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INTRODUCTION TO THE TELECOMMUNICATIONS, MEDIA & TECHNOLOGY (TMT) PRACTICE GROUP

Drew & Napier's Telecommunications, Media & Technology (TMT) Practice Group is consistently ranked as the leading IT, telecoms, broadcasting and multimedia legal practice in Singapore. The firm possesses unparalleled transactional, licensing and regulatory experience in the TMT and postal sectors in Singapore. The strength of our team, headed by Director Lim Chong Kin, lies in a carefully-selected mix of more than 10 lawyers and paralegals familiar with infocomms and media law, data protection, and sector-specific and general competition law.

A trailblazer in the telecommunications and media competition law scene, the TMT Practice Group has constantly worked on every significant development in the Singapore TMT market. In 1999, Chong Kin was the lead Singapore counsel appointed by the Info-communications Development Authority (IDA) to draft the Telecom Competition Code (TCC), the first industry-wide competition legislation in Singapore and precursor to the country's general competition regime. In 2004 and again in 2009-12, Chong Kin was reappointed to revise the TCC as part of its first and second triennial review exercises. In the media scene, Chong Kin was appointed as lead Singapore counsel by the Media Development Authority (MDA) in drafting the Media Market Conduct Code in 2003. Today, the team continues to advise MDA on enforcement, licensing, regulatory and market access issues, in particular the implementation of novel regulatory measures relating to cross-carriage of content by pay-TV operators. Chong Kin also led the drafting of the Postal Competition Code in 2007 to facilitate liberalisation of the postal industry in Singapore.

In addition to **conceptualising and drafting of regulatory frameworks**, the TMT Practice Group routinely assists regulators to enforce and implement their directions, regulations and decisions against licensees, mandating market access and addressing

RECENT NOTABLE MATTERS

- **Technology:** Data centre deployment – assisted two of the world's foremost Internet and computing companies in setting up Singapore data centres to serve Asia Pacific requirements.
- **Data Protection and Compliance:** Assisting a range of leading multi-national corporations and local organisations to formulate and implement compliance programmes to meet Singapore data protection requirements.
- **Telecoms:** Lead local counsel to IDA in reviewing the Telecom Competition Code to implement amendments to the Telecommunications Act, as well as reviewing various implementing guidelines under the Telecom Competition Code 2012.
- **Regulatory Advisory Services:** Sri Lanka Policy and Regulatory Advisory Project (for installation of a national Next-Gen Broadband Network).
- **Media:** Revisions to Media Market Conduct Code, and assisting MDA in implementation of a landmark exclusive content "cross-carriage measure".

unfair competition issues. Chong Kin and his team have advised IDA on the enforcement and implementation of licensees' obligations, for example in respect of licensees' ability to roll-out fibre-to-the-home networks. The Practice Group has also advised IDA on all competition and regulatory issues in three groundbreaking infrastructure development initiatives – the establishment of the Next Generation Nationwide Broadband Network (**Next Gen NBN**), Singapore Internet Exchange, and the National Authentication Framework. In numerous instances, the Practice Group has also been involved in defending regulators against ministerial appeals filed by licensees. Recently, Chong Kin and his team successfully defended MDA's decision in a landmark case

concerning the application of mandatory cross-carriage requirements to certain exclusive pay-TV content. Chong Kin and his team have also advised Singapore regulators on their international obligations and interactions with regulators of other countries.

Today, the TMT Practice Group acts for a broad range of clients – from established fast-moving consumer goods MNCs to technology start-ups, to sectoral regulators (both local and foreign):

- We regularly act for technology leaders and start-ups in **information technology, data privacy and protection** and commercial matters (including Research-in-Motion/Blackberry);
- We are routinely consulted on **commercial, licensing and regulatory matters** by global clients, including regional telecommunication service providers (including AT&T, Pacnet, Sprint, FLAG and Reliance) and international broadcasters (including NBCUniversal, Discovery, ESPN, Chellozone and Sony); and
- We are often called upon to provide **high-level advisory and consultancy services** to various regulators, including IDA, MDA, the Competition Commission of Singapore (**CCS**), the telecoms regulator of Sri Lanka, and most recently, the Personal Data Protection Commission (**PDPC**).

In 2014, for the 16th consecutive year, Drew & Napier's TMT Practice Group has been retained as IDA's external legal and regulatory advisors, a record which speaks volumes for its proven ability to deliver effective, timely and commercially-relevant solutions to its clients. Since 2013, Drew & Napier's TMT Practice Group has also been appointed as external legal and regulatory advisors to the PDPC, which has been established to administer the new Personal Data Protection Act.

