

**REPUBLIC OF SINGAPORE  
INFO-COMMUNICATIONS DEVELOPMENT AUTHORITY  
OF SINGAPORE**

**CODE OF PRACTICE FOR COMPETITION IN THE PROVISION OF  
TELECOMMUNICATION SERVICES 2005**

**18 FEBRUARY 2005**

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## CODE OF PRACTICE FOR COMPETITION IN THE PROVISION OF TELECOMMUNICATION SERVICES 2005

18 February 2005

In exercise of the powers conferred by Sections 26 (1)(a), (b), (c), (d), (e) and (g) of the Telecommunications Act (Chapter 323), the Info-communications Development Authority of Singapore (“**IDA**”) issues the Code of Practice for Competition in the Provision of Telecommunication Services 2005 (“**Code 2005**”). This document provides IDA’s response to the comments received to the proposed Code of Practice for Competition in the Provision of Telecommunication Services (“**Code**”) issued in May 2004 and provides a summary of the key provisions of Code 2005 and the Schedule.

### 1. INTRODUCTION

- 1.1 In October 2003, IDA initiated the first triennial review of the Code. IDA released a Consultation Document which sought public comments regarding a proposed comprehensive revision of the Code (“**proposed Code**”). On the same day, IDA also held a Regulatory Workshop to discuss the proposed revisions.
- 1.2 Following the close of the consultation in December 2003, IDA began an intensive review process. In the course of this process, IDA gave extensive consideration to the views and proposals contained in each of the submissions. Based on these comments, as well as IDA’s policy goals, IDA made a number of significant revisions to the proposed Code.
- 1.3 IDA also accepted the industry’s request to conduct a second round of public consultation regarding the proposed Code, the accompanying Schedule of Interconnection Related Services and Mandated Wholesale Services (“**Schedule**”). Accordingly, IDA released a Consultation Document in May 2004, describing the proposed revisions and seeking comment. IDA requested for the comments to be filed by 22 June 2004. IDA thanks the commenters for their inputs.
- 1.4 Many of the comments repeated arguments made in the first consultation, which IDA had previously rejected. While IDA gave these arguments further consideration, in most cases IDA concluded that the commenters had not advanced any new argument or provided any new factual information that would justify a change in IDA’s initial decisions. In some cases, however, IDA has

concluded that further modifications are appropriate. Some commenters also raised new issues, which IDA has fully considered. IDA has also made several further modifications to improve the clarity and organisation of the Code and the Schedule.

- 1.5 IDA now issues the Code 2005. This document provides IDA's response to the comments received to the proposed Code issued in May 2004 and provides a summary of the key provisions of the Code 2005 and the Schedule.
- 1.6 In response to the industry's request, IDA is also releasing three sets of Advisory Guidelines. The first set of Guidelines addresses the procedures for dispute resolution that IDA will use in enforcing the Code 2005. The second set of Guidelines addresses the procedures and standards that IDA will use to assess proposed changes in ownership and Consolidations. The third set of Guidelines addresses the procedures and standards that IDA will use to assess proposed changes in ownership that may result by way of tender offers.

## **2. RESPONSE TO COMMENTS RECEIVED IN THE SECOND PUBLIC CONSULTATION**

- 2.1 Seven parties filed comments in the second public consultation. Non-dominant Licensees continued to advocate increased transparency, greater IDA participation in the dispute resolution process, and imposition of additional obligations on Dominant Licensees. The Dominant Licensees, by contrast, sought further relaxing of existing obligations. Both Dominant and Non-dominant Licensees advocated some further reduction in the requirements regarding Licensees' obligations to their Customers. Some Licensees also advocated closer alignment between the Code 2005 and the Competition Act. This Section describes IDA's response to the more significant comments.

### Transparency

- 2.2 Several commenters proposed that IDA adopt measures to further increase the transparency of its regulatory process. In particular, IDA was asked to amend the Code to expressly commit to making public all preliminary decisions in enforcement proceedings involving Dominant Licensees, to publish directions issued to Dominant Licensees that may have an impact on other Licensees, to commit to following Advisory Guidelines except in exceptional circumstances,

and to provide an explanation in any case in which IDA waives or suspends a Code 2005 provision.

2.3 IDA assures these commenters that it is committed to enhancing the transparency of its regulatory regime, and has already taken significant steps to do so. Consistent with this approach:

- a) IDA will generally make public its preliminary decisions and seek public comment for significant cases, such as exemption requests;
- b) IDA will continue to make public its decisions in enforcement cases. However, IDA does not believe that it is advisable to issue preliminary decisions for enforcement cases. It is more effective for IDA to issue a final decision and allow for reconsideration and appeal;
- c) In those cases in which IDA anticipates waiving or suspending an obligation that the Code 2005 imposes on IDA (such as the obligation to make a decision within a specified period), IDA will generally provide appropriate notice and an explanation; and
- d) In the case of Advisory Guidelines, IDA clarifies that it expects to follow the standards and procedures outlined in the Guidelines. As requested by the commenters, IDA plans to issue two additional sets of Advisory Guidelines, namely (i) IDA's criteria for assessment of Dominance and Significant Market Power, and exemptions and reclassification of Dominant Licensees; and (ii) IDA's assessment criteria for anti-competitive behaviour and agreements that IDA considers to unreasonably restrict competition. IDA will seek public comments on these guidelines soon, before finalising them.

#### Dominance Classification

2.4 Several commenters suggested further changes in the procedures for classifying Licensees as either Dominant or Non-dominant. Specifically, commenters continued to request IDA to adopt the "market-by-market" approach currently being implemented in the European Union ("EU"), rather than continuing with the current licensed-entity approach. Some commenters also suggested that the classification of a Licensee as Dominant or Non-dominant should be based solely on the Licensee's market share.

- 2.5 Given that competition in Singapore's telecommunications market is less developed than in some other jurisdictions that have a longer history of liberalisation, such as the EU, IDA continues to believe that it is not yet appropriate to adopt the market-by-market approach for Singapore. However, IDA will study how it may do so in the future.
- 2.6 IDA also does not believe that it should base the classification of a Licensee as Dominant or Non-dominant solely on the Licensee's market share. In this regard, although IDA will make an initial presumption that a Licensee has Significant Market Power in any market in which the Dominant Licensee has a market share of 40 percent or greater, IDA will also consider other relevant factors, such as existence of price competition and barriers to competitive entry.

