MEDIA DEVELOPMENT AUTHORITY OF SINGAPORE

PROPOSED ADVISORY GUIDELINES ON MAXIMUM CONTRACT TERM AND EARLY TERMINATION CHARGES FOR PAY TV SERVICES OFFERED TO CONSUMERS

PUBLIC CONSULTATION

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1. INTRODUCTION

1.1 The Media Development Authority ("MDA") aims to maintain fair market conduct and effective competition in the media market such that consumers are able to benefit from greater choice and value. To help achieve this outcome while balancing the commercial interests of pay TV retailers, MDA proposes to issue guidelines relating to the maximum contract term and early termination charges ("ETCs") that pay TV retailers can impose on residential consumers.

1.2 The proposed guidelines are advisory in nature and do not impose any legal obligations on the pay TV retailers; rather, the guidelines are intended to clarify the standards that MDA will generally apply in assessing if the pay TV retailers comply with their obligations set out in paragraph 3.5 ("Prohibition on Excessive Early Termination Liabilities")[1] of the Code of Practice for Market Conduct in the Provision of Media Services 2010 (also known as the Media Market Conduct Code, "MMCC")..

1.3 As a matter of principle, MDA prefers not to interfere with commercial arrangements in the media market, including contractual terms between consumers and retailers. Currently, pay TV retailers are free to determine the contractual terms offered such that they could differentiate their service offerings and compete in the market. Consumers are free to make their own decisions on whether the contracts offered by the pay TV retailers suit their needs.

1.4 However, competition in the pay TV market has intensified with the introduction of SingNet Pte Ltd's mio TV ("SingNet") service and various niche pay TV services. With the roll-out of the Next Generation National Broadband Network ("NGNBN"), we expect even more pay TV retailers to enter the market. This would invariably create more switching opportunities for consumers – especially when content changes hands to another pay TV retailer – and corresponding issues on the termination of existing contracts.

1.5 MDA has received consumer feedback on ETCs being imposed on consumers who wanted to terminate their pay TV contracts after having been affected by changes initiated by the pay TV retailers. Consumers generally feel that they are unfairly disadvantaged for prematurely terminating their contracts, especially when the changes are made by pay TV retailers, for instance, where :

[1] Paragraph 3.5 of the Media Market Conduct Code states that "the amount of any such early termination liability must be **reasonably related** to the extent of the discount or special consideration that such Regulated Person has provided and the duration of the period during which the said Subscriber took the Subscription Service."

a. there are changes to programming and bundling, resulting in a reduced number of channels or change in channel lineup; or

b. there are upward pricing adjustments[2].

1.6 A review of the contracts revealed that major pay TV retailers, such as StarHub Cable Vision Ltd ("SCV") and SingNet, have provisions in their residential consumer contracts which allow them to reserve the right to impose ETCs for premature contractual termination, and make programming and pricing changes as deemed fit. While these contractual clauses could be backed by legitimate business considerations, MDA takes the view that excessively long contracts and high ETCs could hinder consumers from deriving the full benefits generally expected of a competitive pay TV market.

1.7 It is thus timely to review whether contractual terms for pay TV services remain reasonable and fair to both pay TV retailers and consumers. After careful review of industry practices, MDA is proposing to introduce a set of guidelines that will cover two main areas:

a. Maximum length of contract; and

b. Early termination charges.

1.8 The guidelines would apply to residential consumer contracts offered by pay TV licensees, i.e. Nationwide Subscription TV licensees and Niche Subscription TV licensees. MDA does not intend to issue a set of guidelines for corporate/business contracts as such contracts tend to be commercially negotiated and customised. MDA also expects corporate/business consumers to have better bargaining power and access to market information, and be in a better position to negotiate deals for pay TV services that best meet their needs.

1.9 In view of the increased convergence of media and telecommunications services in the form of triple- and quad-play bundles, MDA has also considered the "*Advisory Guidelines on Contract Period and Early Termination Charges for Telecommunication Services Offered to End Users*" issued by the Infocommunications Development Authority ("IDA") on 15 December 2009, and which took effect on 1 March 2010. Where practicable, MDA has aligned the proposed guidelines for pay TV services with IDA's so as to minimise any difficulty in compliance.

[2] In July 2007, the price of SCV's packages increased by at least $4.

2. OVERVIEW OF INDUSTRY PRACTICES

Nationwide Subscription TV licensees

2.1 The Nationwide Subscription TV licensees, namely, SCV and SingNet, have adopted the following practices for contract lengths and ETCs:

2.1.1 SCV offers three types of residential contracts with varying ETCs:

(a) Standard Service Subscription Contracts (no premium or discount):

- No ETC if customer terminates after 3 months of service subscription, otherwise an ETC of $60 will apply; and

(b) Promotional Service Contracts (with premium or subscription discounts):

- Contract will usually range from 6 months to a maximum of 24 months; and
- Quantum of ETC will be linked to the retail price of the premium or to the discount provided.

(c) Landed Property Connection Contracts (applies to cabling amounting to less than $8,000[3]):

- Contract will usually be for a period of 24 months with a minimum service subscription required; and
- Quantum of ETC will be equivalent to the outstanding balance of the minimum service subscription commitment (ie, remaining subscription term multiplied by monthly subscription rate).

