
TELECOMMUNICATIONS ORDER, 2001
CODE OF PRACTICE FOR COMPETITION IN THE
TELECOMMUNICATIONS SECTOR (COMPETITION CODE)

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**CODE OF PRACTICE FOR COMPETITION IN THE
TELECOMMUNICATIONS SECTOR (COMPETITION CODE)**

In exercise of the powers conferred by Section 26(1) of the Telecommunications Order 2001, the Authority for Info-communications Technology Industry of Brunei Darussalam (“Authority”) hereby issues the following Code of Practice for Competition in the Telecommunications Sector (Competition Code) **effective 20 April 2020**:

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1. PRELIMINARY

1.1 Citation and Commencement

The Competition Code may be cited as the Code of Practice for Competition in the Telecommunications Sector (Competition Code). The Competition Code shall commence on a date to be appointed by the Authority.

1.2 Goals of the Competition Code

The Competition Code is intended to:

- (a) Promote efficiency and competitiveness of the information and communications industry in Brunei Darussalam;
- (b) Promote fair and efficient market conduct, as well as transparent and objective market access, and effective competition between persons engaged in commercial activities connected with information and communications technology in Brunei Darussalam;
- (c) Ensure that telecommunications services are reasonably accessible to all people in Brunei Darussalam;
- (d) Encourage self-regulation and adaptability of Brunei Darussalam's information and communications industry;
- (e) Encourage, facilitate and promote foreign investment in the establishment, development and expansion of the information and communications industry;
- (f) To ensure that small and medium-sized enterprises have an equitable opportunity to participate in the information and communications industry;
- (g) Ensure that consumers are provided with competitive prices and quality in their product choices;
- (h) Promote any-to-any connectivity for network services;
- (i) Ensure an efficient allocation of resources in Brunei Darussalam's information and communications industry; and
- (j) Promote industry development and the effectiveness of economic regulation by facilitating technical interoperability of networks.

The Authority shall endeavour to achieve these goals by exercising its powers and duties under the Competition Code.

1.3 Definitions

As used in the Competition Code:

- (a) An "**Affiliate**" of a Market Player means an entity:
 - (i) That holds an interest in any Market Player, party or Acquiring Party of five (5) per cent or more (parent);
 - (ii) In which a Market Player, party or Acquiring Party holds an interest of five (5) per cent or more (subsidiary); or
 - (iii) In which any parent of the Market Player, party or Acquiring Party holds an interest of five (5) per cent or more (sibling), provided that a Market Player will not be deemed an Affiliate of another Market Player based solely on the fact that both Market Players' ultimate parent only has a passive ownership interest without Control in both Market Players.

- (b) **“Acquiring Party”** means any party, whether alone or together with its associates, that acquires equity interest or voting power in a Market Player.
- (c) **“AITI Order, 2001”** means the Authority for Info-communications Technology Industry of Brunei Darussalam Order, 2001.
- (d) **“Aggrieved Party”** means any Market Player that is aggrieved by the Authority’s decision or direction under the Competition Code, or any party (other than a Market Player) that is aggrieved by the Authority’s decision or direction made under the Competition Code.
- (e) **“Authority”** means the Authority for Info-communications Technology Industry of Brunei Darussalam (also known by the acronym AITI) established under Section 3 of the AITI Order, 2001.
- (f) **“Basic Telephone Service”** means a fundamentally plain telephony service as may be identified by the Authority in a Market Player’s licence, which service enables an End User to make and receive voice calls within Brunei Darussalam.
- (g) **“Competing Market Players”** means Market Players that provide, or have the potential to provide, competing Infrastructure or Services in Brunei Darussalam.
- (h) **“Competition Code”** means the Code of Practice for Competition in the Telecommunications Sector as set out in Section 1.1 above.
- (i) **“Consolidation”** means acquiring, buying control or a controlling interest in or merging with, any material business of a Market Player as a going concern.
- (j) **“Control”** refers to direct or indirect control over the decision making of a Market Player. The Authority would look at whether decisive influence is or can be exercised over the Market Player. Factors which the Authority will consider may include, but is not limited to:
 - (i) Whether the controlling Market Player has ownership of more than fifty (50) per cent of the other Market Player’s voting rights;
 - (ii) Whether the controlling Market Player has control over the decisions made or resolutions passed by the board of directors of the other Market Player;
 - (iii) Veto rights over strategic decisions such as those involving the budget or material business plans of the Market Player;
 - (iv) Powers to make certain key decisions such as those involving the budget or material business plans;
 - (v) Powers to appoint certain key personnel such as directors and senior management; and
 - (vi) Such other factors that the Authority deems fit and appropriate to ensure that the goals of the Competition Code as set out in Section 1.2 above are achieved.
- (k) **“Critical Support Infrastructure”** means any Infrastructure:
 - (i) Which is required by other telecommunications Market Players to provide Services;
 - (ii) Which cannot be replicated within the foreseeable future, or obtained from a third party, by an efficient new entrant to the market for Services in Brunei Darussalam, in either case, at a cost that would reasonably allow market entry; and

- (iii) The failure or refusal to allow telecommunications Market Players to use the Infrastructure would unreasonably restrict competition in any market for Services in Brunei Darussalam.
- (l) **“Customer”** means a Market Player which has purchased or consumed another Market Player’s Services or Infrastructure.
- (m) **“End User”** means a business or residential subscriber or user of any Services in Brunei Darussalam.
- (n) **“End User Service Information”** or **“EUSI”** consists of all information that a Market Player obtains as a result of an End User’s use of any Services provided by the Market Player. This includes, but is not limited to, information regarding:
 - (i) The End User’s usage patterns of any Infrastructure or Services;
 - (ii) The End User’s telephone numbers, network configurations, IP addresses or any other data that will reasonably allow a third party to discern the identity of the End User;
 - (iii) The End User’s location information; and
 - (iv) The End User’s billing name, identification/registration number, address and credit history.
- (o) **“Infrastructure”** means the underlying systems, networks and facilities which enable the provision of infocommunications services, including all buildings, lands, structures, machinery, equipment, cables, ducts, cable raisers, poles and lines.
- (p) **“Interconnection Agreement”** means a written agreement between Market Players governing interconnection and related arrangements.
- (q) **“Interconnection Related Services”** means physical and logical interconnection, origination, transit and termination, essential support facilities, unbundled network elements and unbundled network services.
- (r) **“Licensee”** means a person to whom a licence has been granted under the Telecommunications Order, 2001;
- (s) **“Mandated Wholesale Services”** are services that the Authority deems necessary inputs for the provision of competitive Services in Brunei Darussalam and sufficiently costly or difficult to provide in that requiring other Market Players to do so would create a significant barrier to the provision of competitive Services in Brunei Darussalam by an efficient Market Player.
- (t) **“Market Player”** means any undertaking or enterprise, duly incorporated and licensed in Brunei Darussalam or otherwise, that is carrying on a business or is engaged in any commercial activity connected with Infrastructure and Services within the information and communications industry, and such other undertakings or enterprises having a measurable effect in Brunei Darussalam and so designated by the Authority. This includes, but is not limited to owners or operators or providers of Infrastructure or providers of Services, as well as any other undertaking or entity whose activities are deemed to have an effect within the information and communications industry in Brunei Darussalam.
- (u) **“Market Share”** is the percentage of the total sales or volume of a given type of Infrastructure or Services, out of the total sales or volume by all companies of a similar type of Infrastructure or Services.
- (v) **“Negotiation Request”** means a request by a Market Player to negotiate a Sharing Agreement under Section 7 of the Competition Code.

- (w) **“Pre-Code Agreement”** means any agreement for the purpose of physically connecting telecommunication networks, exchanging telecommunication or providing related services entered into prior to the commencement date of the Competition Code, as the case may be.
- (x) **“RIO”** means a Reference Interconnection Offer.
- (y) **“Services”** refers to any service for telecommunications but excludes any broadcasting service.
- (z) **“Sharing Agreement”** means a written agreement to share Infrastructure under Section 7 of the Competition Code.
- (aa) **“Significant Market Power”** means the ability to unilaterally restrict output, raise prices, reduce quality or otherwise act, to a significant extent, independently of competitive market forces. A Market Player will be determined as having Significant Market Power in accordance with the terms of the Competition Code.
- (bb) **“Tariff(s)”** means prices, terms and conditions to be filed with the Authority.
- (cc) **“Working Day”** These are the days between and including Monday through Friday, and do not include public holidays and weekends.

1.4 Legal Effect of the Competition Code

- (a) All Market Players duly licenced in Brunei Darussalam or otherwise and all parties designated as Market Players must comply with the applicable provisions of the Competition Code.
- (b) The obligations contained in the Competition Code are in addition to those contained in the Telecommunications Order, 2001, as well as any other regulations, licences or codes of practice issued by the Authority.
- (c) To the extent that any provision of the Competition Code is inconsistent with the provisions of the AITI Order, 2001, and the Telecommunications Order, 2001, the provisions of the AITI Order, 2001 and the Telecommunications Order, 2001 shall prevail.
- (d) To the extent that the Competition Code is inconsistent with the provision of any other codes of practice or standards of performance or additional licence’s terms and conditions issued by the Authority, whether currently in force or implemented in the future, the terms of the Competition Code shall prevail.
- (e) If any provision of this Competition Code is held to be unlawful, all other provisions will remain in full force and effect.

1.5 Application of the Competition Code to Market Players

Unless otherwise stated, the provisions of the Competition Code shall apply to all Market Players and such other undertakings or enterprises as the Authority may designate, given the impact in Brunei Darussalam.

1.6 Regulatory Principles

The following regulatory principles provide the foundation for the Competition Code, and will guide the Authority’s implementation of its provisions:

1.6.1 Technology Neutrality

The Authority will take a technology neutral approach.

1.6.2 Reliance on Market Forces

Competitive markets typically provide consumers with a wide choice at reasonable, competitive and non-discriminatory prices. Therefore, to the extent that markets or market segments are competitive, the Authority will place primary reliance on private negotiations and industry self-regulation, subject to minimum requirements designed to protect consumers and prevent anti-competitive conduct.

1.6.3 Promotion of Effective and Sustainable Competition

The Authority recognises the effectiveness of market forces in promoting consumer welfare and will take resolute measures, in line with the goals stated in Section 1.2 of the Competition Code, to promote and maintain effective and sustainable competition.

1.6.4 Proportionate Regulation

- (a) To the extent that a given market is not or not yet competitive, significant ex ante regulatory intervention will remain necessary. Where this is the case, the Authority will seek to impose regulatory requirements that are carefully crafted to achieve clearly articulated results, including issuing advisory guidelines, where appropriate, to clarify the procedures and standards that it will use to implement the Competition Code.
- (b) Regulatory intervention may be necessary because:
 - (i) the level of competition in the relevant markets for the provision of Infrastructure or Services is limited;
 - (ii) certain Market Players in those markets continue to have Significant Market Power and may abuse their Significant Market Power; and
 - (iii) competitive market forces alone may not always achieve all public interest goals.
- (c) The Authority will intervene in any market within its jurisdiction where necessary to, inter alia:
 - (i) ensure that Market Players fulfil their obligations to serve the public interest as provided in the Competition Code;
 - (ii) protect Customers and End Users, from improper business practices;
 - (iii) prevent Market Players and their Affiliates, whether individually or collectively, from abusing their market positions in a manner that unreasonably restricts competition in any market within the Authority's jurisdiction;
 - (iv) prevent Market Players from entering into agreements that unreasonably restrict competition in any market within the Authority's jurisdiction;
 - (v) prevent Consolidations involving Market Players that are likely to unreasonably restrict competition in any market under the Authority's jurisdiction;

- (vi) promote competition by ensuring that Market Players have non-discriminatory access to support Infrastructure or essential Services; and
- (vii) otherwise safeguard the public interest.

1.6.5 Transparent and Reasoned Decision Making

The Authority will apply the provisions of the Competition Code in a transparent manner. The Authority may also provide an opportunity for public comment in connection with material issues, as it deems necessary and appropriate in its sole discretion. Where public comments are called for, then except to the extent that information submitted to the Authority is confidential, proprietary, commercially sensitive or raises law enforcement or national security concerns as determined by the Authority, the comments will be made available to the public. In arriving at its decisions, the Authority will give consideration to the comments received. The Authority will, as a general rule where it deems feasible and appropriate and to the extent permissible under the Competition Code, endeavour to make available to the public its decisions adopted, including any enforcement action taken, pursuant to the Competition Code on its website, with any confidential information appropriately redacted, and will clearly explain the basis for its actions.

1.6.6 Avoidance of Unnecessary Delay

- (a) Recognising the need for Market Players to respond rapidly to changing market forces, the Authority will strive to make all decisions pursuant to the Competition Code within the timeframes specified herein and, in any case, as soon as reasonably possible.
- (b) The Authority will not be responsible for any delays in its decision making due to a failure by Market Players to meet any regulatory requirement, direction and/or instructions in a timely manner.

1.6.7 Non-discrimination

The Authority's decisions shall follow a non-discriminatory approach. Where appropriate, the Authority's decisions will reflect relevant differences between Market Players or categories of Market Players, such as the various Licensees, as well as non-Licensees, regardless of where they are incorporated, subject to public policy requirements.

1.6.8 Consultation with Other Regulatory Authorities

The Authority, where feasible and appropriate, will consult with other regulatory authorities whether in Brunei Darussalam or elsewhere in order to facilitate the development of a consistent regulatory policy that promotes fair and effective competition and serves the public interest.

1.7 Modification of Provisions

- (a) The Authority, where appropriate, will modify the provisions of the Competition Code to reflect changing market conditions. The Competition Code may be modified in the following manner:

- (i) The Authority will review the Competition Code at regular intervals after the issuance of the Competition Code. If such a review is conducted, the Authority may amend or modify relevant sections of the Competition Code based on the experience gained through the growth and development of competition among the information and communications industry in Brunei Darussalam. The Authority will also make any other changes it deems fit and necessary to achieve the goals of the Competition Code; or
 - (ii) The Authority may modify the Competition Code on its own initiative at any time.
- (b) In each case, the Authority may seek public comments prior to adopting modification.

1.8 Exemptions, Waivers and Suspensions

The Authority may, in its absolute discretion, grant any exemption or waiver and:

- (a) Exempt any Market Player or any specific categories of Market Players from, or waive the application of, all or any provisions of the Competition Code in accordance with the Telecommunications Order, 2001. An exemption or waiver shall be subject to such terms and conditions as the Authority may specify and may, without limitation, be on a one-time basis, temporary, permanent, for a fixed period or effective until the occurrence of a specific event. The Authority may seek public comments prior to granting such exemption or waiver.
- (b) Waive or suspend any provision of the Competition Code that imposes an obligation on the Authority in any situation in which such action is necessary in the public interest.

1.9 Rule of Construction

The Authority will interpret the Competition Code in a manner that is consistent with the ordinary meaning of the terms used. In case of any ambiguity, the Authority will interpret the Competition Code in the manner most consistent with the goals and regulatory principles as set out in the Competition Code.

2. CLASSIFICATION OF MARKET PLAYERS

2.1 Introduction

2.1.1 Overview

The Competition Code distinguishes between Market Players that are subject to competitive market forces and Market Players whose conduct are not constrained adequately by competitive market forces. Where a Market Player's conduct is not constrained by competitive market forces, the Authority will classify the Market Player as having Significant Market Power, and require it to comply with more stringent regulatory requirements. If a Market Player is not classified as having Significant Market Power, then there is a rebuttable presumption that such a Market Player does not have Significant Market Power.

2.1.2 Determining Significant Market Power

Some of the conditions that will be taken into account in determining whether a Market Player has Significant Market Power include:

- (a) Whether it is costly or difficult to replicate any Infrastructure or Services operated or provided by the Market Player including where requiring new entrants to do so would create a significant barrier to successful entry into any regulated market in Brunei Darussalam by an efficient Competing Market Player and meets any or all of the criteria under sub-sections (b) and (c);
- (b) Whether the Market Player will be able to unilaterally restrict output, alter prices, reduce quality or otherwise act independently of market forces, including taking into account the Market Player's as well as other Market Players' Market Share; and
- (c) Other competitive forces, which include but are not limited to:
 - (i) The prevailing economic conditions;
 - (ii) Global technology and commercial trends;
 - (iii) Substitutability;
 - (iv) The degree of product or service differentiation in the market;
 - (v) Costs of various resources;
 - (vi) Barriers to entry; and
 - (vii) Any other factors that the Authority may deem fit.

2.2 Classifying Market Players as Market Players with Significant Market Power

- (a) The Authority will have the power to classify all Market Players as having Significant Market Power regardless of whether they hold a licence or whether they are incorporated in Brunei Darussalam or otherwise.
- (b) At the time when the Authority grants a licence or designates a party as a Market Player, the Authority will determine whether to classify the Licensee or other party as a Market Player with Significant Market Power, in accordance with criteria as set out in Section 2.1.2.
- (c) A Licensee or other party classified as a Market Player with Significant Market Power will, without prejudice to the application of all of the provisions of this Competition Code, be subjected to obligations of Market Players with Significant Market Power for the operation or provision of all its Infrastructure or Services pursuant to its licence and in accordance with Section 4 of the Competition Code as well as such other provisions of this Competition Code that is expressly made applicable to Market Player with Significant Market Power.
- (d) In any case where the Authority classifies, or reclassifies pursuant to Section 2.3 of the Competition Code below, a Market Player as having Significant Market Power, the Authority will issue a notice on the Authority website or by any other means of publication the Authority considers appropriate.

2.3 Reclassifying Market Players

- (a) The Authority will reclassify a Market Player with Significant Market Power as not having Significant Market Power if the Authority concludes, based on relevant evidence, that the Market Player no longer satisfies the conditions for determination of Significant Market Power specified in Section 2.1.2 of the Competition Code.

