

For the attention of:

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Contact details for the party submitting these comments are set out at Part Four of this document below.

**COMMENTS OF THE  
FOOTBALL ASSOCIATION PREMIER LEAGUE LIMITED  
IN RESPONSE TO THE MEDIA DEVELOPMENT AUTHORITY OF SINGAPORE'S  
CONSULTATION ON PRELIMINARY POLICY POSITIONS DATED 1 SEPTEMBER 2010**

**30 September 2010**

This document contains the comments of the Football Association Premier League Limited (the **Premier League**) in response to the Media Development Authority (**MDA**) of Singapore's request for comments in response to its document entitled Consultation on Preliminary Policy Positions dated 1 September 2010 (the **Consultation**).

We note that the MDA has requested that comments are submitted in a specific format and order. In this regard, given the Premier League's comments are relatively brief and concise in nature, we have dispensed with a summary of major points. Accordingly, this document contains the following four sections:

- Part One:** A brief description of the Premier League and a statement of the Premier League's interest in the Consultation.
- Part Two:** The comments of the Premier League in response to the Consultation.
- Part Three:** A brief conclusion.
- Part Four:** Relevant contact.

Capitalised words and expressions used in this document shall have the meanings given to them in the Consultation unless otherwise defined herein.

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**Part One: The Premier League and its statement of interest in the Consultation**

The Premier League is the body which organises and administers the league football competition played in England and Wales currently known as the Barclays Premier League (the **Competition**). The Premier League is also responsible for the central sale of, inter alia, the live audiovisual rights to football matches played as part of the Competition (the **PL Rights**) in territories around the world including Singapore.

In virtually all cases, the Premier League has historically sold, and continues to sell, the PL Rights on an exclusive basis in territories and regions around the world (subject to certain exceptions, for example, to allow Premier League clubs the right to exploit themselves footage of their own matches). Accordingly, the Premier League is, in the terminology of the Consultation, the supplier of Qualified Content under the terms of an exclusive content arrangement or "ECA".

The Premier League takes the view that the sale of the PL Rights on the basis set out above and in accordance with a transparent and open bidding process serves to ensure that the value of the PL Rights is maximised.

The maximisation of the value of the PL Rights is essential because it ensures that the Premier League (which is a non-profit making organisation) can:

- distribute monies to its member Clubs to invest in, for example, players, staff, training facilities and stadia thereby maintaining and improving the high standard of the Competition and the quality of the resulting audiovisual product; and
- itself distribute a significant portion of such monies to good causes and grass roots initiatives in the UK and around the world.

The Premier League's interest in the Consultation is, therefore, derived from its desire to ensure that the effect of the Measure is not to stifle competition for, or to reduce the value of, the PL Rights so that it can continue to achieve the two objectives set out in the bullets immediately above.

## **Part Two: The Premier League's comments in response to the Consultation**

Having read through the Consultation in detail and save as set out below, the Premier League is pleased to confirm that it broadly endorses the Measure and the approach of the MDA in respect of its implementation (as summarised by the MDA in paragraph 2.11.3 of the Consultation). In the Premier League's view, if correctly implemented, the Measure will potentially have the positive effect of increasing the viewership of the Competition (and consumer access to the Competition) without having any detrimental impact upon the value of the PL Rights.

That endorsement of the Measure and its implementation is however:

- based upon the Premier League's understanding of the operation of the cross-carriage fees mechanism (which is set out in Section A below); and
- subject to the Premier League's comments on certain of the details relating to the implementation and operation of the Measure (set out in Section B below).

### Section A - Cross-Carriage Fees

The Premier League's endorsement of the Measure and its implementation are based upon our understanding of how it is proposed the cross-carriage fees mechanism will operate in practice (as described in paragraph 3.6 of the Consultation). That understanding is set out in this Section A below together with our comments relating to that mechanism.

**Accordingly, the Premier League expressly reserves to itself the right to revisit its position and comments in respect of the Measure in the event that:**

- **our understanding of the cross-carriage fees mechanism is incorrect in any way; or**
- **the cross-carriage fees mechanism changes as a result of the Consultation.**

As will be evident from the above, the Premier League believes that the success of the Measure and its ability to achieve the objectives of the MDA are critically dependent upon cross-carriage fees being set at an appropriate level in accordance with a clear and transparent set of rules.

In this regard, the Premier League endorses the MDA's proposed approach to the setting of those fees and considers that, in paragraph 3.6 of the Proposal, the MDA has struck a reasonable compromise between the potentially conflicting aims of ensuring that a RQL is remunerated for the costs that it incurs in providing a carriage service to a SQL, whilst also minimising the risk of a negative impact on the profitability of the SQL and, therefore, the amount which any such SQL would be prepared to bid in order to acquire rights to Qualified Content (including, for example, the PL Rights).

