CLOSING NOTE ISSUED BY
MEDIA DEVELOPMENT AUTHORITY OF SINGAPORE

AMENDMENTS TO THE CODE OF PRACTICE FOR MARKET CONDUCT IN THE PROVISION OF MEDIA SERVICES 2010: IMPLEMENTATION OF THE CROSS-CARRIAGE MEASURE

ISSUED ON: 1 July 2011

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CODE OF PRACTICE FOR MARKET CONDUCT IN THE PROVISION OF MEDIA SERVICES

Issued on: 1 July 2011

1.1 In exercise of the powers conferred by section 17(3) of the Media Development Authority of Singapore Act ("**MDA Act**"), the Media Development Authority of Singapore ("**MDA**") varies the Code of Practice for Market Conduct in the Provision of Media Services 2010 (also known as the Media Market Conduct Code 2010, "**MMCC 2010**") with effect from 2 July 2011.

1.2 This document provides MDA's responses to the comments received on the proposed refinements to the MMCC 2010 to facilitate implementation of the cross-carriage measure ("**Measure**") introduced on 12 March 2010.

PART I: EXECUTIVE SUMMARY

1.3 At the close of the Third Consultation on the Measure, which was conducted from 23 March 2011 to 19 April 2011, MDA received submissions from 10 respondents, representing the interests of different stakeholders in the pay TV industry.

1.4 The 10 responses presented a diverse range of views on the proposed amendments to the MMCC 2010 regarding the Measure and its implementation details.

1.5 Several respondents expressed their views on the scope of the Measure, including whether Temasek-linked companies will constitute "Group" entities and whether Internet TV and mobile TV are excluded from the definition of "Relevant Platform".

1.6 Respondents also sought broad-ranging clarifications on the definition and scope of "Qualified Content". These queries included the delineation between "Basic Functions" and "Value-added Services" – concepts that were introduced into the definition of "Qualified Content" pursuant to the Second Consultation; while several respondents renewed calls for MDA to reconsider its position that self-produced or self-commissioned content (such as locally-produced content) is to be included in the scope of Qualified Content.

1.7 One of the issues which attracted significant comments related to the inclusion of implicit agreements which prevent or restrict, or are "likely to prevent or restrict", another Regulated Person from acquiring the channel or programming content for transmission. Opposing views were received in this respect. Aside from responses strongly supporting MDA's objective to prevent tacit practices aimed at circumventing the Measure, other respondents felt that the phrases "implicit" and "likely to" were too subjective and, therefore, would increase business risks and commercial uncertainty to industry. Accordingly, these respondents sought greater clarity over MDA's assessment criteria in applying the new concept. Otherwise, the new concept should be removed from the definition of Qualified Content. Other areas which respondents commented upon include the definition of "Regulated Person"; bundled channels or programming content; and the application of the Measure to Video-on-Demand ("**VOD**") and interactive content.

1.8 Respondents also provided valuable feedback on the definitions, designation and duties of Supplying Qualified Licensees ("**SQLs**") and Receiving Qualified Licensees ("**RQLs**"). These comments focused on issues such as platform rights acquisition; the billing relationship; the requirement to seek a content provider's consent before SQL bundles content; the publication of cross-carried Qualified Content on websites and viewing guides; the requirement to ensure non-violation or non-infringement of intellectual property rights ("**IPRs**"); content protection, preparation and activation timeframes; fault/complaint resolution timeframes; and the termination of end-user contracts. One respondent also commented on the definition of "subscription fee".

1.9 Further, MDA received comments relating to agreements for cross-carriage and dispute resolution, particularly the determination of cross-carriage fees.

1.10 Relating to the possibility of exemptions from the Measure, MDA once again received queries seeking further clarity on the factors that MDA will take into consideration when considering an exemption request.

1.11 The suggestion to introduce a whistle-blowing scheme was also raised for MDA's consideration.

1.12 Finally, several respondents expressed mixed reactions to the "mandated open platform access" approach, which MDA was considering as a complement to the Measure. One respondent considered that such an approach would allow MDA to meet the Minister for Information, Communications and the Arts' conditions (set out in the January 2011 decisions to the appeals against the Measure), i.e., no mandatory unbundling and compliance with Singapore's international commitments to IPR-protection; while another respondent submitted that the value of

"mandated open platform access" in the pay TV market would diminish once the Next Generation Interactive Multimedia Applications and Services ("**NIMS**") project is successfully implemented. The respondent felt that the "mandated open platform access" should only be implemented to complement the NIMS project, and not the Measure.

1.13 Part III of this Closing Note sets out a summary of the comments received from the Third Consultation and MDA's response thereto.

1.14 Part IV of this Closing Note sets out a summary of the amendments to the MMCC 2010.

1.15 MDA has consulted extensively since the Measure was introduced on 12 March 2010, and has carefully considered stakeholders' feedback in refining the MMCC 2010 amendments to implement the Measure.

1.16 Going forward, MDA will continue to take steps to ensure that its regulatory framework reflects changing market conditions in the provision of media services, in order to bring about a more vibrant pay TV market, to the benefit of consumers and the industry.

PART II: INTRODUCTION

2.1 With the introduction of competition in the pay TV market, 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 from other aspects of competition, such as service and content innovation. MDA was concerned that competition in the market had failed to deliver the full benefits that are generally associated with a competitive market and that market forces are 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.

2.2 On 12 March 2010 ("**Effective Date**"), MDA introduced the Measure which imposes an obligation on pay TV retailers ("**Supplying Qualified Licensees**" or "**SQLs**") to widen the distribution of their channels or programming content which are Qualified Content, by offering such content for access by SQL's subscribers over the Relevant Platforms of specific pay TV retailers who 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 MMCC 2010 on the same date, to prevent any industry participant from negating the effectiveness of the Measure and thereby frustrating MDA's policy objectives.

2.3 Since the Effective Date, MDA has conducted three separate consultations from March 2010 to April 2011. MDA has received a substantial number of submissions in each round. Respondents, including existing and potential pay TV retailers, content providers, industry associations and a consumer interest group contributed enthusiastically, providing valuable feedback to MDA while it fine-tunes the Measure.

2.4 MDA expresses its appreciation to all parties who have contributed to the consultation process. Based on the feedback received over the three rounds of consultations and in-depth reviews by MDA, MDA sets out herein the final implementation details of the Measure by way of revisions to the MMCC 2010 gazetted today, 1 July 2011.

2.5 The Measure will be implemented from 1 August 2011, whereby every SQL and RQL must comply with MDA's requirement to cross-carry Qualified Content with effect from this date.

PART III: SUMMARY OF COMMENTS RECEIVED FROM THE THIRD CONSULTATION AND MDA'S RESPONSE

3.1 Overview

3.1.1 This section provides a summary of the comments received on MDA's proposed amendments to the MMCC 2010, as well as MDA's response and final decision, where applicable.

3.1.2 While a substantive portion of the comments received focused on the proposed amendments to the MMCC 2010 in order to implement the Measure, concerns were still raised over the Measure's compatibility with IPR rules. Given that MDA has substantially responded to this issue in the past consultation papers (specifically, the First Consultation and Second Consultation) and given that no new arguments were raised by the respondents, MDA's previous response remains unchanged. MDA reassures the industry that the Measure does not curtail the IPRs of the content providers and will not impose any compulsory licensing or forced unbundling of packaged channels or programming content. The Measure is therefore fully consistent with Singapore's international obligations.

3.1.3 Some respondents had also raised issues which were not directly related to this present review of the MMCC 2010 under consultation. Nonetheless, MDA will endeavour to broadly address these issues in this Closing Note, where appropriate.

3.1.4 In terms of the comments received on the proposed amendments to the MMCC 2010, besides expressing general support, many thoughtful comments were raised by the respondents with the view to further fine-tune the provisions and provide for a smooth implementation of the Measure.

3.2 List of Respondents

3.2.1 At the close of the Third Consultation, MDA received submissions from 10 respondents, namely:

1) Cable and Satellite Broadcasting Association of Asia ("**CASBAA**");
2) Consumers Association of Singapore ("**CASE**");
3) Home Box Office (Singapore) Pte Ltd ("**HBO**");
4) M1 Limited;
5) MediaCorp Pte Ltd;
6) Motion Picture Association ("**MPA**");
7) NBC Universal;

8) News Corporation;
9) SingNet Pte Ltd ("**mio TV**"); and
10) StarHub Cable Vision Limited ("**SCV**").

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

3.3 Comments on Proposed Amendments to the MMCC 2010

3.3.1 Insertion of definition: "Group" (paragraph 2.3(ba), MMCC 2010)

3.3.1.1 A definition of the term "Group" has been inserted to refer to a group of two or more persons where one person has Control over the other person or persons in the group. This new definition aims to prevent a potential manner of circumventing the Measure, whereby a Regulated Person uses the pretext that the channel or programming content is being broadcast by another Regulated Person(s) (and is therefore not Qualified Content) when in reality, the said channel or programming content is simply being broadcast by an affiliated entity within its Group structure.

3.3.1.2 A respondent sought MDA's clarification as to whether all subsidiaries and affiliates (including SingTel and StarHub) under the Temasek Holdings (Pte) Ltd would be considered part of the same Group under the proposed definition.

MDA's Response

3.3.1.3 MDA clarifies that its key consideration is whether the parties in a given Group have any decisive influence over each other with respect to the acquisition of Qualified Content such that other pay TV retailers outside the Group are prevented or restricted from acquiring the same for transmission on any Relevant Platform in Singapore. The definition of Group needs to be read in that context.

