

NetLinkTrust

the fibre of a smart nation

NLT/REG/0318/021

21 March 2018

INFO-COMMUNICATIONS MEDIA DEVELOPMENT AUTHORITY ("IMDA")

10 Pasir Panjang Road

#10-01 Mapletree Business City

Singapore 117438

Via email: Consultation@imda.gov.sg

Attention: Ms Aileen Chia
Deputy Chief Executive (Policy, Regulation & Competition Development) &
Director-General (Telecoms & Post)

Dear Ms Chia

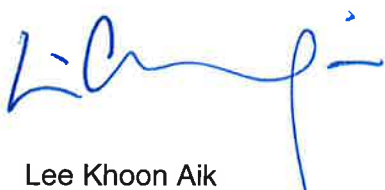
PUBLIC CONSULTATION ON THE TELECOMMUNICATION AND SUBSCRIPTION TV MEDIATION-ADJUDICATION SCHEME

We write in response to the Consultation Paper issued by IMDA on 17 January 2018 with regards to the proposed Telecommunication and Subscription TV Mediation-Adjudication Scheme.

NetLink Trust welcomes the opportunity to offer our views and comments on IMDA's proposals detailed in the Consultation Paper. NetLink Trust has reviewed the proposals, and is pleased to submit herewith our views and comments for IMDA's consideration.

Please do not hesitate to contact the undersigned if IMDA should require any clarification or additional information with regards to this submission.

Yours sincerely,



Lee Khoon Aik
Director (Regulatory & Interconnect)
NetLink Trust
(managed by NetLink Management Pte Ltd as its Trustee)

Enc.

PUBLIC CONSULTATION ON THE TELECOMMUNICATION AND SUBSCRIPTION TV MEDIATION-ADJUDICATION SCHEME

1. NetLink Trust appreciates this opportunity to submit our views and comments on IMDA's Consultation Paper on the proposed Telecommunication and Subscription TV Mediation-Adjudication Scheme ("Proposed Scheme").

General Comments

2. NetLink Trust respectfully disagrees with IMDA on the need for an alternative dispute resolution scheme for the telecommunication and media sectors. As IMDA correctly noted in its Consultation Paper, there is already an extensive range of avenues available to consumers to address their grievances with telecommunication and media service providers. These include the consumer protection measures put in place by IMDA under the Telecom Competition Code, Media Market Conduct Code, Premium Rate Services Code, Quality of Service frameworks, and the Small Claims Tribunal established and administered by the State Courts of Singapore.
3. These consumer protection mechanisms range from regulatory measures to deal with systemic issues (such as the Telecom Competition Code and Media Market Conduct Code) to mechanisms for dealing with individual disputes (such as the Courts and Small Claims Tribunal). Collectively, these existing measures provide a very substantial degree of consumer protection.
4. According to statistics released by the Consumers Association of Singapore ("CASE"), complaints relating to telecommunication services accounted for only 3% of all complaints handled by CASE in 2017.¹ Compared to other sectors (such as the "Motorcars" industry which accounted for 15% of all complaints), the number of complaints for the telecommunication industry was relatively low.
5. In NetLink Trust's view, the Proposed Scheme does not appear to be necessary and its introduction may inadvertently prolong and delay the process for resolving disputes between consumers and their service providers. IMDA's Proposed Scheme may also result in higher costs for consumers and service providers in their endeavours to resolve disputes.
6. NetLink Trust notes that the Proposed Scheme, which IMDA has developed to supplement the existing consumer protection measures and dispute resolution approach, does not appear to provide an independent, conclusive, efficient and cost-effective way to resolve disputes between consumers and their service providers.

