

MEDIA DEVELOPMENT AUTHORITY OF SINGAPORE

**CLOSING NOTE TO PUBLIC CONSULTATION ON PROPOSED AMENDMENTS TO THE
CONSUMER PROTECTION MEASURES IN PART THREE OF MEDIA MARKET
CONDUCT CODE (“MMCC”)**

16 March 2016

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PART I: INTRODUCTION

- 1.1 To safeguard consumer interests, Part 3 of the Media Market Conduct Code (“MMCC”) sets out the obligations of Regulated Persons (i.e. broadcasting licensees and proprietor of newspapers) towards consumers in the provision of media services (the “Part 3 Provisions”). These include complying with minimum quality of service standards and certain billing practices, prohibiting excessive early termination liabilities and protecting Subscriber Service Information (“SSI”).
- 1.2 As part of MDA’s review of the Part 3 Provisions, MDA conducted a public consultation from 24 September to 5 November 2014 on proposals to address three key consumer concerns specific to the provision of pay TV services, namely, (a) unilateral contract variations, (b) forced upgrade of non-pay TV services arising from changes in pay TV service, and (c) lack of awareness of contract terms. The consultation also included proposals to remove the provisions on protecting SSI in light of the Personal Data Protection Act (“PDPA”) and the transfer of certain consumer protection conditions from broadcasting licences to the MMCC.
- 1.3 At the close of the public consultation, MDA received a total of 39 written submissions. These included submissions from three pay TV operators (“pay TV respondents”), three content providers (“CP respondents”), a consumer association, an industry association (“association respondents”) and 31 individuals (“individual respondents”). In addition, seven focus groups were conducted, involving a total of 61 participants (“focus group respondents”). Please refer to **Annex A** for the list of parties who submitted responses and the general profile of the focus groups, and **Annex B** for the full text of the submissions and focus group findings.
- 1.4 Following the initial review of the submissions to the consultation, MDA met with major pay TV operators to discuss how to implement the proposals (the “Consultation Meetings”). Their comments were used to further refine the proposals.
- 1.5 With the restructuring of the MDA and the Infocomm Development Authority (“IDA”) to form the Info-communications Media Development Authority (“IMDA”), MDA also reviewed the proposed measures to ensure that they complement or are aligned with those in place for the infocomm sector where possible, without holding back the proposed enhancements to protect consumers’ interests.
- 1.6 MDA would like to thank all respondents for their feedback and comments. Part II of this closing note summarises the comments received and MDA’s responses to these comments. Part III of this closing note summarises MDA’s final positions to the public consultation.

PART II: SUMMARY OF COMMENTS RECEIVED AND MDA’S RESPONSE TO COMMENTS

2.1 This Part sets out the comments received and MDA’s responses, categorised into the following sections:

- A: Proposals related to unilateral contract variations, including the option to exit without Early Termination Charges (“ETCs”), safeguards against possible gaming and mitigating actions by operators;
- B: Proposals related to forced upgrades of non-pay TV service(s) arising from changes in pay TV service, specifically the prohibition of such practices;
- C: Proposals related to disclosure requirements, including the requirement for consent for free trial and complimentary services/ content and retention of marketing materials; and
- D: Other proposals, including the removal of provisions on protection of SSI and the transfer of consumer protection conditions from broadcasting licences to the MMCC

Each section will provide an overview of the proposed measures consulted, followed by a summary of the comments received and MDA’s response.

A: PROPOSALS RELATED TO UNILATERAL CONTRACT VARIATIONS

2.2 The following proposed measures were set out for consultation:

- a. Option to exit without ETCs. Operators to give consumers the option to exit their fixed term contracts without ETCs if there is an increase in subscription fee, removal of channel(s) or removal of material content within a channel.
- b. Safeguards against possible gaming. Consumers to decide whether to exit the contract within 30 days from the date of change to the service. In addition, operators are allowed to charge ETCs for equipment not essential to the provision of the service, such as laptops and tablets.
- c. Mitigating actions by operators. Operators to be exempted from the requirement to provide the option to exit without ETCs if the removed channel or content is replaced with a channel or content of a similar genre and of the same quality and standing, or there is a reduction of the subscription fee.

