CONSULTATION ON THE TELECOMMUNICATION AND SUBSCRIPTION TV MEDIATION-ADJUDICATION SCHEME

Submission by StarHub Ltd to the Info-comm Media Development Authority of Singapore

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1. Summary of Major Points:

1.1 StarHub Ltd ("**StarHub**") thanks the Info-comm Media Development Authority of Singapore (the "**Authority**") for providing parties with the opportunity to comment on its proposed Telecommunication and Subscription TV Mediation-Adjudication Scheme (the "**Proposed Scheme**").

1.2 StarHub's comments on the Proposed Scheme can be summarised as follows:

- First, the Proposed Scheme is not needed at this time. This is because:

  (i) The telecoms and pay-TV markets are very competitive, and operators already have strong incentives to address issues raised by customers.

  (ii) Customer satisfaction with telecoms and pay-TV operators is steadily increasing, and customer complaints (as measured by CASE and the Authority) are steadily declining.

  (iii) Customers with a claim against an operator, already have the option of taking the matter to the Small Claims Tribunal ("**SCT**"), which is ideally placed to address the issues highlighted by the Authority.

- Second, if the Proposed Scheme is implemented, it should be based on mediation, not arbitration. This is because:

  (i) This is consistent with the consultation paper issued by the Ministry of Communications and Information ("**MCI**") on changes to the Telecommunications Act (the "**Act**").

  (ii) This is consistent with the statements made in Parliament by the Minister for Communications and Information (**"Minister"**).

  (iii) There is no demonstrable case for a system of mandatory binding arbitration (which is not applied to the other areas of the economy).

- Third, if the Proposed Scheme is implemented, and if it does include arbitration, then the Proposed Scheme will need significant modifications. In particular:

  (i) The charges for using the Proposed Scheme will have to be lowered (to match those charged by the SCT) and made more equitable between the parties.

  (ii) The scope of the Proposed Scheme must be scaled back (and should exclude matters already covered under contract, and matters outside of the operator's direct control).

(iii) Proper procedures for the arbitration must be established upfront, on matters such as the rules of evidence and rights of appeal.

1.3 As the Proposed Scheme is currently drafted, we are concerned that it will create a costly (and unnecessary) burden on operators, with significant potential for misuse.

2. Statement of Interest

2.1 StarHub is a Facilities Based Operator ("**FBO**") in Singapore, having been awarded a licence to provide Public Basic Telecommunication Services ("**PBTS**") by the Telecommunications Authority of Singapore ("**TAS**") (the predecessor to the Authority) on 5 May 1998.

2.2 StarHub Mobile Pte Ltd is a wholly-owned subsidiary of StarHub. StarHub Mobile Pte Ltd was issued a licence to provide Public Cellular Mobile Telephone Services ("**PCMTS**") by the TAS on 5 May 1998. Our commercial PBTS and PCMTS services were launched on 1 April 2000.

2.3 StarHub acquired CyberWay Pte Ltd (now StarHub Internet Pte Ltd) for the provision of Public Internet Access Services in Singapore on 21 January 1999.

2.4 In July 2002, Singapore Cable Vision Limited (now StarHub Cable Vision Ltd) merged with StarHub, and become a wholly-owned subsidiary of StarHub. StarHub Cable Vision Ltd holds a Nationwide Subscription Television Service Licence, and an FBO licence, and offers cable TV and wholesale broadband services.

2.5 StarHub Online Pte Ltd is a wholly-owned subsidiary of StarHub. StarHub Online Pte Ltd was issued a licence to provide Public Internet Access Services in Singapore on 22 February 2005.

2.6 Nucleus Connect Pte Ltd, a wholly-owned subsidiary of StarHub Ltd, incorporated on 14 April 2009, is the appointed Operating Company of the Next Generation Nationwide Broadband Network.

2.7 This submission represents the views of the StarHub group of companies, namely StarHub Ltd, StarHub Mobile Pte Ltd, StarHub Internet Pte Ltd, StarHub Online Pte Ltd and StarHub Cable Vision Ltd.

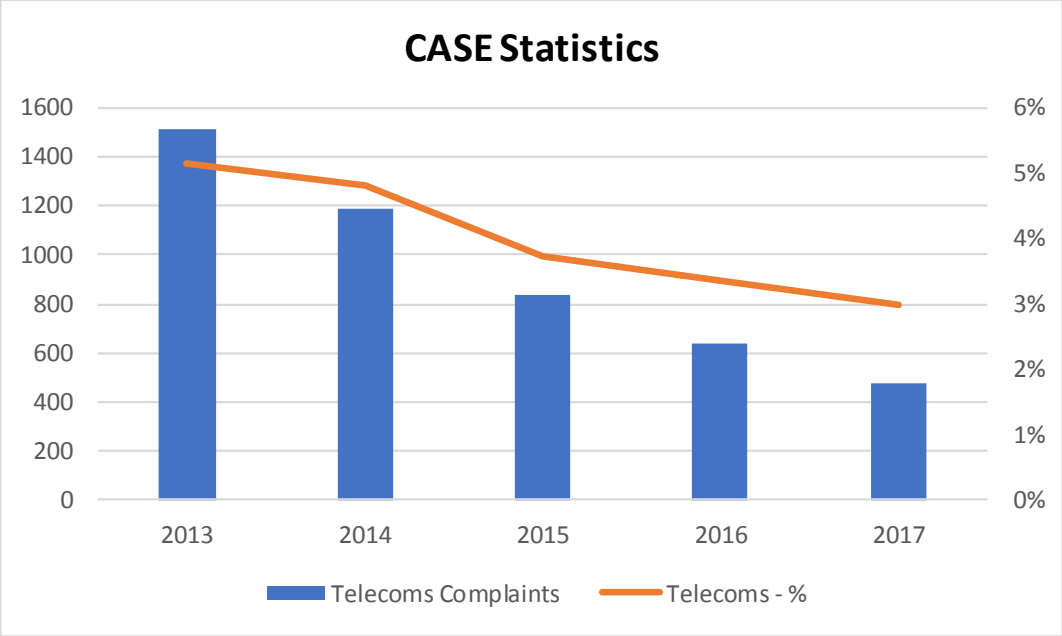
3. StarHub's Detailed Response:

