M1'S RESPONSE TO IDA'S CONSULTATION PAPER ON THE GUIDELINES ON MAXIMUM CONTRACT TERM AND EARLY TERMINATION CHARGES FOR TELECOMMUNICATION SERVICES OFFERED TO CONSUMERS

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1. M1 has been providing cellular mobile services to the Singapore market since 1 April 1997 and in 2000, we launched our international telephone services. In February 2005, M1 took the lead in introducing 3G technology and launching our 3G services. This was followed by the launch of our Mobile Broadband service in December 2006. In August 2008, M1 became a fully-fledged broadband player with the introduction of M1 Fixed Broadband service, transforming M1 from a single-play mobile operator to a dynamic multi-play operator with interests in the mobile and fixed sectors.

2. We welcome the opportunity to submit our comments to IDA for its consideration on the proposed guidelines on maximum contract term and early termination charges for telecommunication services offered to consumers. As a customer-focused telecommunications service provider, we strongly support the introduction of guidelines on the regulatory principles for telecommunication services contracts. A framework that addresses excessive or unreasonable contractual terms would be useful in instilling confidence in consumers/public as well as ensuring fair and effective competition in the telecommunications industry. In addition, we have also included additional key aspects that ought to be addressed in the guidelines in view of the upcoming Next Generation National Broadband Network ("NGNBN") and cross-product packages, particularly those that include service offerings from monopolistic or duopolistic markets.

3. Whilst a framework of guidelines on telecommunication services contracts would be useful, M1 would also like to emphasise the importance of proportionate regulation, particularly in relation to private contracts between customers and operators in competitive telecommunication markets. Prescriptive regulations that absolve the customer of all his responsibilities, and place the customer in a disproportionately favoured position, should not be adopted for competitive markets, as they will not promote efficiency and effectiveness of the telecommunications industry. To the extent that markets or market segments are already competitive (e.g. mobile markets), primary reliance on private negotiations and industry self-regulation should be maintained instead of prescriptive regulations. The latter will also have commercial and operational implications, which needs careful deliberation. Hence, a review and refinement of the proposed guidelines from this perspective would be helpful.

Maximum Contract Term

4. M1 endorses IDA's proposed move to cap the maximum contract term for mobile, fixed-line telephone and broadband service plans to a maximum of 24 months. We concur that excessively long contracts are likely the result of expensive "free gifts" that operators offer to customers as part of their service

packages. Such practices detract from the fundamental objective of competition based on quality of services delivered, and unfairly lock-in customers.

Advent of NGNBN in 2010

5. With the advent of NGNBN in 2010, consumers will have the opportunity to experience ultra-high-speed broadband services not available today. Consumers, who are tied down by lengthy contracts with accompanying penalties for early termination, would be hindered from taking up NGNBN services. As it is today, the household broadband penetration is already very high at 96.9% (as at November 2008[1]) and the NGNBN cannot depend on new broadband households alone for it to succeed. The regulatory regime must, therefore, ensure that consumers are generally able to freely sign up to NGNBN broadband services at its launch.

6. In this context, we recommend that all broadband service contracts not be allowed to extend beyond the first half of 2010. A similar directive was issued by the Telecommunication Authority of Singapore prior to the entry of StarHub into the telecommunications industry. The policy, applicable to all service providers and their authorized equipment dealers, mandated that all tie-in conditions cannot extend beyond 31 March 2000. The intent was to enable customers to reap the benefits of a liberalized telecommunications industry and to create a level playing field for fair and effective competition, which was effective and achieved its regulatory purpose.

7. Given that there would be substantive (60%) roll-out of NGNBN by first half of 2010, it would be useful to issue a similar policy directive to enable consumers as well as Retail Service Providers ("RSPs"), to have the opportunity to trial and reap the benefits of the NGNBN when it is launched in 2010. Specifically, such a directive would:
   - Ensure that all customers, including RSPs, are not penalized for switching to NGNBN;
   - Prevent anti-competitive actions by existing providers in engaging predatory pricing or aggressive promotions or subsidies just prior to launch of NGNBN to tie-in customers or RSPs; and
   - Create a level playing field for fair and effective competition for the new NGNBN Operating Company and the other existing wholesale service providers.

8. For existing contracts that may still be in force beyond the first half of 2010, consumers should be provided with the following options to ensure fair and effective competition:

   a. For consumers who wish to sign up for NGNBN broadband service with a NGNBN Retail Service Provider but keep their other bundled services (e.g. mobile, cable TV) with the incumbent operator, the latter should allowed such an option. However, the incumbent operator should be prohibited from pricing the reduced bundle marginally lower

[1] IDA Publications – Statistics on Telecom Services for 2008 (Jul – Dec).

than the full bundle (with broadband included) to discourage consumers from taking up NGNBN broadband.

b. For consumers who wish to preserve their contract with the incumbent operator in its entirety (e.g. Triple Play of mobile, cable TV, broadband) an option must be available for them to "migrate" their broadband service from the incumbent platform e.g. Cable Modem or ADSL etc. to the new NGNBN platform (if offered by incumbent operator) while serving out the existing contract. In other words, the customer should be provided an option to remain as the incumbent operator's customer but utilises the NGNBN platform for his/her broadband service. To this end, IDA should ensure that existing broadband customers are not foreclosed from choosing such option. Under such an option, the migration from the incumbent network to the NGNBN may or may not result in higher costs to the incumbent operator. There should be regulatory guidelines in place to ensure that any increase in price to the consumers is justifiable so that the consumers would not be hindered in taking up such option.