Overview of comments received and MDA’s responses

2.3 Option to exit without ETCs (“Exit Option”)

2.3.1 Industry respondents expressed concerns that the exit option would increase business uncertainty and discourage innovation in new content or channel line-ups. For example, pay TV operators may choose not to introduce complimentary or trial channels as it would

trigger the exit option should they be subsequently removed. Some respondents also commented that changes in content and channel line-ups were inevitable in any TV service, and pay TV operators typically would not have direct control over such changes. MDA's proposed exit option was also noted to differ from overseas models. For example, Australia offers the exit option as a possible solution, and not an automatic and absolute right of consumers, while Hong Kong adopts a self-regulation approach, where the exit option would only be offered when the change has a "substantial and adverse impact" on consumers. One pay TV respondent suggested limiting the application of the exit option to only changes that pass a "material adverse impact" test.

- 2.3.2 During the Consultation Meetings, a pay TV respondent sought clarification on the application of the exit option for bundled service contracts comprising pay and non-pay TV services. The pay TV respondent shared that there were synergies in infrastructure and operations that enabled them to offer triple or quad play bundles to consumers at a discount, which would not be possible for standalone services.
- 2.3.3 All the focus group respondents and CASE on the other hand were supportive of the exit option, and viewed that it was fair and beneficial to consumers. Some respondents suggested expanding the circumstances under which the exit option would be triggered, such as when there was a lapse in service reception or lack of information about service limitations prior to contracting. There were also suggestions for the exit option to be complemented with other measures, such as requiring operators to (a) provide options of shorter or zero fixed term contracts to minimise the detrimental impact on consumers from unilateral contract changes, (b) offer monetary compensation for affected subscribers such as discount or rebates for future subscriptions, or (c) allow re-structuring of subscribers' existing pay TV packages without ETCs.

MDA's response

- 2.3.4 MDA wishes to clarify that the consumer protection regulations in Australia, UK and the EU do provide consumers the right to exit the contract without ETCs when they are affected by unilateral variations by operators¹, although there are variations in the circumstances under which the exit option will be triggered. In this regard, MDA recognises the need to find a balance between providing the industry with some flexibility to innovate

¹ Australian consumer law (Guide to unfair contract terms law) stated that a unilateral variation clause may be acceptable where the consumer has the right to cancel the contract, without penalty, if the change is detrimental to the consumer.

Communications Association of Hong Kong's Code of Practice for Telecommunications Service Contracts stated that consumers must be allowed to exit their contracts without ETCs when there is unilateral price increase. It further stated that consumer can also exit without ETCs if there is "substantial and adverse impact to the service" that the consumer has acquired.

UK Unfair Terms in Consumer Contracts Regulations 1999 stated that where a seller or supplier reserves the right to alter unilaterally the conditions of a contract, he is required to inform the consumer with reasonable notice and that the consumer is free to dissolve the contract.

in their content offerings, and safeguarding consumers' interests when there are unilateral contract changes.