No Compelling Case for the Proposed Scheme:

3.1 The broadband, mobile and pay-TV markets in Singapore are open and competitive. Operators in those markets already have very strong incentives to ensure that customers have a positive service experience, and that any issues with customers are addressed in a timely manner. If an operator fails to address customer concerns, customers have the ability to change their service provider. The Authority already has regulatory measures in place on matters such as disclosure of service information, maximum contract length, number portability, and early termination charges; to give customers the maximum flexibility in the choices they make.

3.2 Given the competitiveness of the market, it is not surprising to note that the overwhelming majority of concerns raised by customers are fully addressed by their service providers.

3.3 In this regard it is important to note the decline in the number of cases involving telecoms companies that have been referred by customers to the Consumer Association of Singapore ("**CASE**"):



Source: www.case.org.sg

3.4 Despite the increasing penetration and growing importance of telecoms services, the complaints about these services (both in absolute terms and as a percentage of the total number of complaints received by CASE) has been falling steadily. This decline is a clear indication that complaints about telecoms services are not a significant issue in Singapore. Given this low volume of complaints, we see no compelling justification for the Proposed Scheme.

3.5 As the number of feedback cases involving telecoms and pay-TV operators has fallen, customer satisfaction levels have continued to rise. In this regard we would note that:

(i) The latest results from the Customer Satisfaction Index of Singapore (CSISG) show a significant improvement for the Info-Communications sector, rising to a high of 69.6 points. The results are at the **highest** level since the survey first started in 2009 (see below).

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Info-Communications	67.4	67.2	66.4	64.4	64.3	65.9	67.7	66.8	67.4	68.5	69.6
Mobile Telecom	67.7	67.5	66.6	64.7	64.5	66.3	67.7	67.2	68.4	69.2	70.2
Broadband	67.2	65.7	65.2	63.6	62.9	64.2	67.5	65.3	64.9	67	68.2
PayTV	-	-	-	-	-	-	-	66.5	65.1	66.6	67.4
Wireless@SG	-	-	-	-	-	-	-	61.5	59.6	69.6	70.3

(ii) The Media Consumer Experience Study 2015, carried out by the Media Development Authority, showed overall satisfaction with media services rising to 76.6% (a record high), with very high satisfaction levels across pay-TV services.

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Availability of the SCT:

3.6 Nevertheless, we recognise that no operator will be able to meet 100% of customers' concerns 100% of the time, and that there will be cases where a customer will want to escalate a dispute for dispute resolution. Today, customers already have the option of approaching the alternative dispute resolution channels available in Singapore. In particular, the SCT is a key forum for resolving outstanding disputes.

3.7 In its consultation paper, the Authority has stated that its intent is to create "*an independent, conclusive, efficient and cost-effective way*" to resolve disputes between customers and operators. We would respectfully note that this is precisely what the SCT is doing today[1]:

- Independent – the SCT is part of the State Courts of Singapore, and is therefore an independent and trusted body;

- Conclusive – an order of the SCT "*is of the same force and effect as an order of a Magistrate's Court, and may be enforced accordingly*". There is therefore certainty that a decision will be made if disputes are raised to the SCT;

[1] Link: https://www.statecourts.gov.sg/SmallClaims/Pages/GeneralInformation.aspx.

- Cost-effective – the aim of the SCT is "*to provide a quick and inexpensive forum for the resolution of small claims between consumers and suppliers*". We will elaborate on the costs of the SCT later; and

- Efficient – From 10 July 2017, the SCT has adopted "*an electronic case filing and management system*" which "*allows parties involved in disputes to file claims and access Court e-services from the comfort of their homes or any place with an internet connection*".

3.8 As highlighted in 2010 by the Minister of Law, the Courts continue to promote "*greater use of alternative dispute resolution*", and that: "*Court based mediation was introduced in the early 1990s. Through court based mediation, a large majority of cases are successfully resolved without the need for protracted adjudication*".[2] This clearly indicates that the applications through the Courts are already a successful form of ADR in Singapore.

3.9 The Ministry of Law ("**MinLaw**") has also recently concluded its public consultation on proposed changes to the SCT.[3] The amendments are "*proposed to enhance the SCT's efficiency and effectiveness*", "*facilitate the speedy and effective resolution of the cases before the SCT*" and proposals include "*empowering the SCT to … order parties to attend mediation*".

3.10 We would note that the SCT is already widely used by operators and customers for disputes involving telecoms and pay-TV services. The SCT already has significance experience with the sector.

3.11 Given the significant overlap between the SCT's current role, and the Authority's proposals, we see no compelling argument for creating a standalone Scheme just to handle telecoms / pay-TV services. We are not aware of any criticisms of the SCT by users or Government. It is therefore unclear why the Authority is negatively disposed towards use of the SCT for disputes involving telecoms and pay-TV services.

3.12 By way of comparison, we would note that having an ADR mechanism just dedicated to telecoms and pay-TV services is likely to be highly inefficient. The costs needed to fund a standalone Scheme would be onerously high (a fact demonstrated by the high charges proposed). If operators are already providing their customers with the option of going for mediation / arbitration to resolve disputes, we do not believe that the Authority should mandate that its Proposed Scheme must be the only ADR option available. Any costs incurred by the operators to fund the Proposed Scheme will ultimately be passed-on to customers via higher retail rates.