Cross-Product Packages

9. We recognise that commercially many companies offer cross-product packages or offers. These can range from simple fare as "value meals" at fast-food restaurants to round-trip airplane tickets, which illustrate the breadth of the practice. Generally, package discounts, offered by firms without market power, are ubiquitous and have no anti-competitive implications.

10. However, in the cases where a dominant firm offer discounts on cross-product packages or offers, it is especially important to ensure that the discounts, contract terms and conditions are not excessive or unreasonable as the firm concerned has market power. M1 would urge IDA to lay down regulatory principles governing cross-product packages/offers to ensure that there are no cross-product subsidies or leveraging of market power in a monopoly/duopoly markets into effectively competitive markets through the imposition of excessive or unreasonable terms and conditions for package offers.

11. Today, the packages offered by firms without market power or in competitive markets are often "soft" packages that are not "exclusionary" of other product substitutes. Using the simple example of a "value meal" package offered at a fast food restaurant, customers are given the option to substitute the stated drink from one company e.g. Drink X in the package offer with another product of a different company e.g. Drink Y with perhaps just a nominal top-up fee. There is no reason to impose excessive fees since the companies are different entities operating on an arms-length basis.

12. However, we note that the dominant firms in Singapore's telecommunications industry currently offer discounts or "hard" bundles that appear "exclusionary" to its affiliated companies. Such bundles discourage customers from taking up other more competitive offers in the other telecommunication markets. To enjoy the substantial discounts offered in the bundle, the customer would have

to take up and maintain all the multi-products/services offered by its affiliates, which are different licensed entities and supposed to operate on an arms-length basis. Our view is that this unfairly hinders customers from switching operators.

13. We submit that such "hard" bundling terms and conditions should be removed where product/service X and product/service Y are provided by different licensed entities, especially those involving products/services in monopolistic or duopolistic markets. Where a customer subscribes for services with different licensed entities, the customer is, in fact, contracting with different, albeit related, corporate entities. These different licensed entities should not be allowed to leverage their position as related companies (within the meaning of "related corporations" in Section 6 of the Companies Act, Cap. 50), to terminate the customer's entitlement to Service Y in the event of termination under Service X. Such behaviour on the part of the Licensees is manifestly inequitable and unfair to the customer because the customer's reasons for termination in Service X is often independent of Service Y as these are services provided by separate firms or different licensed entities.

14. Given the above, we strongly urge IDA to seriously consider a clear set of guidelines on cross-product packages. The guidelines should allow consumers who subscribe to cross-product packages to switch operators for selected service offerings in the bundle without being penalised excessively. After all, they would still remain with the incumbent operator for the other service offerings. This would be aligned with IDA's licensed-entity regulatory approach and its key intent to promote effective competition in the telecom sector, preventing the occurrence of potential cross-product subsidies that increases the barriers for end users to switch operators.

Early Termination Charges

15. We view that consumer protection and awareness is important and we fully encourage consumer awareness on their rights and responsibilities so that they can make informed decisions. This includes rights to information, an acceptable service quality, and contractual terms. The terms of the service contract should be provided up-front and clear, and both contracting parties should accept and honour the legitimacy of the contract. It should also be noted that another aspect of the consumer responsibility is the equitable principle of benefit and burden and it must be taken into account to balance the responsibilities of the mobile operator as well as the consumer.

16. A fixed-term contract yields benefits to both parties, in terms of providing the operator with some certainty in terms of planning, fostering capital investments, etc. while giving the consumer cost-saving incentives such as discounts and subsidies during the contract period. In practical terms, where the fixed term contract is of a longer-term tenure, the expected benefits to the consumer logically have to outweigh the constraints to the consumer to make it viable.

17. Even then, a customer may change his decision during the course of a contract term subject to payment of an early termination charge. Such a provision allows customers to prematurely terminate a fixed-term contract that they have committed to. Accordingly, customers would have to be responsible for such early termination charges as laid out in their contract terms, which take into account the remaining contract term and the discounts and subsidies given in the course of their contract.

18. In a competitive market environment, customers will have a variety of service offerings available to them. As a customer-focused telecommunications operator, M1 has different plans to suit the needs of our customers. We offer short-term contracts e.g. 3 – 6 months to customers who prefer not to be tied to a long-term contract. Alternatively, customers can opt for pre-paid service, which gives them freedom to manage their own accounts without monthly fee payments and ease of switching operator.

