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Dear Sir

First Triennial Review of the Code of Practice for Competition in the Provision of
Telecommunication Services

I am pleased to submit my comments to the review of the Telecom Competition Code.

Yours sincerely,

Bryan Tan

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First Triennial Review of the Code of Practice for Competition in the Provision of Telecommunication Services

Particulars

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Summary of Major Points

Overview

I would describe the first review of the Code of Practice for Competition in the Provision of Telecommunication Services (the "Code") as being eagerly anticipated for a number of reasons. First, the experience of the past three years have proven that the Code has tremendous utility in ensuring proper market conduct. Thus, the Code is an important part of the telecoms industry in Singapore. Second, the experience and frustration at times over the past three years shows that the Code does have its shortcomings. Like a turbo-charged engine awaiting fine-tuning, I can imagine that we all wait in anticipation for the roar that will soon engulf the track once the Code is able to run like it should.

It is also significant that in the background, Singapore has committed to enact a general competition law by 2005. It remains to be seen how IDA will be able to align the Code in 2005 even though the Code should expect the revision to be completed sometime in the first half of 2004. Nevertheless, the forward-looking nature of this review is assuring.

As a general point, to consumers such as myself, the reluctance of IDA to take on consumer-related areas is clarifying but yet puzzling. It is clarifying because it means that the Code is very much intended to be regulatory and IDA is very much wearing the hat of regulator in the telecoms industry in Singapore. It is puzzling because IDA also plays the part of promoter and where IDA should step in to areas which ensure consumers are fairly treated, these would be very much promoting the telecoms industry. There are certain things that a powerful body like IDA can do and achieve that individual consumers may not be able to. The gulf between a consumer who buys a service worth a maximum of a few hundred dollars and a telecommunications giant valued at a few billion dollars is one fight where calling the consumer the underdog is a gross underestimation. Therefore, one of my suggestions would be for IDA to adopt a role outside the Code as a consumer-regulator.

Statement of Interest

I am submitting my comments in my private capacity as a citizen of Singapore.

Detailed Comments

Limiting Consumer Protection Obligations

In paragraph 4.3 of the Consultation Document, IDA wishes to leave consumer interests to other avenues such as the proposed Fair Trading Act (Consumer). While I agree that leaving it out of the Code is logical as the Code covers regulatory matters and competition matters per se, I question whether IDA should wash its hands of this entirely.

There are specific issues which affect consumers directly and whose interests may be opposite that of Licensees. Some of these issues are also specific to the telecoms industry. For instance, the issue of spam or unsolicited commercial email (or soon to be SMS) is unique to telecoms. In addition, telecom consumers are among a few classes of consumers who buy an ongoing service and are granted theoretically unlimited credit to chalk up unlimited amount of expenses. Even credit card holders are subject to certain spending limits. I believe only utility holders are subject to such limits. Every few months, a newspaper report appears of some consumer who claims that he chalked up thousands of dollars of such bills without his knowledge.

Next, although Section 7.4.1 of the current Code (False and Misleading Claims) is only but one small section in the entire Code, IDA records significant number of complaints made by Licensees over the past 3 years in respect of this section. Out of 32 reported regulatory decisions as of August 2003, 19 (or 59%) cited Section 7.4.1 as grounds of complaint. In fact, in 13 cases (40% of the total), section 7.4.1 was the sole ground of complaint. I note that these complaints were made by Licensees and not even individuals. The explanation is simple – even Licensees are affected by misleading or false claims as a false claim (eg to competitors quality) may not affect consumers who may be impervious to such claims. However, the affected Licensee may feel the real effect. I would therefore urge IDA to reconsider its decision or at least to consider alternatives such as the enactment of a Telecom Consumer Best Practices Code.

In paragraph 4.5, IDA also proposes changing the rules governing End User Subscriber Information (EUSI). I note that in particular, section 3.2.6.3 of the current Code has been removed. This means that telecom licensees will soon be free to embark on opt-out type consent. This seems inconsistent with what is happening in the rest of the world although I note that in Singapore, the trend thus far is very much hands-off and for consumer-prejudiced measures.

In Section 3.3.4(a) of the proposed Code, I note that such procedures are now optional as “may” instead of “must” has been used. While the right to dispute and contest plus the payment of default interest in the event the decision is found against the consumer are within the concepts of law, it is heartening to know that IDA has chosen to be less than prescriptive. I would also suggest that to also follow the position in law, if the Licensee adopts the position in 3.3.4(a)(iii) contractually, then there should be mutuality – in other words if it is found that the disputed charge is wrong and had been paid, then the Licensee should also pay for the reasonable compensation for arbitration, collection expenses, plus interest incurred by the End User.

Publication of Tariffs

In paragraph 5.5 of the Consultation Document, IDA is now introducing the publication of tariffs. Generally, it is good to see such transparency and I think the telecoms industry would welcome this. However, although I do see the concerns with restricting flexibility and incentive to price-compete. In this regard, I do not see how the proposed Sub-Section 4.5 will deal with the concerns.

Modification of Tariffs

In the proposed Section 4.6(c) of the Code, there is a requirement for modification of agreements to be consistent where tariffs are modified. There is a concern that if IDA allows a change of tariffs following an application by the Dominant Licensee, then the customer may end up with a contract vastly different from what he agreed to, without his consent. For commercial certainty, this point should be re-looked.

Review of IDA's decisions

In response to the question raised in paragraph 12.4 of the Consultation Document, I wonder whether there is any utility in having a right to ask IDA for reconsideration. The reason is that IDA is the same body making the decision and analyzing the same arguments and information is unlikely to elicit a different response and will only result in a further appeal to the Minister. Perhaps IDA can share whether in the past 3 years, there have been instances where reconsideration requests resulted in a changed decision. Otherwise, this may just be an extra step without finality.

Initial Submissions to IDA

Looking at the proposed sub-Section 11.5(a), I submit that the drafting needs some tweaking. Instead of making it an obligation of the party to enforcement proceedings to adhere to the sufficiency of information, the appropriate penalty is the rejection of evidence or even the submission as provided in 11.5(b) and not the general contravention measure provided under the Code.

Conclusion

In conclusion, it is hoped that IDA will reconsider whether consumer issues are sufficiently addressed and how it can be a facilitator in doing so.