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Subject: Industry Submission on Proposed Converged Competition Code for the Media and Telecommunications Markets, Singapore

On behalf of the Asia Internet Coalition (AIC) and its members, I am writing to express our sincere gratitude to the Infocomm Media Development Authority (“IMDA”) and the Government of Singapore for the opportunity to participate in the public consultation on the Proposed Converged Competition Code for the Media and Telecommunications Markets (“Converged Code”). AIC is an industry association comprised of leading Internet and technology companies in the Asia Pacific region with an objective to promote the understanding and resolution of Internet and ICT policy issues. Our current members are Airbnb, Amazon, Apple, Expedia Group, Facebook, Google, LinkedIn, LINE, Rakuten, Twitter and Yahoo (Oath), and Booking.com.

We commend the Government for conducting a multi-stakeholder consultation process in the development of this important legislation, particularly to promote competition, enhance consumer protection and improve regulatory clarity to incentivize the development of new and innovative consumer services. Such efforts and dialogue are critical, and as responsible stakeholders in the development of this legislation, we appreciate the ability to participate in this discussion and the opportunity to provide inputs into the policy-making process.

Please find appended to this letter detailed comments and recommendations, which we would like to respectfully request IMDA to consider, not only to strengthen consumer protection and but also to embrace competition in the digital economy.

Should you have any questions or need clarification on any of the recommendations, please do not hesitate to contact our Secretariat Mr. Sarthak Luthra at Secretariat@aicasia.org or at +65 8739 1490. Importantly, we would also be happy to offer our inputs and insights on industry best practices, directly through meetings and discussions and help shape the dialogue around effective Competition Code for the Media and Telecommunications Markets in Singapore.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jeff Paine".

Jeff Paine
Managing Director,
Asia Internet Coalition

DETAILED COMMENTS BY SECTION

1. PART II: MARKET OVERVIEW AND CONVERGENCE

We are supportive of the IMDA's view that Over the Top (“OTT”) services have had a positive impact in some of the key markets considered, and that the current regulatory approach remains largely relevant for the key markets in review. We believe this approach will promote competition in the digital services, platforms and OTT media marketplace while also ensuring that necessary consumer protection framework is maintained. Re-evaluating the need for existing regulations is particularly important when considering whether to extend those regulations to new services, as IMDA has. The IMDA's careful consideration in this regard is commendable and aligns with the views of other law and policymakers around the world.

Regarding the IMDA's observation that “the take-up of OTT messaging and voice services has placed competitive restraints on traditional voice and messaging services such as SMS,” we note the Australian Competition & Consumer Commission's (ACCC) recent finding that “[t]he emergence of OTT services has largely been a positive development for consumers,” including in that “[t]he entry of OTT voice and messaging services has . . . provid[ed] consumers with a low cost alternative [to traditional services], and likely influenced the movement towards unlimited call and message inclusions for relevant services.” See Consultation at 11; ACCC, *Communications Sector Market Study (Final Report)*, at 32, 151 (Apr. 2018), available [here](#). The ACCC also noted that OTTs “provide [] consumers with new services (such as entertainment, social media, ride-sharing, shopping, etc.) and innovative alternatives to traditional communications services[.]” *Id.* at 151. We agree and submit to the IMDA that the growth of OTT services has been a boon to consumers.

OTT services bring numerous benefits to consumers, content creators, producers, companies and the whole economy, generating a strong demand for better internet infrastructure and data. Consumers can gain immediate access to content faster and easier, anywhere and anytime with Internet access available at sufficient speeds, via various devices. Compared to the traditional channels of broadcast and cablecast, consumers have more choices and more power and are more likely to acquire new knowledge and transform that into income.

Referring to industry best practices, AIC recently launched two OTT studies in Indonesia and Thailand, which we strongly refer to IMDA. The [Indonesian report](#) examines the value of RIA (Real Interactive Applications) or OTT, to the Indonesian economy, specifically on jobs, GDP and income, especially its impact on SMEs and key sectors of healthcare, education, tourism and employment. The [Thai report](#) examines the impact and value to the Thai economy coming from Video-on-Demand (VOD services), specifically on income, GDP and employment. These are some of the useful references that shows the potential impacts of this sector on the whole economy value chain.