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[2] In his remarks during the Parliament session of 16-August 2010, in response to a question on the Caseload of Subordinate Courts.

[3] Link: https://www.mlaw.gov.sg/content/minlaw/en/news/public-consultations/public-consultation-on-proposed-amendments-to-the-small-claims-t.html.

If the Proposed Scheme is Implemented, it should be based on Mediation:

3.13 StarHub strongly believes that, should the Authority decide to implement the Proposed Scheme, it should be based on mediation (rather than arbitration). This would be in line with the statements made by MCI when it originally consulted on this matter. We would note the following:

- In its public consultation, MCI noted that: "*At the outset, it is envisioned that the appointed ADR organisation will provide mediation services, with adjudication to be considered as a later stage*".

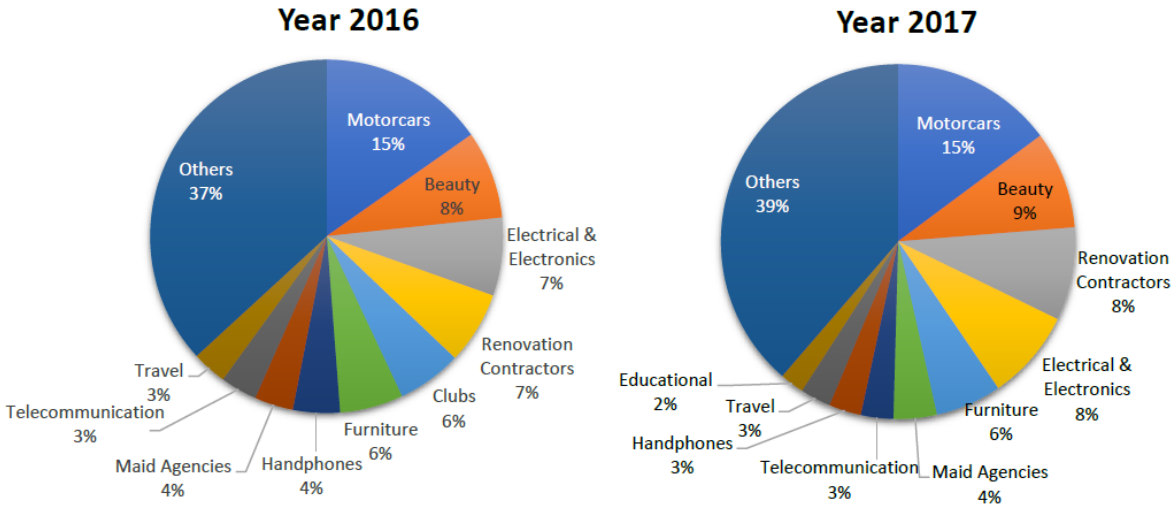
- MCI also added that: "*adjudication, which requires skilled personnel in deliberating and assessing both parties' representations before making a decision, would be more complex to implement*".

- The debate in Parliament on this measure focussed solely on mediation as the avenue for dispute resolution. At no point did Minister indicate that the Government was considering implementing an arbitration scheme for the telecoms / pay-TV sector.

3.14 Unfortunately, the Proposed Scheme ignores MCI's position, and proposes to cover **both** mediation and arbitration. The Authority's consultation paper has not provided an explanation of either: (1) the reason for the departure from what MCI originally proposed; (2) why a dedicated arbitration scheme for telecoms and pay-TV is needed in the Singapore context; or (3) how the Authority is seeking to address the issue of having "*skilled personnel*" involved carrying out arbitration. As stated, the SCT already provides an avenue for independent arbitration, and we are very concerned by the overlap proposed by the Authority, as well as the high costs involved in implementing a standalone Scheme.

3.15 From CASE's statistics, many other sectors of the Singapore economy generate significantly higher levels of customer complaints as compared to the telecoms sector.

Chart 1. Comparison of the percentage of complaints by industry received by CASE in 2016 and 2017.



Source: CASE media release on 7-February 2018.

3.16 As shown above, the motorcar industry (15% of complaints) the beauty industry (9%); renovation contractors (8%); the electrical and electronics industry (8%); and the furniture industry (6%) each receives between **two to five-times** the number of complaints received about the telecoms industries. It is unclear why those other industries are not going to be subject to mandatory arbitration or dispute resolution regimes, while the telecoms / pay-TV industry is. We respectfully submit that it is discriminatory and illogical to have the Proposed Scheme applied on just telecoms and pay-TV operators.

3.17 If any standalone Scheme is implemented for the telecoms and pay-TV sectors, it should be focused on mediation only, which is in-line with MCI's public consultation proposal.

International Comparisons:

3.18 Imposing a mediation-based ADR regime is also consistent with the approach adopted in Hong Kong, where the telecoms regulator has facilitated the setup of a "Customer Complaints Settlement Scheme" (CCSS) which resolves billing-related disputes via mediation. The CCSS has a proven track-record of success, and has publicly announced that it *"had successfully achieved a high settlement rate of almost 100%"*.[4]

3.19 The CCSS regime is complemented by arbitration via the SCT-equivalent in Hong Kong (which has filing fees comparable to those charged by the SCT in Singapore).[5] A similar approach could be adopted in Singapore.

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[4] Link: https://www.ofca.gov.hk/filemanager/ofca/en/content_793/press_release4.pdf.

[5] The filing fees in Hong Kong are approximately in the range of $3 to $20. Link: http://www.judiciary.hk/en/crt_services/pphlt/html/sc.htm#4

3.20 In its paper, the Authority has also highlighted ADR schemes adopted in Australia and the UK. However, these regimes may not be comparable given the significantly higher costs of court-led arbitration in those countries.[6] [7] This has been pointed out by the UK regulator, which highlighted that ADR schemes are a "*well established and important mechanism for giving consumers access to justice* ***where recourse to the court system may be impossible or impractical due to cost and resource restraints***"[8] (emphasis added).