The TMT Practice Group is also particularly experienced in a wide range of technology law issues. Clients who trust Drew & Napier on technology matters include MNCs, public listed companies, statutory boards and some of the most established names in Singapore. We have advised and acted for clients in **drafting, reviewing and/or negotiating**

RECENT ACCOLADES

- **Chambers Asia Pacific:** Band 1 TMT firm in Singapore for **2018, 2017, 2016, 2015, 2014, 2013, 2012, 2011, 2010, 2009, 2008**
- **Asia Pacific Legal 500:** Tier 1 TMT practice for **2017/2018, 2016/2017, 2015/2016, 2014/2015, 2013/2014, 2012/2013, 2011/2012, 2010/2011, 2009/2010, 2008/2009**
- **AsiaLaw Profiles:** Outstanding (IT, Telecoms & Media) for **2016, 2017, 2018**; Highly Recommended (IT, Telecoms & Media) for **2013, 2014, 2015**
- **Asian-MENA Counsel In-House Community Firm of the Year** Singapore Telecommunications, Media & Technology Firm of the Year 2016
- **The International Who's Who of Telecommunications, Media & Technology 2017** and **The International Who's Who of Competition Lawyers and Economists 2017** both recognise Chong Kin as a leading lawyer in regulatory and competition advisory work

various technology contracts relating to **consultancy and project management, website service agreements (including privacy policies and data management procedures), outsourcing, software integration, bespoke hardware and software, and hardware/software maintenance**. The firm's broad client base allows it to offer unique insights on the TMT industry from all perspectives.

EXPERTISE

Our client base spans MNCs and local companies across industries, as well as the entire spectrum in the TMT sector, ranging from telecommunication carriers, service providers, network operators, hardware manufacturers, equipment suppliers, consultants, specialist contractors, software

houses, leading global broadcasters and content providers, and international law firms.

Telecoms & Technology

A sampling of our recent notable telecom and technology industry experience includes:

- Assisting two of the world's largest integrated Internet and computing companies, under separate instructions, to assist in their respective plans to roll-out data centres in Singapore. The purpose of these data centres is to host and support soaring data traffic volumes for the Asia Pacific region – including East Asia. As a full-service law firm, our assistance to these two Fortune 500 firms include, without limitation: liaising with the national telecoms regulator, IDA, on telecoms licensing requirements (including possible Facilities-Based Operations and Services-Based Operations); assisting on all legal aspects relating to conveyance of land, site selection, negotiations with the land authorities (including Jurong Town Corporation); advising on energy and power (including green energy) and construction issues; and legal documentation support (e.g. preparing invitations to tender and drafting service agreements). All assistance is centrally coordinated through the Drew & Napier TMT practice group, which also advises the companies on structuring the shareholding of the local operating entities.
- Successfully assisted a leading global Internet service provider to apply for a Facilities-Based Operator licence, in order to support its regional network deployment plans.
- Advised a government-linked entity on its tender for the turnkey development of a high performance supercomputing facility and data centre. Work tasks included drafting and reviewing tender documents for the client. The complex technical specifications and high degree of customisation required the working team to, amongst other things, understand and develop innovative solutions to protect client's interests (including protection of ownership rights, and safeguarding against failure or inadequacy of design or construction) and preserve intellectual property rights.
- Advised a major Internet services provider and search portal in respect of its legal needs for the Asia Pacific region. This includes instructing and directing counsel in various countries, drafting template service and distributor agreements, adapting end-user software licensing arrangements and drafting marketing agent agreements.
- Successfully assisted a regional submarine cable operator in obtaining IDA Facilities-Based Operations licensing for new cable deployment out of Singapore, including advising on backhaul access and setting up cable landing facility.
- Advised and assisted a regional submarine cable operator in its preparation of a facilities sharing and access agreement relating to a cable-landing station in Hong Kong.
- Successfully assisted in negotiating an amicable settlement package on behalf of a pan-Asian submarine cable network operator in its dispute with a dominant telecom operator over a US\$200m convertible loan facility.
- Advised on a Master Licence Agreement between a key Singapore print media company and a foreign online advertising solutions provider, in relation to targeted video commercials on a newly-launched web-based platform that allows Internet users to view rich media and video commercials online without buffering time.
- Advised a major Singapore-based insurance company in drafting software customisation and licensing agreements with its IT-solutions vendors.
- Advised a leading Asian stock exchange on a software development joint venture.
- Advising the world's largest software provider on the Singapore legal and regulatory requirements in various cutting-edge developmental products, involving convergence of conventional software platforms with IP telephony networks and state-of-the-art technology. The TMT Practice Group assisted the client in successfully applying for an integrated

Services-Based Operator licence from the telecoms regulator, IDA.

