

For the attention of:

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**COMMENTS OF THE FOOTBALL ASSOCIATION PREMIER LEAGUE LIMITED
IN RESPONSE TO THE INFOCOMM MEDIA DEVELOPMENT AUTHORITY OF
SINGAPORE'S SECOND CONSULTATION ON THE CODE OF PRACTICE FOR
COMPETITION IN THE PROVISION OF TELECOMMUNICATION AND MEDIA
SERVICES DATED 5 JANUARY 2021**

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This document contains the comments of The Football Association Premier League Limited (the **Premier League**) in response to the Infocomm Media Development Authority (**IMDA**) of Singapore's request for comments in response to its document entitled Second Consultation on the Code of Practice for Competition in the Provision of Telecommunication and Media Services dated 5 January 2021 (the **Second Consultation**).

We note that the IMDA has requested that comments are submitted in a specific format and order. In this regard, given the Premier League's comments are relatively brief and concise in nature, we have dispensed with a summary of major points. Accordingly, this document contains the following sections:

Part One: A brief description of the Premier League and a statement of the Premier League's interest in the Second Consultation.

Part Two: The comments of the Premier League in response to the Second Consultation and the draft Code.

Part Three: A brief conclusion.

Capitalised words and expressions used in this document shall have the meanings given to them in the Second Consultation unless otherwise defined herein.

Part One: The Premier League and its statement of interest in the Second Consultation

The Premier League is the body which organises and administers the league football competition played in England and Wales currently known as the Premier League (the **Competition**). The Premier League is also responsible for the central sale of, inter alia, the live audio-visual rights to football matches played as part of the Competition (the **PL Rights**) in territories around the world including Singapore. In virtually all cases, the Premier League has historically sold, and continues to sell, the PL Rights on an exclusive basis in territories and regions around the world (subject to certain exceptions, for example, to allow Premier League clubs the right to exploit deferred rights to their own matches).

The revenues derived from the sale of the PL Rights deliver benefits for consumers because they enable the Premier League (which is a non-profit making organisation) to:

- distribute monies to its member Clubs for investment in, for example, players, staff, training facilities and stadia thereby maintaining and improving the high standard of the Competition and the quality and attractiveness of the resulting audio-visual product; and
- distribute a significant portion of the revenues to good causes and grass roots initiatives in the UK and around the world.

The Premier League is currently, in the terminology of the Second Consultation and the Cross Carriage Measure (**CCM**), the supplier of Qualified Content under the terms of an agreement with SingTel and, as the IMDA is aware, its rights have been subject to the CCM in respect of the contractual periods

covered by the 2013/14 to 2015/16 seasons, the 2016/17 to 2018/19 seasons and the 2019/20 to 2021/22 seasons.

The Premier League's interest in the Second Consultation is, therefore, derived from its desire to ensure that the effect of the changes proposed in the Second Consultation is not to stifle competition for, or to reduce the value of, the PL Rights and that it can continue to deliver the benefits set out in the bullets immediately above. The Premier League is also concerned to ensure that the CCM does not have the effect of discouraging competition through service differentiation and disincentivising broadcasters and platform operators from innovating in new services for their subscribers.

The Premier League previously submitted a response to the first public consultation published on 20 February 2019 (the **First Consultation**) (although we notice that the submission of this response was not noted in the Second Consultation).

Part Two: The Premier League's comments in response to the Second Consultation and the draft Code

Having reviewed the Second Consultation and the draft Code, the Premier League wishes to comment only in relation to sections 11.1.4, 11.3 and 11.6 of the draft Code (and paragraphs 230 to 241 of the Second Consultation), in relation to the CCM. The Premier League reserves its right to comment on any other matter covered by the Second Consultation if the IMDA consults in the future on any further proposals in relation to any such matter.

Restricting the CCM by Content Genre (sections 11.1.4 and 11.3 of the draft Code, paragraphs 231 – 237 of the Second Consultation)

The Premier League notes that the IMDA now intends to limit the application of the CCM to live programmes that are acquired on an exclusive basis. We expect that the practical effect of this will largely be to limit the CCM to live sports. The Premier League believes that there is no justification for singling out sports in this manner or, more broadly, for treating sport differently from drama and movies (which the IMDA's own survey evidence, referenced in the First Consultation, suggests are more important to viewers than sport).