3.3.2 Modification of definition: "Qualified Content" (paragraph 2.3(d), MMCC 2010)

3.3.2.1 Under the proposed revision to the definition of "Qualified Content", the scope of Qualified Content includes (i) Basic Functions (set out in Part I of Appendix 1) in support of Qualifying Content; (ii) self-produced or commissioned content by a Regulated Person which is being transmitted on its Subscription Television Service in Singapore, and which is not allowed to be transmitted on any Relevant Platform in Singapore by another Regulated Person or by another Regulated Person outside the

Group; and (iii) 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.

Definition of Basic Function

3.3.2.2 A respondent considered that "subtitling" should be classified as either a Basic Function or a Value-Added Service, but not both. It therefore sought clarification as to which category "subtitling" should fall under.

3.3.2.3 There was also feedback that it is impractical to require the provision of "multiple languages" as a Basic Function given that the content source may not have multiple languages features. There may also be situations whereby the RQL may not have the network capacity to accommodate the multiple languages features. As such, the respondent suggested removing "multiple languages" from Basic Functions to avoid confusion and unnecessary costs to the operators and consumers.

MDA's Response

3.3.2.4 MDA considers that there is no contradiction for "subtitling" to be classified as a Basic Function as well as a Value-Added Service. The key determinant is whether the underlying programming content is Qualified Content. Where the "subtitling" forms part of a Qualified Content, it will fall under Basic Functions. However, where the underlying programming content is not Qualified Content, any "subtitling" that the pay TV retailer packages with such programming content to enhance the viewing experience, but which does not alter the underlying nature of the programming content, will be considered a Value-Added Service.

3.3.2.5 As for classifying "multiple languages" as part of Basic Functions, where the content source does not include a multiple languages feature, MDA will not require the SQLs to provide such a feature as part of their Qualified Content. In circumstances where the RQL is unable to fulfil its obligations under the MMCC 2010, such as when it is faced with network capacity constraint, MDA may consider an exemption application from the RQL if it falls within the circumstances stipulated in paragraph 2.7.4 of the MMCC 2010.

Self-produced or Self-commissioned Content by a Regulated Person

3.3.2.6 Several respondents commented that self-produced or self-commissioned content should not be included in the definition of Qualified Content (or in the alternative, should be considered as a Value-

added Service). They commented that excluding such content from the Measure is necessary to encourage innovation within the industry given that pay TV retailers see this content as a means of competitive differentiation. In fact, a respondent submitted that local content helps to achieve a competitive differentiation in what would be an otherwise largely homogenous environment. By subjecting self-produced or self-commissioned content to the Measure, it will remove pay TV retailers' incentives to promote such content. The expected outcome is contrary to MDA's efforts towards service and content innovation.

3.3.2.7 A respondent further submitted that the pay TV retailers generally prefer proven foreign content over new untested locally produced content. A pay TV retailer will only commission or acquire an untested and untried locally produced programme if there is a good chance of spotting an eventual hit programme that is exclusive to its platform. By removing the exclusive protection for locally produced content, pay TV operators may further gravitate towards acquiring proven foreign content as there is no longer any compensation for taking the original risk and costs of placing the new and untested programme or channel on a crowded programme grid or channel line up before the interest of subscribers has been demonstrated. Even where they keep the self-produced content exclusive, they would have to bear the cross-carriage costs, which would erode their profit margins. Pay TV retailers may instead adopt a passive approach towards such programming content and provide access to those that have proven to be hits with audiences without having to bear the associated developmental costs. The respondent opined that the Singapore local content production industry is too fragile to support a "push" model where the content producers are the main driving force behind the distribution of new and untested content.

3.3.2.8 There was also a request for MDA to clarify the principles it will follow to determine what constitutes a "refusal to allow" by an SQL in relation to a piece of self-produced or self-commissioned channel or programming content such that MDA would classify it as Qualified Content.

MDA's Response

3.3.2.9 MDA would like to clarify that self-produced or self-commissioned content will not be automatically deemed as Qualified Content and subject to the Measure. Such content will only become Qualified Content when there is refusal to make the content available for acquisition by other Regulated Persons on any Relevant Platform. For example, where there are contractual terms that prevent the sale of the content to a third party, or when approached to sell, the content owner refuses to do so, or the content owner quotes a price far beyond reasonable market consideration.

3.3.2.10 Similarly, if there is intention to make the self-produced or self-commissioned content available for acquisition by other Regulated Persons on any Relevant Platform but there is no buyer of the content, such content will not become Qualified Content by default.

3.3.2.11 While MDA appreciates that the traditional model for investing in self-produced or self-commissioned content is on an exclusive basis, it is important to note that the Measure does not hinder pay TV retailers from continuing to invest in or produce their own content. The Measure offers a pay TV retailer the opportunity to leverage on another retailer's platform to widen the distribution of its self-produced or self-commissioned channels and programming content. This provides the pay TV retailer the opportunity to reach out to a broader subscriber base, thereby increasing its revenue. There is also nothing to stop the pay TV retailer from monetising its content at a fair market price should it be approached by other pay TV retailers, who wish to acquire its content. As such, MDA believes that the Measure can similarly encourage the growth of a vibrant local production and media industry.

3.3.2.12 In any event, pay TV retailers may consider seeking an exemption from the Measure if they can demonstrate, for example, that the creation of a particular piece of content would not or could not take place as a result of the Measure.

Explicit and Implicit Arrangements which will or is likely to prevent or restrict the acquisition of the Qualified Content

3.3.2.13 Opposing views were received from the respondents with respect to the inclusion of the concept of implicit agreements which prevent or restrict, or are likely to prevent or restrict another Regulated Person from acquiring the channel or programming content for transmission on any Relevant Platform. On the one hand, there was support expressed for MDA to capture situations whereby pay TV retailers may engage in tacit practices that restrict or may restrict other competitors from acquiring the content. In fact, a respondent raised the possibility of specifying that where a pay TV retailer agrees with content providers to acquire exclusive rights on other platforms (that is not a Relevant Platform) and non-exclusive rights on a Relevant Platform and a premium is paid for these rights, all channels and programming content acquired under such an arrangement should be classified as Qualified Content. There was also a suggestion for MDA to maintain a residual right to classify channels or programming content as Qualified Content, where they fall within the relevant definition.

3.3.2.14 On the other hand, concerns were also received over the potential ambiguity created by the revision to the definition of Qualified Content. In particular, it was felt that the phrases "implicit" and "likely to" were

subjective and open to wide interpretation. There were calls for greater clarity over the basis or criteria under which MDA will assess and determine whether there is the existence of implicit agreement and whether an agreement is "likely to" prevent or restrict another Regulated Person from acquiring the channel or programming content for transmission on any Relevant Platform.

3.3.2.15 There was the added concern that under the revised definition of Qualified Content, the Measure can be triggered at any point in time when MDA deems that the content is "likely to" be regarded as Qualified Content. Such uncertainty exposes the pay TV retailers and the content providers to considerable business risk and creates negotiating uncertainty, which translates into more difficulty to bring content to the market. In addition, a piece of non-exclusive content, which is acquired in good faith and which is bundled with other non-exclusive content, runs the risk of being turned into Qualified Content upon MDA's decision, and as such potentially making the full bundle subject to cross-carriage.

3.3.2.16 A respondent highlighted that there is the risk that a content provider may not be compensated for the expanded viewership under the Measure if the content was "deemed" by MDA to be Qualified Content subsequent to the completion of the contract. It is possible that the negotiated compensation arrangements would not provide appropriate remuneration to the content provider for the expanded distribution of his content, which he will not have knowingly authorised. The respondent therefore suggested that in the event that MDA "deems" a channel or programming content to be Qualified Content, it will not require cross-carriage unless the content provider confirms that it is receiving satisfactory negotiated compensation for the wider-than-anticipated distribution of its works.

3.3.2.17 Another respondent was concerned that the revised definition of Qualified Content together with the ability for MDA to take any interim measure during its investigations was disproportionate and would give rise to extensive ex post facto determination by MDA. The respondent suggested a more measured approach to be taken instead, as well as requiring MDA to demonstrate an agreement *actually* has the required effect before intervening. Another respondent suggested that the references to "implicit" arrangements and "likely to" should either be clarified or removed from the definition of Qualified Content.

MDA's Response

3.3.2.18 MDA's purpose of including the concept of "implicit" arrangements is to apply the Measure to informal arrangements 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. The inclusion of "implicit" arrangement into the definition of Qualified Content is essential to ensure that the Measure achieves its policy objectives, and is not circumvented by any arrangements that are designed to fetter or otherwise constrain the ability of another pay TV retailer from accessing a channel or programming content. In fact, respondents to the Second Consultation had voiced concerns over such a possibility and this refinement to the definition of Qualified Content is meant to address the concerns raised.

3.3.2.19 The concept of "implicit" arrangement is well established under competition law and should not be foreign to the industry. For example, under the Competition Commission of Singapore's Guidelines on the Section 34 Prohibition, it is stated that:

"Agreement has a wide meaning and includes both legally enforceable and non-enforceable agreements, whether written or oral; it includes so-called gentlemen's agreements. An agreement may be reached via a physical meeting of the parties or through an exchange of letters or telephone calls or any other means. All that is required is that parties arrive at a consensus on the actions each party will, or will not, take."[1]

3.3.2.20 In assessing whether an arrangement 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, MDA will assess any arrangement or agreement in its legal and commercial context. Amongst the factors that MDA will consider, it will examine the effects of the arrangement or agreement in its entirety including the parties' objectives and the likely quantitative impact on other players in the market in entering into such an arrangement or agreement. Other factors may include commercial considerations underpinning the agreement (for example, the business relationship between the parties), and the specific circumstances in which the parties operate (for example, nature of programme and the market conditions for the particular programme genre). Based on these factors, MDA will assess whether, if such an arrangement is implemented, a third party pay TV retailer in Singapore will, in normal circumstances, be prevented or restricted from acquiring the channels or programming content.