#### Duty to End Users

- 2.7 Both Dominant and Non-dominant Licensees opposed adopting new requirements regarding bankrupt customers, and advocated further relaxation of the rules designed to protect End Users. IDA has eliminated proposed provisions that would have required a Licensee to continue to provide service to a bankrupt End User under certain conditions. Licensees may continue to resolve the treatment of bankrupt customers as a commercial matter. The Code 2005, as previously proposed in May 2004, also provides increased flexibility in a number of areas. For example, while a Dominant Licensee must obtain IDA's permission before ceasing to provide a telecommunication service, the Licensee may give its End Users the option of transitioning to another service that the Licensee provides. Similarly, while a Licensee must specify the purposes for which the Licensee intends to use End User Service Information ("**EUSI**") in the End User Service Agreement ("**EUSA**"), nothing prevents the Licensee from getting consent for additional uses as the need arises. However, IDA does not believe that it would be appropriate to reduce the period for consumers to contest charges from 12 to 6 months, as two commenters proposed.

#### Tariff Regime

- 2.8 IDA previously proposed changes to the tariff regime to increase transparency and establish clearer standards by which IDA will assess the prices, terms and conditions on which a Dominant Licensee proposes to offer its services. Some commenters proposed that all wholesale services offered by Dominant Licensees should be offered at prices based on long run incremental cost (or similar

measures) and that resale services should be priced below retail levels. IDA will not adopt these proposals. As IDA has previously explained, there is a distinction between resale and wholesale services. In a resale scenario, a competing Licensee is buying a Dominant Licensee's *retail* service and reselling the service to its retail customers. Where the Dominant Licensee's tariff provides for discounts for large volume users, competing Licensees can purchase the tariffed service and pass the discounts on to smaller customers. In contrast, in a wholesale situation, a Dominant Licensee is offering a service that is specifically designed for other Licensees. Because Dominant Licensees are under no general obligation to provide wholesale services to other Licensees, IDA believes that it is appropriate to require that voluntary wholesale services be offered at just, reasonable and non-discriminatory prices. However, where IDA *requires* a Dominant Licensee to offer a Mandated Wholesale Service ("**MWS**"), IDA will ensure that the service is priced at a level that will enable other Licensees to make full use of the offering to facilitate competition.

- 2.9 IDA believes that the revised tariff regime will provide Dominant Licensees with sufficient flexibility to develop wholesale services voluntarily to meet market demand, provide checks against anti-competitive pricing behaviour and allow IDA to impose ex-ante regulation where necessary. The revised regime, together with Sub-section 8.2.1.2 of the Code 2005 which prohibits price squeezes, will help IDA minimise the possibility of Dominant Licensees engaging in price squeezes.
- 2.10 IDA also does not believe that it is necessary to carry out a public consultation before allowing a Dominant Licensee's tariff to become effective, as suggested by some commenters. Such a process could significantly impede a Dominant Licensee's ability to respond rapidly to changing market conditions. However, once the tariff has been published, interested parties may raise any concern to IDA, especially if they believe any tariff is not just, reasonable and non-discriminatory.
- 2.11 IDA has previously proposed average variable cost as a more precise standard to determine whether a Dominant Licensee's proposed prices are adequate and for assessing predatory pricing. Several Licensees objected to the proposed standard on the grounds that, in the telecommunication industry, firms tend to be characterised by high common or joint costs which are fixed over a large range and volume of services. Given a high fixed cost structure, the commenters contend, the variable costs of a network operator are likely to be very low or

close to zero. Some commenters suggested that IDA adopts the fully distributed cost methodology or long run incremental cost (“**LRIC**”) methodology.

- 2.12 IDA believes that using the fully distributed cost or LRIC methodology as the costing standard for determining adequacy in pricing or predation would be too restrictive, and could deter pro-competitive price competition. However, IDA recognises the high common or joint cost characteristic in the telecommunication industry. Therefore, IDA has decided to use average incremental cost (“**AIC**”) as the cost standard. This means that IDA will presume that a Dominant Licensee has engaged in predatory pricing if evidence demonstrates that the Dominant Licensee is selling its service at less than its AIC. In seeking to determine whether a Dominant Licensee is selling its service at less than its AIC, IDA will determine the average cost that the Dominant Licensee would have avoided if it had not produced the allegedly predatory increment of sales over the period during which the sales occurred. IDA believes that this standard should prevent Dominant Licensees from setting prices at levels that force efficient rivals from the market, while limiting the risk that IDA will deter pro-competitive price cutting. IDA is providing further details on the cost standard in the draft Advisory Guidelines that it is issuing regarding IDA’s assessment criteria for anti-competitive behaviour and agreements that unreasonably restrict competition.
- 2.13 While IDA does not believe further fundamental changes are necessary to the overall tariff regime, IDA has made several other modifications to the Code for further clarity. In particular, the Code 2005 provides that a Dominant Licensee must publish the key provisions of any approved tariff on its website, no later than the date on which the Dominant Licensee begins to provide service pursuant to that tariff. In addition, the Code 2005 provides that, upon request, a Dominant Licensee must file a resale tariff within a reasonable period of time.

### Interconnection Regime

- 2.14. Commenters made a significant number of comments regarding the interconnection regime. To the extent that these comments address detailed operational issues, IDA will consider them as part of its upcoming review of SingTel’s Reference Interconnection Offer (“**RIO**”). Based on the comments, however, IDA has made two modifications to the interconnection regime. First, IDA has slightly modified the procedure for negotiating an Individualised Interconnection Agreement. Parties will now be required to adopt a confidentiality agreement within 7 days after a Licensee submits a Request to negotiate, rather

than 15 days, and must commence negotiations within 7 days after adoption of the confidentiality agreement. Second, IDA has modified the Code to make clear that any change made to the RIO will apply to all Interconnection Agreements adopted by accepting the RIO. IDA also clarifies that it generally will consult on the appropriate price methodology to adopt in connection with MWS.

