Singapore Competition Bill 2004

Submission by StarHub Pte Ltd to the Ministry of Trade and Industry

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A. Introduction

1.1 StarHub Pte Ltd ("**StarHub**") welcomes the opportunity to make this submission as part of the first phase of consultation on the introduction of generic competition legislation in Singapore.

1.2 This submission is in response to the draft bill for the proposed Competition Act 2004 issued by the Ministry of Trade and Industry ("**MTI**") for public consultation on 12 April 2004 ("**Competition Bill**").

1.3 StarHub's submission is structured as follows:

- **Part A** contains this introduction;
- **Part B** contains an executive summary of StarHub's submission;
- **Part C** contains StarHub's statement of interest;
- **Part D** contains StarHub's detailed submissions on the need to reverse the Competition Bill's current exclusion of the telecommunications sector;
- **Part E** contains StarHub's detailed submissions on the additional key amendments which should be made to the Competition Bill; and
- **Part F** contains StarHub's detailed submissions on amendments which should be made to the Telecoms Competition Code 2000 ("**Telecoms Competition Code**") and the Telecommunications Act 1999 ("**the Telecoms Act**"), should telecommunications remain excluded from the Competition Bill.

1.4 References in this submission to section numbers or schedules are references to sections or schedules of the Competition Bill, unless specified otherwise.

B. Executive Summary of Key Points

1.1 StarHub welcomes the introduction of generic competition legislation in Singapore as an important step in establishing a basic framework with many of the features needed to foster sustainable, effective competition in Singapore.

1.2 However, there are a number of key issues that should be addressed in the Competition Bill to ensure that competition policy objectives are achieved in the telecommunications sector.

1.3 The key issues that should be addressed in the Competition Bill are set out below:

- **removal of telecommunications exclusion from Competition Bill -** exclusion of the telecommunications sector should be removed from Schedule 3 of the Competition Bill following a 12 month transitional period if the amendments to the Competition Bill set out below are made. Responsibility for conduct or "*ex post*" regulation of the telecommunications sector should rest with the proposed Competition Commission of Singapore ("**Competition Commission**"), with access and licensing, or "*ex ante*" regulation remaining with the Infocommunications Development Authority of Singapore ("**IDA**").

  International precedent supports the application of generic competition laws to the telecommunications sector in this manner. International precedent also supports stronger, not weaker, regulation of telecommunications compared with other sectors of the economy. In many key respects, the Telecoms Competition Code is weaker than the Competition Bill.

- **amendment of the Competition Bill -** if telecommunications is regulated under the Competition Bill, a number of important amendments to the Competition Bill should be made:

  - *strict liability for financial penalties* - the imposition of financial penalties under the Competition Bill should not be reserved for contraventions committed "intentionally or negligently";

- *vertical agreements in the telecommunications sector should be regulated* - the proposed blanket exclusion for vertical agreements should be removed so that vertical agreements in the telecommunications sector are subject to regulation based on an assessment of substantial anti-competitive effect on a case by case basis. In the telecommunications sector, vertical agreements are common and can have substantial anti-competitive effects;

- *scope of abuse of dominance prohibition should be clarified* - the abuse of dominance prohibition should be clarified in the Competition Bill itself, not only in guidelines, to ensure that the presence of either an anti-competitive purpose or effect is sufficient to ground a contravention;

- *appeals on decisions not to enforce* - a decision by the Competition Commission not to enforce the Competition Act should be subject to appeal to the Competition Appeal Board by any interested party;

- *full private right of enforcement* - the right of an aggrieved person to take legal action for contraventions of the Competition Bill should not arise only once the Competition Commission has taken action - rather it should be available to any aggrieved person at any time;

- *express threshold for invalidation of anti-competitive agreements* - there should be an express materiality threshold for the prohibition of anti-competitive agreements to avoid the unintended invalidation of contracts with insignificant effects on competition;

- *exclusions subject to industry consultation* - the exclusions from the scope of the Competition Bill should be determined or amended by the Minister on the recommendation of the Competition Commission following formal public consultation;

- *greater transparency in decision-making* - Ministerial directions to the Competition Commission should be made public by way of a

Gazette notification. Decisions of the Competition Commission and Competition Appeals Board should always be published, with detailed associated reasoning;

- *block exemptions for anti-competitive agreements should be granted by the Commission* - block exemptions for anti-competitive agreements should be granted by the Competition Commission rather than the Minister and should be subject to appeal to the Competition Appeals Board;

- *increased independence of the Competition Commission* - the tenure of Commissioners should be extended to 5 years to enhance their independence. The circumstances in which Commissioners and appointees to the Appeals Board can be removed from office should be limited to cases of proven misbehaviour or inability to fulfil duties of the office;

- *deadlines for decision-making* - express deadlines for decision-making and appeals should be incorporated into the Competition Bill; and

- *Minister should not have the ability to unilaterally amend inconsistent legislation* - the Minister should not have the unilateral ability to amend any legislation he considers is inconsistent with the Competition Bill.

1.4 In the alternative, if the regulation of the telecommunications sector remains entirely under the Telecoms Competition Code, amendments to the Telecoms Competition Code and the Telecoms Act must be made in order to ensure consistency with the Competition Bill in the key areas of financial penalties, private rights of enforcement and appeal rights.

C. Statement of Interest

1.1 StarHub Pte Ltd is a Facilities Based Operator ("**FBO**") in Singapore, having been awarded a licence to provide public basic telecommunications services ("**PBTS**") by the Telecommunications Authority of Singapore ("**TAS**") (the predecessor to the IDA) on 5 May 1998.

1.2 StarHub Mobile Pte Ltd is a wholly-owned subsidiary of StarHub Pte Ltd. StarHub Mobile Pte Ltd was issued a licence to provide public cellular mobile telephone services ("**PCMTS**") by the TAS on 5 May 1998. StarHub launched its commercial PBTS and PCMTS services on 1 April 2000.

1.3 StarHub acquired CyberWay (now StarHub Internet Pte Ltd) for the provision of Public Internet Access Services in Singapore on 21 January 1999. In July 2002, StarHub Pte Ltd completed a merger with Singapore Cable Vision Ltd to form StarHub Cable Vision Ltd.

1.4 This submission represents the views of the StarHub group of companies, namely, StarHub Pte Ltd, StarHub Mobile Pte Ltd, StarHub Internet Pte Ltd and StarHub Cable Vision Ltd.

