



## LEGAL UPDATES

### **Supreme Court of Judicature Act and Subordinate Courts Act**

With effect from 1 January 2011, amendments to the Supreme Court of Judicature Act streamline the process for interlocutory appeals to the Court of Appeal, remove the former mandatory requirement of further arguments before leave applications can be made, change the leave to appeal provisions and expand the jurisdiction of the 2-judge Court of Appeal.

Amendments to the Subordinate Courts Act also taking effect from 1 January 2011 are of a more substantive nature and give the District Courts subject-matter jurisdiction equivalent to the High Court in any action in personam. However, the enhanced District Court jurisdiction does not extend to supervisory or revisionary matters, judicial review or jurisdiction vested exclusively in the High Court under any written law or expressly excluded by any written law.

### **Telecom Competition Code**

With effect from 21 January 2011, a revised Telecom Competition Code was introduced. The purpose of the amendments is to further enhance consumer protection and promote competition in telecom markets in Singapore.

Key changes to the Code which further safeguard consumers' interests include a clause that prohibits telecom licensees from "cross-terminating" a consumer's service agreement if the consumer breaches the terms and conditions of another service agreement from an affiliated operator. This would prevent telecom operators from exerting undue pressure on consumers to make payment of disputed charges through threatening to terminate services offered by an affiliated telecom operator, unless the services are offered under the same service agreement. Consumers' right to enjoy the use of a

basic telephone service will also be protected unless there is a breach of the agreement for the basic telephone service in itself.

Further, licensees will no longer be allowed to automatically charge consumers after a free trial of their service has ended, unless they have obtained express agreement from the consumer. This change is intended to help address consumer feedback about the provision and terms of free trial services being buried in the fine print of the service contract, which have resulted in consumers being charged for services which they were unaware of.

Other changes to the Code aim to further promote competition. One amendment allows for regulator Infocomm Development Authority (IDA) to apply a prohibition against abuse of dominant position to any licensee which is found to have significant market power even though it may not yet be classified by IDA as a Dominant Licensee. This takes into consideration that the licensee may acquire significant market power in certain telecom markets over time, and will allow IDA to investigate and take measures if such licensee's actions restrict competition. This change also brings the competition provisions of the Code closer to Singapore's general competition law framework as enshrined in the Competition Act.

### **Copyright**

*RecordTV Pte Ltd v MediaCorp TV Singapore Pte Ltd and others [2010] SGCA*

The Singapore Court of Appeal has delivered a landmark decision on whether the actions of an Internet-based service provider which allowed the recording of free-to-air broadcasts by its registered users infringed copyright.

RecordTV Pte Ltd was the owner of an Internet-based service that allowed its registered users to

request the recording of MediaCorp free-to-air shows in Singapore on a device which functioned just like a traditional digital video recorder, an iDVR. MediaCorp objected to RecordTV's provision of its iDVR service on the basis that the use of the iDVR infringed MediaCorp's copyright in the free-to-air shows.

This decision deals with an important policy issue, namely, how the courts should interpret copyright legislation in the light of technological advances which have clear legitimate and beneficial uses for the public, but which may be circumscribed or stymied by expansive claims of existing copyright owners.

Bearing in mind that the law strives to encourage creativity and innovation for the common good, as well as the competing interests of various stakeholders, viz, consumers, content providers as well as technology and service vendors, the Court of Appeal found in RecordTV's favour. It was held that that RecordTV's iDVR service represented a significant technological improvement over existing recording methods, and that RecordTV did no more than make it more convenient for its users to enjoy the MediaCorp shows, an activity which they were already entitled to do. The Court thus found that RecordTV (i) did not copy the MediaCorp shows, (ii) did not communicate the MediaCorp shows to the public, and (iii) did not authorise its registered users to do any act comprised in MediaCorp's copyright in the MediaCorp shows, contrary to the Copyright Act (Cap 63, 2006 Rev Ed).

### **Without Prejudice Communications**

*Oceanbulk Shipping and Trading SA v TMT Asia Ltd & Ors [2010] UKSC 44*

This decision involved a dispute over the terms of a settlement agreement. When considering how to interpret the settlement agreement, the UK Supreme Court had to determine whether it could look at statements made in "without prejudice" communications to assist in the interpretation of the agreement.

It held that Oceanbulk should be permitted to bring evidence of the "without prejudice" communications. In doing so, it formulated a new "interpretation" exception to the "without prejudice" rule. Under the interpretation exception, facts which are communicated in the course of without prejudice negotiations and which form part of the factual matrix or surrounding circumstances would be admissible as an aid to construe the resulting settlement agreement. The Court reasoned that the exception was required so that settlement agreements could be properly construed in accordance with, and properly respecting, the modern principles of construction of contracts. It noted that there was no reason why the process of interpretation should be any different where the negotiations were conducted without prejudice. This did not mean that the Court was downplaying the importance of the "without prejudice" rule. It also emphasised that this exception should not be extended beyond evidence that was admissible in order to explain the factual matrix or surrounding circumstances to the court whose responsibility it was to construe the agreement in accordance with the principles identified in previous cases.