

# Telecoms and Media

*Contributing editors*

**Laurent Garzaniti and Natasha Good**



**2016**

GETTING THE  
DEAL THROUGH 

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*Contributing editors*

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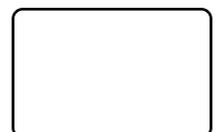


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# Singapore

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## Communications policy

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### 1 Regulatory and institutional structure

**Summarise the regulatory framework for the communications sector. Do any foreign ownership restrictions apply to communications services?**

#### Regulatory framework

At the time of writing, the Infocomm Development Authority of Singapore (IDA) is the statutory body responsible for the development, promotion and regulation of the info-communications industry, which includes both the telecoms and IT sectors. Separately, the Media Development Authority of Singapore (MDA) is the statutory body responsible for overseeing the media sector, which includes regulation of broadcasting and content (see question 15). The IDA and MDA are under the direct authority of the Ministry of Communications and Information (MCI).

Notably, on 18 January 2016, the MCI announced that Singapore will begin implementing a converged info-communications and media regulator, namely, the Info-communications Media Development Authority (IMDA), which will be formed through a merger of the IDA and MDA (see question 14). While the IMDA is expected to be formally established in the second half of 2016, the IDA and MDA are expected to undergo an administrative reorganisation from 1 April 2016. In light of the MCI's announcement, the existing regulatory framework, as described in this chapter, can be expected to undergo a number of changes. Further details of changes to the existing regulatory framework are expected to become available in due course.

Under the existing framework, the telecoms sector is regulated by the IDA under the Telecommunications Act (the Telecoms Act) and the Info-communications Development Authority of Singapore Act (the IDA Act).

'Telecommunications' is defined very broadly under the Telecoms Act as:

*[A] transmission, emission or reception of signs, signals, writing, images, sounds or intelligence of any nature by wire, radio, optical or other electromagnetic systems whether or not such signs, signals, writing, images, sounds or intelligence have been subjected to a rearrangement, computation or other processes by any means in the course of their transmission, emission or reception.*

The Telecoms Act is the primary legislation governing the telecoms industry in Singapore. It sets out the broad licensing and regulatory framework for the telecoms sector. Specific issues are dealt with through regulations, codes of practice, standards of performance, directions and advisory guidelines issued by the IDA, pursuant to its powers under the Telecoms Act.

The Telecoms Act itself does not make a distinction between fixed, mobile and satellite services. This is consistent with the technology-neutral approach that the IDA has taken in regulating the industry. There are, however, licensing and regulatory requirements that are service-specific. For instance, the Telecommunications (Radio-Communications) Regulations (Radio-Communications Regulations) regulate the licensing process for radio frequency (RF) spectrum, the use of RF spectrum and the operation of radio stations and networks. This set of regulations is applicable primarily to mobile services.

Other regulations cover specific issues pertaining to fixed, mobile and satellite services. Examples of such regulations are the Telecommunications

(Class Licence) Regulations, the Telecommunications (Dealers) Regulations and the Telecom Competition Code 2012 (TCC). The TCC regulates competition, interconnection and market access across the entire telecoms industry.

At present, the Telecoms Act does not apply to the licensing of any broadcasting service or any broadcasting apparatus that is already subject to regulation under the Broadcasting Act.

#### Foreign ownership restrictions

Since 1 April 2000, no direct or indirect foreign equity limits have been applicable to telecoms licences. However, other than in exceptional circumstances, the IDA's current practice is to issue facilities-based telecoms licences only to companies incorporated in Singapore, which can be wholly owned by a foreign entity. In the case of services-based licences, the IDA would also issue licences to foreign companies with a local registered branch. Merger and acquisition control regulations exist under the TCC.

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### 2 Authorisation/licensing regime

**Describe the authorisation or licensing regime.**

#### Licensing framework

All persons operating and providing telecoms systems and services in Singapore must be licensed under section 5 of the Telecoms Act. The IDA categorises licences for the operation and provision of telecoms systems and services into licences for either facilities-based operators (FBOs) or services-based operators (SBOs), and where RF spectrum is required for the provision of wireless services, additional licensing is required under the Radio-Communications Regulations.

#### FBO licence

A person intending to deploy telecoms infrastructure (generally taken to refer to any transmission facility) to provide telecoms services to other telecoms licensees or end-users must obtain an FBO licence. The IDA generally adopts a technology-neutral approach towards the licensing of telecoms infrastructure. The configuration of the systems deployed and the technology platform (wireless or wired) adopted will be left to the choice of the licensee, subject to spectrum and other physical constraints.

An FBO licence is on a higher hierarchical level than an SBO licence. As such, an FBO licensee does not need an SBO licence if it wishes to provide services that on their own would have required an SBO licence. The converse, however, does not apply. An SBO licensee that wishes to deploy telecoms infrastructure in the provision of telecoms services must apply for an FBO licence. The FBO licence will then replace the SBO licence.

Although the general conditions of an FBO licence are standardised across all FBO licensees, additional specific conditions may apply to each individual FBO licensee depending on the services that the licensee may provide.

The following are some telecoms systems and services that may require an FBO licence:

- any terrestrial telecoms infrastructure for the carriage of telecoms or broadcasting traffic (be it cross-border or local traffic; network coverage may be nationwide or limited to selected local geographic broadcast), including but not limited to:
  - submarine cables (including the establishment of frontier stations, backhaul and sale of indefeasible rights of use);
  - satellite international gateways; and

- domestic telecoms networks (including core backbone and local access networks);
- public switched telephone services;
- public switched message services;
- public switched ISDN services;
- leased circuit services;
- public switched data services;
- public radio communication services;
- public cellular mobile telephone services;
- public trunked radio services;
- public mobile data services;
- public mobile broadband multimedia services (including 3G mobile communication systems);
- public fixed-wireless broadband multimedia services;
- terrestrial telecommunication network for broadcasting purposes only; and
- satellite uplink/downlink for broadcasting purposes.

- satellite mobile telephone or data services;
- mobile communications on aircraft;
- voice and data services with masking of calling line identity;
- machine-to-machine (M2M) services;
- white space geolocation database services; and
- prepaid services for other telecoms services, such as:
  - callback and call re-origination services;
  - internet-based voice and data services;
  - international calling card (ICC) services;
  - resale of public switched telecoms services;
  - store-and-retrieve value-added network services; and
  - store-and-forward value-added network services.

Telecoms services that require only an SBO (class) licence include, without limitation:

- post-paid telecoms services, such as:
  - callback and call re-origination services;
  - internet-based voice and data services;
  - ICC services;
  - resale of public switched telecoms services;
  - store-and-retrieve value-added network services; and
  - store-and-forward value-added network services;
- audio-text services; and
- public chain payphone services.

Certain services, such as audio-text and internet access services, are subject to concurrent telecoms and media licensing requirements. In this respect, audio-text and internet access services are also subject to the licensing and regulatory jurisdiction of the MDA, and are deemed to be class-licensed under the Broadcasting (Class Licence) Notification (see also question 17).

FBO licences	Annual fees and duration
FBOs	Licence duration: 15 years, renewable for a further period as the IDA thinks fit • First S\$50 million annual gross turnover (AGTO): S\$80,000 • Next S\$50 million - S\$100 million in AGTO: 0.8 per cent of incremental AGTO • Above S\$100 million in AGTO: 1 per cent of incremental AGTO
FBO designated as public telecoms licensee	Licence duration: 20 years, renewable for a further period as the IDA thinks fit • First S\$50 million AGTO: S\$200,000 • Next S\$50 million - S\$100 million in AGTO: 0.8 per cent of incremental AGTO • Above S\$100 million in AGTO: 1 per cent of incremental AGTO
Public mobile data services Public trunked radio services	Licence duration: 10 years, renewable for a further period as the IDA thinks fit • First S\$50 million AGTO: S\$80,000 • Next S\$50 million - S\$100 million in AGTO: 0.8 per cent of incremental AGTO • Above S\$100 million in AGTO: 1 per cent of incremental AGTO
Terrestrial telecoms network for broadcasting purposes only Satellite uplink/downlink for broadcasting purposes	Licence duration: 10 years, renewable every five years Annual fee: S\$5,000

**SBO licence**

SBO licences are granted to operators that do not intend to deploy telecoms infrastructure. Such licensees may instead lease telecoms network elements (such as transmission capacity) from FBO licensees to provide telecoms services, or resell the telecoms services of other telecoms licensees. SBO services can be individually licensed or class-licensed. Class licensing is a licensing scheme where the standard terms and conditions that apply to the category of licences are published in an official gazette for compliance. Operators providing the services within the scope of the class licence will be deemed to have read and agreed to the terms and conditions of the class licence. Generally, operators leasing international transmission capacity to provide telecoms services will be licensed individually.

Telecoms services that require SBO (individual) licensing include, without limitation:

- international simple resale;
- resale of leased circuit services;
- public internet access services;
- internet exchange services;
- virtual private network services;
- managed data network services;
- mobile virtual network operation;
- live audio-text services;
- global mobile personal communications by satellite services;
- internet protocol (IP) telephony services;

SBO (individual) licence	
SBO (individual)	Annual fee: • First S\$50 million AGTO: S\$4,000 • Next S\$50 million to S\$100 million in AGTO: 0.5 per cent of incremental AGTO • Above S\$100 million AGTO: 0.8 per cent of incremental AGTO
Live audio-text services only	S\$200 every five years
SBO (class) licence	
Resale of public switched telecommunication services, public chain payphone services, and store-and-retrieve value-added network services (without the use of leased circuits)	No registration fee
All other categories of SBO (class) licences	S\$200 (one-time payment)

**Licensing – radio frequency**

Pursuant to its exclusive privilege under the Telecoms Act, the IDA can determine how RF spectrum is allocated. The IDA can also make decisions on the assignment of unused radio spectrum. Specifically, the Radio-Communications Regulations give the IDA the right to prepare and publish radio spectrum plans and RF band plans. The Radio Spectrum Master Plan is a document prepared by the IDA pursuant to such statutory right and it serves to inform the industry and interested parties on the allocation and availability of spectrum, technological trends in the use of spectrum and the IDA's policy with regard to spectrum allocation and reallocation for public communication networks. The IDA is also empowered under the Radio-Communications Regulations to vary or revoke any radio spectrum plan or RF band plan, in whole or in part.

RFs required for the provision of 2G, 3G and 4G mobile services, as well as wireless broadband services, have been granted as spectrum rights through an auction process. RFs required for the operation of a satellite are generally allocated administratively or assigned by the IDA as part of the satellite licence. The Radio-Communications Regulations also regulate the installation and maintenance of radio communications stations or networks in Singapore.

Regarding the permitted use of licensed radio spectrum, the general powers of section 5A(8) of the Telecoms Act and regulation 10(i) of the Radio-Communications Regulations give the IDA the discretion to include in the licences a direction to the grantee on its use of the spectrum right. Additionally, the grantee may be restricted in its use of equipment within the allocated RF spectrum. For example, no station fitted in an aircraft shall be operated or used while such aircraft is at rest on land or on water in Singapore, barring certain exceptional circumstances as stated in regulation 36 of the Radio-Communications Regulations.