- 2.3.5 On balance, MDA will **maintain the exit option for any increase in subscription fees, but narrow its application for channel and content removal to focus on (a) removal of any material channel, (b) removal of material sports content, and/ or (c) net removal of at least 20 per cent of the total bundled channels (regardless of the materiality of the channel).** In determining whether the 20 per cent removal threshold is met, channels removed would be net off against new channels added by the operator since subscription.
- 2.3.6 With regard to material sports content, as the duration of the content acquired would generally be known at the point of acquisition, the exit option will not apply if operators specify clearly the period of availability of the sports content (for example the relevant seasons of sporting event) to the consumers at the point of contracting.
- 2.3.7 In view of the narrowed application of the exit option, MDA will introduce a new provision to require **operators to provide equivalent service packages and bundles with contract terms of 12 months or less, for all packages or bundles with contract terms of more than 12 months.** This is to help mitigate the potential detriment if the subscriber does not qualify for the exit option. Given the option of shorter contract terms, consumers would be empowered to make trade-offs between promotional price benefits and duration of contract.
- 2.3.8 Regarding complimentary or trial channels, MDA will like to clarify that the removal of such channels are excluded from the exit provision. However, such channels must be clearly specified either at the point of contracting or at the launch of the channels (see Part II, Section C). Arising from queries during Consultation Meetings, MDA will also take this opportunity to clarify that OTT service, Pay-Per-View (PPV), multi-view channels, simulcast channels, and channels added by the operator after the point of contracting are excluded from the exit option. In addition, to avoid dissuading operators from adopting and providing new technologies, increases in set-top box rental fees and other ancillary charges are excluded from the exit option.
- 2.3.9 On bundled service contracts, MDA wishes to clarify that the exit option only applies to the pay TV service component of the contract. However, **operators are required to disclose at the point of contracting, the applicable charges of the remaining non-pay TV services in the bundle should the exit option for the pay TV service be exercised.** The charges for the remaining non-pay TV services in the bundle must not exceed the subscription fee which the subscriber paid for the original bundled service contract. Operators may choose to offer consumers the option to exit the entire bundled service contract without ETCs, so long as there is also the option to only exit the pay TV service component.

2.3.10 With regard to suggestions for the exit option to extend to lapses in service or information disclosure, MDA will not further extend the exit option to cover these scenarios as there are other regulatory requirements² in place to address them.

2.4 Determination of Materiality

2.4.1 Pay TV respondents were of the view that the criteria for determining material content were subjective and vague. There were concerns that factors such as time allotted to airing the content and prominence of the content in marketing materials may not reflect the materiality of the content. For example, a highly popular content may only be broadcasted over a limited time window in a channel, or a new content could be heavily marketed to increase consumer interest in them. One pay TV respondent mentioned that while viewership could be used to assess materiality, it would not be practical for operators to measure the level of interest for every programme across all channels. Two CP respondents also commented that the criteria to determine materiality did not take into account the inherent short-term nature of certain types of content such as drama series or seasonal sports. Channels with such content would have frequent changes in programming mix. Some respondents requested MDA to provide a series of non-binding and non-definitive examples to guide the application of the materiality factors.

MDA's response

2.4.2 In the context of the narrowed scope of application of the exit option to material channels and material sports content, MDA will use the following factors to determine materiality:

- a. Viewership of channel or sports content;
- b. Actual or potential value of the channel or sports content
- c. Level of consumer interest in channel or sports content; and,
- d. Prominence accorded to channel or sports content in marketing materials.

Of these, viewership will be the primary determining factor. However, where viewership data is unavailable or limited, the other factors would be used and considered in totality. The prominence of marketing is retained as a factor as it reflects the importance and significance of the content in drawing subscriptions. The factor on "time allotted to airing the content" is removed.

2.4.3 MDA notes industry concerns over the need for clarity in determining materiality, and will continue to work with the pay TV operators to clarify the application of the factors.

² Pay TV operators are required under the licence to provide its service at such reasonable quality that meets public expectations and is satisfactory to MDA, and provide proper avenues for speedy resolution of consumers' complaints on the service or related apparatus. They also have to comply with the Code of Practice for Television Broadcast Standards and disclosure requirements in the MMCC.

2.5 Safeguards against Possible Gaming

Grace Period of 30 Days to Exercise Option to Exit without ETCs

- 2.5.1 Pay TV respondents were supportive of the 30-day grace period for consumers to exercise their decision to exit the contract, although one pay TV respondent subsequently suggested reducing the grace period from 30 days to 7 days, given that operators would have informed the consumers of the change 30 days in advance.
- 2.5.2 Most focus group respondents found the grace period reasonable and sufficient. However, there were some who suggested a longer grace period to give consumers more time to experience the changes, before deciding whether to exit the contract. CASE was of the view that there should not be any time limit for consumers to exit their contracts as operators may strategically implement detrimental unilateral changes during ongoing or upcoming broadcasts of popular programmes, making it hard for consumers to exit the contract.
- 2.5.3 One pay TV respondent also sought clarification on whether pay TV operators could charge the subscriber the revised subscription fee from the start of the grace period till the day when the subscriber terminates the service.

