

MEDIA DEVELOPMENT AUTHORITY OF SINGAPORE

THIRD CONSULTATION

**IMPLEMENTATION OF THE CROSS-CARRIAGE MEASURE
IN THE PAY TV MARKET**

ISSUED ON: 23 March 2011

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PART I: EXECUTIVE SUMMARY

- 1.1 At the close of the Second Consultation on the cross-carriage measure (“**Measure**”) which was conducted from 1 September 2010 to 5 October 2010, the Media Development Authority (“**MDA**”) received submissions from 13 respondents, including existing and potential pay TV retailers, content providers, industry associations and a consumer interest group.
- 1.2 As with the First Consultation, the 13 responses presented a diverse range of views regarding the Measure and its implementation details. Many respondents expressed their views on the scope of Measure, including the definition of Qualified Content, application of the Measure to Video-On-Demand (“**VOD**”) and interactive content, as well as the qualifying criteria for Supplying Qualified Licensees (“**SQLs**”) and Receiving Qualified Licensees (“**RQLs**”).
- 1.3 MDA also received comments on customer relationship, particularly the relationship between an SQL and its subscribers, single billing arrangements, marketing and promotion of Qualified Content, and channel numbering.
- 1.4 Further, respondents provided valuable feedback on the proposed requirement relating to platform rights acquisition, the two-tier cross-carriage fee system based on the most cost-efficient system run by the RQLs, same retail pricing to be charged to subscribers regardless of the platforms used to access the Qualified Content, and the cross-carriage of packages and bundles that contain Qualified Content. The comments on service standards focused mainly on the ability of RQLs to carry Qualified Content “without any alteration”, the preparation and activation standards for the cross-carriage of Qualified Content, customer/technical service standards and the submission of service standards for MDA’s approval.
- 1.5 Comments and suggestions were received on the proposed basis on which MDA will grant an exemption in relation to the Measure.
- 1.6 Finally, feedback was received on the proposed triennial review of the Measure. Other alternative measures were also raised for MDA’s consideration.
- 1.7 Part III of this paper sets out a summary of the comments received from the Second Consultation and MDA’s responses to them.

- 1.8 MDA is also seeking industry's views on the "mandated open platform access" approach as a complement to the Measure. In order to finetune the Measure and facilitate implementation, MDA will make refinements to the Code of Practice for Market Conduct in the Provision of Media Services 2010 (also known as the Media Market Conduct Code, "**MMCC**"). Part IV of this paper sets out the consultation for these amendments to the MMCC.
- 1.9 The Third Consultation will be conducted over a period of four weeks and will close on 19 April 2011.

PART II: INTRODUCTION

- 2.1 With the introduction of competition in the pay TV market, the Media Development Authority (“**MDA**”) has been actively monitoring the impact of competition on consumers and the industry. In recent years, MDA observed that competition centred around exclusive carriage arrangements (“**ECAs**”) has resulted in content fragmentation which increased inconvenience and attendant costs for consumers as well as created significant barriers to entry for new entrants. Furthermore, attention and resources of pay TV retailers were diverted away from other aspects of competition such as service and content innovation. While MDA is of the view that the competitive landscape for the pay TV market is evolving and, to the extent possible, the development of the market should be left to market forces, nonetheless, MDA is concerned that the current form of competition in the market has failed to deliver the full benefits that are generally associated with a competitive market.
- 2.2 As Singapore’s pay TV market became increasingly out of sync with the norms observed in other competitive pay TV markets, MDA considered that market forces were not likely to address its concerns in the pay TV market. Regulatory intervention was imperative to promote the interests of consumers and the pay TV industry as a whole, and better align the local pay TV market to the state of competitiveness observed in other competitive pay TV markets overseas.
- 2.3 On 12 March 2010 (“**Effective Date**”), MDA introduced the cross-carriage measure (“**Measure**”) which imposes an obligation on pay TV retailers (“**Supplying Qualified Licensees**” or “**SQLs**”) to make available channels or programming content which they have acquired or otherwise obtained on or after the Effective Date on an exclusive basis, for carriage by specific pay TV retailers which are licensed to provide nationwide Subscription Television Services (“**Receiving Qualified Licensees**” or “**RQLs**”). An industry consultation (“**First Consultation**”) was concurrently launched to obtain industry feedback on the Measure and its implementation mechanics. The Measure was effected via amendments to the Code of Practice for Market Conduct in the Provision of Media Services 2010 (also known as the Media Market Conduct Code, “**MMCC**”) on the same date, to prevent any industry participant from negating the effectiveness of the Measure and thereby frustrating MDA’s policy objectives.
- 2.4 At the close of the First Consultation on 6 May 2010, MDA received submissions from 19 respondents, including existing and potential pay TV

retailers, content providers, industry associations and a consumer interest group.

- 2.5 MDA subsequently conducted a Second Consultation from 1 September 2010 to 5 October 2010 to seek comments on its preliminary views as it continued to finetune the Measure based on feedback received from the First Consultation and subsequent engagements with stakeholders. Part III of this paper sets out a summary of the comments received from the Second Consultation and MDA's responses to them. MDA is also seeking industry's views on the "mandated open platform access" approach as a complement to the Measure.
- 2.6 To further finetune the Measure and facilitate implementation, MDA intends to make refinements to the MMCC. Part IV of this paper sets out the consultation for MDA's proposed amendments to the MMCC.
- 2.7 MDA expresses its appreciation to all parties who have contributed to the consultation process and welcomes further participation in the Third Consultation, which will be conducted over a period of four weeks and will close on 19 April 2011.

PART III: SUMMARY OF COMMENTS RECEIVED FROM THE SECOND CONSULTATION

3.1 List of Respondents

3.1.1 At the close of the Second Consultation, MDA received submissions from 13 respondents, namely:

- 1) A&E Television Networks;
- 2) Cable and Satellite Broadcasting Association of Asia (“CASBAA”);
- 3) Consumers Association of Singapore (“CASE”);
- 4) ESPN Star Sports;
- 5) Football Association Premier League Limited;
- 6) M1 Limited;
- 7) MediaCorp Pte Ltd;
- 8) Motion Picture Association (“MPA”);
- 9) NBC Universal;
- 10) News Corporation;
- 11) SingNet Pte Ltd (“mio TV”);
- 12) StarHub Cable Vision Limited (“SCV”); and
- 13) Vue Networks Pte Ltd.

MDA would like to thank all the respondents for their useful feedback and comments.

3.2 Overview

3.2.1 The responses received from the Second Consultation can be broadly classified into two broad categories: (i) comments on the Measure’s compatibility with intellectual property rights (“IPR”) rules and (ii) comments on the implementation details relating to the Measure.

3.2.1.1 Compatibility with IPR rules

3.2.1.1.1 A few respondents questioned the design of the Measure. There were also views that the Measure is tantamount to compulsory licensing; that it is in conflict with content rights holders’ basic rights to determine how their IPR should be used; and that it is in conflict with Singapore’s treaty obligations, e.g. under international copyright treaties and the US-Singapore Free Trade Agreement.

MDA's Response:

3.2.1.1.2 As explained substantively in the Second Consultation paper issued on 1 September 2010, the Measure does not curtail the IPR of the content providers as the content owners and pay TV retailers continue to have the full freedom to enter into ECAs if they so wish. The Measure merely requires a pay TV retailer to leverage on another retailer's platform to widen the distribution of the former's channels or programming content that are subject to an explicit or implicit arrangement entered into on or after 12 March 2010 (i.e., "Effective Date") that prevents or restricts another retailer from acquiring or otherwise obtaining them for transmission on any of the Relevant Platforms. The cross-carried content would be carried in the same form complete with the supplying pay TV retailers' branding and commercials. The Measure does not impose any compulsory licensing or forced unbundling of packaged channels or programming content. The Measure is fully consistent with Singapore's international obligations. It should also be noted that the treaty obligations do not constrain the ability of countries to adopt regulatory measures that are pro-competition and anti-monopoly in nature.

3.2.1.2 **Comments on Implementation details**

3.2.1.2.1 Substantial comments were also received on the implementation details of the Measure. The comments were wide ranging and contained valuable feedback on areas ranging from the scope of the Measure to channel numbering and marketing. Sections 3.3 to 3.12 provide a summary of the key comments received and MDA's responses to these comments.

3.3 Scope of the Measure

3.3.1 Definition of “Qualified Content”

3.3.1.1 Generally, there was support for the revision to the definition of Qualified Content¹ as proposed by MDA. In addition, a few respondents sought clarification on certain phrases within the revised definition while several others proposed modifications.

3.3.1.2 One respondent sought clarification as to whether content is deemed Qualified Content where other pay TV retailer(s) are unable to pay the price of the content set by the content providers (the price not being higher than what the first pay TV retailer has paid).

MDA’s Response:

3.3.1.3 As a matter of principle, MDA will not intervene in commercial negotiations over the terms at which channels or programming content are sold. As such, content providers are free to set the appropriate price level for their channels or programming content and if the content remains available for acquisition by another pay TV retailer on Relevant Platform, it will not become Qualified Content.

3.3.1.4 That said, MDA is aware of the possibility that a pay TV retailer may enter into an agreement (formal or otherwise) with a content provider whereby the subsequent pricing of the channels or programming content or other contractual terms and conditions are set at such levels to prevent another interested pay TV retailer from being able to afford the channels or programming content. MDA will, upon becoming aware of such instances, assess whether the content in question amounts to Qualified Content, and therefore be subject to the Measure.

3.3.1.5 Another respondent commented that the revised definition of Qualified Content should be limited to instances where programming content is “acquired” and/or otherwise similarly “obtained” and should not include content produced by the entity itself, outsourced from that entity or supplied

¹ “Qualified Content means all channels and programming content (including linear and non-linear channels, and content packaged in video-on-demand format), acquired or otherwise obtained on or after the Effective Date by a Regulated Person under an arrangement, whether explicit or implicit, which prevents or restricts another Regulated Person from acquiring or otherwise obtaining the channels or programming content for transmission on any of the Relevant Platforms. For the avoidance of doubt, “Qualified Content” excludes any channels or programming content acquired or otherwise obtained before the Effective Date, but includes any extension, renewal, or otherwise re-contracting of such channels or programming content on or after the Effective Date.” Source: 1 September 2010, MDA’s Second Consultation Paper on Preliminary Policy Positions.

from related entity(ies). The respondent considered that such an approach would help to preserve, ensure and encourage a vibrant local production and media industry. Should MDA be concerned over potential circumvention of the Measure through minority ownership in content production entities, the respondent suggested that MDA could require an SQL to own a sizeable equity stake (as defined under Section 6 of the Companies Act) in these entities before the relevant content produced by such entities are excluded from the definition of Qualified Content.

MDA's Response:

3.3.1.6 As a matter of policy, MDA does not intend to make a distinction as to whether channel or programming content originated from a third party or a related party, or was self-produced or commissioned under the Measure. So long as the channel or programming content is not made available to other pay TV retailers for transmission on the Relevant Platforms, it will fall within the definition of Qualified Content. If the pay TV retailer's self-produced or commissioned content is available to other pay TV retailers but there are no takers, such content would not be classified as Qualified Content. MDA has refined the definition of Qualified Content to clearly reflect its policy objective.

3.3.1.7 MDA considers that the Measure will enable a pay TV retailer to leverage on another retailer's platform to widen the distribution of the former's channels and programming content. This provides the pay TV retailer the opportunity to reach out to a broader subscriber base and attract additional "eyeballs" thereby increasing its revenue. As such, MDA believes that the Measure will similarly help to encourage the growth of a vibrant local production and media industry.