### Provision of publicly available telephone services

Since 1 April 2000, subject to the IDA's licensing requirements, any person may apply to the IDA for a licence to provide telecoms services to the public. There are no special conditions imposed by the IDA for such services. A holder of an FBO licence may, however, depending on the scope and requirements of its operations, apply to the IDA to be designated as a public telecommunications licensee (PTL) under section 6 of the Telecoms Act. A PTL is accorded certain statutory powers under the Telecoms Act to facilitate the deployment of telecoms infrastructure, including the power to enter state and private property to lay telecoms infrastructure. The IDA will grant such applications only if the FBO licensee has committed to substantial telecoms infrastructure investment and roll-out so as to offer services to a significant proportion of the population within a reasonable time. At present, four licensees have been designated as PTLs (namely, CityNet (as trustee-manager of NetLink Trust), Singtel, StarHub and StarHub Cable Vision). The IDA also reserves the right to impose basic service obligations on a PTL.

The IDA may modify the conditions of a telecoms licence granted under section 5 of the Telecoms Act. The procedure to be followed is set out in section 7 of the Telecoms Act, which prescribes that, in the case of a PTL licensee, the IDA first has to give notice to the PTL licensee of the proposed modifications to the licence, including whether compensation is payable. Before finalising any direction to implement the licence modifications, the IDA is also required to give PTL licensees at least 28 days to make written representations on the proposed modifications. In the case of a non-PTL licensee, the Telecoms Act does not set out the procedure to be followed in relation to the modification of the licence. Instead, the modification procedure of a non-PTL licence is typically set out in the relevant licence. Under the terms of their licences, telecoms licence holders may not assign, transfer, deal with or otherwise dispose of the whole or any part of the rights, privileges, duties or obligations under the licence without obtaining the prior written approval of the IDA.

### 3 Flexibility in spectrum use

#### Do spectrum licences generally specify the permitted use or is permitted use (fully or partly) unrestricted? Is licensed spectrum tradable or assignable?

The IDA manages the allocation and usage of spectrum for various services, including public mobile, private land mobile, terrestrial fixed and broadcasting services. As such, spectrum licences generally specify that licensees can only use the assigned spectrum for the specified purpose. Conditions requiring the network to be operated on a non-interference and unprotected basis, and limiting the operation to specific geographical locations, may also be imposed.

The IDA may also permit existing assigned spectrum to be used for new purposes, if there are grounds to do so. For example, in December 2014, the IDA decided to allow 3G spectrum rights holders to deploy 4G and International Mobile Telecommunication (IMT)-Advanced services using the 3G bands, subject to the following conditions:

- 3G spectrum rights holders who wish to deploy 4G and IMT-Advanced systems and services using the 3G bands are required to seek the IDA's prior approval;
- 3G spectrum rights holders must ensure there is no degradation of existing services;
- 3G spectrum rights holders must take measures to prevent interference to any IDA-authorized networks; and
- the IDA reserves the right to impose quality of service requirements on the 4G and IMT-Advanced systems and services, as well as other measures to protect consumer interests.

Licensed RF granted under a spectrum right may be traded and shared, subject to the IDA's prior approval, TCC provisions and any restrictions

and conditions specified by the IDA. At present, the IDA has not issued any specific regulations on the trading and sharing of RF, aside from general conditions stated in the Radio-Communications Regulations. Conditions on trading and sharing of RF may also be imposed via the licences or relevant spectrum rights.

### 4 Ex-ante regulatory obligations

#### Which communications markets and segments are subject to ex-ante regulation? What remedies may be imposed?

Ex-ante regulations are primarily applied to licensees that are classified as 'dominant licensees' under the TCC. Under section 2.2.1 of the TCC, a licensee will be classified as 'dominant' if it is licensed to operate facilities that are sufficiently costly or difficult to replicate such that requiring new entrants to do so would create a significant barrier to rapid and successful entry into the telecommunication market in Singapore by an efficient competitor; or it has the ability to exercise significant market power in any market in Singapore in which it provides telecommunications services.

In this regard, dominant licensees are subject to a range of ex-ante obligations under the TCC, such as accounting separation requirements; obligations to file tariffs with the IDA for approval; to provide unbundled services; and to allow resale of end-user services by any licensee. Dominant licensees may also be required to offer certain interconnection and access-related services on terms that are pre-approved by the IDA, by way of a standardised reference interconnection offer (RIO). These obligations are explored in greater detail below.

#### Tariffing

Unless exempted by the IDA, dominant licensees must file tariffs for any telecommunications service they intend to offer (including any offer on a trial basis) with the IDA and obtain the IDA's prior approval before offering the service. The proposed tariff filing must include certain specified information, including a description of the service; the relevant prices, terms and conditions; any discounts or special considerations that will be offered; and the minimum time period for which the service will be available. The IDA will assess whether the proposed tariff is just and reasonable in accordance with the principles in the TCC.

#### Interconnection with dominant licensees

If required by the IDA, dominant licensees must also publish RIOs, under which they have to offer interconnection and access-related services on prices, terms and conditions that are pre-approved by the IDA. A downstream operator that meets the relevant criteria may then request services from the dominant licensee under the terms of its RIO.

Presently, Singtel (which is the incumbent fixed-line network operator and also operates a number of telecoms facilities such as submarine cable landing stations) and CityNet (as trustee-manager of NetLink Trust, whose assets include central offices, ducts and manholes) have been required to offer RIOs pursuant to the TCC.

In the context of the next-generation nationwide broadband network (NGNBN), the IDA has also imposed similar obligations on the appointed network and operating companies to make available certain mandated services to qualifying persons under the terms of standardised interconnection offers (ICOs) (see question 5 for more details on the appointed network and operating companies).

#### Accounting separation

Dominant licensees are subject to the IDA's Accounting Separation Guidelines, which provide for two levels of accounting separation: detailed segment reporting and simplified segment reporting. The accounting separation requirements are intended to provide the IDA with information to monitor cross-subsidisation by dominant FBOs, as well as to ensure that services provided internally by dominant FBOs to their downstream operators or affiliates are provided on similar terms to equivalent services provided to other unrelated licensees.

Briefly, detailed segment reporting involves separate reporting of key service segments and certain individual retail services. The requirements include a specified cost allocation process and prescribed allocation methodologies for certain cost and revenue items. Reports include both income statements and mean capital employed statements. In contrast, simplified segment reporting requires less disaggregation of operations and a less rigorous cost allocation process. Only income statement reporting is required.

### Next-generation nationwide broadband network

To ensure effective open access of the NGNBN infrastructure for downstream operators, the IDA has put in place structural separation and operational separation requirements on the network and operating companies (see further question 5).

### Merger control

Under part VA of the Telecoms Act, all designated telecommunication licensees (DTLs), designated business trusts (DBTs) and designated trusts (DTs) are required to comply with merger control requirements. Where a transaction meets the specified pre-merger filing thresholds, generally, where the transaction would result in a party and its associates becoming either a 12 per cent controller (ie, holding 12 per cent or more); or a 30 per cent controller (ie, holding 30 per cent or more), of the ownership or voting power in a DTL, DBT or DT, the IDA's prior approval must be sought for the transaction. In addition, the IDA must be notified if a transaction would result in a person holding 5 per cent or more but less than 12 per cent of the ownership or voting power in a DTL, DBT or DT.

### Infrastructure sharing

Under certain circumstances, the IDA may require an FBO licensee (which may not be a dominant licensee) to 'share' its infrastructure with other licensees. As provided under section 7 of the TCC, the IDA may require sharing of any infrastructure that it determines is 'critical support infrastructure', or where the IDA concludes that sharing would be in the public interest, in accordance with the principles in the TCC.

## 5 Structural or functional separation

### Is there a legal basis for requiring structural or functional separation between an operator's network and service activities? Has structural or functional separation been introduced or is it being contemplated?

Generally, the IDA does not require structural or functional separation between an operator's network and service activities in Singapore. However, in relation to the NGNBN industry, the IDA has, with a view to ensuring effective open access for downstream operators, instituted a multilayered industry structure consisting of: the network company (NetCo); several operating companies (OpCos) including the appointed OpCo; and numerous retail service providers.

At the first layer, the NetCo appointed by the IDA is responsible for building and operating the passive infrastructure, which includes the dark fibre network. OpenNet Pte Ltd was the initial NetCo appointed by the IDA. Since 1 October 2014, the assets and operations of OpenNet have been taken over by NetLink Trust (acting through its trustee-manager, CityNet), following NetLink Trust's acquisition of OpenNet. Under the FBO licence conditions of CityNet (acting as trustee-manager of NetLink Trust), it is required to ensure structural separation, which involves, among other things, ensuring that it has no effective control over any other telecoms licensee or broadcasting licensee; it is not under the effective control of any other telecoms licensee or broadcasting licensee; and it is not under the effective control of the same controlling entity as any other telecoms licensee or broadcasting licensee (the 'no effective control' requirements). These requirements are intended to ensure that the NetCo and its downstream operators are separate entities with fully autonomous decision-making considerations, and that they do not have control over each other's management and major operating decisions.

At the second layer, Nucleus Connect Pte Ltd (Nucleus Connect), the appointed OpCo, is responsible for building and operating the active infrastructure, comprising switches and transmission equipment, to provide wholesale network services. While Nucleus Connect may be owned by its downstream operating units, it is nevertheless subject to a range of detailed operational separation requirements under its FBO licence conditions. The operational separation requirements are intended to ensure, among other things, that downstream operators are treated in a non-discriminatory manner; that Nucleus Connect independently formulates and makes its own commercial decisions; and that it operates at arm's length from affiliated operators.

Section 69C of the Telecoms Act also empowers the Minister for Communications and Information (the Minister), if certain conditions are met and in the public interest, to issue a separation order requiring the transfer of a telecom licensee's business or assets to a separate or independent entity.

## 6 Universal service obligations and financing

### Outline any universal service obligations. How is provision of these services financed?

The Telecoms Act provides for the imposition of universal service obligations (USOs). Generally, USOs are applied only to PTLs. For example, Singtel, the incumbent telecoms operator, is required under its licence to provide basic telephone services to any person in Singapore who requests such service. In respect of the NGNBN, the IDA has imposed USOs on both the appointed NetCo and OpCo following the creation of the NGNBN. The NetCo's USO took effect from 1 January 2013. The NetCo's USO obliges it to fulfil all requests to provide its fibre services to all locations in Singapore. Correspondingly, the OpCo must meet all reasonable requests by any operating company or downstream retail service providers (RSPs) for access to a basic set of wholesale services offered under its standard ICO.

Compliance with USOs is not financed by a statutorily created fund (such as universal service funds in other jurisdictions) or contributions from industry.

