

**MEDIA DEVELOPMENT AUTHORITY OF SINGAPORE**

**PUBLIC CONSULTATION**

**PROPOSED 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: 19 AUGUST 2011**

**PART I: Introduction**

**PART II: Proposed Amendments to Appendix 4 of the Code of Practice for  
Market Conduct in the Provision of Media Services 2010**

**PART III: Consultation**

## **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 on 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 MDA considers that it is important that there is no ambiguity over the charging methodology set out in Appendix 4 of the MMCC 2010 which it may adopt if it is to determine the incremental costs to be borne by the SQLs. In this respect, MDA has reviewed the relevant paragraphs in Appendix 4 and considers that some refinements to the legal drafting of these paragraphs will help to provide clarity to MDA’s policy position. MDA emphasises that there is no change in policy position. MDA’s proposed amendments are set out in Part II of this consultation paper.
- 1.5 The Public Consultation will be conducted over a period of three weeks and will close on 5pm, 7 September 2011.

## **PART II: PROPOSED AMENDMENTS TO APPENDIX 4 OF THE CODE OF PRACTICE FOR MARKET CONDUCT IN THE PROVISION OF MEDIA SERVICES 2010**

- 2.1 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. 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.
- 2.2 Paragraph 5.1 of Appendix 4 sets out that in determining the incremental costs to be recovered from the SQL, MDA will adopt the following broad principles:
- (i) the incremental costs must be costs incurred by the RQL as a direct result of its compliance with its cross-carriage obligation in relation to Qualified Content of the SQL; and
  - (ii) the pricing principles are to be applied in a transparent, fair and non-discriminatory manner.
- 2.3 Further, to ensure efficient transmission of Qualified Content, MDA will determine the incremental costs to be recovered from the SQL based on the rate of the most cost efficient Relevant Platform in the Singapore market.

### ***Existing Paragraph 5.2.2***

- 2.4 The existing paragraph 5.2.2 is as follows:

*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 in using either methodology, no account shall be taken of any leasing costs payable by the Receiving Qualified Licensee 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,*

*under an arrangement with Singapore Telecommunications Limited entered into on or after 2nd July 2011 and any amendment or variation, thereto, 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.*

2.5 MDA has received feedback that the existing paragraph 5.2.2 could be misinterpreted to prevent an RQL from passing through to the SQL any additional leasing charges that have been incurred by the RQL as a result of carrying Qualified Content of the SQL as required under the Measure, in the situation where an existing arrangement entered into with Singapore Telecommunications Limited ("**SingTel**") before 2<sup>nd</sup> July 2011 is amended or varied after such date to allow the RQL to comply with the Measure.

2.6 MDA clarifies that this is not the intention of paragraph 5.2.2. Such a reading of the paragraph is inconsistent with MDA's policy decision as set out in paragraphs 3.3.8.5 and 3.3.8.6 of the Closing Note. In paragraph 3.3.8.5, MDA stated that where "*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 before 2 July 2011<sup>1</sup>, but not including any extension, renewal or re-contracting, in its determination of the cross-carriage fee under a dispute resolution process.*" MDA had further set out in the Closing Note the following two scenarios for illustration purposes 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;

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<sup>1</sup> Please refer to the Corrigendum issued by MDA on 18 August 2011 correcting a reference in paragraph 3.3.8.5 of the Closing Note (attached as Annex to this Consultation Paper).

- (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.

**Proposed Amendments to Paragraphs 5.2.2, 5.2.3, 5.3(b) and 5.4(b)**

- 2.7 Accordingly, MDA is proposing the following amendments (marked-up in bold) to be made to paragraph 5.2.2:

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 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 an arrangement with Singapore Telecommunications Limited entered into ~~on or after~~ before 2<sup>nd</sup> July 2011 ~~and (including any amendment or variation, thereto), 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.~~*

2.8 Following from the above proposed amendment to paragraph 5.2.2, MDA is also proposing the following consequential amendments to 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~~**included** under 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 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 in respect of its Relevant Platform that is included under 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 in respect of its Relevant Platform that is included under 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 III: CONSULTATION

3.1 MDA invites the submission of written comments regarding the proposed revisions to the MMCC in the following format:

- a. Cover page;
- b. Table of contents;
- c. Summary of major points;
- d. Statement of interest;
- e. Comments; and
- f. Conclusion.

3.2 This consultation closes on 7 September and comments (if any) must be submitted to MDA on or before 5pm of that date. All comments must be submitted in softcopy (in Microsoft Word format compatible with Microsoft Office Version 2003). Parties submitting comments should include their personal or company particulars, and their correspondence address, contact numbers and email addresses on the cover page of their comments. All comments should be addressed to:

Ms Eileen Ang  
Deputy Director (Competition)  
Media Development Authority of Singapore  
(Attention: Ms Ruth Wong)  
Email: [ruth\\_wong@mda.gov.sg](mailto:ruth_wong@mda.gov.sg)

3.3 All comments should be clearly and concisely written, and should provide a reasoned explanation for any proposed revision to the revised MMCC 2010 as set out in paragraphs 2.7 and 2.8 of this document.

3.4 MDA strongly discourages parties from repeating arguments that have previously been made, and rejected, whether by MDA or the Minister for Information, Communications and the Arts. MDA reserves the right to disregard any repeated arguments or comments and any response that does not relate to the specific changes proposed in this round of consultation.

3.5 MDA reserves the right to make public all or parts of any written comment and to disclose the identity of the source. Commenting parties may request confidential treatment for any part of the comment that the commenting party believes to be proprietary, confidential or commercially sensitive. Any such information should be clearly marked and placed in a separate annex. If MDA grants the request for confidential treatment, it will consider, but it will not publicly disclose, the information. If MDA rejects the request for



confidential treatment, it will return the information to the commenting party and will not consider the information as part of its review. As far as possible, commenting parties should limit any request for confidential treatment of information submitted. MDA will not accept any comment that requests for confidential treatment of all or a substantial part of the comment.

- 3.6 MDA will review all written comments received. Based on the written comments and other relevant considerations, MDA may make appropriate modifications to the revised MMCC 2010.

**CORRIGENDUM  
TO CLOSING NOTE DATED 1 JULY 2011  
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: 18 AUGUST 2011**

Paragraph 3.3.8.5 of the Closing Note is amended to correctly refer to an existing arrangement entered “before 2 July 2011” instead of an error in reference to “on or before 2 July 2011”.

The amended paragraph 3.3.8.5 shall read as follows:

**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 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.*