Significant Changes to the Proposed Scheme will be needed to Include Arbitration:

3.21 We would strongly object to any implementation of a standalone arbitration scheme for the telecoms / pay-TV sectors in Singapore. As highlighted above, there is no demonstrable need for such a scheme.

3.22 However, if the Authority insists on implementing arbitration under the Proposed Scheme, significant changes will be needed to its current proposals.

3.23 Firstly, the Authority will need to significantly lower the charges for the Scheme. During the Parliamentary debates on the Act, Mr Ong Teng Koon (Member of Parliament for Marsiling-Yew Tee) stated that:

"***The benchmark to beat is the Small Claims Tribunal where mediation services cost $10***. *The mandated mediation sessions are conducted by Registrars. Therefore,* ***affordable mediation services conducted by neutral professionals are already available***. *How will the ADR improve on this and how much will the ADR charge consumers for this service? A related and pertinent question is on the funding the ADR. What volume of cases does the IMDA expect to refer to the ADR? And if small, this raises questions about economies of scale. Who will pay for the overheads, as well as the direct legal costs of engaging mediators?* ***Will these costs eventually be passed on to the consumer in the form of higher bills****?"* (emphasis ours).

3.24 Unfortunately, the Authority's proposal does not address the concerns raised by Mr Ong. We note the following:

- The $10 fee[9] charged by the SCT cover an end-to-end process, including arbitration (if necessary) by the SCT. In contrast, the Authority is expecting the

[6] Filing a claim in the Australian Small Claims Tribunal costs approximately $540. Link: http://acat.act.gov.au/fees.

[7] The filing fees for the UK Small Claims Court are approximately in the range of $45 (for claims up to $550) to $830 (for claims up to $18,300). Link: https://www.gov.uk/make-court-claim-for-money/court-fees.

[8] Link: https://www.ofcom.org.uk/__data/assets/pdf_file/0021/51393/statement.pdf.

total costs for its Scheme to be in the range of **$600, which represents a 60-fold increase in costs**. We would add that the mediation fees charged by CASE are also significantly lower, ranging from $50 – $75[10]; and

- The Authority's proposed solution, is for the telecoms / pay-TV operators to foot 90% of the bill for its proposed Scheme. We would highlight three concerns:

    - Firstly, customers still end-up paying more for the Scheme, than if they approached the SCT directly;

    - Secondly, under mediation by CASE, the fees paid by the disputing parties are evenly split. Businesses are not expected to foot 90% of the bill. There is no reason why the costs for mediation under the Scheme are borne 90% by the operators; and

    - Thirdly, if operators are expected to shoulder the burden of the proposed Scheme, this will increase their overall operating costs, and these additional costs will ultimately be passed-on to customers via higher retail prices (which is precisely the concern highlighted by Mr Ong).

3.25 Furthermore, the cost for a typical telecoms / pay-TV service is relatively low. Individual disputes may be over single or double-digit amounts. It makes very little sense for operators / customers to pay (at least) $600 to resolve a dispute involving far less than this amount.

3.26 Therefore, if arbitration is needed under the Proposed Scheme, the costs for the Proposed Scheme must be aligned with those under the SCT.

Scope of the Proposed Scheme is too Wide:

3.27 Secondly, the Authority must significantly scale down the scope of the Proposed Scheme, to exclude matters covered under contract, and matters outside of the operator's direct control.

3.28 Given the high costs of the Proposed Scheme, it will be necessary to scope the disputes carefully, to avoid situations where customers raise disputes simply to push for monetary gain from the operators.

3.29 Again, a good approach is the Hong Kong example, where the CCSS has a very tight focus on handling just billing-related disputes.

[9] The $10 fee applies for customers lodging the dispute, and is for claims up to $5,000. While there are higher costs involved for higher-value claims, we would note that the entire contract value for the overwhelming majority of telecoms / pay-TV services would fall within the $5,000 range.

[10] Link: https://www.case.org.sg/complaint_mediation.aspx.

Proper Rules for Arbitration must be Imposed:

3.30 Thirdly, there needs to be proper rules for the conduct of any arbitration. The Authority is effectively proposing a pseudo-Court process, where evidence is submitted, and binding decisions are made by an independent third party. This will necessitate having stringent procedural rules to ensure a fair and reasonable outcome.

3.31 The following issues need to be considered:

- How to ensure that the party carrying out the arbitrations (the "**ADR Operator**") is both independent and competent. If the ADR Operator is clearly affiliated with any organisation or interest groups (e.g., a consumer advocacy group), there will be valid concerns with the Operator's ability to reach a fair and independent resolution on any disputes raised by customers.[11] We would respectfully suggest that the telecoms and pay-TV operators be allowed to comment on the appointment of the ADR Operator. If the ADR Operator has failed to carry out its duties in a fair and reasonable manner, the telecoms / pay-TV operators must also be allowed to request for a replacement.

- How evidence is submitted. Any arbitrated decision must be based on truthful submissions by both parties. If parties are allowed to submit false information, without fear of consequence, this will undermine the entire arbitration process.

- Arbitration decisions have to be binding on both parties. For the decision to be binding on the Operator but on the customer, will lead to a poor outcome, as there will be no finality in the resolution of the dispute.

- Notwithstanding the aforesaid, the right to appeal any decision which is incorrect on a point of law, or inconsistent with public policy. It would be untenable if there was no process to challenge a clearly incorrect decision made by the ADR Operator.

- The ability of the ADR Operator to assign costs for the arbitration. It would be entirely reasonable to allow the ADR Operator to require a "losing" party to be responsible for the bulk of the costs incurred. This correctly places the burden of costs on the party at fault, and encourages responsible dispute resolution.