In Indonesia, for example, it was found that a 10% increase in network coverage is associated with 0.92% increase in GDRP (regional GDP) growth. Social media has proved to bring positive effect to the economy, as a 10% increase in social media penetration is also associated with an



increased GDRP growth by 0.11%. Regions with higher mobile internet and social media penetration rate perform significantly better in terms of economic growth. A region with 50% level of mobile internet penetration, has a higher GDRP growth by 3%. Similarly, regions with 50% social media penetration also grow more quickly by as much as 0.4%.

2. PART VI: CONSUMER PROTECTION PROVISIONS

OTT services increase consumer choice, productivity, and innovation and give local businesses and content creators access to a global customer base. This ultimately expands Singapore's creative industry as well as overall economy. Prescriptive regulation for this industry could limit the online applications and services available to Singapore's users and businesses, which would negatively impact the economic capability of its citizens and Singapore's competitiveness in the digital economy and overall economic growth. Keeping the Internet open, decentralized, and free of barriers is critical to helping Singaporean businesses remain competitive in today's increasingly digital economy.

We therefore strongly support IMDA's proposal to "retain its light-touch approach to the OTT media landscape", which we agree will provide OTT TV and content providers "greater flexibility to innovate and compete", to the benefit of consumers. Refer to IMDA Consultation Paper at 46 (Section 6.8). We note that the online video marketplace is diverse and evolving - comprising providers of subscription video on demand (VOD), free VOD, platforms for user-generated content (UGC), and other revenue and business models, meaning that any regulation deemed necessary for certain services may be ill suited for different applications or providers.

To the extent that any regulation of online apps and services is considered necessary, we must ensure that any rules or policies implemented do not stifle innovation or competition, while also protecting and promoting consumer interests.

In particular, legacy telecommunications should not be automatically extended to OTTs because of the fundamental technical and business differences between traditional services and OTTs. For example, network operators and cable service providers own and control the underlying network infrastructure and connection to the customer's premises, and consumers may have limited choices in their broadband or cable provider and may have costs associated with switching. By contrast, as the IMDA notes, for online apps "[b]arriers to entry are very low, as many OTT services do not operate a local network", and it is typically easy and cost-free for consumers to switch between competing online apps. Refer to Consultation at 113-14. Thus, the rationale underpinning many legacy telecommunications regulations does not apply to online apps.

Broadcasting services and online video services are similarly distinct. Broadcasters deliver service to customers using spectrum, a valuable and regulated resource. Because spectrum is limited, the number of broadcasters that can operate in any market is also necessarily limited. By contrast, the high capacity of broadband networks and global nature of the Internet means that a virtually unlimited number of competing providers can deliver digital content and applications to customers. Broadcasting regulations were also designed for traditional, linear services on which consumer choice in content is limited. For online video apps, particularly video on demand, users are in control and can consume the content they want anytime, anywhere.

Globally, many law and policymakers recommend a cautious approach to extension of existing telecom and broadcasting regulation to online applications and consideration of opportunities to deregulate traditional services.

- For example, in a joint letter to the European Commission (EC) regarding reform of the European Union's telecoms framework, the governments of 10 European countries cautioned against “automatically extending” regulation to online apps, urging the EC to “consider deregulation of traditional telecoms services.” See Joint Letter from Belgium, Czech Republic, Denmark, Estonia, Ireland, Finland, Lithuania, Poland, Sweden, United Kingdom to Vice-President Ansip and Commissioner Oettinger, European Commission, at pp. 1-2 (2016), available [here](#).
- Similarly, the Nordic National Regulatory Authorities recommended “a cautious approach to regulation” of online apps and that “possibilities to simplify, modernize and lighten existing regulation should be pursued.” Nordic NRAs, The EU telecommunications legislation for the Digital Single Market, The Nordic NRAs’ viewpoints (July 4, 2016), available [here](#).

Regulators and lawmakers are also actively reconsidering existing broadcast regulatory frameworks in light of changes in the marketplace.

