CONSULTATION PAPER ISSUED BY THE
INFO-COMMUNICATIONS DEVELOPMENT AUTHORITY OF SINGAPORE

GUIDELINES ON MAXIMUM CONTRACT TERM AND EARLY TERMINATION CHARGES FOR TELECOMMUNICATION SERVICES OFFERED TO CONSUMERS

23 December 2008

GUIDELINES ON MAXIMUM CONTRACT TERM AND EARLY TERMINATION CHARGES FOR TELECOMMUNICATION SERVICES OFFERED TO CONSUMERS

PART I: INTRODUCTION

1. One of IDA's key policy objectives is to promote effective competition in the telecoms sector so that end users would benefit from having greater choice of service providers and innovative services, at competitive prices and quality. To this end, some of IDA's regulatory measures have been specifically targeted at lowering the barriers for end users to switch from one operator to another. Examples of these measures would include number portability for fixed and mobile telephony services and the prohibition of SIM-lock on mobile handsets to individual mobile operator's networks.

2. Long term contracts and high early termination charges ("**ETC**") could hinder consumers wishing to switch operators. IDA has generally refrained from intervening in contractual matters for telecom services – IDA would prefer to leave it to consumers to make their own decisions on whether short-term or long-term contracts suit their needs. IDA has therefore left operators to determine the contract durations offered, to differentiate their service offerings and compete in the market.

3. Notwithstanding the above, IDA has received requests from consumers to review the current industry practice of mobile and broadband operators imposing unduly long contract terms, and fixed or high ETCs on consumers. Consumers generally feel that they are hindered from switching operators in such cases. IDA therefore conducted a study of the contract terms and ETCs of the mobile, fixed-line telephone and broadband services offered by M1, Pacnet, SingTel and StarHub, and a summary is enclosed in **Annex A**. IDA believes that it is timely to review current industry practices to ensure that they remain reasonable and fair to both operators and consumers. After careful review of industry practices, IDA is proposing to introduce a set of guidelines that will cover two main areas:

   (a) Maximum length of contract, and
   (b) Early termination charges.

4. The guidelines would exclude mobile, fixed-line telephone and broadband services offered to business/corporate customers as this customer segment may have unique requirements which are usually met through customised deals negotiated between the customer and the operator. As the terms and conditions (including the contract term) of such deals would be unique to individual business/corporate customers, it would be difficult for IDA to issue a guideline governing all business contracts. IDA also expects business/corporate customers, with better bargaining power and access to market information, to be in a better position to negotiate deals for these services that best meet their needs, compared to consumers.

5. Although IDA is currently proposing the above as guidelines to the industry, depending on the industry's response, IDA may subsequently impose the

above via any other regulatory framework (e.g. via directions or codes of practice) as IDA deems necessary or appropriate.

PART II: MAXIMUM CONTRACT TERM

6. IDA has observed that the length of contracts available in the consumer market for mobile, fixed-line and broadband service plans may vary from a minimum of one month up to a maximum of 36 months. IDA does not consider term contracts unreasonable as they provide operators with business certainty, including the certainty of recovering the costs incurred for the provisioning of a service to the consumer. These include administration, installation, and equipment costs. Operators may have also provided consumers with discounts or gifts in exchange for the consumer's commitment to a longer contract term for the service. It is not unreasonable for operators to recover these costs by imposing a minimum contractual period.

7. However, with increasing competition, many operators have resorted to competing based on the offer of expensive "free gifts", which in some cases may be unrelated to the telecom service being offered (e.g. LCD TVs). In return, operators have tied consumers down to even longer contract terms to recover their costs. While it can be argued that the consumers knowingly agreed to these long contract terms, this has not prevented disputes between operators and consumers. Consumers may initially be attracted by the "free gifts" offered, but they may subsequently be disgruntled that they are "unfairly" locked-in by a prohibitively high ETC which is overly punitive when they decide to switch operators. IDA believes that a balance needs to be struck. IDA considers that a combination of a long contract term and a high ETC is undesirable as it potentially limits consumers' ability to switch operators, depriving them of the full benefits of competition in the market[1].

