

## SUMMARY OF THE DIRECTION OF THE MEDIA DEVELOPMENT AUTHORITY OF SINGAPORE MADE PURSUANT TO SECTION 26(1) OF THE MEDIA DEVELOPMENT AUTHORITY OF SINGAPORE ACT (CAP. 172)

### Background

1. On 10 October 2012, Singapore Telecommunications Ltd ("**SingTel**") announced that it had acquired rights to "all 380 Barclays Premier League (BPL) matches for the next three seasons commencing August 2013" ("**Barclays Premier League Live Package content**"<sup>1</sup>) from the Football Association Premier League Limited ("**FAPL**") for broadcast on SingNet's Subscription Television Platform, "**Mio TV**"<sup>2</sup> (the "**Agreement**").
2. The Agreement is the agreement through which SingNet Pte Ltd ("**SingNet**"), as part of the SingTel Group and as the relevant SingTel Group entity holding a subscription nationwide television service licence granted under the Broadcasting Act (Cap. 28), would obtain the rights to broadcast the Barclays Premier League Live Package content in Singapore on its Mio Stadium channel.
3. Following a thorough examination of the clauses of the Agreement, the Media Development Authority of Singapore (the "**Authority**") took the view that the Agreement contains provisions which render the Barclays Premier League Live Package content "**Qualified Content**" as defined in Paragraph 2.3(d)(i)(B) of the Media Development Authority of Singapore Act – Code of Practice for Market Conduct ("**Code of Practice for Market Conduct**").

### Determination that the Barclays Premier League Live Package content constitutes Qualified Content

4. Pursuant to Paragraph 2.3(d) of the Code of Practice for Market Conduct, the Barclays Premier League Live Package content becomes Qualified Content if it is

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<sup>1</sup> The right to make live, delayed and on-demand transmissions within Singapore of football matches played as part of the Barclays Premier League competition during the 2013/2014, 2014/2015 and 2015/2016 seasons.

<sup>2</sup> News Release, "*SingTel mio TV secures rights to broadcast Barclays Premier League for another three seasons*" released by SingTel on 10 October 2012.

acquired or otherwise obtained by SingNet (as a Regulated Person<sup>3</sup>) for transmission on its Subscription Television Service<sup>4</sup> in Singapore under an arrangement, whether explicit or implicit, which prevents or restricts or is likely to prevent or restrict the channel or programming content from being acquired or otherwise obtained from it for transmission on any Relevant Platform<sup>5</sup> in Singapore by any other Regulated Person outside the SingTel Group (Paragraph 2.3(d)(i)(B) of the Code of Practice for Market Conduct).

5. The Authority has found that certain arrangements in the Agreement operate to prevent or restrict, or are likely to prevent or restrict, the Barclays Premier League Live Package content from being acquired or otherwise obtained from the FAPL for transmission on any other Relevant Platform in Singapore by any other Regulated Person outside the SingTel Group (i.e. a subsequent acquirer) for the reasons set out below. Specifically, the Authority considered that the clauses create a price barrier for a subsequent buyer ("**Pricing Provision**") and impose restrictions on the promotion of the content by the subsequent buyer ("**Marketing Restriction**") (hereafter referred to collectively as the "**Relevant Clauses**").

### ***The Marketing Restriction***

6. The Marketing Restriction provides *inter alia* that in the event that the FAPL licenses to a subsequent acquirer the right to broadcast the Barclays Premier League Live Package content for viewing in Singapore, the subsequent acquirer shall not be entitled to announce its right to exploit such rights within Singapore, or to engage in any form of marketing or promotional activity related to such exploitation, before a certain prescribed time prior to when the subsequent acquirer is due to start commercial exploitation of the Barclays Premier League Live Package.
7. In the view of the Authority, such restriction will reduce the attractiveness and value of the Barclays Premier League Live Package content to a potential subsequent acquirer.

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<sup>3</sup> SingNet has been designated as a "Regulated Person" being a licensee granted a subscription nationwide television service licence pursuant to section 16(3)(a)(ii) of the Act read with paragraph (3) of the Schedule to the Media Development Authority of Singapore (Regulated Persons) Notification 2003.

<sup>4</sup> Any subscription television service, video-on-demand service or special interest television service which is made available to the audience for whom it is intended only upon payment of a subscription fee (Paragraph 1.5(b)(xxxv) Code of Practice for Market Conduct).

<sup>5</sup> "Relevant Platform" means a managed network over or using any one or any combination of the following:

- (i) hybrid fibre-coaxial;
- (ii) optical fibre;
- (iii) the Asymmetric Digital Subscriber Line. (Paragraph 2.3(ea) of the Code of Practice for Market Conduct).

8. The Authority recognises that the calculation of the value of the Barclays Premier League Live Package content to a subsequent acquirer will have to take into account the marketing “headstart” achieved by SingNet in marketing, promoting and/or retailing its offer of Barclays Premier League subscriptions, i.e. the pool of subscribers to which a subsequent acquirer may market, promote and/or retail the Barclays Premier League subscription would likely be reduced.
9. Further, in combination with the restriction mentioned in paragraph 12, the FAPL is also to give SingTel Global Private Limited advance notice of a certain period of time before the subsequent acquirer can begin exploitation. This would have the effect of prolonging the time between when a subsequent acquirer is granted rights to the Barclays Premier League Live Package content, and when the subsequent acquirer is able to commence exploitation, by the period of the advance notice. (The Authority notes that in the case of SingNet, although the Agreement was only entered into on 21 December 2012 by SingTel Global Private Limited, it had publicly announced its rights to the Barclays Premier League Live Package content as early as 10 October 2012.)