### Specific IRS and MWS

- 2.15. Commenters also advocated adding or deleting certain Interconnection Related Services (“**IRS**”) and MWS. (The IRS and MWS are detailed in a separate Schedule, which IDA has reorganised for better clarity.) IDA believes that the current conditions in the Singapore telecommunication market do not warrant a significant alteration to the requirements pertaining to IRS. However, IDA will make certain limited changes. First, IDA will eliminate the requirement that a Dominant Licensee must construct loops. IDA believes that competing Licensees are capable of providing this infrastructure themselves. Second, IDA has deleted the requirement that a Dominant Licensee must allow co-location at satellite earth stations. Third, IDA will require Dominant Licensees to provide more specific service level assurances in the RIO. Fourth, IDA has deleted the requirement that Dominant Licensees provide access to cable risers in buildings that they control. Instead, this issue will be addressed in IDA’s Code of Practice for Infocomm Facilities in Buildings (“**COPIF**”). (IDA is currently reviewing the COPIF and will conduct a public consultation in due course.) Finally, on further consideration, IDA has decided to retain the requirement that a Dominant Licensee must offer line sharing as an unbundled network element. While line sharing has not yet been widely used in Singapore, IDA understands that line sharing is proving increasingly popular in the EU and Japan.
- 2.16 After giving the matter serious consideration, IDA also declines to make additional changes requested by certain commenters that seek reciprocal interconnection rights, non-publication of IRS prices and a shorter RIO review process. Because Dominant Licensees lack economic incentives to reach a negotiated agreement with other Licensees, IDA has specified the prices, terms and conditions on which Dominant Licensees must make IRS available to other Licensees. However, because Non-dominant Licensees are subject to market forces, IDA will not require them to provide “reciprocal” interconnection rights to Dominant Licensees. IDA also maintains its decision to require Dominant Licensees to publish the prices, terms and conditions on which it proposes to offer IRS. IDA believes that publication of IRS prices will increase transparency,

while deterring discrimination. Finally, while IDA seeks to avoid unnecessary delay, IDA believes that it is not feasible to complete the entire RIO review process in 75 days. This reflects IDA's experience, which has shown that this is a complex and time-consuming process. A shorter timeframe also would limit IDA's ability to seek public comment. That said, IDA expects to take less than the full measure of time in considering individual modifications to an existing RIO.

### Critical Support Infrastructure

2.17 IDA has not made any further significant change to the Code regarding Critical Support Infrastructure (“**CSI**”). In particular, IDA declines to remove in-building cabling and lead-in ducts – which satisfy the Code's definition of CSI – from the list of infrastructure that must always be shared.

### Abuse of Dominant Position & Anti-Competitive Agreements

2.18 Several commenters urged IDA to retain Code provisions designed to address false and misleading advertising by Licensees. IDA has reviewed the comments, but continues to believe that it should no longer seek to resolve disputes regarding false and misleading claims. False and misleading advertising is a general consumer protection problem, and is not unique to the telecommunications industry. As IDA has previously noted, businesses and consumers have adequate means to resolve these disputes, such as through consumer and trade associations, standards bodies and legal redress through the Courts. IDA will consider providing any requested assistance to the Advertising Standards of Singapore in its review of specific complaints against false and misleading claims in the telecommunication sector.

2.19 Several commenters suggested that IDA replace the use of “average variable cost” with “long-run incremental cost”. As explained in paragraph 2.12 of this document, IDA proposes to replace the use of “average variable cost” with AIC. This approach would ensure that IDA's rules properly distinguish between predatory pricing and pro-competitive price competition, which can benefit end-users.

2.20 IDA has also made certain clarifying changes in the Code. For example, IDA has modified the language of the Code to make clear that a Licensee that is affiliated with a firm that has Significant Market Power may not accept any cross-subsidisation that would enable the Licensee to engage in predation.

- 2.21 As suggested by one commenter, IDA has modified the Code to clarify that the Code's prohibition on Licensees entering into anti-competitive agreements, such as price fixing agreements, applies to both telecommunication service and equipment providers.

### Enforcement Procedures

- 2.22 Many commenters expressed their views regarding IDA's enforcement procedures. IDA believes the current regime is generally sound, and that significant further changes are not required. In particular, IDA does not believe that it should assist in resolving *all* disputes involving Dominant Licensees. Many such disputes involve purely commercial or contractual matters, which Licensees must work out between themselves. IDA will only conduct dispute resolution where a Dominant Licensee has an obligation, under the Code 2005, to enter into an agreement. Even then, IDA urges parties to use the Conciliation process, which may provide a faster alternative. That said, IDA can and will act in any case in which a Licensee has contravened any obligation imposed by the Code 2005. IDA's current statutory authority allows it to impose penalties of up to S\$1 million for each contravention. IDA also has the authority to eliminate any unreasonable price, term or condition contained in a Dominant Licensee's tariff.
- 2.23 The Code 2005 also clarifies that, unless IDA provides otherwise, where a party asks IDA to reconsider a decision or direction, all parties must continue to comply with the decision or direction until such time as IDA or the Minister reverses or modifies it. In considering whether to stay the effectiveness of a decision or direction pending review, IDA generally will consider factors including the merits of the reconsideration request or appeal, whether the potential harm to any person outweighs the benefits of allowing the decision or direction to go into effect and the effect of a stay on the public interest.
- 2.24 On the filing of Requests for Enforcement by "private parties", one commenter enquired if trade associations were permitted to file such requests. While IDA supports the development of industry associations, it does not anticipate that trade associations will be able to file Requests for Enforcement. The text of Sub-section 11.4.1 of the Code 2005 states that a "Licensee or End User that has been injured, or is likely to be injured as a direct result of a contravention" may submit a Request for Enforcement. Section 11.4.1.1(a) (iv) of the Code 2005 further states that the party filing the Request for Enforcement must describe "the manner in which the Party Requesting Enforcement has been injured, or is likely

to be injured, as a direct result of the alleged contravention". These provisions seek to ensure that Requests for Enforcement are filed by parties with direct knowledge of, and a direct interest in, the matter for which enforcement is sought. Trade associations are not Licensees and, generally, are not End Users. Rather, trade associations seek to *represent* Licensees or End Users. Thus, except where they are themselves an End User, and claim injury as such, trade associations will not be able to file Requests for Enforcement. Rather, in those cases in which multiple Licensees or End Users believe that they have been injured as a direct result of a Licensee's alleged contravention of the Code 2005, each Licensee or End User should file a separate Request for Enforcement. Pursuant to Sub-section 11.4.1 of the Code 2005, where multiple Requests "arise out of the same action or course of action" by the same Licensee, IDA may choose to consolidate the Requests into a single proceeding.

- 2.25 On submissions of information to IDA, whether voluntarily or at IDA's request, one commenter expressed concern on parties being able to seek confidential treatment of the information. According to the commenter, the Code "allows operators to withhold information from IDA on the basis of confidentiality." This is not correct. Sub-section 11.7.2(c) of the Code 2005 makes clear that parties must comply "fully with any obligation that it may have to provide complete and accurate information to IDA." Thus, if IDA requests information that a party believes is commercially sensitive, the party must provide the information, but may request confidential treatment of the information. Where IDA declines to provide confidential treatment, the party may either request IDA to return the information (in which case, IDA will not consider the information), or withdraw its request (in which case IDA may consider and disclose the information). IDA has not adopted any special rule regarding information that is subject to a Non-Disclosure Agreement ("**NDA**"). A party may provide IDA with information covered by an NDA where necessary to meet the requirements governing the filing of a Request for Enforcement. A party must submit such information when directed to do so by IDA. In such cases, the party should make clear that the material is subject to an NDA. IDA will grant confidential treatment to any material that is subject to an NDA if IDA concludes that there is a reasonable possibility that its disclosure would cause harm to either party to the NDA or provide a commercial benefit to either party's competitors.