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[11] For example, in Australia, the telecommunications industry ombudsman is meant to be "*independent of industry, the government and consumer organisations*". Link: http://www.tio.com.au/about-us.

4. Response to the Authority's Questions:

4.1 Dispute Resolution Process:

Question 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?

4.1.1 As highlighted above, the SCT already provides an efficient and cost-effective solution for both customers and the operators.

4.2 Unfortunately, the proposed structure of the Scheme not only fails to create an effective and impartial ADR scheme, it also fails to encourage a robust dispute resolution process. Rather, we would note the following issues:

- The Proposed Scheme promotes a serious "moral hazard" situation (detailed below), where customers are incentivised to raise disputes, even if they know they have a weak or frivolous (or non-existent) case. Customers will be aware that, regardless of the outcome of the dispute, the Authority's rules require operators to bear 90% of the costs in all cases; and

- The Proposed Scheme is not binding on customers, and so they are free to ignore the conclusions of the mediator / arbitrator, and continue raising disputes through other avenues if the decision is not in their favour.

<u>"Moral Hazard" problem:</u>

4.3 Under the Authority's proposal, operators are responsible for 90% of the costs of the Proposed Scheme **<u>regardless of the actual outcome of the mediation / arbitration</u>**. Even if the mediation / arbitrator entirely dismisses the customer's case, the operators will still be obliged to fund (at least) $540 per case.

4.4 Operators are therefore heavily incentivised to avoid going through the Proposed Scheme (even if they are in the right), simply to avoid the high costs involved.

4.5 While customers will be required to pay $60 to go through the Proposed Scheme, they will be aware that the operators have to pay significantly more. This creates a serious "moral hazard" situation, where customers are incentivised to raise disputes whenever possible, to force the operators to give way to their demands. The Proposed Scheme is therefore almost entirely "consequence-free" for disputing customers.

4.6 However, from an operator-perspective, regardless of the validity of their case, there will always be a heavy cost involved in going through the Proposed Scheme and defending their position. This cost may actually outweigh the amount under dispute.

4.7 We sincerely believe that this cannot be the incentive structure that the Authority is seeking to encourage.

4.8 This issue has also been raised in Australia. As part of an independent review of the ADR scheme[12], the consultant appointed highlighted common operator feedback that "*there is a deeply held view that the fees* operate *as a blunt instrument designed to put pressure on* [the operators] *to 'roll over', In their minds, it is the antithesis of 'fair and independent'*." StarHub supports this comment, and believes that it is highly applicable given the high costs involved in the proposed Scheme.

Non-binding nature of the Proposed Scheme:

4.8.1 Further emphasising the "consequence-free" nature of the Proposed Scheme for customers, the Authority has proposed that any arbitrated decision would only be binding on operators, while customers can reject any decision, and continue to raise their dispute through alternative channels.

4.8.2 Again, the high costs of the Proposed Scheme, and the fact that operators pay 90% of these costs mean that customers are incentivised to raise disputes. There can be no "*effective*" or "*conclusive*" outcome if customers are free to walk-away from any decision made.

4.8.3 We would note that these problems do not exist under the SCT regime, because: (1) the costs for utilising the SCT is significantly lower; and (2) the SCT provides a legally binding resolution to disputes. Today, if StarHub cannot reach a consensus with our customers, and they wish to raise the matter to the SCT, StarHub has a fair opportunity to defend its position. Regrettably, under the proposed Scheme, any attempt by an operator to defend its position will result in onerous costs being imposed on it.

Question 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?

4.8.4 We support the principle that customers should only approach an ADR scheme if they have failed to resolve the matter with the operator directly. This is a reasonable approach which first places the onus on parties to reach an amicable settlement.

4.8.5 Nonetheless, it is unclear how such a principle could be enforced, and how a mediator / arbitrator would determine whether the Disputing Parties "*have exhausted all available options*". It will be necessary for the Authority to provide further guidance on exactly how this term will be defined.

[12] Link: https://www.tio.com.au/__data/assets/pdf_file/0005/253643/2017_0929-TIO-Report-Final.pdf.

4.8.6 In its consultation paper, the Authority has also stated that, when a customer raises a dispute, the ADR Operator will first "*assess the eligibility of the complaint*". We believe that the operator involved in the dispute should have a say in this matter. If the customer has submitted wrong / misleading / slanted information, the operator may be required to attend mediation / arbitration, and pay 90% of the costs, on a false pretext.

4.8.7 The operator's comment is therefore necessary prior to the ADR Operator deciding whether any complaint should be accepted.

4.8.8 To encourage responsible dispute resolution, we also submit that customers who raise disputes must be required to participate actively in the process. For example, customers cannot fail to turn-up for mediation, and still expect to continue escalation of the dispute to arbitration. If any customer either fails to attend mediation, or fails to submit the necessary information for arbitration, his request should be dismissed, and he should be required to bear the full cost of the ADR process.

Question 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?

4.8.9 It is not clear that a documents-based adjudication scheme will be more efficient, or be sufficiently robust to address all disputes. We envisage that there will be instances where it will be necessary for the parties to meet to clarify the issues at hand.

4.8.10 We would also highlight the following issues:

- To reach a meaningful and accurate decision, any documentation submitted must be complete and factually accurate. There needs to be a process to ensure that documents submitted by disputing parties are truthful (e.g., via the signing of an affidavit), and that all the relevant documents have been submitted. Otherwise, it will be too easy for parties to submit false, misleading and unsubstantiated claims which would undermine the arbitration process;

- There must be a process where both parties are allowed to review the documents submitted by each other. This allows parties to respond to any inaccuracies or misrepresentations; and

- Operators must be allowed to submit audio call recordings as evidence. Such recordings are typically the clearest evidence of what has transpired between the customer and the operator. A written transcript of calls will: (1) be time-consuming and costly to produce; and (2) not communicate the customer's tone and manner.