8. **IDA proposes that the maximum contract term for mobile, fixed-line telephone and broadband service plans should not exceed 24 months**. IDA believes that 24 months is reasonable and balanced. This is also in line with the current industry norm where most service plans do not exceed 24 months. Operators are also strongly encouraged to offer contract term options of *less than* 24 months, which are not bundled with "free gifts", to provide more options for consumers.

---

[1] The issue of contract lengths is also being reviewed by regulators in the European Union and the United States. In a hearing on early termination charges held in June this year, the chairman of the United States Federal Communications Commission proposed that, to protect consumers, rules should be established to guarantee that "*any contract for service should be for a reasonable length of time*". The European Parliament also proposed to amend the Universal Service Directive to limit operators from imposing contract lengths longer than 24 months. The European Parliament noted that though "*contracts lasting 24 months can be beneficial to consumers in cost, […] consumers must be able to subscribe for a shorter, less binding period for all the services offered*". See European Parliament document number A6-0318/2008 and European Commission document number COM(2008)723 final.

Question 1: IDA seeks comments on the proposed guideline that the contract term for mobile, fixed-line telephone and broadband services offered to consumers should not exceed 24 months.

PART III: EARLY TERMINATION CHARGES

9. Currently, operators providing mobile, fixed-line telephone and broadband services have adopted various methods in determining the applicable ETCs for their service offerings. Two methods of imposing ETCs stand out for their potential unfairness to consumers.

Fixed ETCs

10. Today, a subscriber may have to pay a <u>fixed</u> or flat-rate ETC for mobile, fixed-line telephone and broadband services (which can be up to $800) whether he terminates the contract on the <u>first or on the last day</u> of his 24-month contract. Fixed ETCs are unfair because they do not decrease as the customer serves out his contract period. There is no objective reason why the ETC should be fixed, since operators would have recouped their costs over the course of a customer's contract.

11. Under Section 3.2.3 (Prohibition on Disproportionate Early Termination Charges)[2] of the Telecom Competition Code (the "**Code**"), operators are required to ensure that the ETCs are *proportionate to the discounts given* and must also be *relative to the amount of time* the end user has completed on the contract. IDA is of the view that a fixed ETC on a long term contract cannot be considered as reasonably proportionate, as it does not take into account the length of time that the end user has completed on his contract. To be fair, the ETC should be <u>graduated</u>, taking into account the length of time remaining on the contract. This is illustrated as follows:

    <u>Illustration 1</u>
    Mr Tan subscribed to a mobile phone service with a 24-month contract with Operator A. Into 18 months of the contract, Mr Tan wanted to terminate his contract and switch to Operator B to take advantage of the latter's promotion. However, the terms of Mr Tan's contract with Operator A stipulate that if he terminates his subscription prematurely, he would be liable for a $200 ETC. This penalty is fixed, regardless of the point in time the contract is terminated – Mr Tan will have to pay the a fixed ETC of $200 even though he had already fulfilled three quarters of his contract.

    Under IDA's proposed guideline, Operator A must ensure that any ETC that Mr Tan has to pay corresponds directly with the length of the contract Mr Tan has fulfilled. In this case, since Mr Tan has already served three quarters of the contract, Mr Tan should have to pay only one quarter of the applicable ETC, i.e. $50.

[2] Section 3.2.3 of the Telecom Competition Code states that: "*the amount of any early termination liability must be reasonably proportionate to the extent of the discount or special consideration that the Licensee has provided **<u>and</u>** the duration of the period which the End User took service"*.

12. IDA recognizes that it may be impractical to require all ETCs to be graduated. Fixed ETCs may be justifiable for short-term contracts, of say one to three months, as it is unlikely that operators would have recovered their upfront costs within such a short period.

