MEDIA DEVELOPMENT AUTHORITY OF SINGAPORE

CROSS CARRIAGE MEASURE

IN THE PAY TV MARKET

CONSULTATION ON PRELIMINARY POLICY POSITIONS

ISSUED ON: 1 September 2010

Executive Summary

1. On 12 March 2010, the Media Development Authority of Singapore ("**MDA**") introduced the cross carriage measure ("**the Measure**") which imposes an obligation on specific pay TV retailers ("**Supplying Qualified Licensee**"s or "**SQL**"s) to make available channels/content which they may acquire on an exclusive basis for carriage by specific pay TV licensees which are licensed to provide subscription nationwide television services ("**Receiving Qualified Licensee**"s or "**RQL**"s).[1] An industry consultation was concurrently launched to obtain industry feedback on the Measure and its implementation mechanics. The Measure was effected via amendments to the Media Market Conduct Code ("**MMCC**") on the same date, to prevent any industry participant from seeking to negate the effectiveness of the Measure and thereby frustrate MDA's policy objectives.

2. The Measure is essentially a regulatory solution designed to address MDA's concerns over the nature of competition developing in the Singapore pay TV market and, in particular, the very high degree of content fragmentation which had resulted in 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 are diverted away from other aspects of competition such as service and content innovation.

3. At the close of the industry consultation which was conducted from 12 March 2010 to 6 May 2010, MDA received submissions from 19 respondents, including existing and potential pay TV retailers, local content providers, foreign content providers and a consumer interest group.

4. The 19 submissions presented a diverse range of views regarding the Measure and its implementation details. Various stakeholder groups – including the consumer interest group, some content providers, as well as the existing and potential pay TV retailers – generally expressed their support for the Measure. Both existing nationwide pay TV retailers also provided valuable feedback on the implementation details, such as bundling, billing-on-behalf, retail pricing and carriage fees. Some content providers raised concerns over the perceived lack of

[1] In essence, the Measure requires SQLs to purchase infrastructural capacity from RQLs to deliver Qualified Content to subscribers who wish to access the Qualified Content via the RQL platforms.

consultation on the Measure and the Measure's ability to address MDA's concerns. There were also concerns over the possible restrictions on the content providers to distribute their content arising from the Measure as well as other potential implementation issues.

5. MDA has, within this consultation paper, further elaborated on its key policy concerns and shared the market evidence and factual observations it has made over time to set out its basis for intervention. MDA has also reiterated why it believes the Measure will facilitate a more competitive and vibrant media industry that will benefit both consumers and various stakeholders in the pay TV market. In particular, MDA highlighted that the intention of the Measure is to address the adverse impact of content fragmentation on consumers (i.e., the inconvenience and costs of having multiple set-top boxes), to enhance competition in the local pay TV market and to encourage pay TV retailers to re-focus competition (that is currently based on an exclusive content-centric strategy) to include other aspects such as service differentiation, competitive packaging and pricing. At the same time, MDA envisages that the Measure will provide pay TV retailers and content providers with immediate access to an increased customer pool given the widened distribution of the former's channels, and accordingly, provide opportunities for substantial subscriber growth. The Measure will also encourage new market entrants, bringing a greater number of subscription and technology choices to consumers.

6. In addition, MDA has also set out its clarifications with regard to a wide range of comments including the potential for the Measure to facilitate collusion between the pay TV retailers, the possibility of the Next Generation Interactive Multimedia Applications and Services ("**NIMS**") Common-Featured Set-Top Box ("**CF STB**") as an alternative to the Measure, the impact of the Measure on the impending Next Generation Nationwide Broadband Network ("**NGNBN**"), the design and scope of the Measure, the impact of the Measure on content bundling, MDA's consultation process for the Measure and the compatibility of the Measure with international treaties and the US-Singapore Free Trade Agreement.

7. The following is a summary of the issues set out for further consultation:

i) Scope of the Measure

7.1 ***Definition of Qualified Content.*** MDA proposes to revise the definition of "**Qualified Content**" to further clarify its policy intention.

7.2 ***Application to VOD and Interactive Content.*** MDA proposes that the Measure will apply to linear and basic Video-on-Demand ("**VOD**") content and their supporting services. The Measure will not apply to advanced interactive content at this point of time.

7.3 ***Qualifying Criteria for Supplying Qualified Licensee.*** MDA proposes an accompanying refinement of the definition of SQL.

7.4 ***Qualifying Criteria for Receiving Qualified Licensee.*** MDA proposes a set of criteria for determining which nationwide subscription television service licensees would be required to fulfil the obligations of a RQL.

ii) Customer Relationship

7.5 ***Customer Relationship is between SQL and Subscribers.*** In relation to cross-carried channels, the policy intent is that the customer relationship is between the SQL and the subscribers of its cross-carried channels. It follows that customer service will be rendered by the SQL to these subscribers.

7.6 ***No Mandatory Single Billing.*** MDA proposes not to impose any single billing requirement. However, MDA encourages industry initiatives to minimize consumer inconvenience.

7.7 ***Marketing and Promotion.*** MDA is proposing that the SQL maintain and publish a list of its Qualified Content on its website and promotional materials. The SQL should also negotiate with content providers to allow RQLs to publish, on the RQLs' websites and viewing guides, a list of the SQL's Qualified Content for the limited purpose of informing consumers of channels which are being cross-carried.

7.8 ***Channel Numbering.*** MDA proposes that the RQLs and SQLs should commercially negotiate, and submit to MDA, the recommended approach for the allocation of channel numbers by the RQLs.

iii) Platform Rights Acquisition

7.9 To safeguard against any circumvention of the Measure, MDA proposes to require any Regulated Person which has acquired Qualified Content to obtain the rights (either exclusive or otherwise) to broadcast the Qualified Content on all the other delivery platforms that are listed by MDA as "**Relevant Platforms**". MDA is prepared to consider limited exemptions in exceptional circumstances, where such exemptions would not defeat the policy intent of the Measure.

iv) Gazetting of Schedule to the MMCC

7.10 To provide greater clarity to the industry, MDA is proposing to gazette and publish a list of all SQLs and RQLs and the Relevant Platforms in a schedule to the MMCC.

v) Cross Carriage Fee

7.11 MDA prefers that the parties reach their own commercial agreement on the quantum of the cross carriage fees. Any disagreements over cross carriage fees which cannot be resolved between the parties may be referred to MDA for a binding resolution.

7.12 In resolving any such disagreements, MDA intends to be guided by a two-tier cross carriage fee framework based on the most efficient system run by the RQLs, which would also address the concern on free riders.

vi) Retail Pricing

7.13 In order for the Measure to effectively address MDA's concerns, MDA proposes that the SQL charges its subscribers the same retail prices regardless of whether they are accessing its channels via its own platform or via the RQLs' platforms.

vii) Cross Carriage of Packages and Bundles

7.14 MDA proposes that so long as a bundle, package or channel contains Qualified Content, it will be subject to the Measure and cross-carried on the RQLs' platforms in the same form and at the same price.

viii) Service Standards

7.15 MDA believes that it is important that the RQL is required to carry all Qualified Content in its entirety and without any alteration (including without limitation, dual sound, surround sound, subtitling and electronic programme guide(s)). MDA holds the view that the RQL should not perform any act, or omit to perform any act, that may diminish, impair or otherwise degrade the viewing experience of any subscriber accessing the Qualified Content on the RQL's service.

7.16 ***Preparation for the Cross Carriage of Qualified Content.*** MDA proposes that the SQL notifies MDA within 5 working days of concluding any arrangement which creates Qualified Content. The SQL should make available Qualified Content for transmission on both its platform and RQLs' platforms simultaneously. The SQL should provide sufficient notification period of no less than 30 days to the RQLs to trigger as well as terminate cross carriage of Qualified Content.

7.17 ***Activation of Cross Carriage of Qualified Content.*** MDA proposes that the SQL, upon receiving a customer's request for Qualified Content, should take no more than 5 working days to activate the provision of the requested Qualified Content.

7.18 ***Customer / Technical Service.*** The SQL should take no more than 24 hours to respond and take steps to resolve the customer and/or technical problems that the subscribers encounter for Qualified Content. The SQL will have an additional 12 hours if the customer and/or technical problems lie with the RQL.

7.19 ***Submission and Approval of Service Standards.*** MDA proposes that both SQLs and RQLs be required to submit draft service standards to MDA for approval. Subsequently, the SQLs and RQLs will be required to publish the approved service standards on their respective websites and to submit to MDA monthly reports on customer service and technical faults.

ix) Exemptions from the Measure

7.20 MDA is only minded to grant exemption under exceptional circumstances. As a preliminary position, MDA considers that an applicant would need to demonstrate how such an exemption will benefit consumers or the pay TV market, for instance, how the exemption will enhance consumer welfare through innovation and the creation of new channels/programming content.

x) Triennial Review of the Measure

7.21 MDA proposes to 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.

8. Following the close of the first industry consultation, MDA has met and engaged with different stakeholders to better understand their concerns. MDA's views encapsulated in this document are based on the comments from the first industry consultation and the subsequent engagements. As MDA continues to fine-tune the Measure and the Measure's implementation details, it welcomes comments on its preliminary views as set out in this consultation document.

1 INTRODUCTION

1.1 On 12 March 2010, the Media Development Authority of Singapore ("**MDA**") introduced the cross carriage measure ("**the Measure**") which imposes an obligation on pay TV retailers ("**Supplying Qualified Licensee**"s or "**SQL**"s) to make available channels/programming content which they may acquire on an exclusive basis for carriage by specific pay TV licensees which are licensed to provide subscription nationwide television services ("**Receiving Qualified Licensee**"s or "**RQL**"s).[2] An industry consultation was concurrently launched to obtain industry feedback on the Measure and its implementation mechanics. The Measure was effected via amendments to the Media Market Conduct Code ("**MMCC**") on the same date, to prevent any industry participant from negating the effectiveness of the Measure and thereby frustrating MDA's policy objectives.

