

CLIENT UPDATE 2016 AUGUST



TECHNOLOGY, MEDIA & TELECOMMUNICATIONS, COMPETITION & ANTITRUST AND TRADE

MCI's Public Consultation on Changes to the Telecommunications Act and the MDA Act

Introduction

The Singapore Ministry of Communications and Information (“**MCI**”) has, on 5 August 2016, sought public feedback on proposed amendments to the Telecommunications Act (Cap. 323) (“**TA**”) as well as some corresponding amendments to the Media Development Authority of Singapore Act (Cap. 172) (“**MDAA**”). The noteworthy amendments that have been proposed include:

- (a) Expanding the rent-free Mobile Deployment Space (“**MDS**”) that building owners must provide to mobile operators to cover both rooftop and non-rooftop areas;
- (b) Prohibiting exclusive arrangements between building developers / owners and telecommunication licensees or end users that deny end users’ choice of, or access to, telecommunications services;
- (c) Establishing an alternative dispute resolution (“**ADR**”) scheme for the telecommunications and media sectors as a consumer protection measure; and
- (d) Increasing the maximum compoundable amount for offences under the TA.

The public consultation on these amendments runs **until 24 August 2016**. The Infocomm Development Authority (“**IDA**”) has also announced that it will conduct a briefing on **17 August 2016** on the proposed amendments to the TA for building developers, owners and managers.

This Client Update seeks to provide a brief outline and commentary on the most salient of the MCI’s proposed amendments.

Proposed Changes under the Public Consultation

Expanding the rent-free MDS requirement to include rooftops

The Code of Practice for Info-communications Facilities in Buildings 2013 (“**COPIF 2013**”) sets out the requirements imposed on building owners to provide space and facilities for telecommunication deployments. One of the requirements under the COPIF 2013 is for building owners to provide a specific amount of rent-free space to mobile operators for mobile deployment. These rent free spaces are known as MDS. The COPIF 2013 does not currently mandate that MDS be sited on building rooftops.

In order to assist network operators to maintain good Quality of Service (“**QoS**”) standards nationwide, as well as to pre-empt the evolution of networks to 5G, the MCI is proposing that the MDS requirement cover both rooftop and non-rooftop areas through legislative amendments to the powers of the IDA. The result of this amendment will be that building owners will be obliged to provide some rooftop space for mobile network equipment, if requested by a network operator.

Prohibiting exclusive arrangements denying end users’ choice

The MCI and IDA have recently noted instances of arrangements being made between property developers or owners and certain network operators for the deployment of telecommunication systems. An example of such an arrangement would be a building owner entering into exclusive contracts with certain network operators to allow a specific network operator but not others to access the building’s

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premises in order to provide telecom services within it. This heightens the risk of end-users' access and choice between network operators being restricted.

In order to prevent such restrictions, the MCI is seeking to empower the IDA to regulate or prohibit such arrangements between building developers /owners and network operators, and between building developers / owners and the building's occupants that might restrict end users' choice between network operators.

However, the proposed amendments will not prevent developers / owners from facilitating preferential rates or promotions for selected telecommunication services to end users.

Establishing ADR mechanisms

The IDA and Media Development Authority ("MDA") maintain consumer protection measures such as minimum QoS Standards in the telecommunications and media industries to address service-related issues that are either systemic or impact customers at a large scale. However, the dispute resolution mechanism for more nuanced and individual complaints is piecemeal. Currently, complainants are encouraged to approach their service provider to resolve any matters in the first instance. If this fails, complainants may then utilise third party ADR channels such as through the Consumer Association of Singapore, or request assistance from IDA or MDA to facilitate dispute resolution. However, neither the IDA nor MDA have the authority to mandate the form of remedies or corrective actions that errant service providers must offer to the complainant.

To resolve such individual disputes more efficiently, MCI proposes to amend the TA and MDAA to provide powers to IDA and MDA to establish ADR schemes. The participation of telecommunication service providers and media service providers in ADR schemes corresponding to their industry is proposed to be mandatory.

Increasing maximum compoundable amount for offences

Section 64(1) of the TA currently provides that the maximum compoundable amount for offences under the TA is \$5,000. The MCI and IDA, observing a spike in recent times in the number of cable cut offences as a result of road works and construction projects across Singapore, propose to increase the deterrent effect of s64(1) of the TA. MCI thus proposes to amend s64(1) of the TA to increase the maximum compoundable amount to half the amount of the maximum fine that is prescribed for the relevant offence under the TA or \$10,000, whichever is lower.

Our Comments

In general, the proposed changes are welcomed as they seek to improve the quality and choices of telecommunications services available to consumers, and to address what the MCI and the regulators view to be the present barriers to achieve this.

Below, we provide further commentary on the salient amendments being proposed by the MCI.

