INFO-COMMUNICATIONS MEDIA DEVELOPMENT AUTHORITY OF SINGAPORE

TELECOMMUNICATIONS ACT 1999

INFO-COMMUNICATIONS MEDIA DEVELOPMENT AUTHORITY ACT 2016

ADVISORY GUIDELINES ON CONTRACT PERIOD AND EARLY TERMINATION CHARGES FOR TELECOMMUNICATION AND MEDIA SERVICES OFFERED TO END USERS UNDER SUB-SECTIONS 3.2.4 AND 3.4.4 OF THE CODE OF PRACTICE FOR COMPETITION IN THE PROVISION OF TELECOMMUNICATION AND MEDIA SERVICES 2022

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The Info-communications Media Development Authority of Singapore ("**IMDA**"), pursuant to Section 32 of the Telecommunications Act 1999 ("**Telecommunications Act**") and Section 61 of the Info-communications Media Development Authority Act 2016 ("**IMDA Act**"), hereby issues these Advisory Guidelines ("**Guidelines**") on Contract Period and Early Termination Charges for Telecommunication and Media Services Offered to End Users Under Sub-sections 3.2.4 and 3.4.4 of the Code of Practice for Competition in the Provision of Telecommunication and Media Services 2022 ("**Code**").

1. INTRODUCTION

1.1 Scope of these Guidelines

These Guidelines explain how IMDA will apply Sub-sections 3.2.4 and 3.4.4 of the Code to early termination charges ("**ETCs**") that are tied to contract periods in relation to End User Service Agreements.

1.2 Guidelines are Advisory

1.2.1 The provisions in these Guidelines are advisory and they do not impose any binding legal obligations on IMDA. Neither do they seek to provide definitive answers as to whether any particular conduct may fall within the prohibitions contained in Sub-sections 3.2.4 and 3.4.4 of the Code. Rather, these Guidelines are intended to describe the procedures that IMDA will generally use, and the standards that IMDA will generally apply, in implementing those provisions.

1.2.2 These Guidelines (including the examples in the illustrations) are not exhaustive, and do not set a limit on the investigation and enforcement powers of IMDA. In applying these Guidelines, the facts and circumstances of each case will be considered. Persons in doubt about how they and their commercial activities may be affected may wish to seek legal advice.

1.2.3 In order to provide a single document addressing all issues relevant to the implementation of these provisions, certain provisions of the Code have been summarised or repeated in these Guidelines. For the avoidance of doubt, in the event of any conflict between the Code and these Guidelines, the provisions of the Code shall prevail.

1.3 Rule of Construction

Capitalised terms used in these Guidelines have the same meaning as in the Code.

1.4 Short Title

These Guidelines may be referred to as the “Contract Period and Early Termination Guidelines”.

2. APPLICATION OF GUIDELINES TO TELECOMMUNICATION LICENSEES AND REGULATED PERSONS

2.1 Overview

2.1.1 One of IMDA’s key policy objectives is to promote and facilitate effective and sustainable competition in the increasingly converging telecommunication and media sectors so that End Users benefit from having greater choice of service providers and innovative services, at competitive prices and quality.

2.1.2 Prior to the Code coming into operation on 2 May 2022, consumer protection provisions relating to contract period and ETCs for telecommunication services were governed by the Code of Practice for Competition in the Provision of Telecommunication Services 2012, while similar provisions for media services were governed by the Code of Practice for Market Conduct in the Provision of Media Services.

2.1.3 As the provisions relating to contract period and ETCs for both telecommunication and media services have been merged under the Code, IMDA issues these Guidelines to address concerns in relation to the imposition of unreasonably long contract periods and/or excessively high ETCs by Telecommunication Licensees and Regulated Persons for telecommunication and/or media services under the Code, and in so doing provide greater certainty to both End Users, Telecommunication Licensees, and Regulated Persons.

2.2 Contract Period capped at 24 Months

2.2.1 IMDA considers that a guideline on contract period is necessary to protect End Users and to promote more rigorous competition. IMDA considers that limiting contract periods to no more than 24 months strikes a good balance between allowing Telecommunication Licensees and Regulated Persons sufficient flexibility to innovate and devise different types of telecommunication and/or media service plans to compete, while at the same time ensuring there is sufficient protection for End Users from being locked-in to unduly long agreements for telecommunication and/or media services.

2.2.2 IMDA does not object in principle to Telecommunication Licensees and

Regulated Persons providing End Users with incentives to take up service agreements with a contract period by way of offering discounts on related or unrelated products or services, vouchers, gifts, etc. However, unduly long contract periods may hinder End Users from terminating service or switching service providers and on balance, IMDA considers that limiting the duration of contract periods to no more than 24 months for End User Service Agreements would go towards meeting both the legitimate interests of End Users as well as Telecommunication Licensees and Regulated Persons.

2.3 Early Termination Charges

2.3.1 ETCs refer to the charges that Telecommunication Licensees and Regulated Persons impose on End Users when they terminate their service agreements with Telecommunication Licensees or Regulated Persons before the end of their contract period.