1.2 The Measure is essentially a regulatory solution designed to address MDA's concerns over the nature of competition developing in the Singapore pay TV market. While the introduction of competition in the pay TV market has brought about greater content variety, enhanced programming quality and some degree of service innovation, MDA has also observed that the pay TV retailers are primarily adopting an exclusive content-centric strategy to differentiate themselves in the market. This has resulted in Singapore becoming out of sync with the norms observed in other competitive pay TV markets with regard to the very high degree of content fragmentation, which has resulted in increased inconvenience and attendant costs for consumers, as well as created significant barriers to entry for new entrants. Furthermore, attention and resources are diverted away from other aspects of competition (such as service and content innovation). MDA has been closely studying this issue since 2008 and after due consideration as well as consultation with the industry, MDA assessed that regulatory intervention was necessary and the Measure best addressed its concerns about Singapore's pay TV market.

1.3 Under the Measure, a pay TV retailer will be able to leverage on another retailer's platform to widen the distribution of the former's channels/programming content that had been acquired or obtained on an exclusive basis. The intellectual property rights ("**IPR**") of the content providers are not curtailed by the Measure as

[2] In essence, the Measure requires SQLs to purchase infrastructural capacity from RQLs to deliver Qualified Content to subscribers who wish to access the Qualified Content via the RQL platforms.

content providers continue to have the freedom to enter into exclusive arrangements with their downstream buyers if they so wish. Similarly, the Measure does not impose any compulsory licensing or forced unbundling of packaged channels/programming content. Further, a SQL will contract directly with the subscribers on the RQL's networks and continue to be accountable for all IPR-related issues. In short, the Measure in effect does no more than provide an additional conduit or platform for a SQL to deliver content to a bigger pool of subscribers.

1.4 At the close of the industry consultation which was conducted from 12 March 2010 to 6 May 2010, MDA received submissions from 19 respondents, including existing and potential pay TV retailers, local content providers, foreign content providers and a consumer interest group; namely:

i) AETN All Asia Networks Pte Ltd;
ii) Consumers Association of Singapore ("**CASE**");
iii) Cable & Satellite Broadcasting Association of Asia ("**CASBAA**");
iv) Creative Technology Ltd & Zii Pte Ltd;
v) Discovery Asia Inc;
vi) Disney-ABC International Television (Asia Pacific);
vii) ESPN Star Sports;
viii) Home Box Office (Singapore) Pte Ltd;
ix) IMG Media;
x) MediaCorp Pte Ltd;
xi) M1 Limited;
xii) Motion Picture Association – International ("**MPA**");
xiii) MP & Silva Pte Ltd;
xiv) News Corporation;
xv) ServTouch-Wywy (S) Pte Ltd;
xvi) SingNet Pte Ltd ("**mio TV**");
xvii) SPORTFIVE Asia;
xviii) StarHub Cable Vision Ltd ("**SCV**"); and
xix) World Sport Group Pte Ltd.

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

1.5 The 19 submissions presented a diverse range of views regarding the Measure and its implementation details. Various stakeholder groups – including the consumer interest group, some content providers, as well as the existing and potential pay TV retailers – generally expressed their support for the Measure. Both existing nationwide pay TV retailers also provided valuable feedback on the implementation details, such as bundling, billing-on-behalf, retail pricing and carriage fees. Section 2 of this consultation paper provides a summary of the comments received.

1.6 Following the close of the first industry consultation, MDA actively met and engaged with various stakeholders to better understand their concerns. MDA's views encapsulated in this document are based on the comments from the first industry consultation and the subsequent engagements. As MDA continues to fine-tune the Measure and the Measure's implementation details, it will appreciate comments on its preliminary views as set out in this consultation document.

1.7 This consultation document sets out the following:

a) a summary of the key comments received from the various stakeholders on the Measure and MDA's clarification of the Measure; and

b) a request for further comments on MDA's preliminary policy positions which were formulated in response to the issues raised by the stakeholders on the Measure.

2 SUMMARY OF FEEDBACK AND CLARIFICATION OF CROSS CARRIAGE MEASURE

2.1 MDA has set out below a summary of the key comments and feedback received. MDA has received several requests for confidential treatment of the comments and information provided in response to the first industry consultation. In order not to discourage the industry from providing their comments freely due to commercial concerns, MDA has kept the identities of the respondents confidential. Where necessary, MDA has provided its clarifications on certain issues raised in the first consultation paper.

2.2 Policy Rationale & Objectives

2.2.1 Some respondents agreed that the state of competition in Singapore's pay TV market negatively impacts both the industry and consumers, and expressed concerns about the high degree of content fragmentation in Singapore, i.e., the situation of many programmes being carried on only one platform. One respondent pointed out that the current state of the market does not encourage new market players to venture to develop new forms of media service and to achieve service excellence while another opined that "moderate policy regulation to control the deteriorating situation would be welcomed by all retail operators whose prime objective is to deliver best values to its consumer base". At the same time, a number of respondents commented that MDA did not provide sufficient evidence to demonstrate that there is market failure in the pay TV market in Singapore. Others opined that the pay TV market will self-correct over time and therefore does not require any regulatory intervention.

MDA's Basis for Intervention is Fully Supported by Factual Observations and Market Evidence

2.2.2 Contrary to any views that MDA's basis for intervention has not been sufficiently established, MDA has been closely monitoring the development in the pay TV market over an extended period of time. In 2008, it commissioned a study (jointly with the Infocomm Development Authority of Singapore ("**IDA**") and Competition Commission of Singapore ("**CCS**")) on competition issues in convergent markets in Singapore, with a particular focus on competition issues in the pay TV market. MDA has continued to analyse these issues since the completion of that study.

2.2.3 The following paragraphs set out MDA's key concerns on a broad policy level and the factual observations MDA has made over time:

a) Content fragmentation in Singapore has led to increased inconvenience and attendant costs for consumers

As a result of the pay TV retailers' strategy to obtain channels/programming content on an exclusive basis, a situation has developed where each pay TV retailer offers a distinct portion of the content available in the market. In comparison to other countries, content fragmentation in Singapore is particularly pronounced. A review of all available channels from SCV and mio TV reveals that only seven pay TV channels are carried by both retailers,[3] amounting to less than 4% of Singapore's pay TV channels. Furthermore, over 90% of the 100 most subscribed channels are presently acquired exclusively[4]. MDA's concerns over content fragmentation were compounded by the fact that there has been a substantial increase in the number of exclusive content/channel agreements ("**ECA**"s) in the market since the entry of mio TV.

As content moves from one pay TV retailer to another or becomes split between retailers, as each retailer tries to out-bid the other for exclusivity, consumers who wish to continue viewing the same content may have to switch their subscription or subscribe to multiple retailers and contend with additional costs and inconvenience such as additional cabling, installation charges and set-top box rentals.[5]

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[3] The only channels carried by both retailers are CCTV4, CCTV9, KBS World, Russia Today, Granada TV, Deutsche Welle and Australia Network.

[4] These figures relate to the 100 most-subscribed channels, based on Nielsen Media Index 2009. MDA came to this determination after undertaking a comprehensive contract due diligence review exercise.

[5] ChannelNewsAsia, "Multiple set-top boxes here to stay, for now" at http://www.channelnewsasia.com/stories/singaporelocalnews/position/1015418/1/.html; and The Business Times, "MDA reviewing 'complex issue' of exclusive content" at http://www.iesingapore.gov.sg/wps/portal/!ut/p/c4/04_SB8K8xLLM9MSSzPy8xBz9CP0os3gDCyNf30C_QA9Hg1APFz_nYBMjAwjQL8h2VAQAeGSibw!!/?nID=6_082MMQNQHA0UHDNCKP80000000&cID=6_082MMQNQHA0UHDNCKP80000000&newsID=91AA5300-9921-48DE-9DCC-5356C1958A33&newsType=1&title=News%20from%20Business%20Times.

Content fragmentation has had a negative impact on consumers. Should a consumer wish to continue accessing the full suite of content, he/she will have no choice but to subscribe to both SCV and mio TV, and correspondingly incur two sets of subscription fees and rental fees for two separate set-top boxes, in addition to the inconvenience (and costs) of installation, cabling and storage space for two set-top boxes. The situation would be more complex for consumers when other nationwide networks become operational and/or other retailers enter the market.

MDA's assertion has been demonstrated from the uproar over shifts in carriage rights for sports content, including football.[6] In fact, the migration of the ESPN and STAR Sports channels to mio TV means that general sports (over and above just football content) also experienced fragmentation.

Further, a face-to-face consumer survey[7] commissioned by MDA (comprising a mix of SCV, mio TV and non-pay TV subscribers) clearly identified that concerns over content fragmentation are not restricted to channels containing *premium sports* content alone[8]. The survey, conducted in late 2008, indicated that *all* pay TV subscribers are sensitive to content fragmentation, not just the sports fans featured in media reports. Indeed, the survey results indicate that over 90% of all pay TV subscribers prefer to have all content available on one platform. *Both* sports fans and *non*-sports fans expressed a similarly strong preference for having all content available on one platform.

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[6] The primary source of consumer indignation was that consumers would have to subscribe to both pay-TV retailers in order to access all popular football content. This arose as a result of SingTel's successful bid in March 2008 for the exclusive media rights to the UEFA Champions League and UEFA Cup 2009-2012 seasons, and subsequently, a successful bid in October 2009 for the Barclays Premier League ("BPL") for three years commencing August 2010. Reference articles: The Straits Times, "Football fans bear brunt of pay-TV battle", 6 April 2008; The Straits Times, "Cheaper with cable? StarHub and mio TV revamped their services to offer better value, but positioners still can't see the payoff in pay TV", 13 June 2008; The New Paper on Sunday, "Fans get drawn into TV war: Is this fair?", 30 March 2008; Todayonline, "Football fans caught offside", 24 March 2008; The Hollywood Reporter, "mio TV takes EPL from StarHub", 1 October 2009.

[7] In order to examine the issue of consumer preferences regarding channel arrangements, at the end of 2008, MDA commissioned a survey of current and potential pay-TV subscribers in Singapore. The survey consisted of face-to-face interviews of a final sample of 1,081 interviewees.

[8] Some respondents to MDA's first industry consultation on the Measure had suggested that the Measure be applied only to limited genres such as sports.

b) Raising barriers to entry into the Singapore pay TV market

MDA is also concerned that the pervasiveness of ECAs between pay TV retailers and content providers will raise entry barriers to an extent which hinders or deters new entrants, particularly those intending to leverage on the pervasive, ultra high-speed Next Generation Nationwide Broadband Network ("**NGNBN**") infrastructure. This would negate MDA's effort to encourage new entrants to the Singapore media industry to spur its development and ultimately bring about greater variety and benefits to consumers and the pay TV industry as a whole. The Measure aims to facilitate new entry by increasing access to content, thus allowing new entrants to gain a foothold in the pay TV market.