D. Detailed Submissions on Telecommunications Exclusion

1 Exclusion of telecommunications should be removed

1.1 The current exclusion of telecommunications from the Competition Bill under Schedule 3 should be removed once the provisions of the Bill have been in effect for 12 months.

1.2 International precedent supports the application of generic competition laws to the telecommunications sector and, therefore, supports the removal of the telecommunications exclusion. In particular, in a number of jurisdictions, including Australia, New Zealand, Canada, the United Kingdom ("**UK**") and the United States of America ("**US**"), the telecommunications sector is subject to the generic competition laws that apply in those jurisdictions.

1.3 A report of the Organisation for Economic Co-operation and Development ("**OECD**") on competition and regulatory issues in telecommunications in 2002 stated:

> "In *all* OECD countries the generic competition law applies fully to the telecommunications sector…No countries reported any exemptions or exceptions in the application of the competition law to the telecommunications sector." [emphasis added][1]

1.4 Further, the removal of the telecommunications exclusion and the application of generic competition laws to the telecommunications sector is consistent with the United Nations Model Law on Competition which does not provide for specific industry exclusions.[2]

2 Competition Commission should regulate conduct in telecommunications sector

(a) Separation of "ex post" and "ex ante" regulation

2.1 Telecommunications should be included within the scope of the Bill, with access and conduct regulation of the sector being separated as follows:

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1 OECD, *Competition and Regulation Issues in Telecommunications*, DAFFE/COMP (2002) 6, at page 8.

2 Model Law on Competition", UNCTAD Series on Issues in Competition Law and Policy, (2000) TD/RBP/CONF.5/7.

- the Competition Commission, as the generic competition regulator, should have jurisdiction under the Competition Bill over conduct or "ex post" regulation of the telecommunications sector; and

- the IDA, as the telecommunications sectoral regulator, should retain jurisdiction over "*ex ante*" regulation (including licensing, access and interconnection, and tariff regulation) under the Telecoms Competition Code.

2.2 StarHub recognises the important role the IDA has played as sectoral regulator of the telecommunications sector under the Telecoms Competition Code. However, *ex post* regulation by the competition regulator, as opposed to the sectoral regulator, will ensure greater consistency in the application of competition principles across all sectors of the Singaporean economy, while leaving sector-specific issues that require more specialist industry knowledge (such as access and interconnection, licensing etc.) to the IDA.

2.3 As all telecommunications markets are not yet fully competitive, the IDA will continue to play an important role in setting *ex ante* rules that are necessary to define and stabilise the competitive environment for telecommunications. For example, the IDA would continue to have responsibility for areas such as access and interconnection, establishment and enforcement of licence conditions, quality of service, etc.

2.4 Following the OECD Committee on Competition Law and Policy's roundtable discussion on the relationships between competition authorities and regulatory authorities[3], a United Nations paper on a model law relating to the relationship between a competition authority and sectoral regulators observed:

> "A study of these relationships shows that the competitive process can be appropriately stimulated by the intervention of competition authorities when firms in a regulated sector abuse their privileges to the detriment of consumer interests and the efficiency of firms that use their regulated services."[4]

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3 OECD, "The relationship between competition and regulatory authorities", *OECD Journal of Competition Law and Policy*, Paris, 1999, vol.1, no.3, pages 169 - 246.

4 UNCTAD, *Model Law: The Relationships between a Competition Authority and Regulatory Bodies, including Sectoral Regulators*, TD/B/COM.2/CLP/23 including Corr.1, 18 June 2001 at page 6.

2.5 StarHub also acknowledges that there will be a need for considerable consultation and co-operation between the *ex post* and *ex ante* regulators to ensure there is no jurisdictional duplication that is burdensome on telecommunications operators. The Competition Bill and/or Telecoms Competition Code will need to define a process whereby the IDA will liaise with the Competition Commission (and vice versa) when making decisions that have a competition policy element. International precedent set out below provides various models by which this can be done. The need for cooperation between regulators is expressly recognised under the Competition Bill itself in section 76.

2.6 StarHub appreciates that a transitional period will be necessary in order for the Competition Commission to develop the necessary expertise and guidelines for enforcement of the Competition Bill. A transition period of 12 months from the enactment of the Competition Bill would be an appropriate period before the telecommunications exclusion was removed.

(b) International precedent supports "ex post" telecommunications regulation by generic competition regulator

2.7 The separation of conduct and access regulation in the telecommunications sector, and *ex post* regulation of that sector by the generic competition regulator, is supported by international precedent. In particular, such an approach is consistent with the approaches adopted in the US, in Canada and in Italy.

In the US:

- *ex ante* regulation of telecommunications is the responsibility of the Federal Communications Commission ("**FCC**"), while *ex post* regulation of telecommunications conduct (and conduct throughout other industry sectors) is the responsibility of the Department of Justice ("**DOJ**") (with some concurrent regulation by the Federal Trade Commission);

- the FCC has authority under the Telecommunications Act 1996, in respect of economic and technical regulation of telecommunications including access, interconnection and rate setting. The FCC is required to consult with the DOJ before granting permission to certain carriers to offer certain

services, allowing the DOJ to keep informed on competition in relevant telecommunications markets; and

- the DOJ has general regulatory authority as the primary enforcer of the generic competition laws in the US (under the Sherman and Clayton Acts), including responsibility for prosecuting cases of monopolisation and anti-competitive restraints of trade. While the DOJ has primary responsibility for enforcing the competition laws, it is required to take into consideration the access regime under the Telecommunications Act when carrying out an investigation.

In Canada:

- *ex ante* telecommunications regulation is the responsibility of the Canadian Radio-television and Telecommunication Commission ("**CRTC**") while *ex post* regulation is the primary responsibility of the Competition Bureau;

- the CRTC regulates telecommunications common carriers and service providers primarily under the Telecommunications Act. The CRTC has the power to issue determinations approving tariffs for telecommunications services or agreements between carriers. The CRTC also has exclusive responsibility for settling interconnection and access disputes;

- the Competition Bureau on the other hand has primary responsibility for regulating the marketing practices of telecommunications carriers under the Competition Act. Within the telecommunications sector and in other sectors, the Competition Bureau investigates restraints of trade, tying, price fixing, price maintenance and exclusive dealing; and

- the CRTC and the Competition Bureau have also entered into an arrangement under which the Competition Act will govern carriers' conduct where the CRTC has not exercised certain regulatory powers (because it considers that sufficient competition exists). In addition, to this *ex post* role, the Competition Bureau is empowered under the Competition Act to make representations in respect of competition issues

before any federal body where those representations are relevant to the matters under consideration and the factors that can be taken into account. Under this power the Competition Bureau has made extensive submissions in relation to the role of competition in the Canadian telecommunications industry.