- (b) The Authority will reclassify a Market Player without Significant Market Power as having Significant Market Power if the Authority concludes, based on relevant evidence, that the Market Player meets the conditions specified in Section 2.1.2 of the Competition Code.
- (c) Reclassification can occur in any of the following ways:
 - (i) At the time when the Authority renews a Licensee's licence, the Authority will make an assessment as to whether the Licensee should be reclassified.
 - (ii) Where appropriate, the Authority may, on its own initiative, proceed to reclassify a Market Player. In such cases (excluding the situation set out in sub-section (c)(iv)), the Authority will request the Market Player to provide relevant information and supporting data and documentation that will assist the Authority in determining whether or not the Market Player meets the conditions specified in Section 2.1.2 of the Competition Code.
 - (iii) A Market Player or other interested party may petition the Authority to have a Market Player reclassified. An interested party seeking to have a Market Player reclassified must provide relevant information and supporting data and documentation demonstrating whether or not the Market Player meets the conditions specified in Section 2.1.2 of the Competition Code.
 - (iv) Following an enforcement action taken against a Market Player for contravention of Section 8.2 of the Competition Code relating to Abuse of Dominant Position in Brunei Darussalam, the Authority may reclassify such a Market Player as having Significant Market Power.

2.4 Transfers of Infrastructure, Services or Business by Market Players with Significant Market Power

- (a) A Market Player with Significant Market Power must comply with the special provisions applicable to Market Players with Significant Market Power specified in the Competition Code, and may be required to transfer to another entity the following:
 - (i) Ownership or operational control of any Infrastructure or Services that the Authority has licensed the Market Player with Significant Market Power to operate or to provide in Brunei Darussalam; or
 - (ii) Any business of the Market Player with Significant Market Power, as a going concern, which include those relating to the operation or provision of Infrastructure or Services that the Authority has licensed the Licensee with Significant Market Power to provide in Brunei Darussalam.
- (b) Where a Market Player with Significant Market Power wishes to transfer to another entity ownership or operational control of its Infrastructure or Services, or its business as a going concern, the Market Player with Significant Market Power must obtain the Authority's approval prior to effecting the transfer.
- (c) The Authority may approve the transfer request in full or in part within ninety (90) Working Days, and subject such approval to any appropriate condition that the Authority may impose (including reclassifying the transferee as

having Significant Market Power where the conditions for Significant Market Power classification set out in Section 2.1.2 of the Competition Code are met). Failure on the part of the Market Player to obtain the Authority's approval will be deemed a contravention of the Competition Code, for which a penalty or such other sanctions may be imposed.

3. DUTY OF MARKET PLAYERS TO THEIR END USERS AND CUSTOMERS

3.1 Introduction

3.1.1 Application

- (a) The provisions in this Section apply to all Market Players.
- (b) In this Section, the term "Service" shall, unless the context requires otherwise, include any equipment associated with the use of such service that has been provided by the Market Player to the End User.
- (c) Save for matters relating to competition law involving the information and technology industry, nothing in this Section is intended to limit any right, including rights of recourse against a Market Player, that an End User may have under any applicable legislation.

3.1.2 Overview

This Section 3 is intended to ensure that Market Players provide Infrastructure or Services to End Users and/or Customers on reasonable, competitive, transparent and non-discriminatory terms.

3.2 General Duties of All Market Players

Market Players must comply with the duties as set out in this Section.

3.2.1 Duty to Comply with the Authority's Quality of Service Standards

Market Players must comply with any applicable minimum quality of service standards issued by the Authority. However, a Market Player and an End User or a Customer may agree in writing to a different quality of service standard. In such cases, the Market Player must clearly inform the End User and/or Customer of the service level that it will provide and the fact that it does not comply with the Authority's minimum quality of service standards wherever applicable. Such an arrangement may be captured in the form of service level agreements, operational level agreements or such other agreements. All Market Players must submit to the Authority a sealed copy, to maintain confidentiality, of all agreements entered into with an End User or a Customer pursuant to this Section, which may be reviewed by the Authority. The Authority reserves the right to declare invalid and unenforceable any agreement entered into pursuant to this Section.

3.2.2 Tariff Filing, Review, Approval and Duty to Disclose

Prior to providing any Infrastructure or Services to an End User or to a Customer as the case may be, Market Players must comply with the terms as set out in any

related Advisory Guidelines, Codes of Practice or Standards of Performance issued by the Authority.

3.2.3 Duty to Provide Infrastructure or Services Consistent with Effective Tariffs

- (a) Market Players must provide Infrastructure or Services on the prices, terms and conditions specified in the applicable effective Tariffs. Any Tariffs published by the Market Player in accordance with the Competition Code must be current and promptly updated to accurately reflect the Tariffs applicable at the time of their publication.
- (b) In any case in which the Authority allows a proposed Tariff to go into effect, and a Market Player subsequently enters into an agreement on terms that differ from those in its effective Tariff, the Authority may:
 - (i) Take enforcement action against the Market Player under Section 11 of the Competition Code;
 - (ii) Direct the Market Player to amend its agreement to comply with the prices, terms and conditions in its effective Tariff; and/or
 - (iii) Direct the Market Player to file a new Tariff embodying the terms of the agreement.
- (c) In any case in which a Market Player enters into an agreement based on the terms of an effective Tariff, and the Authority subsequently allows or directs the Market Player to modify the terms of such Tariff, the Market Player must amend the agreement to be consistent with the modified Tariff unless otherwise approved or directed by the Authority.

3.2.4 Duty to Protect Brunei Darussalam's Public Interest

Market Players may not enter into any agreement or arrangement with any person who runs an authorised overseas system, on terms or conditions which unfairly preclude or restrict any person licensed by the Authority to provide those services in Brunei Darussalam. The relevant preclusion or restriction in this sub-section may be a detriment to Brunei Darussalam's public interest, while the relevant overseas system in this sub-section may relate to the provision of any Infrastructure or Services by a Market Player.

3.2.5 Duty to Provide Infrastructure or Services on a Reasonable, Competitive and Non-Discriminatory Basis

- (a) A Market Player:
 - (i) must operate or provide, or both operate and provide, Infrastructure or Services to End Users and/or to Customers at prices, terms and conditions that are reasonable, competitive and not discriminatory; and
 - (ii) must not discriminate in favour of itself, an Affiliate, or any other related entity in the operation or provision of any Infrastructure or Services that it provides.
- (b) This requires that, except where otherwise permitted or required by the Authority, differences in the prices, terms and conditions for comparable Infrastructure or Services must be based on objective differences, such

as, but not limited to:

- (i) variations in the cost of the Service provided;
- (ii) variations in the quantity or quality of Service provided; or
- (iii) variations in the duration of the service agreement period.

3.2.6 Duty to Provide Unbundled Infrastructure or Services

- (a) A Market Player must provide Infrastructure or Services on an unbundled basis. Specifically, the Market Player must not require a Customer or End User that wants to receive or purchase access to a specific Infrastructure or Service, as a condition for purchasing that Infrastructure or Service to also purchase any:
 - (i) other Infrastructure, Service or Equipment; or
 - (ii) non-telecommunication related services or equipment.
- (b) However, the Market Player may offer End Users or Customers the option of purchasing a package that contains:
 - (i) multiple Infrastructure, Services or Equipment; or
 - (ii) a single telecommunication or non-telecommunication related service or equipment.

3.2.7 Wholesale Infrastructure or Services

Unless directed to do so by the Authority pursuant to Section 6 of the Competition Code, a Market Player is not required to offer any Infrastructure or Services on a wholesale basis. If the Market Player chooses or is directed to do so, it must:

- (a) Offer the wholesale Infrastructure or Services at prices, terms and conditions that are reasonable, competitive, and non-discriminatory;
- (b) Allow any Market Player to purchase rights to or access to, as the case may be, the wholesale Infrastructure or Services;
- (c) Not restrict the ability of another Market Player to use the wholesale Infrastructure or Services as an input or inputs into other Infrastructure or Services; and
- (d) Not require another Market Player to disclose that it is using the Market Player's wholesale Infrastructure or Services as an input or inputs.

3.2.8 Specific Duties Applicable to the Provision of Infrastructure or Services

The following duties are applicable to the provision of Infrastructure or Services by a Market Player:

3.2.8.1 Duty to Provide Services on Reasonable Request

A Market Player must provide Infrastructure to Customers or Services to any End User upon reasonable request of the End User or Customer, or as directed by the Authority from time to time.

3.2.8.2 Duty to Allow Resale of Infrastructure or Services

- (a) A Market Player must allow any other Market Player to purchase access to any Infrastructure or any Services that the first Market Player makes available to its own End User or Customer. Such access to Infrastructure or Services shall be provided by the first

Market Player to other Market Players on similar equitable prices, terms and conditions that the first Market Player makes such access to Infrastructure or Services available to its own End Users or Customers. The first Market Player must not prevent other Market Players from reselling such access to Infrastructure or Services to other third parties, including third-party Market Players, Customers or their respective End Users. The first Market Player must not prevent other Market Players from using the Infrastructure or Services as an input for the provision of Infrastructure or Services to third parties.

- (i) A Market Player may comply with this obligation by filing and making publicly available Tariffs for its Infrastructure or Services that do not restrict resale and use as an input (or eliminating any restriction on resale and use as an input contained in its existing Tariffs for its Infrastructure or Services).
 - (ii) Where an effective Tariff by a Market Player restricts its resale or use as an input by other Market Players, the first Market Player must, within a reasonable time period, file a Tariff that allows such other Market Players to purchase the Infrastructure or Services on equitable (or, at the request of such other Market Players, on substantially equivalent) prices, terms and conditions as those End Users or Customers who receive the Infrastructure or Services from the Market Player.
- (b) A Market Player must not require another Market Player that uses its Infrastructure or Services as an input into other Infrastructure or Services to disclose that it is using the Market Player's Infrastructure or Services.

3.2.8.3 Duty to Allow Sales Agency

If a Market Player provides a commission or fee or other consideration to any other Market Player (whether or not affiliated with the Market Player) that resells any of the Market Player's Infrastructure or Services, the Market Player must, upon request, provide the same opportunity to any other Market Player on the same prices, terms and conditions.

3.2.8.4 Prohibition on Disproportionate Early Termination Charges

Market Players may enter into agreements under which it provides the End User or Customer with a discount or special consideration in return to commit to a minimum service period or a minimum revenue commitment. Any termination liability in the event that the End User or Customer ends the agreement prior to the agreed termination date must be reasonably proportionate to the extent of the discount or special consideration that the Market Player has provided and the duration of the period during which the End User or Customer took the Services.

3.2.8.5 Infrastructure or Service Termination or Suspension with Prior Notice

In any case in which a Market Player seeks to terminate an Infrastructure or Service agreement, or suspend the provision of Infrastructure or Services to an End User or a Customer, on the grounds that the End User or Customer has breached any of the terms and conditions in that agreement, such as the consistent failure to pay for Infrastructure or Services, the Market Player may do so, if:

- (a) The Market Player has provided the End User or Customer with advance notice as provided in Section 3.3.6 and a reasonable opportunity to remedy the breach; and
- (b) The End User or Customer has failed to remedy the breach.

3.2.8.6 Infrastructure or Service Termination or Suspension without Prior Notice

A Market Player may terminate an Infrastructure or Services agreement, or suspend the provision of Infrastructure or Services to an End User or Customer, without providing prior notice only in the following circumstances:

- (a) The End User or Customer has created, or is likely to create, imminent physical harm (such as interruption, disruption or congestion) to the Market Player's network or has defrauded the Market Player;
- (b) The Market Player is acting in compliance with a requirement of any relevant regulatory authority or law enforcement body;
- (c) Where the End User or Customer is an individual, the End User or Customer dies or becomes insolvent; or
- (d) Where the End User or Customer is a corporation, the End User or Customer ceases to carry on its business or is insolvent.

3.2.8.7 Termination or Suspension for Illegal or Improper Activities

Notwithstanding Sections 3.2.8.5 and 3.2.8.6 of the Competition Code, a Market Player may not terminate an Infrastructure or a Service agreement, or suspend the provision of Infrastructure or Services to an End User or a Customer under the agreement on the ground that the End User or Customer is using the Infrastructure or Services to engage in illegal or improper activities. Instead, the Market Player should in such a situation, inform the Authority or the relevant authority at the soonest and act in conformity with that authority's directions or guidelines.

3.2.8.8 Restrictions on Termination or Suspension due to Breach of Another Infrastructure or Service agreement

Notwithstanding Sections 3.2.8.5 and 3.2.8.6 of the Competition Code, a Market Player may not terminate an Infrastructure or Service agreement, or suspend the provision of Infrastructure or Services to an End User or a Customer, on grounds that the End User or Customer has breached any of the terms and conditions in another Infrastructure or Service agreement, where:

- (a) The Infrastructure or Service to be terminated or suspended is a Basic Telephone Service (where “Basic Telephone Service” means a fundamentally plain telephony service as may be identified by the Authority, which enables an End User or Customer to make and receive voice calls domestically); or
- (b) The other Infrastructure or Service agreement that has been breached is with a different Market Player.

3.2.8.9 Infrastructure or Service Termination Due to a Market Player’s Discontinuance of Operations or Specific Services

- (a) A Market Player that intends to discontinue operations or a specific Infrastructure or Service must give reasonable advance notice to all affected End Users and/or Customers, where such notice must be given no less than thirty (30) Working Days prior to the discontinuation of the operations or the specific Infrastructure or Service or as otherwise provided in the licence. In such cases, the Market Player must take all reasonable measures to avoid any service interruption to its End Users and/or Customers, including complying with any requirement specified or direction issued by the Authority.
- (b) In any case in which an End User or a Customer has made an advance payment for Infrastructure or Services provided by a Market Player, and the Market Player subsequently decides to discontinue operations or the specific Infrastructure or Service, the Market Player must allocate a proportionate share of the advance payment for refund to the End User or Customer.

3.2.8.10 Prohibition on “Slamming”

No Market Player shall switch an End User or Customer from one Market Player’s Infrastructure or Services to another Market Player’s Infrastructure or Services without the prior consent of the End User or Customer. No Market Player shall collect or retain any payment from an End User or Customer for any Infrastructure or Service that the End User or Customer did not consent to. In such cases, the Market Player that performed the unauthorised switching must also bear any cost necessary to switch the End User or Customer back to the End User’s or Customer’s original Infrastructure or Services provider.

3.2.8.11 Duty to Prevent Unauthorised Use of EUSI

Market Players must take reasonable measures to prevent the unauthorised use of EUSI.

3.2.8.12 Prohibition on Unauthorised Use of EUSI Under Section 3.2.8.11

- (a) A Market Player must adopt appropriate procedures to ensure that, unless the End User has provided prior consent, the Market Player will not use EUSI for any purpose other than:

- (i) Planning, provisioning and billing for any Infrastructure or Services operated or provided by the Market Player;
 - (ii) Managing bad debt and preventing fraud related to the operation or provision of Infrastructure or Services;
 - (iii) Facilitating interconnection and interoperability between Market Players for the provision of any Infrastructure or Services;
 - (iv) Providing assistance to law enforcement, judicial or other government agencies; or
 - (v) Complying with any regulatory requirement imposed by the Authority authorising the use of EUSI (for example, for the provision of directory assistance services, or to prevent the use of such information for activities such as spamming).
- (b) The Market Player must further ensure that, unless the End User has provided consent, the Market Player will not provide EUSI to any third party (including its Affiliates) for the purposes of developing and marketing any goods or services.

3.2.8.13 Joint Marketing

Nothing in the Competition Code prohibits a Market Player from allowing other entities to include promotional or other material in any mass mailing that the Market Player makes to all or a selected portion of its End Users, provided that the Market Player does not disclose the EUSI of any End User that has not provided consent and provided the End User has given consent to the Market Player for receiving such mass mailings.

3.2.9 Service Quality Information Disclosure Requirements

- (a) Market Players must submit to the Authority at least once a year or as directed by the Authority on a more frequent basis, in a format and medium to be determined by the Authority, a report indicating the number and type of complaints that the Market Player has received from its End Users and/or Customers and a statement as to the extent to which the Market Player has met all applicable quality of service standards issued by the Authority.
- (b) Market Players must submit to the Authority information regarding the extent of its service coverage by, and the availability of, any Infrastructure or Services, where relevant, provided by that Market Player in a format and medium to be determined by and at a frequency as required by the Authority.
- (c) The Authority may direct that the report prepared under Sub-section (a) in its entirety or as selected by the Authority be made available to End Users and/or Customers in a format and medium that can be understood easily by End Users and/or Customers to be determined by the Authority.

3.2.10 Prohibition on Charging for Infrastructure or Services Supplied on a Free Trial Basis

If a Market Player has provided an End User or a Customer with Infrastructure or Services on a free trial basis, the Market Player must not charge the End User or Customer for such Infrastructure or Services after the end of the free trial period unless:

- (a) The Market Player has notified the End User or Customer of the date on which the free trial period will end; and
- (b) The Market Player has obtained the express agreement (subject always to at least five (5) Working Days requirement for cancellation or alteration by the End User or Customer pursuant to such prevailing consumer protection regulation) of the End User or Customer to continue the Infrastructure or Service after the expiry of the free trial on the applicable prices, terms and conditions as notified to the End User or Customer.

3.3 Mandatory Contractual Provisions

Market Players must include the provisions specified in the following Sections 3.3.1 to 3.3.6 in their Infrastructure or Service agreements. An End User or a Customer may bring a private legal action against a Market Player to enforce these contractual obligations pursuant to its Infrastructure or Service agreement with that Market Player. In addition, the Authority will treat a Market Player's wilful, reckless, or repeated failure to fulfil these obligations as a contravention of the Competition Code.