2.2.4 As Singapore's pay TV market becomes increasingly out of sync with the norms observed in other competitive pay TV markets, MDA considers that market forces are not likely to address its current concerns in the pay TV market. Regulatory intervention is imperative to promote the interests of 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.

2.3 Impact on Industry and Consumers

2.3.1 MDA received comments to the effect that the current market conditions have hindered the development of new, innovative services and the distribution of content enabled by technology developments. Another respondent lauded the Measure as an enabler for smaller IPTV players/retail service providers to focus on promoting local content and innovations. Conversely, some respondents voiced concerns that after the implementation of the Measure, pay TV retailers can no longer compete on content differentiation and service innovation, and will therefore lose the motivation to aggressively promote the content. This would mean that content providers will need to undertake the efforts and costs of promoting the content themselves, thus reducing their profit margins. Further, it was argued that the Measure may lead to lower revenues for content providers as pay TV retailers are likely to pass on the costs of cross carriage to them. Consequently, these respondents felt that content providers may have less resource to invest in further content innovation. These respondents considered that the Measure will ultimately lead to a dilution in the value of content.

2.3.2 Some respondents considered that the Measure represents a step towards greater competition in the pay TV market. One respondent opined that the "initiative will clearly benefit consumers, as they can enjoy the full array of contents at non-discriminated pricing". Another respondent commented that the Measure is likely to result in the intended beneficial effect of avoiding content fragmentation. However, some respondents commented that their confidence in the Singapore market is shaken through the implementation of the Measure, due to a lack of respect for IPR, regulatory transparency and certainty, and content protection. Further, the Measure will damage Singapore's reputation as a media hub and lead to an outflow of creative talent and media-related jobs. Some respondents also raised the possibility that content providers may be forced to leave the Singapore market as it is no longer commercially viable, while new content providers may choose not to enter the market at all. These respondents argued that consumers would also suffer from poorer content quality and choices.

Positive Impact on Industry and Consumers

2.3.3 In response to the concerns raised by the some of the respondents, MDA considers that over time the Measure will facilitate a more competitive and vibrant media industry that will benefit both the consumers and various stakeholders in the pay TV market.

2.3.4 The intention of the Measure is to encourage pay TV retailers to engage in service and product differentiation beyond pursuing an exclusive content-centric strategy. The Measure aims to increase competition in the local pay TV market and to allow pay TV retailers to re-focus competition to other areas such as service differentiation, competitive packaging and pricing.

2.3.5 Further, MDA envisages that the Measure will provide pay TV retailers and content providers with immediate access to an increased customer pool given that one pay TV retailer is able to leverage on another retailer's platform to widen the distribution of the former's channels, and accordingly, provide opportunities for substantial subscriber growth, and a corresponding increase in returns. To illustrate, if SCV acquired a channel under an exclusive arrangement (e.g. Channel XYZ), it can now offer this channel beyond its own SCV subscriber base, and reach out to subscribers on the mio TV Internet Protocol ("**IP**") TV platform. Channel XYZ continues to be associated with SCV and those users accessing Channel XYZ through the mio TV IPTV platform are SCV's retail subscribers for that channel.

2.3.6 It is important to reiterate that MDA is fully committed to respecting the rights of copyright holders. Under the Measure, content providers remain at liberty to continue signing exclusive agreements with their preferred pay TV retailer. The exclusive channels/programming content to be cross-carried ("**Qualified Content**") is not mandatorily resold to a second pay TV retailer or subject to 'compulsory licensing'; it is merely carried on an additional platform. The affected channel will continue to be branded in its original form featuring the preferred pay TV retailer's and/or channel's branding and commercials. MDA believes that pay TV retailers will still find value in competing to become the 'primary' contractor for popular content (as opposed to passively carrying a competitor's feed), because of the branding association and the ability to control the retail pricing and packaging and the retail relationship with the consumer.

2.3.7 With the implementation of the Measure, consumers will be able to receive more of their desired content through one platform than was possible pre-Measure. Greater ease of access to available pay TV content (i.e. access content through one pay TV retailer's set-top box), will in turn reduce the ancillary costs that consumers incur from multiple pay TV subscriptions (for example, additional cabling, installation and set-top boxes rental). One respondent commented that it "is pleased that MDA has offered a solution to the hassle of consumers having to subscribe to multiple set-top boxes".

2.3.8 Academic commentary similarly takes the view the Measure will serve to benefit consumers in the long run. Eminent local economist Professor Ivan Png in a Straits Times (27 May 2010) article "New TV rules will benefit Singaporeans" expressed that the cross carriage regulation would extend the audience for popular sports while Visiting Professor Lim Yee Fen from NUS's Lee Kuan Yew School of Public Policy in a Straits Times (29 June 2010) article "Free market a win-win for all operators", opined that the Measure would increase competition in the pay TV market.

2.3.9 Some industry watchers were also supportive of the Measure. Frost & Sullivan, for instance, released a report "Pay TV Content Exclusivity: Justified?" [9] which put forth that "in the ideal world, the pay TV service providers should not be forced to try to seal exclusive content deals at hefty price tags, but should be able to sell all available content in the market and differentiate based on quality of service, customer satisfaction and competitive packaging".

2.3.10 Besides encouraging innovation from existing pay TV retailers, MDA considers that the Measure will also encourage new market entrants, bringing a greater number of subscription and technology choices to consumers. This accords with the Singapore Government's investment in the pervasive, ultra high-speed NGNBN infrastructure, and together work to spur a greater degree of competition and service innovation in the delivery of new media content such as 3-D content.

2.3.11 MDA believes that ultimately, the Measure will safeguard the public interest from the undesirable consequences arising from content fragmentation and its attendant negative effects; encourage investment and service differentiation (e.g. improved quality of service) by content providers, and pay TV retailers alike; reduce inconvenience to consumers (e.g. cost and effort in installing multiple set-top boxes and additional cabling); and lower the barriers to entry for new entrants to the pay TV market. Singapore will therefore continue to remain an attractive media market in Asia, boasting of a vibrant and sustainable pay TV industry.

2.3.12 The Measure does not diminish the value of content, whether on a short or long term basis. MDA considers this to have a positive impact on whether content providers will continue to invest and base themselves in Singapore. Professor Lim Yee Fen pointed out in her article that, in contrast to claims that the Measure would hurt the media sector, the Measure would in fact result in greater competition in the Singapore pay TV market. Thus, the Measure is not a reason for content providers to withdraw from the Singapore market. Similarly, Ng Kuo Pin, Accenture's Head of Communications and High Technology, had commented that "successful media hubs require talent, the presence of a creative media and content eco-system, as well as

[9] Source: BusinessWorld Online, 6 July 2010, www.bworldonline.com/main/content.php?id=13755

good regulatory, business and living environments. If you look at it objectively, these factors have not really changed as a result of the new ruling".[10]

2.4 Potential for Collusion

2.4.1 There were some concerns over whether the implementation of the Measure will facilitate anti-competitive conduct by pay TV retailers arising from discussions on cross carriage of exclusive content. It appears to MDA that many respondents thought that the Measure requires pay TV retailers to share sensitive pricing information and coordinate their market conduct in the relevant markets. MDA would like to clarify that the Measure does not require any such coordination or exchange of commercially sensitive information between the pay TV retailers.

2.4.2 Firstly, the Measure does not compel pay TV retailers to share any sensitive pricing information. If a pay TV retailer acquires a channel exclusively, it will then be required under the Measure to retail that channel across the other retailer's platform at the same retail price that it sells the channel or bundle of channels on its own platform.

2.4.3 Secondly, it is expected that the pay TV retailers will still compete for first-rights to valuable content, because the winning bidder, as the SQL, can still extract considerable commercial value from the subscription fees and advertising revenue (as may be applicable) as well as having its branding and marketing associated with the channel; as opposed to becoming a RQL who can only passively carry the channel in its entirety without modification.

2.4.4 Thirdly, the existing MMCC prohibitions (as set out in paragraph 7 of the MMCC) against anti-competitive agreements and activities (e.g. price fixing, bid-rigging, etc) will continue to apply to the pay TV retailers.

2.4.5 As such, MDA is of the view that the Measure would not facilitate collusion in the market.

[10] Source: US Government voices concern over pay-TV rules, The Straits Times, 18 May 2010

2.5 NIMS Common-Featured Set-Top Box

2.5.1 Given the issues that the Measure is perceived to give rise to, some respondents queried whether the concern over content fragmentation could be better addressed by the Next Generation Interactive Multimedia Applications and Services ("**NIMS**") Common-Featured Set-Top Box ("**CF STB**") instead. One respondent advocated for the NIMS project to be fast-tracked and asked for greater clarity on the status of the NIMS project and the CF STB. Another respondent requested for government funding for further research and development in this area and a subsidy for nationwide adoption of a universal set-top box.

Project NIMS CF STB not an Alternate Solution

2.5.2 MDA wishes to clarify that the NIMS CF STB is not an alternative solution, but a complementary initiative. In the absence of the Measure, the Government would still have to mandate that all pay TV retailers make their content available via the NIMS CF STB to facilitate consumer access. Furthermore, MDA understands that there is currently no existing set-top box in the market that can support both SCV and mio TV's services without extensive customisation. In addition, there remains the issue of dual cabling in consumer's home since SCV and mio TV are using different infrastructures to deliver their services.

2.5.3 MDA sees the Measure as a complement to the NIMS CF STB efforts in facilitating greater consumer flexibility. In view of this impending development, MDA intends to 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, to ensure its continued relevance in the pay TV market.

2.6 Impact on NGNBN

2.6.1 MDA received support and positive feedback from respondents which are keen to offer retail pay TV services via the NGNBN platform. These potential new entrants fed back that enhanced access to content would be a critical factor as to whether they could make a competitive entry into the pay TV market in the NGNBN environment. However, there were also concerns over the impact of the Measure on the development of the NGNBN. In particular, the comments highlighted that without the offer of exclusive content on the NGNBN platform, consumers may lack a sufficiently compelling reason to migrate to NGNBN, thereby slowing down the take up of the NGNBN.

