



US-ABC INPUTS – Draft Code of Practice for Competition in the Provision of Telecommunication and Media Services

The US-ASEAN Business Council (“US-ABC”) and our members express our sincere gratitude to Infocomm Media Development Authority (“IMDA”) and the Government of Singapore for the opportunity to participate in the second public consultation on the Draft Code of Practice for Competition in the Provision of Telecommunication and Media Services. We are pleased that our comments in the first public consultation for the Converged Code were taken into account and hope that our inputs for the second public consultation will once again provide meaningful consideration.

The Council shares the goal of encouraging market innovation and ensuring regulations keep up with fast-changing market developments. We would like to respectfully offer our recommendations for achieving these goals in the most effective manner. Should you have any questions or would require any clarification on the points raised, please contact our Manager for ICT based in Singapore, Ms. Heidi Mah at hmah@usasean.org.

The Council and our members encourage for the final draft regulation to be kept simple and clear in order to protect both individual consumers while ensuring private sector robustness. The following are key points that our members would like to specifically highlight for IMDA’s consideration:

- Regulatory Simplification – IMDA may consider reviewing the regulatory and compliance reporting obligations for Facility Based Operators (FBOs) to ensure the framework remains “light touch” and does not stifle innovation and investment by imposing unnecessary compliance costs on operators.
- Consumer Protection – We recommend that the proposed application of certain Consumer Protection Provisions to not be applied to large enterprise businesses, as the regulations are intended to safeguard consumers. Further, the current



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prohibition on detrimental or disadvantageous mid-contract changes makes no distinction between individuals and business end-users, and in turn, places Small Medium Enterprises (SME) reselling entities at a disadvantage. We would propose that amending the Code to specify the type of user and permit contract changes with one month’s notice would balance the equities between service providers and end users.

Finally, we would also like to provide specific recommendations in the Draft Code.

Proposed additions are highlighted in yellow.

Comments	Recommendation
<p>IMDA has stated, in page 45 of its Consultation Paper, that the prohibition against disadvantageous or detrimental changes to the End User during the contract term <i>“is intended to protect End Users against unilateral contract variations that are detrimental to them, in view that End Users typically do not have the power to reject such changes and are liable to pay ETCs if they opt to terminate their service agreements before the expiry of the minimum service period.”</i></p> <p>1. While we recognize and commend the IMDA’s desire to protect End Users, the proposed section 4.3.2 of the Code is unnecessarily broad and restrictive, and does not recognize the distinction between:</p> <p>(a) <u>Individual consumers</u> who do not have the ability to negotiate their contracts with their service providers, and who would be the appropriate beneficiaries of such protection against detrimental changes; and</p> <p>(b) <u>Business End Users</u> who are very often able to, and do, negotiate the terms of their service contracts, including any fixed-term contracts that they choose to enter into for commercial purposes, and who would have been able to weigh the appropriate costs and benefits of allowing for price (or other adverse) fluctuations in their contracts in</p>	<p>We recommend that IMDA amend proposed section 4.3.2 of the Code as follows:</p> <p><u>(a) A Telecommunication Licensee must not make any change in the terms and conditions (including pricing) of any fixed term service contract that is disadvantageous or detrimental to the End User during the term of the contract, without at least one month’s prior notice to the End User.</u></p> <p><u>(b) Paragraph (a) above does not apply to any fixed term service contract that the End User has negotiated or had the ability to negotiate.</u></p> <p><u>(c) Paragraph (a) above does not apply to any fixed term service contract that is between an End User and a Telecommunication Licensee that purchases telecommunication services and/or access (as the case may be) as inputs for the Telecommunication Licensee’s production, resale or provision of the telecommunication services under the contract.</u></p>

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exchange for better discounts or other benefits.

2. The absolute prohibition against making any discriminatory changes, **including to prices**, will also adversely and disproportionately affect any entity that “*purchases telecommunication or media goods, services and/or access (as the case may be) as inputs for that person’s production, resale or provision of any telecommunication or media service*” (a “**Reselling Entity**”) as such Reselling Entity, being carved out of the definition of “End User” in proposed section 4.1.1(b)(iii) of the Code, would be excluded from the protection under section 4.3.2 of the Code. This results in a situation where the Reselling Entity would be subject to price increases from the Telecommunication Licensee it purchases the service from, but be unable to pass along those price increases to its End Users, even if the End User in question were a business End User that had, in the course of negotiating the service contract, agreed to allow for fluctuations in the prices of underlying services to be passed through to the End User in exchange for discounts or other benefits. Additionally, given that such Reselling Entities are very often small- and medium-sized enterprises, this would adversely and disproportionately affect the SME sector, and would serve to stifle innovation by SMEs in beneficial telecommunication products and services for End Users.

3. We would also highlight that the position adopted by IMDA is at odds with the position in other parts of the world such as the E.U., where, under Articles 105(4) and 105(6) of the European Electronic Communications Code¹, providers of electronic communications services are allowed to provide end users at least one month’s notification of any contractual changes, **including detrimental changes**, and end users

¹ Directive 2018/1972 of the European Parliament and Council establishing the European Electronic Communications Code.



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can choose to terminate the contract without further costs, but **with compensation to the service provider for retained subsidized terminal equipment.**

4. Relating to this, we note that proposed section 4.3.4 of the Code already balances the equities between service providers and End Users by providing End Users appropriate protection against disproportionate early termination liability. Accordingly, proposed section 4.3.2 of the Code only needs to be adjusted to permit changes by at least one month's notice, to bring Singapore's regime in line with other leading jurisdictions.