## 7 Number portability

### Describe the number portability regime in your jurisdiction.

Number portability across mobile networks and fixed-line services is obligatory. Fixed-line and mobile telephony operators are required to allow consumers to retain full use of their existing phone numbers when switching service providers. In addition, IP telephony operators utilising level '6' numbers (ie, Singapore telephone numbers beginning with '6') are subject to the same number portability requirements as fixed-line operators. Syniverse Technologies is the centralised database administrator appointed to operate the centralised number portability database system, starting with the launch of full mobile number portability in June 2008. The IDA has published a document entitled the 'Fixed Number Portability Guidelines' to set out the technical approach to fixed number portability by FBOs offering fixed-line voice service.

## 8 Customer terms and conditions

### Are customer terms and conditions in the communications sector subject to specific rules?

Retail tariffs filed by dominant licensees for approval with the IDA must include information relating to the customer terms and conditions (see question 4 for more details).

Section 3 of the TCC also sets out a number of consumer protection-related provisions that all FBOs and SBOs must comply with. These include provisions relating to minimum quality of service standards (and disclosure to end-users of any lower standards agreed to); disclosure of prices, terms and conditions (including for services provided on a free trial basis); restrictions on service termination; and prohibition against charging for unsolicited telecoms services.

Section 3 of the TCC also includes a number of mandatory contractual provisions that must be included in all FBOs' and SBOs' end-user service agreements (ie, service contracts with business or residential subscribers). These include provisions relating to billing cycles; the prices, terms and conditions upon which service will be provided; procedures for disputing charges; and termination or suspension of service.

The IDA also has the right under the FBO and SBO licences to require licensees to file their schemes of service, including non-price terms and conditions for the provision of services, with the IDA before the launch or announcement of such services.

## 9 Net neutrality

### Are there limits on an internet service provider's freedom to control or prioritise the type or source of data that it delivers? Are there any other specific regulations or guidelines on net neutrality?

The IDA's policy framework on net neutrality is set out in a policy paper dated 16 June 2011. In the IDA's policy paper, the IDA set out five principles representing its approach towards net neutrality that internet service providers (ISPs) and telecoms network operators are required to adhere to:

- no blocking of legitimate internet content or imposing of discriminatory practices, restrictions, charges or other measures that would effectively render any legitimate internet content inaccessible or unusable;

- they must comply with competition and interconnection rules in the TCC;
- they must comply with the IDA's information transparency requirement and disclose to end-users their network management practices and typical internet broadband download speeds;
- ISPs must meet the minimum broadband quality of service standards prescribed by the IDA. Reasonable network management practices are allowed, provided that the minimum internet broadband quality of service standards are adhered to, and that such practices will not render any legitimate internet content effectively inaccessible or unusable; and
- they are allowed to offer niche or differentiated services that meet the IDA's information transparency, minimum quality of service and fair competition requirements.

In particular, the IDA recognised that, in order to promote the development of online services, ISPs and network operators must be given the flexibility to manage their networks or differentiate their service offerings to meet the needs of changing customer demands or niche user groups. At the same time, such flexibility cannot result in discriminatory practices that render legitimate internet content effectively inaccessible or unusable. In this respect, the IDA has indicated in its decision that it intends to deal with any complaints on a case-by-case basis.

In connection with the above, the IDA requires residential fixed broadband internet access service providers to publish, on their websites, information about their respective network management policies (including whether traffic shaping is implemented).

## 10 Platform regulation

### Is there specific legislation or regulation in place, and have there been any enforcement initiatives, relating to digital platforms?

At present, there is no overarching legislation or regulatory framework that specifically deals with digital platforms. In the case of online digital platforms such as search engines, social media platforms and online digital media stores, they may instead be subject to a range of existing legislation and regulatory frameworks which govern specific sectors or subject matter. These may include, without limitation:

- to the extent that a digital platform constitutes a telecoms service, it may be subject to the telecoms licensing and regulatory framework;
- to the extent that a digital platform constitutes a broadcasting service, it may be subject to the broadcasting licensing and regulatory framework. In particular, where the platform operator may be considered to be an internet content provider, it may be deemed to be subject to a broadcasting class licence (see question 17);
- to the extent that a digital platform collects, uses or discloses personal data relating to individuals, it may be subject to data protection obligations under the Personal Data Protection Act 2012 (PDPA) (see question 12); and
- competition issues involving a digital platform may be governed by the general competition law as established under the Competition Act and which is administered by the Competition Commission of Singapore (CCS), or sector-specific regulatory frameworks as administered by the respective regulatory authorities. For example, competition issues that impact the telecoms sector may fall within the purview of the IDA, while competition issues that impact the media sector may fall within the purview of the MDA. The Competition Act provides that it does not apply insofar as another regulatory authority (other than the CCS) has jurisdiction in a particular competition matter (see question 26).

In relation to the areas of regulation listed above, there have not been any notable cases recently in which enforcement action was taken against an online digital platform. Notably, however, in 2015, the CCS published two occasional papers which discussed various issues that may be of relevance to this area. The first, entitled 'E-Commerce in Singapore – How it affects the nature of competition and what it means for competition policy' highlighted a number of potential competition issues and observations in relation to e-commerce activities, including the use of various e-commerce platforms. The second, entitled 'Anything wrong with asking for the best price?', discusses the use of most-favoured nation (MFN) clauses, and

includes observations on overseas cases in which MFN clauses have raised competition concerns, including cases that involved internet platforms.

## 11 Next-Generation-Access (NGA) networks

### Are there specific regulatory obligations applicable to NGA networks? Is there a government financial scheme to promote basic broadband or NGA broadband penetration?

#### Regulation of the NGNBN

At present, NGNBN entities are regulated under existing telecommunications and media legislation, and through contractual obligations between them and the IDA. In particular, the respective ICOs of NetLink Trust and Nucleus Connect, in fulfilment of their contractual obligation under their request-for-proposal bid commitment to the IDA, set out the prices, terms and conditions upon which they would provide certain mandated NGNBN services.

In addition, the IDA released specific regulations providing for licensing and regulatory frameworks in 2009 – namely the NetCo Interconnection Code and the OpCo Interconnection Code – to regulate the activities of the NetCo and OpCo respectively. The Interconnection Codes are the regulatory instruments underlying the ICOs and specify, inter alia, requirements related to the pricing, terms and conditions for the services offered by the NetCo and OpCo under their respective ICOs, as well as the obligations placed on both the NetCo and OpCo and persons requesting services from them. The obligations contained under the Interconnection Codes are in addition to those contained in the Telecoms Act, other statutes, regulations, directions, licences and codes of practice.

#### Government schemes promoting basic and NGA broadband

The Singapore government has been keenly promoting the development of basic broadband infrastructure, application and services since the 1990s. Many initiatives have been put in place over the years to promote the establishment of nationwide broadband networks. The government has also devoted significant efforts to encourage the roll-out and take-up of NGA broadband services, in particular service offerings over the NGNBN. In 2006, the IDA, in conjunction with the Singapore government, launched the 10-year iN2015 master plan to develop the information and communications sector, use technologies to enhance the competitiveness of key economic sectors and build a better-connected society. More recently, in 2015, the Singapore government launched the 10-year Infocomm Media 2015 master plan, which seeks to be a key enabler of the Singapore government's vision to transform Singapore into the world's first Smart Nation, by harnessing the power of technology including in the area of infrastructure (see question 14).

In terms of government financial schemes for the promotion of a NGNBN, it was announced in December 2007 that the government would grant up to S\$750 million for the development of this high-speed broadband network. This is part of the government's intention to adopt a public-private partnership approach with regard to the building, ownership and operation of the network. In particular, the government hopes that more small firms will be able to offer online services without being burdened by the cost of building the network. In line with the promotion of NGNBN, the IDA has also spearheaded other broadband initiatives, including the Singapore Internet Exchange (SGIX), which serves as a neutral internet exchange for local and international IP traffic. By establishing multiple nodes in different sites in Singapore as its core, the SGIX plays a significant role in the deployment of services over the NGNBN, allowing for the efficient exchange of traffic, reducing latency and ensuring sustainable, reliable transmission of bandwidth-intensive services to end-users.

To complement the NGNBN, a wireless broadband network has also been deployed in key catchment areas around Singapore: Wireless@SG allows end-users to enjoy indoor and outdoor wireless broadband access in public areas. As part of the Singapore government's Smart Nation vision, it is currently exploring the concept of a nationwide heterogeneous network (HetNet), which will allow devices to stay seamlessly connected throughout Singapore by hopping automatically across wireless networks, such as cellular and wi-fi networks. In this regard, the IDA has worked with local mobile network operators and other industry players to conduct trials in order to validate technologies and capabilities of HetNet beginning from 2015.

## 12 Data protection

### Is there a specific data protection regime applicable to the communications sector?

The IDA has prescribed specific rules for the telecommunications sector. Section 3.2.6 of the TCC contains provisions that govern the use of end-user service information (EUSI) by all FBO and SBO licensees. Different provisions may apply, depending on whether the licensee is dealing with a business end-user or a residential end-user. The IDA's standard licence conditions also include provisions requiring licensees to ensure the confidentiality of customer information.

Furthermore, with effect from 2 July 2014, the PDPA establishes a baseline standard of data protection for all private sector organisations in Singapore. Among other things, organisations are required to obtain an individual's consent before collecting, using or disclosing his or her personal data, unless an exception in the PDPA applies. Other obligations under the PDPA include requiring that organisations make a reasonable effort to ensure that personal data they collect is accurate and complete, if the personal data is likely to be used by the organisation to make a decision that affects the individual or is likely to be disclosed by the organisation to another organisation; and requiring that organisations make reasonable security arrangements to prevent unauthorised access, collection, use, disclosure, copying, modification, disposal or similar risks.

In addition, the PDPA establishes a Do Not Call (DNC) Registry with effect from 2 January 2014, which allows individuals to register their Singapore telephone numbers, in order to opt out of receiving telemarketing calls and messages. The Personal Data Protection Commission (PDPC), which is responsible for administering the PDPA, has also issued a set of advisory guidelines that specifically aims to address certain unique circumstances faced by the telecommunication sector in complying with the PDPA.

The PDPA is not intended to override sector-specific data protection frameworks. To the extent of any inconsistency, the provisions of other written laws will prevail. In addition, the PDPA's provisions on data protection do not affect any obligation imposed by or under law (except for contractual obligations), which may include regulatory obligations imposed under other written laws. Hence, licensees will need to ensure that they are in compliance with any sector-specific obligations such as the TCC, as well as the general framework under the PDPA.

## 13 Big data

### Is there specific legislation or regulation in place, and have there been any enforcement initiatives in your jurisdiction, addressing the legal challenges raised by big data?

In Singapore, there is no legislation or regulation that specifically deals with big data per se. Rather, companies involved in big data-related activities must ensure that they comply with existing data protection laws and regulatory frameworks as may be applicable, such as the PDPA.