In Italy:

- *ex ante* regulation is the responsibility of the *Autorita per le garanzie nelle comunicazioni* ("**AGCOM**") while *ex post* regulation in telecommunications and other industry sectors is the responsibility of the *Autorita garante della concorrenza e del mercato* ("**AGCM**"). The AGCOM has responsibility for setting criteria for interconnection and access terms, approving tariffs for telecommunications services, setting quality of service levels and issuing general authorisations. The AGCM has exclusive responsibility for *ex post* enforcement of the Competition and Fair Trading Act within the telecommunications and other sectors, including alleged abuses of dominant position and anticompetitive agreements; and

- there is a formal structure for co-ordination between regulators in the telecommunications sector in Italy. AGCOM and AGCM are required to seek each others (non-binding) opinion in specific cases. AGCM is required to seek the views of AGCOM on decisions relating to agreements restricting competition, abuses of dominant power and mergers involving participants in the communications industry. Similarly AGCM is required to issue a non-binding opinion to AGCOM on the identification of telecommunications operators with significant market power, interconnection agreements and access arrangements.

(c) Benefits of single "ex post" regulator

2.8 Conduct or *ex post* regulation of telecommunications by a regulator with jurisdiction over most sectors of the economy provides the following added benefits:

- *increase in regulatory certainty* - a cross sectoral competition regulator which has jurisdiction across all sectors of the economy not only provides consistency, but also produces more precedent, therefore reducing regulatory uncertainty. That is, a decision by that regulator in relation to one sector on a regulatory issue that is common to all sectors will set a precedent that is applicable to other sectors. This is particularly important in jurisdictions such as Singapore where generic competition laws are being introduced for the first time;

- *increase in investment* - an increase in regulatory certainty arising from consistency in decision-making and the development of a body of precedent will promote the likelihood of increased investment in relevant sectors. By excluding telecommunications from the Competition Bill and subjecting it to a separate and distinct conduct regime, the MTI is reducing the certainty available to potential investors (in terms of precedent) not only in the telecommunications sector, but also in other sectors where investors have not had the benefit of telecommunications-related conduct decisions;

- *reduction in the potential for regulatory capture* - a cross-sectoral competition regulator reduces the risk of regulatory capture. That is, a regulator that is responsible for more than one sector can better avoid the decision making process being captured by a dominant player in one sector or an industry-specific interest group;

- *creates powerful competition advocate* - in order to exercise its functions as set out in the Competition Bill (including to promote and sustain competition in markets in Singapore), the Competition Commission needs to be an independent and free advocate of competition policy. A cross-sectoral competition regulator , with oversight across all sectors of the economy (including telecommunications), is better positioned to fill this role and to be highly regarded both domestically and internationally as an independent advocate of competition, able to voice independent opinion as to whether competition is working or not;

- *provides effective means of dealing with converging sectors* - where a combination of competition authorities and sectoral regulators apply competition policy, the need for clear lines of jurisdiction is greatly increased. *Ex post* regulation by a single regulator reduces jurisdictional uncertainty where there is convergence between sectors (some of which may be regulated under the Competition Bill, while others are excluded);

- *increases regulatory efficiency - ex post* regulation by the generic regulator across a number of jurisdictions increases regulatory efficiency due to economies of scale in the use of one set of professionals (e.g. economists, lawyers, financial analysts), especially in the early stages of competition development where there is likely to be a shortage of regulatory expertise. This is particularly important in the case of a relatively small economy, such as Singapore;

- *reduces costs of regulatory compliance* - for firms with operations over multiple sectors, a cross-sectoral competition regulator can reduce the costs of regulatory compliance. For example, telecommunications operators with operations in other sectors not excluded from the Competition Bill would be required to comply with both the Telecoms Competition Code and the Competition Bill when considering whether particular conduct is lawful; and

- *enables transfer of regulatory know-how across sectors* - the ability for the generic competition regulator to build up skills and expertise in the application of competition principles would be greatly enhanced where all sectors to be subject to generic competition regulation under the Competition Bill and the jurisdiction of the Competition Commission.

3 International precedent supports stronger, not weaker, regulation of telecommunications

3.1 The exclusion of the telecommunications sector from the Competition Bill will result in the weaker regulation of telecommunications in certain important respects relative to other sectors of the Singaporean economy that are within the scope of the Competition Bill.

3.2 In particular, set out below are three key areas where regulation of conduct in the telecommunications sector under the Telecoms Competition Code and Telecoms Act is materially weaker than under the regime provided for in the Competition Bill:

	Competition Bill	**Telecoms Competition Code/Telecoms Act**
Maximum Penalties	Maximum of 10% of Singapore turnover for up to 3 years	Maximum $1 million per contravention
Enforcement	Limited private right of action	No private right of action
Appeal rights	Appeal to independent Competition Appeals Board	Appeal to Minister

3.3 While the regulation of these areas in the Competition Bill should be further strengthened,[5] even as the Competition Bill is currently drafted, the regulation of these issues remains considerably stronger than the corresponding regulation under the Telecoms Competition Code.

3.4 There is no justification for regulation of the telecommunications sector to be weaker than for other sectors, particularly given the importance of telecommunications to a modern economy and the range of competition disputes that can arise in telecommunications. More detail on these issues is set out in Part F of this submission.

3.5 StarHub believes that removing the telecommunications exclusion from the Competition Bill would be supported by the overwhelming majority of operators in the telecommunications sector. Operators would see such a move as a sign of the Government's determination to establish a capable, cross-sectoral competition regulator, with real powers to intervene. As noted above, we believe that such a move would encourage additional entry and investment in the Singapore telecommunications market.

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[5] See Part E below.

E. Detailed Submissions on Additional Key Issues

StarHub has identified in Part E of this submission twelve critical issues that should be addressed in the Competition Bill if the telecommunications exclusion is removed.

1 Strict liability for financial penalties

1.1 StarHub welcomes the introduction of significant financial penalties for infringements of the Competition Bill. However, the strong deterrent effect arising from these penalties is significantly diluted because, under section 69(3) of the Competition Bill, no penalty may be imposed unless the Competition Commission is satisfied that an infringement has been committed "*intentionally or negligently*".

