STARHUB CABLE VISION LTD RESPONSE TO

MDA THIRD PUBLIC CONSULTATION PAPER

"REVIEW OF THE CODE OF PRACTICE FOR MARKET CONDUCT IN THE PROVISION OF MEDIA SERVICES ON IMPLEMENTATION OF THE CROSS-CARRIAGE MEASURE IN THE PAY-TV MARKET"

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INTRODUCTION

StarHub Cable Vision Ltd ("StarHub") welcomes the opportunity to comment on the Authority's Third Consultation Paper, on the proposed Code of Practice for Market Conduct in the Provision of Media Services on Implementation of the Cross-Carriage Measure in the Pay-TV Market ("the Proposed Code").

StarHub believes that a transparent and workable Code is essential to the effective implementation of the Authority's cross-carriage regime. In order for the Authority to effectively implement its cross-carriage measure, and for the Subscription TV market to grow, it is important that regulatory policy should be clear and practical; and that any intervention should not be over-reaching or unnecessarily burdensome. If the regulatory obligations imposed on Subscription TV Licensees are ambiguous or too onerous, this will result in uncertainty and confusion, will discourage investment, will delay innovation, and will impose costs on operators (which must inevitably be passed on to customers).

StarHub has carefully reviewed the Proposed Code, and our comments are set out in the attached annexes. Our comments are structured into:

(a) Section A, which focuses on:

- Definitions relating to "Qualified Content" (Clause 2.3D);
- Duties of "Supplying Qualified Licensees" (Clause 2.7.1);
- Duties of "Receiving Qualified Licensees" (Clause 2.7.2A);
- Exemptions from Cross-Carriage Obligations (Clause 2.7.4A); and
- Charging Methodology for Cross-Carriage Costing (Appendix 4)

(b) Section B, which examines the other sections of the Proposed Code.

SECTION A

STARHUB'S COMMENTS TO KEY SECTIONS OF THE PROPOSED CODE

StarHub has studied carefully the Authority's Third Consultation Paper against the earlier consultation papers. While the Third Consultation Paper provides greater clarification as to the definition of Qualified Content ("QC") and the duties of the Supplying Qualified Licensee ("SQL") and the Receiving Qualified Licensee ("RQL"), the Third Consultation also increases ambiguity in several areas.

This approach may subject the Proposed Code to subjective interpretations and result in greater confusion. Depending on the interpretations, this may potentially have an adverse impact on the subscription TV industry and the operators.

StarHub's specific comments on these clauses are set out below.

Clause 2.7.1 – Definitions Relating to "Qualified Content"

Definition of Regulated Person:

We would highlight the ambiguity surrounding the term "*Regulated Person*". Going forward, it is likely that some Regulated Persons in the Subscription Television market will be inefficient, under-capitalised, or lacking the abilities to operate within the cross-carriage regime.

However, under the Proposed Code, QC is defined as anything "*which prevents or restricts or is likely to prevent or restrict the channel or programming content from being acquired or otherwise obtained from it for transmission on any other Relevant Platform in Singapore by: any other Regulated Person*".

Clearly, an action that "*restricts*" an under-capitalised and inefficient Regulated Person may have no impact whatsoever on a Regulated Person who is efficient and adequately-capitalised. We submit that the objective of the cross-carriage regime should not be to support the inefficient and under-capitalised.

However, the Proposed Code fails to clearly state that the definition of QC (as set out above) is in regard to efficient Regulated Persons who are adequately-funded. This lack of certainty in the Proposed Code will create an ambiguity as to the definition of QC, and the objectives of the cross-carriage regime. We therefore respectfully submit that it is necessary to amend the definition of QC, to refer to "*efficient Regulated Persons*", rather than referring to just "*Regulated Persons*".

Definition of Basic Function:

When a particular piece of content is defined as QC, the SQL is required to provide to the RQL the "*Basic Function*" on top of the programming content. Under the Proposed Code, "*Basic Function*" includes subtitling and multiple languages. However under Appendix 1 of the Proposed Code, subtitling has also been included as a "*Value-Added Service*". It is therefore necessary to clarify whether subtitling is a "*Basic Function*" or a "*Value-Added Service*".

