

M1'S RESPONSE TO IMDA'S PUBLIC CONSULTATION ON THE TELECOMMUNICATION AND SUBSCRIPTION TV MEDIATION-ADJUDICATION SCHEME



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Introduction

1. M1 is Singapore's most vibrant and dynamic communications company, providing mobile and fixed services to over 2 million customers. With a continual focus on network quality, customer service, value and innovation, M1 links anyone and anything; anytime, anywhere.
2. M1 supports the development of a stable regulatory environment with proportionate regulatory frameworks that will catalyse a sustainable and growing info-communications industry where long term planning and decisions can be undertaken.
3. M1 welcomes the opportunity to submit our comments with regard to IMDA's public consultation on the proposed Alternative Dispute Resolution ("ADR") scheme. IMDA's intent is to supplement the existing consumer protection measures and dispute resolution approach, by providing an independent, conclusive, efficient and cost-effective way to resolve disputes between consumers and service providers. It is noted that ADR schemes have been implemented in countries such as the United Kingdom, Hong Kong and Australia.
4. We are of the view that the proposed ADR scheme may not be warranted in the Singapore context. At M1, we place strong emphasis on customer service, and would fully investigate customer's feedback and endeavour to resolve any dispute amicably, without the need for litigation. If a dispute cannot be resolved, we believe that current resolution avenues available to customers are sufficient recourse.
5. M1's specific comments on the proposed ADR scheme are set out in the following sections.



M1'S SPECIFIC COMMENTS ON THE PROPOSED ALTERNATIVE DISPUTE RESOLUTION SCHEME

IMDA's Proposed ADR Scheme

1. M1 foresees that the ADR scheme, which comprises a 2-step Mediation – Adjudication process, will likely prolong the current dispute resolution approach, rather than assist the disputing parties to resolve the dispute in an efficient and cost-effective manner. However, the more fundamental question is whether there is a need to duplicate existing dispute resolution channels available to consumers.

Number of telecom related complaints / disputes is declining

2. Based on IMDA's Consumer Awareness and Satisfaction Survey¹ conducted in Y2014, satisfaction levels in relation to the time taken to resolve complaints have increased across the key operators (Singtel, StarHub and M1) from Y2010 to Y2014.

3. The Consumers Association of Singapore ("CASE") also reported a decrease in the number of telco-related complaints received, with 85 complaints received in 2016 as compared to 168 complaints in 2015². Of the total number of complaints received by CASE, the percentage of complaints pertaining to telecommunication service providers remained consistently low at 3% from 2016 to 2017³.

Current avenues for dispute resolution are adequate

4. There are existing channels (which offer similar mediation and adjudication functions) where consumers can seek redress if their disputes with the service providers cannot be resolved.

5. For instance, CASE offers mediation services for consumers who are unable to resolve their disputes with retailers. Similar to the proposed ADR scheme, a mediation session can be conducted (capped at 2 hours) and a settlement agreement will be signed and given to both parties once a settlement has been reached.

6. Similarly, consumers can turn to the Small Claims Tribunals ("SCT") to resolve their disputes with service providers. The SCT involves a 2-stage process. The first is a consultation stage where parties are given an opportunity to discuss their case with a view of resolving their dispute amicably. If the dispute cannot be resolved, it will proceed to the second stage where a hearing will be held and the judge would make a binding decision on both parties based on the merits of the case.

¹ IMDA's Consumer Awareness and Satisfaction Report 2014 (<https://www.imda.gov.sg/industry-development/facts-and-figures/survey-reports>).

² New Way to Settle Telco Disputes could kick in late this year (2018). Available at: <http://www.straitstimes.com/tech/new-way-to-settle-telco-disputes-could-kick-in-late-this-year>

³ CASE media release - Motorcars, Beauty, Renovation Contractors and Electrical & Electronics industries ranked as top four with most complaints (2018). Available at: https://case.org.sg/admin/news/pdf/292_pdf.pdf



7. These established channels already provide a quick and inexpensive avenue for resolution of disputes between consumers and suppliers.

Potential Pitfalls of the Proposed ADR Scheme

8. The proposed ADR Scheme is a duplicate channel and can potentially prolong the dispute resolution process as the adjudicated decision is not binding. Consumers can resort to multiple attempts to seek a favourable dispute resolution outcome, by not accepting the adjudicated decision and pursuing further options such as the SCT, leading to concerns on the possibility of abuse and “forum shopping”⁴. The dispute resolution process then becomes protracted and service providers will need to expend increased resources to address customer disputes.

9. The proposed co-payment model, which requires the service providers to bear 90% of the fees, is not justifiable. It does not take into consideration the merits of the case which could be ultimately dismissed in favour of the service provider. Nonetheless, even in such a situation, the service provider has to bear the bulk of the cost for the proceedings⁵ with no prospect of cost recovery.