3.3.2.21 MDA reiterates that it will thoroughly investigate all cases of alleged circumvention of the Measure, 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.

[1] Paragraph 2.10.

3.3.2.22 As for the suggestion that MDA should not require cross-carriage unless the content provider confirms that it is receiving satisfactory negotiated compensation for the wider-than-anticipated distribution of its works, MDA considers that ample notice has been given to the industry regarding the possible implementation of the Measure. As such, in negotiating their agreements, it is up to the content providers and the pay TV retailers to take into account such a potential scenario and arrive at a commercially agreeable position vis-à-vis the compensation model. Notwithstanding this, MDA will consider any reasonable request for a limited delay in the cross-carriage of specific Qualified Content, on a case by case basis, to allow parties to resolve contractual matters. Ultimately, MDA will reserve the right to require the non-compliant pay TV retailer to cease broadcast of the channel or programming content. This is to signal that MDA takes a serious view on parties attempting to circumvent the Measure.

Definition of Regulated Person

3.3.2.23 A respondent raised the possibility that any action that "restricts" an under-capitalised and inefficient Regulated Person may have no impact on a Regulated Person who is efficient and adequately capitalised. The respondent considered that the objective of the cross-carriage regime should not be to support inefficient and under-capitalised pay TV retailers. As such, it was suggested that the definition of Qualified Content should be amended to refer to "efficient Regulated Persons", rather than referring to just "Regulated Persons".

MDA's Response

3.3.2.24 As the respondent rightly pointed out, the objective of the cross-carriage regime is not to support inefficient and under-capitalised pay TV retailers but to address MDA's concerns over the developments in the pay TV market and how they are adversely affecting consumers. In assessing whether a channel or a piece of programming content will become Qualified Content, MDA will give due consideration to the circumstances under which a Regulated Person is likely or has been prevented or restricted from acquiring the channel or programming content. For example, MDA may take into account factors, such as the creditworthiness of a Regulated Person in assessing whether a Regulated Person has been restricted or prevented from acquiring the channel or programming content.

Definition of Value-Added Service

3.3.2.25 There was general support for the concept of "Value-Added Service" to allow pay TV retailers to differentiate their programming content via the

addition of services which have the objective of enhancing the consumers' viewing experience but which do not alter the underlying nature of the programming content.

3.3.2.26 However, a respondent highlighted that the Value-Added Services should similarly be subject to the test of whether the rights to these Value-Added Services would have the effect or the likely effect of foreclosing access to the underlying programming content to which they relate to. If it is, then the programming content, as well as the Value-Added Services, should be classified as Qualified Content and be subject to the Measure. However, the respondent also recognised that there might be cases, whereby even if the Value-Added Services have been acquired exclusively by a pay TV retailer, it would not have the effect of rendering the underlying programming content as Qualified Content. The respondent considered that in situations, where a pay TV retailer acquires or obtains non-exclusive rights to any Value-Added Services, and subsequently engages or procures, on an exclusive basis, the services of a third party vendor to produce the Value-Added Services, the Value-Added Services and the underlying content should not be rendered Qualified Content.

3.3.2.27 Based on the above views, the respondent proposed for MDA to amend the list of Value-Added Services set out in Part II of Appendix 1 of the MMCC 2010 as follows:

a. where a party acquires exclusive rights to dubbing, subtitling, commentaries, and pre- and post-documentaries which are not standalone programmes (items A-C in Part II of Appendix 1 to the MMCC 2010), then the content (including the Value-Added Services) may be designated Qualified Content and therefore subject to the Measure if rights to these Value-Added Services prevent or restrict the acquisition of the underlying content; and

b. for the other Value-Added Services (items D-H in Part II of Appendix 1 to the MMCC 2010) which do not materially alter the nature of the content acquired, the acquisition of these Value-Added Services should not result in the content to which they relate or the Value-Added Services being designated Qualified Content.

MDA's Response

3.3.2.28 In determining what constitutes Value-Added Services, MDA would consider whether the said service has the objective of enhancing viewing experience of a channel or programming content, but which does not alter the underlying nature of the channel or programming content. MDA agrees with the respondent that in cases where a party acquires from content rights owners exclusive rights to Value-Added Services in such a manner that prevents or restricts other pay TV

retailers on any Relevant Platform from acquiring or otherwise obtaining the underlying programming content to cater to the Singapore market, such content could be rendered as Qualified Content. For example, a pay TV retailer has an arrangement with a content provider to acquire, on a non-exclusive basis, content which is in a foreign language not understood by the general public in Singapore (e.g. Korean, Japanese). However, the arrangement allows the pay TV retailer to provide dubbing or incorporate subtitles on an exclusive basis. Such an arrangement could potentially be considered Qualified Content since no other pay TV retailer would be able to offer the content in a language that is understood by the general public in Singapore.

3.3.2.29 Conversely, if a pay TV retailer procures non-exclusive rights to a programming content and subsequently engages a third party vendor to produce Value-Added Services, the underlying programming content will not become Qualified Content.

Bundled channels or programming content

3.3.2.30 With regard to MDA's decision to require the entire bundle, package or channel to become subject to the Measure insofar as any Qualified Content is included in the bundle, one respondent argued that the requirement "inadvertently forces operators to unbundle" their services and revert to ala-carte offerings, where cost of content may become higher. The respondent therefore repeated a call for a grandfathering / exemption regime for existing content bundles.

3.3.2.31 Another respondent warned of the chilling effect that the Measure will have on the number of exclusive carriage agreements. The respondent added that concluding "non-exclusive" agreements does not equate to being "effectively available on all platforms" as there is no indication that all relevant platforms really have the desire or the commercial strategy to acquire all content.

3.3.2.32 Another respondent highlighted that the remaining non-Qualified Content within a bundle could in fact have been acquired by the RQL. By having the SQL make available the entire bundle through the RQL, the SQL will have to bear the Long Run Incremental Cost ("**LRIC**") cost of licensing and transmitting the other non-Qualified Content to the RQL with no added benefit since the RQL can offer these contents themselves. In this regard, since the bundled non-Qualified Content could be, or may already be, carried by the RQL, the respondent proposes to mandate the availability of the Qualified Content for cross-carriage but leave the SQL and RQL to discuss the commercial and operational arrangements on having the same bundle at the same price for customers on the RQL platform.

3.3.2.33 During one of MDA's dialogues with the industry, clarity was sought on how the Measure would be applied to existing bundles. Specifically, two scenarios were highlighted for discussion:

a) Where a piece of Qualified Content is added to a basic-tier bundle; and

b) Where a piece of Qualified Content is added to the "add-on bundle/channel" such that subscription to the basic-tier bundle is a pre-requisite to subscribing to the "add-on bundle/channel".

MDA's Response

3.3.2.34 MDA has carefully considered the comments received, and on balance, it has determined that it would be more beneficial to the industry and consumers as a whole that any Qualified Content contained within a bundle, package or channel will result in the entire bundle, package or channel becoming subject to the Measure on the basis that the bundle would be available to consumers in the same form and at the same price, regardless of the platform on which they are accessed.

3.3.2.35 If Qualified Content is present only in the basic-tier bundle (scenario (a) in paragraph 3.3.2.33), then only the basic-tier bundle is subject to the Measure. Should the Qualified Content be part of the "add-on bundle/channel" (scenario (b) in paragraph 3.3.2.33), then both the basic-tier and the "add-on bundle/channel" are subject to the Measure.

3.3.2.36 In taking this approach, MDA's policy intent is clear – i.e. MDA seeks to ensure that SQLs do not discriminate between subscribers on their own platforms vis-à-vis those accessing their Qualified Content via RQLs' platforms. Grandfathering and/or exemption of existing content bundles run counter to MDA's overarching policy objectives. MDA also cannot agree with the suggestion for the RQL and SQL to collectively agree on the commercial arrangements for cross-carried bundles due to anti-competitive concerns.

3.3.2.37 MDA is cognisant of efficiencies that arise from bundling and it 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. It is simply incorrect to view that the Measure "forces operators to unbundle".

3.3.2.38 At all times, MDA is fully aware that not all non-exclusive content would be "effectively available on all platforms". MDA reiterates that the decision of acquiring a particular piece of content – whether on exclusive or non-exclusive terms and the pricing of such content –

remains a commercial decision on the part of every pay TV retailer. MDA considers that, where there is sufficient demand from a retailer's subscribers, market forces will dictate whether the retailer ultimately negotiates with the content provider to carry the latter's content. Such fundamental business considerations are not hindered by nor compromised under the Measure. Ultimately, industry players are free to decide on the commercial model that they think would best serve their interests to provide consumers with greater choice, convenience and innovation, while observing the requirements of the Measure.

3.3.2.39 Contrary to claims that the Measure would have a negative impact on the pay TV market in Singapore, since the introduction of the Measure, MDA has observed the entry of new players, more innovative packaging and services, increased channel offerings and more common channels. MDA is confident that the Measure would help bring about a more vibrant pay TV market, to the benefit of consumers and industry.