3.3.1.8 One respondent voiced its support for MDA's proposed revision of the definition of Qualified Content to include the acquisition of Qualified Content through either implicit or explicit arrangements which restrict other Regulated Persons from acquiring the same for transmission on any other platform.

3.3.1.9 Should an SQL modify the terms and conditions of an existing ECA that do not relate to the rights to broadcast exclusively, the respondent considered that the content should not constitute Qualified Content.

MDA's Response:

3.3.1.10 MDA is guided by the effect of the re-contracting or contract alteration. Where the re-contracting or contract alteration has no material effect on

any matter relevant to the Measure and its application, MDA will not consider that the Measure will subsequently apply to the channels or programming content under such contracts.

3.3.1.11 In its consideration, MDA will have due regard to the nature of the changes to the contracts, and any rights or obligations relevant to the channels and programming content under such contracts, on a case-by-case basis. In particular, MDA will consider:

- (a) the extent to which the scope of channels or programming content to which the ECA relates has been changed;
- (b) the extent to which any explicit or implicit prevention or restriction against another Regulated Person from acquiring or otherwise obtaining the channels or programming content to which the contract relates has been changed or created;
- (c) the extent to which the term of the agreement, or the duration of any prevention or restriction (of a nature described above), has been changed; and
- (d) any other relevant considerations.

3.3.1.12 Another respondent also wanted more clarity as to what is meant by “*explicit or implicit*” arrangements and the standard of proof that MDA will use to assess whether there is an existence of an “implicit” arrangement. Alternatively, the respondent suggested that this reference be removed from the definition of Qualified Content.

3.3.1.13 The same respondent also requested clarification on what is meant by an arrangement “*which prevents or restricts another Regulated Person from acquiring or otherwise obtaining the channels*”. In order to provide more clarity and certainty, the respondent suggested removing the reference to “*or restricts*” from the definition of Qualified Content.

MDA’s Response:

3.3.1.14 In response to the clarifications over the definition of Qualified Content received from the First Consultation and industry concerns over tacit collusion between pay TV retailers and content providers which would undermine the effectiveness of the Measure, MDA has proposed revisions to the definition of Qualified Content.

- 3.3.1.15** Specifically, the purpose of including the concept of “*implicit*” arrangements is to apply the Measure to informal arrangements, regardless of whether written or oral (including so-called “gentlemen’s agreements”), that involve the parties arriving at a consensus on the actions that they will or will not take to prevent or restrict another Regulated Person from acquiring the channels or programming content for transmission on any of the Relevant Platforms.
- 3.3.1.16** In addition, under the revised definition of Qualified Content, where any Regulated Person has any channel or programming content that is subject to an arrangement which “prevents or restricts” another Regulated Person from acquiring the same, the channels or programming content will be Qualified Content. In this regard, MDA considers that in order to achieve its policy objectives, it is important that the definition not only includes channels and programming content that are subject to an exclusive arrangement, but also channels and programming content that are subject to arrangements designed to intentionally fetter or otherwise constrain the ability of another pay TV retailer from accessing the channel or programming content for transmission on any of the Relevant Platforms.
- 3.3.1.17** Further, to discourage any attempts to circumvent the Measure and to ensure that the Measure is able to deliver the full benefits to the industry and consumers, MDA has decided to further refine the definition of Qualified Content to cover the situation whereby an arrangement is *likely* to prevent or restrict another Regulated Person from acquiring the channels or programming content. Under this definition, it will not be necessary for MDA to demonstrate that the arrangement *actually* has the effect of preventing or restricting the acquisition by another Regulated Person. Instead, it shall be sufficient for MDA to be satisfied that the arrangement in question is *likely* to have the effect of preventing or restricting the acquisition of the channels or programming content by another Regulated Person on any Relevant Platform, having regard to all relevant considerations.
- 3.3.1.18** In all cases of alleged circumvention of the Measure, MDA, as a responsible regulator, will thoroughly investigate and consider the circumstances and rationale of the arrangement or agreement involved before deciding whether a channel or programming content should be classified as Qualified Content.
- 3.3.1.19** MDA has also been asked to clarify whether an exclusive arrangement with a content aggregator for a packaged channel would not fall within the definition of Qualified Content if: (i) the packaged channel did not contain

exclusive content; and (ii) there are other aggregators in the market that could package such a channel.

MDA's Response:

3.3.1.20 MDA considers that a packaged linear channel or non-linear video-on-demand ("VOD") service that does not contain any content that has been procured exclusively or on any other basis which prevents or restricts or is likely to prevent or restrict interested parties from being able to purchase the carriage rights to this content for transmission on the Relevant Platforms should not fall within the definition of Qualified Content.

3.3.1.21 At any point where Qualified Content is added to such a packaged channel or VOD service, the pay TV retailer will be required to comply with the Measure.

3.3.1.22 There were also questions raised as to whether content under a non-exclusive arrangement (i) with a tiered pricing mechanism (whereby a content provider would reduce the licence fees of an existing operator when it licenses its content to other operators), or (ii) whereby the content provider commits not to license content to other operators on more favourable terms would be considered as Qualified Content.

MDA's Response:

3.3.1.23 While it is conceivable that such commercial arrangements may be fashioned in a manner that is unlikely to prevent or restrict the content provider from licensing the same channel or programming content to another pay TV retailer, it is also possible to envisage an arrangement which operates as a strong disincentive for the content provider to license the same content to another pay TV retailer, whereby the pricing and/or terms are so prohibitive to the other pay TV retailer, that the other pay TV retailer is restricted or prevented from acquiring the channel or programming content.

3.3.1.24 MDA considers that whether such commercial arrangements will restrict access to carriage rights of channels or programming content is fact-specific and will have to be examined on a case-by-case basis. In assessing an arrangement, MDA will undertake both a qualitative and a quantitative assessment. Amongst the factors, MDA will consider whether there are objective justifications for putting in place such an arrangement, and the effective payment per subscriber under such commercial arrangements.

3.3.1.25 MDA takes a very serious view of any attempts through the use of creative pricing and/or terms to circumvent the Measure. MDA has revised the definition of Qualified Content to expressly cover implicit arrangements which prevent or restrict, or is likely to prevent or restrict another Regulated Person from acquiring the channel or programming content for transmission on any Relevant Platform. In the event that MDA finds that a pay TV retailer has entered into any form of arrangement of this nature, the channel or programming content will be deemed to be Qualified Content and therefore subject to the Measure.

3.3.1.26 On the issue of safeguards against tacit agreements and efforts to bypass the Measure, MDA received diverging comments on the measures proposed by MDA. There were views that MDA's proposed measures, while necessary, may not be sufficiently robust. One respondent suggested that in order to adequately safeguard against tacit agreements and other efforts to circumvent the Measure, the requirements (for example, requirement for statutory declaration made under the Oaths and Declarations Act) should be broad enough to cover both parties to the agreement (i.e., both the SQLs and the content/channel providers).

3.3.1.27 Another respondent requested that MDA provide further guidance about the investigation process and the type of enforcement and remedial action that it would take against agreements that sought to circumvent the Measure. The respondent also suggested that, where MDA believes that a party has engaged in such anti-competitive behaviour, MDA should, as part of its interim enforcement measure(s), prohibit the broadcast of the relevant content until MDA's investigations are completed.

3.3.1.28 On the other hand, MDA received a comment that the requirement for statutory declaration made under the Oaths and Declarations Act by the CEO is too over-reaching and places an unjustified administrative burden such that it may result in the perception that it is difficult to do business in Singapore or there is a tight control over the media.

MDA's Response:

3.3.1.29 MDA notes the diverging concerns from different respondents and it is clear to MDA that it will have to seek a balance in terms of its approach in order to address the different needs of the industry.

3.3.1.30 MDA considers that its proposed requirement for a statutory declaration from a key appointment holder of the pay TV retailer represents a fair and appropriate balance between deterring collusive behaviour in the market without imposing an unnecessarily burdensome regime that might

disincentivise content providers from dealing with local pay TV retailers. As such, MDA reserves the right to require a statutory declaration in circumstances where MDA considers it necessary to do so. Furthermore, MDA notes that the requirement for statutory declarations from company officers is not entirely unusual and is already practised by other government agencies. (For example, the Intellectual Property Office of Singapore and the Singapore Land Authority currently require such declarations in certain circumstances.) Accordingly, MDA does not consider that the requirement imposes an unreasonable or onerous administrative burden.

3.3.1.31 MDA will generally be guided by the investigation process, and the types of enforcement and remedial actions that are set out in the MMCC. MDA aims to send a clear signal to the industry that any attempts to circumvent the Measure will be dealt with very seriously and this will be reflected in the penalties imposed.

3.3.1.32 In terms of the suggestion for MDA to prohibit the broadcast of a channel or programming content as an interim measure until it completes its investigation, MDA notes that it has such an ability under paragraph 10.6.2.9 of the MMCC. MDA will make assessments on the necessity and the appropriateness of any such interim measure on a case-by-case basis, and after having regard to, *inter alia*, the specified considerations at paragraph 10.6.2.9(a) to (d) of the MMCC.

3.3.2 *Application to VOD and Interactive Content*

3.3.2.1 MDA received support for the Measure to apply to linear and VOD content and their supporting services. There is also support for the Measure not to apply to “advanced interactive content”.

3.3.2.2 One respondent requested that MDA provide further guidance on the detailed scope of “advanced interactive content” to avoid a situation whereby pay TV retailers seek to classify content as such to avoid the application of the Measure.

3.3.2.3 Another respondent noted that MDA has not specifically dealt with the treatment of High Definition (“**HD**”) and three-dimensional (“**3D**”) versions of channels that are classified as Qualified Content. The respondent took the view that if an SQL chooses to innovate by producing and making available a HD/3D version of a channel, it should be allowed to determine whether to make it available on the platform of any RQL as part of its commercial decision on how best to recoup its investment in the relevant HD/3D service.

MDA's Response:

3.3.2.4 MDA appreciates that technological development in the media industry is rapid and the notion of “advanced interactive content” is likely to continuously and rapidly evolve. As such, MDA will instead provide a list of basic functions that will be covered by the Measure. MDA will review this list triennially or whenever there is sufficient evidence of market development that warrants an interim review, to take into account industry development and changes in technologies.

3.3.2.5 On the issue of HD content, MDA does not consider HD technology to be an emerging technology. In markets such as the US, HD channels or programming content is already the mainstream, and Singapore is rapidly moving in the same direction. Including HD content within the scope of the Measure will ensure that consumers will be able to access such HD channels or programming content as they become increasingly available in the Singapore market. This will also help to accelerate the adoption of HD technology amongst the local consumers. In contrast, the development of 3D technology is presently in its infancy stage with limited 3D content available in the market as well as very low adoption of 3D television sets. MDA therefore considers it premature to subject 3D channels and programming content to the Measure. MDA would review this requirement as 3D technology evolves.

3.3.3 ***Qualifying Criteria for Supplying Qualified Licensee***

3.3.3.1 In response to MDA's proposed refinement of the SQL definition, MDA received comments that the current definition of SQL is over-inclusive and that only a nationwide subscription television licensee should qualify as an SQL.