- For example, Hong Kong's Commerce and Economic Development Bureau (CEDB) has initiated a review of its broadcasting regulatory framework “with the aim of relaxing obsolete statutory requirements.” See Hong Kong Commerce and Economic Development Bureau, *Review of Television and Sound Broadcasting Regulatory Regimes*, Consultation Paper, at 15 (Feb. 2018). The CEDB did not propose to extend existing obligations for traditional audiovisual services to online apps in part because “[t]hrough OTT and other Internet TV and radio programme services are gaining their prominence, traditional media . . . are still highly pervasive and accessible to all in the family, young and old.” *Id.* at 46.
- In October 2017, the Australian Parliament enacted broadcasting reform legislation that in part eliminated media control and broadcast audience reach restrictions and was intended to “improve the sustainability of Australia’s free-to-air broadcasting sector” and “reform[] outdated media regulation . . . to better reflect the contemporary digital media environment.” See Parliament of Australia, *Broadcasting Legislation Amendment (Broadcasting Reform) Bill 2017*, Summary (2017), available [here](#); The Parliament of The Commonwealth of Australia House of Representatives, *Broadcasting Legislation Amendment (Broadcasting Reform) Bill 2017 Explanatory Memorandum*, at p. 2 (2017), available [here](#).
- In November 2017, the US Federal Communications Commission (FCC) eliminated or revised several of its broadcast ownership rules to “reflect the present, not the past” of the media landscape. The FCC concluded that updating those rules – which principally limit a single entity's ownership of multiple media outlets – would afford broadcasters and local newspapers “a greater opportunity to compete and thrive in the vibrant and fast-changing media marketplace.” See FCC, *2014 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to*

Section 202 of the Telecommunications Act of 1996 et al., MB Docket No. 14 et al., Order on Reconsideration and Notice of Proposed Rulemaking, at ¶ 1 (Nov. 20, 2017), available [here](#).

4. PART IX: PUBLIC INTEREST OBLIGATIONS

With respect to the Cross-Carriage Measure (“CCM”), *see* IMDA Consultation Paper 69, Section 9.2, we recommend that IMDA re-consider the Code’s proposal to extend the CCM to all content in Singapore. We believe that this measure, which would essentially be a ban on the exclusivity of content in Singapore, is excessive and violates content owners’ rights to exclusively authorize or prohibit the use of their content. Indeed, the application of the existing CCM across-the-board to all genres of content has already had a negative impact on content providers inside and outside the country. It has resulted in the distortion of contractual negotiations and the virtual elimination of exclusive carriage – except for a very small number of the highest-value sports events – in Singapore’s television industry. Such a sweeping policy is not employed in any other developed country.

While we respectfully encourage the Government not to apply the CCM to any content, we also strongly urge IMDA to ensure that the CCM is not applied to online content. Given the evolving business models of online content providers, and the fact that the Internet is essentially available to everyone in Singapore, there is no risk of market fragmentation, and thus no rationale for applying the provision to online content.

3. PART XII: COMPETITION IN A DIGITAL ECONOMY

Competition in digital and online spaces is fast-paced, multi-faceted, and continuously evolving, with low barriers to entry and where multi-homing is commonplace across a range of digital products and services. Existing competitors - some of which began as disruptors themselves - operate under constant threat that a new entrant with an innovative idea will win over at least some of their users.

These competitive dynamics constantly push companies to innovate and experiment with new ideas and approaches, and it has consistently yielded new business strategies and models that have disrupted established incumbents to the benefit of consumers.

As online platforms constantly invest in improving the user experience to stay relevant, the key dimension of this competition for user engagement will not only be price, but service, quality, and innovation. For example, the services on social media platforms like Facebook are provided for free to users and are supported by the sale of advertising. This makes it possible for businesses of all sizes to connect with customers locally and globally, through advertising and that advertising service has enabled a whole new generation of entrepreneurs and small and medium-sized businesses, who might previously have struggled to or were excluded.

Given the dynamic competition in the market, competition authorities should not intervene in the absence of serious evidence of potential and actual harm to competition. For instance, whether data may be a source of market power (*see* IMDA Consultation Paper at 94) should be considered on a case-by-case basis based on the specific circumstances. Enforcement in the absence of such

evidence could greatly stifle the constant, rapid innovation of this dynamic industry, harming both consumers and businesses. In light of Singapore's aspirations in the digital economy and Smart Nation, we encourage IMDA to continue to adopt a light-touch regulatory approach in Singapore.

