MEDIA DEVELOPMENT AUTHORITY OF SINGAPORE

CLOSING NOTE TO CONSULTATION ON GUIDELINES ON MAXIMUM CONTRACT TERM AND EARLY TERMINATION CHARGES FOR PAY TV SERVICES OFFERED TO CONSUMERS

1 November 2011

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PART I: INTRODUCTION

1.1. A key regulatory role of the Media Development Authority ("MDA") is 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, while balancing the commercial interest of pay TV retailers, MDA is issuing the "Guidelines on Maximum Contract Term and Early Termination Charges for Pay TV Services Offered to Consumers" ("Guidelines").

1.2. The Guidelines are advisory in nature and are intended to clarify the standards that MDA will generally apply and set out some of the factors and circumstances that MDA may consider in assessing whether the pay TV retailers have complied with their obligations set out in paragraph 3.5 ("Prohibition on Excessive Early Termination Liabilities")[1] of the Media Market Conduct Code ("MMCC"). The Guidelines are not exhaustive and do not set a limit on the investigation and enforcement activities of MDA. In applying these Guidelines, the facts and circumstances of each case will be considered.

1.3. Generally, MDA prefers not to interfere with commercial arrangements in the media market, including contractual terms between consumers and retailers. However, in recent years, MDA has received feedback from Subscribers of pay TV services that they are unfairly disadvantaged by having to pay early termination charges ("ETCs") due to unilateral changes initiated by the pay TV retailers on the channel line-up or pricing of their subscription packages.

1.4. MDA believes that such consumer concerns will not go away, particularly since the roll-out of the Next Generation National Broadband Network ("NGNBN") is expected to facilitate the entry of even more pay TV retailers. Consumers who want to leverage on the increased switching opportunities in the market would not want to be unduly hindered by long contractual periods and excessively high ETCs.

1.5. MDA launched a public consultation on the proposed Guidelines on 21 April 2011 with the aim of safeguarding subscribers' welfare while balancing the interests of pay TV retailers. MDA proposed to require pay TV retailers to:

(a) Limit the maximum contractual lock-in period in the pay TV sector to two years;

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[1] **3.5 Prohibition on Excessive Early Termination Liabilities**

A Regulated Person may enter into an agreement pursuant to which it provides a Subscriber with a reasonable discount or special consideration in return for the said Subscriber's agreement to commit to a minimum service period for a Subscription Service. Such agreements may contain provisions providing for termination liability in the event that the said Subscriber terminates the agreement prior to the agreed-upon termination date. However, 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.

(b) Ensure that the ETCs for contracts that are longer than three months be graduated, at a minimum, on a month-by-month basis (i.e. decrease in tandem with the consumption of the contract such that the ETCs cannot be higher than the sum of the monthly subscription fees for the remaining months); and

(c) Ensure that the ETCs for contracts that are longer than three months exclude costs that will be avoided by the pay TV retailer when a Subscriber terminates the service.

1.6. At the close of the public consultation on 25 May 2011, including an extension of one week, MDA received four submissions from:

(a) Consumer Association of Singapore ("CASE");
(b) M1 Limited ("M1");
(c) SingNet Pte Ltd ("mio TV"); and
(d) StarHub Cable Vision Limited ("SCV").

1.7. MDA would like to thank all the respondents for their useful feedback and comments.

PART II: SUMMARY OF COMMENTS RECEIVED FROM THE PUBLIC CONSULTATION

2.1. Key responses from the four respondents are as follows:

(a) CASE was supportive of the proposed Guidelines and further proposed that ETCs should not be imposed on consumers for changes to programming mix or subscription charges caused by the retailers;

(b) M1 proposed that MDA should facilitate the adoption of Next Generation Interactive Multimedia, Applications and Services ("NIMS") [2] by allowing Subscribers to "bring over" their existing pay TV contracts to the NIMS platform without imposing ETCs and introduce an interim period to allow Subscribers to switch to NIMS without ETCs even if they were to terminate their pay TV contracts;

(c) mio TV objected to regulatory intervention on the basis that there was no evidence of market failure to warrant intervention in this area. They viewed that the introduction of the Guidelines would deprive consumers of attractive premiums, restrict pay TV retailers' ability, flexibility and creativity in developing innovative packages, and dampen competition between pay TV retailers; and

(d) SCV viewed that since the pay TV market was open and competitive and the number of customer complaints in regard to the terms of contracts and ETCs was extremely low, there was no need for regulatory intervention in this area. SCV further proposed an option of letting retailers offer "a standard contract term (e.g. 24 months) and ETC structure" but allowing flexibility for variations.