3.3.3.2 One respondent pointed out that with the proposed amendment to the definition of SQL, both niche subscription television licensees and free-to-air broadcast licensees will be able to enjoy the ability to make available their content to subscribers on the RQL's platform without the commensurate level of investment and commitment to the development of the nationwide subscription television market in Singapore. For example, non-nationwide subscription television licensees have more flexible licensing conditions and a lower performance bond while not having a cap on advertising revenues or must-carry obligations. The respondent also considered that given that the Measure pertains to the pay TV market, the free-to-air broadcast licensees should not be captured by the Measure.

- 3.3.3.3 Another respondent similarly raised concerns that the proposed definition of SQL could give rise to free-riding issues. It therefore suggested that MDA revise the definition of an SQL as “an operator with 100,000 or more paying customers and a Nationwide Subscription Television Services Licence”.

MDA’s Response:

- 3.3.3.4 While MDA appreciates the respondents’ concerns, it is also cognisant of the fact that niche pay TV retailers may also secure Qualified Content. Moving forward, MDA envisages that there will be more and more smaller scale pay TV retailers that will provide content to niche audiences using the new nationwide optical fibre network, also known as the Next Generation National Broadband Network (“NGNBN”). To achieve its policy objectives, MDA considers that it is therefore necessary to include niche pay TV retailers in the definition of SQL. Given that the Measure is meant to address concerns within the pay TV market, MDA would like to clarify that the Measure will not apply to free-to-air broadcast licensees. The definition of SQL has been revised to reflect this accordingly.

- 3.3.3.5 To address concerns over potential “free-riding” by niche pay TV retailers, in determining the appropriate fee level in the case of a dispute, MDA will adopt a differentiated structure for the cross-carriage fees whereby SQLs that are not RQLs will compensate RQLs more for the use of their networks.

3.3.4 *Qualifying Criteria for Receiving Qualified Licensee*

- 3.3.4.1 MDA proposed in the Second Consultation paper that “a RQL must be a nationwide Subscription Television Service licensee that has fulfilled the following set of criteria:
- (a) has 10,000 or more subscribers;
 - (b) has an industry-recognised content protection system and anti-piracy measures; and
 - (c) has the ability to meet Service Standards”.

MDA’s Response:

- 3.3.4.2 There was no specific comment in relation to the type of criteria proposed by MDA. MDA will consider all criteria in its decision to designate an RQL and enforce criterion (b) as an MMCC obligation on the RQL. In consideration that service standards are part of broadcast licensees’ obligations, criterion (c) would be enforced under the RQLs’ respective licences.

- 3.3.4.3 A couple of respondents were concerned that the subscriber threshold of 10,000 was too low and could potentially allow new entrants that have not deployed any significant infrastructure or offered services on any significant scale to free-ride on the content of the SQLs.
- 3.3.4.4 The two respondents proposed to raise the subscriber threshold to “100,000 or more paying customers”. One commented that this figure is consistent with MDA’s licensing framework whereby niche licensees are required to have no more than 100,000 subscribers, beyond which they will require a nationwide licence. The respondent added that if an RQL obtains access to Qualified Content and does not actually achieve 100,000 or more paying subscribers within 24 months in accordance with the roll-out plan, then that RQL should cease to be an RQL.
- 3.3.4.5 On the other hand, a respondent urged MDA to consider the current subscriber base of the two pay TV retailers when setting the subscriber threshold to qualify as an RQL. The respondent pointed out that an unnecessarily high subscriber threshold may deter new entrants which may not have built up this minimum base, and prejudice the interests of the subscribers of these new entrants.

MDA’s Response:

- 3.3.4.6 **While MDA appreciates the respondents’ concerns, MDA is concerned that setting the threshold at 100,000 subscribers will deter entry of new pay TV retailers which are interested to become RQLs. MDA has arrived at the figure of 10,000 after reviewing the take-up rate of new pay TV retailers over the past two years and the current level of market penetration. Consistent with MDA’s policy of facilitating market entry and growing the media industry, MDA considers that the threshold of 10,000 subscribers is appropriate.**
- 3.3.4.7 Requests for clarifications were received on the types of standards for the content protection system and anti-piracy measures that would be considered by MDA to be “industry-recognised” and the body/institution that should make this decision. The respondent sought MDA’s clarification on the potential deadlock whereby the content provider declines to accept “industry-recognised” content protection system and anti-piracy measures. To prevent such a situation from arising, the respondent suggested that any content protection systems and anti-piracy measures implemented by RQLs must be subject to the content providers’ agreement.

MDA's Response:

- 3.3.4.8** MDA's purpose in requiring all RQLs to deploy an industry-recognised content protection system is to assure the industry that the IPR of the Qualified Content would be safeguarded. To this end, MDA will set out the principles for content protection security requirements in the MMCC. For greater clarity and guidance, MDA intends to subsequently set out the guidelines for minimal content security requirements to be adopted by RQLs. RQLs would be required to undertake a certification process – whether self-certified, jointly certified or independently certified. As mentioned in the Second Consultation paper, MDA understands that mio TV and SCV, the two possible RQLs, have already deployed content protection systems and anti-piracy measures which are recognised by international content providers.
- 3.3.4.9 Finally, a respondent proposed that, for the purpose of clarity, and to be consistent with MDA's intent that the Measure only applies to Qualified Content on Relevant Platforms, the RQL qualifying criteria should include a reference to the fact the RQL should operate any of the Relevant Platforms.

MDA's Response:

- 3.3.4.10** MDA has further refined the RQL definition such that only nationwide subscription television licensees that operate a service on a Relevant Platform can be designated as an RQL.
- 3.3.4.11** MDA will require RQLs to ensure that they do not, in receiving and transmitting Qualified Content of an SQL, violate or infringe any IPR.

3.4 Customer Relationship

3.4.1 *Customer Relationship is between SQL and Subscribers*

- 3.4.1.1 In relation to cross-carried channels, MDA considered that since the customer relationship is between the SQL and the subscribers of its cross-carried channels, it follows that customer service should be rendered by the SQL to these subscribers and the SQL should be responsible to the content providers for the provision of subscriber related data.
- 3.4.1.2 Respondents concurred with MDA that each SQL should maintain a direct customer relationship with subscribers of Qualified Content. One respondent considered that such an approach is consistent with the intent of the Measure which is to enable SQLs to provide their Qualified Content

directly to subscribers via the RQL's network. Another respondent commented that given it is the SQL who bore the business risk in acquiring the rights to the relevant Qualified Content, it should retain control over, and benefit from, the resulting retail relationship.

- 3.4.1.3 In response to MDA's preliminary position that a subscriber will contact the SQL with a request for Qualified Content, one respondent suggested that while the SQL should retain the primary responsibility, including being responsible for the cost of providing customer service, for practical purposes, the subscriber should be allowed to contact the RQL on issues regarding the Qualified Content. Another respondent however felt that the RQL should be rendering customer service and technical support to the subscribers given that the subscriber's main relationship is with the RQL.

MDA's Response:

- 3.4.1.4 **While MDA has indicated that the SQL should be responsible for rendering customer service to subscribers of its cross-carried channels, SQLs and RQLs are not prevented from agreeing on a commercial arrangement to offer better customer service to their subscribers.**

3.4.2 *No Mandatory Single Billing*

- 3.4.2.1 MDA received support on its proposed position of not imposing a single billing requirement with the exception of one respondent which felt that there should be a single bill from the RQL to minimise consumer inconvenience. One respondent suggested the flexibility for parties to commercially agree on alternative billing arrangements for subscribers receiving Qualified Content on the RQL's platform.

MDA's Response:

- 3.4.2.2 **As far as MDA is concerned, the customer relationship is between the SQL and its subscribers on the RQL's platform. SQLs and RQLs may, if they wish, agree on a commercial arrangement to offer alternative billing arrangements to better serve their subscribers.**

3.4.3 *Marketing and Promotion*

- 3.4.3.1 Support was expressed for MDA's proposal that SQLs should maintain and publish a list of its Qualified Content on its website to inform the public. However, one respondent commented that it would be impractical for SQLs to include this information on their promotion materials given the limited space available on such materials. Some promotion materials are also

generic in nature and therefore would not be appropriate to include the information on Qualified Content.

- 3.4.3.2 Another respondent suggested that where an SQL is unable, for whatever reason, to secure agreement with its content providers to allow RQLs to publish, on the RQLs' websites and viewing guides, a list of SQL's Qualified Content (as proposed by MDA), the SQL should provide its promotional materials to the RQL for the limited purpose of informing consumers of channels which are being cross-carried.

MDA's Response:

- 3.4.3.3 **MDA appreciates the concern that the promotional materials may not be suitable to carry a list of Qualified Content. However, MDA is similarly concerned that consumers do not have access to adequate information, leading to confusion over the cross-carried channels. Accordingly, MDA will require SQLs to provide consumers with access to the list of their Qualified Content on their websites and viewing guides. The SQLs should also negotiate with content providers to allow RQLs to publish, on the RQLs' websites and viewing guides, a list of SQLs' Qualified Content for the limited purpose of informing consumers of channels which are being cross-carried. In the case of self-produced or commissioned content, the SQLs should allow the RQLs to publish the list of SQLs' Qualified Content on the RQLs' websites and viewing guides. Correspondingly, the RQLs should publish on their websites and viewing guides, the list of such Qualified Content carried on their Relevant Platforms.**

- 3.4.3.4 **SQLs and RQLs are free to commercially explore whether more information on the cross-carried channels can be made available to consumers.**

3.4.4 *Channel Numbering*

- 3.4.4.1 Comments were supportive of MDA's proposed approach that the RQLs and SQLs should commercially negotiate, and submit to MDA, the recommended approach for the allocation of channel numbers by the RQLs.

- 3.4.4.2 One respondent further added that in addition to the commercial negotiation, MDA should ensure that the channel numbers/electronic programme guide ("**EPG**") positions of channels featuring Qualified Content are allocated on a fair, reasonable and non-discriminatory basis and in accordance with a published price list and methodology. This is to prevent an RQL from unfairly favouring the position of its own channels over those of an SQL's or charging prohibitively high fees for prominent channel positions.

MDA's Response:

- 3.4.4.3** In their commercial negotiation on the allocation of channel numbers, the SQL and RQL should adopt a fair, reasonable and non-discriminatory approach to best serve their interest and consumer interest.

3.5 Platform Rights Acquisition

- 3.5.1 To safeguard against any circumvention of the Measure, MDA proposed to require any Regulated Person with Qualified Content to obtain the rights (either exclusive or otherwise) to broadcast the Qualified Content on all Relevant Platforms. Should a Regulated Person be unable to obtain the rights for the other Relevant Platforms, it can apply to MDA for an exemption from this requirement.
- 3.5.2 One respondent wholly agreed with MDA's proposal, stressing that this requirement is fundamental to the proper function of the Measure. If this requirement is not imposed, pay TV retailers may be able to circumvent the Measure by making content available exclusively on limited platforms thereby preventing subscribers on other platforms from accessing the content. The same respondent further suggested that an exemption to this proposed obligation should only be granted if the content provider can prove that it does not have the rights for the Relevant Platforms.
- 3.5.3 Another respondent felt that suppliers of Qualified Content wishing to license their content in Singapore on a platform-by-platform basis should have the ability to do so. MDA's proposed obligation would unfairly constrain the rights of the owners of Qualified Content to deal with the content as they deem fit. As such, the respondent suggested that there should be an exception to the proposed obligation.
- 3.5.4 One respondent submitted that MDA should exercise considerable care in deciding whether to proceed with this obligation. The obligation is thought to increase the risk of market foreclosure as well as increase the costs of SQLs as they are required to obtain additional rights, beyond those they actually need. If MDA decides to implement this obligation, the respondent was of the view that the definition of Relevant Platforms must be determined now and should not be subject to any further changes as that will create uncertainty in the market and substantially increase the costs of the SQLs.