Application of Measure to VOD and Interactive Content

3.3.2.40 Notwithstanding its earlier support for applying the Measure to VOD content, a retailer respondent is now seeking to postpone implementation of the Measure to VOD content till end December 2011. However, MDA notes that the respondent had provided only broad reasons including "significant costs" and "complex implementation" (e.g. time and effort required to assess the necessary systems, processes and operational modifications to support cross-carriage of VOD content).

MDA's Response

3.3.2.41 In consideration of the industry's requests for more time to institute system operation and processes, and to put in place the necessary architecture to certify the content security measures of RQLs before the Measure is implemented, MDA will extend the implementation date of the Measure from 30 June 2011 to 1 August 2011.

3.3.2.42 Additionally, in consideration of the complexities involved in the initial set-up for cross-carriage of VOD content vis-a-vis linear channels, MDA will extend the initial setup period for VOD content from 60 working days to 120 working days. For subsequent cross-carriage of such VOD content, MDA will allow a lead time of 30 working days to enable cross-carriage of such VOD content, and where the RQL needs to acquire equipment, MDA will allow a lead time of 60 working days. (Please refer to further discussion at paragraph 3.3.5.12 below.)

3.3.3 Definition of "Relevant Platform" (paragraph 2.3(ea), MMCC 2010)

3.3.3.1 One respondent sought MDA's confirmation that the definition of "*Relevant Platforms*" would exclude Internet TV (the delivery of TV content over the public Internet) and "Mobile TV" (e.g., 3G, DVB-H, MBMS). No other comments were received on the definition of Relevant Platform.

MDA's Response

3.3.3.2 MDA confirms that the current definition of "Relevant Platform" under the MMCC 2010 shall exclude delivery of pay TV content over the Internet and mobile platforms.

3.3.3.3 MDA has refined the definition of "Relevant Platform" for greater clarity. The updated definition makes it clear that MDA will capture only managed pay TV services delivered over any one or any combination of the following: (i) Hybrid Fibre Co-axial ("HFC") infrastructure; (ii) Asymmetrical Digital Subscriber Line ("ADSL")-based network; and (iii) the Next Generation Nationwide Broadband Network ("NGNBN") over optical fibre.

3.3.4 Definition of "Supplying Qualified Licensees" (paragraph 2.3(f), MMCC 2010)

3.3.4.1 A respondent repeated its earlier submission that non-nationwide subscription television licensees (i.e. niche licensees) should be excluded from the Measure. The respondent reiterated that niche licensees do not need to commit to a nationwide rollout and meet requirements in relation to providing services to the entire population and other regulatory obligations (such as advertising revenue caps). As such, these niche players should not enjoy the privilege of being able to make their content available on another party's platform.

3.3.4.2 A respondent suggested that due to its open nature, pay TV operators operating on an unmanaged network or Over-the-top ("**OTT**") service providers should not be deemed as SQL even if they were to acquire Qualified Content.

MDA's Response

3.3.4.3 Given that the first respondent has not brought out any new points in its latest representations, MDA will repeat its earlier response in the Third Consultation which had substantively and categorically addressed the respondents' contentions:

"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 Nationwide 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."

3.3.4.4 On the suggestion that pay TV retailers offering OTT services should not be deemed as SQLs, MDA clarifies that the Measure applies only to a Subscription Television Licensee who produces, commissions, acquires or otherwise obtains Qualified Content (specifically, where Regulated Persons on any Relevant Platform are (or are likely to be) prevented or restricted from acquiring the said content). *A fortiori*, the Measure will not apply if the pay TV retailer only acquires exclusive rights for broadcast over the (unmanaged) Internet such that rights to Relevant Platforms are still available for acquisition by other Regulated Persons.

3.3.5 Duties of Supplying Qualified Licensee (paragraph 2.7.1, MMCC 2010)

General observations and billing relationship

3.3.5.1 A respondent expressed that the fundamental principle of SQLs making Qualified Content available to end-users is buried within the drafting of paragraph 2.7.1(c) of the MMCC 2010 and requested that the MMCC 2010 includes a statement that SQLs are required to make Qualified Content available to all end-users at the same time and at the same quality.

3.3.5.2 With respect to the billing relationship, another respondent observed that, notwithstanding the customer relationship is between SQL and subscriber, customers invariably will contact the RQL for enquiries and customer service. The same respondent reiterated its earlier call for a single billing relationship (with the RQL, as the primary pay TV provider to the customer).

MDA's Response

3.3.5.3 Having reviewed paragraph 2.7.1(c) of the MMCC 2010, MDA is satisfied that the requirement on an SQL to make Qualified Content available to all end-users at the same time and same quality has been clearly and unequivocally set out such that no further amendments to the MMCC 2010 are warranted.

3.3.5.4 With regard to billing, MDA maintains that, for accountability, the customer relationship in respect of cross-carried content must be standardised – i.e., each SQL shall maintain a direct customer and contractual relationship with subscribers of its Qualified Content. MDA reiterates that SQLs and RQLs are free to enter into appropriate commercial arrangements to better serve consumers. In the absence of any special customer servicing arrangements between an SQL and an RQL, where an RQL is contacted by its customers in relation to content cross-carried from an SQL, the default procedure is for an RQL to re-direct the query to the SQL.

3.3.5.5 On the issue of single billing, MDA had previously carefully considered the pros and cons of adopting such an approach. It was determined that a single billing relationship will likely result in considerable complications, including customer confidentiality issues and difficulties in accounting for billing errors. This view is well supported by industry – given that a majority of responses from the Second Consultation supported not imposing a single billing requirement. As such, MDA is not changing its position. That said, nothing precludes an SQL and an RQL from voluntarily coming to a commercial agreement to offer alternative billing arrangements to better serve their subscribers.

Paragraph 2.7.1(b): Platform rights acquisition

3.3.5.6 One respondent expressed a concern that the revised drafting of paragraph 2.7.1(b) may be interpreted as not requiring an SQL to "proactively obtain" the broadcast rights on Relevant Platforms to enable cross-carriage. Rather, the respondent contends that the proposed wording implies that an SQL can take a passive approach to acquiring rights, such that it only has to acquire the rights for its own platform and not for all Relevant Platforms.

MDA's Response

3.3.5.7 MDA clarifies that the policy intent for paragraph 2.7.1(b) remains the same – any SQL which has acquired Qualified Content shall, *inter alia*, acquire or otherwise obtain the rights (whether exclusive or non-exclusive) to transmit such Qualified Content on all other Relevant

Platforms. MDA is satisfied that this regulatory intent is sufficiently and unequivocally borne out in the proposed drafting language such that no further amendments to the MMCC 2010 will be necessary.

Paragraph 2.7.1(d): Requirement to seek content provider's consent before SQL bundles content

3.3.5.8 A respondent objected to the proposed insertion requiring an SQL to seek the approval of content providers before bundling channels/content. The particular practical difficulties raised relate to: (i) how the SQL is to get "the consent or agreement of the channel or content provider"; (ii) whether it is necessary for the SQL to get the "the consent or agreement of the channel or content provider" beyond what is set out in the SQL's contract with the channel / content provider; and (iii) who would assess whether the SQL has obtained the necessary "consent or agreement of the channel or content provider". The respondent expressed strong concerns that such a requirement would give too much power to content providers with channels / content within an existing bundle, akin to a "veto right" over the SQL's packaging and branding strategies.

3.3.5.9 The respondent added that the proposed insertion may unnecessarily restrict the SQL's rights to bundling beyond what is provided for in the SQL's contract with the content providers. As a result, the respondent argued that such a clause may force operators to unbundle their services, requiring them to provide their content offerings on an ala carte basis.

MDA's Response

3.3.5.10 The policy intent of the Measure is to ensure that in implementing the Measure, the IPRs of content providers and upstream rights holders are not violated. If an SQL fails to or omits to acquire the necessary rights to allow for cross-carriage of other content in a bundle containing Qualified Content, the SQL will risk violating the IPRs of the content providers. MDA considers that the concerns raised by the respondent on the current drafting of paragraph 2.7.1(d) are valid and have revised the said paragraph to better reflect the policy intent.

Paragraph 2.7.1(e)(ii): Lead time for setting-up

3.3.5.11 Some respondents reflected that the lead time of 60 working days for the SQL and RQL to prepare their systems for cross-carriage of Qualified Content is insufficient. The timeframe may be insufficient for reasons, including physical distance (which impacts time needed for physical interconnection, nature of SQL and RQL networks (due to standards conversion), and volume of Qualified Content to be exchanged. Similarly, sufficient time is needed for a variety of activities to take place, such as system configuration for inclusion of new SQL and electronic guides,

billing system setup, content setup, implementation process flow, etc. The respondents requested for 120 working days for completion of the necessary processes.

MDA's Response

3.3.5.12 MDA considers that there are merits to the requests for a longer initial setup timeframe to cater for situations where the RQL has yet to cross-carry any Qualified Content from the SQL. Accordingly, MDA will extend the initial setup timeframe for linear channels from 60 working days to 80 working days. For subsequent cross-carriage of Qualified Content from the same SQL, MDA will extend the lead time from 21 working days to 30 working days.

3.3.5.13 In scenarios where the RQL needs to acquire equipment to enable cross-carriage of Qualified Content, MDA is prepared to extend the initial setup and subsequent cross-carriage of Qualified Content to 120 working days and 60 working days, respectively.

3.3.5.14 As mentioned in paragraph 3.3.2.42, MDA will extend the initial setup period for VOD content to 120 working days in view of the complexities involved. For subsequent cross-carriage of such VOD content, MDA will allow a lead time of 30 working days to enable cross-carriage of such VOD content, and where the RQL needs to acquire equipment, MDA will allow a lead time of 60 working days.