Question 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?

4.8.11 We do not believe that allowing customers to unilaterally reject any adjudicated decision will "*achieve faster resolution of disputes*". The exact opposite would be true, as customers can reject any decision that disfavours them, and then continue to prolong the dispute with their operators.

4.8.12 We note the following sequence of events may become possible:

(1) The customer highlights an issue directly to their operator. The parties are unable to come to a satisfactory conclusion;

(2) The customer raises a dispute under the Proposed Scheme, and the dispute undergoes mediation. No outcome is achieved, or the mediator sides with the operator;

(3) The customer raises the case to arbitration under the Proposed Scheme. The arbitrator rules in favour of the operator. The customer then rejects the ADR Operator's decision.

At this stage, the operator would already have incurred at least $540 in fees under the Scheme;

(4) The customer raises the case to another ADR platform (e.g., the SCT). There is a mandated mediation process, and no outcome is achieved; and

(5) The SCT rules against the customer, and finally a binding outcome is achieved.

4.8.13 Effectively, the Authority is prolonging an existing process by two additional steps (2 and 3), while subjecting operators to additional costs, and ultimately reaching the same conclusion. If the Authority insists on imposing a standalone arbitration regime for telecoms / pay-TV services, this must have a binding outcome on both operators and customers.

4.8.14 In addition, if mediation is successful, and parties agree on an outcome, this must also be binding on both parties. Customers should not be allowed to renege on an earlier agreement and re-open the case via the Proposed Scheme or any other ADR scheme.

Question 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?

4.8.15 In principle, StarHub has no objections for customers to request adjudication without going through mediation. However, this must be contingent on the Authority; (1) confirming that any arbitrated decision will be binding on both parties;

and (2) defining the scope of matters that can be raised as a dispute. We also respectfully suggest that operators should have the same rights to request arbitration as a first recourse, to shorten the dispute resolution process. If ultimately, the final arbitrated decision is just and reasonable (as per the current SCT process), then there is no reason why either party should object to going straight to adjudication.

4.8.16 Nonetheless, we would reiterate that MCI had earlier proposed that its ADR scheme would focus on mediation. It is therefore unclear why the Authority is now considering that customers may be allowed to skip mediation altogether, and go straight to adjudication. Furthermore, under the current proposal, arbitration is only binding on operators, and not on customers. We would reiterate the fundamental problems with this approach.

4.9 Eligible Customers:

Question 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?

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

4.9.1 We would note that the Authority's proposal again differs significantly from what was consulted during the proposed changes to the Act. MCI had clearly stated that the ADR scheme would only apply to "*residential/individual retail customers*", and that "*Business end-users generally have greater bargaining power and hence most disputes would be resolved amicably*".

4.9.2 We would also note that it would be operationally extremely difficult to determine whether a customer falls under the Authority's definition of "*Small Business Customer*". It is unclear how this definition was derived, and how the ADR Operator would be able to confirm whether a customer falls within this category. For example, large companies can (and do) set-up small holding companies, which would be the entity that subscribes for services. Just because the small holding company fits the definition of a "*Small Business Customer*", it does not mean that the actual company using the service fits within that definition.

4.9.3 For administrative certainty, and for compliance with MCI's statements, the Proposed Scheme should only cover residential customers.

4.9.4 We would also suggest that the Authority confirm that customers can only be allowed to raise disputes against an operator, if: (1) the customer has entered into a service contract with the operator; and (2) the dispute relates directly to the services provided under the contract.

4.10 Designated / Declared Licensees:

Question 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?

Question 9: Are there other Service Providers that should be required to participate in the ADR scheme? Why do you think so?

4.10.1 If the Proposed Scheme is implemented, it should be implemented on **all** telecoms and pay-TV operators. This should include:

(1) PRS providers; and

(2) IDD providers.

4.10.2 We would be very concerned if the Authority's proposal was for the billing network operator to attend the Proposed Scheme on behalf of the actual service provider. The billing network operator would have limited information on how the service works, and is not in a position to either negotiate on behalf of the actual service provider (or to defend the service provider's position). It would also be highly unreasonable to expect the billing network operator to foot the bill for the Proposed Scheme on behalf of the actual service provider. Simply put, if a customer has a claim against a PRS operator, it is only reasonable that the PRS operator be present to defend their position.

4.10.3 Given that customer disputes are likely to arise in regard to PRS and IDD services, it is only reasonable that the Scheme covers PRS and IDD providers. There is no logical basis for excluding such services from the Proposed Scheme.

4.10.4 It will also be necessary for the Authority to clarify how the various operators of the NBN will be treated by the Proposed Scheme. We understand from the Authority's explicit statements, that NetLink Trust ("**NLT**") and Operating Companies (such as Nucleus Connect Pte Ltd) will be subject to the Scheme.

4.11 Eligible Services:

Question 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?

4.11.1 As highlighted above, it is unclear why there is a need for a standalone Scheme for telecoms / pay-TV services. Complaints about these two sectors: (1) form a small minority of overall complaints received by CASE; and (2) have fallen significantly over the past 5-years. The SCT already provides an efficient and cost-effective ADR regime, and the upcoming changes by MinLaw will make mediation compulsory for disputing parties.

4.11.2 Creating a standalone Scheme for telecoms / pay -TV services will mean a significant overlap with the SCT, and impose additional costs on the industry, which will ultimately be passed-on to customers via higher retail rates.

4.12 Eligible Complaint Issues:

Question 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?

Question 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?

4.12.1 We have very strong reservations with the Authority's proposal. The Authority's definition effectively allows customers to submit almost **any** complaint for dispute resolution.

