

CLOSING NOTE ISSUED BY
MEDIA DEVELOPMENT AUTHORITY OF SINGAPORE

AMENDMENTS TO APPENDIX 4
OF
THE CODE OF PRACTICE FOR MARKET CONDUCT IN THE
PROVISION OF MEDIA SERVICES 2010:
IMPLEMENTATION OF THE CROSS-CARRIAGE MEASURE

ISSUED ON: 9 JULY 2012

- PART I: Introduction
- PART II: MDA's Responses to Comments Received
- PART III: Summary of Amendments to Appendix 4 of the Code of Practice for Market Conduct in the Provision of Media Services 2010 ("Media Market Conduct Code 2010, "MMCC 2010")
- PART IV: Conclusion and Issuance of Amendments to Appendix 4 of the MMCC 2010

PART I: INTRODUCTION

- 1.1 On 1 July 2011, the Media Development Authority of Singapore (“**MDA**”) issued a Closing Note setting out its responses to the comments received on the proposed refinements to 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**”) to facilitate implementation of the cross-carriage measure (“**Measure**”). On the same day, MDA, in exercise of the powers conferred by section 17(3) of the Media Development Authority of Singapore Act (“**MDA Act**”), also varied the MMCC 2010 with effect from 2 July 2011.
- 1.2 The Measure, which was introduced on 12 March 2010 (“**Effective Date**”), 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**”).
- 1.3 Following the issuance of the revised MMCC 2010 and the Closing Note of 1 July 2011, MDA received feedback that certain paragraphs within Appendix 4 of the MMCC 2010 can be drafted to better reflect MDA’s policy decision as set out in its Closing Note, so as to avoid any ambiguity as to the charging methodology when MDA determines the cross-carriage fees.
- 1.4 Appendix 4 of the MMCC 2010 sets out the default pricing principles that MDA will apply when conducting a Dispute Resolution to determine the price or costs to be paid in specific situations.
- 1.5 In response, MDA proposed refinements to the legal drafting of the relevant paragraphs in Appendix 4 (“**revised Appendix 4**”), to provide greater clarity on the charging methodology MDA may adopt to determine the incremental costs to be borne by the SQLs.
- 1.6 On 19 August 2011, MDA launched a Public Consultation on its proposed revisions to Appendix 4. The Consultation was conducted over a period of three weeks, and closed on 7 September 2011.
- 1.7 MDA received a submission from one respondent. Outside of the formal consultation process, MDA also consulted with other relevant parties to ensure that their views were also taken into consideration. This document sets out MDA’s views on the feedback received and the final amendments to Appendix 4 of the MMCC, to be gazetted on 9 July 2012.

PART II: MDA’S RESPONSES TO COMMENTS RECEIVED

2.1 At the close of the Consultation, MDA received a submission from one respondent, StarHub Cable Vision Ltd (“**StarHub**”). Outside of the formal consultation process, MDA also consulted with other relevant parties to ensure that their views were also taken into consideration. MDA would like to thank all parties for the useful feedback and comments provided during the consultation process.

2.2 The comments received and MDA’s responses are described in detail below.

SUGGESTED REVISIONS TO PARAGRAPH 5.2.2 OF THE REVISED APPENDIX 4 OF THE MMCC

2.3 Paragraph 5 specifically sets out the pricing principles that MDA may adopt, in accordance to paragraph 2.7.3 of the MMCC 2010, for determining the incremental costs to be recovered by the RQL from the SQL for the purpose of carrying Qualified Content of the SQL on the RQL’s Relevant Platform(s) under the Measure.

Deletion of the word “directly”

2.4 The respondent proposed the deletion of the word “*directly*” before “*attributable to enabling the Receiving Qualified Licensee to cross-carry the Qualified Content of the Supplying Qualified Licensee*” in paragraph 5.2.2 of the revised Appendix 4.

2.5 The respondent was of the view that paragraphs 5.3 and 5.4 of Appendix 4 of the MMCC 2010 setting out the Directly Attributable Incremental Cost (“**DAIC**”) and Long Run Incremental Cost (“**LRIC**”) methodologies respectively already employ the concept of “directly attributable” in the computation of the cross-carriage fees. As such, the insertion of the word “directly” may have the effect of a “double or further restriction” on the leasing costs to be taken into account, thereby preventing any RQL from passing on relevant leasing costs to the SQL whose content it is cross-carrying.

