MEDIACORP PTE LTD

FEEDBACK TO
MEDIA DEVELOPMENT AUTHORITY OF SINGAPORE
ON CROSS CARRIAGE MEASURE
IN THE PAY TV MARKET CONSULTATION

THIRD INDUSTRY CONSULTATION

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TABLE OF CONTENTS

SUMMARY OF MAJOR POINTS

MediaCorp is highlighting a number of issues for the Media Development Authority ('Authority')'s consideration as feedback to the Third Consultation on the Implementation of the Cross-Carriage Measure in the Pay TV Market which was issued on 23 March 2011. These issues are centered around:

I. The asymmetrical treatment in classifying RQLs and SQLs and how this is unnecessary for pay TV platforms that operate on unmanaged networks

II. The Authority's Long Run Incremental Cost concept for cross carriage fees

III. Likely resultant disincentives which will stunt the development of the local content production market and the long run implications on the local media scene

STATEMENT OF INTEREST

As a major player in the Singapore media industry in the free-to-air market, and an interest in the subscription television market as a new entrant, MediaCorp has interests in matters that concern content development and the pay TV industry.

COMMENTS

1. Asymmetrical Treatment in Classifying RQLs and SQLs

1.1 In view of the policy reason behind the Cross Carriage Measure (the Measure), there is an apparent asymmetrical treatment between the classification of Receiving Qualified Licensees (RQLs) and Supplying Qualified Licensees (SQLs), which in return would have a much wider implication and impact on the scope of the Measure than the stated policy reason. Currently, only pay TV operators on a Relevant Platform will qualify to be a RQL but operators on <u>any platform</u> can be deemed a SQL. This will in effect create an unequal playing field to the advantage of the pay TV operators on a Relevant Platform who will have the ability to provide a wider scope of access as opposed to the SQL who is not operating on a Relevant Platform.

1.2 In view of how the digital world is progressing, with the impact of streaming television in the form of Apple TV and other similarly announced measures, it is extremely likely that many upcoming and new pay TV services will operate on unmanaged networks and as such, their acquired content contracts will only cover the rights for transmission over an unmanaged network.

1.3 As many of these unmanaged networks operate on the basis of open and easily accessible networks, the issues that led to the Measure would not arise if operators on such unmanaged networks were to secure exclusive content transmission rights over unmanaged networks as:

(i) all pay TV operators on Relevant Platforms are still free to acquire such content for broadcast over their respective Relevant Platforms (i.e. the rights for transmission over managed networks);

(ii) other pay TV operators on similar unmanaged networks are not RQLs and as such, they are not entitled to receive such Qualified Content; and

(iii) pay TV operators on unmanaged platforms (i.e. OTT services) operate openly over the unmanaged Internet, enabling anyone in Singapore with internet access to receive their services – on a Connected TV, Set-top box, PC or mobile (computing) devices, thus averting the issues of content fragmentation caused by exclusive contents made available only for closed platform/s.

1.4 We will like to emphasize that unmanaged platform or OTT services are conceived as **<u>device and platform agnostic</u>** and that means of delivery ensures wide, expansive and open access, unlike the closed networks of existing nationwide pay TV operators.

1.5 As such, due to its open nature, pay TV operators on an unmanaged network or OTT service providers should not be deemed a SQL even if they were to have Qualified Content.

2. Issues with Cross Carriage fees

2.1 The way the Cross Carriage Measure is structured now appears disadvantageous to new SQLs who operate on unmanaged platforms (New SQLs) in comparison to the existing nationwide pay TV operators on Relevant Platforms. This is because the New SQL (who is not designated as a RQL) is required to pay the other RQL for carriage based on the Long Run Incremental Cost (LRIC) Methodology, in addition to its own incremental cost to comply with the Measure. It would be very expensive for a New SQL to serve customers through a RQL, if only a small number of the RQLs subscribers wish to view the New SQL's content. The fees collected from those subscriptions may not be enough to cover the cost of carriage; yet the moment a single RQL customer wants content from the New SQL, the latter is obliged to serve it through the RQL.

For example, if a RQL only has 10 subscribers who are interested in the New SQL's service which is priced at $10 per month, the New SQL will earn $100 per month from the RQL's subscribers whilst incurring expenses in leased line connectivity to the RQL, LRIC of the RQL's additional encoders (1 per channel), additional ports on the RQL's multiplexer and recurring equipment maintenance costs etc, just to earn all but $100.

Depending on how the industry moves, particularly with more and more targeted and niche content being offered, the foregoing example may become a real and common situation that will impose undue hardships on the New SQLs which will in turn have the opposite effect of damaging the industry rather than develop the industry for a more robust and bustling media industry in Singapore.