Paragraph 2.7.1(f) and (g): Publication of cross-carried Qualified Content on website and viewing guide

3.3.5.15 MDA proposed to require the SQL and RQL to publish on their respective websites a list of cross-carried Qualified Content. Whilst it agreed with the regulatory principle, one respondent commented there could be circumstances, where the obligation may be impractical. For example, if the Qualified Content consists of an individual programme within a linear channel, or an individual VOD title. The respondent suggested that this obligation be limited to Qualified Content channels.

MDA's Response

3.3.5.16 MDA believes that the respondent may have overstated or misunderstood the compliance requirements relating to this obligation. It bears noting that the Measure requires that, so long as any piece of programming content within a linear channel or within a channel package constitutes Qualified Content, the entire linear channel or the channel package (as the case may be) will have to be cross-carried. *A fortiori*, it follows that the SQL will only need to publish on its website and viewing guide(s) such linear channel(s), or channel bundle(s) or

name of VOD genre/service, which are subject to cross-carriage, and certainly not every piece of linear individual programming content or individual VOD title.

Paragraph 2.7.1(h)(iii): Fault/complaint resolution timeframes

3.3.5.17 A respondent once again argued that there is no need for the MMCC 2010 to set out the detailed fault restoration and associated service level standards in paragraph 2.7.1(h)(iii), on the basis that these timelines were unworkable in practice. It argued that with new networks (including NGNBN) based on new technologies interconnecting for the first time, tracing such faults may not be possible within the proposed timeline. The structure of NGNBN may create additional challenges in tracing the location of faults. It may also be necessary for the parties to establish a joint investigation group, to determine the location of the fault. The respondent argues that it will therefore not be possible, for all cases, "to determine the location of the fault within 24 or 36 hours". Instead, the respondent suggests replacing the timeframe with a reference to a "reasonable timeframe".

MDA's Response

3.3.5.18 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 (such as technical issues involving third parties). In consideration that pay TV retailers are subject to Quality of Service ("QoS") standards in their respective licences, MDA will not stipulate specific timeframes for complaint resolution but will instead require both SQLs and RQLs to deal with customer feedback or complaint on a non-discriminatory basis. It follows that the requisite cross-carriage agreements concluded between RQLs and SQLs should clearly provide for fault reporting and rectification procedures with respect to technical and customer service issues.

3.3.6 Designation of "Receiving Qualified Licensees" (paragraph 2.7.2, MMCC 2010)

3.3.6.1 A respondent repeated its concern 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. It argues that the obligation to cross-carry should only be applicable once an RQL has built up "sufficient scale" in its subscriber base due to the high costs and technical complexity of implementation.

3.3.6.2 Another respondent argued that only Regulated Persons <u>which *currently has*</u> 10,000 or more Subscribers on any of its Relevant Platforms should qualify; otherwise an RQL may be created in perpetuity so long as a Regulated Person had attained 10,000 Subscribers at any point in the past.

MDA's Response

3.3.6.3 In determining a suitable subscriber threshold for the designation of RQLs, MDA had considered that new pay TV retailers would need time to ramp up to a sizable subscriber base, even if they had put in considerable capital investments in production, content acquisition and infrastructural commitments. As mentioned in the Third Consultation, 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. Today, only SCV and mio TV have crossed the 100,000 subscriber threshold, whereas the other retailers generally have subscriber bases that do not extend beyond 10,000 subscribers. Furthermore, MDA will only consider designating Nationwide Subscription Television Licensees as RQLs. On balance, MDA considers that the 10,000 subscriber threshold is appropriate.

3.3.6.4 MDA would be relying on the periodic subscriber figures provided by all Subscription Television Licensees as part of their licence obligations to determine if the 10,000 subscriber threshold has been crossed. MDA does not intend to designate an RQL for perpetuity. MDA would regularly review if the RQL has met the stipulated qualifying criteria. An RQL that consistently fails to meet the qualifying criteria for designation of RQL (i.e., a Nationwide Subscription Television Licensee with 10,000 or more subscribers) and its obligations under the MMCC 2010 would accordingly be taken off the list of RQLs. For example, MDA would consider removing the RQL status of a pay TV retailer, which consistently has a subscriber base below 10,000.

3.3.7 Duties of Receiving Qualified Licensees (paragraph 2.7.2A, MMCC 2010)

<u>*Paragraph 2.7.2A(a)*</u>

3.3.7.1 One respondent sought clarification on whether paragraph 2.7.2A(a) already assumes that the RQL has satisfied the minimum threshold of 10,000 subscribers before MDA will designate any nationwide Subscription Television Licensee as an RQL.

MDA's Response

3.3.7.2 MDA will designate a Regulated Person as an RQL only if the two criteria in paragraph 2.7.2(a) are both satisfied. MDA does not preclude designating additional RQLs in future, as and when such Regulated Person satisfies the criteria for designation. Be that as it may, MDA further clarifies that the mere fact that a licensee has met the two criteria in paragraph 2.7.2(a) does not result in it being designated as an RQL by default or as of right. MDA still retains the regulatory discretion to designate an RQL.

Paragraph 2.7.2A(b)

3.3.7.3 A respondent highlighted a potential difficulty in fully complying with paragraph 2.7.2A(b)(ii), which requires an RQL to ensure it does not violate or infringe IPRs owned by the person from whom the SQL acquired the Qualified Content. The respondent highlighted the potentially contradictory obligation under paragraph 2.7.2A(c) which dictates that the RQL cannot modify or edit the cross-carried content – i.e. the RQL has a choice of either:

(a) Carrying that offending content in an unmodified and unedited form, thereby complying with paragraph 2.7.2A(c), but violating paragraph 2.7.2A(b)(ii); or

(b) Refusing to carry that offending content in an unmodified and unedited form, thereby complying with paragraph 2.7.2A(b)(ii), but violating paragraph 2.7.2A(c).

MDA's Response

3.3.7.4 MDA clarifies that it is not our policy intent to compel an RQL to carry content without the appropriate rights and, in doing so, knowingly violate or infringe IPRs.

3.3.7.5 Given that the SQL is the party acquiring the content and negotiating the relevant carriage agreements with the content providers, MDA will place primary reliance on the SQL to ensure that such content – and cross-carriage of the same under the Measure – does not infringe any relevant IPRs. In this regard, MDA also recognises that the RQL will be transmitting the SQL's Qualified Content in an unmodified and unedited form to the SQL's Subscribers through the RQL's platform. While MDA requires the RQL to also exercise diligence to ensure that such transmitted content does not violate or infringe any relevant IPRs, it is open to the RQL to require appropriate warranties and indemnities from the corresponding SQL in relation to non-infringement of IPR in

cross-carrying the SQL's Qualified Content on its network for transmission to the SQL's Subscribers.

3.3.7.6 MDA also understands that contractual provisions to protect from such risks are a norm in the industry. If the RQL has reasons to believe that the content is suspicious, they could request for an exemption from the cross-carriage obligations.

Paragraph 2.7.2A(c)(i)(A)

3.3.7.7 A respondent reiterated its concern that inherent differences in the platforms should not be interpreted as altering or degrading Qualified Content transmission quality, breaching any IPRs, i.e. these should not constitute non-compliance with service standards by RQLs.

3.3.7.8 Another respondent queried whether MDA's definition of "unmodified and unedited" relates to the viewer experience or to the technical aspects of the transmission, due to its concern that the cross-platform nature of the Measure may require differing technical requirements in terms of encoding, security protocols and other DRM systems.

MDA's Response

3.3.7.9 MDA is cognisant of technological differences amongst different platforms and has catered for these differences, where practical, in the design of the Measure. For instance, one of the criteria for exemptions addresses the limitations brought about by technological differences. Furthermore, the Measure requires an RQL to carry Qualified Content on its Relevant Platforms at a level of quality that is not inferior to the level of quality at which the Qualified Content is made available to it by the SQL, to the extent technically feasible for the RQL. MDA has refined paragraphs 2.7.2A(c)(i)(B) and 2.7.2A(c)(i)(C) of the MMCC 2010 to better reflect this position.

3.3.7.10 MDA will also clarify that its regulatory policy and intention for paragraph 2.7.2A(c)(i)(A) is to create and achieve a homogeneous / consistent viewer experience for the consumer whether he / she views the Qualified Content through the SQL's or RQL's platform.

Paragraph 2.7.2A(d)

3.3.7.11 A respondent expressed that while it supports MDA's requirement for an RQL to ensure it has in place the necessary content protection systems to prevent compromise of Qualified Content, the respondent sought greater clarity on how the RQL's content protection system may be certified for compliance, or whether RQL self-certifies compliance.

MDA's Response

3.3.7.12 MDA appreciates the feedback on the certification of compliance for an RQL's content protection system. MDA has on 1 July 2011 issued the Guidelines on Content Security Requirements in support of the Measure; these guidelines were developed after due consultation with stakeholders.

3.3.7.13 As there was no consensus on the best certification approach, MDA will support self-, joint- or independent certification to provide more options to industry. In a self-certification process, MDA will require an RQL to obtain a testimony from a credible party, for instance, a provider of content protection solutions used to support delivery of premium content, and/or prove that their content protection systems have been accepted by premium content providers.

Paragraph 2.7.2A(f)

3.3.7.14 One respondent sought clarification that the 5-working day "activation period" under paragraph 2.7.2A(f) should commence only from the day that the RQL receives the subscription request from the SQL.