4.12.2 During the parliamentary debates on the Act changes, Minister highlighted that: "*the ADR scheme will be dedicated to the resolution of disputes between subscribers and their telecom or media service providers. As such, **disputes usually relate to specific billing and contractual issues***" (emphasis added). However, rather than focusing on billing and contractual issues, the Authority has now proposed that the Proposed Scheme will handle any issue "*that can be resolved through service recovery efforts, or compensated in kind or monetary terms*". Such a vague definition opens up the Scheme to virtually any manner of disputes, above and beyond billing and contractual issues.

4.12.3 Even if the customer has a poor case for submitting the dispute, the operators will be forced to pay (at least) $540 to go through the Proposed Scheme. As highlighted above, the unbalanced payment bearing structure of the Proposed Scheme actually encourages customers to raise disputes, frivolous or otherwise.

4.12.4 In response to the specific "*Examples of Eligible Complaint Issues Covered under the Scheme*", we would raise the following concerns:

- Example 1: We agree that a customer should have the right to raise a dispute if he was misrepresented to when sold a service. However, if there is clear evidence that the customer had agreed to the service terms (e.g., via a signed agreement, or voice recordings of the sales call), then any such dispute should be dismissed immediately, with costs charged to the customer. Operators should not be required to pay $540 for an ADR process simply to submit evidence that subscription by a customer was genuine. [13]

[13] If an operator did misrepresent in the sale of a service, or charge a customer for services the customer did not request, this would appear to be an issue under Section 3.2.2 of the Code of Practice for Competition in the Provision of Telecommunication Services. It is unclear what would happen under the Proposed Scheme if

- Example 2: We agree that a customer should be allowed to raise a dispute if he was wrongfully charged for services he did not consume. However, in the example provided, the situation appears to be a case where a customer had not secured his PABX device, which allowed third parties to use that device to carry out international phone calls (i.e. PBX toll fraud). We are very concerned that the Authority appears to be shifting the onus of responsibility and proof from a customer who failed to secure his device onto operators. This is entirely unreasonable. Taking another example, if a customer installs malware onto his device, and that device results in the customer incurring additional data charges, are operators similarly responsible? That would be a manifestly unfair position for any ADR Operator to take, and we are very concerned that the Authority is suggesting that this may be a valid dispute to undergo the ADR process.

- Example 3: We agree that customers should be allowed to raise disputes if their operator failed to provide services that were promised. However, if the issue is related to a problem with the customer's device, or a problem with the customer's in-home cabling, it would be unreasonable to expect the operators to compensate customers for this. We would be very concerned if the ADR Operator's default position was that operators should compensate their customers for all service-related issues, even those beyond the operators' reasonable control.

- Example 4: We agree that operators should honour appointments made with their customers. In many cases, if operators end-up inconveniencing their customers, they will offer the necessary service recovery. However, if this is subject to an ADR process, then it is critically important to understand how an ADR operator would "value" such a missed appointment. We respectfully submit that the "value" of a missed appointment would not be commensurate with the costs of undergoing a $540 ADR process. In addition, we would note that many of the complaints raised to StarHub about a missed appointment actually relate to the failure of NLT installation staff to turn-up on time. In such cases, it is unclear whether the Authority will require: (1) Retail Service Providers to take responsibility for NLT's failings; or (2) for NLT to be the subject of customer complaints via the Proposed Scheme. Clearly, Option (1) is unreasonable and unrealistic.

- Example 5: Similar to example 3, we agree that customers should be allowed to raise disputes if the operator fails to provide the service that was promised. However, in many cases, loss of mobile coverage may be due to many factors, including planned maintenance or customer device issues. It would be unreasonable if operators had to incur $540 in costs to prove that any loss in service was outside of their reasonable control.

a customer raised a dispute to the mediator / arbitrator when that matter is already being considered by the Authority. For example, if the Authority found that no misrepresentation had taken place, could the arbitrator overrule that decision? There could essentially be a duplication of the dispute resolution processes.

4.12.5 We therefore respectfully propose that the Proposed Scheme primarily focus on billing issues (as is the case in Hong Kong), and that the following scenarios should be excluded:

- Matters covered by the customer contract. The Authority has already put in place heavy obligations on operators to inform customers of the key terms and conditions of the service, and to provide customers with copies of the service contracts;

- Service difficulty incidents. These matters are already covered by the Authority's Code of Practice for Telecommunication Service Resiliency, and it would be unreasonable to punish operators twice for a single incident;

- Channel cessations. These matters are already fully covered by the Authority's Code of Practice for Market Conduct);

- Feedback on customer service. As noted above, customers have a variety of different channels for engaging with their operator (including via phone, in person, online, and via social media);

- Debt collection matters. As noted above, this matter is already covered by the terms and conditions of the service;

- Suspension / termination of contract. Again, this matter is already covered by the terms and conditions of the service;

- Services provided outside of Singapore. Operators cannot be held to be responsible for matters outside of their control;

- Matters that have already been raised to the Courts or to the SCT. Customers should not be able to either: (1) carry out "forum shopping"; or (2) relitigate or seek dispute resolution for a matter already under consideration;

- Customer requests for waivers / discounts. Customers should not be able to demand matters beyond what has been agreed under the contract;

- The level of prices. Again, customers should not be able to demand matters beyond what has been agreed under the contract;

- Quality of service issues (e.g., relating to speed, coverage or programme quality). Such matters are generally already under the Authority's direct supervision, and operators should not be subject to additional (and potentially open-ended) obligations;

- Matters beyond the operators' control. If an operator cannot control an external event (such as a third-party cutting an operator's fibre cable), it should not be punished for that event;

- Early termination charges and the imposition of these charges. This matter is already covered by the terms and conditions of the service;

- Number retention. The need to recycle numbers, and to give up numbers when the service ceases, is an inherent part of the Authority's policies for number management. As such, operators cannot be held responsible for these matters;

- PDPA matters (e.g., spam). Such matters are already regulated by the Personal Data Protection Commission;

- Matters related to third-party devices or premiums. Again, it would be unreasonable and inequitable to blame operators for matters outside of their direct control; and

- Sales matters handled by third-parties. Again, if a customer has a dispute with a third-party, the customer should raise that matter with the third-party, not with the operator.