Below we highlight key points to consider when working on the Converged Code:

a. Different online platforms compete on multiple axes: Different online platforms compete on multiple axes - competing with a wide variety of services to provide users with products and services that allow them to connect, share, communicate, discover, and purchase.

That dynamic is important for competition analyses because the economic principles governing how firms compete in single-sided markets differ in important ways from the principles that govern multi-sided platforms. First, multi-sided platforms connect distinct groups that interact with each other through the platform. Second, interactions between the distinct groups can create cross-platform effects, whereby the actions of participants on any side of the platform, or of the platform itself, affect participants on one or more of the other sides of the platform (or the functioning of the platform itself).¹ These differences must be taken into account when applying competition law to markets involving multi-sided platforms.

b. Fierce competition to provide products and services that users want to engage with: The ever-decreasing cost of high-speed Internet connectivity, processing power, the often zero price nature of the services and storage space on devices means that people do not need to be selective - they can easily switch between services, add new ones, or combine them to perform identical or similar functions. The ease with which people can move between different applications creates strong competitive pressure on every product and service a digital platform offers - as well as pressure to develop new functions to attract and retain users.

c. Low barriers to entry allow new entrants to compete effectively with established competitors: Low barriers to entry mean that new competitors can quickly challenge established players. Low barriers to entry also mean that online platforms must innovate constantly, and it underscores that online platforms are not insulated from competition because of network effects.² In today's digital economy, "[t]he underlying technology, and business models, facilitate entry and enable firms, with the right formula, to attain global scale quickly, and to challenge incumbent platforms in one or more dimensions." As a result, "all online platforms, no matter how secure they may seem, [are forced] to keep innovating and providing value to users. And each needs to worry about other successful platforms in addition to the proverbial inventor in the garage."

e. Data does not create barriers to entry, is widely available and non-exclusive: Access to or control of data - whether specific types of data or large amounts of it - may provide established companies with sustainable competitive advantages and/or inhibit the ability of new competitors

¹ See, Secretariat, *Executive Summary*, in POLICY ROUNDTABLES: TWO-SIDED MARKETS 11, 11 (Organisation for Economic Co-operation and Development Competition Committee, 2009) (OECD Paper); see also, e.g., David S. Evans & Richard Schmalensee, *The Industrial Organization of Markets with Two-Sided Platforms*, 3 COMPETITION POL'Y INT'L 151, 152 (2007).

² See, e.g., David S. Evans, *Why the Dynamics of Competition for Online Platforms Leads to Sleepless Nights, but Not Sleepy Monopolies* (last revised 25 August 2017), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3009438

to enter the industry.³ There is good reason to doubt this overly simplistic narrative however. In fact, as numerous examples show, the non-exclusive and non-rivalrous nature of data means that new competitors can and do enter the market without possessing large amount of data at the outset or even prior to actually entering.

Digital platforms and the apps-based industry in Singapore are growing rapidly. There is a lot of potential to support the development of digital-based economy in the country. Building regulatory walls and barriers will minimize their opportunity to capture the value and deliver it to consumers. Any new rules for RIA (or OTTs) services should not hamper innovation for start-ups and other tech-companies. Rather, they should promote greater consumer choice and competition in the technology and communication sectors.

Given the importance of placing a highly supportive regulatory framework, we recommend that regulatory formulation be based on good regulatory principles. Regulatory environment is just one of many factors that influence the distribution of benefits from internet platforms, including the benefits of RIAs. There are many other essential aspects that are responsible for transforming a country's digital sector into one that benefits society and generates economic growth. Both government and private sector should work together to create a more conducive environment for the use and development of digital technology in Singapore. Further, improving digital literacy among users should be integrated. Better understanding the use of RIAs would help the public in making reasonable judgment and selection of content, while facilitating better decisions regarding inappropriate content. Increasing digital literacy would also create greater economic opportunity by facilitating the use of RIAs and other online platforms for more productive activities.

- *End of Submission*

³ Anja Lambrecht & Catherine E. Tucker, *Can Big Data Protect a Firm from Competition?*, 4 (2015), available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2705530;