3.3.7.15 Separately, another respondent argues that the 5-working day requirement should only apply to linear channels; while VOD content, given its nature, should be made immediately available when requested by a Subscriber.

MDA's Response

3.3.7.16 The 5-working day "activation period" provides Subscribers with certainty on the applicable timeframe for activation of the cross-carriage of Qualified Content. As such, the MMCC 2010 provides an obligation on both the SQL and the RQL to ensure that the Subscriber is able to access Qualified Content within 5 working days from the day when the Subscriber submits its subscription request. To better serve its consumers, an SQL and an RQL may negotiate to enable a shorter or immediate access upon request by the Subscriber.

Paragraph 2.7.2A(g)

3.3.7.17 A respondent objected to the imposition of fault rectification and identification of service level standards on the RQL, on the basis that it is incorrect to assume that the problem must always reside in the RQL's network. Instead, the respondent submits that upon receiving feedback or complaints of a technical nature, the SQL should check its own network and source feeds first.

MDA's Response

3.3.7.18 MDA will not stipulate specific fault rectification and customer feedback response timeframes, but will instead require both SQL and RQL to deal with customer feedback or complaints on a non-discriminatory basis. MDA has revised the MMCC 2010 to reflect this accordingly.

<u>*Paragraph 2.7.2A(i)*</u>

3.3.7.19 Two respondents submitted that the RQL should not be allowed to terminate an end-user's contract with the SQL, i.e. the option in paragraph 2.7.2A(i)(ii). Their concerns stem from the fact that the RQL is not a party to the contract between the SQL and its customer, therefore the SQL has no obligation to act on an instruction from the RQL in regard to the contract between the SQL and its customer. The following example was also provided to highlight that there is no comparable obligation in the telecoms realm: if a SingTel customer terminates their PSTN line, there is no obligation on SingTel to notify StarHub (so that StarHub can terminate its IDD service to the customer). Rather, IDA requires operators to take responsibility for their own customers.

MDA's Response

3.3.7.20 MDA clarifies that the regulatory intention is to promote convenience to end-users – i.e. where an end-user terminates his / her service with the RQL, it must necessarily follow that any cross-carried services obtained from an SQL (but provided through the RQL's platform) should by default come to an end. MDA considers that the respondent has raised valid points. MDA would therefore remove the requirement for the RQL to provide the option of terminating the SQL account. However, for the convenience of consumers, MDA retains the obligation on RQL to remind the consumers to terminate their subscription with SQL directly.

3.3.8 Agreements for Cross-Carriage of Content and Conciliation/Dispute Resolution – Determination of cross-carriage fees (paragraph 2.7.3, MMCC 2010)

3.3.8.1 One respondent commented that the Measure is presently structured in a manner that is disadvantageous to new SQLs operating on unmanaged platforms, in comparison to existing nationwide pay TV operators on the Relevant Platforms. This is because such new SQLs (who is not designated as an RQL) is required to pay the RQL for carriage based on LRIC methodology, in addition to its own incremental cost to comply with the Measure.

3.3.8.2 Another respondent highlighted concerns over MDA's proposed approach of using "the most cost efficient relevant platform" in the market to determine the cross-carriage fees in the event that it was called upon to make a binding resolution. The respondent submitted that different technologies would have different network capacity requirements and different cost structures. Operators' coverage profiles would also impact each operator's cost structures. The services and facilities that pay TV retailers deploy would also impact on the costs they incur in providing cross-carriage. Given these factors, which are unrelated to an operator's "efficiency", SCV's HFC network costs cannot be comparable with another operator's ADSL or NGNBN network costs. Similarly, the cost structure of SCV's HFC network (with its Government-mandated rollout requirements) cannot be compared to a new entrant, who can choose their own rollout (and focus only on lower-cost areas).

3.3.8.3 The said respondent therefore recommended that MDA should assess the cross-carriage charges based on networks with similar technology platforms and coverage profiles, rather than considering all networks together without reference to the different technological and costing implications of those networks. The respondent also highlighted that in line with the principle of "cost causality" and to prevent any cross-subsidisation, RQLs should be able to recover all of the costs they incur in implementing the cross-carriage regime, including portions of Fixed and Common Costs of television services, as well as the company's overhead contribution.

MDA's Response:

3.3.8.4 MDA has addressed the issue of unmanaged networks earlier in paragraphs 3.3.4.3 and 3.3.4.4, and also stated its position on the principles adopted if asked to determine the cross-carriage fee. MDA's first principle is for the parties to reach their own commercial agreement on the quantum of the cross-carriage fees. In the event that the fee cannot be resolved through commercial negotiation, the parties may request for either conciliation or dispute resolution under the MMCC 2010. MDA will adopt a two-tiered framework in its determination of the cross-carriage fee based on the most cost-efficient Relevant Platform. MDA will publish such fees as determined.

3.3.8.5 Where an RQL leases infrastructure from Singapore Telecommunications Limited ("SingTel") to enable cross-carriage of Qualified Content, MDA may take into consideration such incremental cost incurred under an existing arrangement entered into on or before 2 July 2011, but not including any extension, renewal or re-contracting, in its determination of the cross-carriage fee under a dispute resolution process.

3.3.8.6 **For clarity, MDA would illustrate the following scenarios where RQL A refers to an RQL that leases SingTel's infrastructure while RQL B does not have such arrangements:**

a) where RQL A is operating the most cost-efficient Relevant Platform, MDA's determination of the cross-carriage fees would be based on RQL A's incremental costs;

b) where RQL B is operating the most cost-efficient Relevant Platform, MDA will allow RQL A to pass through the incremental costs of leasing SingTel's infrastructure to facilitate cross-carriage, by charging (i) the full amount of RQL A's incremental costs; or (ii) RQL B's incremental costs plus RQL A's incremental costs of leasing SingTel's infrastructure, whichever is lower.

MDA has revised Appendix 4 of the MMCC 2010 accordingly.

3.3.8.7 **Notwithstanding the above, MDA considers that applying the principle of "most cost-efficient Relevant Platform" for the computation of cross-carriage fees serves to strike a balance between providing sufficient compensation to the RQLs and setting cross-carriage fees at a reasonable level for the SQLs. Adopting such an approach would encourage pay TV retailers to improve the operational efficiency of their networks.**

3.3.9 Applications for Exemption from Obligation under Paragraph 2.7 (paragraph 2.7.4, MMCC 2010)

3.3.9.1 MDA has received further queries from two respondents seeking further clarity on the factors that MDA will take into consideration when considering an exemption request from the Measure. One respondent repeated its call for MDA to make public the exemptions granted, and the grounds for MDA's decision in granting exemption.

MDA's Response:

3.3.9.2 **MDA had previously stated in its response to the Third Consultation that MDA intends to publish its decisions on exemptions, including the basis for such decisions, in order to provide further guidance for industry and promote transparency. At this juncture, no further changes to the broad provisions on exemption requests are necessary, especially since MDA has considered the issue and determined that the principles and examples provided in the Second Consultation paper would have provided general guidance on MDA's thinking as to how it is likely to assess applications for exemptions.**

3.3.10 Other comments: definition of "subscription fee" (paragraph 1.5(b)(xxxii), MMCC 2010)

3.3.10.1 Notwithstanding that no comments were sought on the definition of a "Subscriber" or "subscription fee" under paragraph 1.5 of the MMCC 2010, one respondent has submitted representations to argue that the definition of "subscription fee" should be more narrowly defined to refer only to "forms of payment of fees and charges for receipt of a service", instead of MDA's broader definition of "any form of consideration". The respondent suggested that Subscribers should refer only to paying subscribers, and that "subscription fees should be confined to a recurring fee in exchange for the provision of a service (and should not include hardware costs or installation fees)."

MDA's Response:

3.3.10.2 In relation to the Measure, MDA has used the existing definitions of "Subscriber", "Subscription Service" and "subscriber fee", where "Subscriber" means an end-consumer who agrees to purchase or who has purchased a Subscription Service from a Regulated Person; "Subscription Service" means a service provided by a Regulated Person to an end-consumer upon the payment of a subscription fee; and "subscription fee" means any form of consideration. At the outset, MDA clarifies that the Measure is to apply to all Subscribers for a pay TV service, including both linear and non-linear content, whether on a recurring or one-time payment basis. In keeping with existing definitions, non-paying subscribers (e.g. subscribers on 'free trial' or who receive free transmission in exchange for an advertisement ticker-tape or to subscribe to other services) will also be able to benefit from the Measure.

3.3.11 Other comments: whistle-blowing scheme

3.3.11.1 A respondent queried whether MDA will put in place a whistle-blowing scheme, which it suggests would be useful for surveillance and enforcement duties. It also acts as a deterrent to anyone who might be exploring ways to circumvent the Measure.

MDA's Response:

3.3.11.2 **MDA will review the necessity of instituting such a whistle-blowing scheme after the Measure has been implemented. MDA will continually monitor the effectiveness of the Measure, and will take all necessary steps to ensure compliance by the SQLs and RQLs. In the meantime, the MMCC 2010 provides for a procedure where any person injured, or is likely to be injured, as a direct result of a contravention of any MMCC 2010 provision may submit a request to MDA to take enforcement action. Details are set out under paragraph 10.6.1 of the MMCC 2010, including an opportunity to request for non-disclosure of the complainant's identity.**

3.3.12 Other comments: Mandated Open Platform Access ("Open Access")

3.3.12.1 In response to a suggestion by an industry member, MDA had invited comments on the Open Access approach, to assess whether such an approach could be adopted to complement the Measure. Under such an approach, pay TV retailers are mandated to offer third parties access to their respective platform services such as conditional access and EPG slots.