10. Moreover, the proposed ADR scheme requires the service provider to bear the proposed fixed amounts of \$90 and \$450 for mediation and adjudication respectively. Where the claim is less than these amounts, the ADR fees are likely to deter service providers from defending the claim as there is currently no prospect for the recovery of cost. Even if the dispute is eventually dismissed in favour of the service provider, the costs incurred by the service provider will still exceed the disputed amount. In such instances, there is a real risk that the scheme could encourage customers with weak or trivial cases to use the ADR scheme as a means to “coerce” service providers into satisfying their compensation demands, especially since it would not make commercial sense for the service provider to proceed with the ADR scheme for dispute resolution.

11. There should be clear guidance on what the consumers are expected to do to demonstrate that there was a genuine attempt to resolve the dispute before raising the dispute under the ADR scheme⁶, to prevent abuse of the Scheme. Some consumers will seek to exploit goodwill or waiver of charges from their service providers. This is an unfortunate business reality which should be addressed to conversely protect the interest of the service providers.

12. To this end, it is important that procedures and mechanisms to be put in place will support a fair and reasonable adjudication, and the final outcome should be binding on both parties involved. For example, under the documents-based adjudication stage, we would propose that audio call recordings should also be allowed to facilitate an objective assessment of the case. It is not stated whether the service providers will have any further recourse if it is aggrieved with an

⁴ New Way to settle telco disputes: Safeguards needed to prevent abuse (22 Jan 2018). Straits Times.

⁵ Under the CASE, both parties would pay an equal share of the mediation fees. Under the SCT, the party who files the claim would bear the fees. The SCT may also dismiss a claim which it considers to be frivolous or vexatious on such terms as it thinks fit.

⁶ For the ADR schemes in UK – namely the Ombudsman Services: Communications, and the Communications and Internet Services Adjudication Scheme (CISAS) – they require the customer to first engage the service provider for at least eight (8) weeks before approaching the ADR Operator.



adjudicated decision, while the customer can have alternative channels of dispute resolution if dissatisfied with the outcome. If the ADR scheme is to be implemented, the decision should be binding for both the consumer and the service provider, and the cost responsibility between the parties should reflect the outcome of the decision.

ADR Schemes in other countries

13. IMDA stated that ADR schemes are already common in other countries such as in the United Kingdom and Australia. However, we would caution against simply referencing the ADR schemes in other countries, as their implementation should be viewed in the proper context of their respective business environments.

14. If an ADR scheme is to be considered, we would suggest evaluating the dispute resolution approach in Hong Kong where the market characteristics are comparable to Singapore. The Communications Association of Hong Kong (“CAHK”) set up a Customer Complaint Settlement Scheme (“CCSS”) for the telecommunication industry, which offers mediation services to help resolve billing disputes. The CCSS is funded by the Government. If no settlement is reached during the mediation, either party may then choose to pursue their own course of action, such as the SCT.

Customers that are eligible for the ADR Scheme

15. IMDA has suggested that besides individual consumers, small-scale businesses (such as shops and cafes) should also be eligible for the ADR scheme, as they may not have as much bargaining power as larger businesses. Such a position taken by IMDA is potentially flawed as service packages to businesses are typically customised to meet their specific needs, and not standardised consumer contracts. At the operational level, it will also be impractical and cumbersome for service providers to comply with such a regulation as they have to then ascertain what size of business they are dealing with to determine if they are covered under the ADR Scheme.

Types of service providers to participate in ADR Scheme

16. M1 is concerned with IMDA’s proposal to mandate participation of all telecommunication and subscription TV service providers that have direct billing relationship with eligible customers in the scheme.

17. We are of the view that service providers who are responsible for the offering of service should be the party addressing any dispute with their customers. For example, M1 bills on behalf of the Premium Rate Services (“PRS”) providers for their services subscribed by mobile customers. In the event of a dispute regarding the PRS, M1 (who acts as the billing agent) will not be the appropriate party to be accountable and agree on how the dispute should be settled with the customers of PRS providers. Thus, if IMDA establishes the ADR scheme, PRS providers should be liable under the scheme.



Types of disputes that can be raised under the ADR Scheme

18. IMDA has cited some examples to illustrate the types of complaints that can be raised under the ADR scheme. We are concerned with the inclusion of some of the examples, and would refer IMDA to [Annex 1](#) on our specific comments on the examples that can be raised under the ADR scheme.

19. To safeguard against abuse of the Scheme, M1 believes that it is important that the type of complaints be limited to issues that are not subjective in nature, and can be resolved through reasonable and equitable means. The following types of complaints should be excluded:

- (i) Complaints on issues that do not fall within the responsibility of a service provider or not due to the fault of a service provider;
- (ii) Complaints on waiver of charges or discounts given by service providers on goodwill basis;
- (iii) Claims for compensation (e.g. loss of revenue) due to service provider's planned maintenance and service difficulties; and
- (iv) Complaints on prices, contractual terms and conditions of the services offered to customers.