The PDPA governs the collection, use and disclosure of personal data by organisations. All organisations that collect, use or disclose personal data relating to an individual are accordingly required to comply with the data protection provisions under the PDPA, unless an exception under the PDPA applies (see question 12).

## 14 Key trends and expected changes

### Summarise the key emerging trends and hot topics in communications regulation in your jurisdiction.

#### Establishment of converged info-communications and media regulator

On 18 January 2016, the MCI announced that the IDA and the MDA will be restructured to form the IMDA and the Government Technology Organisation (GTO).

#### Merger of info-communications and media regulators

The new IMDA will be Singapore's new converged regulator in the info-communications and media sectors. It will combine the regulatory functions of the IDA, which presently regulates the info-communications sector, and the MDA, which presently regulates the media sector.

In announcing the formation of the new IMDA, the Singapore government expressly recognised that a key driver of the reorganisation is

the phenomenon of increasing convergence in the info-communications and media sectors, which has blurred the traditional distinction between telecommunications and broadcasting. The new converged regulator, IMDA, is expected to enhance regulatory capabilities in a converged landscape. The merger of the IDA and MDA into a converged regulator follows the release in August 2015 of the Infocomm Media 2025 master plan, which sets out broad strategies to guide the development of the infocomm media sector into 2025 (see further below). The Singapore government has announced that one of the roles of the new IMDA will be to implement the Infocomm Media 2025 master plan.

In line with the merger of the IDA and MDA, the Singapore government has also announced that it intends to review the Telecoms Act, the Broadcasting Act, and the Films Act in order to keep pace with a converged info-communications media space. The Telecoms Act is currently the primary legislation governing telecoms-related activities in Singapore, while the Broadcasting Act and Films Act are the primary legislation governing broadcasting and film-related activities in Singapore.

The MCI has also announced that the PDPC will be part of the new IMDA. The PDPC is the authority responsible for administering and enforcing the PDPA, which establishes Singapore's general data protection law.

#### Government Technology Organisation

The new GTO will lead digital transformation efforts in the public sector. The GTO is expected to tackle issues such as ensuring the security and resilience of the government's IT infrastructure, as well as helping government agencies capitalise on the speed of innovation and new technology trends such as robotics, artificial intelligence, the Internet of Things, and big data.

#### Timeline for changes

The MCI has announced that the IMDA and GTO will be officially established in the second half of 2016. In preparation for the formal establishment of the two new bodies, the existing IDA and MDA will be administratively reorganised from 1 April 2016.

In light of the restructuring of the IDA and MDA, details of legislative changes to establish the new converged regulator, IMDA, as well as the new GTO, can be expected to be announced in due course.

#### Infocomm Media 2025 master plan and Smart Nation Programme

In 2014, the Singapore government officially announced its vision to transform Singapore into the world's first 'Smart Nation'. The Smart Nation Programme seeks to improve the quality of life for individuals and business opportunities by harnessing the full power of information and communications technology (ICT), networks and data on a nationwide scale. Following the launch of the Smart Nation Programme, the Singapore government has introduced various initiatives to realise its vision. The Programme is centrally coordinated by the Prime Minister's Office and supported by other government agencies.

One initiative is the Smart Nation Platform (SNP), which is a key piece of infrastructure that will support the Smart Nation vision, by bringing together a nationwide sensor network and data analytics abilities. The key elements in the SNP include a nationwide communications and sensor network, as well as a Smart Nation Operating System. The operating system will undertake functions such as sensor management and facilitating the exchange of sensor data.

Another initiative that the Singapore government is exploring is the concept of a nationwide 'HetNet', which will allow devices to stay seamlessly connected throughout Singapore by hopping automatically across wireless networks, such as cellular and wi-fi networks. In this regard, the IDA has worked with local mobile network operators and other industry players to conduct trials in order to validate technologies and capabilities of HetNet beginning from 2015.

In line with Singapore's vision to become a Smart Nation, the Internet of Things Technical Committee (IOTTC) has also developed two sets of technical standards to facilitate interconnectivity and interoperability of devices. These are the 'Technical Reference for Sensor Network for Smart Nation (Public Areas)' (first published in 2014) and the 'Technical Reference for Sensor Networks for Smart Nation (Homes)' (first published in 2015).

### **Infocomm Media 2025 master plan**

In August 2015, the Singapore government released its Infocomm Media 2025 10-year master plan, which is intended to guide the development of the info-communications media sector into 2025. The Infocomm Media 2025 master plan identifies various trends that are relevant to info-communications media, as well as three broad strategic thrusts to guide the development of the info-communications media sector:

- to capitalise on data, advanced communications and computation technologies;
- to nurture an info-communications media ecosystem that encourages risk-taking and continuous experimentation; and
- to connect people through info-communications media.

One of the key objectives expressly identified by the master plan's steering committee, in formulating the master plan, was to enable and complement the Singapore government's Smart Nation Programme. The Singapore government has announced that the IMDA, which will be formed from the merger between the IDA and MDA (see above), will be tasked with implementing the Infocomm Media 2025 master plan.

### **2016 spectrum auction and framework to facilitate entry of new mobile network operator**

On 7 July 2015, the IDA commenced a public consultation on its proposed framework for the allocation of spectrum for 4G and IMT-Advanced services. Part of the spectrum to be allocated includes the spectrum that will be freed up upon completion of the digital TV switchover and the switching off of analogue TV signals (see question 22). This was the second public consultation held by the IDA on this subject, following an earlier public consultation held by the IDA in 2014. The issues raised under the second public consultation included technical considerations for the allocation of spectrum and a proposed framework to facilitate new entry into the mobile services market.

On 18 February 2016, the IDA issued its decision on the second public consultation. In its decision, the IDA stated that it will proceed with the planned spectrum allocation exercise in 2016, which will be held in the form of a spectrum auction.

The IDA decided that a total of 235MHz of spectrum will be available for allocation, as follows:

- 2 x 45MHz in the 700MHz band;
- 2 x 30MHz in the 900MHz band;
- 40MHz, unpaired, in the 2.3GHz TDD band; and
- 45MHz, unpaired, in the 2.5GHz TDD band.

Notably, the IDA also decided that, as part of the spectrum allocation exercise, it will implement a framework to facilitate the entry of a new mobile network operator (MNO) into the Singapore market, in order to enhance innovation and competition in the mobile market. In this regard, there will be two stages to the 2016 spectrum auction: (i) a new entrant spectrum auction (NESA), which will only be open to qualified bidders (ie, potential new MNOs) who are currently not MNOs and not an associate of any MNO and/or of another qualified potential bidder; and (ii) a general spectrum auction (GSA), which will be open to the incumbent MNOs and the successful bidder from the NESA (if any). Potential new MNOs who are interested in participating in the NESA will be required to participate in a pre-qualification exercise before they are allowed to participate in the NESA, in order to ensure that they are serious and possess the requisite capabilities to deploy the relevant network(s).

As part of the parameters for the NESA, the IDA decided to set aside 60MHz of spectrum for one new MNO, comprising 2 x 10MHz of spectrum in the 900MHz band and 40MHz of spectrum in the 2.3GHz TDD band, at a reserve price of S\$35 million. IDA will adopt an ascending round auction format and a 'clock plus' auction format for the NESA and GSA respectively. In the event that there is no new MNO following the conclusion of the NESA, the set-aside spectrum will be added to the pool of spectrum available for allocation in the GSA, which will then be available for bidding by the incumbent MNOs only. In the event that there is a provisional new MNO following the NESA, the provisional new MNO will be permitted to bid alongside the incumbent MNOs in the GSA.

As stated in the IDA's decision, the new MNO will be required (among other regulatory obligations) to roll out its network for nationwide coverage (except road tunnel, in-building service and underground MRT stations/lines coverage) by 30 September 2018, road tunnel and in-building

service coverage by 30 September 2019, and underground MRT stations/lines coverage by 30 September 2021.

Separately, to facilitate the entry of mobile virtual network operators (MVNOs), the IDA also decided to publish, as part of its decision, a set of negotiation principles to guide negotiations between MNOs and MVNOs for wholesale access.

### **Cessation of 2G mobile services in 2017**

In June 2015, the IDA announced that it had approved the request of the MNOs (M1, Singtel and StarHub) to close their 2G networks with effect from 1 April 2017. The IDA also required the MNOs to ensure that existing 2G subscribers will transit smoothly to the 3G networks.

As a result, 2G services will cease to be available in Singapore from 1 April 2017. The spectrum freed up by such a move will be used to provide faster 3G and 4G services.

In approving the operators' request, the IDA considered that 2G pre- and post-paid subscriptions have declined steadily to about 3 per cent of mobile subscriptions in Singapore, as the technology landscape has evolved and consumers have migrated to 3G and 4G technologies.

In light of the decision to cease 2G services from 1 April 2017, the IDA also announced that it will stop accepting the registration of 2G-only mobile communications equipment from 15 September 2015. Under equipment regulations, mobile handsets must typically be registered with the IDA before they may be sold in Singapore by licensed dealers.

### **Review of the IP transit and peering landscape in Singapore**

On 13 February 2015, the IDA commenced a public consultation to gather feedback on the findings of its study into the IP transit and peering landscape in Singapore.

As part of efforts to ensure that its regulatory frameworks remain relevant, the IDA had decided to carry out a study and review the issue of whether regulatory intervention in the IP transit and peering arrangements was necessary to further improve competition in the local internet services market, as well as the quality and reliability of broadband internet services for end-users. Specifically, the IDA also considered whether it was necessary to mandate IP peering arrangements among all ISPs, or require that all local traffic should be kept local, so as to minimise incidences of local traffic being tromboned via a longer, indirect path overseas, which may affect the quality of internet services.

Having concluded its study, the IDA did not find any competition concerns or adverse impact on the quality of internet services arising from the current situation in the IP transit and peering landscape in Singapore. According to the IDA, the study also suggested that operators should be given the flexibility to offer differentiated internet connectivity business models, and the flexibility to adopt the connectivity arrangements that best meet their business and operational needs.

Based on the findings of its study, the IDA put forward the following preliminary views in its consultation paper:

- There appears to be no strong justification for further regulatory measures such as mandating IP peering arrangements at this juncture. The internet services market is vibrant with many ISPs competing and providing end-users with multiple choices of high speed broadband plans at competitive prices. Currently, ISPs, internet content providers and content delivery networks (CDNs) can commercially negotiate and enter into IP peering arrangements or purchase IP transit from multiple operators, and have multiple options for internet connectivity. The IDA's existing regulatory frameworks will continue to facilitate competition, and ensure that a reasonable level of quality and reliability of broadband internet services to safeguard consumer interests.
- The IDA should continue to foster a conducive wholesale environment for a diverse and agile ISP retail marketplace, leaving IP transit and peering arrangements to commercial decision-making.

Following the close of the public consultation on 10 April 2015, the IDA received a number of responses. At the time of writing, the IDA's final decision on the issues raised for consultation is still pending.