¹ https://www.case.org.sg/consumer_guides_statistics.aspx

NetLinkTrust

the fibre of a smart nation

7. Under the Proposed Scheme, consumers are required to approach their service providers first to resolve the dispute, before escalating it to the Alternative Dispute Resolution (“ADR”) body appointed by IMDA to administer the Proposed Scheme. IMDA has omitted to provide any specific detail as to the selection criteria that it would apply, and the appointment mechanism that would be adopted, in selecting and appointing an ADR operator. NetLink Trust believes that such details are important to facilitate an informed discussion amongst IMDA and industry stakeholders on the efficacy of the Proposed Scheme.
8. Given the powers ADR operators would have under the Proposed Scheme, NetLink Trust believes that it would be appropriate for IMDA to seek stakeholders’ views and comments on its criteria for selecting and appointing an ADR operator. For example, IMDA should ensure that the appointed ADR operator is independent of any consumer or industry advocacy group. The appointment mechanism should incorporate a ‘circuit-breaker’ to allow service providers to raise their concern and/or objection to IMDA with regards to any decision or determination issued by the appointed ADR operator pursuant to the Proposed Scheme. Accordingly, NetLink Trust would request that IMDA consult the industry and public on its proposed criteria for selecting and appointing an ADR operator.
9. As part of the operating mechanics for the Proposed Scheme, IMDA has proposed, amongst other things, for disputes that could not be resolved at the mediation stage, consumers may choose to escalate it to the second stage i.e. adjudication, where the resolution of the dispute would be decided by a neutral third party. Participation in adjudication is mandatory for service providers if consumers choose to proceed with it. IMDA has also proposed that the adjudicated decision would be final and binding on the service provider only if the consumer accepts it.
10. IMDA has further proposed that consumers need only bear 10% of the case fees, while service providers bear the remaining substantial share of 90%.
11. NetLink Trust is concerned that eventual dispute resolution mechanism under the Proposed Scheme will be unjustifiably skewed in favour of the complainant, and the resultant mechanism will become dysfunctional.
12. NetLink Trust observes that certain aspects of the operating mechanics of the Proposed Scheme could be exploited by complainants to game the system to their advantage. For example, IMDA has proposed that a complainant need only bear 10% of the case fee (comprising mediation and/or adjudication fees), whereas the service provider bears the remaining substantial share of 90%. The adjudicated decision will be final and binding in the service provider only if the complainant accepts it.
13. NetLink Trust is concerned that the disproportionately low cost to consumers to participate in the Proposed Scheme (which IMDA estimated to start from \$10 for mediation) will inadvertently result in more frivolous cases being referred to ADR operators for resolution. In turn, this will increase the cost to service providers in attending to such cases, since they would have to bear a significant 90% of the case fee. At the same time, service

NetLinkTrust

the fibre of a smart nation

providers will have to incur significant time and resources to prepare for and participate in the mediation and/or adjudication required under the Proposed Scheme.

14. NetLink Trust is concerned that by proposing to allow consumers to have the final say in deciding whether an adjudicated decision could be effected and be final and binding on the disputing parties, IMDA may inadvertently create a loophole for consumers to 'cherry pick' and accept only those adjudicated decisions that benefit them. Clearly, IMDA's proposal will not ensure an independent and fair outcome for all disputing parties. Neither will it ensure an efficient and cost-effective approach to dispute resolution.
15. Set out below are NetLink Trust's detailed comments with respect to specific proposals put forth by IMDA in its Consultation Paper.

Dispute Resolution Process

(a) Effectiveness of Proposed Scheme

16. NetLink Trust respectfully disagrees with IMDA on the need for an alternative dispute resolution scheme for the telecommunication and media sectors for the reasons explained in the preceding section.
17. However, should IMDA decide to proceed with the Proposed Scheme, NetLink Trust would like to highlight that in order for the Proposed Scheme to be effective, it should not simply be an alternative platform for consumers to lodge complaints. Factors to consider include, but are not limited to, the following:
 - (i) First and foremost, the Proposed Scheme must be able to enhance the currently available avenues for consumers to resolve their disputes. IMDA has stated in its Consultation Paper that the Proposed Scheme would be an alternative platform for consumers to resolve issues with their telecommunication and media service providers. This would imply that there is no differentiation between the Proposed Scheme and the existing consumer protection mechanisms such as the Courts and the Small Claims Tribunal, since it is just a new option for consumers to resolve their disputes. In NetLink Trust's view, introducing a new mechanism without added value would only create an unnecessary level of regulatory oversight on licensees in the telecommunication and media sectors.
 - (ii) The mediation-adjudication process would be effective in achieving the policy objectives if the screening process for eligible claims is appropriately stringent. The proposed mediation-adjudication process is consumer-centric, as is apparent from the apportionment of fees between consumers and service providers, and the fact that the consumer would have the option to accept or reject the decision by the adjudicator. There needs to be sufficient safeguards to ensure that service providers are not unduly pressurised into giving in to unreasonable claims so as to avoid expending disproportionate time and cost through mandatory participation

NetLinkTrust

the fibre of a smart nation

in the mediation-adjudication process. Accordingly, NetLink Trust would like to propose that as part of the ADR process, consumers have to sign a declaration form to attest that the details they provided are truthful. NetLink Trust would also like to propose that details such as the penalties for any abuse of the Proposed Scheme, as well as limits on the number of claims the consumer is allowed to lodge concurrently, should be clearly spelt out in the terms and conditions of the Proposed Scheme.