3.5.5 Another respondent urged the need for the Measure to be platform neutral in nature and stressed that platform neutrality is fundamental and necessary to avoid situations where the Measure could be circumvented.

MDA's Response:

3.5.6 MDA would like to clarify that the requirement to acquire the Relevant Platform rights applies only to SQLs with Qualified Content that are subject to arrangements that prevent or restrict, or are likely to prevent or restrict, other Regulated Persons from acquiring the channel or programming content for transmission on any Relevant Platform.

3.5.7 MDA has carefully weighed the pros and cons of requiring such SQLs to obtain the rights to broadcast the Qualified Content on all Relevant Platforms. While this requirement may require the SQL to incur additional costs, the additional rights will provide the opportunity for the SQL to reach out to more subscribers across different transmission platforms, thereby generating additional revenue.

3.5.8 After considering all the comments received, MDA maintains that the Measure should only be applicable to the defined Relevant Platforms and not to all platforms at this point in time. By applying the Measure to only the *hybrid fibre-coaxial network and managed networks² using Asymmetric Digital Subscriber Line technology and over the NGNBN³*, which are the existing and upcoming networks with the most extensive reach and impact in Singapore's pay TV market, MDA considers that it is taking the most proportionate approach in addressing the issues that consumers are facing.

3.5.9 Once designated as an RQL, the RQL would be required to carry all Qualified Content made available by Supplying Qualified Licensees on all Relevant Platforms of its nationwide Subscription Television Service regardless of the number of Subscribers on the Relevant Platform(s).

3.5.10 Similar to the requirement on the RQL, MDA will also require the SQL to ensure that it can broadcast all its Qualified Content without violating or infringing any IPR owned by the persons from whom it acquired or otherwise obtained the Qualified Content.

3.5.11 To ensure that the list of Relevant Platforms remain relevant and up-to-date with market developments, MDA will review the definition of

² A network that is closed and managed by an operator to provide guaranteed performance and services such as delivery of multimedia content and applications to consumers.

³ The NGNBN is targeted to reach 95% of Singapore by mid 2012.

Relevant Platforms triennially or whenever there is sufficient evidence of market development that warrants an interim review.

3.6 Gazetting of Schedule to the MMCC

3.6.1 To provide greater clarity to the industry, MDA proposed to gazette and publish the list of all SQLs and RQLs and the Relevant Platforms in a schedule to the MMCC. MDA did not receive any comments on the above proposal.

MDA's Response:

3.6.2 **For ease of administration, the list of SQLs and RQLs will be made available on MDA's website. The list of Relevant Platforms will be specified in the MMCC.**

3.7 Cross-Carriage Fee

3.7.1 Respondents were generally supportive of MDA's preliminary position that parties reach their own commercial agreement on the quantum of cross-carriage fees. They also supported the proposal of distinguishing the fees for SQLs that are also RQLs, and SQLs that are not RQLs, to address the issue of free-riding. One respondent, however, warned that the cross-carriage fees may raise the overall subscription rates which would ultimately be borne by the subscribers.

3.7.2 One respondent considered that MDA's proposed cost model has struck a reasonable compromise between the potentially conflicting aims of ensuring that an RQL is remunerated for the costs that it incurs in providing a carriage service to an SQL, whilst also minimising the risk of a negative impact on the profitability of the SQL. The respondent also suggested that each SQL which is not an RQL should be entitled to determine in relation to each of its channels which is classified as Qualified Content whether it should retail the channel itself (and therefore contribute to the RQL's costs) or to enter into a wholesaling arrangement with each RQL where the RQL will retail that channel directly (such that no contribution to RQL's costs will be necessary). The respondent also highlighted the need for MDA to settle any dispute over the cross-carriage fees within a very short timescale to minimise uncertainty. To provide greater transparency and certainty to the industry, the respondent proposed that MDA explore the possibility of requiring the RQLs to make available the relevant cross-carriage fees on the basis of a MDA-regulated ratecard. In this way, bidders of content would be able to quantify

in advance the amount of RQL carriage fees they would be required to pay if its bid was to be successful.

- 3.7.3 Other respondents however raised a number of comments and clarifications on the specifics of MDA's proposed cost model.
- 3.7.4 While one respondent supported MDA's proposed adoption of the Directly Attributable Incremental Costs ("DAIC") methodology for SQLs that are also RQLs, it considered that MDA should adopt a Long Run Incremental Cost + ("LRIC+") methodology (as opposed to the pure LRIC based approach) for SQLs that are not RQLs. "LRIC+" is supposed to fully compensate the RQL for all of its attributable costs including fixed and common costs in connection with the provision of the cross-carried content, as well as a reasonable rate of return. The respondent considered a pure "LRIC"-based pricing would not be appropriate as it would under-compensate the RQL.
- 3.7.5 Concerns were raised over MDA's proposal that the cross-carriage charges should be calculated based on "the most efficient system" operated by the relevant RQLs. Given that RQLs will operate different networks, a cross-carriage fee based on the "most efficient" RQL network may under-compensate other RQLs. Two respondents opined that the cross-carriage charges should fully compensate each RQL for the costs they efficiently incur with their networks.
- 3.7.6 Further, one respondent commented that it was not clear whether the costs of the most efficient system run by the RQLs would be used to set the cross-carriage fees in the environment where there are numerous SQLs and RQLs.
- 3.7.7 There was also a question on whether the cross-carriage fee that was determined by MDA in one instance would be applied to other commercially agreed cross-carriage agreements.
- 3.7.8 A respondent considered that once a cross-carriage agreement is set, the cross-carriage fees in that agreement should continue to apply until the expiration of the agreement.
- 3.7.9 In the event that an RQL's network is unable to support the Qualified Content, MDA was also asked to clarify whether an RQL could claim for (i) incremental CAPEX on a one-time lump sum basis and (ii) ongoing recurrent OPEX needed to provide support on the incremental requirements of SQL(s).

MDA's Response:

- 3.7.10** MDA notes the comments raised by the respondents and reiterates that parties should reach their own commercial agreement on the quantum of the cross-carriage fees. MDA will only step in where a commercial negotiation breaks down and MDA has been requested to make a binding resolution.
- 3.7.11** In instances where MDA intervenes for dispute resolution purposes, MDA maintains that it will determine prices based on the DAIC methodology for SQLs that are also RQLs and the LRIC methodology for SQLs that are not RQLs. MDA considers that such pricing methodologies strike a balance between providing sufficient compensation to the RQLs and setting cross-carriage fees at a reasonable level for the SQLs.
- 3.7.12** As for whether the cross-carriage charges should be calculated based on "the most cost-efficient" system, MDA considers that adopting such an approach would encourage pay TV retailers to improve the operational efficiency of their networks. As such, in instances where MDA intervenes for dispute resolution purposes, it would consistently apply the principle of "the most cost-efficient system" operated by the RQLs in calculating the cross-carriage charges.
- 3.7.13** After having determined the cross-carriage fee(s) as part of the dispute resolution process, MDA will publish its determination of the cross-carriage fee(s) for industry reference.

3.8 Retail Pricing

- 3.8.1** There is general agreement with MDA's proposal that the SQL should charge its subscribers the same retail prices regardless of whether they are accessing its channels via its own platform or via the RQLs' platforms.
- 3.8.2** One respondent suggested that MDA may wish to allow possible exceptions to this rule, for example, to allow limited and targeted promotions where Qualified Content packages may be offered at a discount or no cost to subscribers.

MDA's Response:

- 3.8.3** MDA considers it important that an SQL should charge its subscribers the same retail prices (including discounts and targeted promotions) regardless of which platform they are accessing its channels. It would not be fair to

consumers if an SQL is allowed to discriminate against different groups of subscribers just because they are accessing the same content via different platforms. Further, having the same retail prices will avoid customer confusion and ensure the attractiveness of accessing the Qualified Content provided by the SQL via the RQL's platform so that the policy objectives of the Measure can be achieved.

3.9 Cross-Carriage of Packages and Bundles

3.9.1 MDA proposed that so long as a bundle, package or channel contains Qualified Content, it will be subject to the Measure and cross-carried on the RQLs' platforms in the same form and at the same price.

3.9.2 A respondent considered that MDA's proposal of subjecting bundles and packages with Qualified Content to the Measure was essential; otherwise the Measure would be undermined. For example, if an SQL is allowed to unbundle the Qualified Content from its existing bundle/package, it may offer the Qualified Content for cross-carriage on an a la carte basis at unattractive rates as compared to the bundle/package on its own platform. The respondent also commented that the SQL should offer the same bundles, packages or discounts to its subscribers on an RQL platform and not treat such subscribers as second class subscribers. It also opposed any form of transitional period for such bundles and packages, and considered that all Qualified Content should be subject to the Measure from the date of implementation.

3.9.3 There were also concerns raised over the mandatory cross-carriage of packages and bundles containing Qualified Content, which may result in "mandating unbundling by the backdoor". One respondent considered that MDA's proposed approach will result in a bias towards an a la carte model of channel packaging.

3.9.4 A couple of respondents were concerned that this requirement would effectively force channels/content to be made available on a non-exclusive basis, thereby diminishing the ability to extract a fair value for them.

3.9.5 Another respondent commented that an SQL will have the concern that it may have to pay more in cross-carriage fees than what it receives in retail revenues from customers on the RQL's network. As such, the SQL may be discouraged from the bundling or packaging of Qualified Content although bundling is beneficial to consumers.

3.9.6 To address consumer dissatisfaction over the removal of Qualified Content from a bundle or the possibility that an SQL may potentially breach the terms of its existing content agreements, it was suggested that existing content bundles should be excluded from the Measure for three years as a transitional measure.

MDA's Response:

3.9.7 **After considering the above comments, MDA maintains its preliminary policy position that so long as a bundle, package or channel contains Qualified Content, it will be subject to the Measure and cross-carried on the RQLs' platforms in the same form and at the same price. For instance, should any Qualified Content be offered by an SQL on a standalone basis as well as part of a bundle, both the standalone offering and the bundle will have to be cross-carried. MDA's policy intent is to ensure that SQLs do not discriminate against subscribers on its own platforms vis-à-vis those accessing its Qualified Content via RQLs' platforms.**

3.9.8 **MDA reiterates that the Measure does not seek to interfere with pay TV retailers' existing channel bundling strategies nor force any change to their contractual arrangements with content providers. The Measure does not impose on the content providers an obligation to give consent for their channels to be bundled with Qualified Content and thus be cross-carried on all Relevant Platforms in Singapore. Industry players are free to decide on the commercial model that they think would best serve their interests while providing consumers with greater choices, convenience and innovation and observing the requirements of the Measure.**

3.9.9 **To ensure that the rights of content providers of the channels or programming content within a bundle are protected, MDA will require an SQL to obtain the consent of these content providers before the SQL bundles the content with Qualified Content for cross-carriage on Relevant Platforms.**

3.9.10 One respondent suggested that MDA should regulate the manner in which Qualified Content are bundled. Furthermore, if Qualified Content was bundled with non-TV services, the respondent urged MDA to work with the Info-communications Development Authority ("**IDA**") to establish and develop clear principles and determinations to prevent the potential cross subsidisation of Qualified Content when bundled with non-TV services.