Any disputes relating to these matters should be rejected by the ADR Operator.

4.12.6 Given the high costs of the Proposed Scheme on operators, it is necessary to scope the disputes carefully, to avoid situations where customers raise disputes simply to push for monetary gain from the operators. We would also raise the following suggestions:

- Rather than the current 1-year for disputes to raise, we suggest that customers should only be allowed to raise disputes under the Scheme within 3-months of the occurrence of the issue. After this 3-month period, the customer can consider other forms of ADR (such as the SCT); and

- There needs to be a monetary cap on the disputed amount that the customer can raise under the Proposed Scheme. We propose that: (1) a cap of $20,000 should be implemented; and (2) the Proposed Scheme should exclude all claims for consequential losses. We believe that the $20,000 limit is well above the value of any telecoms / pay-TV contract we offer to residential customers today.

4.13 Funding of Scheme & Fee Structure:

Question 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?

4.13.1 We are very concerned with the high cost structure proposed by the Authority. $600 for mediation and arbitration is significantly above the benchmark set by the SCT,

and cannot be seen as reasonable in **any** sense. It is unclear how such charges were derived, given the substantially lower charges that are available via other avenues (such as the SCT).

4.13.2 As highlighted above, creating a standalone Scheme will be highly cost-inefficient and will only result in higher costs being imposed on the operators, which will ultimately be passed-on to customers. We strongly believed that the cost of the Proposed Scheme should be set at (or below) the levels charged by the SCT. We can see no reason why charges under the scheme should be higher than those of the SCT.

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

4.13.3 Firstly, it is unclear why the Authority is seeking a 10:90 fee ratio. If this was a legitimate basis to set charges, organisations like CASE / SCT would already be charging fees based on the relative wealth of the disputing parties. Rather than creating a "balance", the Proposed Scheme seems to be seeking to justify imposing the vast majority of the Proposed Scheme's costs on the operators. As outlined above, there is no need for such a standalone Scheme in the first place, and we respectfully submit that the Authority's position on the fee ratio is unreasonable.

4.13.4 Secondly, by forcing operators to pay 90% of the costs (regardless of the outcome of the mediation / arbitration), this creates an extremely unbalanced, and perverse, incentive structure. Customers and operators will be well aware that the whole process of mediation / arbitration will cost the operator (at least) $540. Even if the customer "loses" the dispute, only the operator will be significantly out-of-pocket. The proposed cost structure and fee split will encourage customers to file weak, frivolous and unsubstantiated cases, regardless of their validity or likelihood of success.

4.13.5 To address this issue, it is imperative that the Authority reduce the cost of the Proposed Scheme, to ensure that it is aligned with the costs of raising a dispute to the SCT.

Distribution of costs under the Scheme:

4.13.6 As highlighted above, the key problem with the Proposed Scheme is that, regardless of the outcome of a dispute (or the validity of the complaint), operators are responsible for 90% of the costs.

4.13.7 To address this concern, we submit that the following changes must be made to the cost allocation framework for the Scheme:

- Costs for mediation should be split 50:50, in-line with the methodology already implemented by CASE; and

- If arbitration is a necessary part of the Scheme, the ADR Operator should be given the responsibility to assign the costs for that arbitration, based on the arbitration's outcome. For example, if an operator or a customer is found to be entirely responsible for the dispute, the ADR Operator could allocate the full cost of the arbitration to the operator or a customer at fault. This encourages customers to only raise disputes if they believe they have a valid case, and allows operators to defend their positions, when they believe they are valid. StarHub believes it is entirely reasonable for operators to pay 100% of the costs, if they are at fault. Similarly, customers should be required to pay 100% of the costs, if the operator is not at fault. This follows the usual position in legal dispute resolution proceedings, where costs awarded follow the outcome of the dispute resolution. Such an approach is also consistent with the proposal by MinLaw to empower the SCT to award costs against parties where necessary. In explaining this proposal, MinLaw correctly noted that it is necessary to "*encourage parties to consider early settlement of the matter, especially if they have a weak case*".

5. CONCLUSION:

5.1.1 In conclusion, StarHub's key points are as follows:

- We do not see a compelling need for the Proposed Scheme at this time:
    - The telecoms and pay-TV markets are very competitive, and operators already have strong incentives to address issues raised by customers.
    - Customer satisfaction with telecoms and pay-TV operators is increasing, and the number of customer complaints is declining.
    - Customers have the option of raising their disputes to the SCT, which provides a convenient and effective ADR option.
- If the Proposed Scheme is implemented, it should be based on mediation, not on arbitration. This is because:
    - A mediation-based approach is consistent with MCI's consultation paper on the Act, and the discussions in Parliament.
    - There is no demonstrable case for a system of mandatory binding arbitration (which is not applied to the other areas of the economy).
- If the Proposed Scheme is implemented, and does include arbitration, then significant modifications to the Authority's proposals will be needed. In particular:
    - The charges for the Proposed Scheme must be significantly reduced, to match those charged by the SCT.
    - The scope of the Proposed Scheme must be reduced, and should exclude matters already covered under contract, and matters outside of the operator's direct control.
    - Proper procedures must be implemented for arbitration, to address matters such as the rules of evidence and rights of appeal.

StarHub Ltd
21 March 2018