2.3.2 Sub-section 3.2.4 of the Code sets out the requirement that ETCs must be reasonably proportionate to any discounts or special consideration given and the amount of time that the End User has completed on the contract. IMDA is of the view that (a) fixed or flat-rate ETCs, and (b) ETCs that do not exclude avoidable costs (i.e., costs that the Telecommunication Licensee or Regulated Person will not need to incur when they cease the provision of the service to the End User), do not meet the standard described in Sub-section 3.2.4 of the Code.

2.3.3 This sub-paragraph seeks to clarify the considerations which IMDA will take into account when assessing whether ETCs are reasonably proportionate for the purposes of Sub-section 3.2.4 of the Code.

(a) *<u>ETCs should be graduated</u>*

2.3.3.1 ETCs for all End User Service Agreements with a contract period of more than three months should be graduated on at least a month-by-month basis. In other words, ETCs should decrease monthly, taking into account the number of months that are left on an End User Service Agreement.

2.3.3.2 IMDA does not object to the imposition of fixed ETCs where the contract period does not exceed three months. However, where any End User Service Agreement has a contract period of more than three months, and the ETC remains the same regardless of the amount of time that the End User has completed on the contract period, such ETC would not be considered "reasonably proportionate".

(b) *<u>ETCs should exclude any costs that will be avoided when the End User Service Agreement has been terminated</u>*

2.3.3.3 In addition to the above requirement of graduation, ETCs for all End User Service Agreements with a contract period exceeding three months should not include costs that will be avoided by the Telecommunication Licensee or Regulated Person when an End User terminates the service.

2.3.3.4 Any ETC imposed should be reasonably below that of the sum of the monthly fee for the remaining months of the contract period. In all cases, the ETC cannot be higher than the sum of the monthly fees for the remaining months.

(c) *<u>Termination of the End User Service Agreement without ETC</u>*

2.3.3.5 For the avoidance of doubt, ETC will not apply to termination of End User Service Agreements that are within the minimum contract period, as long as they meet any of the events set out under the Sub-section 3.4.4(a) of the Code. End Users will have up to 30 days after the occurrence of the event to terminate the Subscription Television Service without ETC. Thereafter, ETC for the remaining contract period shall apply.

2.3.3.6 For End Users whose Subscription Television Service is part of a bundled package, the option to exit without ETC is only applicable to the Subscription Television Service.

2.4 Examples

2.4.1 The following examples below aim to illustrate how the guidelines on the ETC could be applied.

<u>Illustration 1</u>

Mr Tan subscribed to a mobile phone service with a 24-month contract period with Licensee A. Under the mobile phone service agreement, the applicable ETC if Mr Tan terminates his contract immediately after signing up would be $200. 18 months into the contract period, Mr Tan wants to terminate his contract.

Licensee A should ensure that any ETC that Mr Tan has to pay corresponds with the length of the contract period Mr Tan has fulfilled. In this case, since Mr Tan has already served three-quarters of the contract period, Mr Tan should not have to pay more than one quarter of the ETC applicable at the start of the contract period less the avoidable cost of Licensee A, i.e. [6/24 x $200 = $50] minus [avoidable cost of Licensee A].

<u>Illustration 2</u>

Mr Tan subscribed to a bundled package of mobile phone, fixed-line telephony broadband and Subscription Television services with a 24-month contract period with Licensee B.

If Mr Tan terminates his <u>entire</u> bundled package contract immediately after signing up, the applicable ETC in relation to the mobile phone, fixed-line *telephony, broadband and Subscription Television services is $600. 12 months into the contract, Mr Tan decides to terminate the entire bundled service contract.*

Licensee B should ensure that any ETC that Mr Tan has to pay, for the mobile phone, fixed-line telephony, broadband and Subscription Television services under the bundled package, takes into consideration the length of the contract period Mr Tan has fulfilled. In this case, since Mr Tan has already served half of the contract period, Mr Tan should not have to pay more than half of the ETC applicable at the start of the contract period less the avoidable cost of Licensee B, i.e. [12/24 x $600 = $300] minus [avoidable cost of Licensee B].

Licensee B also allows Mr Tan to terminate individual services within the bundled package. For example, if Mr Tan terminates the Subscription Television Service immediately after signing up, the applicable ETC is $250. Licensee B should also ensure that any ETC imposed for termination of the Subscription Television Service takes into consideration the length of the contract period Mr Tan has already fulfilled. For example, if Mr Tan terminates the Subscription Television Service offered under the bundled package contract 6 months into the 24-months contract, he should pay no more than three quarters of the ETC applicable at the start of the contract period less the avoidable cost of Licensee B in not providing the Subscription Television Service, i.e. [18/24 x $250 = $187.50] minus [avoidable cost of Licensee B].

<u>*Illustration 3*</u>

Mr Tan subscribed to a mobile phone service with a three-month contract period with Licensee C. As Licensee C may not be able to fully recover all the upfront costs incurred in providing this service within the three-month contract period, it is acceptable for Licensee C to charge a non-graduated ETC, should Mr Tan terminate the contract anytime within the three-month contract period.