- Advised a leading gaming company on the introduction of a revolutionary gaming console. Tasks included drafting, reviewing and negotiating numerous regulatory requirements (including multiple market regulators) for the roll-out.

Media and Entertainment

Our notable experience in media and entertainment-related matters includes:

- Leading a consortium of consultants to conduct a study on the competition issues in convergent media and telecommunications markets. Commissioned jointly by MDA, CCS and IDA, the study involved, *inter alia*, an assessment of the state of the pay-TV market in Singapore, in particular the effects of exclusive carriage agreements, and the bundling of media and telecoms services, on these convergent markets.
- Separately, we were also part of an international consortium of media consultants engaged by MDA to undertake a study identifying international best practices for managing a competitive media market, and to recommend effective strategies for regulating a changing media landscape.
- Appointed by MDA to advise on and draft the Media Market Conduct Code to regulate the media and print industry in Singapore.
- Advising MDA on market access and licensing issues, including the licensing framework for the introduction of new media services, such as niche subscription television services including video-on-demand and IPTV services; and the migration of services between licensing regimes.
- Advising MDA routinely on issues relating to the implementation of the cross-carriage measure on pay-TV operators under the Media Market Conduct Code.
- Acting for leading media content providers (including an international sports broadcast network) in media and entertainment-related agreements, including:

- Broadcast licence agreements; advised client on conferring rights to a media company to broadcast, in a designated territory, an international sporting event via various forms of transmissions or distribution channels. Also advised client on reviewing, drafting and negotiating regional broadcast rights for *le Tour de France*.
- Preparation of Host Venue Agreement for staging sporting event in KL, Malaysia.
- Acquisition of licensing rights of a famous musician's characteristics for use in an international sporting event.
- Service agreement – assisted clients in drafting service provider agreements for the construction and set-up of props and various tournament equipment for both indoor and outdoor venues.
- Mobile content services agreements – advised and assisted client in reviewing and drafting of the collaborative arrangements made with various international football clubs for the rights to exploit mobile content services in the nominated territory of these football clubs.
- Manufacturing and content licence agreement – advised and assisted client in reviewing of a licensing agreement with an established PRC handset manufacturer to manufacture mobile telecommunication handsets and accessories under our client's brand name.
- Advising a leading international media content provider on compliance with local gaming laws in respect of a proposed regional card game tournament.
- Advising the largest worldwide broadcasting corporation (in terms of audience numbers) and the leading music-television channel on its regulatory and licensing affairs in Singapore.

Data Protection and Compliance Audits

We are regularly engaged by MNCs as well as local clients across industries (including

airlines, manufacturing, entertainment, and fast-moving consumer goods), telcos and Internet companies to conduct regulatory risk audits of their business operations to highlight potential areas of non-compliance and to assist in the rectification of any problematic agreements and conduct. We have gained considerable first-hand expertise in compliance audits, and our team of lawyers is also experienced in conducting compliance audits of business practices, existing legal agreements, and informal business arrangements.

In developing compliance programmes for our clients, we further value-add by creating manageable, staff-level compliance manuals and training programmes to ensure that our clients are in a position to operationalise their compliance procedures on a day-to-day basis, and will only need to rely on external counsel under exceptional instances. Our data protection compliance audit work for clients includes:

- Preparing data protection questionnaires relating to existing data protection practices.
- Drafting inter/intra-organisation data protection policies.
- Developing and implementing standard operating procedures to ensure that business practices comply with the relevant requirements under the PDP regime.
- Conducting data protection training for employees to familiarise themselves with the requirements of the Personal Data Protection Act.

Regulatory Advice and Enforcement

We advise and represent national and sectoral regulators on enforcement actions for breach of competition laws and regulations. Some of the projects we have undertaken include:

- Advising IDA and MDA in respect of numerous disputes and complaints under the Telecommunications Act, Telecom Competition Code and the Broadcasting Act.
- Advising IDA on enforcement action in respect of contravention of the anti-

competitive provisions in the Telecom Competition Code (including abuse of dominance and anti-competitive arrangements).