MDA's Response:

3.9.11 MDA believes that consumers will benefit from creative packaging across multiple services and does not intend to put in place any ex ante regulation at this point. Moreover, paragraph 4.6 of the MMCC currently prohibits anti-competitive leveraging. A Regulated Person is deemed to be engaging in anti-competitive leveraging when it uses the dominant position of its affiliates or its own in a manner that enables or is likely to enable it to unreasonably restrict competition in any media market in Singapore other than the media market in which the market power giving rise to the dominant position exists. In other cases, MDA will work with the Competition Commission of Singapore ("CCS") and the IDA on how best to address any anti-competitive behaviour that may arise from cross-sectoral bundling issues.

3.10 Service Standards

3.10.1 MDA proposed that the RQL be required to carry all Qualified Content in its entirety and without any alteration, (including without limitation, dual sound, surround sound, subtitling, and EPG). RQLs should also not perform any act, or omit to perform any act, that may diminish, impair or otherwise degrade the viewing experience of any subscriber accessing the Qualified Content on the RQL's service. In addition, RQLs would be required to maintain the same level of Quality of Service ("QoS") standards for cross-carried channels as it would for its own channels while complying with the QoS standards set out in the Nationwide Subscription Television Service Licence.

3.10.2 One respondent supported MDA's proposal and considered that MDA's collective safeguards will assure SQLs of the return of their investment on Qualified Content. SQLs will in turn be incentivised to still compete strongly for the Qualified Content.

3.10.3 Another respondent, while agreeing with MDA on the need for service standards, commented that service standards should similarly be imposed on the SQLs to ensure a smooth implementation of the Measure.

3.10.4 A respondent further opined that MDA's proposal that RQLs be required to carry all Qualified Content "without any alteration" may not be practical. Given that RQLs and SQLs may operate different types of networks and systems with different format or encryption, Qualified Content made available "without any alteration" may not fit the RQL's network specifications. The respondent therefore proposed that SQLs be obliged to

make Qualified Content available for carriage on RQLs platforms at “source quality” rather than the SQL’s own broadcast quality to avoid any degradation of quality arising from the encoding processes.

- 3.10.5 In addition, the respondent proposed that the RQL be permitted to perform acts in relation to the Qualified Content (for example, encoding and encryption) to enable the content to be carried on the RQL’s platform, so long as the content is provided at a quality that is no worse than that of the RQL’s own content.
- 3.10.6 The respondent also submitted that quality differences arising from the inherent differences in platforms should not constitute non-compliance with service standards requirements. It should not be interpreted as altering the Qualified Content, breaching IPR, or impairing or degrading the quality of the Qualified Content.
- 3.10.7 On the issue of indemnity against financial losses arising from negligence, a respondent commented that besides considering the positions of SQLs and RQLs, MDA should similarly consider potential loss of content rights owners arising from the acts of both SQLs and RQLs.

MDA’s Response:

- 3.10.8 **MDA appreciates the respondents’ concerns over their ability to carry all Qualified Content “in its entirety and without any alteration”. MDA’s policy intention here is to ensure that the subscribers are treated in a non-discriminatory manner, i.e., subscribers’ experience of viewing the Qualified Content is not in any way affected whether the Qualified Content is viewed over the SQLs’ networks or the RQLs’ networks. MDA will therefore amend the MMCC to require RQLs to carry all Qualified Content “in its entirety and in an unmodified and unedited form” to better reflect its policy objective.**
- 3.10.9 **MDA also notes the feedback that service standards should similarly be imposed on the SQLs to ensure the smooth implementation of the Measure.**
- 3.10.10 **MDA will set out the minimum service requirements for cross-carriage arrangements in the MMCC. Both SQLs and RQLs must ensure that their commercially negotiated agreement provides for no worse than the minimum standards set out in the MMCC. Both parties are free to negotiate with each other for better service level agreements (“SLAs”), but they must adopt the principle of non-discrimination in terms of their supply and carriage of Qualified Content (i.e., SQLs will supply Qualified Content at a quality that is no worse than that supplied to subscribers on their own**

networks, while RQLs will carry Qualified Content at a quality that is no worse than that of their own channels on their networks).

3.10.11 Further, given that the content rights owners and channel providers are in the best position to know the extent to which they will need to safeguard against any financial losses arising from negligence on the part of the pay TV retailers, MDA considers it more effective to leave it to the relevant parties to reach a commercially acceptable arrangement.

3.10.12 *Preparation for the Cross-Carriage of Qualified Content*

3.10.12.1 MDA proposed that the SQL should notify MDA within 5 working days of concluding any arrangement which creates Qualified Content. The SQL should make available Qualified Content for transmission on both its platform and RQLs' platforms simultaneously. The SQL should provide a notice period of no less than 30 days to the RQLs to enable the necessary arrangements to be put in place for cross-carriage of new Qualified Content. For existing channel or programming content that subsequently becomes Qualified Content, MDA proposed that the cross-carriage should start on the day the content becomes Qualified Content and a notice period of no less than 30 days should be provided to the RQLs prior to this date. In a case where a channel or programming content ceases to be a Qualified Content, notification period of no less than 30 days should be provided to the RQLs and the affected subscribers.

3.10.12.2 Several respondents raised concerns over the proposed timeframes. While there was feedback that the 30-day minimum notification period may be too short for the RQL if significant network changes are required to support the Qualified Content, others considered this period to be too long for instances where the necessary arrangements are already in place.

3.10.12.3 One respondent suggested a refinement to MDA's proposal. It was suggested that the 30-day timeframe should apply only for linear Qualified Content and the timeframe should be based on working days rather than calendar days. Further, the respondent considered that 30 working days is only sufficient for the cross-carriage of only a single channel; where multiple channels are to be cross-carried, the notification period should be 60 working days. For non-linear content (i.e., VOD), the respondent commented that the content should be provided to the RQLs in a format suitable for delivery to the subscriber at least 5 working days before the content is to be made available on the SQL's own network/platform. To facilitate the initial set-up and implementation of the Measure, the respondent suggested that a 120-working day notification should be given.

- 3.10.12.4 Another respondent suggested that, instead of mandating fixed timeframes or requiring competitors to discuss in advance new content launches, the SQL should notify all RQLs at the same time it notifies its own customers when launching exclusive content. Further, the SQL must be ready to cross-carry the channel to the other RQLs on the date that the SQL launches the channel on its own network. RQLs must also implement the cross-carried channel on their networks within 60 days (or such other reasonable agreed timeframe) of the SQL's notification. The respondent therefore suggested that MDA imposes an obligation of non-discrimination on the SQLs and RQLs in terms of the manner in which they treat customer and technical problems, regardless of which network the customer uses, as opposed to mandating response timeframes.
- 3.10.12.5 Concerns were raised over collusion arising from interactions and exchange of information between pay TV retailers in order to implement the Measure. It was proposed that where relevant, processes should be modified to avoid operators needing to provide each other advance notice of their activities and to remove the obligation to notify competitors when a customer terminates services. Besides the possibility of encouraging collusion between operators, the respondent was of the view that this proposal would breach paragraph 3.6 of the Media Market Conduct Code.

MDA's Response:

- 3.10.12.6 MDA has carefully considered the suggestions received. Instead of prescribing timeframes that will meet the needs of all SQLs and RQLs, MDA considers that a better approach would be to retain the timeframes that it has proposed as minimal standards that SQLs and RQLs have to comply with. SQLs and RQLs are free to commercially negotiate for SLAs that will better serve their operational needs as well as consumer needs. For consistency, the timeframes would be stipulated on a working day basis, rather than a calendar day basis. MDA considers that a 60-working day timeframe for initial setup is reasonable for SQLs that have Qualified Content for cross-carriage for the first time. For SQLs that have pre-existing cross-carriage arrangements with the RQL(s), MDA maintains that a 21-working day (previously stipulated as 30-day) notification period is a reasonable timeframe.**
- 3.10.12.7 MDA appreciates the feedback regarding the exchange of confidential subscriber information upon the customer's termination of his RQL account. While MDA is agreeable to removing the obligation for the RQL to notify SQL(s) in the event of a service termination by a subscriber, for subscribers' convenience, MDA will require:**

- (a) the RQL to offer subscribers the option of authorising the RQL to update the SQL upon service termination; and
- (b) the RQL to remind subscribers, at point of termination, to terminate their Qualified Content accessed via the RQL's platform.

3.10.12.8 Moreover, MDA does not foresee any further process arising from the implementation of the Measure that will require coordination or exchange of commercially sensitive information between the pay TV retailers. MDA further reminds the industry that the existing MMCC prohibitions (as set out in paragraph 7.3 of the MMCC) against anti-competitive agreements and activities (e.g. price fixing, bid rigging, etc) will continue to apply to the pay TV retailers.

3.10.13 *Activation of Cross-Carriage of Qualified Content by Subscribers*

3.10.13.1 MDA proposed that the SQL, upon receiving a customer's request for Qualified Content, should take no more than 5 working days to activate the cross-carriage of the requested Qualified Content.

3.10.13.2 A respondent noted that since the main contract is between the RQL and the subscriber, the request for Qualified Content should be made by the customers to the RQL who would then liaise with the SQL.

3.10.13.3 Another respondent sought clarification from MDA on whether the proposed activation process would similarly apply for VOD. Should the VOD content be housed in the RQL's VOD server, it should be possible to make available the VOD content within 30 minutes. The respondent requested MDA to clearly set out the activation process for VOD content.

MDA's Response:

3.10.13.4 As mentioned in para 3.10.12.6, MDA prefers the approach of retaining the proposed timeframe as a minimal standard that SQLs and RQLs have to comply with. The parties are free to commercially negotiate for SLAs that will better serve their operational needs as well as consumer needs.

3.10.14 *Customer/Technical Service*

3.10.14.1 One respondent considered that it was not appropriate for MDA to mandate timeframes for customer contact and fault resolution. The respondent was concerned that the proposed timeframe of 24 hours for SQL-related problems and 36 hours for RQL-related problems were unrealistic as they failed to take into account that customer and technical problems may be outside of the SQL's control. It further noted that while the RQL's input may

also be critical in fault resolution, the RQL is presently under no obligation in this regard.

MDA's Response:

3.10.14.2 MDA wishes to clarify that the proposed customer service timeframes are for the SQL to:

- (a) where the problem lies with the SQL's platform, within 24 hours of receipt of the feedback or complaint, send an acknowledgement to the subscriber involved and inform the subscriber that the SQL is dealing with the problem;**
- (b) where the problem lies with the RQL's platform, within 36 hours of receipt of the feedback or complaint, send an acknowledgement to the subscriber involved and inform the subscriber that the RQL is dealing with the problem; and**
- (c) take all reasonable steps to monitor the progress of RQL and ensure that the RQL resolves the problem as soon as possible.**

Similarly, the RQL must, upon being notified by an SQL of any feedback or complaint received from a subscriber in respect of the SQL's Qualified Content carried on the RQL's platform, take immediate steps to identify the cause of the problem and within 12 hours of the notification from the SQL, confirm with the SQL that it is dealing with the problem.

3.10.14.3 MDA appreciates that the time taken for resolving customer feedback and complaints will vary depending on the nature of the issues, particularly if they are a result of factors that are outside the control of the SQLs.

3.10.14.4 As such, beyond the minimum customer service quality standards for acknowledgement of customer feedback or complaints, SQLs and RQLs are free to commercially negotiate and agree on a set of customer service standards that are guided by the principle of non-discrimination regardless of which network the customers use. The SQLs and RQLs are also encouraged to work together on consumer education to promote greater customer awareness on what they should do under such scenarios.