2.6.2 MDA has intended the Measure to not only encourage innovation from existing pay TV retailers, but also to facilitate new market entrants to bring about a greater number of subscription and technology choices for consumers. Based on feedback received, MDA understands that potential new players are keen to leverage on NGNBN to deliver content that would otherwise remain 'locked-up' under exclusive arrangements with existing pay TV retailers. These potential new entrants were of the opinion that the Measure will facilitate their market entry, rather than reduce their incentives to do so.

2.7 Design and Scope of the Measure

2.7.1 One respondent called for MDA to widen the scope of the Measure to include a "holistic remedy or package of remedies" as the current situation is not only harmful to intra-platform competition, but also to overall developments of new platforms in the pay TV market. Some respondents, on the other hand, objected to the coverage of the Measure which applies to Qualified Content irrespective of content/genre, which they considered to be too interventionist. They questioned whether there is any international precedent on the use of such a broad-brush approach/blanket requirement which is applicable to all content providers and channels/programming content.

2.7.2 There were various suggestions for the Measure to be focused on specific genres of content (e.g. live sports) and not applied to channels/programming content that have substitutes or are in low demand. An implementation challenge is whether the Measure would apply to self-produced channels that contain non-exclusive content as well as exclusive content that was acquired on and after 12 March 2010.

Application of Measure to all Exclusive Content

2.7.3 MDA wishes to clarify that its concerns are not confined to sports content alone. In the consumer survey[11] conducted in late 2008, respondents when asked to

[11] As stated above, MDA had in late 2008 commissioned a face-to-face survey of consumers (comprising a mix of SCV, mio TV and non-pay TV subscribers) to gather information on different aspects of consumer behaviour in the Singapore pay TV market,

identify the most important content genres that would affect their decision to subscribe to a pay TV service, indicated their preference (see Figure 1), in order of priority: (1) movies, (2) news, (3) television series, (4) documentaries and (5) sports.

Genre of content	*Percentage of pay TV subscribers ranking the genre first*	*Percentage of pay TV subscribers ranking the genre second*	*Percentage of pay TV subscribers ranking genre as "Top two"*	*Ranking among subscribers choosing the genre as first or second favourite*
Movies	*27%*	*24%*	*51%*	*1*
News	*25%*	*23%*	*48%*	*2*
Television series	*17%*	*22%*	*39%*	*3*
Documentaries	*14%*	*25%*	*39%*	*4*
Sports	*15%*	*4%*	*19%*	*5*
Chinese entertainment	*0%*	*1%*	*1%*	*6*
Children's programmes	*0%*	*1%*	*1%*	*6*
Education	*0%*	*0%*	*0%*	*8*
Entertainment	*0%*	*0%*	*0%*	*8*
Variety shows	*0%*	*0%*	*0%*	*8*

Figure 1: Key content genres

[Sources: Analysys Mason, Research International, December 2008]

2.7.4 Furthermore, based on the Nielsen Media Index ranking of the top TV channels viewed on a daily basis by cable TV subscribers in 2009, Football Channel (which carried English Premier League (EPL) programming) was placed 11th while ESPN was placed 18th (see Table 1 below).

including (without limitation) the decision-making criteria when consumers decide which pay-TV products to subscribe to.

Table 1: Ranking of Most Viewed Channels by Cable TV Subscribers in 2009

Ranking	Name of Channel
1	CH 8
2	CH 5
3	CHANNEL NEWS ASIA
4	CHANNEL U
5	VV DRAMA
6	DISCOVERY
7	NATIONAL GEOGRAPHIC CHANNEL
8	ANIMAL PLANET
9	E-CITY
10	DISCOVERY T & L
11	FOOTBALL CHANNEL
12	CTI
13	SUN TV
14	CNN
15	TVBS ASIA
16	BBC WORLD
17	VASANTHAM CENTRAL
18	ESPN
19	AXN
20	DISNEY CHANNEL

2.7.5 Further, the survey also clearly identifies that contrary to the belief of some respondents, the concerns over content fragmentation are not restricted to channels containing *premium sports* content alone. As mentioned earlier, the survey indicated that *all* pay TV subscribers are sensitive to content fragmentation, not just the sports fans featured in media accounts of the recent football rights deals. Indeed, the survey results indicated that over 90% of all pay TV subscribers prefer to have all content available on one platform. It should be noted that *non*-sports fans also expressed a strong preference for having all content available on one platform – the somewhat less extreme response than that of sports fans may be explained by the fact that channels from non-sports genres have not, in general, moved away from the incumbent retailer and thus these viewers have yet to face the consequences of such fragmentation.

2.7.6 In addition, Singapore is a multi-lingual, multi-cultural society. To apply the Measure only to certain genres could potentially be prejudicial to audiences from the minority groups.

2.7.7 Adding the fact that Singapore has an extremely high degree of content fragmentation, it is therefore apparent to MDA that any option proposed by MDA, should not target any specific genre (e.g. sports) in order to bring about the desired effects. It seems to MDA that it is only appropriate that the Measure applies to all exclusive content, given the extent of the content fragmentation in the market.

2.7.8 MDA also notes that regulatory intervention on the exclusive carriage of content over media platforms is not unprecedented. For example, in the USA, the Federal Communications Commission ("**FCC**") developed regulations to resolve the problem of content fragmentation through programme access rules that prohibit platforms integrated with channels (e.g. Time Warner Cable previously owned HBO and CNN[12]) to sign exclusive contracts with their own channels, and require them to make those channels available to all other platforms on non-discriminatory terms. The United Kingdom has recently announced mandated wholesale must-offer of premium sports channels, and France has imposed obligations on the dominant player (Canal Plus) on wholesale offering and limited exclusivity periods. In Sweden, pay TV operators transmitting over Digital Terrestrial Television ("**DTT**") or those reselling DTT pay TV channels must collaborate to ensure that all channels (including pay TV channels) can be viewed using one technical set-up (i.e. one viewing card).

2.7.9 In all jurisdictions, the overarching rationale for the intervention is the same – to ensure fair and effective competition to the benefit of both consumers and the industry. However, the key difference lies in the market conditions which warranted the regulatory intervention. In the US, the general trend observed was that vertically integrated cable operators were signing exclusive arrangements with (their own) channels, and thus the remedy only needed to be applied to them. In the UK, the only notable exclusive arrangements relate to Sky's self-produced sports and movies channels. In Singapore, by contrast, over 90% of the top 100 channels are under exclusive contract with a pay TV retailer, and this is reflected in the scope of the application of the Measure.

[12] MDA notes that Time Warner Cable has since divested HBO and CNN.

2.8 Impact on Content Bundling

2.8.1 Questions were also raised as to whether the Measure would require the unbundling of content packages. Some respondents were of the opinion that the Measure may, in practice, force the unbundling of content packages. They considered that this would amount to an unbridled distortion of the market place in favour of an a la carte business model which, in Singapore, has yet to be proven successful for pay TV retailers or content providers. There were also concerns raised that unbundling may disrupt the minimum guarantee structure that is the traditional practice in the marketplace; a la carte channels may cost more; and retailers may not be able to provide a la carte channels if content providers insist on aggregating their channels into bundles at the retail level.

No Requirement to Unbundle

2.8.2 MDA wishes to assure the industry that the Measure does not seek to interfere with pay TV retailers' existing channel bundling strategies. It is not the intention for the Measure to force any change to pay TV retailers' contractual arrangements with content providers or bundling strategies. They are free to decide on the commercial model that they think would best serve their interests while providing consumers with greater choices, convenience and innovation.

2.9 Consultation Process

2.9.1 A number of respondents felt that MDA had not sufficiently consulted the industry on the Measure before it was put in place on 12 March 2010. According to some respondents, the decision to implement the Measure came as a complete surprise given that MDA had previously taken the position that content exclusivity in the Singapore pay TV market had not led to substantial foreclosure of the market.

2.9.2 There were concerns expressed that the implementation of the Measure is inconsistent with Singapore's commitments under the US-Singapore Free Trade Agreement ("**USSFTA**"). Under Article 19.3 of the USSFTA, Singapore has committed to transparent rulemaking such that to the extent possible, each country would publish in advance regulations or rulings that it proposes to adopt and to provide interested persons a reasonable opportunity to respond.

Measure arrived at after consultation and engagement with industry and a thorough assessment of the market conditions in Singapore's pay TV market

2.9.3 As mentioned previously, MDA has been closely monitoring the pay TV market and has in fact commissioned a study in 2008 to examine the competition issues in convergent markets in Singapore, particularly pay TV retailers' pursuit of an exclusive content-centric strategy to differentiate themselves.

2.9.4 As part of the study and on its own initiative, MDA has since 2008 been actively consulting with no less than 30 key stakeholders – including pay TV retailers, content rights owners, channel providers, international competition regulators and competition experts – for their views on the state of competition in the Singapore pay TV market and how best to address its concerns. Based on these consultations and further review of public feedback, MDA determined that it was necessary to implement decisive measures to address its concerns as outlined in paragraph 2.2.3.

2.9.5 Since 2009, MDA explored no less than 20 regulatory options to address the issues identified above. In fact, as one of the possible options, MDA contemplated continuing in its policy of relying on market forces, as opposed to regulatory intervention. However, it became clear to MDA that market forces alone were unlikely to address the issues affecting the pay TV market, so long as pay TV retailers continue to aggressively pursue an exclusive content-centric strategy. MDA does not foresee the pay TV retailers voluntarily abandoning their exclusive content-centric strategy in the near future given that it is deeply entrenched in the way that the pay TV retailers currently compete in the market. This is backed by MDA's observations on the number of ECAs being signed over time.

2.9.6 Out of the various regulatory approaches identified, MDA shortlisted three possible regulatory options[13] that it considered to be more suitable for the Singapore market and studied them in greater detail. MDA focused on these potential remedies on the basis that they least affect industry stakeholders' legitimate business interests, whilst still being able to meet MDA's objectives.

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[13] The three regulatory options, to apply to key genres and/or content, were (i) prohibit pay-TV retailers from signing ECAs; (ii) mandatory resale of content/channels by pay-TV retailers; (iii) mandatory a-la-carte offering and price regulation.

2.9.7 MDA also continued closed-door discussions with some stakeholders. Having carefully considered all the feedback received, MDA derived a measure which it considered to be the least interventionist in nature and effect (e.g. not affecting stakeholders' copyrights).