- Acted for IDA in the dispute between SingTel and Singapore Cable Vision over facility access issues.

Merger Clearance

We have played instrumental roles in **formulating and implementing merger frameworks in Singapore**. As counsel to IDA and MDA, Chong Kin advised on the drafting of the Telecom Competition Code, Media Market Conduct Code and Postal Competition Code. We have also advised the CCS on a number of matters concerning the implementation of the general competition law.

Chong Kin and his team assisted IDA to review and revise its industry guidelines relating to anti-competitive conduct in the telecoms sector.

Our in-depth regulatory experience and familiarity with the ins-and-outs of the competition authorities translates into a wealth of practical knowledge for industry clients to tap on. We advise companies on the competition law aspects of their proposed mergers and acquisitions, and prepare and lodge merger filings on behalf of our clients.

We successfully obtained merger clearances for four major telecommunications consolidations under the Telecom Competition Code, and filed the first merger notification under the general Competition Act. Some of our telecoms-related merger projects include:

- Acted for the telecommunications regulator in conducting a competition merger review involving CityNet's acquisition of OpenNet.
- Public takeover of Pacific Internet, a regional ISP-services giant, by a private equity fund group: secured unconditional merger control approval from the telecoms regulator.
- Consolidation of C2C and AsiaNetcom: obtained merger control approval from the telecoms regulator.

- Merger of Reliance and FLAG Telecom: obtained Singapore merger control approval from the telecoms regulator.
- Merger of SBC and AT&T: Obtained Singapore merger control approval from the telecoms regulator.
- Acted for the telecommunications regulator in conducting a competition merger review involving the consolidation of StarHub and Singapore Cable Vision (**SCV**) under the Telecom Competition Code.

Legislative Drafting, Enforcement and Policy Advice

No other practice comes close to matching our experience in drafting of TMT legislation, advising on enforcement and policy formulation. Some of the projects we have undertaken include:

- Lead Singapore counsel in advising on the liberalisation of the Singapore postal industry, including drafting of the proposed Postal Competition Code.
- Lead Singapore counsel for drafting of the Telecom Competition Code, consolidation framework and other guidelines issued in respect of the Telecom Competition Code and the two triennial reviews.
- Drafting of the framework for reviewing the competitive effects of mergers and acquisitions in the telecoms industry.
- Drafted Singapore's first interconnection, market access and infrastructure sharing framework to regulate competition in the telecoms industry, and triennial review of the Media Market Conduct Code.
- Drafting of the Media Market Conduct Code 2003 to introduce competition regulations to the media and print industry.
- Advising IDA on the implementation of the Next Gen NBN, including advising on the conceptualisation and evaluation of primary competition and regulatory issues to ensure an open market access infrastructure framework. In particular, our advice focused on reviewing and drafting the structural and operational separation requirements in IDA's request for proposal for operators to design, build and operate the Next Gen NBN infrastructure, and, drafting Singapore's interconnection,

market access and infrastructure sharing framework for the Next Gen NBN.

- Advising IDA on competition and regulatory issues concerning the groundbreaking National Authentication Framework project.
- Acting for the telecommunications regulator on enforcement action against three major telecommunications licensees for their breach of their licence obligations to provide 3G in-tunnel coverage, and representing the regulator in the appeal before the Minister.

Main contacts



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Chong Kin practices corporate and commercial law with strong emphasis in the specialist areas of TMT law and competition law. He regularly advises on regulatory, licensing, competition and market access issues. Apart from his expertise in drafting “first-of-its-kind” competition legislation, Chong Kin also has broad experience in corporate and commercial transactions including mergers and acquisitions. He is widely regarded as a pioneer in competition practice in Singapore and the leading practitioner on TMT and regulatory work. Chong Kin has won plaudits for “good knowledge of the telecommunications industry and consistently excellent service” (**Asia Pacific Legal 500: 2011/2012**); has been recognised as a “leading practitioner in the TMT sector who ‘makes a strong effort to meet the needs of the clients’ and provides ‘practical advice’” (**Chambers Asia Pacific 2014**: Band 1 for TMT); and has been endorsed for his excellence in regulatory work and competition matters: **Practical Law Company’s Which Lawyer Survey 2011/2012**; the **International Who’s Who of Telecommunications Media & Technology 2017** and the **International Who’s Who of Competition Lawyers & Economists 2017**. **Asialaw Profiles 2013** notes: “There is no one who matches him in responsiveness. He’s always personally involved. He’s always responding to e-mails and timelines are always met without compromising quality”.