In addition, the requirement to provide "*multiple languages*" as part of the Basic Function may simply be impractical, as the content source may not have multiple languages features. There will also be circumstances when the RQL may not have the network capacity to accommodate the QC's multiple language functions. To avoid creating confusion and unnecessary costs to the operators and consumers, StarHub would respectfully submit that "*multiple languages*" should be excluded from the basic function requirements.

Assessing "refusal to allow" access to QC:

Clause 2.3(d)(i)(A) states that a piece of self-produced or commissioned content/channel would be considered as QC as long as the SQL "*refuses to allow*" the content/channel to be acquired or obtained by any other Regulated Person. However, the Proposed Code does not provide guidelines as to what would constitute a "refusal to allow".

If the SQL's pricing is one factor, it is unclear how the SQL should set its prices so as to comply with Clause 2.3(d)(i)(A). In the absence of clarity on this point, an operator might inadvertently trigger a "refusal to allow" test. Clearly content which has a high revenue potential but a low production cost will have to be priced in a different manner to content which has low revenue potential but a high production cost.

We would therefore respectfully request that the Authority clarifies and specifies the principles it will follow to determine what would be a "refusal to allow". We believe that this would help to facilitate compliance with the Proposed Code. The absence of such clarity may: (i) cause an operator to inadvertently be in breach of the Code; and (ii) discourage operators from investing in local content.

Definition of "Qualified Content"

The Proposed Code states that content will be considered QC when it is acquired *"…under an arrangement whether explicit or implicit, which prevents or restricts or is likely to prevent or restrict the channel or programming content from being acquired…"*

StarHub has reviewed this wording, and would highlight two significant concerns:

- First, the phrases "*implicit*" and "*likely to*" are subjective and open to wide interpretation. It is unclear what standard of proof the Authority will require from the operators, or how the existence of "*implicit agreements*" will be assessed. The lack of clarity is complicated by the inclusion of these phrases, as there is no explanation as to how "*implicit*" and "*likely to*" should be assessed.

- Second, these phrases mean that a licensee can at any point in time be found to trigger the cross-carriage regime when the Authority deems that the content is "*likely to*" be regarded as QC. This uncertainty exposes the operators to considerable business risk. A piece of non-exclusive content which is acquired in good faith, and which is bundled with other non-exclusive content, can suddenly become QC – potentially making the full bundle subject to cross-carriage. The absence of guidelines as to how these phrases will be interpreted generates uncertainty and will discourage innovative investment in new content.

StarHub strongly submits that the reference to "*implicit*" arrangements and *"likely to"* should either be clarified or removed from the definition of QC.

Scope of Bundling:

Clause 2.3(d)(ii) defines QC to include any bundled channels/content as long as one of the particular exclusive channel/content is included in the bundle. This requirement may inadvertently force operators to unbundle their services, requiring them to offer their content offerings on an ala-carte basis. Such unbundling would be:

- Detrimental to the industry and the consumers in the longer term as the cost of ala-carte content will be higher due to the absence of economies of scale (thereby creating customer dissatisfaction); and

- Contrary to the statement in the Authority's first consultation paper (of March 2010) that "*forcing unbundling would remove economic efficiencies such that both retailers and consumers may be worse off.*"

Given the long-established nature of bundles and packages in the Singapore subscription television market, we believe that this obligation is over-reaching. It is therefore important to establish a grandfathering / exemption regime for existing content bundles.

Clause 2.7.1 – Duties of SQL

Clause 2.7.1(d) - A Supplying Qualified Licensee must not bundle any channel or programming content together with any channel or programming content referred to in sub-paragraph (i) of the definition of "Qualified Content" without first having obtained the consent or agreement of the channel or content provider of the first-mentioned channel or programming content to the bundling.

This clause effectively requires a SQL to seek the approval of content providers before bundling channels/content. We respectfully believe that this obligation would be unreasonable and impractical, and should be removed from the Proposed Code.