MDA's response

- 2.5.4 MDA **maintains the proposal for consumers to have 30 days from the date of the change to exercise their option to exit their contracts.** This should provide consumers with sufficient time to experience the changes to the service and consider if they want to exercise their option to exit the contract. To be clear, operators are still required to provide consumers with 30-day advance notification of changes to service, prior to effecting the change.
- 2.5.5 MDA wishes to clarify that in the case of an increase in subscription fee, pay TV operators are not prohibited from charging their subscribers based on the revised rates, pro-rated where applicable, from the effective date of change.

ETCs for Equipment Not Essential to the Provision of the Service

- 2.5.6 Pay TV respondents and some focus group respondents supported the proposed requirement for consumers to pay ETCs for equipment not essential to the provision of the pay TV service. They noted that it was fair to protect operators from consumers who may sign up for the contract term, only to terminate when given an exit option to take advantage of the premiums. However, one pay TV respondent felt that the proposed requirement to disclose the amount of such ETCs would lengthen the customer service process and could cause frustration to consumers.
- 2.5.7 On the other hand, some focus group respondents commented that it would be unfair for consumers to pay the ETCs, as the exit was triggered by changes in service by operators. Some respondents added that they would rather return the equipment than pay the ETCs.

There were also queries on how ETCs would be pro-rated, in view of equipment depreciation. Some respondents also emphasized the need to ensure transparency in the ETC computation.

- 2.5.8 CASE viewed that operators should be required to state the cost of equipment upfront, if they were not meant to be offered free. CASE was also supportive of the proposed requirement for operators to offer the option of the same service without such equipment, although the cost of such service should be significantly lower.
- 2.5.9 One pay TV respondent sought clarification on whether television sets, laptops and tablets would be considered “equipment not essential to the provision of the service”.

MDA’s response

- 2.5.10 MDA **maintains its proposal to allow operators to impose ETCs for equipment that are not essential to the provision of the pay TV service, should the exit option be exercised.** This is to give operators the flexibility to create promotional packages to meet different consumer demands. However, operators would have to offer an option of the same service or bundle of services without the equipment.
- 2.5.11 In addition, MDA **maintains the requirement for operators to disclose the ETCs for such equipment at the point of contracting,** so that consumers can make an informed decision. Operators should also ensure that the ETCs are commensurate with the retail price of the equipment, the discount provided, and the remaining contract duration.
- 2.5.12 MDA also wishes to clarify that television sets, laptops and tablets are not considered as equipment essential to the provision of the service.

2.6 Mitigating Actions for Operators

- 2.6.1 The pay TV respondents and most of the focus group respondents were not in favour of the proposed mitigating actions. They felt that it would be subjective whether a substitute channel or content was of the same quality and standing as the discontinued channel or content. In fact, some respondents felt that a material channel or content may not be replaceable with another of similar genre or quality. One pay TV respondent further commented that the mitigating actions would be burdensome given the large number of channels on its pay TV network and the frequent changes to its channel line-up. There were also concerns over prolonged disputes with consumers.
- 2.6.2 Most of the focus group respondents also viewed price reduction as an inadequate mitigating action, and that consumers should still be given the exit option. One pay TV respondent commented that it was not possible for operators to make pro-rata reduction in subscription fees as channels and content were typically sold in packages, and it would be hard to assign an exact value to a single channel or programme. Further, the reduction in subscription fees might be negligible.

MDA's response

- 2.6.3 Given the lack of support for the proposed provisions in relation to mitigating actions, **MDA will remove these provisions**. However, MDA wishes to clarify that operators are not prohibited from implementing mitigating actions on their part to retain subscribers, in the event of the aforementioned changes to their service(s).