## Relationship to the Competition Act 2004

- 2.26 A number of commenters proposed that IDA's competition regime should either be aligned with, or made subordinate to, Singapore's new national competition regime. Specifically, IDA should raise the administrative penalty cap from S\$1 million to 10% of annual gross turnover ("**AGTO**"), provide private rights of action and allow appeals of IDA's decisions to go to the Competition Appeals Board rather than the Minister.
- 2.27 IDA has considered the merits of incorporating some of these provisions of the Competition Act into IDA's regulatory framework for the telecommunication sector. However, IDA proposes not to adopt a piecemeal approach by incorporating some provisions of the Competition Act without a change in the fundamental competition regulation framework. Fundamentally, the competition regulation framework for the telecommunication sector is different from that of the Competition Act. The Competition Act relies solely on ex-post measures to stop any anti-competitive behaviour and does not presume any firm to be dominant. The telecommunication sector is transiting from a monopoly to a competitive one. There is a fundamental presumption that ex-monopolies have significant market power at the start of full liberalisation, which could be abused to frustrate the competition process. The Code 2005 therefore imposes ex-ante regulation on Dominant Licensees to prevent anti-competitive conduct and to facilitate competition development. The Code 2005 already contains ex-post prohibitions developed based on competition law principles, similar to the provisions in the Competition Act, that prohibit Licensees from engaging in anti-competitive acts or unfair methods of competition. IDA will reconsider this issue when competition is more developed in the telecommunication sector.

### **3. RESPONSE TO COMMENTS RECEIVED IN CONSOLIDATION REVIEW CONSULTATION**

- 3.1 Section 10 of the Code 2005 addresses the standards and procedures for reviewing proposed changes in ownership and Consolidations involving a Designated Telecommunication Licensee. In developing these provisions, IDA has given full consideration to the comments received in response to the Consultation Document regarding Consolidation Review, conducted in 2003. This Section summarises IDA's responses to the key comments.

## Thresholds

3.2 Several of the commenters questioned the thresholds established by IDA. These thresholds generally require: (a) after-the-fact notification of acquisitions of an Ownership Interest in a Licensee of 5 percent or more; (b) IDA approval of acquisitions of an Ownership Interest of 12 percent or more; and (c) the conduct of Consolidation Reviews in connection with acquisitions of an Ownership Interest of 30 percent or more. Some commenters suggested that IDA need only be concerned with acquisitions of Ownership Interests that result in the Acquiring Party obtaining Effective Control (i.e., the ability to cause the Licensee to take a decision regarding the management or major operating decisions of the Licensee), or majority control, over a Licensee. IDA believes that the proposed thresholds are appropriate. These thresholds – which represent a significant decrease in existing regulation – are consistent with those used in the Singapore banking and media sectors. They reflect the fact that, as a sectoral regulator, IDA’s concerns are not limited to pure competition policy. IDA believes that the 5 percent notification requirement is a minimally burdensome means to enable IDA to monitor any person or entity that has an interest in a Licensee. Acquisitions of interests of this size may signal the first step in an effort to acquire a larger interest. In certain cases, such acquisitions could also raise public interest concerns. The 12 percent threshold reflects an ownership level that could raise competitive concerns. For example, a party that has an Ownership Interest of 12 percent or more in several competing Licensees could have an incentive to facilitate coordinated actions by those Licensees. Finally, the 30 percent threshold reflects the ownership level that, under the Singapore Code on Take-over and Mergers, is presumed to provide Effective Control.

## Consolidations involving Services-based Licensees

3.3 One commenter objected to IDA’s proposal to broaden the Consolidation Review process to include certain Services-based Licensees. However, IDA believes that it is appropriate to include larger Services-based Licensees that participate in concentrated markets. Consolidations involving these Licensees can raise significant competitive concerns. For example, a Facilities-based Licensee that is dominant in an “upstream” market could substantially reduce competition through the acquisition of a “downstream” Services-based Licensee that competes against one of the Dominant Licensee’s affiliates.

### Timing of Consolidation Review

- 3.4 Several commenters made suggestions regarding the time at which IDA should conduct any Consolidation Review. One commenter proposed that IDA only review Consolidations after-the-fact. IDA does not believe this is desirable. An after-the-fact approach will increase market uncertainty. Moreover, once a transaction has occurred, requiring divestiture is often difficult and disruptive. Two other commenters, by contrast, proposed that IDA review a proposed Consolidation at the time the parties sign a letter of intent, rather than after they have entered into a legally binding agreement. IDA also does not believe this approach should be adopted. Letters of intent are not legally binding. In some cases, the parties do not ultimately enter into an agreement. In other cases, the final agreement has additional and different terms – which could have an impact on the competitive effect. IDA believes that the most efficient solution is to defer its review until the parties have entered into a complete, legally binding agreement. This approach is consistent with the practices of competition authorities in the United States and the EU.

### Modifications

- 3.5 IDA has made several modifications to this Section of the Code 2005 in response to the comments. In particular, IDA has modified the standard that it will use to assess whether to permit a proposed Consolidation. Rather than seeking to determine whether a proposed Consolidation would “unreasonably restrict competition”, IDA will assess whether the proposed Consolidation would “substantially lessen competition”. This is consistent with the approach taken in other jurisdictions. Finally, any change in ownership that constitutes a “pro forma” transaction (i.e., a transaction that does not alter the economic relationship among the owners of a Licensee) will only be subject to after-the-fact notification.

## **4. SUMMARY OF KEY PROVISIONS IN CODE 2005 AND SCHEDULE**

This Section summarises the key provisions of the Code 2005 and is intended to assist the industry in understanding IDA’s intent. However, it neither adds to, nor alters the requirements specified in the Code 2005.

#### **4.1 Section 1**

- 4.1.1 Section 1 sets forth the goals of the Code 2005, IDA's legal authority to promulgate the Code 2005, and the specific categories of Licensees to which different provisions of the Code 2005 apply. Section 1 also specifies the Regulatory Principles that will guide IDA's implementation of the Code 2005. Consistent with these principles, IDA will take resolute, but proportionate, measures to promote and sustain competition. Where markets are competitive, IDA will rely on market forces and industry self-regulation. Where markets are not effectively competitive, and especially where there are bottleneck essential facilities, regulation will continue. IDA will also strive to make decisions in a transparent, reasoned, non-discriminatory, timely and technology-neutral manner.
- 4.1.2 Section 1 also sets out the procedures for ensuring that the Code 2005 continues to evolve to reflect changing market conditions. Specifically, IDA will conduct a review of the Code at least once every three years. Licensees may also petition IDA to modify or eliminate specific provisions of the Code 2005.