2.9.8 This eventually led to the announcement of the Measure on 12 March 2010. MDA considered that it was not appropriate to carry out any public consultation on the precise Measure *prior to its announcement* on 12 March 2010 as it was concerned that doing so may risk frustrating the policy objectives of the Measure, by allowing a window period for industry participants to rush to conclude lengthy ECAs in the period between the start of the consultation and the coming-into-force date of the Measure.

2.9.9 Further, mindful of the need to balance the interests of content rights owners, channel providers, pay TV retailers and consumers, MDA applied the Measure in what was, in its view, the least interventionist manner: i.e. only applying the Measure to ECAs renewed or concluded on or after 12 March 2010 and to only implement it on ECAs between content providers and pay TV retailers (i.e. at the downstream level).

2.9.10 Meanwhile, MDA has continued to consult the industry since 12 March 2010. It remains open to making further refinements to the Measure following a thorough review of the feedback received from the relevant stakeholders. This was unambiguously communicated to recipients of the first industry consultation paper:

> *"3.10 Strictly with a view to preventing any industry participant from negating the effectiveness of the Remedy and thereby frustrating MDA's policy objectives (for instance, by concluding or renewing long-term exclusive carriage agreements during the consultation period), MDA has concurrently gazetted amendments to the Code. Specifically, MDA has inserted an additional Public Interest Obligation within Section 2 of the MMCC (including all necessary consequential amendments), which takes effect immediately.* ***MDA may make further amendments to the Code, pursuant to a review of the feedback received from this industry consultation.****"* [Emphasis added.]

2.10 Compatibility with International Treaties and the USSFTA

2.10.1 MDA received comments that the Measure is potentially tantamount to forcing the grant of compulsory licences to pay TV retailers in Singapore, and that is in conflict with the basic rights of content providers to determine how their IPR should be used. This would therefore bring the Measure in conflict with international copyright treaties (specifically the World Intellectual Property Organisation ("**WIPO**") Copyright Treaty to which Singapore is a party), and the WTO Trade Related Aspects of Intellectual Property Rights Agreement ("**TRIPS**") and the USSFTA. The respondents were also concerned that the Measure does not provide a mechanism for content providers to safeguard their IPR while their content is being cross-carried.

Measure Compatible with International Treaties and USSFTA

2.10.2 It would appear to MDA from a review of the comments received that there is some misunderstanding regarding the ambit of the Measure and the operation of the cross carriage of content under the Measure. The Measure is not an exception, exemption or limitation to copyright. There is no denigration as to the scope of exclusive rights that can still be freely exercised by copyright owners. As iterated above, under the Measure, the Qualified Content is not resold by the SQL to the RQL or subject to a compulsory licence; it is merely carried on the RQL's platform by the SQL. A content rights holder may continue to sign ECAs with its preferred pay TV retailer, and the channel continues to be branded in its original form featuring the preferred pay TV retailer's branding and commercials. As such, the premium derived from making the content exclusively available to a SQL is not removed. The essence of exclusivity in the contractual arrangements has been preserved in so far as the Measure only permits the SQL to broadcast its channels/programming content on the RQL's broadcasting platform to reach the SQL's subscribers on the RQL's platform. The SQL remains as the only retailer who makes the exclusive content available but instead of only making the content available to SQL's subscribers on its platform, it will also make the exclusive content available to its subscribers on RQL's platform, as part of the exercise of the same right to communicate the exclusive content by the content provider. The Measure only provides for an extended infrastructure for the distribution of content which accords with the rights holder's normal exploitation of its rights in the Qualified Content. Therefore, it cannot be said that the content rights holder is deprived of its rights or that it has been prejudiced.

2.10.3 It also cannot be said to be compulsory licensing since (i) the rights holder still retains the right to determine whether to enter into exclusive arrangements or non-exclusive arrangements or at all; and (ii) the RQL does not obtain any control or possession of content and also does not obtain the right to communicate the content that has been licensed to the SQL to its subscribers. The Measure does not stipulate that the SQL can do any restricted act without the consent of the copyright owner. Ultimately, the Measure is implemented as a result of public interest considerations, and for the future development of the pay TV market.

2.10.4 Accordingly, respondents can be assured that the Measure is compliant with international copyright treaties, TRIPS and the USSFTA. The Measure does not erode or denigrate the ability of any rights holder to license any restricted act, nor does the Measure stipulate that either a SQL or RQL can undertake any restricted act without authorisation from the right owner.

2.10.5 The respondents also provided feedback that the Measure does not provide a mechanism for content providers to safeguard their intellectual property rights. MDA's preliminary position is that both SQL and the RQL are required to put in place industry recognised content protection systems and anti-piracy measures that safeguard IPR and are in line with content providers' rights protection requirements. This issue will be further discussed in section 3 of this consultation paper and MDA invites the industry to provide comments for its consideration.

2.11 Other Comments

2.11.1 A respondent highlighted that a RQL should not be allowed to advertise the cross-carried channels as this could go against content providers' requirements. MDA also received feedback that the SQL should make available the Qualified Content to the RQL at the source quality. A number of respondents commented that Qualified Content should be cross-carried without any modification by the RQL to avoid eroding the branding and marketing efforts of the SQL.

2.11.2 MDA also received comments from the respondents regarding various other issues such as extension of the implementation deadline; customer relations between SQL and subscribers; the practicality of single billing, Video-On-Demand ("**VOD**") and interactive content, the process to request for Qualified Content; retail pricing; rights requirement; bundling; cross carriage charges; exemption; other operational details; and clarification of certain terms/definitions.

Details of the Measure

2.11.3 For ease of reference, MDA has summarised the proposed operational details of the Measure as follows:

a) only the SQL has the ability to brand and market the Qualified Content. The RQL may only do so with the SQL's approval;

b) the RQL is to passively carry the Qualified Content in its entirety without modification;

c) the SQL should endeavour to offer the Qualified Content on the RQL's platform at a quality that is no lower than that at which it offers to its own viewers;

d) both SQL and RQL are required to put in place industry recognised content protection systems and anti-piracy measures that safeguard the IPR of the Qualified Content; and

e) active cross carriage would start when a subscriber of a pay TV retailer approaches the SQL to subscribe to the Qualified Content. For all intent and purposes, the subscriber becomes a SQL subscriber as well, who then receives the Qualified Content via the RQL platform.

2.11.4 The other comments received will be dealt with in more detail in section 3 of this consultation paper.

3 ISSUES FOR FURTHER CONSULTATION

3.1 Based on the comments received in the first round of consultation as well as its further review, MDA has set out its preliminary positions on the following issues:

a) scope of the Measure;
b) customer relationship;
c) platform rights acquisition;
d) gazetting of schedule to the MMCC;
e) cross carriage fee;
f) retail pricing;
g) cross carriage of packages and bundles;
h) service standards;
i) exemptions from the Measure; and
j) triennial review of Measure.

MDA welcomes industry feedback on its preliminary positions. Where possible, MDA requests for the industry to provide the relevant details to support the feedback provided.

3.2 Scope of the Measure

Definition of "Qualified Content"

3.2.1 Currently, the MMCC defines "Qualified Content" as:

> *"All channels and programming content (including linear and non-linear channels, and content packaged in video-on-demand format), acquired or otherwise obtained on or after the Effective Date by a Supplying Qualified Licensee on the basis of the Supplying Qualified Licensee having the exclusive right to broadcast such channels or programming content. For the avoidance of doubt, Qualified Content excludes any channels or programming content where the exclusive rights to broadcast such channels or programming content were acquired or otherwise obtained before the Effective Date, but includes any extension, renewal, or otherwise re-*

contracting of existing exclusive rights over such channels or programming content on or after the Effective Date."

3.2.2 MDA has received queries from the industry as to whether, under the definition of Qualified Content, the SQL would have acquired the exclusive right to broadcast such channels/programming content over all platforms or specific platforms. MDA takes the preliminary position that the definition of Qualified Content could be revised to only refer to channels/programming content which are so obtained by a SQL on 12 March 2010 (i.e., "**Effective Date**") or thereafter such that other pay TV retailers are prevented or restricted from acquiring the same channels/programming content for transmission over specified platforms. MDA proposes to include *Hybrid Fiber-Coaxial network and/or Managed IP network*[14] given that these two delivery platforms are currently the ones with the most extensive reach and impact in Singapore's pay TV market.

3.2.3 For further clarity, MDA is considering revising the definition for Qualified Content as follows: *"Qualified Content means all channels and programming content (including linear and non-linear channels, content packaged in video-on-demand format), acquired or otherwise obtained on or after the Effective Date by a Regulated*[15] *Person under an arrangement, whether explicit or implicit*[16]*, which prevents or restricts another Regulated Person from acquiring or otherwise obtaining the channels or programming content for transmission on any of the Relevant Platforms*[17] [18]*. For the avoidance of doubt, "Qualified Content" excludes any*

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[14] Managed IP network refers to an end-to-end IP network that is closed and managed by an operator to provide guaranteed performance in the delivery of services, such as multimedia content and applications, to consumers.

[15] "Regulated Person" means —
(a) such person —
(i) who is the proprietor of any newspaper as defined in section 2 of the Newspaper and Printing Presses Act (Cap. 206); or
(ii) who holds any broadcasting licence granted under the Broadcasting Act (Cap. 28), whether before, on or after 1st January 2003; or
(b) in the case of section 23, such newspaper company as defined in section 2 of the Newspaper and Printing Presses Act,
as the Minister may, by notification in the Gazette, specify

[16] MDA reserves the right to require the pay-TV retailers to submit the relevant supporting evidence, including a copy of the channel/content agreements and statutory declarations by the Chief Executive Officer and Chief Financial Officer of the pay-TV retailers.

[17] "Relevant Platforms" means *Hybrid Fiber-Coaxial network, Managed IP network* or any other Managed network identified by MDA.

[18] When MDA makes reference to a channels/content being acquired exclusively or on an exclusive basis or exclusive content in sections 3 and 4 of this consultation paper, MDA

channels or programming content acquired or otherwise obtained before the Effective Date, but includes any extension, renewal, or otherwise re-contracting of such channels or programming content on or after the Effective Date."