13. **IDA proposes that the ETCs for mobile, fixed-line telephone and broadband services contracts that are longer than three months should be graduated**. Graduation means that early termination penalties must decrease in tandem with the number of months left on the contract. Hence, a consumer who terminates his service close to the end of the contract term would not be made to pay the same penalty amount as another consumer who terminates the service near the start of his contract. This proposal would ensure that ETCs imposed are fair and commensurate with the length of the contract served, and would be welcomed by consumers.

Question 2: IDA seeks comments on the proposed guideline that the ETCs for mobile, fixed-line telephone and broadband services offered to consumers (of contract periods longer than 3 months) should be graduated, to ensure compliance with Section 3.2.3 of the Code.

High ETCs that do not exclude avoided costs

14. IDA is also concerned that some operators have set very high ETC quantum, which may unreasonably restrict consumers from terminating their service. Some operators have chosen to set the quantum of the ETCs equal to the total subscription charge for the remaining months in a consumer's contract. This means that, in the case of a consumer who terminates a service six months after committing to a two-year contract, the consumer will be required to bear an ETC that amounts to the sum of the monthly subscription fee for the remaining 18 months of the service, even though he will not be consuming the service after termination.

15. IDA is of the view that such high ETCs 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. It is unfair that a customer should be made to pay the <u>full</u> monthly fees for services which he no longer consumes, especially if the operator would be able to avoid some costs when it stops providing the service to the customer[3]. While there may be certain costs that were incurred in order to serve the customer (including administrative and installation/roll-out costs or even costs of gifts or discounts, amongst others), these costs are unlikely to constitute the total monthly fee of the remaining months of the contract.

16. IDA believes that the quantum of the ETCs should be reasonably below the sum of the monthly fee for the remaining months of a terminating customer's contract. The ETC should be set on a cost-recovery basis only (allowing the

[3] In consumer telecom services, it is likely that the capacity and equipment freed up by the departure of a customer is to a large extent easily redeployed towards serving another customer.

operator to recoup any cost that were incurred in order to provide the service to the customer), and it should exclude any costs that may be avoided when the operator stops providing the service to the customer.

17. **IDA proposes that the ETCs for mobile, fixed-line telephone and broadband services provided to consumers should exclude any costs that are avoided when they cease the provision of the service to the consumer**. ETCs must only be set on the basis of recovering unavoided costs directly associated with the consumer, which has not already been recovered over the completed portion of the consumer's contract. Any ETC imposed must be <u>reasonably below that of the sum of the monthly fee for the remaining months</u> of a terminating customer's contract.

18. IDA notes that the offering of discounts or gifts to consumers, in exchange for consumers' commitment to longer contract terms is a widespread industry practice. To ensure that operators are not made worse off by consumers benefiting from the discounts/free gifts and then terminating their contracts prematurely, IDA proposes the following <u>guidelines</u> on the computation of fair recovery of the costs of any gifts or discounts provided to consumers –

    (a) Operators may only recover the value of the *discount* that the consumer had enjoyed up to the point of 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; and

    (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 method of computation to be used should the consumer terminate his contract prematurely.

    This is illustrated as follows:

    <u>Illustration 2</u>
    Operator B offers a 2 Mbps broadband service at $38 per month. Customers who commit to a 24-month contract get a $5 discount off their monthly subscription fee, i.e. they pay only $33 a month. Mr Tan subscribed to a 2 Mbps broadband service from Operator B and committed to a 24-month contract term. 6 months later, Mr Tan would like to terminate his contract. However, the terms of Mr Tan's contract with Operator B stipulate that if he terminates his subscription prematurely, he will be liable for an ETC, which is calculated based on the number of months left on the contract, multiplied by the monthly subscription of the service, i.e. (24 – 6) x $38 = $684. In effect, Mr Tan will have to pay the full subscription fee for the remaining months of the contract (that he will not be consuming).

