of the Telecommunications Act, to comply with the applicable provisions contained in this Code. The obligations contained in this Code are in addition to those contained in the Telecommunications Act, other statutes, regulations, directions, licences or codes of practice. To the extent that any provision of this Code is inconsistent with the terms of the Telecommunications Act, other statutes, regulations, directions or the terms of any licence, the provisions of those statutes, regulations, directions or licences shall prevail. To the extent that this Code is inconsistent with the provision of any prior codes of practice issued by IDA or its predecessor, the Telecommunication Authority of Singapore (TAS), the terms of this Code will prevail. If any provision of this Code is held to be unlawful, all other provisions will remain in full force and effect.

REGULATORY GOALS OF THE CODE

6 This Code is intended to:
   (a) promote the efficiency and international competitiveness of the information and communications industry in Singapore;
   (b) ensure that telecommunication services are reasonably accessible to all people in Singapore, and are supplied as efficiently and economically as practicable and at performance
standards that reasonably meet the social, industrial and commercial needs of Singapore;

(c) promote and maintain fair and efficient market conduct and effective competition between persons engaged in commercial activities connected with telecommunication technology in Singapore;

(d) promote the effective participation of all sectors of the Singapore information and communications industry in markets (whether in Singapore or elsewhere);

(e) encourage, facilitate and promote industry self-regulation in the information and communications industry in Singapore; and

(f) encourage, facilitate and promote investment in and the establishment, development and expansion of the information and communications industry in Singapore.

UNDERLYING REGULATORY PRINCIPLES

7 IDA’s underlying regulatory principles include:

(a) maximum reliance on voluntary negotiations and market forces where effective competition exists;

(b) clear and effective regulatory requirements to promote full competition where it does not yet exist;

(c) use of regulation that is no more burdensome than necessary to achieve regulatory goals;

(d) technological neutrality; and

(e) open and reasoned decision-making.
PROCESS IN SETTING UP THE CODE

In formulating the Telecom Competition Code, IDA engaged the industry through two public consultation as well as two public forums to obtain comments and inputs.

The First Public Consultation

On 17 April 2000, IDA issued two consultation documents: a proposed Code of Practice for Competition in the Provision of Telecommunication Services and “Interconnection/Access in a Fully Liberalised and Convergent Environment.” Together, these documents were intended to provide a key part of the regulatory framework for the development of a fully competitive telecommunication market in Singapore. On 15 May 2000, IDA conducted a Public Forum, which had 130 attendees, representing a wide range of interests. IDA originally requested interested parties to submit comments on the two papers by 22 May 2000. In response to industry requests, however, IDA extended the deadline for comments to 5 June 2000. IDA also committed to a second round of consultation on the revised Proposed Code prior to its adoption. Fourteen parties, representing a broad range of interests, filed comments during the first public consultation.

The Second Public Consultation

Following the close of the first comment period, IDA began an intensive review process. In the course of this process, IDA gave
extensive consideration to the views and proposals contained in the comments. IDA also considered several additional issues on its own initiative. Based on this process, IDA issued a revised Proposed Code on 30 June 2000. On 6 July 2000, IDA conducted a second public forum, which had approximately 200 attendees. On 14 July 2000, 13 parties submitted comments to IDA regarding the revised Proposed Code.

After considering all the comments and inputs received from the two rounds of public consultations, IDA formulated the Telecom Competition Code and the Code was issued on 15 September 2000 and came into effect 14 days later.

**KEY PROVISIONS IN THE CODE**

The Telecom Competition Code contains ten sections and two appendices.

Section One sets out the goals of the Code, explains the legal basis and effect of the Code, repeals the previous interconnection code, the Code of Practice (Interconnection, Access and Infrastructure), and specifies which categories of Licensees are subject to which provisions of the Code. Section One then sets forth IDA’s regulatory principles. This Section also includes provisions for reviewing and removing provisions that cease to be necessary as competition develops. For example, IDA is to conduct a review of the provisions
of the Code not less than once every three years. Section One reserves IDA’s authority to grant exemptions from, modify or suspend the Code.