(b) Need for Transparency in Appointment of ADR Operators

18. IMDA has omitted to include in its Consultation Paper the selection criteria and appointment mechanism for ADR operators. Under the Proposed Scheme, ADR operators play a crucial role in the determination of disputes between consumers and service providers. Therefore, it is important that the appointed ADR operator is (and will continue to be) impartial in its decision-making process, including in its assessment of the eligibility of a complaint for mediation/adjudication under the Proposed Scheme.
19. IMDA must institute an appropriate regulatory framework to proactively monitor and audit the work of ADR operators, to ensure that they do not abuse the powers accorded to them under the Proposed Scheme. Stringent checks must be put in place for effective oversight of ADR operators. For instance, there should be a mechanism in place for an ADR operator to declare its independence and neutrality. There should also be an avenue for service providers to raise their concerns to IMDA regarding the selection or appointment of an ADR operator – for example, where an ADR operator is deemed to have a vested interest to take on complaint cases referred to it and to do so at service providers' expense, or where the judgement of an ADR operator is likely to be skewed towards the complainant to induce business for the ADR operator.
20. In addition to being independent, neutral and impartial, the ADR operator should also have specialised working knowledge of the telecommunication and media sectors. In other words, the ADR Operator should ideally be a dedicated organisation aimed primarily at resolving telecommunication and media related disputes for the Proposed Scheme, as opposed to an existing organisation such as CASE that is handling all consumer-related disputes from various industries.

(c) Notice of Intention to Mediate

21. IMDA has proposed in the Consultation Paper that consumers who choose to resolve the dispute through the Proposed Scheme have to serve a 14-day “notice of intention to mediate” to their service providers, before initiating the ADR process. NetLink Trust agrees that the “notice of intention to mediate” is necessary, as it allows the disputing parties to make a final attempt at resolving the matter without further escalation, which would save time and cost for all parties.
22. However, in NetLink Trust's view, the 14-day notice period is insufficient to effectively resolve the dispute between the consumer and his/her service provider, notwithstanding

NetLinkTrust

the fibre of a smart nation

that the disputing parties should already have initiated discussions to resolve the dispute prior to lodgement of the “notice of intention to mediate”.

23. Since the notice period is meant to allow the disputing parties to make a final attempt at resolving the dispute amicably without resorting to mediation, it would be more effective if the notice period is sufficiently long for them to arrive at a meaningful conclusion.

24. NetLink Trust believes that a 30-day notice period would be more realistic, bearing in mind that the disputing parties would require time to negotiate and arrive at an amicable resolution. NetLink Trust would like to further propose that consumers should be required to attach documentary proof (or a written statement) describing the previous attempts at settling the dispute, and the reasons such attempts had not been successful. This information is important as it provides useful insights on the complainant’s basis for dispute and will enable the service provider to consider meaningful alternatives. In the event resolution is not achieved within the 30-day notice period, such details on settlement attempts would also be helpful to the ADR operator in assessing whether the claim is eligible and whether the complainant’s position is tenable.

(d) Document-Based Adjudication

25. NetLink Trust agrees with IMDA that a document-based adjudication is more efficient than a face-to-face meeting. NetLink Trust recommends that as part of the adjudication process, the disputing parties should have access to each other’s submissions, and a right of reply to the submissions. Voice recordings and audio tapes should be also allowed as supporting evidences, as consumers commonly interact with service providers through the latter’s customer contact helpline.

(e) Adjudicated Decision Binding on All Parties with Right of Appeal

26. NetLink Trust respectfully disagrees with IMDA’s proposal to allow the consumer the option to choose whether to accept an adjudicated decision. As discussed in the earlier section of this submission, NetLink Trust is concerned that IMDA’s proposal will engender undesirable behaviour among consumers whereby they will not accept an adjudicated decision unless it is favourable to them. IMDA’s proposal to require the adjudicated decision to be final and binding on the service provider only if the consumer accepts it will undermine the fairness and impartiality of, and stakeholders’ confidence in, the adjudication process.

27. In NetLink Trust’s view, the policy objective of resolving disputes in an independent, fair and efficient manner would be better served if the adjudicator’s decision is binding on both parties, with a right to appeal against the adjudicated decision.

(f) Option to Proceed Straight to Adjudication

28. NetLink Trust is of the view that giving the consumer the option to proceed straight to adjudication, without requiring the disputing parties to go through mediation first, would

NetLinkTrust

the fibre of a smart nation

not be helpful in the resolution of disputes as it unnecessarily restricts the disputing parties' chance at remediating the issue amicably. As discussed in the previous section, this option should only be considered if the adjudicated decision is made binding on both parties, with a right of appeal.

Eligible Complaint Issues

(a) Validity Period for Disputes to be Eligible for Proposed Scheme

29. In the Consultation Paper, IMDA has proposed a timeframe of one year within which disputes may be brought under the Proposed Scheme, as *"it would not be in the interest of any of the disputing parties if issues were brought to the ADR operator after a long period of time has lapsed."*²
30. NetLink Trust agrees with IMDA's rationale for the proposal. However, in NetLink Trust's view, the proposed timeframe of one year for consumers to bring their dispute to the ADR operator under the Proposed Scheme is too long.
31. Consumers clearly have an interest to see that their dispute with service provider is resolved as soon as practicable. Service providers have the business prerogative to minimise the number of outstanding disputes with their customers to the extent feasible, and that the resolution of these disputes are not unnecessarily prolonged or delayed. A shorter timeframe within which disputes may be brought under the Proposed Scheme is therefore in the mutual interests of both disputing parties. To this end, NetLink Trust would propose three months for the said timeframe, taking into consideration the benefits of an earlier resolution to both consumers and service providers, which avoids prolonging the dispute between the consumer and his/her service provider and the resultant unpleasant consumer experience.

