



**COVER NOTE ISSUED BY THE INFOCOMM DEVELOPMENT AUTHORITY OF
SINGAPORE**

**ADVISORY GUIDELINES ON CONTRACT PERIOD AND EARLY TERMINATION
CHARGES FOR TELECOMMUNICATION SERVICES OFFERED TO END USERS**

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ADVISORY GUIDELINES ON CONTRACT PERIOD AND EARLY TERMINATION CHARGES FOR TELECOMMUNICATION SERVICES OFFERED TO END USERS

PART I: INTRODUCTION

1. One of IDA's key policy objectives is to promote and facilitate effective and sustainable competition in the telecommunication services sector so that End Users would benefit from having greater choice of service providers and innovative services, at competitive prices and quality. To this end, some of IDA's regulatory measures have been specifically targeted at removing or lowering any barriers that unfairly prevent End Users from terminating services and switching operators.
2. IDA has generally refrained from intervening in contractual matters for telecommunication services in competitive markets – End Users would be in a best position to make their own decisions on the types of service contracts that best suit their needs. IDA had therefore so far left it to operators to determine the contract durations and the early termination charges (“ETCs”) applicable for their services, and left it to End Users to decide whether the terms of the contract are acceptable, so long as these terms are disclosed upfront by the operator prior to providing the service.
3. However, there has been growing concerns, particularly amongst residential End Users, regarding the current industry practice of mobile, fixed-line telephony, and broadband operators, who impose long contract periods, and fixed or high ETCs that do not decrease over time. There were concerns that the contracts might be becoming unduly long, and ETCs excessively high, which together hinder residential End Users from terminating services and switching operators. IDA therefore conducted a study and reviewed these industry practices. To ensure that these industry practices remain reasonable and fair to both operators and residential End Users, IDA had proposed to issue a set of guidelines (the “**Proposed Guidelines**”) on contract periods and ETCs.
4. The Proposed Guidelines, to be applied to contracts for mobile, fixed-line telephony, and broadband services offered to residential End Users, proposed to require operators to:
 - (a) Limit the duration of contract periods to no more than 24 months;
 - (b) Ensure that ETCs for contracts that are longer than three months are graduated (i.e. decrease over time); and
 - (c) Ensure that the quantum of ETCs imposed on End Users excludes any costs that will be avoided by the operator when an End User terminates the service.
5. IDA conducted a public consultation on the Proposed Guidelines between 23 December 2008 and 20 January 2009. At the close of the public consultation, IDA received comments from 13 respondents, namely:

- (a) MobileOne Limited (“**M1**”);
 - (b) Singapore Telecommunications Limited (“**SingTel**”);
 - (c) StarHub Limited (“**StarHub**”); and
 - (d) 10 members of the public (henceforth referred to as the “**Individual Respondents**”).
6. IDA would like to thank all the respondents for their comments.
7. In making a final decision on the Proposed Guidelines, IDA took into account IDA’s policy objectives as well as the views received in the public consultation.
8. This cover note sets out the following:
- (a) A summary of the comments received from the public and industry participants on the Proposed Guidelines;
 - (b) IDA’s response to the issues raised by respondents on the Proposed Guidelines; and
 - (c) IDA’s decision on the final guidelines on contract period and ETCs for residential End User mobile, fixed-line telephony, and broadband services (the “**Final Guidelines**”).

PART II: SUMMARY OF COMMENTS RECEIVED ON THE PROPOSED GUIDELINES

9. The Individual Respondents were in general strongly supportive of IDA’s Proposed Guidelines and felt that it would ensure that residential End Users are not hindered from switching operators and unfairly penalised for terminating their contracts before the end of their contract periods.
10. Comments from the operators were mixed. SingTel argued that absent a verifiable failure in the market, there are no reasons for IDA’s intervention in the market for consumer telecommunication services. SingTel also noted that competition in the broadband and mobile markets is strong and any interference by IDA would restrict operators’ *“ability, flexibility and creativity in developing new and innovative service offers”*. The other two operators, M1 and StarHub expressed varying levels of support for IDA’s Proposed Guidelines. The following is a summary of the comments received in the public consultation.