It is the Premier League's understanding that, under the MDA's proposal, a RQL would be compensated for the additional (capital and operating) costs that it incurs as a result of providing carriage to a SQL that is also a RQL. Moreover, a RQL will be expected to benefit from the Measure if the carriage of the SQL's content leads to an increase in the number of subscribers to the RQL's platform.

The Premier League takes the view that it would be inappropriate to set the carriage fees to a SQL that is also a RQL at a level that is higher than the MDA's current proposal (as set out in paragraph 3.6 of the Consultation). This is because any increase in carriage fees above those set out in the proposal would have the effect of unfairly enriching a RQL that provides passive carriage of the relevant SQL channel thereby reducing the profitability of the SQL and lowering the value of the rights to the Qualified Content featuring on that channel (and the amount which that SQL is prepared to bid for those rights).

The Premier League also agrees with the MDA that a SQL that is not a RQL should pay a higher carriage fee which includes a contribution to the replacement costs of the RQL's transmission networks. This additional charge would prevent a SQL that is not a RQL from "free riding" on the investment of RQLs and would create a level playing field for bidders in any sales process for content rights i.e. when compared with SQLs which incur the costs of developing and maintaining their own platforms.

Further, the Premier League considers that, following the implementation of the Measure, each SQL that is not currently a RQL should be entitled to determine in relation to each of its channels which features Qualified Content whether it wishes to:

- (i) retail that channel itself (in which case, the SQL should be required to make the additional contribution to the RQL's costs); **or**
- (ii) enter into a wholesaling arrangement with each RQL under which that RQL retails that channel on behalf of the SQL (in which case, the additional contribution would not be relevant).

In other words, the Measures should allow that degree of flexibility to a SQL who is not a RQL.

Finally, in terms of the actual implementation and enforcement of the cross-carriage fees mechanism, the Premier League would make the following two comments:

- The Premier League considers it is of critical importance that there is complete clarity and transparency in relation to the nature and amount of the relevant cross-carriage fees and that the MDA acts promptly and effectively to ensure that all RQLs comply at all times with the Measure - without such strict regulation, there is clearly the potential for RQLs to distort the operation of the cross-carriage fees mechanism which would undermine the MDA's stated objectives for the Measure.
- Similarly, if there is any dispute over the carriage fees which are to be paid by a SQL to a RQL, the Premier League would support a mechanism under which the fees are determined by the MDA within a very short timescale in order to ensure that any period of uncertainty is kept as short as possible for the benefit of all concerned.

Both of the above comments are essentially designed to ensure that all stakeholders have as much certainty as possible with regard to the level of fees which would be payable. That certainty creates the best possible conditions for a competitive bidding process for Qualified Content and should continue to incentivise broadcasters and platform operators to bid for Qualified Content which is attractive to consumers. Indeed, the Premier League would welcome the MDA exploring the

possibility of requiring RQLs to make available the relevant carriage on the basis of a MDA-regulated ratecard. In this way, each bidder for Qualified Content would be able to quantify in advance the amount of RQL carriage fees it would be required to pay if its bid were to be successful.

### Section B - Implementation and Operation of the Measure

The main focus of our comments is in respect of the cross-carriage fees mechanism. However, we would also make the following comments:

- The Premier League agrees strongly with the MDA that each SQL should maintain a direct retail relationship with subscribers to Qualified Content (as set out in paragraph 3.3.1 of the Consultation). It is the SQL who takes the business risk in respect of the acquisition of the rights to the relevant Qualified Content and it is, therefore, correct that the SQL should retain control over, and benefit from, the resulting retail relationship.
- The Premier League also agrees with the MDA that (i) each RQL should be required to carry all Qualified Content in its entirety and without alteration and to "comply with and respect the IPR accorded to the SQL" (paragraph 3.9.1) and (ii) each RQL should not do, or omit to do, anything which might diminish, impair or degrade the viewer's enjoyment of the relevant Qualified Content on that RQL's platform (paragraph 7.15). Together with the requirement that each SQL is solely responsible for the retail relationship with the consumer, the ability of an SQL to control the content, branding and advertising upon a channel which features Qualified Content (and the package/bundle (if any) in which that channel is contained) ensures that the relevant SQL will:
  - (a) be confident that it can derive a commercial benefit from its investment in that Qualified Content; and
  - (b) be incentivised to submit its best possible bid for that Qualified Content with the effect that competition for that Qualified Content is maximised (as recognised by the MDA in the final sentence of paragraph 2.3.6).
- The benefits set out at (a) and (b) above also help to ensure that prospective bidders are disincentivised from colluding i.e. because, if an SQL is successful in acquiring any Qualified Content, it knows that it can use that Qualified Content to its competitive advantage vis-à-vis other service providers in Singapore. In this regard, the Premier League supports the position of the MDA that the Measure will not affect the existing MMCC prohibitions against anti-competitive agreements and activities (e.g. price fixing, bid-rigging etc) (see paragraph 2.4.4) and would support any monitoring and/or enforcement action undertaken by the MDA which has the effect of combating any bid-rigging or collusion among prospective bidders for Qualified Content such as the PL Rights.
- In terms of the obligation upon SQLs to acquire the rights to Qualified Content across all platforms (as set out at paragraph 3.4), the Premier League considers that there should be an exception to that obligation in the event that the supplier of the relevant Qualified Content determines that it wishes to license that content in Singapore on a platform-by-platform basis for use on all qualifying platforms. Although the Premier League presently has no intention of so selling the PL Rights (which are currently offered for sale on a technologically neutral basis), it considers that, without such an exception, the effect of the obligation to acquire content across platforms would be to constrain unfairly the right of the owner of Qualified Content to deal with that content as it sees fit.