3.2.4 For illustration purposes (and without limitation): a Regulated Person acquires a channel for transmission on its cable platform and the channel agreement does not contain any condition that the acquisition is on an exclusive basis. In fact, the channel agreement clearly states that the channel has not been licensed for exclusive transmission and remains available for others on the cable platform. However, the Regulated Person has an arrangement (whether legally binding or otherwise) whereby the channel owner implicitly agrees that it will not license the channel to others for broadcast on any IPTV platform. The channel will be "Qualified Content" even though the Regulated Person has not acquired the channel for exclusive transmission on cable platform nor acquired the right to transmit on IPTV platform. The reason is because the Regulated Person has acquired the channel under an arrangement that prevents or restricts others from transmitting on any of the Relevant Platforms (in this case, IPTV platform).

3.2.5 To safeguard against tacit agreements and efforts to bypass the Measure, MDA reserves the right to require the pay TV retailers to submit relevant supporting evidence to MDA before MDA will allow the pay TV retailers to transmit the relevant channels/programming content. Such supporting evidence must include a statutory declaration made under the Oaths and Declarations Act (Cap. 211) by the Chief Executive Officer of the pay TV retailers (or officers in equivalent capacity), in such form prescribed by MDA, declaring under oath that the channels/programming content are not "Qualified Content". MDA also reserves the right to require the pay TV retailers to submit a copy of the channels/programming content agreements and highlight the relevant terms of the agreements that clearly and expressly show that the channels/programming content are not "Qualified Content".

Application to VOD and Interactive Content

3.2.6 Respondents have also raised concerns on whether the RQL can deliver Qualified Content in interactive form, or alternatively, additional time will have to be

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means such content being acquired or otherwise obtained under an arrangement that prevents or restricts a Regulated Person from acquiring or otherwise obtaining the channels or programming content for transmission on any of the Relevant Platforms.

provided in order to achieve the delivery of interactive and VOD service to subscribers. There were suggestions on how to enable the delivery of VOD content such as linking up the VOD platforms so that customers on the RQL's network can access SQL's VOD content directly. Issues with regard to terms and standards at which interactive content would be offered were also raised; for example, there may be licensing issues in connection with interactive standards.

3.2.7 In order to reduce the operational complexity of the Measure, MDA proposes that the Measure will apply to linear and VOD content, including supporting functions such as those enabling toggling between multiple languages, subtitles, stereo/surround sound formats; navigational access to VOD content like Left, Right, Up, Down, OK, Enter, Exit; and time display like Time Elapsed and Time Remaining. Content such as Electronic Programme Guide and Synopsis, as well as the necessary mechanism(s) to support the purchase of VOD content should similarly be included. MDA holds the view that the Measure need not apply to advanced interactive content such as player statistics, multiple angles, embedded links to other content, etc, at this point of time. As technologies develop, MDA will periodically review the list of interactive services that will be subject to the Measure, to ensure that consumer needs continue to be met. At all times, the RQL needs to comply with and respect IPR.

Qualifying Criteria for Supplying Qualified Licensee ("SQL")

3.2.8 Currently, the MMCC defines a "Supplying Qualified Licensee" ("**SQL**") as:

(i) any Regulated Person who is licensed to provide any Subscription Television Service and who acquires or otherwise obtains Qualified Content; or

(ii) any Regulated Person who:

(A) has Control over or is under the Control of a person who has acquired or otherwise obtained Qualified Content; or

(B) along with a person who has acquired or otherwise obtained Qualified Content, is under the Control of a third person,

and who has an arrangement with the person who has acquired or otherwise obtained the Qualified Content to broadcast the Qualified Content on such Regulated Person's service.

3.2.9 With the proposed revision in the definition of Qualified Content, MDA proposes an accompanying refinement of the definition of SQL: SQL means any of the following:

(i) any Regulated Person who acquires or otherwise obtains Qualified Content; or

(ii) any Regulated Person who:

(A) has Control over or is under the Control of a person who has acquired or otherwise obtained Qualified Content; or

(B) along with a person who has acquired or otherwise obtained Qualified Content, is under the Control of a third person,

and who has an arrangement with the person who has acquired or otherwise obtained the Qualified Content to broadcast the Qualified Content on such Regulated Person's service.

3.2.10 While there is industry feedback that there is a risk that niche subscription television service licensees may exploit the Measure to reach out to large number of potential subscribers by free riding on the RQL's network, MDA holds the preliminary position that it is essential that the Measure cover all content that had been acquired on an exclusive basis. Excluding content acquired exclusively by niche subscription television service licensees may create further fragmentation in the market. To address this potential free rider problem, MDA has proposed a differentiated cross carriage fee structure that will be discussed in paragraph 3.6.2.

Qualifying Criteria for Receiving Qualified Licensee ("RQL")

3.2.11 Currently, the MMCC defines a "Receiving Qualified Licensee" ("**RQL**") as a Regulated Person who is licensed to provide subscription nationwide television services.

3.2.12 MDA has received feedback raising concerns over potential free rider problems whereby a subscription television services licensee may attempt to increase the attractiveness of its network by providing its subscribers with access to Qualified Content supplied by the SQL under the Measure without putting in place the necessary investment in infrastructure or content. To safeguard MDA's policy intent that RQLs should be subscription nationwide television services licensees that have substantial network reach, MDA is proposing to impose a criterion on the minimum number of subscribers for determining which licensees are RQLs.

3.2.13 Further, MDA recognises the importance of safeguarding the IPRs of the Qualified Content. It is therefore proposing that all RQLs must deploy an industry-recognised content protection system and anti-piracy measures. Based on information available to MDA, it understands that the two possible RQLs, mio TV and SCV, have deployed content protection systems and anti-piracy measures which are recognised by international content providers.

3.2.14 It is therefore proposed that a RQL must be a nationwide subscription television service licensee that has fulfilled the following set of criteria:

a) has 10,000 or more subscribers;
b) has an industry-recognised content protection system and anti-piracy measures; and
c) has the ability to meet Service Standards stated in paragraph 3.9.

3.2.15 Further, MDA is proposing that a RQL will start carrying all Qualified Content when MDA gazettes the RQL in a Schedule in the MMCC. This will ensure minimal consumer confusion over the carriage of Qualified Content by the RQL.

3.2.16 To ensure optimal consumer satisfaction and operational efficiency, MDA is proposing several high level outcomes on the Service Standards. MDA encourages commercial retailers to discuss and develop the details for the respective Service Standards in paragraph 3.9.

3.3 Customer Relationship

Customer Relationship is between SQL and Subscribers

3.3.1 There were some comments that were related to the relationship between the SQL and the subscribers of cross-carried channels. For example, some respondents had suggested that customer service to subscribers that have taken up cross-carried channels should be provided by the SQL as this is more effective and efficient. There were also questions raised regarding the ability of the RQL to provide subscriber information that are required by content providers (e.g., subscriber usage).

3.3.2 For the purpose of the cross-carried channels, the policy intent is that the customer relationship is between the SQL and the subscribers of its cross-carried channels. MDA therefore holds the position that customer service will be rendered by the SQL to these subscribers. Similarly, the SQL (rather than the RQL) will be responsible to content providers for the provision of any subscriber related data.

No Mandatory Single Billing

3.3.3 In their feedback to MDA, a number of respondents had highlighted the complexities and difficulties surrounding the implementation of single billing as proposed in the consultation paper of 12 March 2010. Amongst other things, they were worried that single billing could give rise to complications with regard to slow consumer dispute resolution, non-payment by the RQL, partial payment allocations as well as loss of confidentiality on price changes and promotions, etc.

3.3.4 Taking this feedback into account, MDA holds the preliminary position that there will not be any requirement of single billing under the Measure. SQL can therefore bill subscribers of the cross-carried channels directly for its services. This is in line with the position that the customer relationship (for cross-carried channels) is directly between the subscribers and the SQL. However, MDA encourages SQLs to reach a mutually agreeable arrangement with the RQLs to minimise potential consumer inconvenience.

Marketing and Promotion

3.3.5 To facilitate consumer education and minimise confusion, MDA is proposing that the SQLs maintain and publish a list of its Qualified Content on its website and promotional materials. SQLs should also negotiate with content providers to allow RQLs to publish, on the RQLs' websites and viewing guides, a list of SQLs' Qualified Content for the limited purpose of informing consumers of channels which are being cross-carried.

Channel Numbering

3.3.6 To address industry feedback and possible consumer confusion over the allocation of channel numbers by the RQLs, MDA proposes that the RQLs and SQLs should commercially negotiate and submit to MDA the recommended approach for the allocation of channel numbers by the RQLs.

3.4 Platform Rights Acquisitions

3.4.1 MDA reiterates that it respects the IPRs of the content rights owners and channel providers. At the same time, it is also critical for MDA to ensure that the Measure is able to work effectively. As such, to safeguard against any possible collusion which is aimed at circumventing the Measure, MDA proposes to require any Regulated Person which acquired Qualified Content to obtain the rights (either exclusive or otherwise) for the other delivery platforms that are listed as Relevant Platforms. For example, if a pay TV retailer intends to procure *Hybrid Fiber-Coaxial network* rights such that another Regulated Person cannot acquire or obtain the channel/programming content for transmission on any of the Relevant Platforms, it will be required to procure the *Managed IP network* rights as well.

3.4.2 MDA considers that this requirement is not likely to impose additional burden on the industry. While MDA has received divergent views as to how content rights are typically acquired by pay TV retailers in practice, i.e. either territory-based (which includes all platform rights) or platform-based (e.g., *Hybrid Fiber-Coaxial network and Managed IP network* rights are sold separately), MDA's current understanding based on industry input and its study of overseas practices is that most content rights, particular exclusive rights for the Relevant Platforms, are typically packaged on a territorial basis.

3.4.3 MDA appreciates that there may be instances where the SQLs may not be able to comply with this requirement. It would not require the SQLs to secure the IPR for platforms that are genuinely not available. Should a Regulated Person (for the reasons given below) be unable to obtain the rights to broadcast on the other Relevant Platforms (other than the target delivery platform), it can apply to MDA for an exemption from the requirement set out in paragraph 3.4.1. To qualify for such an exemption, the SQL must demonstrate that the content provider does not have the relevant broadcast rights for Singapore and other neighbouring countries. In addition, the SQL must submit a statutory declaration made under the Oaths and Declarations Act by its Chief Executive Officer, in such form prescribed by MDA, declaring under oath that there is no arrangement to prevent or restrict other

Regulated Persons from acquiring or otherwise obtaining the channels/programming content for transmission on any of the Relevant Platforms.