In the interim, the IDA has noted two opposing views in the responses received. One view suggests that some form of regulatory intervention is required, such as requiring retail ISPs to enter into settlement-free peering agreements with each other and with internet content providers, as this would subject the incumbents to greater competition, thereby lowering prices for consumers while forcing the incumbents to innovate in

the process. The other view requests the IDA to maintain the status quo and refrain from intervening, as the market is competitive and functioning properly, and mandating peering between all operators would enable smaller ISPs to free-ride on the investments made by larger ISPs to host premium content within their networks, possibly disincentivising further investments.

#### **Review of NetLink Trust's interconnection offer and reference access offer**

On 25 June 2015, the IDA completed its latest comprehensive review of NetLink Trust's ICO. As the NetCo of the NGNBN, NetLink Trust is required to publish the ICO, which sets out the prices, terms and conditions upon which downstream operators may purchase certain mandated services from NetLink Trust (see question 11). In light of NetLink Trust's acquisition of the previous NetCo (OpenNet), consequential changes had to be made to the ICO to reflect NetLink Trust as the new NetCo. In addition, other changes were made to address operational issues concerning the NetCo layer of the NGNBN. These include (without limitation): reviewing the service level guarantees provided by NetLink Trust under the ICO to address delays in service delivery; reviewing the circumstances in which NetLink Trust may reject service orders; and reviewing the quota mechanism under the ICO to better manage NetLink Trust's installation capacity to meet demand for new service orders.

Furthermore, on 23 September 2015, the IDA completed its review of NetLink Trust's reference access offer (RAO). As a dominant licensee, NetLink Trust is required, pursuant to the TCC, to offer certain interconnection and access-related services on prices, terms and conditions that are pre-approved by the IDA via its RAO (see question 4). The issues reviewed include (without limitation): making consequential changes arising from NetLink Trust's acquisition of OpenNet; and CityNet's proposed removal of certain services from the RAO in light of an apparent lack of demand. In relation to the latter, the IDA decided, following a public consultation exercise, that Singtel would need access to these services in order to be able to fulfil its own obligations to provide mandated services to its downstream operators, and that the services should therefore be retained in NetLink Trust's RAO.

#### **Establishment of the Cyber Security Agency and upcoming Cyber Security Bill**

On 1 April 2015, the Cyber Security Agency of Singapore (CSA) was established under the Prime Minister's Office to provide centralised oversight of national cybersecurity functions.

The CSA replaces the functions previously carried out by the Singapore Infocomm Technology Security Authority (SITSA) under the Ministry of Home Affairs. SITSA was set up in 2009 as the national specialist authority overseeing operational IT security. The CSA also takes over some roles previously undertaken by the IDA, such as the Singapore Computer Emergency Response Team, which facilitated the detection, resolution and prevention of security-related incidents on the internet.

In January 2016, the Singapore government announced that it intends to develop a new national cybersecurity strategy to strengthen Singapore's information infrastructure. In this respect, the government further announced that it intends to prioritise the critical sectors of energy, water, transport, health, government, info-communications, media, security and emergency services, and banking and finance. As part of its cybersecurity strategy, the Singapore government also intends to introduce a Cyber Security Bill to give the CSA greater powers to secure Singapore's critical information infrastructure. Further details in this regard are expected to become available in due course.

## **Media**

### **15 Regulatory and institutional structure**

#### **Summarise the regulatory framework for the media sector in your jurisdiction.**

At the time of writing, the MDA is the statutory body responsible for broadcasting and content regulation (irrespective of the transmission medium) and the primary applicable legislation is the Media Development Authority of Singapore Act (the MDA Act) and the Broadcasting Act. Like the IDA, the MDA is under the direct authority of the MCI.

Notably, on 18 January 2016, the MCI announced that Singapore will begin implementing a converged info-communications and media regulator, the IMDA, which will be formed through a merger of the IDA and MDA

(see question 14). While the IMDA is expected to be formally established in the second half of 2016, the IDA and MDA are expected to undergo an administrative reorganisation from 1 April 2016. In light of the MCI's announcement, the existing regulatory framework, as described in this chapter, can be expected to undergo a number of changes. Further details of changes to the existing regulatory framework are expected to become available in due course.

Under the existing framework, 'media' is defined in the MDA Act as referring to any film, newspaper, broadcasting service or publication (as defined in the Films Act, Newspaper and Printing Presses Act, the Broadcasting Act and the Undesirable Publications Act respectively). The Minister may further specify in the Gazette any other thing to be included under 'media'.

In respect of policy formulation, the MDA consults a number of committees in creating and developing its regulatory framework. These include various programme advisory committees for broadcast programmes in different languages, and a number of other consultative panels. Their members are drawn from a cross-section of society and the media industry.

Furthermore, under the existing framework at the time of writing, content and broadcasting regulation remains separate from infrastructure regulation. Therefore, firms should be mindful that they must comply with both the licensing and regulatory requirements imposed by the MDA for content and broadcasting, and those imposed by the IDA (see question 2) for the establishment and operation of any infrastructure.

### **16 Ownership restrictions**

#### **Do any foreign ownership restrictions apply to media services? Is the ownership or control of broadcasters otherwise restricted? Are there any regulations in relation to the cross-ownership of media companies, including radio, television and newspapers?**

##### **Foreign investors**

There are provisions under the Broadcasting Act regulating foreign participation in a broadcasting company. Prior approval of the MDA must be obtained if a person wishes to receive funds from a foreign source to finance any broadcasting service owned or operated by a broadcasting company (section 43(1) of the Broadcasting Act). In addition, no company (unless the Minister approves otherwise) is to be granted or permitted to hold a relevant licence (as defined in the Broadcasting Act) if the Minister is satisfied that any foreign source, alone or together with one or more foreign sources:

- holds no less than 49 per cent of the shares in the company or its holding company;
- is in a position to control voting power of no less than 49 per cent in the company or its holding company; or
- all or a majority of the persons having the direction, control or management of the company or its holding company are appointed by, or accustomed or under an obligation to act in accordance with the directions of, any foreign source.

##### **Ownership controls**

The Broadcasting Act contains ownership and control provisions that apply to broadcasting companies as defined therein. A 'broadcasting company' is a Singapore-incorporated company or Singapore branch office that holds a 'relevant licence'. A relevant licence refers to any free-to-air licence, or any broadcasting licence under which a subscription broadcasting service may be provided, that permits a broadcast capable of being received in 50,000 dwelling houses (which is defined to include hotels, inns, boarding houses and other similar establishments) or more. In addition, the Minister may designate any other broadcasting licence as a relevant licence on public interest or national security grounds. A class licence will not be considered a relevant licence.

Under the Broadcasting Act, no person may, on or after 2 September 2002, become a 12 per cent controller or an indirect controller of a broadcasting company without first obtaining the approval of the Minister. The terms 'controller' and 'indirect controller' are defined in section 36 of the Broadcasting Act.

Pursuant to section 33(2) of the Broadcasting Act, unless the MDA approves otherwise, the CEO of a broadcasting company and at least half of its directors must be citizens of Singapore. A broadcasting company may request to be exempt from this requirement, and exemptions have been made by the Minister.

Notably, the category of niche subscription television licensees has been exempted from all foreign ownership restrictions (see question 21).

Broadcasting licensees that are regulated persons (within the meaning of section 16(3) of the MDA Act) are subject to the provisions on consolidations and mergers in the MDA Act and the Media Market Conduct Code (MMCC) (see question 26).

### Cross-ownership

No regulations specifically prohibit the cross-ownership of media companies, including radio, television and newspapers. Such mergers and acquisitions between media companies are regulated by the MDA. The prior written approval of the MDA is required for all consolidations or mergers between a regulated person (as defined in the MDA Act) and another regulated person, or any other person (not being a regulated person) carrying on business in the media industry (section 23 of the MDA Act). Paragraph 8 of the MMCC details the MDA's regulation of such consolidation activities. Intra-group consolidations are exempted from the requirement to obtain the MDA's approval under paragraph 8.2 of the MMCC.

## 17 Licensing requirements

### What are the licensing requirements for broadcasting, including the fees payable and the timescale for the necessary authorisations?

Under section 5 of the Broadcasting Act, the MDA may grant two types of licences: broadcasting licences and broadcasting apparatus licences.

#### Broadcasting licences

To broadcast programmes in Singapore, a person must obtain a broadcasting licence from the MDA. Broadcasting licences may be granted for the following categories of licensable broadcasting services:

- free-to-air nationwide, localised and international television services;
- subscription nationwide, localised and international television services;
- niche subscription television services;
- special interest television services;
- internet protocol television (IPTV) services;
- mobile digital television services (ie, services that allow the receipt of television programmes on outdoor premises such as food courts and public transportation services such as buses, taxis and ferries);
- free-to-air nationwide, localised and international radio services;
- subscription nationwide, localised and international radio services;
- special interest radio services;
- audio-text, video-text and teletext services;
- video-on-demand (VOD) services;
- broadcast data services; and
- computer online services.

The licence fees payable for a number of the broadcasting services listed above (eg, free-to-air television broadcasting services) are not publicly available. Listed below are the licence fees that have been published by the MDA as payable for the following broadcasting services:

- S\$5,000 per annum for a subscription international television services licence (commonly known as a satellite broadcasting licence). A performance bond of S\$50,000 must be given to the MDA by broadcasters not based or registered in Singapore. The performance bond must be issued by a financial institution approved by the MDA;
- 2.5 per cent of total revenue for a nationwide subscription television licence, subject to a minimum licence fee of S\$50,000 per year throughout. In addition, a performance bond of S\$200,000 must be furnished. A nationwide subscription licence is valid for 10 years;
- 2.5 per cent of total revenue for a niche subscription television licence, subject to a minimum licence fee of S\$5,000 per year throughout. In addition, a performance bond of S\$50,000 must be furnished. A niche licence is valid for five years; and
- S\$1,000 per year for a television receive-only (TVRO) licence (per satellite dish).

Section 8(2) of the Broadcasting Act provides that a broadcasting licence must be in such a form and for such a period and may contain such terms and conditions as the MDA may determine. The Broadcasting Act sets out certain conditions that licensees must comply with, such as compliance with the MDA's codes of practice and certain public service broadcasting obligations. Templates of such licences are not publicly available. The

MDA has not indicated publicly how long it will take to process all licence applications. Generally speaking, applicants may need to factor in several weeks for their applications to be processed, depending on whether all the information required for the MDA's evaluation purposes has been submitted. For more complex or novel applications, the MDA may take longer.

In addition to the individual broadcasting licences listed above, there is also a class-licensing regime. The MDA has specified that the following licensable broadcasting services are subject to the class licence regime:

- audio-text, video-text and teletext services;
- broadcast data services;
- VAN computer online services; and
- computer online services that are provided by internet content providers and ISPs.