    In order to provide its customers with the broadband service, Operator B had purchased wholesale Broadband Access Service from Operator C at $20 per line per month. As Operator B 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 Operator B will be able to *stop incurring is the $20 monthly cost for the wholesale Broadband Access Service.*

Operator B must ensure that any ETC that Mr Tan has to pay excludes the costs it can avoid by not providing Mr Tan the broadband service. Therefore, the ETC that Operator B may recover from Mr Tan should be lower than: (24 – 6) x ($38 – $20) = $324. Separately, Operator B may also recover the discount given to Mr Tan during the 6 months, i.e. $5 x 6 = $30, as Mr Tan was given the discount on the basis that he would subscribe to Operator B's service for 24 months.

Question 3: IDA seeks comments on the proposed guidelines for computing the fair quantum of the ETC for mobile, fixed-line telephone and broadband services offered to consumers, to ensure compliance with Section 3.2.3 of the Code.

PART IV: INVITATION TO COMMENT

19. IDA would like to seek comments from the industry and members of the public on the above issues.

20. All comments should be submitted in writing and in both hard and soft copies (Microsoft Word Format) by **12 noon, 13 January 2009**. IDA may make all or parts of any submissions made in response to this consultation paper public and disclose the identity of the source. Any part of the submission which is considered commercially sensitive must be clearly marked and placed as an annex to the comments raised. IDA will take this into account in its review. All comments should be addressed to:

Mr Andrew Haire
Deputy Director-General (Telecoms & Posts)
Infocomm Development Authority of Singapore
8 Temasek Boulevard
#14-00 Suntec Tower Three
Singapore 038988
Fax: (65) 6211 2116

AND

Please submit your soft copies, with the email header "Public Consultation on Guidelines on Maximum Contract Term and Early Termination Charges for Telecommunication Services Offered to Consumers"**,** via email to IDA_Consultation@ida.gov.sg.

Annex A

Contract Lengths and Early Termination Charges Imposed by Operators[1]

Services	Operator	Contract Lengths Available	Early Termination Charge (ETC)[2]
Mobile Telephone	M1	3 months (no handset subsidy or gift provided)	Variable amount – The ETC quantum is the sum of the non-promotional monthly subscription fee for the remaining months left on the contract.
		24 months (with a handset subsidy provided)	Fixed amount – The ETC is dependent on the amount of handset subsidy provided and ranges from $300 - $500.
	SingTel Mobile	3 months (no handset subsidy or gift provided)	Variable amount – The ETC quantum is set as the sum of the non-promotional monthly subscription fee for the remaining months left on the contract.
		12 months (with a discount on the monthly subscription fee provided)	Fixed amount – The ETC is set at $150.
		24 months (with a handset subsidy provided)	Fixed amount – The ETC is dependent on the amount of handset subsidy provided and ranges from $450 - $800.
	StarHub Mobile	No contract (no handset subsidy or gift provided)	NA
		24 months (with a handset subsidy provided)	Variable amount, but stepped – The ETC is set at $500 for termination within the first 6 months from sign-up; $400 for termination between 6-12 months; $300 for termination between 12-18 months; and $200 for termination between 18-24 months.
Broadband – Mobile	M1	6 months (no equipment subsidy or gift provided)	Variable amount – The ETC quantum is set as the sum of the non-promotional monthly subscription fee for the remaining months left on the contract.
		12 months (with a USB modem and a discount on the monthly subscription fee provided)	Fixed amount – The ETC is dependent on the amount of equipment subsidy provided and ranges from $300 - $500.
	SingTel Mobile	3 months (as a value-added service for existing SingTel Mobile subscribers, no equipment subsidy or gift provided)	Variable amount – The ETC quantum is set as the sum of the non-promotional monthly subscription fee for the remaining months left on the contract.

---

1 Information obtained from operators' websites and customer service hotlines, as at 23 December 2008. .

2 In this table, ETCs are denoted as "fixed" if the applicable ETC does not vary in tandem with the number of months left on a customer's contract and "variable" if the applicable ETC varies as the number of months left on a customer's contract decreases.