2.2. MDA has carefully studied all the comments submitted and sets out MDA's response in Part III of this Closing Note.

[2] Project NIMS is a joint initiative by IDA and MDA to foster the development of a conducive environment for the delivery of interactive multimedia, applications and services over NGNBN.

PART III: MDA'S RESPONSE TO THE COMMENTS FROM THE PUBLIC CONSULTATION

Need for Regulatory Intervention

3.1. Mio TV objected to regulatory intervention on the basis that there was no evidence of market failure to warrant intervention in this area.

MDA's Response

3.2. Contrary to mio TV's comments, MDA has received a number of consumer feedback on ETCs and unilateral changes to contracts, which warrant more regulatory clarity on the standards that MDA will apply in assessing whether the pay TV retailers have complied with their obligations set out in paragraph 3.5 of the MMCC. In addition, MDA takes the view that the Guidelines will enhance competition by reducing switching barriers for consumers, thus lowering the entry barriers for new pay TV players; the Guidelines will not hinder industry development and competition.

Maximum Contractual Lock-in Period

3.3. CASE was supportive of MDA's proposed two-year cap for the pay TV contracts. On the other hand, mio TV objected to the cap as being interventionist and would not benefit the consumers and overall pay TV market, while SCV viewed that regulatory intervention in this area was unnecessary.

3.4. SCV further suggested that besides offering a 24-month contract as a standard contract, pay TV retailers should be given the flexibility to vary the contractual terms to best meet consumer needs. The various contractual options also serve to be an important point of differentiation between competitors.

3.5. M1 proposed that Subscribers be allowed to serve out any unfulfilled pay TV contract term when switching to the NIMS platform. This proposition would facilitate NIMS adoption and lower the entry barrier for NIMS entrants in the NGNBN environment, especially given the dominance of the pay TV incumbents.

MDA's Response

3.6. MDA's policy intent in setting a maximum cap on the contractual term for pay TV services is to ensure that consumers who wish to leverage on switching opportunities in the market are not unduly hindered from doing so. MDA notes that typically, premiums and/or discounts on pay TV contracts are offered for longer contracts. While premiums and/or discounts are welcomed by consumers, MDA views that the flexibility to switch pay TV services is also important given the nature of the pay TV market, i.e. changes in

programming mix and pricing may be due to factors which are beyond the pay TV retailers' control (for example, failure to secure content after expiry of content agreement, increase in upstream content acquisition costs, etc).

3.7. As such, SCV's suggestion of requiring pay TV retailers to offer a standard 24-month contract together with other contract terms which are longer or shorter than 24 months, will not address MDA's concerns on consumers being locked in with excessively long contract terms.

3.8. As for M1's suggestion to allow Subscribers to fulfil the remaining term of the pay TV contract on the NIMS platform, MDA views that this is a commercial decision best made by pay TV retailers based on their business considerations.

3.9. MDA thus maintains the view that limiting the contract period to no more than two years strikes a good balance between allowing pay TV retailers enough room to be creative in devising their packages while protecting Subscribers from being locked into unduly long contracts. Moreover, MDA notes that the current industry norm is that most pay TV contracts do not exceed two years. Limiting contractual periods to no more than two years should therefore not materially impact the pay TV retailers' ability to innovate or compete.

3.10. MDA observes that IDA's Advisory Guidelines on Contract Period and Early Termination Charges for Telecommunication Services Offered to End Users ("IDA Guidelines") also caps the telecommunications operators' contracts with End Users to two years. With the increased convergence of media and telecommunications services in the form of triple- and quad-play bundles, MDA views that it is necessary to align the maximum contract term in the pay TV market with that in the telecommunications market. Since the IDA Guidelines have already been effective since March 2010, MDA's Guidelines should not pose operational difficulties to pay TV retailers.