B: PROPOSALS RELATED TO FORCED UPGRADES OF NON-PAY TV SERVICE(S) ARISING FROM CHANGES IN PAY TV SERVICE

- 2.7 The following proposed measure was put forward for consultation:
- a. Pay TV operators to be prohibited from leveraging a subscriber's pay TV contract to impose changes on a non-pay TV contract that the subscriber has from the same retailer, if it is not a technical requirement for the provision of the pay TV service. However, pay TV operators could offer it as an option for consumers.

Overview of comments received and MDA's response

2.8 Forced Upgrade on Non-pay TV Services

- 2.8.1 One pay TV respondent highlighted that commercial offers were constantly evolving with changes in market conditions, competition and consumer preferences, and a particular technology or offer may be discontinued as a way of encouraging consumers to take up newer and better quality services. The pay TV respondent added that if a consumer wishes to make changes to his pay TV service within a bundle, it would be reasonable for an operator to lower prices and provide greater conveniences only on the condition that the consumer signs up for a particular bundle, such as one with upgraded non-pay TV services.
- 2.8.2 Pay TV respondents also sought clarification on whether the proposed provision would prohibit upgrades of non-pay TV services that were due to technical requirements for the pay TV service.
- 2.8.3 One pay TV respondent suggested that any forced upgrade should be subjected to a material adverse impact test, i.e. whether the forced upgrade would result in a material adverse impact on the consumer. In the event that the forced upgrade meets the threshold of a material adverse impact, the consumer could be allowed to exit their fixed term contracts without any ETCs. Such an approach would give operators the flexibility to make changes to the bundles during the contract period, while protecting consumers from changes that would cause material detriment.
- 2.8.4 CASE and the majority of the focus group respondents generally supported the proposed provision. Nevertheless, some respondents were concerned that sales assistants may mislead them into thinking that certain non-pay TV service upgrades are necessary to support their pay TV services when in fact they are not.

2.8.5 During the Consultation Meetings, a pay TV respondent sought clarification on whether the provision would apply in cases where the consumer was the one requesting to change the existing pay TV package.

MDA's response

2.8.6 MDA wishes to clarify that the proposed provision is not intended to prohibit upgrades to non-pay TV services necessary for the provision of pay TV services. As such, MDA feels that it is unnecessary to apply a material adverse impact test on the non-pay TV service components and **will maintain the proposed provision.**

2.8.7 MDA also wishes to clarify that the provision would not apply if the change is initiated by the consumer **and** it alters the basic construct of the pay TV package that was purchased at the point of contracting. This provision is not intended to reduce consumers' commitment to the original contract. However, if the change initiated by the consumer does not change the basic construct of the package, for example, the addition of a new add-on channel subscription that is available to other subscribers, operators are prohibited from using the change in the pay TV service to impose changes on the other non-pay TV services.

C: PROPOSALS RELATED TO DISCLOSURE REQUIREMENTS

2.9 The following proposed measures were put forward for consultation:

- a. Disclosure requirements. Operators to disclose (a) specifics on price, channels and material content within a channel, (b) presence of unilateral variation contract clauses, (c) changes to service upon expiry of service(s) offered on promotional or continuous basis, (d) specific period of availability and/ or expiry of any complimentary service, channel(s), and/ or material content and applicable charges thereafter; and (e) when applicable charges will apply for free trials.
- b. Consent for free trial and complimentary services/ content. Operators to obtain consumers' consent to continue with the trial and/ or complimentary service, before they can start charging.
- c. Retention of marketing materials and details of agreements. To facilitate enforcement and investigations, operators are to retain records of their marketing materials and details of the agreement brought to the attention of a consumer for at least three years, and to supply such materials to MDA upon request.

Overview of comments received and MDA's response

2.10 Disclosure requirements

2.10.1 Pay TV respondents commented that the scope of the disclosure requirements was overly broad and difficult to implement, and could result in delays and frustration during service applications. In addition, information regarding contractual terms and channels was

already available online. One suggestion was to narrow the scope of the disclosure requirements to cover (i) the subscription fee payable under the agreement and the payment date; and (ii) the services that would be chargeable when the minimum service period, promotional period, free trial basis or complimentary basis ends. Another suggestion was to have operators produce a “critical information summary” to highlight the important terms and conditions of the relevant consumer contract.

