INFO-COMMUNICATIONS DEVELOPMENT AUTHORITY OF SINGAPORE

TELECOMMUNICATION ACT

(CHAPTER 323)

ADVISORY GUIDELINES ON CONTRACT PERIOD AND EARLY TERMINATION CHARGES FOR TELECOMMUNICATION SERVICES OFFERED TO END USERS

21 January 2011

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The Info-communications Development Authority of Singapore ("**IDA**"), pursuant to Section 28 of the Telecommunications Act (Chapter 323) ("**the Act**"), hereby issues these Advisory Guidelines on Contract Period and Early Termination Charges for Telecommunication Services offered to End Users.

1. INTRODUCTION

1.1 Scope of these Guidelines

These Guidelines explain how IDA will apply Sub-section 3.2.3 of the Telecom Competition Code 2010 ("**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 IDA. Neither do they seek to provide definitive answers as to whether any particular conduct may fall within the prohibitions contained in Sub-section 3.2.3 of the Code. Rather, these Guidelines clarify the standards that IDA will generally apply in assessing whether an End User Service Agreement contravenes Sub-section 3.2.3 of the Code.

1.2.2 The examples in these Guidelines are for illustration only. They are not exhaustive, and do not set a limit on the investigation and enforcement powers of IDA. 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 relevant issues, 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 Effective Date of these Guidelines

These Guidelines have taken effect on 1 March 2010.

1.5 Short Title

These Guidelines may be referred to as the "Contract Period and Early Termination Charges Guidelines".

2. APPLICATION OF GUIDELINES TO LICENSEES

2.1 Overview

One of IDA's key policy objectives is to promote and facilitate effective and sustainable competition in the telecommunication sector so that End Users would benefit from having greater choice of service providers and innovative services, at competitive prices and quality. IDA's specific objective in introducing these Guidelines is to address concerns over the imposition of contract periods that might be unduly long, and ETCs excessively high, which together hinder service termination and switching between operators.

2.2 Contract Period capped at 24 Months

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

2.2.2 IDA does not object in principle to Licensees 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, IDA 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 interest of End Users as well as Licensees.

2.3 Early Termination Charges

2.3.1 Early termination charges or "ETCs" refer to the charges that Licensees impose on End Users when they terminate their service agreements with Licensees before the end of their contract period.

2.3.2 Sub-section 3.2.3 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. IDA is of the view that fixed or flat-rate ETCs, and ETCs that do not exclude avoidable costs (i.e. costs that the Licensee 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 3.2.3 of the Code.

2.3.3 This sub-section seeks to clarify the considerations which IDA will take into account when assessing whether ETCs are reasonably proportionate for purposes of Sub-section 3.2.3 of the Code.

(a) *ETCs should be graduated*

2.3.3.1 ETCs for all End User Service Agreements with a contract period of more than 3 (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 IDA does not object to the imposition of fixed ETCs where the contract period does not exceed 3 (three) months. However, where any End User Service Agreement has a contract period of more than 3 (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) *ETCs should exclude any costs that will be avoided when the End User Service Agreement has been terminated*

2.3.3.3 In addition to the above requirement of graduation, ETCs for all End User Service Agreements with a contract period exceeding 3 (three) months should not include costs that will be avoided by the operator 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[1] 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.

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

Illustration 1
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].

Illustration 2
Mr Tan subscribed to a bundled package of mobile phone, fixed-line telephony and broadband services with a 24-month contract period with Licensee B.

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[1] The monthly fee refers to the basic amount that the subscriber must pay the Licensee under the service agreement, regardless of the actual usage of the subscriber. For example, where an End User pays $20 per month for a mobile service agreement (excluding GST), which includes 100 minutes of free talktime per month and excess talktime is charged on a per minute basis thereafter, the monthly fee refers to the basic subscription charge of $20 (excluding GST).

If Mr Tan terminates his entire bundled package contract immediately after signing up, the applicable ETC in relation to the mobile phone, fixed-line telephony and broadband 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 and broadband services under the bundled package, corresponds with 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 broadband service immediately after signing up, the applicable ETC is $250. Licensee B should also ensure that any ETC imposed for termination of the broadband service also corresponds with the length of the contract period Mr Tan has already fulfilled. For example, if Mr Tan terminates the broadband 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 broadband 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 3-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 3-month contract period, it is acceptable for Licensee C to charge a non-graduated ETC, should Mr Tan terminate the contract anytime within the 3-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. 6 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 C 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.

3. IMPLEMENTATION OF GUIDELINES

For End Users to be able to make an informed choice when selecting which Licensee and which type of service to subscribe to, Licensees 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 3.2.2 of the Code. Licensees should also obtain expressed written acknowledgement from End Users that they have understood the ETCs applicable to their service agreements

Illustration 5
Mr Tan is interested to subscribe to a mobile phone service with a 24-month contract period with Licensee F. 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 F should ensure that any ETC that Mr Tan has to pay is made clear to him upfront. Licensee F should also obtain Mr Tan's expressed written acknowledgement of his understanding of the relevant ETC terms. Licensee F could do this by providing Mr Tan with a 1-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.