Broadband – Mobile	SingTel Mobile	12 months (as a data plan, with a USB modem and a discount on the monthly subscription fee provided)	Fixed amount – The ETC is set at $300.
		24 months (as a data plan, with a USB modem and a discount on the monthly subscription fee provided)	Fixed amount – The ETC is set at $500.
	StarHub MaxOnline/ StarHub Mobile	No contract (no handset subsidy or gift provided)	NA
		24 months (as a data plan, with a USB modem and a discount on the monthly subscription fee provided.	Variable amount, but stepped – The ETC is set at $500 for termination within 6 months from sign-up; $400 for termination between 6-12 months; $300 for termination between 12-18 months; and $200 for termination between 18-24 months.
Broadband – Fixed	M1	6 months (no gift or discount provided)	Variable amount – The ETC quantum is set as the sum of the non-promotional monthly subscription fee for the remaining months left on the contract.
		24 months (with a cable modem and a discount on the monthly subscription fee provided)	Fixed amount – The ETC ranges from $348 - $708, depending on the plan subscribed.
	Pacnet	6 months (for time or volume-based cable broadband plans, no gift or discount provided)	Variable amount – The ETC quantum is set as the sum of the monthly subscription fee for the remaining months left on the contract.
		12 months (for unlimited cable broadband plans, no gift or discount provided)	Variable amount – The ETC quantum is set as the sum of the monthly subscription fee for the remaining months left on the contract.
		18 months (for unlimited ADSL plans, with an Ethernet modem provided)	Variable amount – The ETC quantum is set as the sum of the monthly subscription fee for the remaining months left on the contract.
	SingNet	12 months (with an ADSL modem provided)	Variable amount – The ETC quantum is the sum of the monthly subscription fee for the remaining months left on the contract.
		24 months (with an ADSL modem provided together with a discount off the monthly subscription fee)	Variable amount – The ETC quantum is the sum of the monthly subscription fee for the remaining months left on the contract.
	StarHub MaxOnline	6 months (no gift or subsidy provided)	Fixed amount – The ETC is set at $30.
		12 months	Fixed amount – The ETC is tied to the value of the gift and/or discount provided to the customer.

<table>
<tr><td rowspan="2">Broadband – Fixed</td><td rowspan="2">StarHub MaxOnline</td><td>24 months (with a gift provided)</td><td><u>Fixed amount</u> – The ETC is tied to the value of the gift and/or discount provided to the customer.</td></tr>
<tr><td>28 months (with a laptop or desktop provided)</td><td><u>Fixed amount</u> – The ETC is tied to the value of the gift and/or discount provided to the customer.</td></tr>
<tr><td rowspan="2">Fixed Line Telephone</td><td>SingTel</td><td>3 months</td><td>No ETC</td></tr>
<tr><td>StarHub</td><td>6 months</td><td><u>Fixed amount</u> – The ETC is set at $$30.</td></tr>
<tr><td rowspan="2">Bundled Service Offerings</td><td>SingTel - mio</td><td>24 months (30 months for certain existing SingTel customers)</td><td><u>Fixed amount</u> – The ETC ranges from $100 – $800.
<table>
<tr><td>All 3 services terminated - $800</td><td>Terminate broadband - $250</td></tr>
<tr><td>Terminate mobile & broadband services only - $700</td><td>Terminate mobile service only - $450</td></tr>
<tr><td>Terminate mobile & fixed line services only - $550</td><td>Terminate fixed line service only - $100</td></tr>
<tr><td>Terminate broadband & fixed line services only - $350</td><td></td></tr>
</table></td></tr>
<tr><td>StarHub - Hub Club</td><td>The minimum contract periods for the separate services apply.</td><td>NA. (However, the ETCs for the individual services will continue to apply.)</td></tr>
</table>