#### **4.2 Section 2**

- 4.2.1 Section 2 contains procedures for the classification and re-classification of Licensees as Dominant or Non-dominant. The Code 2005 adopts a "licensed entity" approach. Under this approach, if a Licensee is classified as Dominant, it must comply with the special requirements applicable to Dominant Licensees when providing any telecommunication service pursuant to its licence. IDA will classify a Licensee as Dominant if it either: (i) exercises operational control over facilities used for the provision of telecommunication services that are sufficiently costly or difficult to replicate in that market; or (ii) has the ability to exercise Significant Market Power in any market in which it provides telecommunication services pursuant to its licence. A Dominant Licensee cannot avoid application of these special requirements by transferring facilities, or an ongoing business, to another Licensee. The Code 2005 also contains procedures for the reclassification of Licensees.
- 4.2.2 Section 2 also contains a procedure by which a Dominant Licensee may obtain exemption from the application of the requirements applicable to Dominant Licensees to any service if the Dominant Licensee can demonstrate that competition has developed to the point that such regulation is no longer

necessary. The Dominant Licensee bears the burden of satisfying IDA that the requirements for an exemption are met.

### **4.3 Section 3**

- 4.3.1 Section 3 sets forth the obligation of Licensees to their End Users. This Section imposes certain “consumer protection” duties on all Licensees. These include: the duty to comply with IDA’s quality of service standards; the duty to disclose prices, terms and conditions prior to providing service; a prohibition on disproportionate early service termination charges; restrictions on the unilateral suspension or termination of service; a prohibition on switching an End User’s service provider without the End User’s prior consent; a duty to prevent against the unauthorised use of EUSI; and a duty to disclose service quality information. These provisions are intended to deter Licensees from engaging in certain types of abuses that may occur in a liberalised market.
- 4.3.2 Section 3 also requires Licensees to include certain provisions in their EUSA. Specifically, the Agreement must: specify the service billing period; specify the prices, terms and conditions on which service will be provided; provide that End Users will not be required to pay for any service that they did not consent to receiving; provide a procedure for an End User to contest charges; specify the bases on which the Licensee may suspend or terminate service; and contain procedures governing the Licensee’s use of EUSI.
- 4.3.3 If a Licensee contravenes any of the general “consumer protection” duties, IDA may take enforcement action. In contrast, if a Licensee breaches any provision in its EUSA, the End User can seek a remedy through voluntary negotiation, arbitration or any appropriate judicial procedure. IDA will only treat a Licensee’s failure to fulfil its obligation under the EUSA as a contravention of the Code 2005 if it is wilful, reckless, or repeated.

### **4.4 Section 4**

- 4.4.1 Section 4 specifies the duty of Dominant Licensees in connection with the provision of telecommunication services to both End Users and other Licensees. Specifically, a Dominant Licensee must provide telecommunication services on just, reasonable and non-discriminatory prices, terms and conditions. The Dominant Licensee is also prohibited from requiring a Customer who wants to

purchase a tariffed telecommunication service to purchase another service or product.

- 4.4.2 Section 4 also specifies the additional duties of Dominant Licensees solely in connection with the provision of tariffed End User telecommunication services. In particular, a Dominant Licensee: must provide service to End Users on reasonable request; allow resale of End User telecommunication services; and allow other Licensees to act as sales agents for its tariffed End User telecommunication service on a non-discriminatory basis.
- 4.4.3 Although the Code 2005 generally does not require Dominant Licensees to offer wholesale services, if the Licensee chooses to do so, it must provide the service at just, reasonable and non-discriminatory prices.
- 4.4.4 A Dominant Licensee must file a tariff, and obtain IDA's written approval, before offering any of the following telecommunication services: End User telecommunication services (both standardised services and services designed for specific End Users); resale telecommunication services; wholesale telecommunication services that the Dominant Licensee chooses to offer; and any other telecommunication service that IDA directs the Licensee to offer pursuant to a tariff. Where a Dominant Licensee's existing End User service tariff restricts resale, the Dominant Licensee must, within a reasonable period of receiving a request, file a new or amended tariff that eliminates the resale restriction. A Dominant Licensee must also obtain IDA's approval before withdrawing a tariffed offering.
- 4.4.5 Section 4 also contains the tariff filing procedures and the standards that IDA will use to determine whether a proposed tariff is just and reasonable. In the case of End User tariffs, IDA will assess whether the price is excessive by benchmarking the prices against prices in a "basket" of comparable jurisdictions. IDA will not find that prices are inadequate if they are above either the Dominant Licensee's AIC or the prices charged by the Dominant Licensee's competitors. The AIC methodology seeks to determine the costs that the Dominant Licensee would incur, in the short-term, to provide the service. In the case of a resale tariff, IDA will determine whether the tariff allows for resale of an End User service on the same prices, terms and conditions as the service is offered to End Users. In the case of a "voluntary" wholesale service, IDA will determine whether the prices, terms and conditions are no less favourable than the prices, terms and conditions on which the Dominant Licensee offers any comparable End User

telecommunication service. IDA may periodically review effective tariffs to ensure that they remain just, reasonable and non-discriminatory.

- 4.4.6 A Dominant Licensee must publish the key provisions of any approved tariff on its website no later than the date on which the Dominant Licensee begins to provide service pursuant to that tariff. In particular, the Dominant Licensee's tariff must contain: a service description; a list of prices (including any discount structure); service termination and suspension provisions; and any availability restriction or eligibility requirement. A Dominant Licensee must provide telecommunication services at the prices, terms and conditions specified in its applicable tariff.

## **4.5 Section 5**

- 4.5.1 Section 5 specifies the duties that all Licensees have to fulfil in order to promote competition. In particular, Licensees must interconnect with other Licensees, whether directly or indirectly, and must submit all interconnection agreements to IDA. Where neither party is a Dominant Licensee, IDA will not reject any Interconnection Agreement so long as it provides that the Licensees will: pay compensation for the origination, transit and termination of telecommunication traffic; provide (except where the Licensees expressly agree otherwise) non-discriminatory interconnection quality; take reasonable measures to prevent technical or physical harm to each other's network if they directly interconnect; give each other necessary billing information; preserve each other's confidential information; not unilaterally suspend the agreement without obtaining IDA's prior approval; and amend the agreement if necessary to incorporate any additional provision that IDA may require in future. Interconnection Agreements are private contracts. IDA generally will not intervene in the relationship between two interconnected Non-dominant Licensees. Licensees are expected to cooperate in good faith, and in a commercially reasonable manner to implement the terms of their Interconnection Agreement. Section 5 also contains procedures for the modification of Interconnection Agreements.