- 2.10.2 Most of the focus group respondents supported the proposed disclosure requirements and the proposed list of terms and conditions that operators have to disclose to consumers. In particular, some respondents highlighted that it was important for operators to bring to their attention the specific period of availability and expiry of any complimentary service or channel(s), where applicable.
- 2.10.3 Some focus group respondents further suggested that operators explain the contract terms to them in layman’s term, with consumers signing against the terms and conditions to indicate their understanding of the sales staff’s explanation. They also suggested that operators provide a hardcopy of the contracts to the consumers at the point of contracting. Separately, some respondents requested for a cooling-off period, during which there would be no penalty should they choose to exit.

MDA’s response

- 2.10.4 MDA will **maintain the scope of the disclosure requirements** as it is important for consumers to be aware of the key contract terms to make informed decisions. Nevertheless, MDA notes the concern that a consumer may not be able to examine the full contract terms in detail due to its length and time constraints. MDA has therefore refined the proposed provision to require **operators to provide a critical information summary (“CIS”) which summarises the key contract terms clearly and accurately**. The CIS should include:

- a. Specifics on price and list of channels;
- b. Presence of unilateral variation contract clauses;
- c. Presence of applicable ETCs when the exit option is exercised;
- d. Changes to service upon expiry of services offered on promotional or continuous basis;
- e. Specific period of availability and/or expiry of any complimentary service, channels, and/or content and applicable charges thereafter;
- f. When applicable charges will apply for free trials; and
- g. If it is a multi-play service, the subscription fee of the remaining non-pay TV services should the consumer exit the pay TV service component

- 2.10.5 **Operators are required to obtain the consumers’ explicit acknowledgement that they have understood the terms. In addition, an electronic or printed copy of the contract and CIS must be provided to the consumer within 14 days of contracting.** This will apply regardless of whether the contracting was done in person at retail outlets, over the phone, or online. The 14-day period was in consideration of feedback from a pay TV respondent during the Consultation Meetings that there would be processing time for online and

phone contracting, although those who contract in person would obtain the printed copies onsite.

2.10.6 With regard to the suggestion for a cooling off period, MDA notes that the provisioning of a pay TV service involves several inter-dependent activities such as technical setups, each of which costs money. Any withdrawal of the service during or after the provisioning process could lead to increase in cost that is subsequently passed on to consumers. Therefore, MDA will not introduce cooling off measures in this MMCC review, but will keep it in view for future reviews.

2.11 Consent for Free Trial & Complimentary Services/Content

2.11.1 All of the focus group respondents and CASE were supportive of the proposed provision, and viewed that free trials and complimentary services/ content should only be continued and charged if consumers gave explicit consent to the operators. Some respondents also suggested that operators send reminders on the expiry of such services.

2.11.2 A pay TV respondent sought clarification on whether the existing practice of obtaining the consumer's consent at the point of contracting to charge after the trial period would be allowed. There was concern that there could be confusion if conflicting answers were given by consumers at different points in time.

MDA's response

2.11.3 MDA will **maintain the proposed provision requiring operators to obtain consumers' consent prior to charging for the free trial and complimentary service(s) or content when the free trial period ends**. MDA also wishes to clarify that it is sufficient for pay TV operators to obtain the consumer's consent at the point of contracting.

2.11.4 With regard to sending reminders on the expiry of complimentary services or channels, MDA notes that a similar obligation to provide reminders in relation to free trial goods and services has been set out in the CPFTA. Notwithstanding this similar obligation, MDA wishes to clarify that operators may only proceed to charge for such service(s) if they have obtained the express agreement of the consumer to continue the service(s) on the applicable prices, terms and conditions.

2.12 Retention of Marketing Materials and Details of Agreement

2.12.1 Pay TV respondents commented that the three-year retention period for marketing materials would be onerous and unnecessary. There were suggestions of a shorter retention period of two years (based on the maximum contract term allowed under MMCC) and one year (based on IDA's current requirement in the Code of Practice for Competition in the Provision of Telecommunications Service 2012³).