Comments on Proposed Guidelines on Contract Period

11. Individual Respondents strongly supported IDA’s proposal to limit the duration of contract periods to no more than 24 months. In fact, one Individual Respondent expressed the view that a more stringent cap of 18 months would be ideal.
12. On the other hand, SingTel argued against IDA’s proposal to cap the contract period to 24 months. SingTel opined that such a guideline would *“deprive consumers of the opportunity to obtain attractive premiums ... and services at*

a lower monthly subscription” and contended that such a move by IDA would arguably restrict consumer choice. SingTel noted that consumers already *“have the choice to subscribe to services on shorter contract terms”* and that, therefore, *“the maximum contract term should be left to the market and consumers to determine”*.

13. The other two operators did not raise any objections to IDA’s proposal. In fact M1 and StarHub suggested that IDA extend the guidelines on contract periods to other services (which IDA will address in the ensuing sections). M1 noted that long contracts arising from the bundling of expensive “free gifts” by operators actually *“detract from the fundamental objective of competition based on quality of services delivered, and unfairly lock-in customers”*.

Comments on Proposed Guidelines on ETCs

14. The Individual Respondents welcomed IDA’s Proposed Guidelines on ETCs, agreeing with IDA’s views that ETCs that are fixed, or equal to the sum of the remaining monthly charges of a contract period, are unfair. They also urged IDA to require ETCs to be graduated.
15. Conversely, the operators opined that the Proposed Guidelines on ETCs would effectively render term contracts to be no different from customers taking up a service on a month-by-month basis. Operators also indicated that they could foresee significant operational issues that need to be overcome in order for them to comply with the guidelines. For example, their billing systems might need to be modified in order to compute and track graduated ETCs for their customers.
16. SingTel went on to state that requiring ETCs to be set in such a manner does not take into consideration operators’ intentions in choosing to offer packages with gifts or discounts to residential End Users – it argued that if operators had been aware that customers are only going to fulfil a portion of their contract periods, they might not have offered an attractive service package in the first place.
17. M1 also highlighted that, in the case of mobile service contracts, the ETCs imposed by operators are *“often set at the quantum which is similar or equivalent to the handset subsidy”* provided to the residential End User. M1 expressed the view that the cost of the handset subsidy *“must be reimbursed to the operator in the form of the ETC, and it remains a fixed cost regardless whether the termination occurs in the first or twenty-third month”*.

Other Comments Received

18. Besides providing feedback on the Proposed Guidelines, one Individual Respondent also took issue with the industry’s practice of packaging gifts and discounts with telecommunication services and appealed to IDA to stop it, on the grounds that it *“unnaturally inflates”* prices and *“affects [Singapore’s] competitive edge”*. No other Individual Respondents took issue with this industry practice however, and in fact one Individual Respondent expressly welcomed the gifts and discounts, and opined that they create value for customers and serve as a reward for their loyalty.

19. Another issue that was raised relates to extending the Proposed Guidelines to business/corporate broadband contracts outside of the central business district (“**CBD**”). StarHub had argued that business/corporate customers outside the CBD “*lack bargaining power and access to market information*” as such customers tend to be served by SingTel. As such, these customers have no choice but to take up services that come with long contract periods and high ETCs.
20. Separately, M1 suggested that IDA direct an “end date” for all broadband contracts before the arrival of the Next Generation Nationwide Broadband Network (“**Next Gen NBN**”). M1 recommended that both retail contracts and wholesale contracts for broadband services should end before the first half of 2010. It argued that by doing so, IDA could help ensure that “*all customers, including RSPs, are not penalized for switching to NGNBN [the Next Gen NBN]*”.
21. M1 also called upon IDA to implement a set of guidelines to ensure that consumers taking up “cross-product” packages are not unfairly locked into a contract and are able to switch operators, for selected service offerings within the “cross-product” package, without being penalised excessively.

PART III: IDA’S DECISIONS ON THE PROPOSED GUIDELINES

22. IDA has carefully considered all the comments received in the public consultation. IDA’s assessment and final decision are set out in the following sections.