3.10.15 *Submission and Approval of Service Standards*

3.10.15.1 MDA proposed that both SQLs and RQLs should be required to submit draft service standards to MDA for its approval. Subsequently, the SQLs and RQLs will be required to publish the approved service standards on their respective websites and to submit to MDA monthly reports on customer service and technical faults.

3.10.15.2 One respondent questioned the necessity of obtaining MDA's approval if parties are able to commercially negotiate and agree to service standards for cross-carried content. It was of the view that MDA should only be involved where the parties were unable to reach a commercial agreement.

MDA's Response:

3.10.15.3 MDA has taken in the feedback and will not require the commercially negotiated agreements to be approved by MDA. To prevent the situation whereby the parties jointly agree to provide services at lower standards to the detriment of consumers, MDA has set out the minimal guidelines for service standards in the MMCC.

3.11 Exemptions from the Measure

3.11.1 *Exemption Criteria and Processes*

3.11.1.1 As a matter of principle, MDA is only minded to grant exemption under exceptional circumstances. MDA considered that an exemption to the Measure would only be granted if applicant was able to demonstrate how the exemption will benefit consumers or the pay TV market (for instance, enhancing consumer welfare through innovation and the creation of new channels or programming content).

3.11.1.2 A respondent requested that MDA publish a transparent set of guidelines to provide certainty on the circumstances where an exemption is likely to be granted. Another respondent further proposed that where an exemption is granted, the decision and the basis for the decision must be clearly and publicly set out.

3.11.1.3 A respondent considered that innovation, differentiation and the creation of value-added content would be discouraged should the addition of "exclusive" features subject otherwise non-Qualified Content to the Measure. To address this problem, the respondent proposed that the definition of Qualified Content should specifically exempt the inclusion of exclusive "value-added content" into non-exclusive channels. It is further proposed that "value-added content" be defined as "...content in the form of commentaries, subtitling, dubbing etc, which has the objective of enhancing the viewing experience, and which do not alter the underlying nature of the channel or programming".

MDA's Response:

3.11.1.4 MDA considers that the principles and examples provided in the Second Consultation paper should have sufficiently demonstrated MDA's thinking as to how it will assess applications for exemptions. In response to the feedback received, MDA intends to publish its decisions, including the basis for the decisions, where exemptions are granted to provide further guidance to the industry.

3.11.1.5 With regard to the suggestion that the definition of Qualified Content should exclude value-added content inserted into non-exclusive channels, MDA considers that this suggestion is reasonable given that the Measure is targeted at channel or programming content rather than the supporting features. As such, MDA accepts the proposal that the inclusion of value-added services ("VAS") into a channel that is otherwise not Qualified Content should not cause the channel to become Qualified Content. VAS refers to any service which has the objective of enhancing the viewing experience of a channel or programming content but which does not alter the underlying nature of the channel or programming content. The list of VAS is set out in Appendix 1 of the MMCC.

3.11.2 ***Exemption from the Requirement to Secure Rights for all Relevant Platforms***

3.11.2.1 On MDA's proposed requirement for the SQL to submit a statutory declaration made under the Oaths and Declarations Act by its CEO as part of the application for an exemption from securing the rights for all Relevant Platforms, diverging comments were received.

3.11.2.2 Support was received for MDA's proposed measures to safeguard against tacit collusion and efforts to circumvent the Measure. However, other respondents considered this requirement to be disproportionate and cumbersome. There was a suggestion for a letter of confirmation from the relevant company instead.

3.11.2.3 On MDA's requirement for SQL to demonstrate that the content provider does not have the relevant broadcast rights for Singapore and other neighbouring countries in order to qualify for an exemption, one respondent considered the reference to countries outside of Singapore to be over-reaching. Another respondent commented that MDA's criteria for exemption was too narrow and suggested expanding the criteria to include situations whereby the content provider does not have or is unwilling to sell the relevant broadcast rights for Singapore.

MDA's Response:

- 3.11.2.4** MDA considers that a statutory declaration from a key appointment holder of the pay TV retailer is necessary to ensure that pay TV retailers do not take any application for exemption lightly. As mentioned earlier, MDA notes that the requirement for statutory declarations from company officers is not new and is already practised by other government agencies.
- 3.11.2.5** On the suggestions that were put forward by the respondents, MDA is concerned that that they may allow the Measure to be easily bypassed. As such, MDA reserves the right to require a statutory declaration in circumstances where MDA considers it necessary to do so. MDA does not consider that the requirement imposes an unreasonable or onerous administrative burden. MDA maintains its position that in order to qualify for an exemption, the SQL must demonstrate that the content provider does not have the relevant broadcast rights for Singapore and other neighbouring countries.

3.12 Triennial Review of the Measure

- 3.12.1** One respondent suggested that MDA set up formal channels to receive consumer feedback and complaints, and conduct a first review of the Measure in one year's time to iron out teething problems during the initial implementation phase.
- 3.12.2** Another respondent noted that details of the proposed triennial review were not provided, for example, the criteria for review, specific performance indicators and a review of the relevance of the Measure to changing market environment.

MDA's Response:

- 3.12.3** MDA agrees that it is important to have channels to receive consumer feedback and complaints. Currently, MDA already has several established channels whereby consumers may provide feedback or lodge a complaint to MDA. These include using the feedback channel on MDA's website, calling MDA's hotline, and writing in directly to MDA. Consumers can use these channels to provide any feedback that they have on the Measure.
- 3.12.4** MDA considers that a review of the Measure in one year's time is too soon as the impact of the Measure may not have been fully felt. However, MDA agrees that there is a need to closely monitor the implementation of the

Measure during the initial phase so that any implementation details can be quickly finetuned where necessary.

3.12.5 MDA will review the Measure every three years as part of the triennial review of the MMCC, or whenever there is sufficient evidence of market development that warrants an interim review.

3.12.6 To enable the industry to better understand its process and review criteria for the triennial review, MDA intends to make publicly available details of its impact assessment. MDA also intends to actively engage the industry in its triennial review.

3.13 Other Implementation Suggestions

3.13.1 *Alternatives to Measure*

3.13.1.1 It has been suggested that rather than regulating individual channel deals, MDA could instead mandate cross-carriage of the entire service offering of a pay TV operator while maintaining the freedom of content owners to sign exclusive or non-exclusive deals with the pay TV operator of their choice. Under such a scenario, the pricing, packaging, and other subscription requirement should be the same regardless of which pay TV operator a subscriber selects to effect the subscription. The respondent considered that this alternative structure can better achieve the aims of the Measure and at the same time be acceptable to content providers.

MDA's Response:

3.13.1.2 While the suggested approach of cross-carriage of a pay TV retailer's entire service offering has some merits (such as bringing greater access to content), MDA needs to consider the effect of full cross-carriage on the SQLs and RQLs, in relation to the extent of carriage fees payable by the SQLs and the current network capacity of the RQLs. MDA considers that the Measure in its current form would be better commensurate with the concerns that it seeks to address (i.e., content fragmentation).

3.13.1.3 Nonetheless, the industry is not prevented from pursuing more extensive cross-carriage arrangements beyond that required by the Measure if stakeholders consider that there is commercial value in doing so.

3.13.1.4 There was another suggestion for a mandatory resale model and for MDA to establish a framework for just, reasonable and non-discriminatory terms to safeguard against potential gaming and anti-competitive practices.

MDA's Response:

3.13.1.5 MDA had previously considered the mandatory resale model as an option to address consumer concerns. The option was finally ruled out as MDA was concerned over its possible impact on IPR. That said, the industry has the flexibility to explore separate commercial arrangements for the resale of channel or programming content.

3.13.1.6 During one of MDA's dialogues with the industry, a suggestion was raised to consider the "mandated open platform access" ruling as an alternative to the Measure. Such a ruling facilitates open platform access in the pay TV market by mandating that pay TV retailers offer third parties access to their respective platform services such as conditional access and EPG slots. Conceptually, this is similar to the Provision of Technical Platform Services ("TPS") rules introduced by Ofcom, the UK communications regulator, in 2003. The suggestor felt that retailers would naturally be incentivised to procure set-top box access to distribute their content (exclusive or otherwise) more widely on other pay TV retailers' platforms.

MDA's Response:

3.13.1.7 The "mandated open platform access" approach was one of the 20 options MDA had considered when developing its regulatory response to the content fragmentation issue in the pay TV market. While such an approach has its merits, it is akin to a "must carry" obligation on pay TV platforms without a corresponding "must supply" obligation. As such, MDA believes that the approach is unlikely to resolve the content fragmentation issues in the Singapore pay TV market.

3.13.1.8 Nonetheless, MDA is open to considering further industry comment on the "mandated open platform access" approach, to assess whether such an approach could be adopted to complement the Measure. Interested parties are welcome to submit their views on the applicability of the "mandated open platform access" approach in the Singapore context including how this approach will address MDA's concerns over the state of competition in the market, the pros and cons of this approach versus the Measure, any potential IPR concerns and the ease of implementation.

3.13.2 Steps to enhance implementation of Measure

3.13.2.1 One respondent suggested that the Next Generation Interactive Multimedia Applications and Services (“**NIMS**”) project – a joint initiative by IDA and MDA to build up capabilities, infrastructure and the industry ecosystem in the area of interactive multimedia, applications and services – should be expedited. The respondent also suggested that the implementation of the Measure is most cost-efficient and effective if it coincides with the introduction of the NIMS set-top box (“**STB**”) to the market. Some advantages cited include lower carriage fees arising from the adoption of the same standard platform by the SQLs and the RQLs; more transparent negotiation of cross-carriage fees as only one pricing model will be needed for the common platform; and reduction in the time to market Qualified Content.

MDA’s Response:

3.13.2.2 As explained in the Second Consultation paper, the Measure and the NIMS Programme are complementary initiatives focused on the video services market, each addressing different issues.

3.13.2.3 MDA introduced the Measure to address the high level of content fragmentation in the pay TV market as a result of an exclusive content-centric strategy adopted by the operators. The Measure places an obligation on qualified pay TV retailers to make available their exclusive channels on the platforms of other qualified pay TV retailers, so as to reach a wider audience base.

3.13.2.4 On the other hand, the NIMS Programme seeks to put in place a common technical platform for multiple industry players to collaborate and offer a variety of interactive video-based services and applications in addition to pay TV content to consumers on the NGNBN, so as to drive the industry towards a more vibrant video services market.

3.13.2.5 It is important to note that the scope of the Measure extends beyond the NGNBN to also cover other nationwide platforms such as the hybrid fibre-coaxial and Asymmetric Digital Subscriber Line platforms. On the other hand, the NIMS common platform covers only the NGNBN.

3.13.2.6 When ready, NIMS would facilitate the implementation of the Measure over the NGNBN.

PART IV: PROPOSED AMENDMENTS TO THE CODE OF PRACTICE FOR MARKET CONDUCT IN THE PROVISION OF MEDIA SERVICES 2010

4.1 Part IV sets out MDA’s proposed amendments to the MMCC and provides references to the relevant section(s) of this consultation paper which sets out MDA’s rationale.

4.2 Overview of amendments to the MMCC 2010

4.2.1 Clarification of the Measure (paragraph 2.1.5, MMCC)

4.2.1.1 The proposed amendment to paragraph 2.1.5 clarifies that RQL’s services refer to RQL’s nationwide Subscription Television Services on Relevant Platforms.