A company wishing to provide a licensable broadcasting service that is subject to the class licence regime must register with the MDA. In particular, audio-text service providers and ISPs must register with the MDA within 14 days of commencing the service. The MDA will take about one week to process the registration forms. Registration forms for the services subject to the class licence regime are available at [www.mda.gov.sg](http://www.mda.gov.sg).

All class licensees must comply with the licence conditions contained in the Broadcasting (Class Licence) Notification. In addition, internet content providers and ISPs must comply with the Internet Code of Practice (available at [www.mda.gov.sg](http://www.mda.gov.sg)). The yearly fees payable for the services listed below have been published in the Schedule of the Broadcasting (Class Licence) Notification:

- S\$2,000 for the provision of teletext services;
- S\$1,000 for the provision of computer online services by internet access service providers;
- S\$1,000 for the provision of computer online services by non-localised internet service resellers (with 500 or more user accounts);
- S\$100 for the provision of computer online services by non-localised internet service resellers (with less than 500 user accounts); and
- S\$100 (per premise) for the provision of computer online services by a localised internet service reseller.

The fees payable for the services not mentioned in the Broadcasting (Class Licence) Notification are not publicly available. If broadcasting infrastructure is to be deployed, a licence from the IDA may also be required (see question 2).

#### Broadcasting apparatus licences

To install, import, sell or operate any broadcasting apparatus in Singapore, a person must obtain a licence from the MDA under section 20 of the Broadcasting Act. This requirement applies to apparatus currently listed under the First Schedule to the Broadcasting Act (ie, TVRO system). The MDA retains the discretion to exempt any person or broadcasting apparatus (or class thereof) from this licence requirement.

## 18 Foreign programmes and local content requirements

### Are there any regulations concerning the broadcasting of foreign-produced programmes? Do the rules require a minimum amount of local content? What types of media fall outside this regime?

There are no express regulations concerning the broadcast of foreign programmes, irrespective of media type. Such broadcasts are, however, subject to paragraph 16 of the Schedule of the Broadcasting (Class Licence) Notification that states that an internet content provider licensee shall remove or prohibit the broadcast of the whole or any part of a programme included in its service if the MDA informs the licensee that its broadcast is against the public interest, public order or national harmony, or offends good taste or decency.

There are no explicit rules requiring a minimum amount of local content. However, under section 17 of the Broadcasting Act, the MDA may require a broadcasting licensee to broadcast programmes provided by the MDA or the Singapore government as a condition of its licence, including the following:

- programmes for schools or other educational programmes;
- news and information programmes produced in Singapore or elsewhere;
- arts and cultural programmes; and
- drama and sports programmes produced in Singapore.

Further, free-to-air television and subscription television broadcasting licensees may be subject to programme codes issued by the MDA containing programming and content guidelines, such as the Free-to-Air TV Programme Code, Subscription TV Programme Code and Content Code for Niche Services (available at [www.mda.gov.sg](http://www.mda.gov.sg)). Generally, programme codes will contain guidelines congruent with national objectives, uphold racial and religious harmony, observe societal and moral standards and promote positive family values. Section 19 of the Broadcasting Act also provides for a must-carry obligation (see question 20).

## 19 Advertising

### How is broadcast media advertising regulated? Is online advertising subject to the same regulation?

At present, stricter content standards are applied to advertisements in public places (in view of their unsolicited viewing) and in mediums that have a wider impact on the general public, such as advertisements on TV. The Advertising Standards Authority of Singapore (ASAS) lays down broad industry codes and guidelines. The Singapore Code of Advertising Practice (SCAP) is reviewed periodically by the ASAS, and was most recently updated in 2015. The ASAS also issued a set of draft guidelines for public consultation in December 2015, in relation to digital and social media advertising (see question 25). The basic premise of the SCAP is that all advertisements should be legal, decent, honest and truthful. The SCAP applies to all advertisements for any goods, services and facilities appearing in any form or any media, including online advertisements in information network services, electronic bulletin boards, online databases and internet services. The SCAP seeks to promote a high standard of ethics in advertising through self-regulation against the background of national and international laws and practices, including the International Code of Advertising Practice published by the International Chamber of Commerce. Alongside the ASAS, the MDA also plays a role in guiding the advertising industry when the need arises. For TV broadcasts, the MDA issues advertising codes to broadcasters, which are stricter than those for the print media due to the wider reach of television broadcasts. The MDA has issued Television and Radio Advertising Codes (the Advertising Codes). These aim to protect the interests of viewers as consumers and require advertisements to be truthful, lawful and not to contain any misleading claims. All claims and comparisons must be capable of substantiation. The Advertising Codes require advertisements to respect public taste and interests and uphold moral and social values. The Advertising Codes also stipulate that broadcasters should exercise discretion when scheduling advertisements and trailers to ensure that these are appropriate for the viewing audience.

With regard to holders of class licences, paragraph 16 of the Schedule to the Broadcasting (Class Licence) Notification states that a licensee shall remove or prohibit the broadcast of the whole or any part of a programme included in its service if the MDA informs the licensee that its broadcast is against the public interest, public order or national harmony, or offends good taste or decency. In the case of online advertising, internet content providers and ISPs are considered class licensees and must also comply with paragraph 16 of the Schedule to the Broadcasting (Class Licence) Notification. In addition, paragraph 13(a) of the same requires licensees to comply with the MDA's codes of practice. In this respect, the MDA-issued Internet Code of Practice requires class licensees to use their best efforts to ensure that prohibited material is not broadcast over the internet to users in Singapore. Examples of prohibited material include, without limitation, content that endorses ethnic, racial or religious hatred, strife or intolerance, and material that depicts extreme violence. Internet content providers and ISPs must also ensure that these advertisements are in line with the SCAP.

Separately, the Undesirable Publications Act prevents the importation, distribution or reproduction of undesirable publications. This may include advertisements that are accessible by computers or other electronic devices, such as online advertisements.

## 20 Must-carry obligations

### Are there regulations specifying a basic package of programmes that must be carried by operators' broadcasting distribution networks? Is there a mechanism for financing the costs of such obligations?

The Broadcasting Act provides for a must-carry obligation. Under section 19 of the Broadcasting Act, the MDA may require a broadcasting licensee

to provide for transmission and reception of any broadcasting service that is provided by any other person or that is specified in its licence (see below for details).

Currently, must-carry obligations are imposed on all nationwide subscription TV licensees to allow their subscribers to access all local free-to-air channels on their network (see further question 21).

Paragraphs 2.1.5 and 2.7 of the MMCC establish a cross-carriage measure for the pay-TV sector, under which a mandatory obligation is imposed upon all licensed subscription television service providers who acquire exclusive broadcasting rights to any channel or programming content (supplying licensees) to provide such channels or content for cross-carriage on the pay-TV network of other subscription nationwide television service providers, who are in turn obliged to carry such channels and content on all 'relevant platforms' (as defined in paragraph 2.3(ea) of the MMCC) in their entirety, without any alteration or degradation in quality. A relevant platform means a managed network over or using any (or any combination of) hybrid fibre coaxial, optical fibre or asymmetric digital subscriber line. Supplying licensees may stand to benefit from an increased subscriber base, as the MMCC requires that any consumer accessing such cross-carried content shall, for billing and operational purposes, also be considered a subscriber of the supplying licensee. The mandatory cross-carriage obligation applies to all exclusive channel and content arrangements signed or renewed on or after 12 March 2010.

Under paragraph 2.4 of the MMCC, free-to-air television and radio licensees (and any other person as the MDA may direct) must comply with the MDA's requirements regarding the broadcast of events that are of national significance. The MDA will provide written notification to free-to-air television and radio licensees regarding the events of national significance that they are to broadcast. The MDA will generally designate only very select events as events of national significance that are to be broadcast live or delayed.

The following events are currently identified in the MMCC as being events of national significance:

- National Day parade;
- National Day rally;
- the prime minister's National Day message;
- parliamentary proceedings, including the budget speech and debate;
- general election, by-election and presidential election; and
- state funerals.

The MDA may specify additional events or remove existing ones.

If it is not desirable for more than one entity to locate cameras and other equipment at the site of such an event, the MDA may select a broadcaster to be the sole broadcaster for the event (the lead broadcaster), or conduct a competitive tender for the position. The lead broadcaster must make the feed from the event available to all free-to-air television and radio licensees and any other person that the MDA specifies.

Any television or radio licensee that receives the feed from the lead broadcaster has an obligation to compensate the lead broadcaster for reasonable costs that are not otherwise compensated (eg, through government subsidies) incurred by the lead broadcaster in providing the television or radio licensee with the feed.

## 21 Regulation of new media content

### Is new media content and its delivery regulated differently from traditional broadcast media? How?

#### IPTV services

The MDA adopts a two-tier licensing framework for the provision of IPTV services in Singapore: nationwide subscription TV licence and niche subscription TV licence (niche licence).

The niche licence is a newer type of licence designed to facilitate the growth of IPTV and other novel services in Singapore by offering operators greater flexibility to roll out services for different market segments, with less onerous regulatory obligations. In particular, the niche licence does not impose any ownership or must-carry obligations on the licensee. Niche licence holders are restricted to transmitting any single channel to up to 100,000 unique viewers in Singapore and transmitting to up to 250,000 unique viewers (including transmission by its related corporations). Such licensees will also be subject to the usual advertising time limits for scheduled programming and programme content codes for subscription and VOD programmes.

The nationwide subscription TV licence applies to operators targeting the mass market (ie, more than 100,000 unique viewers daily for a single

channel). The first nationwide IPTV licence was awarded to SingNet Pte Ltd (SingNet) in January 2007 for the provision of its mio TV service, which has since been renamed Singtel TV.

Licence applicants are free to decide which licence tier they wish to operate under. Importantly, trial licences are also available for the provision of IPTV services (temporary subscription TV licences). This allows applicants to conduct marketing or technical trials prior to the commercial launch of their service. Key licence conditions include a licence period of six months and a licence fee of S\$2,500, and no performance bond is required.

The MDA has stated that it will not limit the number of niche licence holders, and it welcomes local and overseas IPTV service providers to establish their presence in Singapore. Below is a brief summary highlighting the key conditions and differences between the niche licence and nationwide subscription TV licence:

	Niche subscription TV licence	Nationwide subscription TV licence
<b>Licence duration</b>	Five years.	10 years.
<b>Number of subscribers</b>	<ul style="list-style-type: none"> <li>Daily reach of any single channel reaches up to 100,000 unique viewers; or</li> <li>Daily reach of broadcaster reaches up to 250,000 unique viewers.</li> </ul> This threshold applies to related corporations.	No limit to the number of subscribers in Singapore.
<b>Licence fee</b>	2.5 per cent of total revenue. A minimum licence fee of S\$5,000 per annum will be applicable throughout.	2.5 per cent of total revenue. A minimum licence fee of S\$50,000 per annum will be applicable throughout.
<b>Performance bond</b>	S\$50,000, in the form of either banker's guarantee or cash.	S\$200,000, in the form of either banker's guarantee or cash.
<b>Ownership</b>	No ownership conditions.	Subject to the ownership conditions as stipulated in part X of the Broadcasting Act.
<b>Must-carry obligations</b>	No must-carry obligations.	Must-carry obligations for enabling access to local free-to-air channels are applicable for subscribers.
<b>Advertising revenue</b>	No cap on advertising revenue.	Advertising revenue not to exceed 25 per cent of total revenue.
<b>Advertising time limit</b>	14 minutes per hour advertising time limit applies for channels with scheduled programming. The 14 minutes advertising time limit is not applicable for VOD content and interactive advertising services.	
<b>Content guidelines</b>	Subscription TV programme code applies if scheduled programmes are offered, while VOD programme code applies if on-demand programmes are offered.	