IDA’s Policy Objective

23. As highlighted above, one of IDA’s key policy objectives is to promote effective and sustainable competition in the telecommunication services sector so that End Users would benefit from having greater choice of service providers and innovative services, at competitive prices and quality. IDA’s specific objective in conducting this review is to address residential End Users’ concerns that contract periods might be becoming unduly long, and ETCs excessively high, which together hinder them from terminating the service and switching between operators. Therefore, in our review on the Proposed Guidelines, IDA sought to ensure that: (i) residential End Users are not hindered from terminating services or switching service providers by unduly long contract periods as well as excessively high ETCs; and (ii) there is a balance between the legitimate interests of both residential End Users and operators.

Effects of Long Contract Periods

24. Having reviewed all the comments, IDA considers that a guideline on contract periods is necessary to protect residential End Users of mobile, fixed-line telephony and broadband services, and to promote more rigorous competition in these markets. IDA is concerned by the growing trend of operators competing on offering more high value “freebies”, and tying residential End Users down to longer contracts. IDA notes that competition based on freebies

could be viewed by some as destructive and unsustainable. IDA also notes that the Individual Respondents' comments to the public consultation strongly support limiting the duration of contract periods to no more than 24 months.

25. IDA considered SingTel's opinion, that there should not be a need for restrictions on contract periods since residential End Users already have a choice of short contracts for mobile and broadband services today. However, IDA notes that the shorter contract plans are usually packaged in such a way that makes them very much less attractive than plans with longer contracts – which usually come with freebies or discounts. Service providers also advertise or market those service packages on long contract period aggressively, and residential End Users may not even be aware of service packages on short-term contracts. As a result, most residential End Users would likely end up subscribing to plans with long contracts and high ETCs.
26. To be clear, IDA does not object to operators offering “freebies” or discounts to residential End Users in return for a commitment to a fixed contract period. IDA recognises that in general, bundling of services with gifts or discounts is welcomed by many residential End Users. However, IDA is primarily concerned that contract periods might be getting longer, and service packages with contract periods that are unduly long may soon become the default package, and hinders residential End Users' ability to terminate services and switch between operators.
27. IDA is of the view that limiting the contract period to no more than 24 months strikes a good balance between allowing operators enough room to be creative and devise their service plans to compete, and protecting residential End Users from being locked in to unduly long contracts. While this may restrict the operators' ability to offer more high value “freebies” tied to longer contract periods, IDA observes that, with rare exceptions, the 24-month contract is already the industry norm for promotional offers today, and operators could already offer all kinds of incentives to differentiate themselves with a 24-month contract. Limiting contract periods to no more than 24 months should therefore not materially impact operators' ability to innovate or compete.
28. Moreover, IDA notes that other regulators¹, including the Competition Commission of Singapore², have also expressed opinions that long contracts,

¹ The issue of contract periods is also being reviewed by regulators in the European Union and the United States:

(a) In a hearing on early termination charges held in June 2008, the chairman of the United States Federal Communications Commission proposed that, to protect consumers, rules should be established to guarantee that “*any contract for service should be for a reasonable length of time*”.

(b) The European Union had recently introduced a set of Telecoms Reforms which, amongst other requirements, specifies that the maximum initial contract periods of a contract signed by a consumer with an operator will be no longer than 24 months. Operators must also offer consumers the possibility of agreeing to a contract with a maximum duration of 12 months (see <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/09/491>).

² The CCS stated in its Oct 2008 guidelines on competition impact assessment for government policy makers, “*the ability of buyers to easily switch to a seller that provides a lower price, better service or quality, incentivises sellers to compete vigorously and so promotes efficiency in a market. Long-term contracts with high financial penalties for leaving before the stipulated time period make it harder for buyers to switch between sellers.*”

coupled with high ETCs, do form significant barriers to switching operators for residential End Users. To effectively reduce such barriers, IDA is of the view that the issue of contract periods and ETCs should be addressed *holistically* – addressing one but not the other is unlikely to effectively resolve the barriers to terminating services and switching operators for residential End Users. For example, if IDA were to implement the guidelines on ETCs without any guidelines on contract periods, nothing prevents operators from imposing longer contracts instead. Therefore, whilst IDA may succeed in reducing the quantum of ETCs and getting ETCs to be graduated, residential End Users' ability to switch service providers could continue to be restricted as they get tied down to increasingly longer contracts.

29. Based on the above reasons, IDA determines that it is appropriate to introduce a guideline on contract period for mobile, fixed-line telephony, and broadband services offered to residential End Users, limiting the duration of contract periods to no more than 24 months. IDA continues to encourage operators to offer a variety of plans, e.g. no-frills plans, standard plans with fixed subscription periods of three to six months etc., in order to provide more options for residential End Users.