3.4.4 MDA takes a very serious view of any attempts to circumvent the Measure. In the event that MDA finds that a pay TV retailer has entered into any form of commercial arrangement to circumvent the Measure in any manner to prevent/impede another pay TV retailer from obtaining the necessary broadcast rights, it will take the necessary remedial actions to ensure that the pay TV retailer comply with the Measure. In addition, a false statutory declaration under the Oaths and Declarations Act will attract criminal liability.

3.5 Gazetting of Schedule to the MMCC

3.5.1. To provide greater clarity to the industry, MDA is proposing to gazette and publish a list of all SQLs and RQLs and the Relevant Platforms in a schedule to the MMCC.

3.6 Cross Carriage Fee

3.6.1 In terms of the costs of cross carriage, MDA's preference is for the parties to reach their own commercial agreement on the quantum of the cross carriage fees. However, MDA is cognizant of the possibility of a disagreement over the cross carriage fee which cannot be resolved through good faith and commercial negotiation. MDA therefore proposes that such disagreements may be referred to MDA for resolution whose decision shall be final and binding on both parties. In such circumstances, the parties will still be required to continue to comply with their obligations of cross carriage of Qualified Content, even if they are unable to reach a mutually acceptable cross carriage agreement and are, or in the process of, initiating either a dispute resolution procedure or conciliation.

3.6.2 In resolving any such disagreements, MDA intends to be guided by the two-tier carriage fee framework set out in Table 2 below.

Table 2 Proposed Cross Carriage Fee Structure

Type of SQL	*Charging Principle*	*Cost Components*
SQLs that are also RQLs	Directly Attributable Incremental Cost (DAIC) based on the most efficient system run by the RQLs	Incremental capital expenses (Capex) and operating expenses (Opex) directly attributable to the cross carriage of the Qualified Content
SQLs that are not RQLS	Long Run Incremental Cost (LRIC) based on the most efficient system run by the RQLs	DAIC + apportionment of actual costs relating to the replacement of the transmission network for the delivery of content

3.6.3 The proposed differentiated cross carriage fee structure aims to address the industry concern that niche licensees may through the Measure try to exploit other licensees that have invested in nationwide infrastructures and allow them immediate access to subscribers on such pay TV platforms while not subjecting themselves to the corresponding obligations. There are industry players who note that such action would distort the market incentive and discourage investment. MDA holds the preliminary position that such SQLs that are non-RQLs should pay for the long run incremental cost for leveraging on the nationwide pay TV platforms that will grant them immediate access to a large group of subscribers.

3.6.4 To ensure efficient transmission of cross carriage content, MDA proposes that the cross carriage charges should be calculated based on the most efficient system run by the RQLs.

3.7 Retail Pricing

3.7.1 MDA has earlier proposed that the SQL charges the same retail prices for subscribers on its own platform as well as those on the RQL's platform. There were suggestions for the SQL to set different retail prices to reflect the differences in the costs of delivering the services to customers.

3.7.2 MDA has introduced the Measure in order to address various competition issues in Singapore pay TV market, including content fragmentation. To avoid consumer confusion, and ensure the attractiveness of accessing the Qualified Content provided by the SQL via the RQL's platform, MDA proposes that the SQL charges its subscribers the same retail prices regardless of whether they are accessing its channels via its own platform or via the RQL's platform.

3.8 Cross Carriage of Packages & Bundles

3.8.1 Some respondents sought clarifications as to whether content programming acquired on an exclusive basis that are packaged with those acquired on a non-exclusive basis will be classified as Qualified Content and be subject to the Measure. There were also queries on whether bundles that include channels that are acquired on an exclusive as well as a non-exclusive basis will be classified as Qualified Content and be subject to the Measure.

3.8.2 MDA aims to balance the need of the subscribers to have access to the Qualified Content while minimising the impact on the content providers' and pay TV retailers' business considerations. As such, MDA proposes that so long as a bundle, package or channel contains Qualified Content, it will be subject to the Measure and be cross-carried on the RQLs' platforms in the same form and at the same price. Beyond that, MDA will leave it to the SQL to make its commercial decision on its bundling and packaging of the Qualified Content which best serves its commercial interests.

3.9 Service Standards

3.9.1 MDA believes that it is important that the RQL is required to carry all Qualified Content in its entirety and without any alteration, (including without limitation, dual sound, surround sound, subtitling and electronic programme guide(s)). The RQL needs to comply with and respect the IPR accorded to the SQL. For example, when a SCV channel is carried on mio TV, that channel would continue to carry SCV's branding and vice versa.

3.9.2 Some respondents also suggested that the RQL should be required to maintain a minimum set of Quality of Services ("**QoS**") standards to ensure that the content providers are protected in relation to faults, outages and adequate quality of service. The RQL should not perform any act, or omit to perform any act, that may diminish, impair or otherwise degrade the viewing experience of any subscriber accessing the Qualified Content on the RQL's platform.

3.9.3 MDA expects the RQL to maintain the same level of QoS standards for cross-carried channels as it would for its own channels while ensuring that it complies with the QoS standards set out in its Subscription Nationwide Television Service Licence. Should that RQL wish to modify the content (including advertisement), it must obtain the SQL's approval.

3.9.4 In the event that there is any financial loss arising from piracy of content as a result of negligence or any other fault of the RQL, some respondents had suggested that the RQL should fully indemnify the content providers and the SQL in such circumstances. Some other respondents raised the point that the RQL should not be liable in the event of a breach by the SQL of any licensing obligations or prevailing legislation. MDA takes the position that where the RQL causes the SQL to suffer loss or to breach its contractual obligations, the RQL should be responsible to the SQL for such loss or breach. The converse also applies.

3.9.5 To provide greater clarity as well as to protect consumer interest, MDA holds the preliminary position that the SQLs and RQLs should commercially negotiate the implementation details while complying with the following proposed service standards and principles:

a) Preparation for the Cross Carriage of Qualified Content

3.9.6 MDA still holds the position that the SQL must provide, within 5 working days of concluding any arrangement (including any acquisition, renewal or other form of re-contracting of channels/programming content on or after the Effective Date) which creates Qualified Content, such information to MDA.

3.9.7 In the case of new channel/programming content that is Qualified Content, the SQL should make available and transmit the Qualified Content on both its platform and RQLs' platforms simultaneously. Sufficient notification period of no less than 30 days should be given to the RQLs to make the necessary arrangement for cross carriage of such new Qualified Content that had not been previously transmitted on the RQLs' platforms. For existing channel/programming content that subsequently becomes Qualified Content, MDA proposes that the cross carriage of such channel/programming content should start on the day it becomes Qualified Content. Similarly, notice period of no less than 30 days should be provided to the RQLs prior to this date. In a case where a channel/programming content ceases to be a Qualified Content, notification period of no less than 30 days should be provided to the RQLs and the affected subscribers.

b) Activation of the Cross Carriage of Qualified Content

3.9.8 MDA proposes that the SQL, upon receiving a customer's request for Qualified Content, should take no more than 5 working days to provide the Qualified Content to the customers.

c) Customer/Technical Service

3.9.9 Should the subscriber terminate the contractual relationship with the RQL, the RQL should take no more than 24 hours to notify the SQL. The SQL will contact the subscriber to make an appropriate arrangement regarding the cross-carried channel(s) subscribed.

3.9.10 As and when required, a subscriber will contact the SQL for customer and technical service for problems related to the channels/programming that are Qualified Content. If it transpires that the problem lies with the RQL, the SQL will inform the RQL but continue to be responsible for updating the subscriber. The SQL should take no more than 24 hours to respond and take steps to resolve the customer and/or technical problems that the subscribers encountered. The SQL will have an additional 12 hours if the customer and/or technical problems lie with the RQL.

d) Submission and Approval of Service Standards

3.9.11 MDA proposes that both SQLs and RQLs will be required to submit the draft service standards to MDA for approval. Subsequently, the SQLs and RQLs will be required to publish the service standards on their respective websites and to submit monthly reports on customers and technical faults to MDA.

3.10 Exemptions from the Measure

3.10.1 One respondent commented that the criteria to qualify for exemption are unclear and that MDA should provide a transparent set of guidelines on this matter. Other respondents have offered suggestions on content/contracts that should be exempted from the Measure. These include:

a) self-packaged channels (no competition issue since channels are assembled from content from a variety of content providers in the market);
b) content involving local sports (in order to promote a vibrant local sports scene);
c) local content (in order to cultivate a vibrant local media industry); and
d) re-negotiated contracts (as opposed to new contracts), unless the re-negotiation is pertaining to an extension or acquisition.

3.10.2 MDA considers that an applicant would need to demonstrate how such an exemption will benefit consumers or the pay TV market, for instance, how the exemption will enhance consumer welfare through innovation and the creation of new channels.

3.10.3 MDA is only minded to grant exemption under exceptional circumstances. As a preliminary position, the following are examples of what MDA may consider as exceptional circumstances:

a) SQL can demonstrate channel innovation and content origination would not or could not take place as a result of the Measure;
b) SQL can prove that they are unable to effect the Measure due to pre-Measure contractual obligations and technical constraints;
c) SQL and/or RQL can demonstrate that Measure will bring about irreparable harm; or
d) Where MDA considers that the implementation of the Measure would be against the public interest or the policy intent of the Measure.

3.10.4 Further, a SQL can seek exemption from securing the rights for all Relevant Platforms if it can demonstrate that the content provider does not have the relevant broadcast rights for Singapore and other neighbouring countries, and if it makes the necessary statutory declarations. In this situation, if the SQL is able to secure the rights to the Qualified Content for only one of the Relevant Platforms, the Qualified Content will not have to be cross-carried on other Relevant Platforms for which the rights are not available. In other words, if the SQL is only able to acquire the rights to the Qualified Content for Hybrid Coaxial Fiber network, the Qualified Content will not have to be cross-carried on a Managed IP network.

3.10.5 However, the Qualified Content will still have to be cross-carried on the Relevant Platform on which the SQL has the relevant rights if there is another pay TV retailer operating on the same Relevant Platform. For example, if mio TV secures a Qualified Content for Managed IP Network only, it will be required to allow other RQLs using Managed IP Network as delivery platforms to cross-carry the Qualified Content to their subscribers.

3.11 Triennial Review of the Measure

3.11.1 After taking into account the industry's request to ensure the continued relevance of the Measure, MDA proposes to 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.