3.3.1 Billing Period

- (a) The Infrastructure or Service agreement must specify how often the Market Player will send a bill. Such bills must be timely, clear and accurate and shall provide End Users and/or Customers with a prior written notice of at least two (2) billing cycles of any proposed amendments, variations or changes in the Market Players' billing structure, rates, fees or amounts.
- (b) End Users and/or Customers who utilise a pre-paid card may be notified of any proposed amendments, variations or changes in the Market Players' billing structure, rates, fees or amounts at the time that they re-charge their pre-paid card.

3.3.2 Prices, Terms and Conditions on which Infrastructure or Service will be Provided

- (a) The Infrastructure or Service agreement must clearly and comprehensively specify the prices, terms and conditions on which the Market Player will provide its Infrastructure or Service. This includes references to any Tariffs, price lists, or similar documents that are readily available to the public.
- (b) The Infrastructure or Service agreement must further provide that the End User or Customer will not be bound by any price, term or condition that varies from those specified in the Infrastructure or Service agreement, unless:
 - (i) The End User or Customer provides prior written approval; or
 - (ii) The Infrastructure or Service agreement clearly states that the

Market Player may revise the prices, terms and conditions by providing reasonable advance notice to the End User or Customer.

3.3.3 No Charges for Unsolicited Services

The Infrastructure or Service agreement must provide that the End User or Customer will not be liable to pay for any Infrastructure or Services charges that the End User or Customer did not consent to receive. For the purposes of this Section 3.3.3 of the Competition Code, a “charge” refers to any act which conveys the impression to the End User or Customer that he is liable to pay for a service such as the issuance of a bill, and “charging” shall be similarly construed.

3.3.4 Procedures to Contest Charges

- (a) The Infrastructure or Service agreement must be registered with the Authority prior to its implementation and clearly indicate the procedures by which an End User or a Customer can dispute any charge for any Infrastructure or Services that the End User or Customer reasonably believes to be incorrect or improperly calculated. This includes situations in which the End User or Customer reasonably believes that the Market Player has not provided the Infrastructure or Service that it has agreed to provide;
- (b) In the event of a dispute, the End User or Customer shall not be required to pay any reasonably disputed amounts pending the resolution of the dispute, provided that the End User or Customer informs the Market Player of any disputed charge prior to the date on which the payment becomes due. If the End User or Customer ultimately is found liable for the disputed amounts, any interest that the Market Player wants to recover, in addition to the disputed amounts, must be commercially reasonable. The Infrastructure or Service agreement must specify the exact rate to be charged;
- (c) An End User or Customer that pays a bill and subsequently chooses to contest the bill will have one (1) year (starting from the date of the bill) to do so;
- (d) An End User or Customer that purchases a pre-paid service who chooses to contest any charge will have one (1) year (starting from the date on which the last contested charge was deducted from the End User or Customer) to do so; and
- (e) The Market Player shall conduct a complete and objective review of the End User’s or Customer’s complaint, and provide a written response within ten (10) Working Days, which time can be extended up to thirty (30) Working Days at the discretion of the Authority, of receiving notification that the End User or Customer is contesting a charge.

3.3.5 Private Dispute Resolution

The Infrastructure or Service agreement must provide that, if the parties are unable to resolve any dispute, they may choose to refer the dispute to the relevant authority under the prevailing laws of Brunei Darussalam for resolution.

3.3.6 Termination or Suspension of Infrastructure or Service by Market player

The Infrastructure or Service agreement must specify prominently:

- (a) Any basis on which the Market Player reserves the right to terminate or suspend the Infrastructure or Service agreement; and
- (b) The procedures by which the Market Player will provide the End User or Customer with advance notice of any proposed termination or suspension, the basis for the action and the means by which the End User or Customer can avoid such termination or suspension, unless otherwise provided for in the Competition Code. Any Market Player who terminates or suspends an Infrastructure or Service agreement in accordance with Section 3.3.6(a) must give the End User or Customer a prior written notice of sixty (60) Working Days before such Infrastructure or Service agreement is terminated or suspended.

4. DUTY OF MARKET PLAYERS WITH SIGNIFICANT MARKET POWER TO PROVIDE INFRASTRUCTURE OR SERVICES ON REASONABLE, COMPETITIVE, TRANSPARENT AND NON-DISCRIMINATORY TERMS

4.1 Introduction

4.1.1 Application

In addition to Section 3, all the provisions in this Section apply to Market Players with Significant Market Power.

4.1.2 Overview

To the extent that Market Players are not subject to competitive market forces, regulatory intervention is necessary to ensure that such Market Players provide Infrastructure or Services to Customers, End Users or to other Market Players on reasonable, competitive, transparent, and non-discriminatory prices, terms and conditions. This Section sets out the requirements with which Market Players with Significant Market Power must comply. This Section also establishes a Tariff filing, review and publication regime designed to ensure compliance.

4.2 Duties of Market Players with Significant Market Power

4.2.1 Duties Applicable to the Provision of All Infrastructure or Services

The following duties are applicable to the provision of all Infrastructure or Services by a Market Player with Significant Market Power:

4.2.1.1 Duty to Provide Infrastructure or Services at Reasonable, Competitive and Non-Discriminatory Prices, Terms and Conditions

A Market Player with Significant Market Power must provide Infrastructure or Services to End Users and/or Customers at prices, terms and conditions that are reasonable, competitive and non-discriminatory.

4.2.1.2 Duty to Provide Infrastructure or Services on a Non-discriminatory Basis

- (a) A Market Player with Significant Market Power must not discriminate in favour of itself, an Affiliate, or any other related entity in the provision of any Infrastructure or Services that it provides pursuant to an effective Tariff.
- (b) This requires that, except where otherwise permitted or required by the Authority, differences in the prices, terms and conditions for comparable Infrastructure or Services, must be based on objective and verifiable differences, such as, but not limited to, variations in the cost of the Infrastructure or Services provided, variations in the quantity or quality of service provided or variations in the duration of the Infrastructure or Service agreement period. This further requires that the Market Player with Significant Market Power must maintain separate accounting to show all elements of cost and revenue, with the basis of their calculation and the detailed attribution methods used, related to the specific Infrastructure or Services provided to avoid discrimination, cross subsidisation and distortion of competition.

4.2.1.3 Duty to Provide Unbundled Infrastructure or Services

- (a) A Market Player with Significant Market Power must provide Infrastructure or Services on an unbundled basis. Specifically, the Market Player with Significant Market Power must not require a Customer or End User that wants to receive or purchase access to a specific Infrastructure or Service, as a condition for purchasing that Infrastructure or Service to also purchase any:
 - (i) other Infrastructure, Service or Equipment; or
 - (ii) non-telecommunication related services or equipment.
- (b) However, the Market Player with Significant Market Power may offer End Users or Customers the option of purchasing a package that contains:
 - (i) multiple Infrastructure, Services or Equipment; or
 - (ii) a single telecommunication or non-telecommunication related service or equipment.

4.2.2 Specific Duties Applicable to the Provision of Infrastructure or Services

The following duties are applicable to the provision of Infrastructure or Services by a Market Player with Significant Market Power:

4.2.2.1 Duty to Provide Infrastructure or Services on Reasonable Request

A Market Player with Significant Market Power must provide Infrastructure or Services to any End User and/or Customer upon reasonable request.

4.2.2.2 Duty to Allow Resale of Infrastructure or Services

- (a) A Market Player with Significant Market Power must allow any

Market Player to purchase access to any Infrastructure or any Service that the Market Player with Significant Market Power makes available to End Users and/or Customers, on the same prices, terms and conditions that the Market Player with Significant Market Power makes such access to Infrastructure or such Service available to End Users and/or Customers. The Market Player with Significant Market Power may not prevent the Market Player from reselling the access to Infrastructure or Service to other Market Players, End Users and/or Customers, and using the Infrastructure or Service as an input for its provision of Infrastructure or Services to other Market Players, End Users and/or Customers.

- (i) A Market Player with Significant Market Power may comply with this obligation by filing Tariffs for Infrastructure or Services that do not expressly restrict resale and use as an input (or eliminating any restriction on resale and use as an input contained in its existing Tariffs for Infrastructure or Services).
 - (ii) Where an effective Tariff for an Infrastructure or Service restricts resale or use as an input, upon request by a Market Player, the Market Player with Significant Market Power must, within a reasonable time period, file a Tariff that allows the Market Player to purchase the Infrastructure or Service on the same (or, at the request of the Market Player seeking to acquire the Infrastructure or Service, on substantially equivalent) prices, terms and conditions as End Users and/or Customers for the purpose of resale or use as an input.
- (b) A Market Player with Significant Market Power must not require a Market Player that uses its Infrastructure or Services as an input into other Infrastructure or services to disclose that it is using the Market Player with Significant Market Power's Infrastructure or Services.

4.2.2.3 Duty to Allow Sales Agency

If a Market Player with Significant Market Power provides a commission or fee or other consideration to any other Market Player (whether or not affiliated with the Market Player with Significant Market Power) that resells any of the Market Player with Significant Market Power's Infrastructure or Services, the Market Player with Significant Market Power must, upon request, provide the same opportunity to any other Market Player on the same prices, terms and conditions.

4.3 Wholesale Infrastructure or Services

A Market Player with Significant Market Power is required to offer any Infrastructure or

Service on a wholesale basis unless waived or exempted in writing by the Authority, and:

- (a) Must offer the wholesale Infrastructure or Service at prices, terms and conditions that are reasonable and non-discriminatory;
- (b) Must allow any Market Player to purchase the access to the wholesale Infrastructure, or the Service;
- (c) Must not restrict the ability of another Market Player to use the access to the wholesale Infrastructure, or the Service as an input into another Infrastructure or Service; and
- (d) Must not require the Market Player to disclose that it is using the Market Player with Significant Market Power's wholesale Infrastructure or Service as an input.

4.4 Tariff Filing, Review, Approval and Duty to Disclose

Prior to providing any Infrastructure or Services to an End User or to a Customer as the case may be, a Market Player with Significant Market Power must comply with the terms as set out in any related Advisory Guidelines, Codes of Practice or Standards of Performance issued by the Authority.

4.5 Exemption from Application of Special Provisions

4.5.1 Rationale for Exemption

A Market Player with Significant Market Power is subject to a number of special provisions in Section 4 and Section 6 of the Competition Code. The Authority recognises that as competition develops, it may no longer be necessary to apply each and every provision in Section 4 and Section 6 of the Competition Code to such a Market Player with Significant Market Power. The Authority reserves the right to not enforce any provision in the Competition Code on a Market Player with Significant Market Power at its sole discretion. The Authority may also consider requests from a Market Player with Significant Market Power to exempt them from these specific provisions. Where the Authority grants a Market Player with Significant Market Power an exemption, the Authority will issue to the Market Player with Significant Market Power a notice in writing. The Authority may additionally make this exemption public on the Authority website or by any other means of publication as the Authority considers appropriate.

4.5.2 Request for Exemption

- (a) A Market Player with Significant Market Power that seeks exemption from any special provision applicable to a Market Player with Significant Market Power must submit an application to the Authority that identifies the specific provisions of the Competition Code from which the Market Player with Significant Market Power seeks exemption.
- (b) The Market Player with Significant Market Power must demonstrate with clear supporting information, documents and data that the continued application of the provision to specific Infrastructure or Services is not necessary to protect End Users and/or Customers or to promote and preserve effective competition amongst Market Players. The Market Player with Significant Market Power must provide verifiable data to support its request.

- (c) The Authority may provide Market Players with a prescribed format for the Request for Exemption.

4.5.3 Review by the Authority

- (a) The Authority will not accept a Request for Exemption from any provision applicable to a Market Player with Significant Market Power until the Market Player with Significant Market Power has provided the information required under Section 4.6 of the Competition Code. After receiving a Request for Exemption, the Authority will notify the Market Player with Significant Market Power whether it must provide additional information before the request can be accepted. The Authority will notify the Market Player with Significant Market Power of the date on which it accepts the request. The Authority will review all information submitted pursuant to this Section and notify the Market Player with Significant Market Power of its decision on the request and the effective date of such decision.
- (b) In each case, the Authority will seek to issue its decision within ninety (90) Working Days from the acceptance date of Request for Exemption. The Authority may grant the request in full or in part, and subject to any appropriate condition that the Authority may impose. Where appropriate, the Authority may extend the time by which the Authority will issue its decision by providing a written notice to the Market Player with Significant Market Power before the end of the ninety (90) Working Day period.

4.6 Evidence to be Considered

A party seeking to demonstrate that a Market Player should, or should not, be reclassified as having Significant Market Power, and a Market Player with Significant Market Power seeking exemption from any special provision applicable to a Market Player with Significant Market Power, must submit direct and objective evidence, including all relevant supporting information, documents and data. Such evidence should include:

4.6.1 Ability of Competing Market Players to Replicate Infrastructure or Services

A party seeking to demonstrate whether or not a Market Player meets the conditions specified in Section 2.1.2 of the Competition Code, and a Market Player with Significant Market Power seeking to be exempted from the application of any special provision applicable to Market Players with Significant Market Power in connection with a specific Infrastructure or Services, should submit verifiable data regarding:

- (a) The Infrastructure or Services deployed by the Market Player in Brunei Darussalam that is the subject of the application;
- (b) The cost to a new entrant to deploy Infrastructure or Services that perform a comparable function;
- (c) The extent to which such Infrastructure or Services are commercially available;
- (d) The extent to which there are technical, economic or regulatory obstacles to the competitive deployment of such Infrastructure or Services; and

- (e) The extent to which competitive deployment has occurred and is likely to occur within the foreseeable future.

4.6.2 Ability of Market Player to Exercise Significant Market Power

A party seeking to demonstrate whether or not a Market Player meets the conditions specified in Section 2.1.2 of the Competition Code, and a Market Player with Significant Market Power seeking an exemption from any special provision applicable to Market Players with Significant Market Power in connection with a specific Infrastructure or Service, should submit verifiable data regarding the Market Player's ability to exercise Significant Market Power. This should generally include:

- (a) The relevant market(s) in which the Market Player operates or provides, or both operates and provides, the Infrastructure or Services, and the basis on which the Market Player has formed this opinion;
- (b) The number of participants in the relevant market;
- (c) The Market Player's Market Share in the relevant market;
- (d) The estimated Market Shares of other major market participants;
- (e) The level of concentration in the market;
- (f) The barriers to entry into the market;
- (g) The likelihood of timely and sufficient increases in output (either through new entry or the provision of additional Infrastructure or Services being added to the relevant market) in response to a significant and non-transitory price increase by the Market Player;
- (h) The likelihood that End User or Customer would respond to a significant and non-transitory price increase by switching to a Competing Market Player;
- (i) Evidence of actual market competition, including new entry, changes in market share over time, price changes, introduction of new infrastructure or services and non-price competition; and
- (j) Any other relevant factors that could enhance or diminish the Market Player with Significant Market Power's ability to act anti-competitively.

5. REQUIRED COOPERATION AMONGST MARKET PLAYERS TO PROMOTE COMPETITION

5.1 Introduction

5.1.1 Application

All provisions in this Section apply to Market Players who provide Infrastructure. All provisions in this Section 5, save for Sections 5.4.1, 5.4.2, 5.4.3, 5.7.5 and 5.7.6, apply to Market Players who provide Services.

5.1.2 Overview

In order to ensure the deployment of an integrated network or networks that provides seamless access for any Infrastructure or Services throughout Brunei Darussalam, Market Players are required to co-operate with each other in the manner specified in this Section.

5.2 Duty to Interconnect with Other Market Players

Market Players have a duty to interconnect with other Market Players. Interconnection may be either direct or indirect. The Authority generally will not involve itself in interconnection negotiations between Market Players without Significant Market Power. In the event of a breakdown of interconnection negotiations between Market Players without Significant Market Power, the relevant Market Players may approach the Authority for a resolution of the negotiations. The Authority may elect to assist the relevant Market Players in reaching a resolution at its sole discretion.

5.3 Duty to Submit to the Authority All Interconnection Agreements

- (a) Every Interconnection Agreement must be in writing.
- (b) Market Players must submit to the Authority a copy of all duly executed Interconnection Agreements into which they enter:
 - (i) Where one of the parties is a Market Player with Significant Market Power, the Interconnection Agreement must provide that the Interconnection Agreement will not be effective until approved by the Authority.
 - (ii) Where neither party is a Market Player with Significant Market Power, the Market Players may provide that their Interconnection Agreement will be effective upon submission to the Authority. If the Market Players include such a provision, they must further provide that the Interconnection Agreement will remain effective unless the Authority informs the Market Players that it rejects the Interconnection Agreement in accordance with Sub-section (c). If the Market Players do not want to include the above provisions, they must provide that their Interconnection Agreement will not be effective until approved by the Authority.
- (c) For an Interconnection Agreement where neither party is a Market Player with Significant Market Power, the Authority may within twenty-one (21) Working Days of the date of submission, approve or reject the Interconnection Agreement or require the Market Players to provide additional information within such time specified by the Authority. Where the Authority requires additional information, the review period shall be extended by another twenty-one (21) Working Days from the date on which complete information is provided to the Authority. If the Authority does not take any action upon expiry of the review period, the Interconnection Agreement shall be deemed to be approved. Where the Market Players fail to provide complete information to the Authority within the specified time, the Authority may reject the Interconnection Agreement. The process for review of Interconnection Agreements where one of the parties is a Market Player with Significant Market Power is set out in Section 6.4 of the Competition Code.
- (d) The Authority will not publicly disclose Interconnection Agreements that are made between Market Players without Significant Market Power.