It is unclear from this clause:

- How the SQL is to get "*the consent or agreement of the channel or content provider*";
- Whether it is necessary for the SQL to get the "*the consent or agreement of the channel or content provider*" beyond what is set out in the SQL's contract with the channel / content provider; and
- Who would assess whether the SQL has obtained the necessary "*consent or agreement of the channel or content provider*".

We believe that this Clause would give too much power to content providers with channels / content within an existing bundle. This Clause effectively gives the content providers in a bundle a "veto right" over the SQL's packaging and branding strategies.

The proposed Clause may unnecessarily restrict the SQL's rights to bundling beyond what is provided for in the SQL's contract with the content providers. As a result, this Clause may force operators to unbundle their services, requiring them to provide their content offerings on an ala carte basis.

Clause 2.7.1(h)(iii) - A Supplying Qualified Licensee must in respect of any feedback or complaint received from a Subscriber in respect of any Qualified Content of the Supplying Qualified Licensee, take immediate steps to identify the cause of the problem and:

A) where the problem lies with the Supplying Qualified Licensee's platform:

(I) within 24 hours of receipt of the feedback or complaint, acknowledge receipt of the same and inform the Subscriber that the Supplying Qualified Licensee is dealing with the problem on its platform; and

(II) take all reasonable steps to resolve the problem as soon as possible; and

B) where the problem lies with the Receiving Qualified Licensee's platform:

(I) within 36 hours of receipt of the feedback or complaint, acknowledge receipt of the same and inform the Subscriber that the Receiving Qualified Licensee is dealing with the problem on the Receiving Qualified Licensee's platform; and

(II) take all reasonable steps to monitor the progress of the Receiving Qualified Licensee and ensure that the Receiving Qualified Licensee resolves the problem as soon as possible.

StarHub respectfully submits that Clause 2.7.1(h)(iii) would be unreasonable and unworkable in practice. We therefore believe that this Clause should be removed from the Proposed Code.

As an initial point, it is important to note that the SQL and RQL both have a strong and direct incentive to provide reliable services to their customers. Any failure to meet the needs of customers may result in customers either moving to a competitor's service or ceasing subscription television service altogether. We must therefore respectfully question whether there is a need for the Proposed Code to address the detail of fault restoration and associated SLAs.

In addition, this Clause is based on the incorrect assumption that, when a network fault does occur, it will be possible to identify the location of that fault within 24 or 36 hours. Unfortunately, with new networks, based on new technologies, interconnecting for the first time, tracing such faults may not be possible within the proposed timeline. In such cases, it may be necessary for the parties to establish a joint investigation group, to determine the location of the fault.

We would note that the scope of the Proposed Code covers services provided over the Next-Gen NBN. The structure of the Next-Gen NBN (with a separate "NetCo", "OpCo", and "RSPs") may create additional challenges in tracing the location of faults.

It will therefore not be possible, for all cases, to determine the location of the fault within 24 or 36 hours. StarHub would respectfully suggest that those

timelines be deleted from the Proposed Code, and that they be replaced with an obligation to acknowledge receipt of the fault "trouble ticket" within "a *reasonable timeframe*". We respectfully submit that a reference to "*reasonable timeframe*" is both necessary and equitable.

Clause 2.7.1 (e)(ii) – Where the RQL has yet to receive any QC from the SQL, the SQL must notify the RQL 60 working days before the QC is to be transmitted.

This Clause effectively sets an implementation timeline between the SQL and RQL of 60 working days. We note that this timeframe might not always be practical, and that there are a variety of factors that will shape the final implementation timeline. These factors include:

- The physical distance between the SQL and RQL networks (as this will influence the time needed to physically connect the networks);
- The nature of the SQL and RQL networks (as dissimilar networks may take longer to connect than networks following the same standards); and
- The volume of QC to be exchanged.

StarHub would respectfully suggest amending the timeline in Clause 2.7.1 (e)(ii) to 120 working days. When the Code is next reviewed, this timeline could be viewed in light of actual experience.

Clause 2.7.2A – Duties of RQL

Clause 2.7.2A(b)(ii) - A Receiving Qualified Licensee must ensure that it does not, in receiving and transmitting Qualified Content of a Supplying Qualified Licensee, violate or infringe any intellectual property rights that are owned… by the person from whom the Supply Qualified Licensee acquired or otherwise obtained the Qualified Content."