The Premier League would also strongly question the conclusion that “[a]part from live sports, most of the TV content, such as dramas and movies, are increasingly being made available to consumers over the Internet” which implies that live sports are not available over the Internet in Singapore (and/or are not increasingly available over the Internet), which is clearly not the case.

Rather than focussing on the narrowing of the CCM, the Premier League would more generally question the continued need for the CCM at all (for live/sports content or more broadly) and whether it has achieved its goals. For example, the Premier League has not seen any studies that demonstrate that the content fragmentation (in particular, the number of common channels on both relevant Pay TV platforms) noted by the IMDA is a result of the CCM and not, for example, a commercial decision on the part of the broadcasters of those channels to pursue a particular distribution strategy.

The Premier League's view is that measures like the CCM, which interfere with freedom of contract and the operation of markets, should only be maintained by regulators where clearly justified and of continued relevance. The growth in new OTT services in the market is likely to soon render the CCM obsolete in the near future. In a diverse and competitive market with broad consumer choice, where the control of physical infrastructure no longer provides a barrier to market entry, a measure like the CCM looks increasingly anachronistic (and may soon become entirely redundant due to technological shifts).

The Premier League agrees with the IMDA that competition can be fostered through service differentiation, competitive packaging and pricing; however, in its global experience, over many years,

it has seen how the acquisition of exclusive content is used by its licensees in order to differentiate their services, packaging and pricing from that of their competitors. We have seen how the acquisition of exclusive content provides an incentive for licensees to create innovative services that are valued by consumers and use exclusive content as a way to promote uptake of their services which in turn provides a sound basis for further investment in the attractiveness and quality of those services.

As such, the Premier League requests that the IMDA reconsiders its position and gives due consideration to removing the CCM completely.

Offering OTT Services that Contain Qualified Content (“QC”) on a Standalone Basis (section 11.6.1(a) of the draft Code, paragraphs 238-241 of the Second Consultation)

Without prejudice to the Premier League’s views in relation to the removal of the CCM as set out above, the Premier League does not support the extension of the CCM to QC available on the OTT platform of the SQL (**SQL OTT Content**).

It appears (from section 11.6.1(a) of the draft Code) that the SQL OTT Content would have to be carried on the RQL’s Relevant Platform (rather than via OTT). The Premier League considers that such a requirement would stifle competition and in particular would discourage service differentiation and innovation.

If an SQL is required to make available SQL OTT Content to cross-carried subscribers via the RQL’s Relevant Platform (as seemingly proposed), this would significantly reduce the incentive on the SQL to invest in its own OTT service, as it would not encourage new customers to take up the broader service offering of the SQL. Instead, the cross-carried subscribers would receive the benefits of the service innovation by the SQL, reducing the incentive on both the SQL to innovate in relation to OTT service provision.

More generally, we believe the proposal would discourage innovation and service differentiation. For the reasons stated above, the Premier League believes that content exclusivity drives service innovation and that this is especially the case for developing technologies such as OTT services. The Premier League believes that SQLs should be able to use content exclusivity on its OTT services (whether standalone, or bundled with a Relevant Service) in order to foster competition between the SQL and RQL by means of service differentiation and in order to encourage investment in OTT services by the operators of the Relevant Services in Singapore.

Part Three: Conclusion

The Premier League has an obvious interest in ensuring the existence of fair and effective competition for all Qualified Content (including the PL Rights) and to ensure that bidders are not disincentivised from bidding for Qualified Content as a result of the CCM (or any similar measure). The Premier League believes that failing to recognise the important role that content exclusivity can play in service differentiation and innovation may lead to a decrease in such competition with negative impacts on consumers in Singapore.

One of the stated aims of the CCM is to encourage competition by means of service differentiation, as referred to in paragraph 230 of the Second Consultation. The Premier League believes that content exclusivity can perform an important role in service differentiation and that, moreover, content exclusivity encourages investment in innovative new services by allowing the service provider to offer something compelling and unique to subscribers and thus ensure that the service is valued by and attractive to consumers. Rather than foster competition by means of service differentiation, the CCM (by preventing the acquisition of QC exclusively) may indeed have the opposite effect.

The Premier League further believes that the CCM is likely to be rendered increasingly redundant by the growing shift (including by new entrants) to OTT services over the coming months and years and that these technical changes also make the CCM neither necessary nor desirable. Accordingly, the Premier League would support the immediate removal of the CCM in its entirety.