5.4 Minimum Duties for Interconnection Agreements

5.4.1 Changes and Rejection of Interconnection Agreements

- (a) Where neither party is a Market Player with Significant Market Power, the Authority will not reject any Interconnection Agreement that fulfils the Minimum Interconnection Duties specified in Sections 5.4.1 through 5.4.8 of the Competition Code (additional requirements applicable to Interconnection Agreements involving a Market Player with Significant Market Power are contained in Section 6 of the Competition Code).
- (b) In any case in which the Authority rejects an Interconnection Agreement, the Authority will direct the Market Players to make the necessary changes.
- (c) Where one of the Market Players is a Market Player with Significant Market Power, the Market Players must make the required changes, unless both Market Players agree to withdraw the Interconnection Agreement. Where neither of the Market Players is a Market Player with Significant Market Power, the Market Players must make the required changes, unless either Market Player determines that it wants to withdraw the Interconnection Agreement.

5.4.2 Duty to Provide Non-Discriminatory Interconnection Quality

Where the Interconnection Agreement obligates a Market Player, engaged in the provision of Infrastructure, to provide direct interconnection to another Market Player, unless the Market Players expressly agree otherwise, the Interconnection Agreement must provide that the Market Player will provide sufficient points of interconnection to its Infrastructure and take other measures to ensure that, on a service-by-service basis, the services that the Market Player provides to other Market Players pursuant to any Interconnection Agreement are at least equivalent in quality to the quality that the Market Player provides to itself, its Affiliates, or any other Market Player.

5.4.3 Duty to Prevent Harm to the Network

Where the Interconnection Agreement obligates a Market Player engaged in the provision of Infrastructure to directly interconnect with another Market Player, the Interconnection Agreement must provide that the interconnecting Market Players will take reasonable measures to ensure that the interconnection does not cause physical or technical harm to each other's network.

5.4.4 Duty to Provide Billing Information

The Interconnection Agreement must provide that the Market Players will provide each other with information within their possession that is necessary to allow them to provide accurate and timely billing to each other and to any other Market Player.

5.4.5 Duty to Preserve Confidential Information Provided by Other Market Players

The Interconnection Agreement must provide that each Market Player will:

- (a) Protect from disclosure any confidential or proprietary information

provided by the other Market Player in the course of negotiating or implementing an Interconnection Agreement;

- (b) Use such information only for the provision of the specific interconnection related services requested by the other Market Player; and
- (c) Adopt appropriate procedures to ensure that the information is not used for the development or marketing of other unrelated Infrastructure or Services by the Market Player, its Affiliates or third parties.

5.4.6 Duty to Obtain the Authority's Approval for Suspension or Termination

- (a) The Interconnection Agreement must include a statement of the bases, if any, for which unilateral suspension or termination will be permitted. This may include situations where:
 - (i) One party has materially breached the agreement including, but not limited to, repeated failure to make required payments;
 - (ii) One party has become insolvent;
 - (iii) Continued operation of the agreement would be unlawful; or
 - (iv) Continued operation of the agreement would pose an imminent threat to life or property.
- (b) The Interconnection Agreement also must provide that any unilateral suspension or termination, unless by operation of law, will only become effective when, and to the extent that it is approved by the Authority.

5.4.7 Duty to Amend

The Interconnection Agreement must provide that the Market Players will amend the Interconnection Agreement to incorporate any additional or modified Minimum Interconnection Duties that the Authority may require during the term of the Interconnection Agreement.

5.4.8 Duty to Comply with the Laws of Brunei Darussalam

The Interconnection Agreement must provide that it will be governed by the laws of Brunei Darussalam.

5.5 Enforcement of Interconnection Agreements

Once an Interconnection Agreement becomes effective, the Authority generally will not involve itself in the day-to-day implementation of the Interconnection Agreement.

5.5.1 Duty to Co-operate

Market Players have a duty to co-operate, in good faith and in a commercially reasonable manner, in implementing the terms of their Interconnection Agreements, avoiding unnecessary disputes and resolving disputes promptly and fairly.

5.5.2 Private Enforcement

Interconnection Agreements are private contracts between the Market Players. The Authority will not resolve disputes arising out of Interconnection Agreements between Market Players without Significant Market Power. If the Market Players

without Significant Market Power are unable to resolve any dispute regarding the implementation of their Interconnection Agreements, they may agree to binding arbitration or may seek relief from a court of competent jurisdiction. However, to the extent that the dispute turns on an interpretation of the Telecommunications Order 2001, or any subsidiary legislation made under it, any decision of the Authority, or any provision of the Competition Code, the Market Players without Significant Market Power may ask the Authority to provide an interpretation.

5.6 Modification, Suspension or Termination of Interconnection Agreements

Whilst Interconnection Agreements will generally remain effective throughout their specified term, the Authority recognises that there may be situations in which the parties will agree to modify, suspend or terminate such Interconnection Agreements.

5.6.1 Modification, Suspension or Termination by Mutual Agreement

The following provisions govern the modification, suspension or termination of Interconnection Agreements by mutual agreement:

5.6.1.1 Modification by Mutual Agreement

- (a) An Interconnection Agreement may be modified at any time by mutual agreement of the Market Players:
 - (i) Where one of the parties is a Market Player with Significant Market Power, the Market Player must provide that the modification will not be effective unless approved by the Authority.
 - (ii) Where neither party is a Market Player with Significant Market Power, the Market Players may provide that the modification will be effective upon submission to the Authority. If the Market Players include such a provision, they must further provide that the modification will remain effective unless the Authority informs the Market Players in accordance with Sub-section (b) that either the Interconnection Agreement, as modified, no longer complies with the Minimum Interconnection Duties specified in Sections 5.4 through 5.4.8 of the Competition Code, or the modification is rejected. If the Market Players do not want to include the above provision, they must provide that the modification will not be effective unless approved by the Authority.
- (b) For an Interconnection Agreement where neither party is a Market Player with Significant Market Power, the Authority may within forty-five (45) Working Days of the date of submission, reject the modification or require the Market Players to provide additional information within such time specified by the Authority. Where the Authority requires additional information, the review period shall be extended by another twenty-one (21) Working Days from the date on which complete information is provided to the Authority. If the Authority does not take any

action upon expiry of the review period, the modification shall be deemed approved. Where the Market Players fail to provide complete information to the Authority within the specified time, the Authority may reject the modification.

- (c) Where the Authority rejects a modification, it may direct the Market Players to make the necessary changes. Where one of the Market Players is a Market Player with Significant Market Power, the Market Players must make the required changes, unless both Market Players agree to withdraw the modification. Where neither of the Market Players is a Market Player with Significant Market Power, the Market Players must make the required changes, unless either Market Player determines that it wants to withdraw the modification.

5.6.1.2 Suspension or Termination by Mutual Agreement

An Interconnection Agreement may be suspended or terminated at any time by the mutual agreement of the Market Players. Upon any such suspension or termination, the Market Players must notify the Authority in writing of the suspension or termination, and provide the reasons for the suspension or termination, within five (5) Working Days of such suspension or termination.

5.6.2 Unilateral Suspension or Termination of Interconnection Agreements

Except where imminent threats to life or property or compliance with other legal or regulatory obligations require immediate action, prior to unilaterally suspending or terminating an Interconnection Agreement, the Market Player that seeks to take such action must seek the Authority's written approval of the action it proposes to take and provide the reason why it believes such action is appropriate. Upon reviewing such proposal, the Authority will provide the other Market Player with an opportunity to submit its views regarding the proposed suspension or termination of the Interconnection Agreement. The Authority will within forty-five (45) Working Days of the initial notification, issue its decision, granting or denying, in whole or in part, the request or require the Market Players to provide additional information within such time specified by the Authority. Where the Authority requires additional information, the review period shall be extended by another twenty-one (21) Working Days from the date on which complete information is provided to the Authority. Any unilateral suspension or termination will only become effective when, and to the extent that, it is approved by the Authority.

5.7 Other Duties

5.7.1 Duty to Disclose Information on Interfaces

A Market Player must make publicly available, in a clear format and in sufficient detail, information on all physical and logical interfaces of its Infrastructure or Services as reasonably necessary to allow the development and deployment of other Infrastructure or Services or equipment that can interconnect to, and

interoperate with, that Market Player's network. A Market Player must also make publicly available, not less than six (6) months prior to deployment, information on any change in logical or physical interfaces that could materially affect existing interconnection arrangements. A Market Player must not disclose this information to any Affiliate, whether licensed or not, prior to the time that the Market Player makes this information available to the public.

5.7.2 Duty to Comply with Mandatory Technical Standards

Market Players must comply, within a reasonable period, with any applicable mandatory technical standard adopted by the Authority. In the absence of any standards adopted by the Authority, Market Players may provide any service or deploy any equipment that complies with a technical standard adopted by an official standards setting body, or that complies with an established industry specification or has been deployed by another Market Player without resulting in operational or other harm.

5.7.3 Duty to Facilitate Change of Service Providers

Market Players must take any reasonable action necessary to allow an End User or Customer that chooses to switch the provider of any Infrastructure or Services to do so with minimum difficulty.

5.7.4 Duty to Assist in the Provision of Integrated Directories and Directory Enquiry Service

A Market Player that provides voice telephony service over a fixed line network must exchange the names, addresses and telephone numbers of its End Users with other fixed line Market Players for the purpose of providing integrated directories and directory enquiry service in accordance with any relevant data protection laws, rules or regulations applicable to the Market Player. Market Players must update this information periodically. Market Players receiving this information may use it solely for the purpose of providing integrated directories or directory enquiry services; Market Players may not use this information for marketing or other competitive purposes.

5.7.5 Duty to Reject Discriminatory Preferences Regarding Infrastructure

- (a) A Market Player that is affiliated, directly or indirectly, with a non-licensed entity that controls Infrastructure such as towers, ducts or similar Infrastructure may not request or accept access to that Infrastructure and any related services on prices, terms and conditions that are not available to other Market Players.
- (b) The Authority reserves the power to designate as a Market Player, such a non-licensed entity which is affiliated to a Market Player and provides that Market Player with Infrastructure, and to require the so designated non-licensed entity to make available the Infrastructure to all other Market Players on such terms and conditions as the Authority deems appropriate.

5.7.6 Duty to Reject Discriminatory Preferences Regarding Space and Support at End User Premises

A Market Player providing Infrastructure may not request or accept any special preference from a building owner or manager regarding the provision of space or support Infrastructure for the Market Player's Infrastructure, where such preference would as a practical matter preclude additional Market Players from providing competing services to the building occupants. In addition, a Market Player that places in the common space of a building equipment used to operate or provide, or both operate and provide, any Infrastructure must, upon request from another Market Player that wants to place its equipment in the same space, take reasonable measures to allow the other Market Player to share the available space, when necessary to allow the competitive operation or provision of Services. This may include reconfiguring its equipment in a manner that optimises the use of the common space.

6. INTERCONNECTION WITH MARKET PLAYERS WITH SIGNIFICANT MARKET POWER

6.1 Introduction

6.1.1 Application

This Section applies to Market Players with or without Significant Market Power, save that Section 6.3 does not apply to Market Players without Significant Market Power.

6.1.2 Overview

The Authority strongly encourages Market Players to enter into Interconnection Agreements through arms-length commercial negotiations. The Authority recognises, however, that it cannot rely solely on market forces to ensure that Market Players with Significant Market Power enter into Interconnection Agreements. The Authority, therefore, will take a more active role in ensuring the adoption of reasonable, competitive, transparent and non-discriminatory Interconnection Agreements involving a Market Player with Significant Market Power.

6.2 Options for Entering into an Interconnection Agreement

Unless a waiver is granted by the Authority, Market Players must enter into an Interconnection Agreement in the following order:

6.2.1 Option 1: Interconnection Pursuant to an Approved Reference Interconnection Offer

A requesting Market Player may obtain Interconnection Related Services and Mandated Wholesale Services from a Market Player with Significant Market Power on the terms specified in the RIO developed by the Market Player with Significant Market Power and approved by the Authority. The Market Player with Significant Market Power must offer the RIO for a period of three (3) years. By notice on the Authority's website or by any other means of publication as the Authority considers appropriate. The Authority will specify the commencement

date for the three (3) year period. Thereafter, prior to the expiry of the three (3) year period, the Authority may by notice on the Authority's website or by any other means of publication as the Authority considers appropriate, specify any further three (3) year period for which the Market Player with Significant Market Power must offer the RIO to requesting Market Players. The general requirements of the RIO are specified in Sections 6.3.1 to 6.3.5 of the Competition Code. The Authority may require the Market Player with Significant Market Power to modify the RIO prior to the expiry of the three (3) year period following a review of the Competition Code pursuant to Section 1.7 of the Competition Code at any appropriate interval.

6.2.2 Option 2: Interconnection Pursuant to an Existing Interconnection Agreement

A Market Player may obtain Interconnection Related Services and Mandated Wholesale Services from a Market Player with Significant Market Power on the same prices, terms and conditions that the Market Player with Significant Market Power has agreed to with another similarly situated Market Player in any Interconnection Agreement. For the purposes of this Section, a Market Player who provides Services and a Market Player who provides Infrastructure will not be deemed to be similarly situated. The Interconnection Agreement between the requesting Market Player and the Market Player with Significant Market Power will terminate on the day the agreement that the requesting Market Player opted-into, terminates.

6.2.3 Option 3: Interconnection Pursuant to an Individualised Interconnection Agreement

A Market Player may obtain Interconnection Related Services and Mandated Wholesale Services from a Market Player with Significant Market Power pursuant to the prices, terms and conditions of an Individualised Interconnection Agreement between the two (2) interconnecting parties. Such agreements may be arrived at through voluntary negotiations or via the dispute resolution process specified in Sections 6.4.3.1 through 6.4.3.3 of the Competition Code.

6.3 The Reference Interconnection Offer

The following provisions govern a Market Player with Significant Market Power's RIO.

6.3.1 Duty to Develop a Reference Interconnection Offer

Within sixty (60) Working Days of a Market Player being designated as a Market Player with Significant Market Power or within such time as directed by the Authority, Market Players with Significant Market Power must submit a proposed RIO to the Authority for approval.

6.3.2 Infrastructure or Services that must be offered under a RIO

(a) The Authority will specify as appropriate the Interconnection Related Services, and Mandated Wholesale Services that the Market Player with Significant Market Power must offer under the RIO, and their applicable requirements by which the Market Player with Significant Market Power

must provide such Infrastructure or Services. The Authority may specify a limited period during which the Market Player with Significant Market Power must offer these services.

- (b) The Authority may, at any appropriate time, review and revise (by adding to, eliminating from or modifying) the list of Interconnection Related Services and Mandated Wholesale Services, and their applicable requirements. In each case, the Authority may seek public comment prior to adopting any modification.
- (c) The Authority will require a Market Player with Significant Market Power to offer Interconnection Related Services or any Services as a Mandated Wholesale Service if the Authority concludes that:
 - (i) The Infrastructure or Services is a necessary input for the provision of competitive Infrastructure or Services in Brunei Darussalam; and
 - (ii) Providing the Infrastructure or Services is sufficiently costly or difficult that requiring other Market Players to do so would create a significant barrier to the provision of competitive Services in Brunei Darussalam by an efficient Competing Market Player.

6.3.3 Substantive Requirements of RIO

The RIO must comply with the following substantive requirements:

6.3.3.1 Absolute Prohibition on Discrimination

A Market Player with Significant Market Power must provide all Interconnection Related Services and Mandated Wholesale Services to requesting Market Players on prices, terms and conditions that are no less favourable than the prices, terms and conditions on which it provides comparable services to itself, its Affiliates or other End Users or Customers.

6.3.3.2 RIO must be Clear, Complete and Modular

- (a) The RIO must:
 - (i) Contain a comprehensive and complete written statement of the prices, terms and conditions on which the Market Player with Significant Market Power is prepared to provide Interconnection Related Services and Mandated Wholesale Services to any requesting Market Player (including a complete technical description of the Interconnection Related Services and Mandated Wholesale Services offered, the procedures that will be used to order and provide such services, and the timeframes that will apply);
 - (ii) Be clearly written in English or such other language as the Authority may direct and organised in a logical and consistent manner;
 - (iii) Be modular, allowing a requesting Market Player to

- purchase only those Interconnection Related Services and Mandated Wholesale Services that it wants to obtain;
- (iv) Be sufficiently detailed to enable a requesting Market Player that is willing to accept its prices, terms and conditions to obtain Interconnection Related Services and Mandated Wholesale Services without having to engage in negotiations with the Market Player with Significant Market Power; and
 - (v) Comply with the specific requirements as may be determined by the Authority.
- (b) If a requesting Market Player accepts the RIO, further discussions will be limited to implementing the accepted prices, terms and conditions.

