

**THE CONSULTATION PAPER ISSUED BY THE INFO-COMM MEDIA
DEVELOPMENT AUTHORITY**

ON

**THE TELECOMMUNICATION AND SUBSCRIPTION TV MEDIATION
ADJUDICATION SCHEME**

SUBMISSION

BY

**THE SINGAPORE INSTITUTE OF SURVEYORS AND
VALUERS**



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3) SUMMARY OF MAJOR POINTS

In general, we are in agreement with the recommendations mentioned in the Consultation Paper. Our detailed comments in response to the 14 questions raised are given in section (5) of our Submission below. A summary is provided below:

- a) The two-step process using mediation and then adjudication is appropriate and useful. There is no necessity to exhaust the mediation route before going to adjudication.
- b) It is useful to cap the monetary amount of the dispute which can be referred for mediation or adjudication using the Scheme
- c) It is necessary to state that the decision of the adjudicator will be final in order to ensure finality to the dispute.
- d) It is useful to include small business consumers in the Scheme.
- e) This should form as a requirement for all telecommunication and subscription TV Service Providers that have direct billing relationship with Eligible Customers to use the Scheme.
- f) The types of services and complaint issues to be covered in the proposed Scheme are wide-ranging and sufficient for a start. We can always include additional services and issues in future if this is found to be necessary.
- g) The 10-90 ratio proposed may appear low for the consumer. A higher co-payment for consumer will help to discourage abuse of the scheme and any frivolous claims.

There are currently a few similar Mediation-Adjudication Schemes introduced to address specific types of disputes. These Schemes are beneficial for both the consumer and service providers to resolve their disputes in an amicable manner without going to court. In many cases where the disputes do not concern legal issues, the resolution of such issues through mediation and other informal means is known usually a better alternative.

The Consultation Paper has proposed the appointment of a single ADR body to operate the proposed Scheme. This is one useful approach. Another approach is to come up with a framework with procedures on mediation and adjudication laid out and designate a few ADR bodies to follow the guidelines and offer services to the consumers and service providers. Such an approach is adopted by the Council for Estate Agencies (CEA) which appointed 3 mediation centres and 2 arbitration centres. An advantage of this second approach is to avail the consumers and service providers with a greater choice of centres and to take advantage of the different mediation training and skill sets provided by the different centres.

4) STATEMENT OF INTEREST

We have no specific interest except to express our support to whatever efforts made to resolve non-legal disputes using informal and amicable ways such as negotiation, mediation and adjudication.

The Singapore Institute of Surveyors and Valuers Dispute Resolution Centre (SISVDRC) was established in 1997. We have since built a steady pool of trained mediators, adjudicators and arbitrators helping to resolve different kind of disputes. If the services of our panel of conflict resolvers or the SISVDRC itself are required, we will be most pleased to offer whatever assistance needed. We can also share our experience in implementing the CEA's dispute resolution scheme being one of the 3 designated mediation centres and one of the 2 arbitration centres.

5) COMMENTS

1. Do you have any comments or suggestions on IMDA's proposed two-step Mediation – Adjudication process, and whether this process will achieve the policy objectives of providing the Disputing Parties with a resolution in an effective manner?

Comments:

Yes, we agree that the proposed two-step process is useful. First, opportunity is to given to the disputing parties to mediate their dispute through a neutral. If there is no settlement, parties are then given the choice of having a neutral adjudicator to decide for them. However, in order to provide a finality to the dispute, both parties must agree at the outset that there is no appeal against the adjudicator's decision. We are of the view that the 2-hour mediation session should only be stated as a guideline as some mediations may take less or more than 2 hours. The mediator concerned should be able to conduct the session accordingly given the guideline of 2-hour session.

2. Do you think that it is necessary to serve a “notice of intention to mediate” so that it is demonstrated that the Disputing Parties have exhausted all available options before starting mediation proceedings? What are your views on the 14 calendar days required – is it too long, too short or sufficient?

Comments:

The notice of the consumer's intention to mediate is a formality so that the service provider is aware. The consumer can in fact serve the notice any time before the 12 months period we have provided them. A clearer procedure is needed on what happens next after informing the service provider ie how long will the service provider takes to respond and when will the mediation session start and when will it come to an end.

3. Do you agree that a documents-based adjudication is more efficient for the Disputing Parties, or do you have any suggestions to enhance the adjudication stage?

Comments:

A documents-based adjudication is indeed cost-effective and efficient. However, we need to state that the adjudicator may seek clarifications or ask for more information if the original documents submitted are insufficient or not clear.

4. What are your views on giving consumer the option to choose whether to accept an adjudicated decision for it to be binding on the Disputing Parties? Do you think that this would help to achieve faster resolution of disputes?