#### ***The Tiered Pricing Provision***

10. Under the Tiered Pricing Provision, the Authority notes that in the event that the FAPL licenses the Barclays Premier League Live Package content to any subsequent acquirer for broadcast in Singapore, SingTel Global Private Limited will be entitled to a significant price reduction of the fees payable to the FAPL under the Agreement.
11. The Authority notes that in general, tiered pricing provisions are not uncommon in pay-TV content licensing contracts, and can fulfil a range of legitimate objectives. In the context of the Barclays Premier League Live Package content, an objective of such a provision may be to reflect the difference in value in the event that SingNet is the only retailer for subscription to the Barclays Premier League programme, in contrast to a case where there is at least one more retailer, without necessarily intending or being likely to restrict access to the content from potential subsequent acquirers.
12. The relevance of the Tiered Pricing Provision in the Agreement is that it would have the effect of negating the incentive of the FAPL to license the Barclays Premier League Live Package content to a subsequent acquirer for broadcast in Singapore at a price that is below the quantum of price reduction that FAPL is required to provide to SingTel Global Private Limited. In other words, the Authority reasonably notes that in practice, this would mean that the FAPL will only be willing to sell to a

subsequent acquirer if the offered price is at least equal to the price reduction which the FAPL would have to give to SingTel Global Private Limited under the Pricing Provision.

13. The price barrier created by the Pricing Provision for a subsequent license of the Barclays Premier League Live Package content in this case would have the effect of preventing or restricting any subsequent acquisition of the rights to broadcast the Barclays Premier League Live Package content in Singapore, where the valuation for a potential subsequent acquirer is below this threshold.

#### ***Combined Effect of the Relevant Clauses***

14. The Authority notes that the Marketing Restriction appears to provide no direct benefit to the FAPL (other than, potentially, an increase in the value the first acquirer is willing to pay) but improves the likelihood of *de facto* exclusivity for SingNet. The Authority takes the view, therefore, that the Marketing Restriction has the object of reducing the value of the Barclays Premier League Live Package content for a potential subsequent acquirer.
15. Coupled with the price barrier created by the Pricing Provision, the combined effect of the Relevant Clauses would render the Barclays Premier League Live Package content rights commercially unviable to a subsequent acquirer, and thus prevent or restrict, or would be likely to prevent or restrict, the subsequent acquirer from acquiring such content.
16. One of the objectives underpinning the Cross-Carriage Measure, which requires Regulated Persons to cross-carry Qualified Content pursuant to the Code of Practice for Market Conduct, is for consumers to no longer require multiple set top boxes or have to switch pay-TV retailers just to enjoy exclusive content, which in turn facilitates greater consumer access to pay-TV content, and shifts the focus of competition in the market from an exclusivity-centric strategy to other aspects such as service differentiation and competitive packaging and pricing.
17. The Authority notes that the Marketing Restriction, in contrast, is likely to have a negative impact on consumer knowledge and choice. Subscribers which contract with StarHub Cable Vision Ltd ("**StarHub**"), the only other nationwide pay-TV retailer in Singapore at present, may take on a second subscription with SingNet for the Barclays Premier League broadcast even after StarHub subsequently acquires the Barclays Premier League Live Package content but before it is able to disclose that it has done so or to commence marketing and promotion activities for its subscription

services. The Authority, therefore, takes the view that the Marketing Restriction operates in contradiction to the objective of the Cross-Carriage Measure.

18. The Authority concludes, therefore, that the magnitude of the combined restrictive effect of the Relevant Clauses would lead to the prevention or restriction, or the likely prevention or restriction of the Barclays Premier League Live Package content rights from being acquired by any subsequent acquirer outside of the SingTel Group.
19. Correspondingly, the Authority concludes that the agreement between SingTel Global Private Limited and the FAPL in respect of the Relevant Clauses will prevent or restrict, or is likely to prevent or restrict, the Barclays Premier League Live Package content from being acquired or otherwise obtained from the FAPL for transmission on any Relevant Platform in Singapore.

Date on which the Barclays Premier League Live Package content becomes Qualified Content

20. Pursuant to the Advisory on Notification of Qualified Content issued by the Authority on 9 February 2012 ("**Advisory**"), for Qualified Content which is acquired or otherwise obtained under a written carriage agreement, the channel or programming content, or bundled channel or bundled programming content becomes Qualified Content:
  - (a) on the execution date of the carriage agreement (i.e. when the subject carriage agreement is signed by the Supplying Qualified Licensee and the upstream content rights owner or content provider), or
  - (b) such date (if any) specified in the carriage agreement,whichever is earlier.
21. This is in line with Paragraph 2.3(d)(i)(B) of the Code of Practice for Market Conduct which provides, *inter alia*, that Qualified Content means a channel or programming content, or any bundled channels or bundled programming content, "**acquired or otherwise obtained... by a Regulated Person for transmission on its Subscription Television Service in Singapore under an arrangement... which prevents or restricts or is likely to prevent or restrict the channel or programming content [or any bundled channels or bundled programming content] from being acquired or otherwise obtained ... for any transmission on any Relevant Platform in Singapore by... any other Regulated Person**" [Emphasis added].

22. Accordingly, the Authority is satisfied that the Barclays Premier League Live Package content constitutes Qualified Content pursuant to Paragraph 2.3(d)(i)(B) of the Code of Practice for Market Conduct with effect from 21 December 2012.

Direction

23. Therefore, in exercise of its powers under Section 26(1) of the Media Development Authority of Singapore Act, the Authority has directed SingNet to immediately comply with its duties as Supplying Qualified Licensee for the Barclays Premier League Live Package content under Paragraph 2.7 of the Code of Practice for Market Conduct.