6.3.3.3 Additional Required Terms

In addition, the RIO must contain the following:

- (a) A provision for interconnection, including physical or virtual connections, or both, at any technically feasible location in the Market Player's network, using its best efforts;
- (b) A provision for access to such Critical Support Infrastructure as specified in Section 7.3.1 of the Competition Code, and co-location where feasible, including all virtual connection options. Any claims of technical, space or capacity limitation to provide such access or co-location must be verified by the Authority. The Authority will not deem an Infrastructure to be Critical Support Infrastructure based solely on evidence that allowing a Market Player that wants to share the infrastructure would reduce its costs, or allow it to provide Services more expediently. The Authority will only deem the Infrastructure as Critical Support Infrastructure if it concludes that:
 - (i) The Infrastructure is required to provide Services;
 - (ii) An efficient new entrant would neither be able to replicate the Infrastructure within the foreseeable future, nor obtain it from a third-party through a commercial transaction, at a cost that would allow market entry;
 - (iii) The Market Player that controls the Infrastructure has no legitimate justification for refusing to share the Infrastructure with other Market Players; and
 - (iv) Failure to share the Infrastructure would unreasonably restrict competition in any telecommunications market in Brunei Darussalam;
- (c) A description of the quality of service, which must meet the requirements of the Authority, that the Market Player with

Significant Market Power will provide, including the means by which quality of service will be measured, the timeframe within which any short-comings will be corrected, and the amount and manner in which the requesting Market Player will be compensated for any failure by the Market Player with Significant Market Power to meet the quality of service standards;

- (d) A description of any operational and technical requirements that the requesting Market Player must comply with to avoid harm to the Market Player with Significant Market Power's network;
- (e) A description of the means by which the Market Player with Significant Market Power will provide information (including call type, duration, and points of origination and termination) necessary to allow the requesting Market Player to bill for Services that it provides to its End Users;
- (f) A statement of the terms on which the Market Player with Significant Market Power will protect confidential information provided by the requesting Market Player, and the terms on which the Market Player with Significant Market Power requires the requesting Market Player to protect its confidential information, in connection with any Interconnection Agreement, including a description of the standards to be used to determine whether information is confidential;
- (g) A description of the means by which the Market Player with Significant Market Power will work with the requesting Market Player to enable the former's End Users to keep their current telephone numbers or network addresses if they switch to the Services provided by the requesting Market Player;
- (h) A description of the means by which a requesting Market Player can order currently available Interconnection Related Services and Mandated Wholesale Services on an unbundled basis, including the contact person, the expected number of days from order to provisioning, the means by which provisioning will be monitored (including quality of service testing procedures), the procedures for reporting operational and technical problems, the procedures and timeframes for correcting any such problems, and the amount and means by which the Market Player with Significant Market Power will compensate the requesting Market Player for any unreasonable provisioning delays;

- (i) Where applicable, information regarding the availability of Interconnection Related Services, including the address of each exchange, the geographical boundaries of the area served by each exchange, the extent to which copper loops or fibre or such other relevant technology are available at each exchange, and the procedures that the Market Player with Significant Market Power will use to notify the requesting Market Player in the event any Interconnection Related Services ceases to become available at any location;
- (j) The means by which the requesting Market Player can request additional Interconnection Related Services not currently specified in the RIO, including the timeframe, procedures, processes and standards that the Market Player with Significant Market Power will use to assess such requests;
- (k) A list and description of any reasonable restriction or condition that the Market Player with Significant Market Power intends to impose on the terms of the offer contained in the RIO, including any situations in which capacity, technical or operational constraints will limit the ability of the Market Player with Significant Market Power to meet requests for Interconnection Related Services and Mandated Wholesale Services, and any situation in which a Market Player with Significant Market Power will not offer (or will limit or condition an offer of) interconnection to a Market Player or class of Market Players;
- (l) A provision stating that the Market Players will refer disputes regarding interconnection arising from the implementation of the Interconnection Agreement to the Authority for resolution and will seek the Authority's written approval before unilaterally suspending or terminating the Interconnection Agreement; and
- (m) Provisions that:
 - (i) If the RIO is accepted, the Interconnection Agreement will constitute the entire agreement between the Market Player with the Significant Market Power and the requesting Market Players;
 - (ii) If any provision of the Interconnection Agreement is held to be unlawful or is required to be amended, all other provisions of the agreement will survive;
 - (iii) Any disputes between the Market Players will be governed by the laws of Brunei Darussalam, including the Competition Code;
 - (iv) The Market Player with Significant Market Power will not unreasonably withhold consent from a Market Player seeking to assign its rights and obligations to

- another Market Player; and
- (v) Any other provision required to be included in an Interconnection Agreement to satisfy the Minimum Interconnection Duties specified in Section 5.4 of the Competition Code.

6.3.4 Pricing of Interconnection Related Services and Mandated Wholesale Services

Market Players with Significant Market Power must use the pricing methodologies specified in any related Advisory Guidelines, Codes of Practice or Standards of Performance issued by the Authority.

6.3.5 Modification and Duration of Reference Interconnection Offer

The Market Player with Significant Market Power must provide that:

- (a) Unless the Authority authorises the Market Player with Significant Market Power to withdraw its RIO and terminate any Interconnection Agreement adopted pursuant to its RIO, any Interconnection Agreement arrived at by accepting the RIO shall be effective for such period as the Market Player with Significant Market Power is required to offer the RIO to requesting Market Players under Section 6.2.1 of the Competition Code; and
- (b) The prices, terms and conditions contained in any Interconnection Agreement arrived at by accepting the RIO will be effective for the duration of the Interconnection Agreement unless either:
 - (i) The Market Players with Significant Market Power and requesting Market Players agree to modify their Interconnection Agreement pursuant to Section 5.6.1.1 of the Competition Code, in which case the parties' Interconnection Agreement will be treated as an Individualised Interconnection Agreement for the purposes of the Competition Code;
 - (ii) The Authority directs the Market Player with Significant Market Power to modify any provision of its RIO, or approves a modification proposed by the Market Player with Significant Market Power, in which case the Market Players must amend the Interconnection Agreement to conform to the modifications in the RIO; or
 - (iii) The Market Player is reclassified as no longer being a Market Player with Significant Market Power.

6.3.6 The Authority Review of the Proposed RIO

- (a) The Authority will review the proposed RIO to determine whether it satisfies the requirements specified in Sections 6.3.2 through 6.3.5 of the Competition Code including such other requirements as may be

specified from time to time by the Authority pursuant to Section 6.3.2 of the Competition Code, and serves the public interest. The Authority may seek public comments regarding the proposed RIO, which must be filed within thirty (30) Working Days from the date on which the Authority seeks comments. Within sixty (60) Working Days from the date on which the Authority receives the proposed RIO, the Authority will notify the Market Player with Significant Market Power of its approval or rejection of the proposed RIO, or that the Authority requires an additional thirty (30) Working Days for its review.

- (b) If the Authority rejects any portion of the proposed RIO, it will provide the Market Player with Significant Market Power with a written explanation of the basis for the rejection and the modifications required to bring the proposed RIO into compliance with the Authority's requirements. The Market Player with Significant Market Power will have thirty (30) Working Days from the date on which the Authority provides notification to submit a revised proposed RIO that incorporates the modifications required by the Authority. The Authority will have thirty (30) Working Days from the date on which it receives the revised proposed RIO to approve the RIO or direct the Market Player with Significant Market Power to incorporate specific language.
- (c) A Market Player with Significant Market Power must notify the Authority and obtain the Authority's written approval before making any changes to its RIO.

6.3.7 Confidentiality

Within fifteen (15) Working Days of being directed to do so by the Authority, the Market Player with Significant Market Power must submit a claim for confidentiality of such proprietary or commercially sensitive information as may be contained in the RIO to be preserved.

6.4 Interconnection Pursuant to an Individualised Interconnection Agreement

A requesting Market Player may seek to enter into an Individualised Interconnection Agreement with a Market Player with Significant Market Power through voluntary negotiations, and if unable to do so, via the dispute resolution process specified in Sections 6.4.3 through 6.4.3.3 of the Competition Code.

6.4.1 The Negotiation Process

The following procedures govern the Market Players' voluntary negotiations:

6.4.1.1 Request for Negotiation

The requesting Market Player must submit to the Market Player with Significant Market Power a written request to negotiate an Individualised Interconnection Agreement. The written request must specify the Interconnection Related Services or Mandated Wholesale Services requested, a contact person and a time and place for initial negotiations.

6.4.1.2 Notification to the Authority

The requesting Market Player must submit a copy of the written request to the Authority concurrently with submitting the Request to the Market Player with Significant Market Power.

6.4.1.3 Confidentiality Agreement

The Market Players must enter into a confidentiality agreement governing the negotiation process prior to entering into any negotiation on an Individual Interconnection Agreement

6.4.1.4 Initiation of Negotiations

Unless the Market Players agree otherwise, they must begin negotiations for an Individualised Interconnection Agreement within seven (7) Working Days after entering into a confidentiality agreement.

6.4.1.5 Duty to Negotiate in Good Faith

The Market Player with Significant Market Power and the requesting Market Player each have a duty to negotiate in good faith. The Market Player with Significant Market Power must not refuse to provide any Interconnection Related Services or Mandated Wholesale Service. However, the parties may agree that the Market Player with Significant Market Power will provide these services on prices, terms and conditions that differ from those in the Market Player with Significant Market Power's RIO.

6.4.1.6 Interim Interconnection Pursuant to the RIO

At the time it submits its written request, the requesting Market Player may require the Market Player with Significant Market Power to provide interconnection pursuant to the prices, terms and conditions of the RIO, pending the outcome of the requested negotiations. The Market Players must negotiate appropriate arrangements governing the transition from the RIO to the prices, terms and conditions of their Individualised Interconnection Agreement.

6.4.1.7 Conciliation by the Authority

For the purposes of facilitating the parties' negotiation in reaching a voluntary Individualised Interconnection Agreement, the Market Players may request the Authority to provide Conciliation pursuant to Section 11.2 of the Competition Code.

6.4.2 Voluntary Agreements

The following provisions govern the adoption of an Individualised Interconnection Agreement by voluntary agreement:

6.4.2.1 Terms of Agreement

The Market Players are free to enter into an Individualised Interconnection Agreement on any mutually agreeable price, terms and conditions, provided that they satisfy the Minimum Interconnection Duties specified in Section 5.4 of the Competition Code.

6.4.2.2 Review by the Authority

- (a) The Individualised Interconnection Agreement must specify that it will be submitted to, and will not become effective, until approved by the Authority.
- (b) The Authority may within twenty-one (21) Working Days of the date of submission, reject the Individualised Interconnection Agreement or require the Market Players to provide additional information within such time specified by the Authority. Where the Authority requires additional information, the review period shall be extended by another twenty-one (21) Working Days from the date on which complete information is provided to the Authority. If the Authority does not take any action upon expiry of the review period, the Individualised Interconnection Agreement shall be deemed approved. Where the Market Players fail to provide complete information to the Authority within the specified time, the Authority may reject the Individualised Interconnection Agreement. The Authority will also reject an Individualised Interconnection Agreement if it determines that the agreement does not fulfil the Minimum Interconnection Duties specified in Section 5.4 of the Competition Code, or discriminates unreasonably against any other Market Player.
- (c) In any case in which the Authority rejects an Individualised Interconnection Agreement, it may direct the Market Players to make the necessary changes. In such cases, the Market Players must make the required changes, unless both Market Players agree to withdraw the Individualised Interconnection Agreement.

6.4.3 Agreements Arrived at via Dispute Resolution

If the Market Players with Significant Market Power and requesting Market Players fail to voluntarily reach agreement regarding the Individualised Interconnection Agreement within ninety (90) Working Days of the date on which the requesting Market Player submitted its Request, either Market Player may request the Authority to resolve the dispute pursuant to the Dispute Resolution Procedure specified in Section 11.3 of the Competition Code.

6.4.3.1 Scope of the Dispute Resolution Procedure

Provided that they satisfy the Minimum Interconnection Duties specified in Section 5.4 of the Competition Code, the Authority will not re-open

any issue on which the Market Players have reached agreement. Instead, the dispute resolution will be limited to those issues on which the Market Players are unable to reach agreement.

6.4.3.2 Standards to be Applied

Any decision resolving a dispute referred by the Market Players will require compliance with the Minimum Interconnection Duties specified in Section 5.4 of the Competition Code. To the extent that an issue in dispute is addressed by the prices, terms and conditions of the Market Player's approved RIO, the Authority will apply those provisions. To the extent that an issue in dispute is not addressed by the RIO, the Authority retains full discretion to impose any solution that it deems appropriate (including solutions not advocated by either Market Player).

6.4.3.3 Implementation of Dispute Resolution Decision by Market Players

Within fifteen (15) Working Days of the date on which the Authority issues its decision, the Market Players must submit to the Authority an Individualised Interconnection Agreement that complies with the decision. The Authority will have fifteen (15) Working Days to either approve the agreement or to direct the parties to amend the agreement by including provisions specified by the Authority that fully implement its decision.

6.5 Publication of Interconnection Agreements

All Interconnection Agreements involving a Market Player with Significant Market Power will be published by the Authority. However, the Authority may, on its own motion or at the request of either of the Market Players, withhold from publication any portion of an Interconnection Agreement if the Authority determines that it contains proprietary or commercially sensitive information.

6.6 Enforcement of Agreements

In the event of a dispute arising out of any Interconnection Agreement with a Market Player with Significant Market Power:

- (a) Both parties may request the Authority to provide Conciliation, pursuant to Section 11.2 of the Competition Code; and
- (b) Either party may request the Authority to resolve the dispute pursuant to the Dispute Resolution Procedure specified in Section 11.3 of the Competition Code. If the Authority declines to intervene, the Market Players may resolve the dispute in any mutually agreeable manner in compliance with the relevant laws of Brunei Darussalam.

7. INFRASTRUCTURE SHARING

7.1 Introduction

7.1.1 Application

All provisions in this Section apply to Market Players operating or providing access to Infrastructure.

7.1.2 Overview

In general, a Market Player is not required to share the use of any Infrastructure that it controls with its Competing Market Players. Instead, each Market Player is expected to build or lease the use of the Infrastructure that it requires. However, where the Authority finds that specific Infrastructure constitutes Critical Support Infrastructure as defined in Section 7.3.1 of the Competition Code, or where the Authority concludes that it is in the public interest and so designates a specific Infrastructure as set out in Section 7.5 of the Competition Code, the Authority may mandate that a Market Player share the use of such Infrastructure with other Market Players.

7.2 Definition of Sharing

Infrastructure sharing refers to an arrangement under which a Market Player that controls Infrastructure used to support the provision of Services allows other Market Players to jointly use the same Infrastructure, at cost-based prices, and on non-discriminatory terms and conditions.

7.3 Standards by Which the Authority Will Determine Whether to Require Sharing

The Authority will use the following standards to determine whether any Infrastructure must be shared:

7.3.1 Critical Support Infrastructure

Without prejudice to the Authority designated specific Infrastructure under Section 7.5 of the Competition Code, the Authority will require sharing of any Infrastructure that it determines is Critical Support Infrastructure. The Authority will not deem an Infrastructure to be Critical Support Infrastructure based solely on evidence that allowing a Market Player that wants to share the infrastructure would reduce its costs, or allow it to provide Services more expediently. The Authority will only deem the Infrastructure as Critical Support Infrastructure if it concludes that:

- (a) The Infrastructure is required to provide Services;
- (b) An efficient new entrant would neither be able to replicate the Infrastructure within the foreseeable future, nor obtain it from a third-party through a commercial transaction, at a cost that would allow market entry;
- (c) The Market Player that controls the Infrastructure has no legitimate justification for refusing to share the Infrastructure with other Market Players; and
- (d) Failure to share the Infrastructure would unreasonably restrict competition in any telecommunications market in Brunei Darussalam.

7.3.2 Public Interest

The Authority may require the sharing of such Infrastructure, whether or not such Infrastructure constitutes Critical Support Infrastructure, if the Authority:

- (a) Determines that such sharing is in the public interest; or
- (b) In consultation with other government agencies, determines that such sharing is appropriate.

7.4 Procedures for Requesting Sharing

Procedures for requesting sharing are set out in any such Advisory Guidelines, Codes of Practice or Standards of Performance issued by the Authority from time to time.

7.5 Designation by the Authority of Infrastructure that Must Be Shared

- (a) The Authority may, on its own initiative, designate Infrastructure, including Critical Support Infrastructure, as Infrastructure that must be shared if the Authority determines that the standards specified in Section 7.3.1 or 7.3.2 of the Competition Code are met. Prior to designating Infrastructure as Infrastructure that must be shared, the Authority may seek public comment. The Authority will provide notification as to the specific Infrastructure that must be shared, and the basis on which sharing is imposed.
- (b) The Authority will specify the full list of designated Infrastructure on its website. This list may be updated and modified from time to time.

7.6 Implementation of Decisions of the Authority

The following procedures must be used to implement the Authority's decision or designation:

7.6.1 Voluntary Negotiations

Once the Authority has decided or designated a specific Infrastructure to be shared, the Market Player that controls such Infrastructure must, upon a Negotiation Request being made by any Market Player, negotiate a Sharing Agreement. The parties must negotiate in good faith.

7.6.2 Dispute Resolution Procedure

If the Market Players are unable to reach a mutually acceptable Sharing Agreement within sixty (60) Working Days of the date on which the Market Player requesting sharing submitted its Negotiation Request, either Market Player may request the Authority to resolve the dispute in accordance with the Dispute Resolution Procedure specified in Section 11.3 of the Competition Code. Pending resolution of the dispute, the Authority may require Infrastructure sharing on an interim basis.

7.6.3 Compensation for Sharing

Where the Market Players are not able to reach agreement regarding compensation for Infrastructure sharing, the Authority will establish cost-based, non-discriminatory rates where appropriate and following procedures as set out in such Codes of Practices as may be issued by the Authority from time to time.

8. ABUSE OF DOMINANT POSITION AND UNFAIR METHODS OF COMPETITION

8.1 Introduction

8.1.1 Application

- (a) All provisions in this Section 8 apply to all Market Players.
- (b) A Market Player that has been classified as a Market Player with Significant Market Power under Section 2 is only presumed to be dominant in relation to the provision of Infrastructure or Services for which it has been classified as a Market Player with Significant Market Power.

8.1.2 Overview

Once a Market Player has complied with the applicable provisions contained in Sections 3 through 7 of the Competition Code, the Authority generally will not intervene in a Market Player's day-to-day operations. However, Market Players must not act in a manner that can impede competition. Where this occurs, the Authority whether on its own motion, or as it deems fit upon a complaint received from an interested party, may initiate an enforcement action, pursuant to the procedures set out in Section 11 of the Competition Code. This Section provides standards that the Authority will use to determine whether a Market Player has contravened the Competition Code by abusing its dominance or by using unfair methods of competition.

8.2 Abuse of Dominant Position in Brunei Darussalam

Any conduct on the part of one or more Market Players which amounts to the abuse of a dominant position in any market within the information and communications industry is prohibited.