1.2 In addition to materially weakening the deterrent effect of the penalties, the threshold in section 69(3) also imposes an unnecessary additional evidential burden on the Competition Commission as regulator. The Competition Commission would not only need to satisfy itself that a breach of a substantive prohibition had occurred, but also that the breach was intentional or negligent.

1.3 A better approach to this issue would be to delete section 69(3) from the Competition Bill so that the Competition Commission would not need to establish intention or negligence in order to impose financial penalties. Rather, the Competition Commission would only need to establish purpose or intention to the extent that the particular substantive prohibition itself required this. Such a "strict liability" approach to the imposition of fines for breaches of substantive competition provisions is consistent with the approach of key jurisdictions around the world, including the US and Australia.[6]

1.4 Under a strict liability approach, liability for a pecuniary penalty potentially arises by establishing that a relevant prohibition has been breached. The issue whether conduct is intentional or negligent would rather become a key factor taken into consideration by the Competition Commission when determining the magnitude of any penalty.[7]

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[6] See, for example, section 76(1)(a)(i) of the Trade Practices Act 1974 (Cth) (for Australia).

[7] This approach is reflected in section 10.3.4.2.1 of the Telecoms Competition Code which provides that *"In imposing financial penalties, IDA will consider any aggravating factors. These factors include: the severity of the contravention; the duration of the contravention; whether the contravention resulted in injury to persons and property; whether the Licensee acted knowingly, recklessly, or in a grossly negligent manner; whether*

1.5 Such a strict liability approach gives greater discretion to the Competition Commission and greater scope to take enforcement action that is proportional to the effect on competition rather than the subjective intentions of the infringer. This approach ensures that the competition law is potentially much stricter in application and therefore more effective in achieving its objective. A strict liability approach also requires a firm to take significantly more care in ensuring that its conduct is not anti-competitive. The firm cannot raise arguments, for example, that although an anti-competitive effect resulted (or may result) from a merger, this effect was (or is) not intended. This aligns with a key objective of any competition regime, which is to deter anti-competitive behaviour.

2 Vertical agreements in the telecoms sector should be regulated

2.1 Vertical agreements are common in the telecommunications industry and may have substantial anti-competitive effects. They are of particular concern where a firm with substantial market power can, in effect, lock-up customers in exclusive long-term supply contracts with the effect of significantly foreclosing market competition.

2.2 The proposed exclusion for vertical agreements should be removed for the telecommunications sector so that vertical agreements are subject to "rule of reason" competition regulation based on any substantial anti-competitive effect. Such an approach appropriately recognises that some vertical agreements may not raise competition concerns, but enables the Competition Commission to act against those that do.

2.3 Alternatively, the proposed exclusion for vertical agreements should at least be expressly qualified so that it does not apply where one of the parties to the vertical agreement has a market share greater than a pre-determined percentage, such as 30%.

the Licensee has a previous history of contraventions; and whether the Licensee made any effort to conceal the contravention."

2.4 There is a clear international policy basis for this approach. For example, the World Bank and OECD in their joint publication *A Framework for the Design and Implementation of Competition Policy* stated:[8]

> "A dominant incumbent may also make it difficult or even impossible for rivals to enter the market by tying up scarce distribution channels through exclusive distribution agreements…
>
> From a competition law and policy point of view, vertical agreements are most likely to be harmful when at least one of the transacting parties is dominant in either the upstream or down-stream markets.
>
> In this context, a three-step approach to the analysis of restrictive vertical agreements can be applied. First, the analysis should focus on signs of the collective exercise of market power or the presence of market dominance at the upstream or downstream levels. If none of the participants in the agreement is dominant in its respective markets and market structures are such that the agreement is not likely to facilitate collusion, it is unlikely that the agreement will be harmful. Second, if these structural concerns exist, the effect of the agreement on competition should be closely examined. Finally, if competitive concerns persist, the analyst should determine whether there are significant efficiency gains arising from the agreement that outweigh the harm to competition."

2.5 In June 2000 the European Commission brought into force a block exemption for vertical agreements.[9] However, consistent with the approach identified above, the European Commission's block exemption does not cover vertical agreements where one of the parties has a market share exceeding 30%. The UK has now removed its own block exemption for vertical agreements and adopted the more flexible EU approach.[10]

2.6 MTI has commented in its consultation materials that exclusive agreements entered into by a dominant firm may still constitute an "abuse of dominance" and this is reflected in section 2(2) of the Competition Bill. However, this approach

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8 World Bank & OECD *A Framework for the Design and Implementation of Competition Policy* (World Bank, Washington DC, 1998) at page 38.

9 Commission Regulation (EC) No 2790/1999 of 22 December 1999 on the application of the Treaty to Categories of Vertical Agreements and Concerted Practices [applied from 1 June 2000].

10 StarHub notes that the UK's initial blanket exclusion of vertical agreements was essentially imposed to avoid significant volumes of notifications for exemptions and was strongly opposed by the National Competition Council - see Department of Trade and Industry (UK), " A World Class Competition Regime", July 2001, at paras 8.14 to 8.16.

may not lead to satisfactory regulation of anti-competitive agreements. Vertical agreements with significant anti-competitive effects may not necessarily trigger the abuse of dominance prohibition, particularly if the concept of "dominance" is interpreted narrowly (see below).

3 Abuse of dominance prohibition should be clarified

3.1 The scope of the abuse of dominance prohibition in section 47 of the Competition Bill should be clarified. StarHub's principal concern is that it is not clear whether a contravention of section 47 requires the existence of an anti-competitive purpose in all cases. It should be made clear that a contravention can occur if either an anti-competitive effect *or* purpose is shown.

3.2 By way of example, the provision regulating anti-competitive conduct under the Australian Trade Practices Act 1974 in relation to the telecommunications sector makes it clear that infringement will occur if an anti-competitive effect is present[11]. One of the primary reasons these provisions were introduced was to supplement the pre-existing generic provision regulating misuse of market power which contained a purposive element.[12]

3.3 In its recent report recommending the retention of these provisions to promote competition in the telecommunications sector, the Australian Productivity Commission stated:

> "The Commission notes that the economic rationale for anti-competitive regulation is to prevent conduct that is regarded to be against the public interest and that this objective stands irrespective of the intent of the carrier or carriage service provider involved. Under the competitive market benchmark, the effect or likely effect test better focuses on the policy objective."[13]

3.4 The Telecoms Competition Code provides another example. Section 7.2 is as follows:

> "A Dominant Licensee must not use its position in the Singapore telecommunication market in a manner that unreasonably restricts competition."

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[11] See Trade Practices Act 1974 (Cth) section 151AJ.