MDA’s response

2.6 MDA notes the respondent’s concern. In this regard, while MDA is of the view that the respondent’s concern is unwarranted given that MDA’s policy on this issue has been clearly set out, MDA has decided to remove the word “directly” to ensure that there is no ambiguity over its policy intention.

Notwithstanding, MDA reiterates that it will only allow the recovery of the relevant incremental costs incurred by an RQL as a direct result of its compliance with the cross-carriage obligation in relation to Qualified Content of the SQL.

Replacement of “*result in re-contracting of the arrangement*” with “*prolong the term covered by such arrangement(s) entered into before 2nd July 2011*”

- 2.7 The respondent submitted that the wording of the revised Appendix 4, paragraph 5.2.2, could give rise to an argument by the SQLs that some subsequent variation or amendment which has nothing to do with cross-carriage will affect the costs to be charged to the SQLs, thereby prejudicing the rights of the RQLs and/or impede the RQL’s ability to pass through any leasing costs incurred.
- 2.8 Therefore, the respondent suggested to use “*prolong the term covered by such arrangement(s) entered into before 2nd July 2011*” instead of “*result in re-contracting of the arrangement*”, so as to keep the focus of the wording on the fact that the variation or amendment itself should not have the effect of extending or prolonging the effective term of the leasing arrangement.

MDA’s response

- 2.9 MDA is given to understand that underlying the respondent’s comments was the concern that should a certain Network Lease Agreement with Singapore Telecommunications Limited (“SingTel”) be amended in order to enable the respondent to carry a third party’s Qualified Content as required under the Measure, the respondent should be allowed to recover the relevant incremental leasing costs. To reiterate, the policy intention of paragraph 5.2.2 of the revised Appendix 4 is to allow an RQL to recover the relevant incremental leasing costs payable in respect of an existing long-term facilities leasing arrangement with SingTel that was concluded before the implementation of the Measure, where such leasing costs arise as a direct result of complying with the Measure (i.e., on a straight pass-through basis without any mark-up or additional charges).
- 2.10 In consideration of the respondent’s concern, MDA has amended paragraph 5.2.2 to better reflect MDA’s policy position and to provide greater certainty to the industry. Paragraph 5.2.2 of the revised Appendix 4 is also amended to accordingly reflect the date of these consequential amendments to the Network Lease Agreement.

2.11 The amendments clarifies that in determining the relevant incremental costs in the event of a dispute resolution involving cross-carriage fees, MDA will take into account the leasing costs payable for the full and subsisting term of the Network Lease Agreement entered into before 2 July 2011. Should the Network Lease Agreement be terminated prematurely, the cost recovery provided for in paragraph 5.2.2 will similarly cease on the early termination date. Lastly, MDA made further revisions to the wording of paragraph 5.2.2 which clearly states that should there be any direct or indirect change made to the automatic renewal provision in the Network Lease Agreement, the cost recovery provided for in paragraph 5.2.2 will only extend up till 31 March 2017. Collectively, the amendments make clear when and under what conditions the recovery of the relevant incremental leasing costs will be allowed.

PART III: SUMMARY OF AMENDMENTS TO APPENDIX 4 of the MMCC 2010

3.1 The following amendments (marked-up in bold) will be made to Paragraphs 5.2.2, 5.2.3, 5.3(b) and 5.4(b):

5.2.2 To determine the rate of the most cost efficient Relevant Platform in the Singapore market, MDA will compare the efficiencies of all Relevant Platforms of all Receiving Qualified Licensees, using for each either the Directly Attributable Incremental Cost Methodology or the Long Run Incremental Cost Methodology; ~~except that and will,~~ in using either methodology, ~~no~~ **take into** account ~~shall be taken of~~ any leasing costs payable by the Receiving Qualified Licensee **based on such rates as at 21st June 2012** in respect of that Relevant Platform for leasing:

(a) optical dark fibre strands in Singapore Telecommunications Limited's network of optical fibre cables; and