8.2.1 Pricing Abuses

A Market Player which is dominant in any market within the information and communications industry must not abuse its dominant position in that market by pricing Infrastructure or Services in a manner that is likely to unreasonably restrict competition. In particular, a Market Player must not engage in the following types of anti-competitive pricing:

8.2.1.1 Predatory Pricing

A Market Player that is dominant in any market within the information and communications industry must not abuse its dominant position in that market by engaging in predatory pricing. The Authority will find that the dominant Market Player has engaged in predatory pricing and, therefore, has abused its dominant position, if:

- (a) The dominant Market Player is selling its Infrastructure or Services at a price that is less than the average incremental cost;
- (b) The dominant Market Player's pricing is likely to drive efficient rivals from the market or deter future efficient rivals

- from entering the market; and
- (c) Entry barriers are so significant that, after driving rivals from the market or deterring entry, the dominant Market Player could impose an increase in prices sufficient (in amount and duration) to enable the Market Player to recoup the full amount of the loss that it incurred during the period of price cutting.

8.2.1.2 Margin Squeeze

A Market Player that is dominant in any market within the information and communications industry must not abuse its dominant position in that market by engaging in margin squeezing. The Authority will find that the dominant Market Player has engaged in margin squeezing if the dominant Market Player provides or operates any Infrastructure or Services that a downstream Market Player requires in order to provide any Infrastructure or Services, at a price that is so high that the downstream Market Player or its Affiliate could not profitably sell its Infrastructure or Services to its End Users or Customers if it were required to pass on to its End Users or Customers the full price of the Infrastructure or Services.

8.2.1.3 Cross-subsidisation

A Market Player that is dominant in any market within the information and communications industry must not abuse its dominant position in that market by engaging in cross-subsidisation. The Authority will find that the dominant Market Player has engaged in cross-subsidisation and, therefore, has abused its dominant position, if the dominant Market Player uses revenues from the provision of a Infrastructure or Services that is not subject to effective competition to cross-subsidise the price of any other Infrastructure or Services that the dominant Market Player is directly or indirectly, whether through an Affiliate or otherwise, also providing and which is subject to effective competition, where this would unreasonably restrict competition in any market within the information and communications industry.

8.2.2 Other Abuses

A Market Player that is dominant in any market within the information and communications industry is also precluded from taking any other action that abuses its dominant position in that market. In particular, a Market Player that is dominant in any market within the information and communications industry must not engage in the following practices:

8.2.2.1 Discrimination

A dominant Market Player must not engage in discrimination. The Authority will find that a dominant Market Player has engaged in discrimination, and therefore has abused its dominant position, if the dominant Market Player provides its Affiliate with access to

Infrastructure or Services on prices, terms or conditions that are more favourable than the prices, terms and conditions on which the dominant Market Player provides access to those Infrastructure or Services to non-affiliated Market Players or End Users or Customers.

8.2.2.2 Predatory Network Alteration

A dominant Market Player must not engage in predatory network alteration. The Authority will find that a dominant Market Player has engaged in predatory network alteration and, therefore, has abused its dominant position, if the dominant Market Player alters the physical or logical interfaces of its network in a manner that imposes significant costs on interconnected Market Player, absent a legitimate commercial, operational or technical justification.

8.2.2.3 Refusals to Supply or to Give Access

A dominant Market Player must not refuse to supply or give access to such scarce Infrastructure, such as the Critical Support Infrastructure mentioned in Section 7 above. The Authority will find that the dominant Market Player has abused its dominant position, if the dominant Market Player refuses to supply or give access to such scarce Infrastructure, or supplies or gives access to such scarce Infrastructure or Services at an unreasonably high price.

8.2.3 Abuses relating to Interconnection

A Market Player that is dominant in any market within the information and communications industry is also precluded from taking any other action, in relation to interconnection, that abuses its dominant position in that market. In particular, a dominant Market Player must not engage in the following practices:

- (a) Adopting technical specifications for Infrastructure or Services for the purposes of preventing or restricting interconnection or interoperability with an Infrastructure or Services of a Competing Market Player;
- (b) The use by the dominant Market Player, of information related to interconnection or other telecommunications Infrastructure or Services such as co-location, which are provided by Competing Market Players, for the purposes of competing with them; and
- (c) Providing interconnection and access on terms, conditions (including technical standards and specifications) or rates that are unreasonable, non-competitive or discriminatory, or have no regard to economic feasibility, or are bundled such that other Market Players seeking interconnection and access have to pay for Infrastructure components, or Infrastructure or Services that they do not need.

8.3 Anti-competitive Preferences

- (a) A Market Player that is affiliated with an entity that has Significant Market Power (whether in the operation or provision of any Infrastructure or Services), or that has Significant Market Power in any market for the operation or provision of any

Infrastructure or Services, is prohibited from using the market position of its Affiliate, or any of its telecommunications business, in a manner that enables it to, or is likely to enable it to, unreasonably restrict competition in any market within the information and communications industry.

- (b) In particular, a Market Player must not engage in any of the following practices:
- (i) A Market Player that uses an input, that is provided by an Affiliate that has Significant Market Power in the market for the input, that other Market Players require in order to operate or provide, or both operate and provide, any Infrastructure or Services, must not obtain the input at a price that is so high that efficient Competing Market Player who are not an Affiliate could not profitably sell their end-product if they were required to purchase the input at the same price as the Market Player.
 - (ii) A Market Player may not accept any cross-subsidisation from an Affiliate that has Significant Market Power, where this would enable the Market Player to engage in predatory pricing. The Authority will find that a Market Player has engaged in predatory pricing based on the standards specified in Section 8.2.1.1 of the Competition Code.
 - (iii) A Market Player that is affiliated with an entity that has Significant Market Power and that operates or controls Infrastructure or Services, that, as a practical matter, are necessary to provide any Infrastructure or Services, may not accept access to the Infrastructure or Services unless the Affiliate offers to the Market Player's Competing Market Players access to those Infrastructure or Services on equivalent and non-discriminatory prices, terms and conditions.

8.4 Unfair Methods of Competition

8.4.1 General Prohibition

A Market Player must not engage in unfair methods of competition. An unfair method of competition is an improper practice by which a Market Player seeks to obtain a competitive advantage for itself or an Affiliate within the information and communications industry, for reasons unrelated to the availability, price or quality of the Infrastructure or Services that the Market Player or its Affiliate offers.

8.4.2 Specific Prohibited Practices

The following practices constitute unfair methods of competition and are specifically prohibited:

8.4.2.1 Degradation of Service Availability or Quality

A Market Player must not take any action, or induce any other party to take any action, that has the effect of degrading the availability or quality of another Market Player's Infrastructure or Services, or raising the other Market Player's costs, without a legitimate business, operational or technical justification.

8.4.2.2 Provision of False or Misleading Information to Market Players

Whilst Market Players are not required to disclose proprietary or commercially sensitive information to their Competing Market Players, a Market Player must not provide information to other Market Players that is false or misleading.

8.4.2.3 Improper Use of Information Regarding a Competing Market Player's End Users or Customers

A Market Player that receives information from another Market Player about the other Market Player's End Users or Customers in order to fulfil any duty under the Competition Code must not use that information for any purpose other than the purpose for which it was provided. In particular, the Market Player must not use the information that it receives to market Infrastructure or Services to the other Market Player's End Users or Customers or otherwise interfere in the other Market Player's existing relationship with its End Users or Customers.

8.5 Penalties

In the event of any breach of this section of Competition Code, the Authority has the power to impose a financial penalty, order the infringing Market Player to cease and desist their conduct and such other enforcement measures as provided under Section 11 of the Competition Code.

9. AGREEMENTS INVOLVING MARKET PLAYERS THAT UNREASONABLY RESTRICT COMPETITION

9.1 Introduction

9.1.1 Application

All provisions in this Section apply to all Market Players.

9.1.2 Overview

Unless otherwise provided in the Competition Code, the Authority will not routinely review agreements entered into by Market Players. However, pursuant to the procedures in Section 11 of the Competition Code, the Authority may take enforcement action as it deems appropriate whether on its own motion or pursuant to a complaint received from any interested party against any Market Player that enters into an agreement with another Market Player that has the object or effect of unreasonably restricting competition in any market within the information and communications industry. While Market Players are subject to general duties as seen in Section 3 of the Competition Code, certain types of agreements are so clearly anti-competitive that the Authority will determine that a Market Player that has entered into such an agreement has contravened the Competition Code, regardless of the actual effect of the agreement. This is because such agreements are deemed to unreasonably restrict competition. The Authority will assess whether other agreements contravene the Competition Code based on their likely competitive effect.

9.2 Determining the Existence of an Agreement

- (a) For the purposes of this Section, an agreement can be established in any of the following three (3) ways:
 - (i) First, an agreement can be established through direct evidence of an express agreement, such as a signed document.
 - (ii) Second, an agreement can be established using circumstantial evidence that demonstrates the existence of an express agreement, whether formal or otherwise.
 - (iii) Finally, an agreement can be established through evidence showing tacit agreement. The Authority may find that there has been a tacit agreement if the Market Players have indirectly or directly shared price and output information, and that these devices have facilitated coordinated behaviour.
- (b) For the purposes of this Section, an arrangement between a Market Player and an Affiliate over which it can exercise effective control i.e., the ability to cause the Affiliate to take, or prevent the Affiliate from taking, a decision regarding the management and major operating decisions of the Affiliate, does not constitute an agreement. Nor does this Section restrict the ability of a Market Player to enter into an arrangement with another entity in which the second entity acts as a bona fide agent of the Market Player.

9.3 Agreements Between Market Players Providing Competing Infrastructure or Services (Horizontal Agreements)

The following provisions are applicable to Competing Market Players.

9.3.1 General Prohibition

Competing Market Players are prohibited from entering into agreements that unreasonably restrict, or are likely to unreasonably restrict, competition in any market within the information and communications industry.

9.3.2 Specific Prohibited Agreements

The following types of agreements between or amongst Competing Market Players are deemed to unreasonably restrict competition and are specifically prohibited.

9.3.2.1 Price Fixing

Competing Market Players must not enter into agreements to fix prices, regardless of the extent to which the Market Players agree to fix prices.

9.3.2.2 Output Restrictions

Competing Market Players must not enter into agreements to restrict output, regardless of the extent to which the Market Players agree to restrict output.

9.3.2.3 Bid Rigging

Competing Market Players must not enter into agreements to coordinate separate bids for assets, resources or rights auctioned by the

Authority, or for any input into the Market Players' Infrastructure or Services for the operation or provision by the Market Player of any Infrastructure or Services, regardless of the price levels to which the Market Players agree.

9.3.2.4 Market and Customer Divisions

Competing Market Players must not enter into agreements not to compete to provide any Infrastructure or Services within the information and communications industry to specific End Users or Customers or not to compete in specific areas, regardless of the terms and conditions on which the Market Players agree.

9.3.2.5 Group Boycotts

Competing Market Players must not agree to refuse to do business with a specific supplier, Competing Market Player, End User or Customer.

9.3.3 Agreements Necessary for Legitimate Collaborative Ventures

Nothing in Sections 9.3.2.1 to 9.3.2.5 of the Competition Code prohibits agreements amongst Competing Market Players that are ancillary to efficiency-enhancing integration of economic activity, where such agreements are no broader than necessary to achieve the pro-competitive benefit. For example, if Market Players establish a joint purchasing or production venture designed to increase total output and lower prices, the permissibility of an agreement between the two Market Players regarding the prices to be paid or charged by the joint venture would be assessed, pursuant to Section 9.4 of the Competition Code, based on its likely or actual competitive effect.

9.4 Agreements Between Market Players and Entities that are Not Direct Competing Market Players (Non-horizontal Agreements)

The following provisions apply to agreements between a Market Player and other entities that are not directly competing Market Players, such as suppliers or distributors:

9.4.1 General Prohibition

Market Players are prohibited from entering into agreements with other entities that are not Competing Market Players, such as suppliers or distributors, which unreasonably restrict, or are likely to unreasonably restrict, competition in any market within the information and communications industry in Brunei Darussalam.

9.4.2 Agreements That Will be Assessed Based on Competitive Effect

The permissibility of the following agreements will be based on their likely effect on competition, using the factors described in Section 9.5 below. As a general rule, the Authority will consider that non-horizontal agreements have no competitive effects when each of the Market Player party to the agreement has less than twenty-five (25) per cent Market Share in their respective markets:

9.4.2.1 Resale Price Maintenance

A Market Player must not agree with another Market Player as to the price that the second Market Player can charge End Users or Customers to which it resells the first Market Player's Infrastructure or Services, if the agreement unreasonably restricts, or is likely to unreasonably restrict, competition in any market within the information and communications industry in Brunei Darussalam.

9.4.2.2 Vertical Market Allocation

A Market Player must not assign specific End Users or Customers to, or allocate specific markets amongst, Market Players that resell its Infrastructure or Services where this unreasonably restricts, or is likely to unreasonably restrict, competition in any market within the information and communications industry in Brunei Darussalam.

9.4.2.3 Exclusive Dealing

A Market Player must not enter into an agreement in which one entity agrees to:

- (a) Supply goods or services to; or
- (b) Purchase goods or services from; or
- (c) Distribute goods or services produced by;

the Market Player on an exclusive basis, where this unreasonably restricts, or is likely to unreasonably restrict, competition in any market within the information and communications industry in Brunei Darussalam.

9.5 Agreements Between Competing Market Players will be Assessed Based on their Actual or Likely Competitive Effect

Many agreements between Competing Market Players have the potential to increase inputs used by multiple Market Players. Examples include, but are not limited to, agreements to jointly market Services or to jointly purchase inputs or to engage in joint research and development activities. If such agreements are challenged in an enforcement proceeding, the Authority will assess whether the agreements contravene the Competition Code based on their actual or likely effect on competition:

- (a) Where there is evidence that the agreement has actually unreasonably restricted competition, the Authority will find it to be in contravention of the Competition Code. This includes the types of agreements described in Sections 9.3.2.1 through 9.3.2.5 of the Competition Code. Such agreements may be excluded if there are sufficient efficiencies, to ensure that only agreements which are purely anti-competitive be subject to sanction.
- (b) Where there is no evidence of actual market effect because the agreement is relatively recent, the Authority will determine the permissibility of the agreement by seeking to assess whether it is likely to unreasonably restrict competition. In conducting this assessment, the Authority will consider the following factors:

9.5.1 The Market Share of the Parties

The Authority will generally exempt agreements between Competing Market Players that do not have an aggregate Market Share of more than twenty (20) per cent in the relevant market. This exemption does not apply to the agreements described in Sections 9.3.2.1 through 9.3.2.5 of the Competition Code.

9.5.2 Commercial Purpose of the Agreement

- (a) In reviewing an agreement, the Authority will make a preliminary assessment of its likely competitive impact i.e., the Authority will attempt to determine whether the agreement is likely to lead to a reduction in output or an increase in prices for the sale, access or interconnection with of Services and telecommunication equipment. If the agreement is between or amongst a small number of Market Players without Significant Market Power, and the commercial purpose of the agreement is shown to be to increase output and reduce prices, the Authority will generally conclude, without conducting any further analysis, that the agreement does not contravene this Section of the Competition Code.
- (b) With regard to the types of agreements described in Sections 9.3.2.1 through 9.3.2.5 of the Competition Code, the Authority will take the view that the purpose of such agreements is to unreasonably restrict competition.

9.5.3 Likelihood of Competitive Harm

- (a) Where an agreement involves a more significant number of Market Players without Significant Market Power, or a Market Player with Significant Market Power, or where an agreement has the potential to result in higher prices or reductions in the output of Infrastructure or Services within the information and communications industry in Brunei Darussalam, the Authority will conduct a more detailed assessment. In particular, the Authority will consider the following factors:
 - (i) Whether (and, if so, to what extent) the Market Players retain the ability to act independently of the agreed-upon venture;
 - (ii) The duration of the agreement;
 - (iii) Whether, in the event the Market Players acted anti-competitively, new entry into the market would be likely, sufficient and timely enough to deter or counter-act any competitive harm; and
 - (iv) Any other factors that help predict the likely competitive effect of the agreement.
- (b) If, after assessing these factors, the Authority concludes that the agreement poses no risk of competitive harm, the Authority will conclude that the agreement does not contravene the Competition Code. With regard to the types of agreements described in Sections 9.3.2.1 through 9.3.2.5 of the Competition Code, the Authority will take the view that such agreements will likely result in competitive harm.

9.5.4 Efficiencies

If the Authority's review demonstrates that the agreement has the potential

to result in a reduction in output or an increase in prices of access or interconnection to the Infrastructure or Services, the Authority will consider whether the agreement is necessary to achieve efficiencies, which are likely to be passed on to End Users and/or Customers. Such efficiencies could include reductions in the cost of operating, developing, producing, marketing or delivering any telecommunications Infrastructure or Services. If such efficiencies offset the potential anti-competitive effect, and could not reasonably be achieved through measures that reduce competition to a lesser extent, the Authority will conclude that the agreement does not contravene the Competition Code. If such efficiencies do not offset the potential anti-competitive effect, or could reasonably be achieved through measures that reduce competition to a lesser extent, the Authority will conclude that the agreement contravenes the Competition Code. With regard to the types of agreements described in Sections 9.3.2.1 through 9.3.2.5 of the Competition Code, the Authority will still consider whether there is sufficient efficiencies to offset the anti-competitive effect.

9.6 Penalties

In the event of any breach of this section of Competition Code, the Authority has the power to impose a financial penalty, order the infringing Market Player to cease and desist their conduct and such other enforcement measures as provided under Section 11 of the Competition Code.

10. MERGERS, CHANGES IN OWNERSHIP OR CONTROL, OR CONSOLIDATIONS INVOLVING MARKET PLAYERS

10.1 Introduction

10.1.1 Application

All provisions in this Section apply to all Market Players.