<u>*Illustration 4*</u>

Licensee D offers a 2 Mbps broadband service at $38 per month. Mr Tan subscribed to a 2 Mbps broadband service from Licensee D and committed to a 24-month contract period. Six months later, Mr Tan would like to terminate his contract.

In order to provide its customers with the broadband service, Licensee D had purchased wholesale broadband access service from Operator E at $20 per line per month. As Licensee D purchases Broadband Access Service lines from Operator E on a month-by-month and per-line basis, when Mr Tan terminates his subscription, one of the costs that Licensee D will be able to stop incurring is the $20 monthly cost for the wholesale broadband access service.

Licensee D should ensure that any ETC payable by Mr Tan excludes the costs that Licensee D can avoid by not providing Mr Tan the broadband service.

Therefore, the ETC that Licensee D may recover from Mr Tan should not exceed: [24 – 6] x [$38 – $20] = $324.

Illustration 5

Mr Tan subscribed to an add-on Subscription Television Service package with a 12-month subscription period with Licensee E. Under the Subscription Television Service agreement, the applicable ETC if Mr Tan terminates the add-on package immediately after signing up would be $100. Three months into the contract period, Mr Tan wants to terminate the add-on package.

Licensee E should ensure that any ETC that Mr Tan has to pay takes into consideration the length of the contract period Mr Tan has fulfilled. In this case, since Mr Tan has already served one-quarter of the contract period, Mr Tan should not have to pay more than three-quarter of the ETC applicable at the start of the contract period less the avoidable cost of Licensee E, i.e. [9/12 x $100 = $75] minus [avoidable cost of Licensee E].

Illustration 6

Mr Tan subscribed to a Subscription Television Service with 24-month contract period with Licensee F. Under the Subscription Television Service agreement, the applicable ETC if Mr Tan terminates his contract immediately after signing up would be $240.

Nine months into the contract period, Licensee F notifies Mr Tan that Channel A will be removed from his Subscription Television Service package the next month. The removal of Channel A, which is deemed as a channel containing material sports content, takes place within Mr Tan's contract period. Mr Tan can terminate his contract without ETC within 30 days from the date that Channel A was removed from his Subscription Television Service package.

Should Mr Tan only decide to terminate the Subscription Television Service from the 12th month onwards, Mr Tan is liable for applicable ETC for the remaining contract period. In this case, Mr Tan has already served half of the contact period, he should not have to pay more than half of the ETC applicable at the start of the contract period less the avoidable cost of Licensee F, i.e. [12/24 x $240 = $120] minus [avoidable cost of Licensee F].

Illustration 7

Mr Tan subscribed to a Subscription Television Service with 24-month contract period with Licensee G. Under the Subscription Television Service agreement, the applicable ETC if Mr Tan terminates his contract immediately after signing up would be $240.

14 months into the contract period, Licensee G notifies Mr Tan that six channels will be removed, and one new channel will be added to his Subscription Television Service package the next month. Mr Tan's package comprises 20 linear channels, including 15 channels from base subscription and five add-on channels. Mr Tan experiences a 25% net loss of channels [(6-1)/20 x 100], which is more than the 20% threshold. Mr Tan can terminate his Subscription Television Service contract without ETC within 30 days from the removal date of the channels.

Should Mr Tan only decide to terminate the service from the 16th month onwards, Mr Tan is liable for applicable ETC for the remaining contract period. In this case, Mr Tan has already served two-third of the contract period, he should not have to pay more than one-third of the ETC applicable at the start of the contract period less the avoidable cost of Licensee G, i.e. [8/24 x $240 = $80] minus [avoidable cost of Licensee G].

3. IMPLEMENTATION OF GUIDELINES

3.1 For End Users to be able to make an informed choice when selecting which Telecommunication Licensee or Regulated Person and which type of service to subscribe to, Telecommunication Licensees and Regulated Persons must also inform End Users of the relevant contract period and ETCs pertaining to its service offerings before End Users subscribe to its services, as required under Sub-section 3.2.3 of the Code. Telecommunication Licensees should also obtain express written acknowledgement from End Users that they have understood the ETCs applicable to their service agreements.

Illustration 8

Mr Tan is interested to subscribe to a mobile phone service with a 24-month contract period with Licensee H. Under the mobile phone service agreement, the applicable ETC if Mr Tan terminates his contract immediately after signing up would be $200. The amount of ETC payable is graduated and excludes avoidable cost.

Licensee H should ensure that any ETC that Mr Tan has to pay is made clear to him upfront. Licensee H should also obtain Mr Tan's expressed written acknowledgement of his understanding of the relevant ETC terms. Licensee H could do this by providing Mr Tan with a one-page summary of the key prices, terms and conditions (including the applicable ETC) of the mobile phone service and require Mr Tan to sign on the page to indicate his understanding and acceptance of the relevant terms.