19. Hence, in entering a fixed term contract, the customer is making a commitment towards the contract term as stipulated and would enjoy the "benefits" of the contract. Likewise, it would be fair that the operator exercises its corresponding contractual rights to preserve its interest in the event of a breach of contract on the part of the customer.

20. In markets where competitive products/services are on offer and not bundled with that offered by dominant firms, there is no need for IDA to impose prescriptive regulations on the structure or computation of early termination charges. Regulators have no reason to regulate terms of private contracts between providers and consumers, particularly since the mobile market is already highly competitive. In fact, consumers are very much aware of the different packages offered by the different telecommunications operators and often approach operators to compare prices, so as to obtain the best deal for themselves. Just as service providers have a liability towards serving its customers, customers must bear the responsibility of their purchase decisions.

21. We would also highlight that there are multiple avenues in place to safeguard consumer interests, such as CASE, Small Claims Tribunal and Consumer Protection (Fair Trading) Act. Section 3.2.3 of the Code of Practice for Competition in the Provision of Telecommunication Services 2005 ("the Code") already clearly provides the principle for imposition of early termination charges.

22. According to IDA's proposed guidelines for computing the fair quantum of the ETC for mobile, fixed-line telephone and broadband services offered to consumer to ensure compliance with the Code:

    a. *Operators may only recover the value of discount that the consumer had enjoyed up to the point of the termination.*

    b. *Operators may recover the cost of any gift provided minus the portion of the cost of the gift that the operator had been able to recover from the consumer's monthly subscription fees.*

c. *Operators must inform the consumer, upfront and in a transparent manner, of the costs of the gifts or discounts that it would be recovering from the consumer, as well as the computation method to be used should the consumer terminate his contract penalty prematurely.*

23. The above proposals are flawed and do not sufficiently take into consideration the commercial and operational implications:

a. Imposition of Condition (a) would tantamount to having no contract between the operator and customer. Under this arrangement, consumers will not be sufficiently deterred from prematurely terminating a contract in a footloose manner at no cost to himself. This would not be beneficial to the industry in the long run. In any contract, there is always an element of penalty in the event of a premature contract termination, in addition to an element of cost recovery for discounts that the consumer had enjoyed till then. The key principle is that the former should not be overly punitive to the consumer such as to hinder the switch of operators. In a competitive market such as the mobile market, such issues are already addressed by the market forces at play.

b. The perception that ETCs of competitive markets "do not meet the Code standard of being reasonably proportionate as it does not take into account the costs avoided once the end user has stopped consuming the service" is an inaccurate perception. In the case of mobile phone contracts, the ETC is often set at a quantum which is similar or equivalent to the handset subsidy which is provided by the operator. Notwithstanding that the consumer has ceased to consume the service after termination, the operator has incurred the upfront cost of the handset subsidy. This cost of the handset subsidy must be reimbursed to the operator in the form of the ETC, and it remains a fixed cost regardless whether the termination occurs in the first or twenty-third month. The current practice is consistent with IDA's recommendation that "the ETC should be set on a cost-recovery basis only (allowing the operator to recoup any cost that were incurred in order to provide the service to the customer)".

c. Operationally, it would be a challenge to communicate to customers up-front and in definite terms of the costs of gifts and/or discounts that it would be recovering from the customer, as well as the method of the computation of ETC, with various components:

i. Device subsidies would vary based on the different tiered subscription plans;

ii. Prices of the devices e.g. mobile phones may fluctuate substantially within a short timeframe; and

iii. Discounts given for subscription plans again vary based on the different tiered subscription plans.

d. Moreover, in setting administrative thresholds, it should be relatively easy to compute. Most of the fixed and operational costs of services are impossible to proportion on a per line basis and it would not be feasible to provide the extent of the costs that are avoided. Handset costs also involve commercial deals where there are confidentiality obligations imposed on operators

24. In short, instead of intervening in private contracts and drafting prescriptive regulations for competitive markets, regulatory resources should focus more in preventing excessive or unreasonable terms for product/service packages involving dominant firms, which tie down consumers unnecessarily.

Conclusion

25. In summary, M1 recommends:-

a. To cap the maximum contract term for mobile, fixed-line telephone and broadband service plans to a maximum of 24 months;
b. All broadband contracts that are entered into between operators and customers, as well as wholesale broadband providers and RSPs, should not be allowed to be in force beyond the first half of 2010;
c. To introduce a set of guidelines on cross-product packages to ensure that consumers are not overly hindered from switching operators for non-monopolistic service offerings even when they still maintain the other service offerings from the incumbent operator; and
d. To allow providers of products or service packages that do not involve dominant firms to have the commercial freedom in its private contracts with consumers, in compliance with Section 3.2.3 of the Code.