4 REQUEST FOR COMMENTS

4.1 MDA invites the submission of comments on the Measure and its implementation mechanics. In particular, MDA seeks views on how best to implement the Measure. This will allow MDA to have a better understanding of the views of interested parties.

4.2 The following is a summary of the issues set out for further consultation:

i) Scope of the Measure

4.2.1 ***Definition of "Qualified Content".*** MDA proposes to revise the definition of "Qualified Content" to further clarify its policy intention.

4.2.2 ***Application to VOD and Interactive Content.*** MDA proposes that the Measure will apply to linear and basic VOD content and their supporting services. The Measure will not apply to advanced interactive content.

4.2.3 ***Qualifying Criteria for Supplying Qualified Licensee.*** MDA proposes a refinement of the definition of SQL.

4.2.4 ***Qualifying Criteria for Receiving Qualified Licensee.*** MDA proposes a set of criteria for determining which nationwide subscription television service licensees would be required to fulfil the obligations of a RQL.

ii) Customer Relationship

4.2.5 ***Customer Relationship is between SQL and Subscribers.*** In relation to cross-carried channels, MDA holds the preliminary position that the customer relationship is between the SQL and the subscribers of its cross-carried channels. It follows that customer service will be rendered by the SQL to these subscribers.

4.2.6 ***No Mandatory Single Billing.*** MDA proposes not to impose any single billing requirement. However, MDA encourages industry initiatives to minimize consumer inconvenience.

4.2.7 ***Marketing and Promotion.*** MDA is proposing that the SQL maintain and publish a list of its Qualified Content on its website and promotional materials. The SQL should also negotiate with content providers to allow RQLs to publish, on the RQLs' websites and viewing guides, a list of SQL's Qualified Content for the limited purpose of informing consumers of channels which are being cross-carried.

4.2.8 ***Channel Numbering.*** MDA proposes that the RQLs and SQLs should commercially negotiate, and submit to MDA, the recommended approach for the allocation of channel numbers by the RQLs.

iii) Platform Rights Acquisition

4.2.9 To safeguard against any circumvention of the Measure, MDA proposes to require any Regulated Person which has acquired Qualified Content to obtain the rights (either exclusive or otherwise) to broadcast the Qualified Content on all other delivery Platforms that are listed by MDA as Relevant Platforms. Should a Regulated Person be unable to obtain the rights for the other Relevant Platforms (other than the target delivery platform), it can apply to MDA for an exemption from this requirement.

iv) Gazetting of Schedule to the MMCC

4.2.10 To provide greater clarity to the industry, MDA is proposing to gazette and publish the list of all SQLs and RQLs and the Relevant Platforms in a schedule to the MMCC.

v) Cross Carriage Fee

4.2.11 MDA prefers that the parties reach their own commercial agreement on the quantum of the cross carriage fees. Any disagreements over cross carriage fees which cannot be resolved between the parties may be referred to MDA for a binding resolution.

4.2.12 In resolving any such disagreements, MDA intends to be guided by a two-tier cross carriage fee system based on the most efficient system run by the RQLs, which would also address the issue of free riders.

vi) Retail Pricing

4.2.13 In order for the Measure to effectively address MDA's concerns, MDA proposes that the SQL charges its subscribers the same retail prices regardless of whether they are accessing its channels via its own platform or via the RQLs' platforms.

vii) Cross Carriage of Packages and Bundles

4.2.14 MDA proposes that so long as a bundle, package or channel contains Qualified Content, it will be subject to the Measure and cross-carried on the RQLs' platforms in the same form and at the same price.

viii) Service Standards

4.2.15 MDA believes that it is important that the RQL is required to carry all Qualified Content in its entirety and without any alteration, (including without limitation, dual sound, surround sound, subtitling and electronic programme guide(s)). MDA holds the view that the RQL should not perform any act, or omit to perform any act, that may diminish, impair or otherwise degrade the viewing experience of any subscriber accessing the Qualified Content on the RQL's service.

4.2.16 ***Preparation for the Cross Carriage of Qualified Content.*** MDA proposes that the SQL notifies MDA within 5 working days of concluding any arrangement which creates Qualified Content. The SQL should make available Qualified Content for transmission on both its platform and RQLs' platforms simultaneously. The SQL should provide sufficient notification period of no less than 30 days to the RQLs to trigger as well as terminate cross carriage of Qualified Content.

4.2.17 ***Activation of Cross Carriage of Qualified Content.*** MDA proposes that the SQL, upon receiving a customer's request for Qualified Content, should take no more than 5 working days to activate the cross carriage of the requested Qualified Content.

4.2.18 ***Customer / Technical Service.*** The SQL should take no more than 24 hours to respond and take steps to resolve the customer and/or technical problems that the subscribers encounter for Qualified Content. The SQL will have an additional 12 hours if the customer and/or technical problems lie with the RQL.

4.2.19 ***Submission and Approval of Service Standards.*** MDA proposes that both SQLs and RQLs be required to submit draft service standards to MDA for approval. Subsequently, the SQLs and RQLs will be required to publish the approved service standards on their respective websites and to submit to MDA monthly reports on customer service and technical faults.

ix) Exemptions from the Measure

4.2.20 MDA is only minded to grant exemption under exceptional circumstances. As a preliminary position, MDA considers that an applicant would need to demonstrate how such an exemption will benefit consumers or the pay TV market, for instance, how the exemption will enhance consumer welfare through innovation and the creation of new channels/programming content.

xi) Triennial Review of the Measure

4.2.21 MDA proposes to 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.

4.3 Submission of written comments should be in the following format:

- a cover page (including the information specified below);
- table of contents;
- summary of major points;
- statement of interest;
- comments; and
- conclusion.

4.4 Supporting material may be placed in an annex. All comments should be clearly and concisely written, and should provide a reasoned explanation for any propositions. To the fullest extent possible, parties should identify the specific section on which they are commenting.

4.5 All comments should be received on or before 5pm, Singapore time, 28 September 2010. 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.

4.6 All comments should be addressed to:

Ms Eileen Ang
Head (Competition & Market Access)
Media Development Authority
3 Fusionopolis Way
#16-22 Symbiosis
Singapore 138633
(Attention: Ms Ruth Wong)
Email: ruth_wong@mda.gov.sg

4.7 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, MDA will provide the reason for its decision, and request for the resubmission of a non-confidential version of the relevant document within 14 working days. As far as possible, commenting parties should minimise any request for confidential treatment of information submitted.

5 Glossary of Key Terms Used in Document

Hybrid Fiber-Coaxial Network	A communications network that uses a combination of optical fibers and coaxial cable for delivery of services such as cable TV service to homes.
Interactive Content	A service which provides the means for bi-directional exchange of information between the subscriber and the provider of the service, where an individual programme is conveyed, a service is provided, or a transaction is carried out in response to a particular request by a subscriber, and at a particular time decided by the subscriber, where such request is transmitted via a telecommunication system back to the provider of the service. Both linear and VOD content with basic interactive service will be subjected to the Measure. This will include the support for toggling between multiple languages, subtitles, stereo/surround sound formats, and the support for navigational control functions to access the VOD content like Left, Right, Up, Down, OK, Enter, Exit, and time display functions like Time Elapsed and Time Remaining. Content such as Electronic Programme Guide, Synopsis and the necessary mechanism to support the purchase of VOD content should similarly be included. Advance Interactive service such as player statistics, multiple angles, embedded links to other content etc will not be subjected to the Measure.
Internet TV	Delivery of television service over the public Internet with no control over the performance and services.
Linear Channel	Television service provided by a pay TV retailer for simultaneous viewing of programmes on the basis of a programme schedule.

Managed Internet Protocol (IP) Network	An end-to-end platform over Internet Protocol network for the delivery of video services with guaranteed performance.
Qualified Content (QC)	"Qualified Content" means all channels and programming content (including linear and non-linear channels, content packaged in video-on-demand format), acquired or otherwise obtained on or after the Effective Date by a Regulated Person under an arrangement, whether explicit or implicit, which prevents or restricts a Regulated Person from acquiring or otherwise obtaining the channels or programming content for transmission on any of the Relevant Platforms. For the avoidance of doubt, "Qualified Content" excludes any channels or programming content acquired or otherwise obtained before the Effective Date, but includes any extension, renewal, or otherwise re-contracting of such channels or programming content on or after the Effective Date. "Relevant Platforms" means Hybrid Fiber-Coaxial network and/or Managed IP network and any other Managed network identified by MDA.
Receiving Qualified Licensee (RQL)	"Receiving Qualified Licensee'' means a Regulated Person who is licensed to provide subscription nationwide television services. Further, it is proposed that to qualify as a RQL, a Nationwide Subscription Television Service Provider has to fulfil the following criteria: a. have 10,000 or more subscribers; b. have in place an industry recognised content protection system and anti-piracy measures; and c. have the ability to meet Service Standards.

Regulated Person	"Regulated Person" means — (a) such person — (i) who is the proprietor of any newspaper as defined in section 2 of the Newspaper and Printing Presses Act (Cap. 206); or (ii) who holds any broadcasting licence granted under the Broadcasting Act (Cap. 28), whether before, on or after 1st January 2003; or (b) in the case of section 23, such newspaper company as defined in section 2 of the Newspaper and Printing Presses Act, as the Minister may, by notification in the Gazette, specify
Relevant Platforms	Hybrid Fiber-Coaxial network and/or Managed IP network and any other Managed Network identified by MDA. Mobile (e.g. 3G, DVB-H, MBMS) and Internet TV (Delivery of Television Content over public Internet) are currently exempted from the Measure.
Supplying Qualified Licensee (SQL)	"Supplying Qualified Licensee" means any of the following: (i) any Regulated Person who acquires or otherwise obtains Qualified Content; or (ii) any Regulated Person who: (A) has Control over or is under the Control of a person who has acquired or otherwise obtained Qualified Content; or (B) along with a person who has acquired or otherwise obtained Qualified Content, is under the Control of a third person, and who has an arrangement with the person who has acquired or otherwise obtained the Qualified Content to broadcast the Qualified Content on such Regulated Person's service.

Video-On-Demand (VOD)	A service where particular programmes are transmitted on a telecommunication system in response to the particular requests of subscribers and at particular times decided by the subscribers, and where such requests are transmitted over a telecommunication system to the provider of the VOD service.