- 4.5.2 Section 5 also specifies certain duties that are applicable even in the absence of an Interconnection Agreement. For example, Licensees must: disclose the physical and logical network interfaces necessary to allow for interconnection and interoperability; comply with any mandatory technical standard adopted by IDA; facilitate End Users' changing service providers; assist in the provision of integrated printed directories and directory enquiry service; reject discriminatory

preferences from any Affiliate that controls access to support facilities; and reject discriminatory preferences from building owners regarding the provision of space or support facilities, where this would preclude competition.

#### **4.6 Section 6**

4.6.1 The procedures governing interconnection with a Dominant Licensee are specified in Section 6. A Requesting Licensee may enter into an Interconnection Agreement with a Dominant Licensee in one of three ways. First, the Requesting Licensee can accept the terms of the Dominant Licensee's RIO. The provisions of the RIO, and of any Interconnection Agreement adopted by accepting the RIO, are to remain in effect until 3 years after the commencement date specified in the *Government Gazette*. Second, the Requesting Licensee may "opt into" an Interconnection Agreement that the Dominant Licensee has entered into with a similarly situated Licensee. Third, the Requesting Licensee may seek to enter into an Individualised Interconnection Agreement with the Dominant Licensee.

4.6.2 Section 6 specifies the substantive requirements of the RIO. Specifically, the RIO must provide that the Dominant Licensee will offer all IRS and MWS on a non-discriminatory basis. The RIO must also contain the following: a service quality description (including provisions for compensation in the event that the Dominant Licensee fails to meet the specified service quality level); a description of any operational and technical requirement necessary to avoid harm to the Dominant Licensee's network; a description of the means by which the Dominant Licensee will provide billing information; a statement of the means by which the Licensees will protect confidential information; a description of the ways in which the Dominant Licensee will cooperate with the Requesting Licensee to facilitate number portability; the procedures and provisioning intervals for ordering IRS and MWS; information regarding the availability of IRS; the means by which the Requesting Licensee can request additional IRS; a list of any reasonable restriction that the Dominant Licensee intends to impose on the availability of IRS and MWS; a statement that the Licensees will refer disputes regarding interconnection to IDA before terminating or suspending the Interconnection Agreement; and any other provision required to be included in all Interconnection Agreements. The Dominant Licensee must also submit, and obtain IDA's approval of, a Model Confidentiality Agreement, which will facilitate negotiations among Licensees. Where IDA requires a Dominant Licensee to offer an MWS, IDA will specify the applicable pricing methodology to be adopted by the Dominant Licensee.

4.6.3 Section 6 also sets out the procedures by which a Requesting Licensee can enter into an Individualised Interconnection Agreement. The parties must first seek to reach an agreement through good faith negotiations. During this period, they may request IDA to provide Conciliation (non-binding mediation) in order to facilitate any agreement. The Licensees may enter into an agreement on any mutually acceptable terms that satisfy the requirements applicable to all Interconnection Agreements that are contained in Section 5 of the Code 2005. If the parties are unable to reach agreement after 90 days, either Licensee may request IDA to conduct dispute resolution.

#### **4.7 Section 7**

4.7.1 Section 7 contains procedures regarding the circumstances in which IDA will require a Licensee – whether Dominant or Non-dominant – to allow other Licensees to “share” the use of certain infrastructure that the Licensee controls. IDA will require Licensees to share infrastructure where: the infrastructure constitutes CSI or IDA finds that sharing is in the public interest.

4.7.2 Section 7 also specifies the procedures that a Licensee must follow if it wants to share another Licensee’s infrastructure. The Licensee must first request negotiation. If the parties cannot reach an infrastructure Sharing Agreement within 60 days, the Licensee Requesting Sharing may request that IDA designate the infrastructure as infrastructure that must be shared. If IDA has so designated the infrastructure, the parties must negotiate and conclude an infrastructure Sharing Agreement within 60 days. If they are unable to do so, then either Licensee may ask IDA to resolve the dispute.

4.7.3 Finally, Section 7 designates certain categories of infrastructure that must always be shared. These include radio distribution systems for mobile coverage in train or road tunnels, in-building cabling (including associated network interface devices) and lead-in ducts and associated manholes). Where parties do not agree on the price the Licensee Requesting Sharing is to pay, IDA will establish the price using a cost-based methodology.

#### **4.8 Section 8**

4.8.1 Section 8 contains provisions, based on general competition law principles that prohibit Licensees from engaging unilaterally in certain anti-competitive acts or unfair methods of competition. A Dominant Licensee may not engage in conduct

that constitutes an abuse of its dominant position in the Singapore telecommunication market. An abuse of dominant position occurs when the Dominant Licensee engages in conduct that unreasonably restricts, or is likely to unreasonably restrict, competition. The Code 2005 contains a non-exhaustive list of practices that would constitute an abuse of dominant position, including: predatory pricing; price squeezing; cross-subsidisation; discrimination (both price and non-price discrimination); and predatory network alteration.

- 4.8.2 Section 8 also addresses conduct by a Licensee that is affiliated with an entity that has Significant Market Power, such as a Licensee whose parent has a monopoly in its home market. For example, such a Licensee may not: obtain an essential input at a price so high that it subjects competing Licensees to a price squeeze; accept any cross-subsidisation that would enable it to engage in predatory pricing; or enjoy preferential access to essential inputs.
- 4.8.3 Finally, Section 8 prohibits certain “unfair methods of competition” by which a Licensee attempts to obtain a competitive advantage for itself or an Affiliate for reasons unrelated to the availability, price or quality of the service that the Licensee or its Affiliate offers. Section 8 contains a non-exhaustive list of unfair methods of competition, such as: unjustifiably degrading another Licensee’s service quality or availability or increasing the Licensee’s costs; providing false or misleading information to another Licensee; or improperly using information that a Licensee provides about its customers.

#### **4.9 Section 9**

- 4.9.1 Section 9 contains provisions, based on general competition law principles that prohibit Licensees from entering into anti-competitive agreements. Agreements may be express, implied or tacit. However, an arrangement between a Licensee and an Affiliate over which it exercises Effective Control does not constitute an agreement for the purposes of this Section.
- 4.9.2 Section 9 contains a general prohibition against Licensees entering into agreements with Competing Licensees (so-called horizontal agreements) that unreasonably restrict, or are likely to unreasonably restrict, competition in any telecommunication market in Singapore. Section 9 then specifies certain types of agreements that are conclusively presumed to be anti-competitive, and are therefore prohibited, even in the absence of evidence of anti-competitive effect. These include: price fixing agreements; bid rigging agreements; customer

allocation agreements; and group boycotts. The permissibility of other types of horizontal agreements will be assessed based on their actual or likely competitive effects.