[12] See Trade Practices Act 1974 (Cth) section 46.

[13] "Telecommunications Competition Regulation - Inquiry Report", Australian Productivity Commission, (21 December 2001), at page 175.

3.5 We understand that MTI has proposed that this issue be clarified in guidelines to be issued subsequent to the passing of the Competition Bill. However, the clarification of dominance is critical to overall success of the Competition Bill and the Competition Commission. StarHub therefore strongly believes that the Competition Bill should contain greater clarity on the abuse of a dominant position.

3.6 The Telecoms Competition Code also sets out, in greater detail than the Competition Bill, various examples of some of the ways in which abuse of dominance could be made out[14]. Despite the fact that the Competition Commission may promulgate guidelines on these issues, it would better promote regulatory certainty if a similar level of detail was included in the Competition Bill itself. Such a move would lessen uncertainty, and would give greater strength to the Competition Commission.

4 Appeals on decisions

4.1 A decision by the Competition Commission not to enforce the Competition Act or a decision by the Competition Commission that an infringement has not occurred should be subject to appeal to the Competition Appeal Board by any interested party.

4.2 At present, the only parties that may appeal a decision of the Competition Commission as to whether an infringement of the Act has occurred are those involved in the potential contravention (i.e., parties to an agreement; parties that have engaged in conduct; parties to a merger).[15] There is no ability for any other parties affected by the anti-competitive conduct to appeal a decision of the Competition Commission not to take enforcement action. This is unfair as it denies a party aggrieved by an infringement of a right to be heard.

4.3 This means that if a party complains to the Competition Commission about certain anti-competitive behaviour, but the Competition Commission decides not to take action, or decides that no infringement of the Act has occurred, then the party has no redress against that anti-competitive behaviour even if they are

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[14] See for example Telecoms Competition Code sections 7.2.1.1 in relation to predatory pricing, section 7.2.1.2 in relation to price squeezes and 7.2.1.3 in relation to cross subsidisation.

[15] Section 71, Singapore Competition Bill 2004.

significantly affected by the behaviour. At present, a private right of enforcement is only possible if the Competition Commission itself first decides to take action (see below).

4.4 It is important, particularly in the absence of a full private right of enforcement, that interested parties have the ability to appeal a decision by the Competition Commission not to take enforcement action or a decision that an infringement has not occurred in a particular case. A decision not to take action may have a significant adverse effect on the complainant given that the complainant has no ability itself to seek relief.

4.5 Importantly, a right of appeal by complainants in relation to a decision not to enforce is contemplated, for example, by the Telecoms Competition Code. Standing is given to any complainant that is "adversely affected" by a decision of IDA. Section 11.9.1 of the Telecoms Competition Code 2004 in the form currently proposed by IDA provides as follows (continuing the approach under the existing section 1.5.9):

> "Within 14 days of the day on which IDA renders its decision or issues a direction pursuant to this Code, any party that it adversely affects may either:
>
> (i) request IDA to reconsider its decision or direction ("Reconsideration Request"); or
>
> (ii) appeal to the Minister ("Appeal")."

4.6 Similarly, in the UK, third parties have a right of appeal to the Competition Appeal Tribunal if the Tribunal considers that the third party has a "sufficient interest" in the decision, or represents a person with such an interest.[16] This right to appeal is crucial as there is only a limited right of private enforcement in the UK. Without this right of appeal, aggrieved third parties would have no recourse where the Competition Commission's decision is that an infringement has not occurred.

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[16] Section 47, Competition Act 1998 (UK).

5 Full private right of enforcement

5.1 The private right of enforcement should not be limited to those occasions where the Competition Commission has taken action - rather it should be available to any aggrieved person at any time.

5.2 A private right of enforcement, independent of regulatory action, is crucial to maintaining the overall deterrent effect of the Competition Act and to enable competitors (and new entrants in particular) to seek protection against anti-competitive behaviour in circumstances where the Competition Commission may not have the available resources for immediate investigation and action. An unrestricted private right of enforcement would also reduce industry participants' reliance on the Competition Commission and would enable the courts to adopt a role in enforcing which would be particularly important at the initial stages of development in the competition regime in Singapore.

5.3 A full private right of enforcement draws private resources into the enforcement process and improves the application and effectiveness of the competition law regime. Concurrently, this enables the resources of the government regulator to be focussed on the most important cases of general application.

5.4 Roach & Trebilcock's conclusions on this issue in the context of the adoption of a full private right of enforcement in Canada (by private parties directly to the Canadian Competition Tribunal) are directly on point:[17]

> "The case for allowing private parties access to the Competition Tribunal is compelling. Plaintiffs can seek corrective justice in the tribunal and, in so doing, supplement the enforcement resources of the Director and promote accountability for the Director's decisions not to proceed with reviewable matters. The major weakness of private enforcement, namely its ability to disrupt the Director's enforcement policy and to allow private litigants to impose strategic costs on others, can be addressed by careful design of the private right of action, as our proposals in Part V [of the article] attempt to demonstrate. Public debates could more productively focus on these

[17] K Roach & M Trebilcock, "Private Enforcement of Competition Laws" (1997) 34:3 *Osgoode Hall Law Journal* 461. http://www.yorku.ca/ohlj/PDFs/34.3/roach.pdf; The benefits of a full private right of enforcement are well documented. Roach and Trebilcock undertook a detailed analysis of the costs and benefits of private enforcement of competition laws in the context of Canada's recent adoption of full private rights of enforcement in the following article: K Roach & M Trebilcock "Private enforcement of Competition Laws" (1997) 34:3 Osgoode Hall Law Journal 461; a condensed version of this article was also published in Policy Options in October 1997 at http://www.irpp.org/po/archive/oct97/roach.pdf

design issues rather than abstract, ideological, or self-serving arguments about whether private enforcement of competition laws is desirable or undesirable *per se*. On this issue, in the end, it is difficult, if not impossible, to defend a public monopoly on the enforcement of laws whose central *raison d'etre* is redressing the evils of private monopoly".

5.5 In addition to Canada, a full private right of enforcement is consistent with the approach taken in other jurisdictions. For example:

- In Hong Kong, a person sustaining loss or damage from a breach of provisions of the Telecommunications Ordinance relating to anti-competitive conduct, abuse of a dominant position, misleading or deceptive conduct and non-discrimination, or from a breach of a licence condition, determination or direction relating to those provisions, may bring an action for damages, an injunction or other appropriate remedy, order or relief against the person who is in breach.[18]

- In Australia and New Zealand, firms that suffer damage have a private right of enforcement in relation to anti-competitive conduct. Competitors may seek an injunction[19] and orders for damages for loss or damage suffered as a result of the anti-competitive conduct.[20] Private action is a key mechanism for the enforcement of competition law in these jurisdictions (accounting for approximately 50% of competition cases in Australia)[21] relieving pressure on the regulator and increasing compliance incentives.