#### Online news sites

From 1 June 2013, online news sites that report regularly on issues relating to Singapore and have significant reach among local readers will be required by the MDA to obtain an individual licence, placing them on a more consistent regulatory framework with traditional news platforms that are already individually licensed.

Under the licensing framework, online news sites will be individually licensed if they (i) report an average of at least one article per week on Singapore news and current affairs over a period of two months, and (ii) are visited by at least 50,000 unique IP addresses from Singapore each month over a period of two months.

These sites were previously automatically class-licensed under the Broadcasting Act. Presently, when the MDA has assessed that a site has met the criteria to be individually licensed, the MDA will issue a formal notification, and work with the site to move it to the new licensing framework.

The MDA has stated that it does not expect any changes in content standards to result. Individually licensed news sites will be expected to comply within 24 hours to the MDA's directions to remove content found in

breach of content standards, and will be required to put up a performance bond of S\$50,000, which is consistent with the sum required of niche TV broadcasters.

## 22 Digital switchover

### When is the switchover from analogue to digital broadcasting required or when did it occur? How will radio frequencies freed up by the switchover be reallocated?

In June 2012, the MDA announced that all free-to-air channels would be transmitted digitally by the end of 2013 using the DVB-T2 (digital video broadcasting – second generation terrestrial) broadcasting standard. In this regard, the nationwide free-to-air broadcaster MediaCorp announced that it would transmit all free-to-air channels in digital format from December 2013. To ensure a smooth switchover, there is currently a simulcast period, during which all free-to-air channels will be broadcast in digital and analogue until the switchover is fully completed.

In January 2016, the MCI, which is the parent ministry overseeing the MDA, announced that it aims to complete the switchover and to switch off analogue broadcasting by the end of 2017. The government had previously announced that it expected the switchover to be complete before 2020. The MCI further announced that it expects the freed up spectrum to provide more capacity for mobile broadband and better support Smart Nation development (see question 14). In this regard, the IDA, which administers the allocation of RF spectrum, has proposed to include freed up spectrum in its upcoming spectrum allocation exercise for mobile broadband services (see question 14).

The IDA has also identified in its most recent Radio Spectrum master plan that the introduction of digital broadcasting provides an opportunity for it to review the current use of broadcast spectrum. The IDA has further stated that it is coordinating with neighbouring countries to replan the VHF and UHF bands for digital broadcasting services and possible new wireless services.

## 23 Digital formats

### Does regulation restrict how broadcasters can use their spectrum (multi-channelling, high definition, data services)?

The IDA's Spectrum Management Handbook explains that planning and channelling of the broadcasting spectrum is carried out at the international level (ITU), regional level (Asia-Pacific Broadcasting Union, ABU) and bilateral levels (ie, border coordination with neighbouring countries). As such, there are only a certain number of channels in each broadcasting band that can be used in Singapore. The usage plans for broadcasting services have already been established. With the advent of digital broadcasting, the IDA has also planned the spectrum allocations for both digital audio and digital video broadcasting. To provide broadcasting services, a licence is required from the MDA. Clearance on the broadcasting transmission station falls under the purview of the IDA.

As stated in the IDA's Radio Spectrum Master Plan, the allocation of broadcasting spectrum is as follows:

Service	Band	Channel bandwidth	Status
MW (medium wave)	0.5265–1.6065MHz	10kHz	Not assigned
SW (short wave)	5.95–21.85MHz	10kHz	Usage subject to coordination by ABU
FM (frequency modulation)	88–108MHz	180 or 300kHz	Mostly assigned
TV (television)	174–230MHz 494–790MHz	7MHz 8MHz	Fully assigned Mostly assigned
DAB (digital audio broadcasting)	174–230MHz 1,452–1,492MHz	1,536MHz 1,536MHz	Not assigned Not assigned
DVB (digital video broadcasting)	494–790MHz	8MHz	Mostly assigned
DBS (direct broadcasting satellite)	11,700–12,200MHz	27MHz	Not assigned

## 24 Media plurality

**Is there any process for assessing or regulating media plurality (or a similar concept) in your jurisdiction? May the authorities require companies to take any steps as a result of such an assessment?**

Singapore does not currently have a formal process or framework in place to assess media plurality.

## 25 Key trends and expected changes

**Provide a summary of key emerging trends and hot topics in media regulation in your country.**

### Establishment of converged info-communications and media regulator

The Singapore government has announced that the IDA and MDA will merge to form the IMDA. The IMDA will be Singapore's converged info-communications regulator (see question 14).

### Infocomm Media 2025 master plan

In August 2015, the Singapore government released its Infocomm Media 2025 master plan, which sets the broad strategy for the development of Singapore's info-communications media sector for the next 10 years. The IMDA will be tasked with implementing the master plan (see question 14).

### Analogue TV to cease by the end of 2017

In January 2016, the Singapore government announced that analogue broadcasting will be switched off by the end of 2017, thus completing the switchover to digital broadcasting (see question 22).

### Revisions to the Code of Practice for Television Broadcast Standards

On 4 May 2015, the MDA issued certain drafting revisions to the Code of Practice for Television Broadcast Standards. The Code of Practice for Television Broadcast Standards sets out certain technical performance standards to be observed by nationwide TV licensees, including in the areas of:

- service coverage requirements;
- TV signal strength requirements;
- picture and audio quality requirements;
- reliability requirements; and
- loudness requirements.

The revisions were issued by the MDA following the receipt of several comments and proposals raised by licensees. The revisions relate to a licensee's obligation to offer solutions in the event that a residential property is unable to receive terrestrial broadcast TV services, as well as the definition of a service outage.

In addition to the drafting revisions, the MDA also issued a number of clarifications as to licensees' obligations under the Code of Practice for Television Broadcast Standards.

The revised Code of Practice for Television Broadcast Standards came into effect on 4 May 2015.

### Proposed Digital and Social Media Advertising Guidelines issued for public consultation

On 7 December 2015, the ASAS commenced a public consultation to seek public feedback on a set of draft Digital and Social Media Advertising Guidelines. The proposed guidelines are intended to address issues arising from the emergence of social media advertising. In this regard, the proposed guidelines establish levels of disclosure that are required of sponsored messages appearing on blogs and social media platforms. The ASAS has also proposed to require marketers to make sponsored messages distinguishable from personal opinions and editorial content in their posts, and to disclose any commercial relationships. Once finalised, the ASAS intends to incorporate the guidelines into the SCAP, which applies to advertisements generally (see question 19).

### Enhancements to internet parental controls

On 14 July 2015, the MDA issued its decision on proposed enhancements to internet parental controls offered by internet access service providers (IASPs). Under the broadcasting (class licence) conditions, IASPs are

required to offer certain internet filtering services to residential fixed-line and mobile internet access subscribers. The issuance of the MDA's decision followed a public consultation exercise held by the MDA to gather public feedback on proposed enhancements to these parental controls.

In summary, the MDA's decision is as follows:

- IASPs will be required to obtain their consumers' explicit decision on whether they want to sign up for internet parental controls either at the point of subscription or renewal for internet access, or within 14 days from the point of contracting (as opposed to an 'inform and offer' or an 'opt-out' regime);
- for consumers who choose to subscribe to internet parental controls and switch them on, IASPs will have to ensure that content containing sexually explicit material, violence and gore, is filtered by default;
- IASPs will be required to provide network level internet parental controls, with the provision of device level parental controls left to the commercial discretion of the IASPs;
- for new and re-contracting subscribers to internet access services, IASPs will be required to offer them a free trial of their internet parental controls, for a period of 50 per cent of the subscriber's fixed-term contract, or six months, whichever is shorter. The free trial would not be required for re-contracting subscribers who already enjoyed the trial or are existing subscribers of the network based internet parental controls offered by the same IASP at the point of re-contracting. IASPs will also be required to obtain the subscriber's express consent to charge for the internet filtering services after the trial period; and
- the MDA will maintain the current requirement under which IASPs are required to provide reasonable technical support to subscribers with respect to filtering arrangements, for the duration of their subscription period. Additionally, IASPs will be required to provide subscribers to internet parental controls with an instructional guide.

The MDA has stated that it intends to amend the class licence conditions, to which IASPs are subject, in order to implement the enhancements to internet parental controls. In this regard, the MDA expects the revisions to the class licence conditions to be gazetted by the end of 2016.

## Regulatory agencies and competition law

### 26 Regulatory agencies

**Which body or bodies regulate the communications and media sectors? Is the communications regulator separate from the broadcasting or antitrust regulator? Are there mechanisms to avoid conflicting jurisdiction? Is there a specific mechanism to ensure the consistent application of competition and sectoral regulation?**

At the time of writing, the IDA and the MDA regulate the communications and media sectors and are statutory bodies established under the IDA Act and the MDA Act respectively. The IDA is primarily responsible for the development and regulation of telecoms, IT and postal services, while the MDA is responsible for media industry development, broadcasting and content regulation, irrespective of transmission medium.

Notably, however, on 18 January 2016, the Singapore government announced that the IDA and the MDA will be merged to form the IMDA, which will function as Singapore's converged info-communications and media regulator. The formal establishment of the IMDA is expected to take place in the second half of 2016 (see question 14). In this regard, changes to the existing regulatory framework are expected to become available in due course.

Under the existing regulatory framework, competition issues in the telecoms and media sectors may be governed by sector-specific rules as administered by the IDA and the MDA respectively. In this regard, the Competition Act, which establishes the general competition law and is administered by the CCS, provides that it does not apply insofar as another regulatory authority (other than the CCS) has jurisdiction in a particular competition matter. Accordingly, the CCS does not have jurisdiction over competition issues that fall under the purview of the MDA or the IDA.

The IDA has issued the TCC, which regulates competition in the provision of telecoms services, with the IDA as the sector-specific competition regulator. Previously, section 10 of the Telecom Competition Code 2010 (relating to consolidations and merger control) was substantially revised, and a new section 10 of the TCC was issued as part of the TCC issued on 9 April 2012. The current section 10 of the TCC implements several

amendments that were made to part VA of the Telecoms Act at the end of 2011, which sets out the merger review framework for the telecoms sector.

Likewise, the MDA has issued the MMCC, which provides for market conduct and competition rules applicable to the media industry only, with the MDA as the sector-specific competition regulator.