2.1.2 SingNet subscribers have the option to subscribe either on a month-to-month basis, or sign up for a 12-month or 24-month contract. Regardless of the contract terms, the ETCs are calculated based on full contract term, i.e. remaining term multiplied by the monthly subscription rate of the channel(s) / package(s) to be terminated. SingNet previously gave a television set as part of their promotion for the Ultimate Pack. For the Ultimate Pack, if a customer terminates their mioTV service before the end of their contract term, they can keep their TV set. However, they will still be liable for the ETC for their mio TV service.

[3] For cabling amounting to more than $8,000, SCV will recover the full cost.

Niche Subscription TV licensees

2.2 Today, there are six niche pay TV retailers in operation. Broadly, the contracts can be divided into three categories as follows:

Contractual Length	Early Termination Charges
a) No Contract	Not Applicable
b) Monthly Contract	Remaining unconsumed subscription paid
c) At least three months contract	Either: a) Fixed ETC, or b) Remaining subscription term multiplied by monthly subscription rate

3. PROPOSED GUIDELINES

Maximum Contractual Lock-In Period

3.1 MDA proposes to set a cap of two years for the maximum contractual lock-in period in the pay TV sector, balancing the retailers' needs to differentiate themselves through different service plans and the consumers' concern that they should not be tied to excessively long-term contracts and face hefty ETCs. This is in consideration of the following:

(a) The current industry norm is that most pay TV contracts do not exceed two years. Therefore, MDA considers that such a cap would not cause any material impact on the pay TV retailers' business model nor face objections from consumers; and

(b) A limit on the maximum contract length could lower the entry barrier for new pay TV entrants in the NGNBN environment, by preventing excessively long lock-in periods for consumers.

Early Termination Charges

3.2 Under paragraph 3.5 ("Prohibition on Excessive Early Termination Liabilities") of the MMCC, pay TV retailers are required to ensure that the ETCs are related (including proportionate) to the discounts given and must also be relative to the length of time the subscriber has completed on the contract. MDA therefore proposes that:

(a) ETCs for contracts of more than 3 months should be graduated, at a minimum, on a month-by-month basis. In other words, ETCs should decrease monthly, taking into account the number of months that are left on a contract. Hence, a consumer who terminates his service close to the end of the contract term would not be made to pay the same penalty amount as another consumer who terminates the service near the start of his contract; and

(b) ETCs for contracts of more than 3 months should not include costs that will be avoided by the pay TV retailer when a subscriber terminates the service.

3.3 Consequently, any ETCs imposed should be reasonably below that of the sum of the monthly fee[4] for the remaining months of the contract period. In all cases, the ETCs cannot be higher than the sum of the monthly fees for the remaining months.

4. PROPOSED IMPLEMENTATION DETAILS

4.1 MDA would emphasize from the onset that the proposed guidelines are meant to help reduce ETCs payable by consumers, rather than serve as a rigid formula for all ETCs. Pay TV retailers should determine the consumer proposition that would best serve its business model.

4.2 To ensure that consumers are au fait with the contractual commitments and penalties for not honouring the contracts, MDA proposes to require pay TV retailers to:

(a) explain the terms and conditions of the service upfront at point of sale; and

(b) provide computation of ETCs at varying points (by month) of the contract to subscribers at point of sale and upon contract renewal.

[4] The monthly fee refers to the actual subscription fee paid by the subscriber. For illustration, if the subscriber is already paying a discounted monthly fee under the contract, under MDA's proposed guidelines, the ETCs will be computed based on the discounted monthly fee, and not the list (i.e. undiscounted) price.

5. INVITATION TO COMMENT

5.1 The MDA would like to seek comments from the industry and members of the public on the proposed guidelines and implementation details.

5.2 Submission of written comments should be in the following format:

(a) a cover page;
(b) table of contents;
(c) summary of major points;
(d) statement of interest;
(e) comments; and
(f) conclusion.

5.3 All comments should be submitted in softcopy (in Microsoft Word format compatible with Microsoft Office Version 2003) by **<u>5pm, 18 May 2011</u>.** Parties submitting comments should include their personal or company particulars, and their correspondence address, contact numbers and email addresses on the cover page of their comments.

5.4 All comments should be addressed to:

Ms Eileen Ang
Head (Competition)
Media Development Authority of Singapore
3 Fusionopolis Way
#16-22 Symbiosis
Singapore 138633
(Attention : Ms Ruth Wong; Email : ruth_wong@mda.gov.sg)

5.5 MDA reserves the right to make public all or parts of any written comment and to disclose the identity of the source. Commenting parties may request confidential treatment for any part of the comment that the commenting party believes to be proprietary, confidential or commercially sensitive. Any such information should be clearly marked and placed in a separate annex. If the MDA grants the request for confidential treatment, it will consider, but it will not publicly disclose, the information. If the MDA rejects the request for confidential treatment, MDA will provide the reason for its decision, and request for the resubmission of a non-confidential version of the relevant document within 14 working days. As far as possible, commenting parties should minimise any request for confidential treatment of information submitted.

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