- In the US, private litigation is the principal means of enforcement of competition legislation, accounting for 90% of competition cases.[22]

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[18] Telecommunication (Amendment) Ordinance 2000, section 26 (amending section 39A of the Hong Kong Telecommunications Ordinance).

[19] Trade Practices Act 1974 (Cth), section 151CA (for Australia), Commerce Act 1986, section 81 (for NZ)

[20] Trade Practices Act 1974 (Cth), section 151CC (for Australia), Commerce Act 1986, section 82 (for NZ).

[21] K Roach & M Trebilcock, "Private Enforcement of Competition Laws" (1997) 34:3, *Osgoode Hall Law Journal* 461. http://www.yorku.ca/ohlj/PDFs/34.3/roach.pdf

[22] Department of Trade and Industry (UK), "A World Class Competition Regime", July 2001, page 47.

6 Threshold for invalidation of anti-competitive agreements

6.1 As presently drafted, the mere fact that an agreement has "as its object or effect the prevention, restriction or distortion of competition" is sufficient to trigger the invalidation provision under section 34(3) of the Competition Bill. There is no need for the Competition Commission to take prior action before a contract is invalidated.

6.2 However, the drafting of section 34 does not include a materiality threshold for the effect on competition. This means that a contract is automatically invalidated by section 34(3) even though its effect on competition could be minor.

6.3 This issue could be addressed by incorporating an appropriate materiality threshold into section 34(3) or section 34(1) to ensure only those contracts that substantially prevent, restrict or distort competition are invalidated. The use of such a threshold would enable reliance on a significant body of international precedent.

6.4 StarHub notes that MTI has indicated the following approach in its consultation paper:[23]

> "It is not the Government's intention to catch each and every instance of anti-competitive activity. Many such activities may only have negligible anti-competitive impact on markets, and the costs of enforcement could well outweigh the benefits. The Competition Commission will therefore focus primarily on anti-competitive agreements and conduct that have appreciable adverse effect on markets in Singapore."

6.5 The automatic invalidation of contracts that have a negligible anti-competitive impact is inconsistent with this statement. The Competition Bill should be amended so that a materiality threshold for anti-competitive agreements is expressly adopted.

6.6 StarHub notes that the drafting of section 34(3) of the Singapore Competition Bill is apparently drafted by reference to section 2(4) of the UK *Competition Act 1998*. However, the relevant provision of the Competition Act 1988 is expressly required to be interpreted in accordance with EU law which has a well

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[23] Ministry of Trade and Industry, "Competition Bill Consultation Paper" (2004), at para 18, page 5.

established materiality threshold. In the UK Department of Trade and Industry's (DTI) initial consultation paper on the UK Competition Bill in 1997, DTI commented as follows:[24]

> "It is important, to avoid unnecessary burden on business, that the prohibition should only apply to agreements which have a significant or appreciable effect on competition. Under clause 52, the prohibition is to be interpreted by the Director General of Fair Trading (DGFT), Competition Commission and UK courts, in a manner consistent with the way Article 85 itself is interpreted. The European Court of Justice (ECJ) has interpreted Article 85(1) as requiring an appreciable effect on competition. The UK domestic prohibition is therefore also to be interpreted as catching only those agreements which have an appreciable effect on competition."

7 Exclusions subject to industry consultation

7.1 Section 92 of the Competition Bill currently provides as follows:

> "The Minister may at any time, by order published in the Gazette, amend the Third and Fourth Schedule".

7.2 The Third and Fourth Schedules of the Competition Bill contain, or could contain, a range of critical exemptions from the substantive prohibitions set out in the Competition Bill.

7.3 The Competition Bill currently contains no requirement for the Minister to engage in a public consultation process before amending the Third or Fourth Schedules. Rather, such amendments could occur at any time simply by way of Gazette notice.

7.4 Section 92 as currently drafted creates considerable regulatory uncertainty, particularly for firms that are currently subject to exemptions. Such firms have no guarantee that an exemption would not be removed and conduct that is not currently subject to the Competition Bill could be rendered subject to the Competition Bill.

7.5 The Competition Bill should be amended to ensure that amendments to the Third and Fourth Schedules are subject to public consultation. StarHub understands

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[24] Department of Trade and Industry (UK), "A prohibition approach to anti-competitive agreements and abuse of a dominant position: draft Bill", (August 1997), at page 9.

that in most cases MTI would engage in such public consultation before recommending removing or amending exemptions, but this requirement should be expressly included in the Competition Bill.

7.6 In particular, international best practice for an effective competition law regime requires a strong, independent regulator which works proactively to eliminate anti-competitive behaviour. This was an important principle which guided the reforms to the UK's Competition Act 1998 brought about by the Enterprise Act 2002 and was outlined in the UK Department of Trade and Industry's paper entitled "*A World Class Competition Regime - Dept of Trade and Industry*":[25]

> "Competition decisions should be taken by strong, proactive and independent competition authorities: Before 1997, competition decisions were taken largely by Ministers. Since 1997, the new framework means decisions are increasingly taken by competition authorities - bringing the UK into line with most industrial countries."

7.7 Giving the Minister the discretionary power to unilaterally amend the application of the Bill would be inconsistent with this principle. Competition regulation works most effectively when enforced and applied by a regulator staffed with the appropriate experts. These experts are best able to apply sound economic and legal analysis to the complex issues at stake and to make decisions in order to correct competition weaknesses to restore healthy competition for the benefit of consumers. This is the superior route to achieving the policy objectives of a competition regime.

7.8 Section 92 should be amended to provide that the Minister may only amend the Third and Fourth Schedules on the recommendation of the Competition Commission following a formal public inquiry.

8 Greater transparency in decision-making

8.1 StarHub has significant concerns regarding the lack of transparency of decision-making under the Competition Bill. In particular, Ministerial directions to the Competition Commission under section 8 of the Competition Bill should always be published.

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[25] Department of Trade and Industry (UK), "A World Class Competition Regime", (July 2001), at page 10.