4.2.2 Insertion of definition: “Group” (paragraph 2.3(ba), MMCC)

4.2.2.1 A definition of the term “Group” has been inserted to refer to a group of 2 or more persons where one person has Control over the other person or persons in the group. Together with the corresponding refinements to the definition of Qualified Content (discussed below), this new definition aims to prevent the circumvention of the Measure whereby a Regulated Person alleges that the channel or programming content is allowed to be broadcast by other Regulated Person(s) (and is therefore not Qualified Content) when the channel or programming content is simply being kept within its Group. Such a concept is currently in the definition of “Supplying Qualified Licensee” in the MMCC and MDA proposes to incorporate it into the definition of “Qualified Content” such that it can be read in context.

4.2.3 Modification of definition: “Qualified Content” (paragraph 2.3(d), MMCC)

4.2.3.1 The proposed revisions to the definition of “Qualified Content” reflects the intended scope of Qualified Content, which includes, *inter alia*:

- (a) basic functions (set out in Part I of Appendix 1) in support of Qualifying Content;
- (b) self-produced or commissioned content by a Regulated Person and where the Regulated Person has, on or after 30 June 2011, transmits

the same on its Subscription Television Service in Singapore and refuses to allow the channel or programming content to be acquired or otherwise obtained from it for transmission on any other Relevant Platform in Singapore by another Regulated Person or by another Regulated Person outside the Group for transmission on any other Relevant Platform; and

- (c) explicit and implicit arrangements which MDA determines will prevent or restrict or is likely to prevent or restrict the acquisition of the Qualified Content by another Regulated Person or by another Regulated Person outside the Group, for transmission on any Relevant Platform in Singapore.

4.2.3.2 A further insertion reflects MDA’s decision on the treatment of bundled channels or programming content such that so long as a bundle, package or channel contains any Qualified Content, the entire bundle, package or channel will be subject to the Measure. However, to ensure that the rights of content providers of the channels or programming content within a bundle are protected, MDA proposes imposing an obligation on the SQL to obtain the consent or agreement of these content providers before the SQL bundles its content with Qualified Content. This obligation is set out at paragraph 2.7.1(d) of the MMCC under “Duties of Supplying Qualified Licensee”.

4.2.3.3 MDA further clarifies that:

- (a) any channel or programming content is not Qualified Content by virtue only of the incorporation of any value-added service (specified in Part II of Appendix 1) in the channel or programming content. MDA considers it reasonable to exempt the inclusion of value-added services into non-exclusive content or programming channels because the Measure is targeted at the channel or programming content, as opposed to features that are meant to enhance the viewing experience of such channel or programming content but which does not alter their underlying nature;
- (b) channel or programming content that is self-produced or commissioned that is Qualified Content will cease to be Qualified Content from the time the channel or programming content is first made available to be acquired or otherwise obtained by another pay TV retailer on any Relevant Platform in Singapore; and
- (c) where any channel or programming content that is Qualified Content is being offered by an SQL on a standalone basis as well as part of a

bundle, both the standalone offering and the bundle will have to be cross-carried.

4.2.3.4 In addition, to more clearly illustrate the scope of Qualified Content, MDA has provided three non-exhaustive examples of scenarios in the pay TV market.

4.2.3.5 For further discussion, please refer to sections 3.3.1 and 3.9 of Part III.

4.2.4 Modification of definition: “Receiving Qualified Licensees” (paragraph 2.3(e), MMCC)

4.2.4.1 The definition of RQL has been refined to refer to any Regulated Person who has been designated by MDA as RQL under the Measure. The criteria for designation of RQLs are set out in paragraph 2.7.2 of the MMCC.

4.2.4.2 For further discussion, please refer to section 3.3.4 of Part III.

4.2.5 Insertion of definition: “Relevant Platform” (paragraph 2.3(ea), MMCC)

4.2.5.1 MDA expressly clarifies that the Measure shall only be applicable to the defined Relevant Platforms and not to all platforms at this point in time.

4.2.5.2 In this regard, the Relevant Platform refers only to the hybrid fibre-coaxial network or managed networks using Asymmetric Digital Subscriber Line technology or over optical fibre.

4.2.5.3 For further discussion, please refer to section 3.5 of Part III.

4.2.6 Modification of definition: “Supplying Qualified Licensees” (paragraph 2.3(f), MMCC)

4.2.6.1 MDA has proposed amendments to the definition of “Supplying Qualified Licensee” to clarify that only Subscription Television Service licensees (both niche and nationwide) may be classified as SQLs, and that free-to-air broadcast licensees will not be deemed SQLs under the Measure.

4.2.6.2 For further discussion, please refer to section 3.3.3 of Part III.

4.2.7 Duties of Supplying Qualified Licensee (paragraph 2.7.1, MMCC)

4.2.7.1 **Paragraph 2.7.1(a):** The implementation of the Measure has been set on 30 June 2011. From and including 30 June 2011, an SQL must make available all

its Qualified Content for transmission and reception on every RQL's Relevant Platform.

- 4.2.7.2 **Paragraph 2.7.1(b):** To safeguard against any circumvention of the Measure, MDA has proposed to require any SQL which has acquired Qualified Content to: (a) obtain the rights (either exclusive or otherwise) to broadcast all the Qualified Content on every RQL's Relevant Platforms; and (b) ensure that it can broadcast all its Qualified Content without violating or infringing any IPR owned by the persons from whom it acquired the Qualified Content. For further discussion, please refer to section 3.5 of Part III.
- 4.2.7.3 **Paragraph 2.7.1(c)(i)(A):** MDA appreciates the concerns voiced over the ability of the RQLs to carry all Qualified Content "in its entirety and without any alteration". MDA has clarified that its policy intention for the Measure is to ensure that subscribers are treated in a non-discriminatory manner where their viewing experience is not in any way affected regardless of whether the Qualified Content is viewed over an SQL's network or through an RQL's network. To better reflect this policy objective, MDA proposes to modify the language in paragraph 2.7.1(c)(i) (as well as paragraph 2.7.2A(c)(i)) to require SQLs (and RQLs) to carry all Qualified Content "in its entirety and in an unmodified and unedited form". For further discussion, please refer to section 3.10 of Part III.
- 4.2.7.4 **Paragraph 2.7.1(d):** As mentioned earlier, MDA requires an SQL to respect IPR and obtain the consent or agreement of all affected content providers before the SQL bundles its content with Qualified Content (whether such content is self-produced or commissioned, acquired or otherwise obtained).
- 4.2.7.5 **Paragraph 2.7.1(e)(i):** MDA proposes that an SQL notifies MDA of its Qualified Content within 5 working days after a channel or programming content, or bundled channel or bundled programming content becomes Qualified Content. For further discussion, please refer to section 3.10 of Part III.
- 4.2.7.6 **Paragraph 2.7.1(e)(ii):** This part of the MMCC sets out the minimal standards (in terms of timeframe) which SQLs have to comply with in preparing the Qualified Content for cross-carriage. MDA acknowledges that more time may be required during the initial setup for cross-carriage. Therefore, the timeframe prescribed in cases where the RQL is receiving the Qualified Content for the first time from the SQL (60 working days) is longer than in cases where there is already a pre-existing cross-carriage arrangement with the RQL (21 working days). SQLs and RQLs are free to commercially negotiate for SLAs that will better serve their operational needs as well as consumer

needs, subject to compliance to these minimal standards. For further discussion, please refer to section 3.10 of Part III.

4.2.7.7 **Paragraphs 2.7.1(f) and 2.7.1(g):** To ensure that consumers have access to adequate information on Qualified Content, an SQL must:

- (a) publish and maintain a list of its Qualified Content on its website and viewing guide; and
- (b) allow RQLs to publish on their websites and viewing guides a list of its Qualified Content that is available on each of the RQL's Relevant Platforms; and where necessary, the SQL must negotiate with the person(s) from whom the Qualified Content was acquired or otherwise obtained, to allow for such rights to be granted to the RQLs.

For further discussion, please refer to section 3.4.3 of Part III.

4.2.7.8 **Paragraph 2.7.1(h)(i):** Please refer to section 3.8 of Part III where MDA reiterates the importance of an SQL providing cross-carriage of the Qualified Content to Subscribers on all Relevant Platforms of the RQLs at prices, terms and conditions that are the same as prices, terms and conditions at which the SQL provides such content to Subscribers on its own platform.

4.2.7.9 **Paragraph 2.7.1(h)(ii):** An SQL has to activate the cross-carriage of the requested Qualified Content within 5 working days of receipt of a Subscriber's request. This also reflects MDA's policy decision to set out the minimal standards required in terms of service standards. Parties have the flexibility to work out more suitable arrangements so long as consumers are not worse off. For further discussion, please refer to section 3.10 of Part III.

4.2.7.10 **Paragraph 2.7.1(h)(iii):** In respect of any feedback or complaint received from a Subscriber relating to Qualified Content, the SQL shall be required to take immediate steps to identify and resolve the problem. In this regard, MDA proposes for an SQL to (a) take no more than 24 hours to acknowledge Subscriber's feedback or complaints with respect to the Qualified Content; and (b) take all reasonable steps to resolve the problem as soon as possible, where the problem lies with the SQL's platform. SQL must (a) not take more than an additional 12 hours (i.e. a total of 36 hours) to acknowledge the feedback or complaint; and (b) take all reasonable steps to monitor the progress of the RQL and ensure that the RQL resolves the problem as soon as possible, if the problem lies with the RQL's platform. For further discussion, please refer to section 3.10 of Part III.

4.2.7.11 **Paragraph 2.7.1(j):** In order to ensure that MDA, RQLs and Subscribers are adequately informed, this paragraph imposes an obligation on an SQL to notify all parties no less than 21 working days before the Qualified Content ceases to be Qualified Content. For further discussion, please refer to section 3.10 of Part III.

4.2.8 Designation of Receiving Qualified Licensee (paragraph 2.7.2, MMCC)

4.2.8.1 In order to address a potential free-rider problem, MDA will only consider designating as an RQL, a Regulated Person who:

(a) is licensed to provide nationwide Subscription Television Service on any Relevant Platform; and

(b) has a minimum of 10,000 Subscribers on any one of its Relevant Platforms.

Please refer to section 3.3.4 of Part III for further discussion.

4.2.9 Duties of Receiving Qualified Licensees (paragraph 2.7.2A, MMCC)

4.2.9.1 Paragraph 2.7.2A sets out the reciprocal duties and obligations of RQLs in order to effectively implement the Measure.

4.2.9.2 **Paragraph 2.7.2A(a):** An RQL must, from and including 30 June 2011, carry all Qualified Content made available by Supplying Qualified Licensees on all Relevant Platforms of its nationwide Subscription Television Service, regardless of the number of Subscribers on the Relevant Platforms.

4.2.9.3 **Paragraph 2.7.2A(b):** MDA will require RQLs to ensure that they do not, in receiving and transmitting Qualified Content of an SQL, violate or infringe any IPR. Please refer to section 3.3.4 of Part III for further discussion.

4.2.9.4 **Paragraph 2.7.2A(c)(i)(A):** The amendments made to paragraph 2.7.2A(c)(i)(A) mirror the changes made to paragraph 2.7.1(c)(i)(A).

4.2.9.5 **Paragraph 2.7.2A(d):** To ensure that the IPR of Qualified content are reasonably safeguarded, an RQL must ensure that it has a content protection system for each of its Relevant Platforms that covers the matters specified in Part III of Appendix 1 which will reasonably prevent the security of all Qualified Content made available to it by any SQL from being compromised.