Although there is currently no specific mechanism under national law to avoid conflicting exercises of jurisdiction by the IDA and the MDA (despite an increasingly convergent environment), the IDA and the MDA are statutory bodies that fall under the purview of the same supervising ministry (ie, the MCI), and can be expected to consult with each other to ensure that their policies and the implementation thereof are not inconsistent.

In this regard, both the TCC and the MMCC contain similar provisions that the IDA and the MDA (respectively) will consult with other regulatory authorities, where feasible and appropriate, to develop a consistent regulatory policy that promotes fair and effective competition and serves the public interest.

As mentioned above, in light of the establishment of the IMDA as a converged info-communications media regulator, which is expected to take place in the second half of 2016, further details of changes to the existing regulatory framework are expected to become available in due course.

## 27 Appeal procedure

### How can decisions of the regulators be challenged and on what bases?

Under section 69 of the Telecoms Act, any telecoms licensee aggrieved by an IDA decision or direction, or anything in any code of practice or standard of performance, and certain other aggrieved persons, may request the IDA to reconsider the matter or appeal to the Minister, who may confirm, vary or reverse the same. Where a reconsideration request and an appeal have been simultaneously filed, the IDA will reconsider the matter and the appeal to the Minister will be deemed withdrawn.

Under section 27 of the MDA Act, any person aggrieved by any act, direction or decision of the MDA under part IV of the MDA Act may appeal to the Minister, who may confirm, vary or reverse the same. Under section 59 of the Broadcasting Act, any licensee aggrieved by any decision of the MDA in its discretion under the Broadcasting Act, or anything contained in any code of practice or direction issued by the MDA, may appeal to the Minister, who may confirm, vary or reverse the decision or direction, or amend the code of practice.

An aggrieved person who has unsuccessfully appealed to the Minister may also be able to mount a further challenge by commencing an action for judicial review in the courts.

## 28 Competition law in the communications and media sectors

### Describe the key merger and antitrust decisions in the communications and media sectors adopted over the past year by your antitrust authority.

#### Telstra's acquisition of Pacnet

On 24 March 2015, the IDA approved the US\$697 million acquisition of Pacnet Limited (Pacnet) by Telstra Corporation Limited (Telstra).

Telstra is Australia's leading telecommunications and information services company, and offers a full range of communications services.

Prior to the consolidation, Pacnet was a global telecommunications service provider of connectivity services, managed services and data centre services, particularly in the Asia-Pacific region. Headquartered in both Singapore and Hong Kong, Pacnet's core assets included data centres and submarine cables located across the Asia-Pacific region. It operated Asia's largest privately owned submarine cable network.

As the acquisition involved a change of ownership of DTLs within the Pacnet group, the transaction was subject to merger review and approval by the IDA.

As part of its merger review process, the IDA held a public consultation to seek feedback on whether the transaction would substantially lessen competition in any Singapore telecoms market or harm the public interest. No responses were received.

In its assessment of the merger, the IDA noted that the market share of the post-consolidation entity in each of the market segments in which it competes is likely to be at a level which typically will not raise any significant competitive concerns. The two exceptions were its share of Asia-Pacific submarine cable capacity, and in the backhaul market. However,

the IDA noted that these markets were competitive with a number of alternative suppliers, and the market share of the post-consolidation entity was unlikely to move in an upwards direction over the next few years as significant additional capacity comes into both markets.

The IDA concluded that the consolidation was not likely to substantially lessen competition in any Singapore market, and that there were no public interest concerns to deny the consolidation application. The IDA therefore decided to approve the consolidation without imposing any conditions.

#### Change in ownership of CityNet (as trustee-manager of NetLink Trust)

On 23 April 2015, the IDA approved the consolidation of CitySpring Infrastructure Trust (CIT) and Keppel Infrastructure Trust (KIT). The consolidation resulted in a change in ownership of CityNet Infrastructure Management Pte Ltd (CityNet).

CityNet is the trustee-manager of NetLink Trust, which owns and operates the passive infrastructure layer of the NGNBN, including the dark fibre network (see question 5), as well as various ducts, manholes and central offices. CityNet carries on NetLink Trust's business and holds the assets on trust for the benefit of the unitholders of NetLink Trust.

As CityNet (as trustee-manager of NetLink Trust) is a DTL, it is subject to the merger control framework administered by the IDA.

Prior to the consolidation, KIT and CIT each owned various infrastructure-related assets, such as waste-to-energy plants, wastewater recycling plants, power plants, and desalination plants. In particular, CIT was also the 100 per cent owner of CityNet.

The consolidation sought to combine CIT and KIT to form an enlarged infrastructure business trust (the Combined Trust). The transaction was effected by CIT acquiring all the business undertakings and assets of KIT. In exchange, 1,326 million new units of CIT were issued to KIT. The new units were then distributed to the then-existing KIT unitholders.

The transaction resulted in the Combined Trust being owned 53.4 per cent by then-existing CIT unitholders and 46.6 per cent by then-existing KIT unitholders. The transaction also resulted in CityNet being 100 per cent owned by the Combined Trust.

Following the consolidation, Keppel Infrastructure Fund Management Pte Ltd (KIFM) was appointed trustee-manager of the Combined Trust.

As the consolidation resulted in a change in the ownership of CityNet, which is a DTL, the consolidation was subject to regulatory approval by the IDA.

- In its assessment, the IDA considered, amongst other factors, that:
- since KIT did not participate in the telecoms sector, the consolidation would not change the Layer 'o' (ie, passive infrastructure including ducts, manholes, and spaces at central offices) and Layer '1' (ie, dark fibre services) market situations post-consolidation;
  - CityNet, already having been classified as a dominant licensee, is required to comply with tighter regulatory requirements. These include regulatory requirements to provide dark fibre, ducts, manholes and central offices in a non-discriminatory manner and not be under any effective control of any telecoms or broadcasting licensee;
  - while the Keppel group would be a common shareholder of both CityNet and M1, itself a telecoms service provider, the IDA noted that M1 operates primarily in the retail telecoms market. On the other hand, CityNet operates in the wholesale market for access to Layer 'o' and Layer '1' services, and is not licensed to provide retail services and wholesale transmission service. The IDA therefore determined that CityNet and M1 participate in two distinct and separate markets. As such, the IDA was of the view that the common parentage shared by CityNet and M1 would not raise significant competitive concerns; and
  - the IDA also noted that there may have been some potential concerns raised in relation to cross-directorships in the Keppel group, in that this may create potential conflicts of interest and the possibility of mishandling commercially sensitive or confidential information post-consolidation. However, the IDA noted that there were existing regulatory and safeguards in place to address such concerns. In addition, the parties had agreed to undertake an additional measure to ensure that, with effect from the completion of the consolidation and for so long as (i) KIFM remains the trustee-manager of the Combined Trust; (ii) CityNet remains a wholly-owned subsidiary of the Combined Trust; and (iii) CityNet remains the trustee-manager of the NetLink Trust, no KIFM or CityNet director shall, without the prior written approval of IDA (such approval not to be unreasonably withheld), hold any

position on the board or in the management of other telecoms licensees or broadcasting licensees in Singapore. In light of the existing regulatory and legislative safeguards, as well as the additional measure committed to by the parties, the IDA was of the view that the concerns regarding potential conflicts of interest and the treatment of commercially sensitive or confidential information had been addressed.

Following its assessment, the IDA concluded that the consolidation was not likely to substantially lessen competition in any Singapore telecoms market, and that there were no public interest concerns to deny the consolidation. The IDA therefore decided to approve the consolidation on the basis of the applicants' submissions, including the undertaking to abide by the additional measure described above.

Following the completion of the merger, the Combined Trust was renamed from CIT to Keppel Infrastructure Trust. In order to avoid confusion, the previous KIT has been renamed Crystal Trust.

#### **Cross-carriage of Barclays Premier League (BPL) seasons**

##### **2013–2016**

In 2015, the MDA continued in its implementation of the cross-carriage measure. The cross-carriage measure requires pay-TV licensees who acquire content on an exclusive basis to make available such content to be carried on other pay-TV licensees' relevant platforms (see question 20).

Previously, on 24 April 2013, the MDA had issued a landmark direction to SingNet, one of the two major nationwide pay-TV operators, to cross-carry BPL live matches over the three seasons from 2013 to 2016. This arose from Singtel's (SingNet's parent company) acquisition of broadcast rights to all BPL live matches for the three seasons commencing August 2013 from the Football Association Premier League (FAPL). Singtel had initially taken the position that it had acquired the rights on a non-exclusive basis, thus taking the BPL content out of the ambit of the cross-carriage rule. However, following an examination of the facts and the agreement between Singtel and FAPL, the MDA decided that certain clauses in the agreement would prevent or restrict (or would be likely to prevent or restrict) the same content from being acquired or obtained for transmission on selected platforms in Singapore by other pay-TV retailer platforms in Singapore, thus triggering the cross-carriage measure under the MMCC.

On 8 May 2013, SingNet submitted an appeal to the Minister to set aside the MDA's direction. On 26 July 2013, the Minister rejected SingNet's appeal and upheld the direction.

Subsequently, SingNet requested various exemptions from cross-carriage requirements from the MDA in respect of a number of channel packages and other service offerings, such as free previews and complimentary channels. In reviewing SingNet's submissions and granting part of the exemptions sought by SingNet, the MDA considered, among other things, whether the exemptions sought would benefit the public and the media industry. The MDA decided to exempt SingNet from cross-carrying certain channel packages comprising BPL content and non-BPL content, such that SingNet would only be required to effect cross-carriage of a channel package containing standalone BPL content. In addition, the MDA also laid down a number of procedures to be followed, in order to facilitate consideration of future applications for exemptions in relation to BPL content.

In November 2014, SingNet requested the MDA for an exemption from being required to cross-carry certain revised channel packages containing the BPL content and other content. On 16 February 2015, the MDA decided to grant SingNet's request, as notified to the public in MDA's industry circular dated 17 February 2015. In granting SingNet's exemption request, the MDA assessed that the exemption would be in the public interest.

On 14 July 2015, the MDA issued a further decision, as notified to the public in its information circular dated 29 September 2015, in which the MDA decided to maintain certain earlier exemptions granted to SingNet, following SingNet's proposal to increase the prices of certain channel packages which had been previously exempted from the cross-carriage requirement. In its decision, the MDA assessed that the public interest would continue to be served by exempting SingNet from making available the updated channel packages.

On 11 February 2016, the MDA issued a decision, as notified to the public in its information circular dated 17 February 2016, in which it decided to revise and streamline certain procedures for facilitating the assessment of exemption requests. These relate to: (i) the adding of new channels to already-exempted channel packages; and (ii) the offering of free previews to subscribers on SingNet's pay-TV platform (to the exclusion of subscribers on SCV's pay-TV platform).

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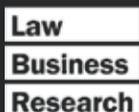
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