(b) Eligible Complaint Issues under Proposed Scheme and Exclusions

32. NetLink Trust agrees with IMDA's proposal to limit eligible complaint issues to those that can be resolved through service recovery efforts, or compensated in kind or monetary terms. For disputes that could be resolved through compensation on monetary terms, NetLink Trust would propose a monetary threshold of up to \$10,000 for eligible complaint issues referred for dispute resolution under the Proposed Scheme. This proposed monetary threshold is similar to the threshold adopted by the Small Claims Tribunal.³
33. NetLink Trust recommends that IMDA should make clear (in the Proposed Scheme) the exclusions that would apply under the Proposed Scheme. In particular, the Proposed Scheme must ensure the sanctity of the service contracts/agreements that consumers and service providers willingly entered into is preserved. The Proposed Scheme must not present an avenue for consumers to circumvent or subvert their contractual obligations

² Page 12, paragraph 6.2 of the Consultation Paper

³ <https://www.statecourts.gov.sg/SmallClaims/Pages/GeneralInformation.aspx>

NetLinkTrust

the fibre of a smart nation

with their service providers. The Proposed Scheme also must not be misused by the ADR operator, or any other party, as an instrument to curtail the contractual rights of service providers.

34. Accordingly, the following exclusions should be incorporated into the Proposed Scheme:
- (i) All claims for consequential losses to be excluded from the Proposed Scheme;
 - (ii) Claims or complaints by consumers who do not have a direct billing or contractual relationship with the service provider to be excluded from the Proposed Scheme;
 - (iii) Claims or complaints relating to works performed by third party contractors or services provided by third party providers to be excluded from the Proposed Scheme; and
 - (iv) Claims or complaints relating to works performed or services provided outside of Singapore to be excluded from the Proposed Scheme.

Funding of Scheme and Fee Structure

(a) Co-Payment Model and Fee Structure

35. In general, NetLink Trust agrees with IMDA's proposed adoption of a co-payment model whereby the disputing parties co-share the cost of the dispute resolution process. NetLink Trust however does not agree with IMDA's proposed co-payment ratio of 10:90, where consumers bear only 10% of the case fees. The huge disparity in the fees payable by consumers and service providers will render the Proposed Scheme cost-inefficient and unsustainable.
36. NetLink Trust respectfully disagrees with IMDA that with its proposed co-payment ratio, service providers will be incentivised towards faster resolution of disputes, and improvement of their consumer handling. In NetLink Trust's view, under IMDA's proposal, the eventual dispute resolution mechanism under the Proposed Scheme will be unjustifiably skewed in favour of the complainant, and the resultant mechanism will become dysfunctional as a consequence.
37. To illustrate, IMDA has proposed that a complainant need only bear 10% of the case fee (comprising mediation and/or adjudication fees), whereas the service provider bears the remaining substantial share of 90%. The adjudicated decision will be final and binding in the service provider only if the complainant accepts it. In NetLink Trust's view, the disproportionately low cost to consumers to participate in the Proposed Scheme (which IMDA estimated to start from \$10 for mediation) will inadvertently result in more frivolous cases being referred to ADR operators for resolution under the Proposed Scheme. This in turn will increase the cost to service providers in attending to such cases, since they would have to bear a significant 90% of the case fee. At the same time, service providers

NetLinkTrust

the fibre of a smart nation

will have to incur significant time and resources to prepare for, and participate in, the mediation and/or adjudication required under the Proposed Scheme. The net effect is service providers will have been compelled to incur significant costs even before the commencement of the mediation or adjudication process.

38. Furthermore, by proposing to allow consumers to have the final say in deciding whether an adjudicated decision could be effected and be final and binding on the disputing parties, IMDA may inadvertently create a loophole for consumers to 'cherry pick' and accept only those adjudicated decisions that benefit them. Clearly, IMDA's proposal does not ensure an independent and fair outcome for all disputing parties. Neither does it ensure an efficient and cost-effective approach to dispute resolution.
39. NetLink Trust submits that a more equitable and reasonable approach would be to adopt a co-payment ratio of 50:50 whereby the case fee for mediation is shared equally between the consumer and service provider. For adjudication, NetLink Trust submits that it would be more appropriate for the adjudicator to decide or allocate the fees based on the outcome of the adjudication process.