(b) duct space in Singapore Telecommunications Limited's underground ducting network,

which are directly attributable to enabling the Receiving Qualified Licensee to cross-carry the Qualified Content of the Supplying Qualified Licensee for the purpose of fulfilling its duties under paragraph 2.7 of this Code, under **any** ~~an~~ arrangement with Singapore Telecommunications Limited entered into ~~on or after~~ **before** 2nd July 2011 **and including** any **subsequent** amendment or variation ~~thereto to the arrangement,~~ **provided that such leasing costs are incurred before the first of the following dates which applies: provided that any such amendment or variation does not extend, renew or otherwise result in re-contracting of the arrangement, including any arrangement for the leasing of such optical dark fibre strands and duct space that was entered into before that date and extended, renewed, or otherwise re-contracted for on or after that date.:**

(i) **1st April 2020;**

- (ii) 1st April 2017, if any change is made (directly or indirectly) before that date to the provision as at 2nd July 2011 in respect of the automatic renewal of the arrangement for the period from 1st April 2017 to 31st March 2020; or
- (iii) the date of termination of the arrangement.

For the avoidance of doubt, any leasing costs payable by the Receiving Qualified Licensee to Singapore Telecommunications Limited to enable the Receiving Qualified Licensee to cross-carry the Qualified Content of the Supplying Qualified Licensee shall be passed through to the Supplying Qualified Licensee by the Receiving Qualified Licensee without any mark-up, variation or additional charge.

3.2 Following from the above amendments to paragraph 5.2.2, the following consequential amendments will be made to paragraphs 5.2.3, 5.3(b) and 5.4(b):

5.2.3 Where:

(a) a Relevant Platform of a Receiving Qualified Licensee is not the most cost efficient Relevant Platform; and

(b) the Receiving Qualified Licensee incurs leasing costs in respect of its Relevant Platform—~~that is not excluded under~~ referred to in paragraph 5.2.2 of this Appendix,

the Authority ~~may allow~~ will take into account, as the incremental costs to be borne by the Supplying Qualified Licensee in respect of that Relevant Platform, the lower of the following:

- (i) ~~the rate of the most cost efficient Relevant Platform, and the leasing costs payable by the Receiving Qualified Licensee for its Relevant Platform that relates to its cross-carriage obligation in question and that is not excluded is included under~~ referred to in paragraph 5.2.2 of this Appendix; or

- (ii) the rate for its Relevant Platform determined in accordance with paragraph 5.2.2 of this Appendix

5.3 Directly Attributable Incremental Cost (DAIC) Methodology

- (a) Where the Supplying Qualified Licensee is also designated as a Receiving Qualified Licensee, MDA will determine the incremental costs to be borne by the Supplying Qualified Licensee based on the DAIC methodology.
- (b) In calculating the incremental costs, MDA will include the incremental capital expenses and operating expenses of the Receiving Qualified Licensee directly attributable to the cross-carriage of the Qualified Content of the Supplying Qualified Licensee **including the leasing costs incurred by the Receiving Qualified Licensee that is referred to in paragraph 5.2.2 of this Appendix.**
- (c) Under the DAIC methodology, MDA will determine the incremental costs in a manner which captures only the costs directly attributable to the Qualified Content of the Supplying Qualified Licensee. Therefore, the relevant increments in the DAIC methodology will exclude other TV-related services (for example, the transmission by the Receiving Qualified Licensee of content other than Qualified Content of the Supplying Qualified Licensee) and any other non TV-related services.

5.4 Long Run Incremental Cost (LRIC) Methodology

- (a) Where the Supplying Qualified Licensee is not designated as a Receiving Qualified Licensee, MDA will determine the incremental costs to be borne by the Supplying Qualified Licensee based on the LRIC methodology.
- (b) In calculating the incremental costs, MDA will include the incremental capital expenses and the operating expenses of the Receiving Qualified Licensee directly attributable to the cross-carriage of the Qualified Content, as well as such portion of the costs as relates to the use of the transmission network of the Receiving Qualified Licensee for the transmission of the Qualified Content of the Supplying Qualified Licensee **including the leasing costs incurred by the Receiving Qualified Licensee that is referred to in paragraph 5.2.2 of this Appendix.**

(c) For the LRIC methodology, MDA will determine the relevant increments in a manner which includes the carriage of the TV services provided by the Receiving Qualified Licensees. Increments in the LRIC methodology will exclude any other non-TV related services.

PART IV: CONCLUSION AND ISSUANCE OF AMENDMENTS TO APPENDIX 4 OF THE MMCC 2010

- 4.1 MDA hereby issues the amendments to Appendix 4 of the MMCC 2010, which shall take effect from 10 July 2012.
- 4.2 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.