- 4.9.3 Section 9 also addresses agreements between a Licensee and another entity that is not a direct competitor, such as a supplier or reseller (non-horizontal agreement). Such agreements typically raise fewer competitive concerns than horizontal agreements. Such agreements are only impermissible if they restrict, or are likely to restrict, competition.

#### **4.10 Section 10**

- 4.10.1 Section 10 sets out the procedures that Designated Telecommunication Licensees, as well as any entities that seek to obtain an ownership interest in a Designated Telecommunication Licensee, must follow in the case of a change in ownership and Consolidation. The term “Designated Telecommunication Licensee” includes all Facilities-based Licensees and any Services-based Licensee that has a market share of at least 10 percent in any market in which IDA has licensed it to provide service, if the three largest participants in that market collectively have a market share in excess of 75 percent. This approach is intended to allow IDA to review transactions that are most likely to raise competitive concerns. Section 10 establishes different procedures for acquisitions of an Ownership Interest in a Licensee of less than 5 percent, acquisitions of an Ownership Interest in a Licensee of at least 5 percent but less than 12 percent, acquisitions of an Ownership Interest in a Licensee of at least 12 percent but less than 30 percent and Consolidations. These procedures do not apply to transactions involving underwriters, lenders, and Official Receivers.

- 4.10.2 The acquisition of an Ownership Interest in a Licensee resulting in an Acquiring Party holding an Ownership Interest of less than 5 percent need not be disclosed to, nor approved by, IDA. The holding of an Ownership Interest below 5 percent is so unlikely to raise competitive or other regulatory concerns that there does not appear to be a need to continue to impose any regulatory obligation.

- 4.10.3 Licensees must *notify* IDA within 5 working days after becoming aware of any acquisition of an Ownership Interest that results in an Acquiring Party holding an Ownership Interest in the Licensee of at least 5 percent, but less than 12 percent. Once a Licensee has notified IDA that an Acquiring Party has acquired an Ownership Interest that results in an Ownership Interest in the Licensee of 5

percent or more, no further notification is required for subsequent changes in the Acquiring Party's Ownership Interest as long as the Acquiring Party's Ownership Interest in the Licensee remains below 12 percent.

- 4.10.4 Licensees and the Acquiring Party must jointly seek IDA's *approval* for any acquisition of an Ownership Interest that results in an Acquiring Party holding an Ownership Interest in the Licensee of at least 12 percent but less than 30 percent, even if it does not result in the Acquiring Party obtaining Effective Control of the Licensee.
- 4.10.5 IDA must approve any Consolidation involving a Designated Telecommunication Licensee. The Code 2005 defines a Consolidation as a transaction that results in previously separate entities becoming a single economic entity. This may occur where an entity obtains Effective Control over a Licensee. IDA will presume that the holding of an Ownership Interest of 30 percent in a Licensee provides Effective Control. The Licensee and the Acquiring Party must jointly file the Application. The Code 2005 recognises that a party may obtain an Ownership Interest in a Licensee in any of several ways.
- 4.10.6 The Code 2005 also specifies the procedures for seeking IDA's approval for any Consolidation and the information that Applicants are required to provide, including a description of the proposed Consolidation, and assessment of its competitive impact and a statement as to why approval of the proposed Consolidation would serve the public interest. IDA may seek additional information, where necessary.
- 4.10.7 IDA will ordinarily complete its Consolidation Review within 30 days, but may extend the review period to a maximum of 120 days. At the conclusion of the review process, IDA will: approve the Consolidation Application; approve the Consolidation Application subject to Conditions; or deny the Consolidation Application. Among the Conditions that IDA may impose are: non-discrimination requirements; accounting separation; structural separation; and voluntary partial divestiture. Where IDA imposes Conditions, the Licensee or any of the Applicants will have 14 days from the date of IDA's decision to notify IDA as to whether they accept the Conditions or wish to withdraw their Consolidation Application.
- 4.10.8 Section 10 further provides that, if an Acquiring Party acquires an Ownership Interest of at least 12 percent without obtaining IDA's prior approval, IDA may

subsequently: (a) require the divestiture of some or all of the voting shares in the Licensee; and (b) require the Licensee to restrict all or any part of the voting rights or dividends that the Acquiring Party has by reason of its Ownership Interest in the Licensee. IDA may also require divestiture if a Party acquires the business of a Licensee as a “going concern” without obtaining IDA’s prior approval.

4.10.9 Section 10 also contains special provisions applicable to acquisition of an Ownership Interest by means of tender offers and share buy-backs.

#### **4.11 Section 11**

4.11.1 Section 11 contains the administrative procedures that IDA will use to implement the Code 2005.

4.11.2 IDA strongly encourages commercial negotiations among Licensees where feasible. However, the Code 2005 specifies certain circumstances in which IDA will assist Licensees by providing conciliation and dispute resolution. Conciliation is a process by which parties can request IDA to assist them in their attempt to reach a voluntary settlement of their dispute. In such cases, IDA will merely facilitate the parties’ negotiations and will not seek to impose a decision on the parties. IDA will consider providing Conciliation in connection with the following events: (a) negotiation of a voluntary Individualised Interconnection Agreement; (b) Licensees’ implementation of an Interconnection Agreement; and (c) Licensee’s infrastructure Sharing Request. By contrast, in a Dispute Resolution Procedure, IDA will impose a binding solution on the parties. IDA will resolve disputes arising out of the failure of Licensees to enter into Individualised Interconnection Agreements or Infrastructure Sharing Agreements. IDA may also resolve disputes regarding implementation of a Sharing Agreement entered into pursuant to IDA’s dispute resolution procedures or an Interconnection Agreement with a Dominant Licensee.

4.11.3 Section 11 also provides that a Licensee or End User that has been injured, or is likely to be injured, as a direct result of the contravention of any provision of the Code 2005 by a Licensee may submit a request asking IDA to take enforcement action against the Licensee that allegedly contravened the Code 2005. The request must be submitted by the party that incurs, or is likely to incur, the injury. IDA will provide a written explanation in any case in which it declines to take enforcement action. IDA may also bring enforcement action against a Licensee

on its own initiative. If IDA concludes that the Licensee has contravened the Code 2005, IDA may impose sanctions on that Licensee. These include: warnings; directions to cease and desist; directions to take specific remedial actions; financial penalties; and suspension or cancellation of the Licensee's licence.