3.3.12.2 There were mixed reactions to the Open Access approach. Under such a model, regulatory and technical infrastructure is created to permit the cross-carriage of content from one delivery platform to another. Supporters of this approach considered that it is a far more preferable alternative to the Measure as different variations of this model (for example, "Simultaneous Access") are already in use in several other countries and as such, Singapore can rely on their experience rather than trying to "re-invent the wheel". Further, this approach provides for the consent of the content rights holders to the expanded public distribution of their content (and possibly how the content is packaged) and therefore is consistent with Singapore's international obligations with respect to IPR. Rather than depending on regulatory mandate, the approach uses market incentive to achieve greater content availability. As a result, this approach will impose less on-going regulatory burden where there is not a need for constant regulatory monitoring and decision-making on exemptions. Examples in the United Kingdom, France, Italy and Germany were cited, whereby platforms and content

providers willingly make use of such a system put in place to allow platform access. In the case of Singapore, the respondent considered that, with the substantial growth of mio TV, content providers will have greater incentive to make use of Open Access approach to expand their supply. On this basis, the respondent concluded that such an approach would be as good as, if not better than, the Measure in dealing with content fragmentation and the need for two set-top boxes, as it provides the means and the market incentives for market players to make content available to consumers on multiple platforms. Where necessary, MDA can reserve the legal powers to deal with exceptional cases, where particular content is of great public interest or subject to competition concerns. Another respondent considered that the "mandated open platform access" approach would allow MDA to meet the conditions imposed by the Minister for Information, Communications and the Arts in his January 2011 decision on the appeals against the Measure, i.e., no mandatory unbundling and compliance with Singapore's IPR obligations.

3.3.12.3 On a related point, a respondent suggested that the implementation and timing of the Measure and NIMS project could be better coordinated given that they are compatible and complementary. The respondent commented that there was no compelling reason for implementing the Measure during the third quarter of 2011 in advance of the NIMS project which could in some respect facilitate open platform access. It was therefore suggested that MDA delay the implementation of the Measure until at least the end of the year.

3.3.12.4 On the other hand, objection to implementing Open Access as a complement to the Measure was also received. A respondent submitted that the industry will benefit from lower cross-carriage fees and more transparent negotiations once the NIMS project is successfully implemented. As such, the value of "mandated open platform access" in the pay TV market would diminish. Instead of the Measure, the respondent submitted that the "mandated open platform access" should only be implemented to complement the NIMS project.

MDA's Response:

3.3.12.5 The Open Access approach was one of the 20 approaches MDA had looked into while it was developing its regulatory response to the content fragmentation issue in the pay TV market. As some respondents rightly pointed out, the Open Access approach was implemented in several countries worldwide such as Australia, the United Kingdom, France, Italy and the United States. While each jurisdiction has adopted the approach in various forms, the rationale remained largely the same; it was often implemented on the pay TV retailers with significant market powers in the media market, and in doing so, the authorities hope that smaller pay TV retailers, who do not

have the infrastructure and, by extension, access to viewers, will have an avenue to distribute their content and act as a competitive constraint to the dominant incumbent.

3.3.12.6 **MDA views that the Open Access approach, in isolation, would not address MDA's concerns on content fragmentation, nor meet the policy objectives, which led to the imposition of the Measure, though it may have merits as a complementary measure. Given the existing market dynamics, it is doubtful that pay TV retailers would voluntarily take up such an option to cross-carry exclusive content. Furthermore, scans of other jurisdictions that have adopted such an approach reveal that the Open Access ruling has been used as a complement to content access measures similar in intent to the Measure in Singapore. In United Kingdom, for example, the Open Access rule was supplemented by wholesale must offer obligations. In the United States, the Commercial Leased Access Rules, the Programme Access Rules and the Programme Carriage Rules were introduced to address competition issues.**

3.3.12.7 **In consideration of the diverse views received on the Open Access approach, MDA will continue to consider this approach under the Project NIMS initiative, as a complement to the Measure.**

PART IV: SUMMARY OF AMENDMENTS TO MMCC 2010

4.1 Obligation to Cross-Carry Content (paragraph 2.1.5, MMCC 2010)

4.1.1 This paragraph clarifies that SQLs must make available its Qualified Content on all Relevant Platforms of the RQL. Correspondingly, RQLs must also carry all SQL's Qualified Content on all its Relevant Platforms.

4.2 Definition of "Group" (paragraph 2.3(*ba*), MMCC 2010)

4.2.1 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, 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.

4.3 Definition of "Qualified Content" (paragraph 2.3(d), MMCC 2010)

4.3.1 **Paragraph 2.3(d)(i):** The definition of "Qualified Content" makes it explicit that packaged channel or individual pieces of programming content, whether delivered through linear transmission or non-linear (i.e. VOD) basis, can potentially become subject to the Measure, insofar as the other 'triggers' in paragraph 2.3(d) of the MMCC 2010 are fulfilled.

4.3.2 It further clarifies that the "Basic Functions" in support of the said content are part of the Qualified Content and will be subject to the Measure. To this end, MDA has set out a list of prescribed basic functions that will be covered by the Measure (see Part I of Appendix 1 of the MMCC 2010).

4.3.3 In contrast, "Value-Added Services" which do not alter the underlying nature of the programming content shall not be subject to the Measure. MDA has set out a list of value-added services which will not, on their own, cause the channel or programming content to become Qualified Content (see Part II of Appendix 1 of the MMCC 2010).

4.3.4 **Paragraph 2.3(d)(i)(A):** Sub-paragraph (A) makes it clear that the Measure will be applied to content:

a) that is self-produced or commissioned by a Regulated Person; **and**

b) the Regulated Person transmits the same on its Subscription Television Service in Singapore; **and**
c) the Regulated Person refuses to allow the channel or programming content to be acquired or otherwise obtained from it for transmission on any Relevant Platform in Singapore by any other Regulated Person (including any other Regulated Person outside the Group, as the case may be).

4.3.5 **Paragraph 2.3(d)(i)(B):** Pursuant to sub-paragraph (B), the Measure will be applied to content:

a) that is acquired or otherwise obtained by a Regulated Person; **and**
b) the Regulated Person transmits the same on its Subscription Television Service in Singapore; **and**
c) such content is acquired under an arrangement which prevents or restricts, or is likely to prevent or restrict, any other Regulated Person from acquiring the said content for transmission on any Relevant Platform in Singapore.

The 'arrangement' referred to in the third limb above includes both explicit and implicit arrangements.

4.3.6 Qualified Content excludes any channels or programming content acquired or otherwise obtained before 12 March 2010, but includes any extension, renewal, or otherwise re-contracting of such channels or programming content on or after the Effective Date (i.e. 12 March 2010).

4.3.7 **Paragraph 2.3(d)(ii):** Under the Measure, so long as any channel, or any bundle or package of channels contains any Qualified Content, the entire bundle will become subject to the Measure and will have to be offered for cross-carriage on all Relevant Platforms of the RQL, in the same form and at the same price.

4.4 Definition of "Receiving Qualified Licensee" (paragraph 2.3(*e*), MMCC 2010)

4.4.1 The definition clarifies that RQLs are a category of Regulated Persons (as defined in the MMCC 2010) which will be designated by MDA in accordance with the prescribed qualifying criteria set out under paragraph 2.7.2 of the MMCC 2010.

4.5 Definition of "Relevant Platform" (paragraph 2.3(*ea*), MMCC 2010)

4.5.1 The Measure will only apply to carriage of channels and programming content over the defined Relevant Platforms.

4.5.2 In this regard, the Relevant Platform refers to a managed network over or using any one or any combination of the following:

a) hybrid fibre-coaxial;
b) optical fibre;
c) Asymmetric Digital Subscriber Line.

4.5.3 For the avoidance of doubt, Relevant Platform shall exclude delivery of pay TV content over the Internet and mobile platforms.

4.6 Definition of "Supplying Qualified Licensee" (paragraph 2.3(*f*), MMCC 2010)

4.6.1 The definition of SQL includes any entity licensed by MDA to provide any form of subscription television services and who produces, commissions, acquires or otherwise obtains Qualified Content.

4.6.2 The Measure will not apply to a pay TV retailer, which only acquires exclusive rights for broadcast over the (unmanaged) Internet such that carriage rights to the Relevant Platforms remain available for acquisition by other Regulated Persons. The Measure will also not apply to free-to-air broadcast licensees.

4.7 Duties of Supplying Qualified Licensee (paragraph 2.7.1, MMCC 2010)

4.7.1 **Paragraph 2.7.1(a):** An SQL must, from and including 1 August 2011, make available all its Qualified Content for transmission and reception on all Relevant Platforms operated by every RQL.

4.7.2 **Paragraph 2.7.1(b):** To enable the cross-carriage of the Qualified Content on all Relevant Platforms, an SQL must ensure that it has: (a) acquired all the relevant rights to broadcast all its Qualified Content on every Relevant Platform of every RQL; and (b) ensure that it has the rights to offer all its Qualified Content for cross-carriage pursuant to the Measure, without violating or infringing any IPRs owned by the persons from whom it acquired or otherwise obtained the Qualified Content.

