

CASBAA response to the IMDA Consultation paper on

The Telecommunication and Subscription TV Mediation-Adjudication Scheme

CASBAA welcomes the opportunity to comment on the IMDA consultation paper on the Telecommunication and Subscription TV Mediation-Adjudication Scheme. As IMDA is aware, CASBAA is the non-profit association of the video and pay-TV industry in the Asia-Pacific region. The Association has a membership of nearly 100 companies, many of whom are international companies with a presence in Singapore.

As noted in the consultation paper, a number of countries have introduced advanced dispute resolution schemes and CASBAA commends the IMDA for consulting the industry on implementing a similar scheme in Singapore.

In response to the consultation, CASBAA would make the following points under a few key broad areas: market failure; scope of scheme; and costs.

Market Failure

Based on data from the Consumers Association of Singapore (CASE) released in February 2018, the vast majority of consumer complaints were brought in industries un-related to the telecommunications and subscription TV market. Of all the complaints made to CASE in 2017, those related to telecommunications accounted for only 3% (ranking 7th), whilst subscription TV doesn't even register as a separate category.

Indeed, we note the 2015 MDA Media Consumer Experience Survey which measured customer satisfaction with media services found that satisfaction levels for pay TV in particular were very high.

Further, CASBAA notes that consumers and companies in Singapore already have access to the Small Claims Tribunal (SCT) which, for a relatively modest cost, enables complaints to be brought on a number of grounds, with the costs (currently SGD\$10) being borne by the complainant unless the SCT directs otherwise. This quick and transparent process works well and we understand is used regularly by both suppliers and consumers to resolve complaints in the telecommunications and TV distribution industry.

Finally, we note that even if the IMDA were to implement the proposed Mediation-Adjudication Scheme it is not legally binding and doesn't prevent consumers from also seeking further redress via other routes, including the SCT. We are concerned, therefore, that the proposed system creates an additional layer of consideration and adjudication, thus adding unnecessarily to the regulatory burdens faced by licensed pay-TV providers in Singapore (which of course are in competition with TV providers from outside Singapore and who, in many cases, would not have to bear the additional burdens.)

In light of these factors, CASBAA does not believe that there is a market failure in Singapore in the telecommunications and subscription TV sector which requires the introduction of the supplementary Mediation-Arbitration scheme proposed in this consultation.

Scope of scheme

That being said, CASBAA recognises that IMDA is keen to explore relevant options under any proposed Mediation-Adjudication Scheme. The consultation paper definition of the scope of the scheme appears to enable a customer to lodge a complaint for compensation under any possible issue that they may be upset about, the majority of which are outside the contractual remit of the pay-TV company in question. Some examples under which a customer may lodge a complaint include: if the customer's building has a power cut and they miss a particular episode; if a cable is broken in a neighbouring region which prevents any customer access; if a customer has a lengthy queue to speak to a customer service representative and doesn't think the staff are helpful. This wide-ranging scope would enable introduction of customer complaints which would be unique to any other contractual arrangement both in Singapore and globally. Whilst we don't believe this is the intended purpose of the scope of the scheme, we would encourage IMDA to more clearly define the areas under which a genuine complaint can be brought, i.e. without creating consumer rights around programming, or around content supply circumstances which are outside of the network operator's control.

We understand that the IMDA proposal is for a scheme which isn't legally binding on the customers but would be legally binding on the company. This again creates a dis-incentive for customers to use the scheme as intended and would potentially give rise to many frivolous and vexatious claims, especially if the scope remains as wide-ranging as currently set out.

If the case goes to arbitration there would be no mechanism to appeal if the arbitrator issued a ruling which went against current legal requirements. If arbitration is agreed as a way forward, CASBAA would recommend that there also needs to be an appeal or review process, in the event that the arbitrator makes an error of law or contradicts Government policy.

Costs

We note in the IMDA proposal that the cost for the Mediation-Arbitration scheme is to be borne mainly by the industry providers. Looking globally at similar schemes we note that they are often broadly funded by the government, or that relevant costs are assigned dependent on the outcome of the case. The IMDA proposal that the pay-TV companies should fund 90% of the costs, even in the event that the customer loses, places an unacceptably high burden on the licensed industry players who will be subject to the scheme. We understand that initial indicative costs suggested by the IMDA are SGD\$50 for mediation and SGD\$500 for arbitration. These are very high when compared to both the current SCT costs, where the cost of bringing a complaint is only SGD\$10, and comparable schemes globally (e.g. Hong Kong).

Whilst we would encourage the industry to contribute to the establishment and support of any such scheme, weighting the costs so heavily in favour of the consumer places no "speedbumps" in front of customers to prevent frivolous or vexatious claims. Indeed, even if the complainant failed to show for the arbitration hearing, the provider would be expected to pay. This not only creates the risk of mass misuse of the system placing a high financial penalty on providers, but perversely gives consumers no incentive to pause and consider if their complaint is genuine or indeed to see it through. Consequently, we view

it is likely that some consumers will also use the cost to the companies as a bargaining tool arguing that it would be cheaper to the company to pay the complainant rather than the arbitration costs.

Rather than setting a fixed 90/10 split of costs between the pay TV operator and the customer, CASBAA would urge the IMDA to consider allowing the arbitrator to award costs, based on who won the case.

Other concerns

There is no requirement on the complainant to disclose the detailed grounds of complaint, nor any burden on the complainant to bring a truthful claim. As the scheme currently proposes a paper-based scheme which is not transparent it makes it more challenging for the respondent to fully offer up counter-arguments. A process which ensures that accurate and honest complaints/statements are used would give any scheme more weight.

Finally, CASBAA believes that the proposed mechanism involving both mediation and arbitration is cumbersome. CASBAA recommends that rather than a 2-stage process, it would be simpler, quicker and cheaper to operate a one-stage mediation process, in parallel with the SCT.