Fairness of Fixed ETCs and ETCs that do not Exclude Avoided Costs

30. As mentioned in the consultation paper, IDA is of the view that fixed ETCs that do not decrease over time, and ETCs that do not exclude costs that will be avoided once a subscriber has terminated his contract, do not meet the standard described in Sub-section 3.2.3 (Prohibition on Disproportionate Early Termination Charges)³ of the Telecom Competition Code (the “**Code**”), which requires operators to ensure that the ETCs are *reasonably proportionate to the discounts given and the amount of time the End User has completed on the contract*.
31. IDA recognises that operators do incur certain costs in order to serve their customers. These costs would include administrative and installation/roll-out costs, as well as costs of gifts, discounts or subsidies that were provided to their customers. In the event of an early termination of a contract by a customer, it is reasonable for operators to seek to recover the portion of these costs which have yet to be recovered from the customer, including the cost of any special consideration (in the form of gifts, subsidies or discounts), but less any costs that will be avoided by the operator when a customer terminates the service.
32. In their responses to the public consultation, operators have raised a number of concerns about the recovery of such costs through ETCs. To justify having a fixed ETC, M1 had raised the view that regardless of when a customer terminates his contract, the cost of any subsidy provided remains a fixed cost. IDA does not agree with M1's view that, at the point of premature termination by a customer, operators should be entitled to recover the full sum of the subsidies that had been provided to the customer. Such a view disregards the fact that customers may have fulfilled part of their contractual obligations

³ Section 3.2.3 of the Telecom Competition Code states that: “*the amount of any early termination liability must be reasonably proportionate to the extent of the discount or special consideration that the Licensee has provided and the duration of the period which the End User took service*”.

and operators have already recouped part of their costs. As highlighted in IDA's consultation paper, IDA's view is that an operator would continuously recoup the costs of any subsidy throughout the course of the customer's contract period. Indeed, when designing a promotion, operators would already have factored in all subsidies when determining the promotional price. This being the case, at the point of the customer's early termination, the operator should only recover the portion of the subsidy which it has yet to recover, and not the full subsidy via a flat-rate or fixed ETC, as though the customer has not served out any part of his contract.

33. IDA considers that fixed ETCs on a long term contract cannot be considered to be "reasonably proportionate", since such fixed ETCs do not take into account the length of time that the End User has completed on his contract and the costs already recouped by the operator. Instead, IDA is of the view that *graduated* ETCs, that take into consideration the length of time that a customer had served on a contract – by decreasing in tandem with the number of months left on the customer's contract period – are more consistent with the Code requirement on proportionate ETCs.
34. IDA also considers that ETCs that are equivalent to, or higher than, the sum of the remaining monthly charges do not meet the Code standard of being "reasonably proportionate". This is because such ETCs do not take into account the variable costs that the operator would have avoided by stopping the provision of service to the End User.
35. Accordingly, IDA is of the view that, for ETCs to be consistent with the Code requirement of being "reasonably proportionate", such ETCs must, at the minimum, meet the following requirements: (i) ETCs should be graduated on at least a month-by-month basis; and (ii) ETCs must exclude avoided costs.
36. Based on the above reasons, IDA determines that it is appropriate to introduce a guideline on ETCs for mobile, fixed-line telephony, and broadband services offered to residential End Users, stipulating that:
 - (a) ETCs for contracts that are longer than three months are graduated (i.e. decrease over time); and
 - (b) The quantum of ETCs imposed on residential End Users excludes any costs that will be avoided by the operator when a residential End User terminates the service.
37. A guideline on ETCs will provide residential End Users and the industry with clarity on what IDA deems to be proportionate ETCs, as required under Sub-section 3.2.3 of the Code.
38. IDA notes that SingTel had referred to the fact that the requirement for proportionate ETCs have been in place in the Code since 2000, and that "*there had never been any suggestion that the ETCs* [ETCs imposed by SingTel that are fixed and/or do not exclude avoided costs] *are not compliant*". IDA would like to clarify that notwithstanding this, nothing precludes IDA from issuing Advisory Guidelines clarifying what IDA considers as necessary requirements to be met by operators going forward in order to remain

compliant with the Code, when determining the ETCs in respect of the relevant service agreements.