14 Section Two contains provisions for classifying Facilities-based Licensees as dominant or non-dominant. A Facilities-based Licensee will be classified as dominant if it controls facilities that provide a direct connection to end-users within Singapore and: (a) the facilities are sufficiently costly to replicate such that requiring new entrants to do so would create a significant barrier to rapid and successful entry by an efficient competitor or (b) the Licensee has the ability to restrict output or raise prices for telecommunication services provided to end-users over these facilities above the levels that would exist in a competitive market. A Dominant Licensee must comply with special requirements contained in Sections Three, Five and Seven of the Code. Finally, Section Two contains standards and procedures by which Dominant Licensee can seek reclassification or can request an exemption, on a service- or facilities-specific basis, from the special requirements applicable to Dominant Licensees.

15 Section Three specifies the duties that Licensees have towards End Users. Licensees must modify their service agreements with their End Users to incorporate certain basic requirements – such as the duty to comply with minimum quality standards, the duty to render timely and accurate bills, the duty to provide fair dispute resolution procedures and the duty to protect End User Service Information. In
addition, Dominant Licensees are required to provide telecommunication service: on demand; on an unbundled basis; on prices, terms and conditions that are just, reasonable and non-discriminatory; and pursuant to filed tariffs. Section Three details the procedures that IDA will use to assess a Dominant Licensee’s tariffs before allowing them to go into effect.

Section Four contains the Minimum Interconnection Duties of Facilities-based Licensees and Services-based Licensees that use switching or routing equipment to provide telecommunication service to the public. For example, Licensees must: interconnect, whether directly or indirectly; establish compensation arrangements for the origination, transit and termination of traffic; and provide billing information. IDA will allow Non-dominant Licensees to interconnect, without prior approval, on any mutually agreeable terms that satisfy the Minimum Interconnection Duties. Section Four also specifies additional obligations that Licensees must fulfil even in the absence of an Interconnection Agreement, such as disclosing network interfaces, complying with mandatory technical standards, facilitating number portability and refusing to accept certain discriminatory preferences.

Section Five contains the interconnection obligations of Dominant Licensees. A Requesting Licensee can choose any of three options in order to enter into an Interconnection Agreement. First, the Requesting Licensee can accept the provisions specified in the Dominant Licensee’s Reference Interconnection Offer (RIO). Second,
the Requesting Licensee can “opt-in” to an existing agreement between the Dominant Licensee and any similarly situated Licensee. Third, the Requesting Licensee can seek to negotiate an individualised Interconnection Agreement with the Dominant Licensee. Section Five contains detailed requirements regarding the terms that a Dominant Licensee must include in its RIO. Section Five also contains detailed procedures regarding the negotiation process.

Section Six contains special provisions by which a Licensee can request the right to share infrastructure controlled by another Licensee. The Licensees must first attempt to negotiate a voluntary Sharing Agreement. If they are unable to do so, the Licensee requesting sharing may ask IDA to make a determination as to whether the infrastructure must be shared – either because it constitutes Critical Support Infrastructure, as that term is defined in the Code, or because IDA concludes that requiring sharing would serve the public interest. The Code designates certain infrastructure that Licensees must share at cost-based prices – such as masts, poles, and towers. Where the Licensees are unable to reach agreement, IDA will conduct a Dispute Resolution Procedure.

In Section Seven, IDA sets out rules that preclude Licensees from engaging in unilateral anti-competitive conduct. A Dominant Licensee may not abuse its market position. For example, the Licensee may not set prices at levels that are so low as to unreasonably restrict competition. Nor can a Dominant Licensee leverage its position in the
market to impede competition in an adjacent, currently competitive market. In addition, Licensees are subject to a prohibition on engaging in unfair methods of competition – such as false advertising or unnecessarily degrading the quality of a competitor’s service.

Section Eight prohibits Licensees from entering into agreements that unreasonably restrict competition. This Section sets out a framework by which IDA will assess the permissibility of such agreements. Licensees are prohibited from entering into certain types of agreements, such as price fixing arrangements or group boycotts. The permissibility of a Licensee entering into other agreements, such as joint research or marketing ventures, will be assessed based on the agreements’ likely or actual impact on competition. IDA will take appropriate enforcement actions against Licensees that violate these restrictions.