4.11.4 Section 11 also specifies the means by which IDA can gather information. These include: requests for responses to specific questions, requests for documents, interviews and inspection. Parties may seek confidential treatment of information. Section 11 further provides that where IDA rejects a request for confidential treatment, the party may either withdraw the request or ask to have the information returned to it, rather than being considered by IDA.

4.11.5 A party that is adversely affected by an IDA decision or direction may, within 14 days, seek reconsideration from IDA or appeal directly to the Minister. Unless they can demonstrate good cause, parties may not raise facts or make arguments for the first time on reconsideration if they could have raised the issue before IDA during its initial proceeding. If a Licensee is not satisfied with IDA's Decision on Reconsideration, it can appeal to the Minister within 14 days. Unless IDA provides otherwise, any decision or direction will remain in effect during the review process.

## **4.12 Section 12**

4.12.1 Section 12 contains provision to facilitate the transition to the Code 2005 upon the repeal of the current version of the Code, issued on 15 September 2000 ("**Code 2000**").

4.12.2 Pursuant to Section 12, the permissibility of all conduct prior to or after the Effective Date of Code 2005 will be assessed under the standards specified in the Code 2000 or the Code 2005, respectively. To clarify, any action after the Effective Date which is taken pursuant to an agreement entered into prior to the Effective Date of Code 2005, will be assessed pursuant to the terms of Code 2005.

4.12.3 Dominant licensee classifications made pursuant to Code 2000 will remain in effect. Unless IDA intends otherwise, exemptions granted pursuant to Code 2000 will remain in effect. For this purpose, by notice in the *Gazette*, IDA will specify

the corresponding provisions in the Code 2005 for which the exemptions remain applicable. Any Request for Exemption filed by a Licensee pursuant to Code 2000, which remains pending on the Effective Date of Code 2005, will be deemed to be a Request for Exemption from the corresponding provisions of Code 2005. Any effective tariff filed by a Dominant Licensee will also remain in effect. The Dominant Licensee must publish all effective tariffs within 90 days of the Effective Date of the Code 2005.

4.12.4 Section 12 also provides for the modification of the existing EUSAs and Interconnection Agreements, as well as the existing RIO, to comply with the requirements of the Code 2005. Licensees will have 90 days from the Effective Date of Code 2005 to ensure that their EUSAs comply with the requirements of the Code 2005. Non-dominant Licensees will have 180 days to ensure that their Interconnection Agreements with other Non-dominant Licensees (“Non-DL IA”) comply with the requirements set out in of the Code 2005. In general, however, to the extent that the EUSAs and Non-DL IAs are already fully compliant with the requirements of Code 2000, no further changes should be necessary to stay compliant with the requirements of Code 2005.

4.12.5 As for the existing RIO, within 30 days after the Effective Date of the Code 2005, a revised RIO that conforms to the obligations of the Code 2005 must be filed by the relevant Dominant Licensee with IDA. IDA will then review the RIO. Once IDA has approved the RIO, it will stay in effect for 3 years. Any Interconnection Agreement entered into pursuant to the revised RIO will be effective until the end of this 3-year period.

#### **4.13 Appendix 1**

4.13.1 Appendix 1 contains the methodologies that a Dominant Licensee must use to develop the prices for IRS and MWS.

4.13.2 Unless IDA directs otherwise, a Dominant Licensee must determine the cost of IRS based on a Forward Looking Economic Cost methodology. The Dominant Licensee must then set the price of the IRS using a Long Run Average Incremental Cost methodology.

4.13.3 Costs for IRS are to be recovered from the Licensee that caused the Dominant Licensee to incur the costs.

4.13.4 Appendix 1 further provides that, at such time as IDA directs a Licensee to offer an MWS, IDA will either direct the Licensee to provide the service at cost-oriented or “retail-minus” rates.

#### **4.14 Schedule**

4.14.1 IDA has moved information previously included in the Code, as well as in Appendix 2, into a new Schedule. The Schedule describes the IRS that a Dominant Licensee must include in its RIO. These are: Physical Interconnection (“**PI**”); Origination, Transit and Termination (“**O/T/T**”); Essential Support Facilities (“**ESF**”); Unbundled Network Elements (“**UNEs**”); and Unbundled Network Services (“**UNS**”). The Schedule also requires a Dominant Licensee to offer Local Leased Circuits (“**LLCs**”) as an MWS.

4.14.2 PI is the provision and maintenance of the physical transmission links between two Licensee’s networks. A Dominant Licensee must offer to provide PI at either an interconnect gateway switch or a local switch.

4.14.3 O/T/T involves the switching, routing and transmission of telecommunication traffic between Licensees. A Dominant Licensee must offer to provide O/T/T to any Requesting Licensee.

4.14.4 ESFs are passive support structures, for which no practical or viable alternatives exist, that enable the deployment of telecommunication infrastructure. The Dominant Licensee must offer to provide the following ESF to Facilities-based Requesting Licensees: co-location; lead-in ducts and lead-in manholes.

4.14.5 UNEs are physical telecommunication plant and equipment, and their associated service functionalities that Requesting Licensees need in order to provide a competitive telecommunication service. A Dominant Licensee must offer to provide the following UNEs to Facilities-based Requesting Licensees: local loops, sub-loops, line sharing; and distribution frame access.

4.14.6 UNS are telecommunication network services which must be provided to Requesting Licensees at cost-based prices in order for them to provide a competitive telecommunication service. A Dominant Licensee must offer to provide the following UNS to Facilities-based Requesting Licensees: Connection Services at submarine cable landing stations, and Emergency Services.

4.14.7 The Schedule specifies only one MWS, LLCs. Pursuant to IDA's decision of 16 December 2003, a Dominant Licensee must provide both full connections (i.e., connections from an End User site to a Facilities-based Licensee's exchange building or data centre) and tail circuit connection (i.e., connections from End User sites to the Dominant Licensee's exchange buildings). During the specified interim period, the Dominant Licensee must price wholesale LLCs based on a retail-minus methodology. Thereafter, IDA's decision requires the Dominant Licensee to make tail LLCs available as an IRS at cost-based prices.

4.14.8 The Dominant Licensee will be required to publish in its RIO the prices, terms and conditions on which it offers to make IRS and MWS available to Requesting Licensees.

## **5. CONCLUSION**

5.1 The adoption of the Code 2005 is an important step in the development of IDA's pro-competitive regulatory regime. Going forward, IDA will continue to take steps to ensure that its regulatory regime reflects changing market conditions, while fully meeting the needs of telecommunication Licensees and End Users.