2.2 Furthermore, the New SQL's marginal cost of operating its platform is already more cost-efficient than the RQL's which is operating on a managed network. Having the New SQL bear the cost of transmitting over a less cost-efficient network to deliver content to RQL's subs runs contrary to the Government's push for productivity and efficiency. In economic terms, the market has incurred a deadweight cost (i.e. cost of delivering content to a less cost-efficient network), as not only is the New SQL paying for distribution on a less cost-efficient platform but the said New SQL's service is already readily available to the RQL's subscribers via the unmanaged network in the first place (as mentioned in paragraph 1.4).

2.3 Hence, we are of the view that unmanaged networks should not be classified as an SQL as it creates an unreasonable financial burden to deliver a service that is already readily available via other means.

3. Implications on the Local Production Market

3.1 The Authority's response in the 3rd Consultation's paragraph 3.3.1.6 reads "As a matter of policy, MDA does not intend to make a distinction as to whether channel of programming content from a third party or a related party was self produced or commissioned under the Measure".

3.2 MediaCorp believes that this position will have a dire impact on the local media production industry as:

(i) The Singapore local content production industry is too fragile to support a Push model; and

(ii) There will be significantly less incentive for pay TV operators to commission local production.

3.3 We will deal with this point in greater detail in Paragraphs 4 and 5 below.

4. Push vs. Pull model

4.1 MediaCorp's view is the sales and distribution relationship for new and untested programmes and channel between Content Producers and Pay TV operators can be classified into either a Push or Pull model. A Push model is where the Content Producer is the main driving force behind the distribution of new and untested content and in the Pull model, it is the pay TV operator who is the main driving force requesting and commissioning such content. MediaCorp believes that the Authority's current thinking on self produced or commissioned content will only work in a media industry where the Push model is pre-dominant.

4.2 In order for a Push Model to work, the Content Producers must have sufficient critical mass and financial resources to bankroll cutting edge programming that will appeal to pay TV operators. In light of the explosion of overseas content now being readily available to viewers via new media sources, the costs of producing cutting edge local programming has increased substantially as viewers expectations have correspondingly risen as well. Unfortunately, Singapore's local production industry is not as well capitalized to underwrite the entire pilot creation process. A perusal of ACRA's database strongly suggest that most of the local TV production companies do not file audited financial accounts with the most likely reason being that these companies all have respective sales turnovers of less than $5 million per annum.

4.3 Thus we are left with the Pull Model. We submit that the pay TV operators will prefer proven / tested acquired foreign content over new untested locally produced content. A perusal of existing pay TV operators channel listings indicate that most of these channels and programmes are foreign acquired programmes and channel with proven track records with audiences in their home markets. Content such as Barclays Premier League, TVB drama etc all are past the pilot stage with ready audiences/followings which results in pay TV operators being prepared to sign them on with the assurance that their audiences will receive such content warmly. However, new locally produced content obviously has no proven track record and thus Singapore pay TV providers will be more apprehensive and cautious in acquiring them. If a Singapore pay TV operator is to take a chance on commissioning or acquiring an untested and untried locally produced programme, it will only do with the aim of spotting a eventual hit programme that is exclusive to its platform. As this exclusive protection for locally produced content is no longer available to pay TV operators, there is a real risk that when one weighs the uncertainty of the locally produced programme's popularity against the lack of a corresponding exclusive upside, this will result in Singapore pay TV operators further gravitating towards acquiring proven foreign content. There is no longer any compensation for taking the original risk 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.

4.4 Hence in order to provide the necessary incentives to pay TV operators to back untested local content, MediaCorp is of the view that the original definition of Qualified Content as first contemplated by the Authority should prevail.

5. <u>Less Incentive for Pay TV Operators to Self Produce/Commission</u>

5.1 MediaCorp understands the Authority's position is that by reaching out to a broader set of eyeballs (through cross carriage), content producers will theoretically be able to earn more revenue. However, MediaCorp is of the firm belief that this will invariably remove any incentive for a pay TV operator to self produce and/or commission local content as such content cannot be used to differentiate its own service platform.

5.2 Imagine a situation where Pay TV Operator A adopts a very aggressive approach in championing locally produced programmes and invests a significant amount of time in screening through pitches, commissioning scripts and fine tuning pilots before going to air. Only a very small fraction of the original number of pitches that Operator A had started out with will eventually prove to be a hit with audiences and Operator A will have incurred significant costs in seeking that hit programme. However, for Pay TV Operator B, it adopts a passive approach on locally produced programmes and only provides its viewers with Operator A's programmes that have proven to be hits with audiences. In such a scenario, Operator A will have little incentive to continually champion locally produced programmes as:

(i) if the content is exclusive, Operator A is classified a SQL and incurs additional costs in reimbursing Operator B for carriage costs. One needs to bear in mind Operator A's transmission costs are already sunk and are largely fixed costs and such cross carriage fees to Operator B will erode Operator A's margins.

(ii) if the content is not exclusive, Operator B can cherry pick only the hits whilst not incurring a share of costs associated with searching for worthy scripts and losses arising from failed pilots.