³ At a minimum, the Licensee must require that: (c) an End User that purchases a pre-paid service who chooses to contest any charge will have 1 year (starting from the date on which the charge was deducted) to do so.

2.12.2 Pay TV respondents also sought clarification on what would constitute marketing materials, with the suggestion to limit to only marketing pamphlets.

MDA's response

2.12.3 MDA will reduce the required retention period of marketing materials to two years, in line with the maximum contract term allowed for pay TV services. The same retention period of two years would apply to details of agreements brought to the attention of a consumer.

2.12.4 MDA also wishes to clarify that marketing materials distributed or intended for distribution (both online and printed) to consumers would be required for retention. This would include:

- a. Physical brochures, flyers, and published ads in newspapers and magazines;
- b. Online or digitally distributed advertisements and materials intended for consumers; and,
- c. Text ads sent via SMS to consumers

D: OTHER PROPOSALS

2.13 The following proposed measures were put forward for consultation:

- a. To remove the MMCC provisions relating to the protection of SSI as they were largely covered under the PDPA; and,
- b. To transfer to the MMCC the licence conditions relating to the publication of charges, terms and conditions; and notification to consumers (i) one month in advance for increases in subscription fee and changes to channel line-up that are detrimental to consumers, and (ii) six months in advance for termination of service.

Overview of comments and MDA's response

2.14 Removal of SSI Provisions from the MMCC

2.14.1 One pay TV respondent asked if the exchange of SSI between operators for the prevention of bad debt or frauds would be permissible if the provisions for SSI were removed from the MMCC. It further commented that the provision should be retained as the Second to Fourth Schedules of the PDPA may not be sufficient to cover such an exchange of information.

MDA's response

2.14.2 MDA notes that the Telecoms Competition Code ("TCC") continues to protect the subscriber information of businesses and licensees are not allowed to use it without consent except for billing, managing bad debts, and certain technical and compliance purposes. Taking a converged view of the business consumers for both media and

infocomm sectors, **MDA will therefore not proceed with the removal of the Duty to Protect SSI provisions from the MMCC**, until such time that there is a more comprehensive review with the IDA.

2.15 Requirement to publish charges, terms and conditions

2.15.1 With regard to the proposed requirement to publish channel information on operators' marketing materials, one pay TV respondent commented that it would not be practical to provide all the required information in their marketing materials as they were intended to be succinct. The respondent suggested for MDA to require pay TV operators to make such information available online instead.

MDA's response

2.15.2 MDA will **maintain that operators are required to publish up-to-date information about their charges, terms and conditions.** However, MDA will not require the information to be published in all marketing materials. Pay TV operators may publish such information in any method that is effective and on any platform that makes it easily available to the public without any charges.

2.16 Requirement for Advance Notification to Consumers

2.16.1 Pay TV respondents suggested that the proposal should account for exceptional circumstances where it would not be reasonably possible for them to provide one month's advance notice to consumers. For example, a channel could be ceased by the content provider at short notice, or the prices could be finalised late due to last minute conclusion of content negotiations. This would also apply to termination of part of the pay TV service (e.g. VOD service) beyond its control, such as in instances of upstream supply issues.

2.16.2 A pay TV respondent also highlighted that in the event of a contractual breach by the consumer, it would not be able to give a written notice for termination six months in advance. Further, with regard to PPV content, consumers could decide not to buy the PPV content if they disagreed with the price increase.

2.16.3 Pay TV respondents also asked whether MDA's requirement to provide "notice in writing" would include digital communications, as it could be more effective to use crawlers across the screen, notice on website and email, as compared to written letters.

MDA's response

2.16.4 MDA will **maintain the existing requirements with regard to advance notification to consumers.** In instances where there are exceptional circumstances beyond operators' control, operators may seek an exemption and MDA will review it on a case by case basis. This is the current practice in place.