10.1.2 Overview

The Authority will review agreements entered into by Market Players that result in mergers, changes in ownership or Control, or Consolidations. Pursuant to the procedures in Section 11 of the Competition Code, the Authority may take enforcement action (on its own motion or pursuant to a request from an interested party) against any Market Player that enters into an agreement with another Market Player that results in mergers, changes in ownership or Control, or Consolidations if the said merger, change in ownership or Control, or Consolidation would result in a substantial lessening of competition in any relevant market in Brunei Darussalam.

10.1.3 Substantial Lessening of Competition

In determining whether a merger, change in ownership or Control, or Consolidation would result in a substantial lessening of competition, the Authority may look at the following factors:

- (a) The Market Shares of the Market Players before and after the merger or consolidation;
- (b) The imminent entry and exit of the market of a Market Player;
- (c) The possibility of increased coordinated behaviour in the market; or
- (d) Changes in the regulatory structure of the market, such as market liberalisation.

10.2 Notification of Mergers, Changes in Ownership or Control, or Consolidations Involving Market Players

Any proposed merger, change in ownership or Control, or Consolidation involving Market Players must in any event comply with the specific terms and conditions as contained in the conditions issued by the Authority, and be notified to the Authority.

10.2.1 Approval of the Authority Required

The Authority must give its approval to the proposed merger, change in ownership or Control, or Consolidation before the Market Players can conclude their proposed merger, change in ownership or Control, or Consolidation. The Authority will deny a request for approval if it determines that the proposed merger, change in ownership or Control, or Consolidation is likely to result in a substantial lessening of competition.

10.2.2 Failure to seek the Authority's Approval

Pursuant to the procedures in Section 11 of the Competition Code, the Authority may take enforcement action (on its own motion or pursuant to a request from a private party) against such Market Players that enter into a merger, change in ownership or Control, or Consolidation without first seeking the Authority's approval. This may include ordering the merger, change in ownership or Control, or Consolidation to be undone. Failure on the part of the Market Player to seek the Authority's approval would be deemed a contravention of the Competition Code and may lead to a penalty under Section 11.4 of the Competition Code.

11. ADMINISTRATIVE PROCEDURES

11.1 Introduction

11.1.1 Application

All provisions in this Section apply to all Market Players.

11.1.2 Overview

This Section describes the administrative procedures that the Authority will use to implement the Competition Code.

11.2 Conciliation

11.2.1 Request for Conciliation

Market Players may jointly request the Authority to provide conciliation to assist them in resolving any dispute arising out of the following events:

- (a) Pursuant to Section 6.4.1.7 of the Competition Code, the negotiation of a voluntary Individualised Interconnection Agreement;
- (b) Pursuant to Section 6.6 of the Competition Code, the Market Player's implementation of an Interconnection Agreement; and
- (c) Pursuant to Section 7.4.1 of the Competition Code, a Market Player's request to share Infrastructure.

11.2.2 Procedures for Requesting Conciliation

Market Players requesting conciliation must submit to the Authority a joint statement describing the disputed issues and the position of each party on the disputed issues.

11.2.3 Role of the Authority in Conciliation

The Authority will provide conciliation at its discretion. The Authority's role in any conciliation will be to assist the parties to reach a mutually acceptable solution that is consistent with the Competition Code. The Authority will not advocate any specific position or impose any solution on the parties.

11.3 Dispute Resolution Procedure

- (a) Upon request, the Authority will resolve disputes between Market Players arising from the following events:
 - (i) Pursuant to Section 6.4.3 of the Competition Code, failure to voluntarily reach an Individualised Interconnection Agreement with a Market Player with Significant Market Power; and
 - (ii) Pursuant to Section 7.6.2 of the Competition Code, failure to voluntarily reach a Sharing Agreement for the sharing of Infrastructure that the Authority has directed or designated to be shared.
- (b) The Authority may, at its discretion, resolve disputes between Market Players arising from the implementation of:
 - (i) An Interconnection Agreement entered into with a Market Player with Significant Market Power; and
 - (ii) A Sharing Agreement entered into via the Authority's dispute resolution.
- (c) Except as otherwise specified, the Authority will not intervene in other disputes relating to matters provided for in the Competition Code. Instead, Market Players are required to resolve their disputes in accordance with the dispute resolution provisions of their respective agreements, or, in the absence of any agreement, through good-faith commercial negotiations.
- (d) The procedures for requesting the Authority to resolve disputes, the process for submitting petitions and responses to the Authority by the parties in dispute and the standards that the Authority will apply to resolve disputes, are specified in such guidelines as the Authority may issue from time to time. The Authority shall have the discretion to make its decision on the basis of national or public interest, as opposed to purely on a commercial basis.

11.4 Market Study, Review for Compliance with and Enforcement Action for Contravention of the Competition Code

11.4.1 Commencing a Market Study or a Review for Compliance or an Enforcement Action

- (a) A market study, a review for compliance or an enforcement action for contravention of the Competition Code can be commenced by the Authority, either at the request of an interested party pursuant to Section 11.4.2 of the Competition Code or on its own motion pursuant to Section 11.4.3 of the Competition Code. The Authority has sole discretion to determine when and whether it will undertake a review for compliance or conduct any enforcement action.
- (b) The enforcement process is designed to provide a significant deterrent to impermissible conduct, any enforcement action taken by the Authority will be proportionate to the severity of the contravention.

11.4.2 Requests for Enforcement by an interested party

- (a) Any Market Player or End User or Customer that has been injured, or is likely to be injured, as a direct result of the contravention of any provision of the Competition Code by a Market Player, may submit a written request asking the Authority to take enforcement action against that Market Player.
- (b) Where the Authority receives two (2) or more Requests for Enforcement against the same Market Player which arise out of the same action or course of action by that Market Player, the Authority may consider the requests to take enforcement action in a single consolidated proceeding.
- (c) Without prejudice to the generality of the above Sub-section, the Authority reserves the sole right to determine whether it should proceed with enforcement action or undertake a review for compliance or a market study, without in effect commencing an enforcement action.

11.4.3 Market Study, Review for Compliance or Enforcement Action Initiated by the Authority

The Authority may commence a market study or a review for compliance or an enforcement action, whether specifically provided in any other Section of this Competition Code or otherwise, on its own initiative against a Market Player to ascertain the state of competition in the relevant market, or to ascertain if the Market Player is in compliance with all requirements of the Competition Code or where it believes that the Market Player has contravened the Competition Code.

11.4.4 Procedures for Market Study, Review for Compliance or Enforcement Action

11.4.4.1 Right of Investigation

In addition to the right to request information as set out in Section 11.4.7 of the Competition Code, the Authority's officers will be given the right where it conducts a market study, reviews for compliance or commences an enforcement action:

- (a) To require the production of any document or information as it deems necessary to aid in its review or enforcement action;
- (b) To search with warrant a Market Player's businesses and private premises and seize with warrant any record, book, financial accounts, document, computerised data or other thing which contains or is reasonably suspected to contain information as to any infringement or offence suspected to have been committed;
- (c) To search without warrant a Market Player's businesses and private premises, where the Authority's officers have reasonable cause to believe that by reason of delay in obtaining a search warrant the investigation will be adversely affected or increases the potential for evidence to be tampered, removed, damaged or destroyed. The Authority's officers may enter the premises and exercise all powers as if a warrant was issued, including such powers of search and seizure;
- (d) To require attendance of persons acquainted with the investigation or case; and
- (e) To interview and interrogate persons acquainted with the investigation or case.

11.4.4.2 Notification to Market Player of Enforcement Action

The Authority will provide a written notification to the Market Player that the Authority is initiating a market study involving, a review for compliance or an enforcement action against that Market Player. In each instance of whether a market study, a review for compliance or an enforcement action is being taken, the notification will clearly indicate the specific provisions of the Competition Code that the Authority is reviewing or believes the Market Player has contravened. In the case of an enforcement action, the notifications will describe in reasonable detail the basis for the Authority's belief, which may include the results of its investigations pursuant to Section 11.4.4.1 above.

11.4.4.3 Opportunity to Respond

The Market Player will have fifteen (15) Working Days to respond in writing to the Authority's notification. The Authority may extend this period in appropriate cases. For each query or allegation which the Market Player disputes, the Market Player's response must provide a clear statement, supported by documents, affidavits, or other relevant materials, providing the basis on which the Market Player disputes the allegation.

11.4.4.4 Request for Additional Information

After reviewing the response submitted by the Market Player, the Authority may request the Market Player to provide additional information pursuant to Section 11.4.7 of the Competition Code.

11.4.4.5 Issuance of the Authority's Decision

- (a) The Authority will carefully consider the matters set out in the responses submitted by the Market Player before issuing its decision, whether in relation to a market study, a review for compliance or an enforcement action.
- (b) In the case of an enforcement action, the Authority will seek to issue its decision within sixty (60) Working Days of receiving all necessary information required by the Authority. Where appropriate, the Authority may, by written notice to the Market Player before the expiry of the sixty (60) Working Day period, extend the time by which the Authority will issue its decision. In such cases, the Authority will specify the number of days by which it is extending the review period.
- (c) In all other cases, the Authority has the discretion to respond or to issue a decision or make public any of its findings. For avoidance of doubt, a review for compliance can be converted into an enforcement action upon due notice being provided as set out in Section 11.4.4.2 of the Competition Code.

11.4.5 Issuance of Interim Directions to Cease and Desist

At any time during an enforcement proceeding pursuant to Section 11.4.2 or 11.4.3 of the Competition Code, the Authority may issue an interim direction to a Market Player to cease and desist from any specified conduct. In determining whether to issue such an interim direction, the Authority will consider whether:

- (a) There is prima facie evidence that the Market Player has contravened the provision of the Competition Code;
- (b) Continuation of the Market Player's conduct is likely to cause serious harm to other Market Players, End Users or the general public;
- (c) The potential anti-competitive harm from allowing the Market Player to continue its conduct outweighs the burden on the Market Player of ceasing the conduct; or
- (d) Issuance of the interim direction is in the public interest.

11.4.6 Enforcement Measures

In the event that the Authority concludes that the Market Player has not complied with or has contravened any provision of the Competition Code, the Authority may take such enforcement measures as it considers appropriate, including the following enforcement measures, save that in the case of a review for compliance, no penalties can be imposed on the Market Player unless the review for compliance has been converted to an enforcement action:

11.4.6.1 Warnings

The Authority may issue a warning to the Market Player. The warning will contain a statement of the Authority's basis for concluding that the Market Player has not complied with or has acted in contravention of any provision of the Competition Code, but will impose no further sanction.

11.4.6.2 Order to Cease and Desist

Where appropriate, the Authority will order the Market Player to cease engaging in conduct that is, or if continued will constitute, a contravention of any provision of the Competition Code.

11.4.6.3 Remedial Actions

Where appropriate, the Authority will direct the Market Player to take specific remedial action or actions, which may include:

- (a) Mandating the sharing of Infrastructure or Services as applicable;
- (b) Mandating that a Market Player shares or supplies its Infrastructure or Services;
- (c) Mandating that a Market Player grants access to its Infrastructure or Services;
- (d) Mandating that the Market Player interconnects;
- (e) Issuing injunctions to stop Market Players from carrying out any activity;
- (f) To recommend that a Market Player reviews its prices, terms and conditions, including its Tariffs, and to make changes, as may be necessary;
- (g) Carrying out decisions related to the admissible changes in ownership structure; or
- (h) Mandating that a Market Player keep separate accounts for all or part of its business activities associated with the provision of Infrastructure or Services as applicable or otherwise.

11.4.6.4 Financial Penalties

- (a) Unless specific financial penalties are otherwise provided in the Competition Code, the Authority may impose financial penalties according to the Telecommunications Order, 2001 on a Market Player that infringes the Competition Code.
- (b) Generally, in determining the quantum of the financial penalty to be imposed, the Authority will consider any aggravating factors. These factors include:
 - (i) Whether the contravention was serious;
 - (ii) Whether the contravention continued for an extended period;
 - (iii) Whether the contravention resulted in harm to third parties;
 - (iv) Whether the Market Player acted wilfully, recklessly or in a grossly negligent manner;
 - (v) Whether the Market Player has a previous history of contraventions or warnings; and
 - (vi) Whether the Market Player made any effort to conceal the contravention.
- (c) The Authority will also consider any mitigating factors when determining the quantum of the financial penalty to be imposed. These factors include:

- (i) Whether the contravention was minor;
- (ii) Whether the adverse consequences to third parties from the contravention were minor;
- (iii) Whether the Market Player took prompt action to correct the contravention;
- (iv) Whether the contravention was accidental; and
- (v) Whether the Market Player voluntarily disclosed the contravention to the Authority and co-operated with the Authority in its investigation.

11.4.6.5 Suspension or Cancellation of a Licence under the Telecommunications Order, 2001

In serious cases where the Authority is satisfied that a Licensee has contravened, and is likely to again contravene, any provision of the Competition Code, the Authority may, instead of taking any of the enforcement actions specified in Section 11.4.6.1-11.4.6.4, cancel or suspend the relevant licence under the Telecommunications Order 2001.

11.4.6.6 Penalties against Individuals

- (a) The Authority may impose penalties on individuals who:
 - (i) Refuse to give access to, or assault, obstruct, hinder, or delay, an officer or employee of the Authority in the discharge of his lawful duties;
 - (ii) Wilfully misstate or without lawful excuse refuse to cooperate or give any information during an investigation;
 - (iii) Intentionally alters, suppresses, or destroys any document or information which he has been required by any order under Section 11 of this Competition Code to furnish or submit to; or
 - (iv) Fail to comply with a lawful demand of an officer or employee of the Authority in the discharge of his duties; or
 - (v) Forge any book, document or copy thereof in the possession of the person.
- (b) Such individuals shall be liable on conviction to a fine not exceeding BND 5,000, or imprisonment for a term not exceeding twelve (12) months, or both, and in the case of a continuing offence, to a further fine not exceeding BND 50 every day or part thereof during which the offence continues after conviction.

11.4.7 Request for Information

- (a) In carrying out its duties and functions under the Competition Code, the Authority may, by notice in writing, require a Market Player or other party specified in the Competition Code to produce specified documents or to provide specified information by a specified timeframe whether under

the provisions of the Competition Code or such other prevailing relevant legislation or regulation.

- (b) The Authority may also request a party to participate in an interview or require a party to allow the Authority to physically inspect its accounts, documents, records, facilities and operations.
- (c) All information submitted to the Authority by any Market Player or other party pursuant to the provisions of the Competition Code must, to the best of that Market Player's or party's ability and knowledge, be accurate, complete and responsive. At the time it submits the information, the Market Player or party must submit a statement in a form acceptable to the Authority, certifying that it has satisfied this obligation.

11.4.8 Effect of Failure to Submit Required Information

- (a) In any proceeding under the Competition Code, if a party fails or refuses to submit information required by the Competition Code or under such other prevailing relevant legislation or regulation, or requested by the Authority, within the timeframe specified, the Authority will base its decision on the information provided by any other party to the proceeding (if any) and on the best information available to the Authority from whatever source derived.
- (b) Where a party requesting the Authority to take a particular action fails to respond accurately and completely to the Authority's information request within the timeframe specified, the Authority may refuse to take the action requested.
- (c) Any failure by a Market Player to comply with the Authority's requests for information, or any destruction, disposal, falsification or concealment of requested documents, constitutes a contravention of the Competition Code for which the Authority can take enforcement action or actions pursuant to Section 11.4.6 of the Competition Code.

11.5 Treatment of Information

11.5.1 Confidential Treatment of Information

A party submitting information to the Authority, whether voluntarily, or pursuant to the requirements of the Competition Code or a request from the Authority, may request that the information submitted be treated as confidential. Where feasible, all information for which a party is seeking confidential treatment must be provided in a separate annex. Alternatively, the requesting party must identify the specific document, or portion thereof, or other information for which confidential treatment is sought.

11.5.1.1 Standards Governing Grant of Confidential Treatment of Information

- (a) The Authority will generally not accept requests to treat all information submitted as confidential. The Authority will grant a request for confidential treatment of information if the requesting party demonstrates, with reasonable specificity, that the information for which it requests confidential treatment

contains commercially sensitive information (including information that is subject to a pre-existing nondisclosure agreement with a third party), or that the disclosure of the information would have a material adverse impact.

- (b) The Authority considers information to be commercially sensitive if:
 - (i) It is not otherwise available to the public; or
 - (ii) There is a reasonable possibility that its disclosure would cause harm to the party or otherwise provide a commercial benefit to the party's Competing Market Players.
- (c) For example, information that describes the disclosing party's business procedures, practices, plans or its assessment of market conditions or similar matters may be commercially sensitive.

11.5.1.2 Notification of Denial of Confidential Treatment of Information

- (a) If the Authority rejects a request for confidential treatment of information, the Authority will provide the party that submitted the information with the reason for its decision. Within seven (7) Working Days from the date of the Authority's rejection of the request for confidential treatment of information, the requesting party may either:
 - (i) Request the Authority in writing to return the information, unless the information is otherwise generally available to the public, in which case the Authority will not have to consider such a request; or
 - (ii) Withdraw in writing its request for confidential treatment of information, in which case the Authority may consider, and where appropriate, disclose the information provided.
- (b) If the requesting party fails to do either of the above within the specified period, the Authority will deem the requesting party to have withdrawn its request for confidential treatment of information, in which case the Authority may consider, and where appropriate, disclose the information provided.
- (c) The Authority's decision not to grant confidential treatment does not excuse a party from complying fully with any obligation that it may have to provide complete and accurate information to the Authority.

11.5.2 Claiming Legal Privilege over Information

- (a) A party submitting information to the Authority, whether voluntarily, or pursuant to the requirements of the Competition Code or a request from the Authority, may claim legal privilege over the information. Parties may claim legal privilege over such information by marking the documents as privileged or creating a special folder for such emails or electronic documents.

- (b) The effect of claiming legal privilege over such information is to exclude such legally privileged materials and information from being seized or used during investigation.

