Minimise early termination charges on switching ICT suppliers: a case study

Switching mid-term from one supplier to another can cost large early termination charges (ETCs). That can be a reason in itself to stay with the existing provider. This applies from retail customers through SMEs to large corporates. In this case study, the switching customer saved $1.3M and also got a subsidy to migrate from the new provider. The supplier could have got the $1.3M if it got its ETC regime right. There are tips for suppliers and customers.

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We overview ETCs in our article, *Early Termination Charges – Enforceable?.*[1] This article applies that overview to an actual situation where a client - the ICT supplier's customer - made $1.3M savings by clever footwork. Names and specific products are not identified for confidentiality reasons.

The customer is a large corporate. It wanted to switch from one ICT supplier to another. The customer had a number of contracts with the existing supplier. All were yet to expire and they had varying ETC regimes in the contracts.

As noted in the sister article, if an ICT supplier gets the wording on the ETC regime wrong, the ETC clause can fall into the liquidated damages/ penalty regime. If that happens, the ETC clause is only enforceable if the amount is - picking up the lingo of penalties - a genuine pre-estimate of damage.

Some of the contracts fell into that trap. Others didn't. But that was a good start for the customer.

Next, the existing supplier had not worked hard enough to make sure that the contracts were signed properly. Some weren't. So the customer got more ammunition.

Then the supplier failed to keep written and signed-up track of many of the changes, new products and services, etc, supplied under the contract. This is like a server being there at the start, the price of which is loaded into the contract price and the ETC; and then a new server is supplied but the paperwork (or online material) for the new server, with a new ETC, was not sorted out.

Plus, even where it was sorted out, the paperwork couldn't be found in many cases.

This litany of problems in our experience is quite common.

So the customer had a good platform to argue against many of the ETC claims. The customer paid a fraction of the claimed ETCs. It's legally entitled to do that, but also at one level it was fair: the ETCs generally were higher than underlying cost to be reflected in the ETCs.

With the new provider, the customer had negotiated a credit to, in effect, go towards paying the ETCs. That's quite common too. The customer made sure that the credit was claimable regardless, rather than having it capped at the value of the ETCs. A win both ways.

A beautiful story for the customer.

1. http://www.wigleylaw.com/assets/Uploads/Early-Termination-Charges-Enforceable.pdf

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