Comments:

To prevent the escalation of the dispute, and reduce the cost and time involved in resolving the dispute, it should be stated in the Scheme that both the consumer and the service provider must agree that the decision of the adjudicator will be final and there is no appeal.

5. Do you think consumers should be given the option to go straight to adjudication, without requiring the Disputing Parties to go through mediation first?

Comments:

Yes, the consumer should be given the choice to go for mediation and then adjudication or proceed straight to adjudication. Some consumers may not want a mediation but instead want a neutral to decide for them. This is also our experience in administering the CEA's Scheme, where some consumers want to go straight to arbitration without resorting to mediation first.

We note that the disputed monetary amount of the conflict that can use the proposed Scheme is not stated. It may be necessary to consider putting a cap on the amount so that larger disputes which tend to be more complicated and involving legal issues may have to be resolved using other avenues for resolution. We may have to consider whether counsel or legal representative can accompany or represent the parties.

6. Do you agree that apart from Individual Consumers, it is beneficial to include Small Business Customers as Eligible Customers under the Scheme? Why do you think so?

Comments:

Small business consumers encounter similar disputes as individual consumers and hence it is appropriate to include them. The question is that whether we need to put a cap on the amount or quantum of disputes for this Scheme. Larger disputes in terms of quantum may have legal or other implications and tend to involve larger businesses. If the purpose is to help the individual consumers and small-time business consumers then, a cap on the dispute amount may be suitable. The experience of the service providers in the Telecommunication and Media industry will provide useful information on the common disputes and their amounts in order to decide on the cap amount.

7. Is the definition of Small Business Customer appropriate? If not, how should it be defined?

Comments:

The experience in the Telecommunication and Media industry will provide useful information to define what is considered small business customers. Small businesses have been defined as organisations having revenues ranging from \$1 million to 5 million under different situations.

8. Do you agree that IMDA should mandate participation of all telecommunication and subscription TV Service Providers that have direct billing relationship with Eligible Customers in the Scheme?

Comments:

We agree that it would be useful to put a mandate all service providers as this will benefit consumers as well as service providers. There will not be a situation where some are in and others are out.

9. Are there other Service Providers that should be required to participate in the Scheme? Why do you think so?

Comments:

We are not aware of other service providers but we can easily include in future those which have been left out.

10. Do you have any comments on the proposed scope of Eligible Services, and what services should be included or excluded from the scope? Why do you think so?

Comments:

We have no further comment on this. The proposed scope of Eligible Services is appropriate.

11. Do you agree that Eligible Complaint Issues ought to be limited to issues that can be resolved through service recovery efforts, or compensated in kind or monetary terms? Why do you think so?

Comments:

Yes, we agree. Complaints relating to billing, service quality and other related commercial dealings where legal issues are not involved are most appropriately settled between the parties informally using a neutral without the need to go to litigation.

12. What do you think are other complaint issues that should be included and / or excluded from the scope of issues that are eligible under the Scheme? Why do you think so?

Comments:

Our view is that the proposed list of complaint issues is comprehensive. Other issues that are relevant can be considered by the ADR body as and when they occur.

13. Do you agree that IMDA should adopt a co-payment model so that the Scheme can be self-sustainable? Why do you think so?

Comments:

The common practice in many schemes is for both disputing parties to co-pay for the services. The issue now is the proportion of payment.

14. What are your views on the fee ratio of 10:90 in favour of the Eligible Customers to help balance the disparity in the respective bargaining power of the Disputing Parties?

Comments:

The common practice is for both disputing parties to pay equally for the services. Of course, if the intention is to encourage the use of the Scheme, the consumer may be asked to contribute a lesser amount. However, it is important to bear in mind that a lower payment may encourage the consumers to make whatever claims despite their merits. The experience of the industry should be used to determine whether the absolute amount the consumer is required to pay is reasonable. Without any particular evidence, it is felt that a higher ratio of say 20:80 or 30:70 (consumer vs provider) may not be an unreasonable balance for the consumer.

6) CONCLUSION

We are in general agreement with the proposed Telecommunication and Subscription TV Mediation-Adjudication Scheme. The main framework has been well established and provided for. The implementation of the Scheme can be done by appointing one or a few ADR bodies. We just need to ensure that the actual operation or use of the Scheme by the consumers as well as the service providers should be easy and user friendly, and the resolution of the disputes is carried out efficiently with minimum delay and cost.

With this Scheme, many disputes relating to telecommunication and media services will be resolved in a faster, less costly and less disruptive way. This is good for the nation as a whole where non-legal as well as legal disputes can be amicably settled, and the cordial relationship between parties can be maintained. We are looking forward to the launch of the Scheme.