- With regard to the numbering/EPG position of channels featuring Qualified Content, the Premier League broadly agrees with the approach suggested by the MDA in paragraph 3.3.6, namely, this should be the subject of commercial negotiation between the SQL and each RQL. However, in order to ensure that the stated aims of the MDA are not indirectly defeated (for example, by the charging of prohibitively high fees for prominent channel positions or an RQL unfairly preferring the position of its own channels over those of an SQL), the Premier League considers that the MDA should ensure that the channel numbers/EPG positions of channels featuring Qualified Content are allocated on a fair, reasonable and non-discriminatory basis and in accordance with a published price list and methodology.
- Similarly, the Premier League considers that, in order to ensure the straightforward carriage of SQL channels on RQL platforms, each RQL should be required to provide such conditional access services and other technical services as may be required for the carriage of the relevant channel on that RQL platform on a fair, reasonable and non-discriminatory basis and in accordance with a published price list and methodology.
- The Premier League notes that the Consultation does not deal expressly with the treatment of High Definition (HD) and three-dimensional (3D) versions of channels which feature Qualified Content. The Premier League's view is that if a SQL chooses to innovate by producing and making available an HD/3D version of a channel, it should be entitled to determine itself whether to make that channel available on the platform of any RQL. That discretion reflects the fact that the SQL should be entitled to make available those versions as it sees fit in order to recoup its investment in the relevant HD/3D service.
- Although the Premier League broadly agrees with the principle that the retail price of any package featuring Qualified Content should be consistent across all platforms upon which that package is made available, we consider that the MDA should consult with SQLs as to whether there should be any agreed exceptions to that principle (for example, to allow for limited and targeted promotional offers during which a package featuring Qualified Content could be made available at a reduced or no cost to subscribers).
- Finally, the Premier League is reassured by, and supports, the content of paragraph 2.10.2 of the Consultation and, in particular, the MDA's comment that content providers may continue to enter into exclusive arrangements with its preferred pay TV retailer. The Premier League firmly believes that consumers benefit from such arrangements because if the SQL knows that it can hold the relevant Qualified Content on an exclusive basis for a specified and certain period of time, it will be incentivised to invest in that product and innovate in order to present the content in the best possible way (which is clearly beneficial to the consumers of that content).

### **Part Three: Conclusion**

In summary, the Premier League broadly supports the proposed approach of the MDA in respect of the implementation of the Measure.

The main concern of the Premier League is to ensure that the MDA proceeds with the proposed approach to cross carriage fees currently set out in the Consultation which it considers:

- to be fair and reasonable to all interested parties; and
- will ensure that (i) fair and effective competition is maintained for all Qualified Content (including the PL Rights) and (ii) bidders are not disincentivised from bidding for Qualified Content.

The Premier League would also ask that the MDA makes every effort to ensure that, in the absence of agreement being reached between an SQL and a RQL in respect of the amount of any cross-carriage fees, such fees are determined by the MDA in accordance with a published ratecard or (failing that) a transparent and fair methodology which ensures that the SQL is as certain as possible of the level of cross-carriage fees which are likely to be payable to RQLs if that SQL successfully acquires Qualified Content and becomes subject to the Measure.

**Part Four: Contact**

Should you have any follow-up questions or comments regarding this document, please can you contact Nicholas West of DLA Piper UK LLP (the legal advisers to the FA Premier League Limited) whose contact details are as follows:

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