Clause 2.7.2A(c) - A Receiving Qualified Licensee…must carry such Qualified Content on all its Relevant Platforms…in its entirety and in an unmodified and unedited form.

StarHub would respectfully note that, as they are currently drafted, Clauses 2.7.2A(b)(ii) and Clause 2.7.2A(c) create contradictory obligations on the RQL,

which cannot simultaneously be met. It is therefore necessary for one or both of these Clauses to be amended.

Under Clause 2.7.2A(c), the RQL simply acts as a conduit, carrying the SQL's content to customers. The RQL is not responsible for that content, has no right to edit that content, and has a strict obligation to carry that content in "*an unmodified and unedited form*". However, Clause 2.7.2A(b)(ii) simultaneous imposes an obligation on the RQL to ensure that the intellectual property rights of the content provider are protected.

This means that if the SQL passes content on to the RQL, and the content breaches the content provider's intellectual property rights, the RQL has a choice of either:

(a) Carrying that content in an unmodified and unedited form, thereby complying with Clause 2.7.2A(c), but violating Clause 2.7.2A(b)(ii); or

(b) Refusing to carry that content in an unmodified and unedited form, thereby complying with Clause 2.7.2A(b)(ii), but violating Clause 2.7.2A(c).

To resolve this contradiction, StarHub would respectfully suggest that Clause 2.7.2A(b)(ii) be amended to clarify that the mere carriage of the SQL's content (in its entirety, without modification or editing) by the RQL would not be considered a breach of Clause 2.7.2A(b)(ii).

Clause 2.7.2A(d) - A Receiving Qualified Licensee must ensure that it has a content protection system for each of its Relevant Platforms that covers the matters specified in Part III of Appendix 1 which will reasonably prevent the security of all Qualified Content made available to it by any Supplying Qualified Licensee from being compromised.

StarHub fully supports the Authority's proposed requirement that a RQL must have an adequate content protection system to cross-carry the QC on its platform. However, it is unclear from the Proposed Code how the certification of the RQL's content security system would work.

If the RQL can simply self-certify its compliance, it is unclear: (i) whether this would meet the concerns of the content providers; and (ii) who would take action if the RQL overstates its compliance.

StarHub would respectfully suggest that certification should be undertaken either: (i) jointly between the SQL and RQL; or (ii) independently by a reliable third party. In the event that this certification process becomes an attempt at

foreclosure or circumvention, the Proposed Code could give the Authority the right to intervene. However, we respectfully submit that allowing RQLs to self-certify their content security systems would not meet the needs of the content providers or the SQLs.

Clause 2.7.2A(g)(i) – Where the SQL advises the RQL of a complaint or feedback from a customer, the RQL must within 12 hours of the notification from the SQL, confirm with the SQL that it is dealing with the problem;

StarHub would respectfully suggest that this principle is too detailed and operational to include in the Proposed Code. We would instead suggest that such matter should be covered in the RCCOs of the SQL and RQL. A blanket obligation, of the type set out in Clause 2.7.2A(g)(i), would also be impractical, for the following reasons:

- The Clause simply refers *"any feedback or complaint received from a Subscriber"* in respect of the SQL's QC. Such feedback and complaints could be in regard to matters that are entirely outside the control of the RQL, for example – the storyline of the QC.

- Even in cases where the "*feedback or complaint*" is of a technical nature, it is incorrect to assume that the problem must always reside in the RQL's network. Problems with the source of the feed, with the carriage of the content to Singapore, with the SQL's head-end, or with the links between the SQL and RQL could all impact on the service received by the SQL's customer.

As a matter of principle, we respectfully submit that, upon receiving feedback or complaints (of a technical nature) from a Subscriber, the SQL should check its own network and source feeds first. Only then should the matter be raised with the RQL. StarHub would therefore respectfully suggest that Clause 2.7.2A(g)(i) should be deleted in its entirety.