4.2.9.6 **Paragraph 2.7.2A(e):** The amendments made to paragraph 2.7.2A(e) mirror the changes made to paragraph 2.7.1(g).

- 4.2.9.7 **Paragraph 2.7.2A(f):** Notwithstanding the fact that the customer relationship is between the SQL and Subscribers, MDA recognises that over and above the obligations placed upon the SQL, there is a corresponding necessity for the RQL to bear a reciprocal obligation to facilitate and coordinate with the SQL to achieve activation of the cross-carriage of the requested Qualified Content within 5 working days of receipt of the Subscriber’s request. For further discussion, please refer to section 3.10 of Part III.
- 4.2.9.8 **Paragraph 2.7.2A(g):** In view of the obligations placed upon the SQL pursuant to paragraph 2.7.1(h)(iii), there shall be a corresponding obligation on the RQL – where it is determined that the problem lies with the RQL’s platform – for the RQL to take immediate steps to identify the cause of the problem and resolve the same, and, to confirm with the SQL that the RQL is dealing with the problem within 12 hours of the SQL’s initial notification. In addition, the RQL must take all reasonable steps to resolve the problem as soon as possible. For further discussion, please refer to section 3.10.14 of Part III.
- 4.2.9.9 **Paragraph 2.7.2A(i):** MDA has agreed to remove the obligation for RQLs to notify SQLs in the event of a service termination by a Subscriber. However, to protect consumer interests and to maximise Subscribers’ convenience, MDA proposes in paragraph 2.7.2A(i) certain procedures which an RQL must minimally adhere to in the event of service termination by any of its Subscribers. For further discussion, please refer to section 3.10.12 of Part III.
- 4.2.10 Agreements for Cross-Carriage of Content and Conciliation/Dispute Resolution (paragraph 2.7.3, MMCC)**
- 4.2.10.1 MDA will leave industry players to commercially negotiate and work out the most appropriate arrangements based on their respective business interests and the needs of their customers.
- 4.2.10.2 If parties are unable to resolve their differences, they may jointly request MDA to provide conciliation services under paragraph 10.4 of the MMCC. Alternatively, either the SQL or the RQL may request MDA to initiate a dispute resolution under paragraph 10.5 of the MMCC.
- 4.2.10.3 In instances where MDA intervenes for dispute resolution on cross-carriage fees, MDA has clarified that it will determine incremental costs borne by SQLs under paragraph 2.7.1(i)(ii) of the MMCC based on the DAIC methodology for SQLs that are also RQLs and the LRIC methodology for SQLs that are not RQLs. MDA will determine the DAIC and LRIC based on “the most cost-efficient” system. Further details are set out in Appendix 4 of the MMCC.

4.2.10.4 For further discussion, please refer to section 3.7 of Part III.

4.2.11 Applications for Exemption from Obligation under Paragraph 2.7 (paragraph 2.7.4, MMCC)

4.2.11.1 MDA contemplates that Regulated Persons may seek exemption from one or more particular aspects of the Measure. To this end, MDA has expressly set out under paragraph 2.7.4 the criteria and procedures to seek exemption from an obligation imposed under paragraph 2.7 of the MMCC.

4.2.11.2 For the avoidance of doubt, MDA has reiterated that it is only minded to grant exemptions from the Measure under exceptional circumstances. To be exempted from the Measure, the Regulated Person must clearly establish that such an exemption will benefit the public and media industry (for example, demonstrate how an exemption will enhance consumer welfare or promote innovation). Alternatively, it must demonstrate there are technical constraints that prevent or restrict a party from fulfilling its obligation and it is not possible to remove such constraint without it incurring serious and irreparable harm. MDA may also grant exemption if the SQL can demonstrate that the channel or content provider does not have the relevant broadcast rights for Singapore and other neighbouring countries.

4.2.11.3 The exemption is without prejudice to the generality of paragraph 1.8.1 of the MMCC with regard to the granting of any exemption by MDA from any particular obligation imposed on a Regulated Person under paragraph 2.7 of the MMCC, including the granting of an exemption for a period of time from the obligation to make available Qualified Content for transmission and reception, or to carry Qualified Content made available, as the case may be.

4.2.11.4 For further discussion, please refer to section 3.11 of Part III.

4.2.12 Information Gathering Procedures (paragraph 10.7, MMCC)

4.2.12.1 As further elaborated at section 3.3.1 of Part III, MDA has determined that its requirement for a statutory declaration from a key appointment holder of the pay TV retailer represents a fair and appropriate balance between deterring collusive behaviour in the market, whilst not imposing an unnecessarily burdensome regime that might disincentivise content providers from dealing with local pay TV retailers.

4.2.12.2 To empower MDA to obtain the necessary statutory declaration, MDA has proposed an addition to paragraph 10.7 of the MMCC (Information Gathering Procedures).

PART V: REQUEST FOR COMMENTS

- 5.1 MDA invites the submission of written comments regarding the proposed revisions to the MMCC in the following format:
- a. Cover page (including the information specified in paragraph 5.4 of this Explanatory Note);
 - b. Table of contents;
 - c. Summary of major points;
 - d. Statement of interest;
 - e. Comments; and
 - f. Conclusion.
- 5.2 Supporting material may be placed in an annex. All comments should be clearly and concisely written, and should provide a reasoned explanation for any proposed revision to the revised MMCC. Parties must identify the specific provision of the revised MMCC on which they are commenting. In any case where a party chooses to suggest revisions to the text of the revised MMCC, the party should state clearly the specific changes to the text that they are proposing and the ramifications for all other parts of the MMCC. Parties are also welcome to submit their views on the applicability of the “mandated open platform access” approach in the Singapore context and as a complement to the Measure.
- 5.3 MDA strongly discourages parties from repeating arguments that have previously been made, and rejected, whether by MDA or the Minister for Information, Communications and the Arts. MDA reserves the right to disregard any repeated arguments or comments and any response that does not relate to the specific changes proposed in this round of consultation.
- 5.4 All comments should be **made on or before 5pm, 19 April 2011**. All comments must be submitted in softcopy (in Microsoft Word format compatible with Microsoft Office Version 2003). Parties submitting comments should include their personal or company particulars, and their correspondence address, contact numbers and email addresses on the cover page of their comments. All comments should be addressed to:

Ms Eileen Ang
Head (Competition and Market Access)
Media Development Authority of Singapore
(Attention: Ms Ruth Wong)
Email: ruth_wong@mda.gov.sg

- 5.5 MDA reserves the right to make public all or parts of any written comment and to disclose the identity of the source. Commenting parties may request confidential treatment for any part of the comment that the commenting party believes to be proprietary, confidential or commercially sensitive. Any such information should be clearly marked and placed in a separate annex. If MDA grants the request for confidential treatment, it will consider, but it will not publicly disclose, the information. If MDA rejects the request for confidential treatment, it will return the information to the commenting party and will not consider the information as part of its review. As far as possible, commenting parties should limit any request for confidential treatment of information submitted. MDA will not accept any comment that requests for confidential treatment of all or a substantial part of the comment.
- 5.6 MDA will review all written comments received. Based on the written comments and other relevant considerations, MDA may make appropriate modifications to the revised MMCC.

ANNEX: Glossary of Key Terms Used in Document

- 1 Basic Function** “Basic Function” refers to any supporting function to the provision of any linear or non-linear content format as specified in Appendix 1 of the MMCC.
- 2 Managed Network** A network that is closed and managed by an operator to provide guaranteed performance in delivering services, such as multimedia content and applications, to consumers.
- 3 Programme** In relation to a broadcasting service, means —

 - (a) any matter the primary purpose of which is to entertain, educate or inform all or part of the public; or
 - (b) any advertising or sponsorship matter, whether or not of a commercial kind,

but does not include any matter that is wholly related to or connected with any private communication, that is to say —

 - (i) any communication between 2 or more persons that is of a private or domestic nature;
 - (ii) any internal communication of a business, Government agency or other organisation for the purpose of the operation of the business, agency or organisation; and
 - (iii) communications in such other circumstances as may be prescribed

4 Qualified Content (QC)

“Qualified Content” means:

(i) any channel or programming content (whether in a linear or non-linear format), including any basic function in support of such channel or programming content that is specified in Part I of Appendix 1, where such channel or programming content is:

(A) subject to sub-paragraph (ii), produced or commissioned by a Regulated Person and where, on or after 30th June 2011 the Regulated Person transmits the same on its Subscription Television Service in Singapore and refuses to allow the channel or programming content to be acquired or otherwise obtained from it for transmission on any other Relevant Platform in Singapore by:

(I) any other Regulated Person; or

(II) where the Regulated Person that produced or commissioned the channel or programming content belongs to a Group, any other Regulated Person outside the Group; or

(B) acquired or otherwise obtained on or after the Effective Date by a Regulated Person for transmission on its Subscription Television Service 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 other Relevant Platform in Singapore by:

(I) any other Regulated Person; or

(II) where the Regulated Person that acquired or otherwise obtained the channel or programming content belongs to a

Group, any other Regulated Person outside the Group; and any bundled channels or bundled programming content comprising, in whole or in part, any channel or programming content that is referred to in sub-paragraph (i) of this definition.

For the avoidance of doubt, any channel or programming content is not Qualified Content by virtue only of the incorporation of any value added service that is specified in Part II of Appendix 1 in the channel or programming content.

For the purposes of sub-paragraph (i)(B) of this definition, for the avoidance of doubt, whilst any channel or programming content that is acquired or otherwise obtained is not Qualified Content if it was acquired or otherwise obtained under or pursuant to an arrangement referred to in that sub-paragraph before the Effective Date, it is Qualified Content if and from the time such arrangement is extended, renewed, or otherwise re-contracted for on or after the Effective Date.

5 Receiving Qualified Licensees (RQL) “Receiving Qualified Licensee” means any Regulated Person who is designated by the MDA as a Receiving Qualified Licensee.

6 Regulated Person “Regulated Person” means —
(a) such person —

(i) who is the proprietor of any newspaper as defined in section 2 of the Newspaper and Printing Presses Act (Cap. 206); or

(ii) who holds any broadcasting licence granted under the Broadcasting Act (Cap. 28), whether before, on or after 1st January 2003; or

(b) in the case of section 23, such newspaper company as defined in section 2 of the Newspaper and Printing Presses Act,

as the Minister may, by notification in the *Gazette*, specify

7 Relevant Platforms

“Relevant Platform” means:

(i) a hybrid fibre-coaxial network;

(ii) a managed network using Asymmetric Digital Subscriber Line technology; or

(iii) a managed network over optical fibre- (also known as Next Generation Nationwide Broadband Network, “NGNBN”).

8 Supplying Qualified Licensees (SQL)

“Supplying Qualified Licensee” means any Regulated Person who:

(i) is licensed to provide any Subscription Television Service; and

(ii) produces or commissions, or acquires or otherwise obtains, Qualified Content.

- 9 Value-Added Services (VAS)** “Value-added Services” means any service which has the objective of enhancing the viewing experience of a channel or programming content but which does not alter the underlying nature of the channel or programming content ,specified in Appendix 1 of the MMCC.
- 10 Video-On-Demand (VOD)** A service where particular programmes are transmitted on a telecommunication system in response to the particular requests of subscribers and at particular times decided by the subscribers, and where such requests are transmitted over a telecommunication system to the provider of the VOD service.