Expanding the rent-free MDS requirement to include rooftops

The proposal to expand the rent-free MDS requirements to include rooftops is a function of Singapore's land scarcity and the rising demand for mobile services. The MCI has determined that using rooftops would be the most efficient way of expanding network coverage and maintaining good QoS standards. The height that networking infrastructure would be placed at on building rooftops would ensure optimised coverage. With networks evolving speedily, network operators are likely to seek access to additional rooftops as time goes by.

This proposal is likely to have far reaching effects on building owners and developers if successful. Nonetheless, the proposal seeks to strike a balance in maintaining building owners' property rights. In this respect, MCI intends for the new framework to apply to those rooftop spaces after the expiry or

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termination of existing agreements or contracts between building owners and mobile operators for the use of rooftop spaces. The following principles under the COPIF 2013 also remain the same - if a network operator wishes to utilise additional space over and above that mandated by the MDS requirement, it will have to gain such access through commercial negotiations with the building owner; network operators will also be required to pay building owners for costs reasonably incurred in providing access to the rooftops.

The ability for mobile operators to access and use building rooftop space to serve each building and the surrounding areas should improve mobile coverage and serve the public interest.

Prohibiting exclusive arrangements denying end users' choice

Building owners engaging in exclusive arrangements that could have the effect of denying access or choice to end users is a competition concern to regulators. Prohibiting such exclusive arrangements allows end users to enjoy the fruits of competition between network operators.

The MCI has however clarified that the proposal will not prevent building owners from having arrangements with network operators to provide preferential rates or promotions to the occupants of that building. The crux of the proposal is to ensure that consumers benefit from competition between network operators. Therefore, this proposed amendment to the TA will only scrutinise agreements that hinder the occupier of a building from securing telecommunication services from a network operator not party to the exclusive arrangement.

Establishing ADR mechanisms

The MCI proposes that telecommunications service providers and media service providers will be obliged to participate in the ADR schemes set up by the MDA and IDA. Consumers of such services will, on the other hand, retain the flexibility to resolve their disputes through the ADR scheme or other avenues such as the Courts, Small Claims Tribunal or other third-party channels.

This proposal therefore buttresses consumer protection in the telecommunications and media industries. Previously, the use of third party channels to mediate disputes between customers and services providers was encumbered by participation in such ADR mechanisms being voluntary for service providers. Time and monetary costs of approaching the Courts or Small Claims Tribunal might have also been prohibitive on consumers.

A consumer will only have the right to approach the ADR organisation under the relevant ADR scheme after failing to resolve the dispute directly with the service provider. The MCI envisions the ADR scheme's mechanism being that of mediation. The MCI is currently not considering an adjudicative ADR scheme as it will be more complex to implement. There is wisdom in this approach. The ADR scheme piloted by the Hong Kong Telecommunication Authority, which included mediation and adjudication, was found to be too costly and inefficient for local market conditions.

If a mediation is successful, it will lead to a binding and enforceable agreement between the consumer and service provider. Unsuccessful mediation will entail consumers retaining the right to bring disputes to the Courts or the Small Claims Tribunal. However, the MCI currently plans to only allow residential or individual retail customers to be covered under the ADR scheme, as it considers business end-users to have greater bargaining power and thus a greater ability to resolve disputes amicably. Other jurisdictions such as the United Kingdom include small businesses (based on a threshold number of employees) in their ADR schemes. It is welcomed that MCI has explicitly stated its willingness to expand the scope of coverage of the proposed ADR scheme if needed.

Increasing maximum compoundable amount for offences

Effectively doubling the maximum compoundable amount for offences under section 64(1) of the TA is a response to an observed spike in the number of cable cut offences as a result of road works and construction projects across Singapore. The MCI has observed that contractors often fail to follow prescribed procedures in avoiding cut incidents. The increase in the maximum compoundable amount

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under section 64(1) of the TA supplements regular dialogue with contractors and other requirements on the construction industry.

How We Can Help

The public consultation on the above proposed amendments runs till **24 August 2016**, with the proposed amendments likely to have a significant effect on stakeholders across industries. Please do get in touch with us at telecoms@rajahtann.com if you would like to discuss any issues or concerns relating to the proposed amendments to the TA and MDAA, or require assistance with preparing and putting forward comments to MCI during this consultation period. We will also be happy to provide advice on putting in place internal policies in compliance with the proposed amendments by the MCI.

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ASEAN Economic Community Portal

With the launch of the ASEAN Economic Community (“AEC”) in December 2015, businesses looking to tap the opportunities presented by the integrated markets of the AEC can now get help a click away. Rajah & Tann Asia, United Overseas Bank and RSM Chio Lim Stone Forest, have teamed up to launch “Business in ASEAN”, a portal that provides companies with a single platform that helps businesses navigate the complexities of setting up operations in ASEAN.

By tapping into the professional knowledge and resources of the three organisations through this portal, small- and medium-sized enterprises across the 10-member economic grouping can equip themselves with the tools and know-how to navigate ASEAN’s business landscape. Of particular interest to businesses is the “Ask a Question” feature of the portal which enables companies to pose questions to the three organisations which have an extensive network in the region. The portal can be accessed at <http://www.businessinasean.com/>.

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