39. As IDA had set out in its public consultation paper, IDA recognises that it may be impractical to require all ETCs to be graduated. In the case of short-term contracts (of between one to three months), IDA is of the view that fixed ETCs which may not exclude avoidable costs are acceptable. This is because it is unlikely that operators would have recovered their upfront costs within such a short period, and the contract period is not too long for residential End Users to see it through if they wish to avoid paying the ETCs.

Other comments

40. On the suggestion for an “end date” to be set for all broadband service contracts before the arrival of the Next Gen NBN, IDA does not think this is necessary. Firstly, IDA does not intend to interfere in contracts that have already been concluded between operators and their customers. Secondly, IDA finds such a measure to be impracticable. Since the Next Gen NBN network and services will be rolled out in stages across the island, there will not be one specific “start date” for the Next Gen NBN. Accordingly, it would not be practical for IDA to set an “end date” for all broadband contracts. IDA also considers that operators should be encouraged to continue to offer innovative services in the run-up to the Next Gen NBN, and End Users should take into consideration all factors before deciding on the best packages that meets their needs.
41. IDA also considers it unnecessary for IDA to introduce a separate set of similar guidelines for “cross-product” packages, as the Final Guidelines are already intended to apply to any single or multiple-product packages which comprise of residential mobile, fixed-line telephony, and/or broadband services. Operators must therefore ensure that, for any multiple-product packages which contain mobile, fixed-line telephony and broadband services offered to residential End Users: (a) any contract period does not exceed 24 months; and (b) any ETCs imposed for termination of any multiple-product packages must be "reasonably proportionate", and in line with the Final Guidelines and the Code.
42. Finally, on the suggestion to expand the Final Guidelines to cover business broadband contracts outside of the CBD, IDA is of the view that similar guidelines covering business contracts, if necessary, would have to be distinct from those for residential End Users, to take into account differences in service offerings to business / corporate End Users, the customisations prevalent in certain business contracts as well as the difference in bargaining power and market information available to such customers. IDA will consider the need for these guidelines separately.

PART IV: CONCLUSION AND ISSUANCE OF FINAL GUIDELINES

43. In summary, IDA's Final Guidelines stipulate the following:
- (a) Operators offering residential mobile, fixed-line telephony, and broadband services must limit the duration of contract periods for such services to no more than 24 months.
 - (b) Operators offering residential mobile, fixed-line telephony and broadband services with contract periods longer than three months must ensure that ETCs are graduated on a month-by-month basis. This means that ETCs must decrease monthly, in tandem with the number of months that are left on an End User's contract.
 - (c) Operators offering residential mobile, fixed-line telephony, and broadband services must ensure that any ETCs for early termination of a service contract do not include costs that will be avoided by the operators when they cease the provision of the service to the End User.
44. The Final Guidelines will take effect on 1 March 2010. The guidelines will not apply to contracts concluded before this date. Notwithstanding this, IDA would like to remind the affected operators that this period of transition is meant to allow operators to adjust or modify their processes, systems and *existing* service offerings, if necessary, to comply with the guidelines. IDA expects that, in the interim, any *new* service offerings introduced by operators should comply fully with the Final Guidelines.
45. For avoidance of doubt, the Final Guidelines will apply to any single and multiple product packages which include any residential mobile, fixed-line telephony and/or broadband services, including those multiple-product packages that may also include other types of residential services. The guidelines will also apply to all value-added services offered pursuant to any residential mobile, fixed-line telephony and/or broadband services.
46. The Final Guidelines will not apply to mobile, fixed-line telephony and broadband services offered to business/corporate customers.
47. IDA would also clarify that the Final Guidelines are advisory and do not impose any binding legal obligation on IDA. However, the Final Guidelines do clarify the standards that IDA will generally apply in assessing whether a service agreement contravenes the Code. Accordingly, IDA expects operators offering residential mobile, fixed-line telephony and broadband services to comply with the Final Guidelines. If IDA discovers that any operator offering residential mobile, fixed-line telephony and broadband services does not meet the requirements set out in the Final Guidelines, IDA will consider taking regulatory actions that IDA deems necessary or appropriate.