5.3 Published literature consistently point out that the costs of screening through and commissioning scripts and exploring failed pilots are significant. "There is a brutal winnowing down of material, and only a small percentage of pitches are commissioned for scripts, and even a smaller percentage of scripts then are produced as pilots."[1] The Museum of Broadcasting estimates the success ratios as follows: "Few scripts are commissioned, and fewer still lead to the production of a pilot--estimates suggest that out of 300 pitches, approximately 50 scripts are commissioned, and of those, only 6 to 10 lead to the production of a pilot."[2]

5.4 Industry veterans also echo this view. Jeff Zucker (former CEO of NBC Universal) said that the five US broadcast networks spent half a billion (US) dollars to develop 80 pilots in 2007. He also anticipated that when the US 2008/09 television season begins, at most eight of those series will return inferring a 10% success rate for the scripts that make it to pilot stage.[3]

5.5 In addition to the disincentive of blazing the trail for one's competitor to free ride upon, MediaCorp also strongly subscribes to the hypothesis that Singapore pay TV operators will not be prepared to invest resources to create iconic local programming as any competitive differentiator and advantage gained in creating such content will be negated as the resultant service will not be unique to the commissioning or self-producing pay TV operator. Exclusively commissioned or self produced content provide a valuable differentiator for pay TV operators and MediaCorp will like to draw attention to the following example which clearly illustrate this.

5.6 Netflix is the highly successful entrant to the US pay TV market with more than 20 million subscribers and is already a distributor of content from most major content providers. Yet on 18 March 2011, Netflix announced that it is going to commission exclusive programming. The New York Times reports "Netflix, the popular online film service, said on Friday that it had licensed the exclusive rights to "House of Cards," a show that is to be directed by David Fincher, the director of "The Social Network," and to star Kevin Spacey. The deal immediately makes Netflix a player in premium television programming." [4] The article continues "Analysts said that through the deal, Netflix was both striving to differentiate its service and to reduce its dependence on films and TV shows licensed from third parties." This clearly illustrates that even successful new entrants in a vibrant and mature market will require exclusive self produced content as a service differentiator.

5.7 Hence in order to provide the necessary incentives to pay TV operators to continually innovate (whilst preventing a free rider effect) and differentiate their channel offerings, MediaCorp is of the view that the original definition of Qualified Content as first contemplated by the Authority should prevail.

6. Issues with Bundling

6.1 The Authority states that when a SQL bundles the Qualified Content with other non Qualified Content, that entire bundle shall be deemed Qualified Content.

6.2 However, as the other content is non Qualified Content, it is conceivable that such content could 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 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.

6.3 Since the non Qualified Content in the bundle could be or is already obtained by the RQL, the proposal is for the Authority to mandate the availability of the Qualified Content for cross carriage but leave the SQL and RQL to discuss on the commercial and operational arrangements to have the same bundle at the same price available for customers on the RQL platform.

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[1] Jeffrey C. Ulin (2010), *The Business of Media Distribution*. Focal Press (Elsevier)
[2] http://www.museum.tv/eotvsection.php?entrycode=pilotprogram

[3] Keynote speech at the 2008 annual conference of the National Association of Television Program Executives.
[4] http://query.nytimes.com/gst/fullpage.html?res=9906E6D9143AF93AA25750C0A9679D8B63

7. Duties of RQL

7.1 With reference to Para 2.7.2A (c)(i)(A), the RQL must carry the Qualified Content on its Relevant Platforms “in its entirety and in an unmodified and unedited form”, the RQL may have to transcode the content and apply a different content protection encryption on the Qualified Content to be able to deliver it on its Relevant Platform.

7.2 We will like to seek clarity as to whether the Authority’s definition of unmodified and unedited is in relation to the viewer experience or that it also includes all technical aspects on the means of transmission. If it is the latter, we are of the view that this definition is too wide reaching and may not be technically possible as cross platforms, particularly in relation to NGNBN, may see differing technical requirements in terms of encoding, security protocols and other DRM systems put in place for content protection against piracy and towards enhancing viewer experiences. Accordingly, we would like to request that the Authority clarify that this requirement of “unmodified and unedited form” does not take into account such technical aspects of carriage.

CONCLUSION

In conclusion, MediaCorp would like to re-iterate that we welcome the opportunity to comment on the Consultation Document and would appreciate that the Authority maintains this channel of open dialogue.

MediaCorp appreciates that the Authority has various areas of concerns that it must address under this Measure but we are of the view that the local media market and industry is larger in perspective and care must be exercised to ensure that the correct balance is in place and more surgical means are adopted rather than the current broad brush approach that will affect the entire Singapore media industry.

In the interest of creating a level playing field for new entrants into the Singapore pay TV industry and the continual development of the local content production industry, we hope the Authority will consider the issues that we have raised in this submission.