11.5.2.1 Standards Governing Grant of Legal Privilege

- (a) The Authority will grant a request for claiming legal privilege if the requesting party demonstrates, with reasonable specificity, that the information for which it claims legal privilege was communication made between the requesting party and his professional legal adviser, in connection with, or in contemplation of, legal proceedings relating to the Competition Code or the Telecommunications Order, 2001.
- (b) Such professional legal advisers include:
 - (i) Lawyers in private practice;
 - (ii) Foreign lawyers, or
 - (iii) In-house lawyers.

11.5.2.2 Notification of Denial of Legal Privilege

- (a) If the Authority rejects a request for claiming legal privilege over information, the Authority will provide the party that submitted the information with the reason for its decision. Within seven (7) Working Days from the date of the Authority's rejection of the request for claiming legal privilege over information, the requesting party may either:
 - (i) Request the Authority in writing to return the information, in which case unless the information is otherwise generally available to the public, the Authority will not consider this information in relation to the proceeding; or
 - (ii) Withdraw in writing its request for claiming legal privilege over information, in which case the Authority may consider, and where appropriate, disclose the information provided.
- (b) If the requesting party fails to do either of the above within the specified period, the Authority will deem the requesting party to have withdrawn its request for claiming legal privilege over information, in which case the Authority may consider, and where appropriate disclose, the information provided.
- (c) The Authority's decision not to grant a request to claim legal privilege over information does not excuse a party from complying fully with any obligation that it may have to provide complete and accurate information to the Authority.

11.6 Application for Decision

Market Players will be able to apply to the Authority to seek a decision as to whether their agreement or conduct is, or both the agreement and conduct are, prohibited under the Competition Code. The seeking of a decision is not compulsory. The Authority may publish

Guidelines to clarify the procedure to be followed to apply for a decision.

11.6.1 Notification for Decision

- (a) A Market Player who is party to an agreement or to a conduct which the Market Player is of the view that it may infringe Sections 8 or 9 of the Competition Code, may notify the Authority of the agreement or conduct, or both, and apply to it for a decision.
- (b) On an application under this Section of the Competition Code, the Authority may make a decision as to whether or not, in its view, the agreement or conduct has, or both the agreement and conduct have, infringed Sections 8 or 9 of the Competition Code.
- (c) If an agreement or conduct, or both to which the prohibition under Sections 8 or 9 of the Competition Code applies has been notified to the Authority under this Section, no penalty shall be imposed under Sections 8 or 9 of the Competition Code in respect of any infringement of the prohibition by the agreement or conduct, or both, which occurs during the period:
 - (i) Beginning with the date on which the notification was given; and
 - (ii) Ending with such date as may be specified in a notice in writing given to the applicant by the Authority when the application has been determined.
- (d) The date specified in a notice under Sub-section (c)(ii) shall not be earlier than the date on which the notice is given.

11.6.2 Effect of Decision

- (a) This section shall apply to an agreement or conduct, or both, if the Authority has determined an application under Section 11.6.1 of the Competition Code by making a decision that the agreement or conduct has not, or both the agreement and conduct have not, infringed the prohibitions under Sections 8 or 9 of the Competition Code, regardless of whether or not such agreement or conduct is, or both the agreement and conduct are, exempted by the Authority under the Telecommunications Order 2001, or any other regulations, licences or codes of practice issued by the Authority, or any generic competition laws.
- (b) The Authority shall take no further action in relation to the prohibitions under Sections 8 or 9 of the Competition Code with respect to an agreement or conduct, or both, to which this Section applies, unless:
 - (i) It has reasonable grounds for believing that there has been a material change of circumstance since it gave its decision; or
 - (ii) It has reasonable grounds for suspecting that the information on which it based its decision was incomplete, false or misleading in a material particular.
- (c) No penalty may be imposed under Sections 8 or 9 of the Competition Code in respect of any infringement of the prohibitions under Sections 8 or 9 of the Competition Code by an agreement or conduct, or both, to which this Section applies.
- (d) The Authority may remove the immunity given by Sub-section (c) if:

- (i) It takes action under this Section with respect to the agreement or conduct, or both, in one of the circumstances mentioned in Sub-section (b);
 - (ii) It considers that it is likely that the agreement or conduct, or both, will infringe the prohibitions under Sections 8 or 9; and
 - (iii) It gives notice in writing to the party on whose application the decision was made that it is removing the immunity as from the date on which the notice is given.
- (e) If the Authority has reasonable grounds for suspecting that information:
- (i) On which it based its decision; and
 - (ii) Which was provided to it by the applicant,
- was incomplete, false or misleading in a material particular, the date specified in a notice under Sub-section (d) may be earlier than the date on which the notice is given.

11.7 Application for Leniency

- (a) Market Players will be able to apply to the Authority for leniency if they are a party to an agreement which is prohibited under Section 9 of the Competition Code.
- (b) The Authority may grant a reduction of up to a maximum of one hundred per cent (100%) of any penalties which would otherwise have been imposed, to a Market Player which has:
- (i) Admitted its involvement in an infringement of Section 9 of the Competition Code; and
 - (ii) Provided information or other form of co-operation to the Authority which significantly assisted, or is likely to significantly assist, in the identification or investigation of an infringement of Section 9 of the Competition Code by any other Market Players.
- (c) The Authority may grant different percentages of reductions to Market Players applying for leniency depending on:
- (i) Whether the Market Player was the first to bring the suspected infringement to the attention of the Authority;
 - (ii) The stage in the investigation at which an involvement in the infringement was admitted or information or other co-operation was provided; or
 - (iii) Any other circumstances which the Authority considers appropriate to have regard to.

11.8 Consultation with Other Interested Parties

In addition to obtaining information directly from the parties to a proceeding under the Competition Code, the Authority may, where appropriate, conduct a public consultation to provide interested parties with an opportunity to comment on any proceeding. In those cases, in which the Authority does not conduct a public consultation, the Authority may nonetheless request comments from individuals or entities where appropriate. The Authority does not assume any obligation to consider any unsolicited comments.

11.9 Review of the Authority's Decisions

The following procedures govern the review of the Authority's decisions under the Competition Code:

11.9.1 Right to Review

- (a) Any Aggrieved Person, or any Aggrieved Party, may, within fourteen (14) days of the day on which the Authority renders its decision or issues a direction, request the Authority to reconsider its decision or direction.
- (b) Upon the expiry of the fourteen (14) day period specified in Sub-section (a), the Authority will notify all relevant parties in the event it receives a Reconsideration Request.

11.9.2 Procedures Governing Reconsideration Request

- (a) Aggrieved Parties are expected to present all relevant facts, and all relevant arguments, before the Authority renders a decision or issues a direction. An Aggrieved Party may not present new facts, or raise new arguments, for the first time in a Reconsideration Request if the Aggrieved Party:
 - (i) Could have presented the fact, or raised the argument before the Authority rendered its decision or issued its direction; and
 - (ii) Cannot demonstrate that it had good cause for failing to do so.
- (b) The Authority generally will seek to issue its decision on the Reconsideration Request within thirty (30) Working Days of the receipt of the Reconsideration Request. In appropriate cases, the Authority may provide any interested party with an opportunity to file comments on the Reconsideration Request. In such cases, the Authority will similarly provide the Aggrieved Party that filed the Reconsideration Request with an opportunity to submit a final written response to the Authority. In such cases, the Authority will seek to issue a decision within thirty (30) Working Days of receiving all comments.

11.9.3 Appeal on the Authority's Decision on the Reconsideration Request

An Aggrieved Party may not ask the Authority to reconsider its decision or direction. However, within fourteen (14) days from the day on which the Authority issues a decision or direction having reconsidered the matter, any Aggrieved Party, may appeal the reconsidered decision or direction to the Minister.

11.9.4 Compliance Pending Review

- (a) Unless the Authority or Minister provides otherwise, where a reconsideration request is made to the Authority or an appeal is made to the Minister, the decision or direction which requires reconsideration by the Authority or which is appealed against shall be complied with until such time, if ever, as the Authority or the Minister reverses or modifies the decision or direction.
- (b) In considering whether to stay the effectiveness of a decision or direction pending review, the Authority will generally consider factors including

the merits of the Reconsideration Request or Appeal, whether the potential harm to any person outweighs the benefits of allowing the decision or direction to go into effect and public interest.

11.10 The Authority's Enforcement Actions and Decisions Cannot Be Subject to Suits

- (a) Save for the processes relating to appealing a decision by the Authority, no suit or other legal proceedings shall lie against the Authority for anything which is in good faith done or omitted to be done in the execution or purported execution of the Competition Code.
- (b) No suit or other legal proceedings shall lie personally against any member, officer or employee of the Authority or other person acting under the direction of the Authority for anything which is in good faith done or intended to be done in the execution or purported execution of the Competition Code.

12. REVOCATION, SAVINGS AND TRANSITIONAL

12.1 Introduction

12.1.1 Application

All provisions in this Section apply to all Market Players.

12.1.2 Overview

This Section sets out the savings provisions governing the implementation of the provisions of the Competition Code.

12.2 Savings Provision

Except as otherwise provided, and so far as it is not inconsistent with the provisions of the Competition Code, any action, approval, decision, designation, direction, exemption and notification taken, granted, issued, made, published or approved by the Authority in relation to any matter under the prevailing licences and/or interconnection arrangements, will continue in effect and will be deemed to have been taken, granted, issued, made, published or approved by the Authority under the corresponding provisions of the Competition Code.

12.3 General Transitional Rules

12.3.1 Status of Pre-Code Agreements

- (a) Any Pre-Code Agreement must be brought to an end within eighteen (18) months from the commencement date the Competition Code. Failure on the part of the Market Player to bring Pre-Code Agreements to an end within the required time would be deemed a contravention of the Competition Code and may lead to such consequences as the Authority deems appropriate including taking any enforcement action, such as imposing a penalty under Section 11.4 of the Competition Code.

- (b) To the extent that any Pre-Code Agreement provides that the parties will modify the Pre-Code Agreement if the Authority adopts a new code, issues a direction or takes any action that alters the rights and obligations of the Market Players regarding the matters addressed by the Pre-Code Agreement, the Authority intends that the adoption of the Competition Code and the issuance of the accompanying instructions to Market Players to comply with the Competition Code, constitutes the requisite action.

12.3.2 Contraventions Before the Commencement Date of the Competition Code

- (a) Subject to Section 12.3.3 of the Competition Code, a person will not be found to be in contravention of any provision of the Competition Code in respect of any agreement entered into, or act or conduct that occurred, before the commencement date of the Competition Code. Rather, the person shall remain liable for any contravention under the prevailing licences and/or or interconnection arrangements in respect of such agreement, act or conduct, as if the prevailing licences and/or interconnection arrangements had not been revoked.
- (b) In this respect, any enforcement proceeding commenced before the commencement date of the Competition Code may be continued and completed under the provisions of the prevailing licences and/or interconnection arrangements (as the case may be), as if the prevailing licences and/ or interconnection arrangements (as the case may be) had not been revoked. However, any right of reconsideration and appeal in relation to that proceeding shall be exercised, heard and determined under Section 11.9 of the Competition Code.
- (c) Where the enforcement action is commenced after the commencement date of the Competition Code, the procedures set out in Sections 11.4 through 11.10 of the Competition Code shall apply to the enforcement action.

12.3.3 Application of the Competition Code to Continuing Agreement, Act and Conduct

Subject to Section 12.3.1 of the Competition Code, any agreement entered into or act or conduct that occurred prior to the commencement date of the Competition Code, but which continues after the commencement date of the Competition Code, will be governed by the terms of the Competition Code from the commencement date of the Competition Code. The Authority will not take enforcement action against a person under the prevailing licences and/or interconnection arrangements (as the case may be), as well as the Competition Code for the same contravening agreement, act or conduct.

12.3.4 Existing Proceedings at The Commencement Date of the Competition Code

- (a) Without prejudice to Section 12.3.2 of the Competition Code, any proceeding commenced before the commencement date of the Competition Code, but which remains uncompleted after the commencement date of the Competition Code, will be deemed to have been made under the corresponding provision of the relevant laws

existing at the time, provided that the Authority is able to determine the proceeding in a manner that is consistent with the provisions of the Competition Code.

- (b) Where the Authority is unable to determine a proceeding in a manner that is consistent with the provisions of the Competition Code, the Authority will notify the parties within thirty (30) Working Days from the commencement date of the Competition Code or such other further extended time and the proceeding shall be deemed withdrawn by the parties. In such an event, the parties may initiate a new proceeding under the relevant equivalent provision of the Competition Code. Where necessary, the Authority may issue directions to the parties of any uncompleted proceeding to specify additional transitional rules for the purpose of determining such proceeding under the corresponding provision of the Competition Code.
- (c) Where a proceeding commenced under the prevailing licences and/or interconnection arrangements (as the case may be) has been completed before the commencement date of the Competition Code but any right of reconsideration and appeal is exercised after the commencement date of the Competition Code, such right of reconsideration and appeal in relation to that proceeding shall be exercised, heard and determined under Section 11.9 of the Competition Code.

12.4 Specific Transitional Rules

12.4.1 Designation of Dominant Licensees and Exemption from Special Provisions Applicable to Dominant Licensees

- (a) The Authority intends that every Dominant Licensee designation made under interconnection arrangements will continue to be in effect and deemed to have been made pursuant to Section 2.2 of the Competition Code as a Market Player with Significant Market Power. Where the Authority considers it appropriate to do so, it may for the purpose of clarity and without affecting the validity of any existing classification, by notice on the Authority website or by any other means of publication as the Authority considers appropriate, specify that such Licensees are classified as having Significant Market Power.
- (b) For the avoidance of doubt, it will not be necessary for the Authority to seek any comment, or initiate any process classifying that Licensee as having Significant Market Power as provided for in the Competition Code prior to issuing any notification under this Section.

12.4.2 Conforming of Restrictions under Infrastructure or Service Agreements

Market Players must ensure that, within ninety (90) Working Days of the commencement date of the Competition Code, their Infrastructure or Service Agreements entered into before the commencement date of the Competition Code comply with the requirements set out in Sections 3.2 and 3.3 of the Competition Code.

12.4.3 Rates, Terms and Conditions

12.4.3.1 Existing Effective Rates, Terms and Conditions

All existing effective rates, terms and conditions filed by any Dominant Licensee under interconnection arrangements (as the case may be) will remain in effect until such time as the Dominant Licensee modifies or withdraws the Tariff, or the Authority directs the Dominant Licensee to modify or withdraw the existing rates, terms and conditions.

12.4.3.2 Obligation to Uphold Existing Rates, Terms and Conditions

Where a Dominant Licensee provides an existing Infrastructure or Service for which it has not filed its rates, terms and conditions under interconnection arrangements (as the case may be), but the Dominant Licensee is required to file a Tariff under the Competition Code, the Dominant Licensee must file a Tariff for that Infrastructure or Service in accordance with the procedures contained in Section 4.4 of the Competition Code within ninety (90) Working Days of the commencement date of the Competition Code, and comply with the Tariff regime contained in Sections 4.2 through 4.4 of the Competition Code. For the avoidance of doubt, nothing in this Sub-section shall be construed as a waiver of the Authority's right to take enforcement action against any Dominant Licensee for any breach of its obligation to file its rates, terms and conditions under interconnection arrangements (as the case may be) or the Competition Code for any Infrastructure or Service for which it is under an obligation to file such Tariff.

12.4.3.3 Obligation to Publish Rates, Terms and Conditions

Within ninety (90) Working Days of the commencement date of the Competition Code, a Dominant Licensee must publish all existing Tariffs that are in effect on its website. The information published must comply with the requirements of Section 4.5 of the Competition Code. Where the Authority has directed the Dominant Licensee to review a Tariff, the Dominant Licensee shall publish the Tariff at such time as specified by the Authority upon completion of the Tariff review.

12.4.4 Interconnection Agreements

- (a) Subject to Sections 12.4.1 and 12.4.5 of the Competition Code, all Interconnection Agreements entered into before the commencement date of the Competition Code based on the requirements of Interconnection Handbook (as the case may be) will continue in effect and will be deemed to have been approved by the Authority under the corresponding provisions of the Competition Code.
- (b) Non-dominant Licensees must ensure that their Interconnection Agreements entered into with other Non-Dominant Licensees before the commencement date of the Competition Code, comply with the requirements set out in Sections 5.4.1 through 5.4.8 of the Competition

Code, within one hundred and eighty (180) Working Days from the commencement date of the Competition Code.

12.4.5 RIO

- (a) Subject to the requirements of this Sub-section, in relation to a Dominant Licensee's RIO that has been approved by the Authority based on the requirements of the Interconnection Handbook (as the case may be), the RIO will continue in effect and will be deemed to have been approved by the Authority under the corresponding provisions of the Competition Code.
- (b) Within thirty (30) Working Days from the commencement date of the Competition Code, the Dominant Licensee as per Sub-section (a) must submit to the Authority for approval the proposed modifications to its RIO to conform to the requirements of the Competition Code. In reviewing the proposed modifications, the Authority will apply the procedures specified in Section 6.3.6 of the Competition Code. Upon approval by the Authority of the proposed modifications to the Dominant Licensee's RIO:
 - (i) Pursuant to Section 6.2.1 of the Competition Code, the Authority will issue a notice on the Authority website or by any other means of publication as the Authority considers appropriate to specify a further three (3) year period, commencing from the date of approval, for which the Dominant Licensee must offer the RIO to requesting Market Players; and
 - (ii) As required by Section 6.3.5(b)(ii) of the Competition Code, the modifications made to the Dominant Licensee's RIO must be incorporated into every Interconnection Agreement entered into with the Dominant Licensee by accepting its RIO. For this purpose, the Authority may, where necessary, issue directions to the parties of these agreements to specify transitional provisions for the purpose of effecting any modification to their agreements to conform to the requirements of the Competition Code, including re-classifying the Market Player as having Significant Market Power.

[END]