8.2 The New Zealand *Commerce Act 1986*, for example, contains a similar directions provision in section 26 which provides as follows:

> "The Minister shall cause every statement of economic policy transmitted to the Commission under subsection (1) of this section to be published in the Gazette and laid before Parliament as soon as practicable after so transmitting it. "

8.3 The Australian *Trade Practices Act 1974* also contains a similar directions provision in section 29(3) which provides as follows:

> "Any direction given to the Commission under subsection (1) shall be in writing and the Minister shall cause a copy of the direction to be published in the Gazette as soon as practicable after the direction is given."

8.4 In addition, the Competition Commission's decisions should always be published with associated detailed reasoning to increase transparency. An express provision should be included in the Competition Bill to this effect.

8.5 Greater transparency in such circumstances has several objectives, including:

- to create a rules-based environment promoting greater regulatory certainty and predictability, increased confidence and reduced market risk;
- to disseminate information to economic actors, thereby more effectively influencing their future behaviour;
- to provide greater precedent value to the Competition Commission's decisions (which is critical in the initial stages of generic law being implemented in Singapore for the first time);
- to ensure the accountability of domestic competition authorities; and
- to ensure fairness and transparency for all parties.

8.6 Problems arising from a lack of transparency include:

- Applicants will not understand the reasons why the Competition Commission has reached its decisions so will have less ability to address the Competition Commission's underlying concerns. Applicants and third

parties will also be hindered in their ability to appeal a decision where they are unaware of the reasons for that decision. If the private right of enforcement remains dependent on prior regulatory action, it will be imperative for aggrieved parties to understand the full scope of the Competition Commission's decision that there has been an infringement.

- Applicants will not be able to determine the likely Competition Commission position on some issues in advance as there will be no body of precedent, increasing regulatory uncertainty.

- The Competition Commission will be less accountable for its decisions. It will become significantly harder for applicants to determine whether or not the Competition Commission has acted reasonably and fairly and has considered all relevant considerations, and no irrelevant considerations. Similarly, a lack of accountability increases the risk of procedural unfairness and regulatory error.

9 Block exemptions for anti-competitive agreements granted by the Commission

9.1 At present, block exemptions for anti-competitive agreements are granted by the Minister and are not subject to appeal.[26] In order to give better effect to competition policy, this should be amended so that block exemptions are granted by the Competition Commission subject to appeal to the Competition Appeals Board. It is submitted that the Competition Commission is best qualified to apply the economic criteria for block exemptions under section 41 of the Competition Bill.

9.2 In support of this submission, StarHub refers to its reasoning in paragraph 7 ("Exclusions subject to industry consultation") above and notes that it is crucially important that affected parties have an opportunity to make representations to the Competition Commission for any proposed block exemption.

9.3 Additionally, giving the Minister the ultimate power to grant block exemptions raises similar fairness and transparency issues to those covered above in paragraph 8 ("Greater transparency in decision making").

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[26] See section 38 of the Competition Bill.

9.4 Again, international best practice favours greater transparency. By way of example, the OECD Joint Group on Trade and Competition published a document in 2001 titled *Trade and Competition Policies: Options for a Greater Coherence*. That paper identified the principle of transparency as a "core principle" for any international agreement on competition law. In relation to the principle of transparency within domestic competition laws, the OECD relevantly commented:[27]

> "Transparency is a basic requirement for any body of law and is particularly important for competition law, as such laws are often general, framework laws applied on a case-by-case basis. The principle also applies generally to the participation of private parties in competition law enforcement. Thus private parties need ready access to decisions made under the law and the reasoning of the decision-makers if they are to understand their obligations and those of other market participants. Transparency is even more important for foreign parties, which may otherwise be unaware of national competition rules or their interpretation. Of course, the desirability of transparency may be offset by the need for confidentiality. Confidentiality rules are often inconsistent with the transparency principle, and therefore it is necessary for competition agencies to seek an appropriate balance between the two.
>
> The following principles relating to transparency in competition law enforcement exist in varying degrees in all Member countries:...
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> Case Decisions
>
> – Decisions of the competition authority and the courts resolving or disposing of a proceeding or case are published in a timely manner, as are decisions by reviewing authorities.
>
> – Published decisions set forth the decision-maker's reasoning and pertinent facts, unless protected by confidentiality rules. The evidential record on which the decision is based is available for inspection by interested parties, subject to the protection of confidential information".

9.5 These principles would be better reflected if the Competition Commission and not the Minister was ultimately responsible for block exemptions.

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[27] OECD Joint Group on Trade and Competition, "Trade and Competition Policies: Options for a Greater Coherence" (2001), at page 111.

10 Increased independence of the Commission

10.1 The effectiveness of the Competition Bill will be enhanced by a truly independent Competition Commission.

10.2 The independence of the Competition Commission will be enhanced if the tenure of Commissioners is increased to five years and the ability for the Minister to remove Commissioners is restricted to instances of misconduct or a genuine inability to perform their duties.

10.3 It is generally apparent that many jurisdictions favour a longer tenure and heavy restrictions on the ability of regulatory office holders to be removed, in order to promote independence and therefore an effective competition regime. This is illustrated by the following comments by the United Nations Conference on Trade and Development ("**UNCTAD**") in the context of its analysis of the design of a model competition law:[28]

> "The tenure in office of the members of the Administering Authority varies from country to country. At present, members are appointed in Australia and Italy for 7 years, in Hungary for 6 years, in Algeria and Panama for 5 years, in Argentina for 4 years, in Canada and Mexico for 10 years, and in Bulgaria, India, the United Kingdom and Pakistan for 5 years. In Lithuania, the law refers to a tenure of 3 years. In Brazil it is for 2 years, and in other countries, such as Peru and Switzerland, it is for an indefinite period. In many countries, such as Thailand, the Republic of Korea, Argentina, India and Australia, members have the possibility of being reappointed, but in the case of Brazil this is possible only once.
>
> Legislation in several countries provides an appropriate authority with powers to remove from office a member of the Administering Authority that has engaged in certain actions or has become unfit for the post. For example, becoming physically incapable is a reason for removal in Hungary, Thailand, the Republic of Korea and India; becoming bankrupt, in Thailand, India and Australia; in Mexico they can only be removed if they are charged and sentenced for severe misdemeanor under criminal or labour legislation; abusing one's position and acquiring other interests, in India; failing in the obligations that one acquires as a member of the Administering Authority, in Argentina and Australia; being absent from duty, in Australia. Another cause for removal is being sentenced to disciplinary punishment or dismissal, for example in Hungary or imprisonment in Thailand. In the People's Republic of China

[28] "Model Law on Competition", UNCTAD Series on Issues in Competition Law and Policy, (2000), at page 34.

where a staff member of the State organ monitoring and investigating practices of unfair competition acts irregularly out of personal considerations and intentionally screens an operator from prosecution, fully knowing that he had contravened the provisions of China's law, constituting a crime, the said staff member shall be prosecuted for his criminal liability according to law."