Mergers and similar consolidations involving Licensees are addressed in Section Nine. Each Facilities-based Licence issued by IDA requires the Licensee to obtain IDA’s approval before assigning the licence or making changes in ownership, shareholding and management of the Licensee. This Section establishes a procedure for notifying IDA of such proposed changes, and sets forth the procedures by which IDA will seek to determine whether a proposed change is likely to unreasonably restrict competition.
Finally, Section Ten specifies the procedures that IDA will use, in accordance with the Telecommunications Act 1999, to enforce the Code. This Section contains two enforcement mechanisms. First, IDA can initiate an enforcement action on its own initiative. Second, IDA can initiate an enforcement action in response to a Request for Enforcement filed by a private party. This Section also addresses the sanctions that IDA may impose on Licensees found to have contravened the Code. IDA can issue warnings, directions or orders to cease and desist. IDA may also impose financial penalties and suspend, shorten the duration of or terminate a Licensee’s licence. Whilst IDA reserves the right to impose financial penalties of up to $1 million, it will consider all relevant aggravating or mitigating factors in order to ensure that any financial penalty imposed is proportionate to the contravention.

Appendix One specifies the methodology that a Dominant Licensee must use to develop the prices at which it will offer, in its RIO, to provide IRS. In most cases, a Dominant Licensee must use FLEC, which must be determined based on Long Run Average Incremental Costs.

Appendix Two specifies the terms and conditions on which a Dominant Licensee must offer, in its RIO, the provision of Interconnection Related Services (IRS) Appendix Two specifies five classes of IRS that a Dominant Licensee must provide:
(a) Physical Interconnection ("PI") is the linking of two networks to enable the exchange of traffic and/or to provide access to Unbundled Network Elements or Essential Support Facilities.

(b) Origination, Transit, and Termination ("O/T/T") services involve the switching, routing, and transmission of telecommunication traffic between network licensees. O/T/T services allow traffic originated on one network to terminate or transit through another network.

(c) Essential Support Facilities ("ESFs") are those passive support structures, for which no practical or viable alternatives exist, that enable the deployment of telecommunication infrastructure.

(d) Unbundled Network Elements ("UNEs") are physical network facilities and the associated services they support that may be de-coupled from the Dominant Licensee’s network and connected to the Requesting Licensee’s Network.

(e) Unbundled Network Services ("UNSs") are peripheral services that are not economically feasible for a Licensee to replicate but which constitute significant barriers to effective competition.

EXAMPLE OF CASES DEALT UNDER THE CODE

In a recent case titled “Only $38 for Unlimited, Dedicated Broadband Access” Advertisement by SingNet Pte Ltd”, IDA used the framework set out in Telecom Competition Code to evaluate the case.
Case Summary

26 SCV alleged that SingNet had breached Section 7.4.1 “False or Misleading Claims” of the Telecom Competition Code (‘Code’) in the following ways: a) SingNet’s advertisement had indicated SingNet’s access speeds of 256kbps and 512kbps but not SCV’s access speed of up to 1.5Mbps, thus not providing a fair and objective comparison of the two services. By then mentioning that cable modem speed was “slow” in a shared environment while SingNet’s access speed was “fast” with dedicated access, it gave an impression that SingNet’s service was better than SCV’s.

27 SingNet’s advertisement thus created a distorted price comparison of the two services as SingNet was comparing SCV’s 1.5Mbps service with SingNet’s 256kbps service. SingNet’s repetition of such misleading advertisements had damaged SCV’s image.

Determination

28 IDA determined that SingNet’s use of the term “fast” used to describe both services under a single end-user scenario was likely to lead end-users to treat both services as equivalent in terms of access speeds/bandwidth which may not be the case. SCV could potentially offer access speeds of up to 1.5Mbps access speed whereas SingNet’s broadband access plan used under its price comparison in its advertisement was up to 256kbps. Such differences in access speeds between two access platforms should be properly presented for comparison purposes and not simply be described as “fast” in
SingNet’s advertisement. As such, the price and quality comparison made by SingNet in its advertisement without key information on the access speeds/bandwidth of the cable modem service in the advertisement did not provide a fair and objective comparison of the two services.

IDA concluded that SingNet had breached Section 7.4.1 of the Code as the advertisement had made claims and/or suggestions regarding the price and quality of its telecommunication services and that of another licensee that was reasonably likely to confuse or mislead end-users, thereby likely to restrict competition in the Singapore telecommunication market. SingNet was ordered to cease and desist the advertisement and IDA imposed a financial penalty of S$2,000 on SingNet.