Comments on Proposed Guidelines on Early Termination Charges

3.11. A diverse range of views were received on MDA's proposed Guidelines on ETCs.

3.12. CASE requested that pay TV retailers be prohibited from having provisions in their residential consumer contracts that allowed the pay TV retailers to make programming and pricing changes as they deemed fit. CASE proposed that when the programming mix or subscription charge changed, the contract should end unless the consumer expressed his intention in writing to continue with the new rate and programming mix.

3.13. M1 agreed that Subscribers should be liable to pay ETCs for termination of pay TV contracts. However, if the Subscribers retained their pay TV contracts but switched to receiving the pay TV service via NIMS platform, then such Subscribers should not be levied with ETCs. To promote NIMS take-up, M1 further proposed that MDA introduce a "transition period" whereby pay TV retailers should not impose ETCs on Subscribers who cancelled their pay TV packages and switched to NIMS.

3.14. mio TV commented that Subscribers already had wide choices over the ETCs payable under their contracts; any additional regulation would limit consumer choice by deterring pay TV retailers from giving premiums to consumers, and remove an important point of differentiation between competitors. Pay TV retailers had developed packages with premiums based on the assumption that the Subscriber would honour the full term of the contract and it was inappropriate to use a graduated ETC. SCV suggested that MDA's proposed month-by-month ETC graduations be replaced by 3-month graduations.

3.15. mio TV opposed to MDA's proposal to exclude "avoidable cost". mio TV highlighted that it was not always clear if a cost was avoidable. The pay TV retailer had to bear the costs of continual infrastructure maintenance and content costs payable to the content providers even though the Subscriber had terminated his contract. Full contractual commitment thus gave business certainty to invest in infrastructures necessary to support the provision of the pay TV service.

3.16. SCV suggested that a "standard offer" with ETCs based on month-by-month graduation to be offered by pay TV retailers as an option, beyond that, pay TV retailers should be allowed to offer contracts with other ETC structures.

MDA's Response

3.17. The intention of the Guidelines is to provide clarity to consumers and industry on the quantum of ETCs that MDA would consider as reasonable ETCs under paragraph 3.5 of the MMCC. On the suggestion of no ETCs for unilateral contractual changes on the part of the retailers, MDA notes that changes to programming mix and pricing are inherent in the nature of pay TV services which are influenced by factors such as global content acquisition and production costs. In coming to this position, MDA has surveyed the pay TV contracts in other established overseas markets (UK, Australia, Malaysia and Hong Kong) and notes that contract terms covering unilateral changes are common in these markets.

3.18. Moreover, MDA notes that not all unilateral changes are disadvantageous to consumers – as in the case when new channels are added without commensurate change in pricing. Taken from this perspective, the pay TV retailers' rights to adjust prices and programming mix during the lifespan of the contract are not unreasonable, as long as they are clearly set out in the contracts and the adjustments in prices and programming mix imposed on Subscribers are proportionate to the consideration provided to the pay TV retailers. MDA further notes that the Consumer Protection (Fair Trading) Act allows consumers to seek redress through the Courts if they have suffered from specific unfair practices[3]. MDA will also not hesitate to take action under the MMCC against offending dominant pay TV retailers if they are found to have imposed contract terms that are

[3] Specifically, the Consumer Protection (Fair Trading) Act prohibits retailers from *taking advantage of a consumer by including in an agreement terms or conditions that are harsh, oppressive or excessively one-sided so as to be unconscionable (Emphasis added).* A list of 20 unfair practices can be found in the second schedule of the Consumer Protection (Fair Trading) Act.

abusive or over-reaching. The Guidelines would also help facilitate switching by capping the maximum contractual period and adopting a monthly graduated ETC computation.

3.19. MDA has in the past urged pay TV retailers to be sensitive to Subscribers' needs, and will continue to encourage pay TV retailers to improve their communication and give ample notice period on changes to programming mix or subscription fee. MDA views that CASE's suggestion for an "opt-out" clause is in consumers' interest and requests that the pay TV retailers consider whether similar clauses could dovetail with their existing contractual frameworks.

3.20. On M1's suggestion to allow Subscribers to switch their pay TV contracts to the NIMS platform without payment of ETCs, MDA maintains its views that this is a commercial decision best made by pay TV retailers based on their business considerations.