11 Deadlines for decision-making

11.1 Specific deadlines for decision-making of the Competition Commission and the Competition Appeals Board should be incorporated into the Competition Bill.

11.2 Binding deadlines contribute to a more effective application of competition law. A key objective in a world class competition regime is deterring anti-competitive behaviour. If excessive time is taken in making decisions, irreparable (but avoidable) damage to competition may occur. For example, in the worst case scenario, the adversely affected party may have gone out of business by the time the decision is made. In the absence of a binding deadline for a decision to be made, an aggressive competitor may knowingly engage in anti-competitive conduct and take the risk of enforcement knowing there is a reasonable chance that irreparable harm will have been caused to its competitor before a decision is made against it.

11.3 A binding deadline is particularly important where a private right of enforcement independent of regulatory action does not exist and aggrieved parties therefore cannot seek urgent injunctions restraining another party's anti-competitive behaviour.

11.4 As an example of a deadline mechanism, the Australian Competition and Consumer Commission must make decisions with respect to a special access undertaking lodged by a carrier or carriage service provider within a specified period of time.[29] This period is subject to extension where the Commission requests further information.

11.5 While StarHub appreciates that many of the timing issues would be addressed in the guidelines to be issued by the Competition Commission, it would be preferable if binding deadlines were set out in the Competition Bill itself.

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[29] Section 152CBC, Trade Practices Act 1974 (Cth) (Australia).

12 Minister should not unilaterally amend any legislation

12.1 Section 94(3) currently provides as follows:

> "The Minister may make regulations to provide for -
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> (a) the repeal or amendment of any written law which appears to him to be unnecessary having regard to the provisions of this Act or to be inconsistent with the provision of this Act; and
>
> (b) such transitional, savings and other consequential provisions as he considers necessary or expedient."

12.2 StarHub is concerned at the width of this power. The power would enable the Minister to amend laws without the involvement of Parliament. This type of unfettered discretionary power removes legal certainty and could undermine the policy objectives of the competition law regime.

12.3 StarHub is concerned, in particular, that section 94(3) would potentially enable the Minister to amend the Telecommunications Act 1999 and the Telecoms Competition Code without consultation at any time. These Acts were enacted after careful consideration by Parliament on legal, economic and public interest considerations. Allowing the Minister to unilaterally amend these Acts risks undermining the policy objectives and public interest considerations enshrined in them without proper consideration of these issues.

12.4 Therefore, section 94(3) should be removed.

F. Detailed Submissions on Telecoms Competition Code Amendments

1.1 If StarHub's submissions set out above are not accepted, it is imperative that the Telecoms Competition Code and the Telecoms Act are amended to ensure greater consistency with the Competition Bill in some key areas.

1.2 There is no economic justification for weaker regulation of the telecommunications sector relative to other sectors that are within the scope of the Competition Bill. On the contrary, international best practice supports stronger, not weaker, regulation of telecommunications given the natural advantages to incumbent operators (e.g. control of essential facilities, economies of established national networks, vertical economies, etc), the market structure and characteristics specific to the telecommunications industry and the importance of a competitive telecommunications sector to the economy s. Some examples of this approach include:

- the UK, where the telecommunications sector is subject to generic competition laws and, in addition, telecommunications operators designated as having significant market power in a particular market are subject to additional telecommunications-specific regulation under the *Communications Act 2003*;

- Australia, where the telecommunications sector is subject to generic competition laws and, in addition, telecommunications operators are subject to additional enforcement and access regulation under telecommunications-specific provisions of the *Trade Practices Act 1974*;

- New Zealand, where the telecommunications sector is subject to generic competition laws as well as telecommunications-specific regulation under the *Telecommunications Act 2001*; and

- the US, where the telecommunications sector is subject to generic anti-trust legislation as well as telecommunications-specific regulation under the *Telecommunications Act 1996*.

1.3 StarHub notes MTI's comment in paragraph 6(b)(ii) of the consultation paper accompanying the Competition Bill as follows:

"For sectors that already have (or are going to have) sectoral competition regulatory frameworks, there should be alignment between those sectoral frameworks and the draft Bill, where possible and appropriate."[30]

1.4 There are three principal concerns regarding inconsistencies between the Competition Code and the Competition Bill:

- **Penalties**

  The Competition Bill provides for maximum financial penalties of up to 10% (or other prescribed amount) of the infringing party's turnover in Singapore for each year of infringement, up to a maximum of 3 years. As set out above, the potential size of this penalty is consistent with international best practice and potentially is a potent deterrent.

  The Telecoms Competition Code contemplates a maximum financial penalty of only $1 million per contravention.

  As set out above, such weaker regulation of the telecommunications sector relative to all other sectors of the economy cannot be justified.

- **Private rights of enforcement**

  As set out above, the Competition Bill provides a private right of enforcement if the Competition Commission has determined that an infringement has occurred. Any person that suffers loss or damage may seek injunctive or declaratory relief, damages (including exemplary damages), or such other relief as the court thinks fit.

  The Telecoms Act and the Telecoms Competition Code do not provide for any private right of enforcement. Rather, only the IDA can undertake enforcement action. The IDA has never awarded damages and its powers to do so are unclear.

  As noted earlier in this submission, an unrestricted private right of enforcement should be introduced into the Competition Bill. However,

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[30] Ministry of Trade and Industry, "Competition Bill Consultation Paper" (2004), at para 6(b)(ii).

even a limited private right of enforcement will enhance the deterrent effect of the Telecoms Competition Code and should be included in it.

- **Appeal rights to an independent Competition Appeals Board**

  As set out above, the Competition Bill provides for appeals from most decisions of the Competition Commission to the Competition Appeals Board. This is broadly consistent with international best practice and is supported by StarHub.

  However, the Telecoms Act and the Telecoms Competition Code do not provide for any appeal right to an independent appeals board. Rather, all appeals must be made to the Minister and the Minister's decision is final.

  It is inappropriate to have a situation in which enforcement action for breaches of competition law under the sectoral regime is not subject to independent review, but enforcement action for breaches of competition law under the generic regime is subject to independent review.