- 2.16.5 MDA wishes to clarify that operators are only **required to give reasonable notice in writing for increases in subscription fee for services provided on an interactive basis, such as PPV**. MDA will also clarify that this provision will not apply to instances where the operator terminates the consumer's service due to breach of contract by the consumer.
- 2.16.6 MDA also wishes to clarify that the provision does not prescribe the format (i.e. physical or electronic) of the communications, and operators may notify consumers in writing in either electronic, printed or any method that is effective and allows for record keeping.

PART III: CONCLUSION AND SUMMARY OF MDA'S FINAL POSITIONS

3 Conclusion

- 3.1 Having considered all the feedback received during the public consultation, MDA's final positions to each of the consulted areas are summarised below.

A: FINAL POSITIONS IN RELATION TO UNILATERAL CONTRACT VARIATIONS

- 3.2 Option to exit without ETCs. Operators will have to give consumers the option to exit their pay TV service without ETCs in the event of (a) an increase in subscription fee, (b) a removal of any material channel(s) or material sports content, and/or (c) net removal of at least 20 per cent of the total number of channels in the consumer's pay TV service since the point of subscription. In determining whether the 20 per cent removal threshold is met, channels removed will be net off against new channels added by the operator since subscription. This provision will not apply where the availability period of the material sports content is stated upfront to consumers at the point of subscription.
- 3.3 Safeguards against possible gaming. Consumers will be allowed to exercise the option to exit their contracts without ETCs within 30 days from the date of change to the service. Operators may require consumers to pay ETCs for equipment not essential to the provision of the service in the event of an exit of contract. The ETCs charged should commensurate with the discount provided, retail price of the equipment, and the remaining contract duration.
- 3.4 Provision of contracts with shorter terms. Operators will be required to offer options of contract terms that are 12 months or less for all packages or bundles with contract terms of more than 12 months.

B: FINAL POSITION IN RELATION TO FORCED UPGRADES OF NON-PAY TV SERVICE(S) ARISING FROM CHANGES IN PAY TV SERVICE

- 3.5 Operators will be prohibited from leveraging a consumer's pay TV contract to impose changes on a non-pay TV contract that the consumer has from the same operator. The provision will not apply if the change is initiated by the consumer **and** it alters the basic construct of the pay TV package that was purchased at the point of contracting.

C: FINAL POSITIONS IN RELATION TO DISCLOSURE REQUIREMENTS

- 3.6 Disclosure requirements. Operators will be required to provide consumers with a CIS containing (a) specifics on price and list of channels, (b) presence of unilateral variation contract clauses, (c) presence of applicable ETCs when the exit option is exercised, (d) changes to service upon expiry of services offered on promotional or continuous basis, (e) specific period of availability and/or expiry of any complimentary service, channels, and/or content and applicable charges thereafter, (f) when applicable charges will apply for free trials, and (g) the applicable subscription fee of the remaining non-pay TV services if the consumer were to exit the pay TV service component of a multi-play bundle.

- 3.7 Operators will need to obtain consumers' written acknowledgement that they understand the contract terms. Operators must send consumers a digital or physical copy of the contract and CIS within 14 days of contracting.
- 3.8 Consent for free trial & complimentary services/content. Operators will be required to obtain consumers' express consent to continue with the trial and/ or complimentary service, before they can start charging.
- 3.9 Retention of marketing materials and details of agreement. Operators will be required to retain records of their marketing materials and agreements for at least two years and to supply such materials upon request by MDA.

D: FINAL POSITIONS FOR OTHER PROPOSALS

- 3.10 The Duty to Protect Subscriber Service Information ("SSI") provisions will not be removed from the MMCC.
- 3.11 The consumer protection licence conditions will be transferred to the MMCC. These include the licence conditions that relate to the publication of charges, terms and conditions; and notification to consumers (i) one month in advance for increases in subscription fee and changes to channel line-up that are detrimental to consumers, and (ii) six months in advance for termination of service.

Effective Date

- 3.12 The revised consumer protection provisions in Part 3 of the MMCC are enclosed in **Annex C**. MDA expects the amendments to Part 3 of the MMCC to be gazetted in April 2016.