3.21. MDA would like to clarify that the Guidelines do not relegate pay TV contracts into a "pay-as-you-use" scheme since such schemes typically do not allow retailers to recover the unconsumed portions of the contract. In contrast, the Guidelines are structured to allow retailers to recover the costs of premature termination of contracts on a graduated basis such that ETCs cannot be higher than the sum of the monthly fees for the remaining months. MDA considers that it is only fair that a Subscriber who terminates his contract close to the end of the contract term would not be made to pay the same penalty amount as another Subscriber who terminates the service near the start of his contract. Thus, graduated ETCs that take into consideration the length of time that a Subscriber had served on a contract on a monthly basis – by decreasing in tandem with the number of months left on the Subscriber's contract period, is fair.

3.22. As to SCV's suggestion that ETCs be graduated on a quarterly rather than monthly basis, MDA views that SCV has not provided good justifications supporting its proposal, particularly when SCV currently practised monthly graduations for their pay TV contracts with graduated ETCs. MDA views that monthly graduation provides for more equitable ETC computation, whereby the ETC charged is directly related to the duration of the unconsumed portion of the contract. Moreover, MDA notes that monthly graduation of ETCs is aligned with the IDA Guidelines.

3.23. MDA's proposal to disallow avoidable costs in the computation of ETCs is not unreasonable as pay TV retailers should not unduly profit from subscribers who terminate their contracts prematurely. Avoidable costs could be content contracts that are on per subscriber basis, billing costs, etc.

<u>Other Comments</u>

3.24. mio TV supports the application of the Guidelines to all niche and nationwide pay TV retailers' residential consumer contracts. SCV suggested that the effective date of the Guidelines should be prospective and that it would need at least nine months to operationalise the requirements as significant backend changes to the existing packages and systems are required.

MDA's Response

3.25. MDA understands that the pay TV retailers need time to review their packages and contract terms, and thus will apply the Guidelines on new and renewed pay TV contracts that were signed on or after 1 March 2012. This means that the Guidelines are applied prospectively and will not affect existing pay TV contracts.

PART IV: CONCLUSION AND ISSUANCE OF GUIDELINES

4.1. MDA has studied all the comments submitted by the respondents and maintains that the Guidelines will not hinder pay TV retailers' ability, flexibility and creativity in developing innovative packages nor hinder competition in the pay TV market. In issuing the Guidelines, MDA seeks to balance consumer interest with pay TV retailers' commercial interest.

4.2. MDA does not object to pay TV retailers offering premiums or discounts to subscribers in return for a commitment to a fixed contract period. MDA recognises that in general, the offering of premiums or discounts by pay TV retailers is welcomed by subscribers, and has its merits. MDA's policy intention is to ensure that subscribers who want to take advantage of switching opportunities in the pay TV market are not prevented from doing so by excessively long contracts and unreasonable ETCs.

4.3. The Guidelines will apply only to residential pay TV contracts offered by pay TV licensees, i.e. Nationwide Subscription TV licensees and Niche Subscription TV licensees. The Guidelines stipulate the following:

(a) Limit the maximum contractual lock-in period to two years;

(b) Ensure that the ETCs for contracts that are longer than three months be graduated, at a minimum, on a month-by-month basis (i.e. decrease in tandem with the consumption of the contract such that the ETCs cannot be higher than the sum of the monthly fees for the remaining months);

(c) Ensure that the ETCs for contracts that are longer than three months exclude costs that will be avoided by the pay TV retailer when a Subscriber terminates the service; and

(d) terms and conditions relating to ETCs should be explained to Subscribers and computations of ETCs at varying points (by month) of the contract should be provided to Subscribers at the point of sale and upon contract renewal.

4.4. The Guidelines will be applied by the Authority on all new and renewed contracts concluded on and after 1 March 2012.

4.5. MDA would emphasise that the Guidelines are meant to ensure that the ETCs payable by Subscribers are reasonable, rather than serve as a rigid formula for all ETCs. Pay TV retailers should determine the commercial proposition that would best serve its business model.

4.6. Where practicable, MDA has aligned the Guidelines to the IDA Guidelines, to ease operationalisation of the Guidelines for triple- and quad-play bundles.