4.7.3 **Paragraph 2.7.1(c)(i)**: MDA's policy objective is to ensure that the SQL's subscribers are treated in a non-discriminatory manner. To reflect this policy objective, an SQL must make its Qualified Content available to RQLs: (a) in its entirety and in an unmodified and unedited form; (b) at the same time (i.e. contemporaneously) as the Qualified Content is made available to subscribers on its own platform; and (c) at a level of quality

that is not inferior to the level of quality at which it makes the Qualified Content available to the subscribers on its own platform.

4.7.4 **Paragraph 2.7.1(d)**: In implementing the Measure, MDA seeks to ensure that the IPRs of the channel or content providers are safeguarded. MDA therefore requires an SQL to first acquire all relevant rights of all relevant programming content or channels that it intends to bundle together with any Qualified Content before it proceeds to do so. This requirement is necessary as any programming content or channel that is bundled with Qualified Content will be subject to the Measure under paragraph 2.1.5 of the MMCC 2010.

4.7.5 **Paragraph 2.7.1(e)(i):** SQL must notify 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.

4.7.6 **Paragraph 2.7.1(e)(ii):** This part of the MMCC 2010 sets out the minimal standards (in terms of timeframe) which SQLs have to comply with in preparing the Qualified Content for cross-carriage. Having considered the requests for longer initial setup timeframe, MDA has prescribed the following timeframes within which an SQL must notify every RQL of its Qualified Content:

a) For linear content:
    i. where the RQL is receiving the Qualified Content for the first time from the SQL, 80 working days;
    ii. where the RQL is receiving the Qualified Content for the first time from the SQL and the RQL requires equipment for cross-carriage, 120 working days;
    iii. where the RQL has already cross-carried Qualified Content from the SQL, 30 working days; and
    iv. where the RQL has already cross-carried Qualified Content from the SQL and the RQL requires equipment for cross-carriage, 60 working days.

b) For non-linear content:
    i. where the RQL is receiving the Qualified Content for the first time from the SQL, 120 working days;
    ii. where the RQL has already cross-carried Qualified Content from the SQL, 30 working days; and
    iii. where the RQL has already cross-carried Qualified Content from the SQL and the RQL requires equipment for cross carriage, 60 working days.

4.7.7 **Paragraph 2.7.1(f):** To ensure that consumers have access to adequate information on Qualified Content, the SQL must publish and maintain a list of its Qualified Content on its website and on its viewing guide.

4.7.8 **Paragraph 2.7.1(g):** An SQL must also: (a) allow every RQL to publish, on the RQL's website and viewing guide, a list of its Qualified Content (that comprises any channel or programming content that is produced or commissioned by the SQL), which is carried on the RQL's Relevant Platforms; (b) negotiate with the person from whom its Qualified Content was acquired or otherwise obtained to allow every RQL to publish, on the RQL's website and viewing guide, a list of this Qualified Content that is carried on the RQL's Relevant Platforms. These two requirements are for the limited purpose of informing consumers of the Qualified Content that is offered for cross-carriage over any RQL's platforms.

4.7.9 **Paragraph 2.7.1(h)(i)**: An SQL must enter into a customer service arrangement with subscribers that are accessing its Qualified Content through any Relevant Platform of an RQL. The SQL must provide these subscribers the Qualified Content at the same prices (including all applicable discounts and promotions), and terms and conditions as that offered to subscribers that are accessing such content on its own platform. Ultimately, the SQL is not allowed to discriminate, in any manner, in favour of subscribers viewing Qualified Content on its own platform.

4.7.10 **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. SQLs and RQLs have the flexibility to work out more suitable arrangements so long as consumers are not worse off.

4.7.11 **Paragraph 2.7.1(h)(iii):** An SQL must, in respect of any feedback or complaint received from a subscriber of its Qualified Content, deal with it on a non-discriminatory basis (as if it was received by the SQL in respect of any channel or programming content that it transmits directly to the subscriber).

4.7.12 **Paragraph 2.7.1(j)**: Where any of its Qualified Content ceases to be so, the SQL must provide MDA, every RQL and every affected subscriber, with notice that the channel or programming content will no longer be Qualified Content no later than 21 working days prior to it ceasing to be Qualified Content.

4.8 Designation of Receiving Qualified Licensee (paragraph 2.7.2, MMCC 2010)

4.8.1 **Paragraph 2.7.2(a):** MDA may designate any Regulated Person to be an RQL if the Regulated Person: (i) is licensed to provide a nationwide Subscription Television Service on any Relevant Platform; and (ii) has or had, at any point in time, 10,000 or more subscribers on any of its Relevant Platforms.

4.8.2 **Paragraph 2.7.2(b):** To allow the public and the industry to easily identify the Regulated Persons that have been designated as RQLs, MDA will publish a list of RQLs on its website.

4.9 Duties of Receiving Qualified Licensees (paragraph 2.7.2A, MMCC 2010)

4.9.1 **Paragraph 2.7.2A(a):** An RQL must, from and including 1 August 2011, carry all Qualified Content made available by SQLs on its Relevant Platforms.

4.9.2 **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.

4.9.3 **Paragraph 2.7.2A(c)(i):** To create and achieve a homogeneous and consistent viewer experience for the consumer regardless of which platform is used to view the Qualified Content, MDA similarly requires an RQL to carry Qualified Content on all its Relevant Platforms: (a) in its entirety and in an unmodified and unedited form; (b) at the same time (i.e. contemporaneously) as the Qualified Content is made available to subscribers on its own platform, to the extent technically feasible; and (c) at a level of quality that is not inferior to the level of quality at which the Qualified Content is made available to it by the SQL, to the extent technically feasible.

4.9.4 **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 of the MMCC 2010, which will reasonably prevent the security of all Qualified Content made available to it by any SQL from being compromised. MDA has issued the Guidelines on Content Security Requirements in support of the Measure.

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

4.9.6 **Paragraph 2.7.2A(f):** Notwithstanding the fact that the customer relationship is between the SQL and its subscribers, MDA imposes a reciprocal obligation on the RQL 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.

4.9.7 **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 to deal with the feedback or complaint on a non-discriminatory basis and as if it were feedback or complaint received by the RQL in respect of any of its own channels or programming content transmitted by it to its subscriber.

4.9.8 **Paragraph 2.7.2A(i)**: For the convenience of consumers, an RQL must, upon being informed by a subscriber of Qualified Content that it wishes to terminate its subscription to the Qualified Content, inform the subscriber that he is to terminate such subscription directly with the SQL.

4.10 Agreements for Cross-Carriage of Content and Conciliation/Dispute Resolution (paragraph 2.7.3, MMCC 2010)

4.10.1 **Paragraph 2.7.3(a):** Under the Measure, parties are expected to reach their own commercial agreement on the terms and conditions of cross-carriage, including the quantum of cross-carriage fees payable, provided that the terms of the agreement are not inconsistent with any obligations set out in the MMCC 2010.

4.10.2 **Paragraph 2.7.3(b):** Where an SQL and an RQL are unable to reach a mutually acceptable cross-carriage agreement, the parties may either request for conciliation or dispute resolution under the MMCC 2010.

4.10.3 **Paragraph 2.7.3(c):** In instances where MDA intervenes for dispute resolution on cross-carriage fees, MDA will determine incremental costs borne by SQLs under paragraph 2.7.1(*i*)(ii) of the MMCC 2010 based on the pricing principles specified in Appendix 4 of the MMCC 2010.

4.11 Applications for Exemption from Obligation under Paragraph 2.7 (paragraph 2.7.4, MMCC 2010)

4.11.1 As a matter of principle, MDA is only minded to grant exemption under exceptional circumstances, where such exemptions would not defeat the policy intent of the Measure. An exemption to the Measure will only be granted if it can be demonstrated that:

a) the exemption will benefit the public and the media industry (for example, how the exemption will enhance consumer welfare or promote innovation);

b) technical constraint prevents or restricts a party from fulfilling its obligations under paragraph 2.7 of the MMCC 2010 and it is not possible to remove such constraint without it incurring serious and irreparable harm;

c) in relation to any request for exemption from paragraph 2.7.1(a) of the MMCC 2010, the channel or content provider does not have the relevant broadcast rights for Singapore and other neighbouring countries; or

d) in relation to any request for exemption from paragraph 2.7.2A(a) of the MMCC 2010 by a RQL, the SQL has failed to comply with paragraph 2.7.1(b).

4.12 Information Gathering Procedures (paragraph 10.7, MMCC 2010)

4.12.1 MDA has amended paragraph 10.7 of the MMCC 2010 (Information Gathering Procedures) to empower MDA to obtain the necessary statutory declarations from key appointment holders of the pay TV retailers.

4.13 Matters Relating to Cross-Carriage (Appendix 1, MMCC 2010)

4.13.1 Part I of Appendix 1 sets out a list of "Basic Functions" that will be covered by the Measure. Part II of Appendix 1 sets outs a list of "Value-Added Services", which will not, on its own, cause the channel or programming content to become Qualified Content.

4.13.2 Part III of Appendix 1 sets out the principles for content protection security requirements. MDA has also issued the Guidelines on Content Protection Security Requirements in support of the Measure.

4.14 Pricing of Costs of Cross-Carriage (Appendix 4, MMCC 2010)

4.14.1 In any dispute resolution involving the computation of all incremental costs to be borne by the SQL under paragraph 2.7.1(*i*)(ii) of the MMCC 2010, MDA may adopt the pricing principles specified in Appendix 4 of the MMCC 2010 for the purpose of resolving the dispute.

PART V: CONCLUSION AND ISSUANCE OF AMENDMENTS TO MMCC 2010

5.1 MDA hereby issues the amendments to MMCC 2010, which shall take effect from 2 July 2011.

5.2 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.