Clause 2.7.2A(i) - Where a Subscriber who subscribes to any Qualified Content made available to the Receiving Qualified Licensee by a Supplying Qualified Licensee informs the Receiving Qualified Licensee that it wishes to terminate its subscription to the Qualified Content, the Receiving Qualified Licensee must: (i) inform the Subscriber that the Subscriber is to terminate such subscription directly with the Supplying Qualified Licensee; or (ii) offer to terminate such subscription on behalf of the Subscriber with the Supplying Qualified Licensee, and, if the Subscriber agrees, to do so.

StarHub respectfully believes that this Clause would be unworkable and impractical, and should therefore be removed from the Proposed Code.

The Authority has taken the clear and principled position that the SQL should be solely responsible for their customers (including the activation and billing for their customers on the RQL's network). However, requiring RQLs to play a part in the termination of services to the SQL's customers would clearly breach that principle, and would cause controversy and disputes.

It is important to note that the RQL is not a party to the contract between the SQL and its customer. The SQL has no obligation to act on an instruction from the RQL in regard to the contract between the SQL and its customer. Clause 2.7.2A(i) has the potential to cause significant confusion for all of the parties involved, given that:

- The RQL may not have the correct billing identification information, and so it may be unclear to the SQL which customer is seeking to terminate services;

- The SQL will have to verify the RQL's authority to act on behalf of the Subscriber for the termination, which will inevitably lead to delays and controversy;

- The RQL will lack information on contract signed between the SQL and its customer, and will therefore lack information on the Early Termination Charges payable by the customer;

- This Clause would cause operational complications, increasing the number of parties involved, and increasing the chances of miscommunication; and

- The RQL may have a commercial incentive to overstate the willingness of the SQL's customer to terminate the SQL's service.

We would highlight that there is no comparable obligation in the delivery of telecommunication services. If a SingTel customer terminates their PSTN line, there is no obligation on SingTel to notify StarHub (so that StarHub can terminate its IDD service to the customer). Rather, IDA requires operators to take responsibility for their own customers.

In line with the principle that the SQL is fully and solely responsible for its customers, StarHub would respectfully suggest that Clause 2.7.2A(i) should be deleted in its entirety.

Clause 2.7.4(a) – Application for Cross-Carriage Exemption

(a) Clause 2.7.4(a) - A Regulated Person may apply to MDA to seek exemption from its obligation to make available all its Qualified Content for transmission and reception on every Receiving Qualified Licensee's Relevant Platform, or to carry on its Relevant Platform all Qualified Content made available by Supplying Qualified Licensees, as the case may be. In seeking any such exemption, the Regulated Person must clearly establish to MDA's satisfaction one or more of the following circumstances:

(i) an exemption from the obligations under paragraph 2.7 of the Code will benefit the public and the media industry (for example, how the exemption will enhance consumer welfare or promote innovation);

(ii) technical constraint prevents or restricts a party from fulfilling its obligations under paragraph 2.7 of this Code and it is not possible to remove such constraint without it incurring serious and irreparable harm; and

(iii) in relation to any request for exemption from paragraph 2.7.1 of this Code, demonstrate that the channel or content provider does not have the relevant broadcast rights for Singapore and other neighbouring countries.

StarHub agrees that Subscription TV Licensees should be able to seek exemptions from the cross-carriage regime under certain conditions.

However, we are concerned that the Proposed Code fails to specify the factors that will be taken into consideration by the Authority when considering an exemption request. This lack of clarity will lead to uncertainty and ambiguity in the market. We also note that there is no indication in the Proposed Code that the Authority will make public the exemptions it has granted, and the grounds for its decision to grant the exemption.

By way of comparison, we would note that when parties are seeking reclassification under the Telecom Competition Code, the factors to be taken into account and the processes to be followed are clearly set out[1].

StarHub would therefore respectfully suggest that, in the Proposed Code, the Authority should:

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[1] http://www.ida.gov.sg/doc/Policies%20and%20Regulation/Policies_and_Regulation_level1/IDA_Reclassification_and_Exemption_Guidelines.pdf

- ➡ Set out the criteria it will use in assessing whether an exemption will be granted. As a minimum, we would suggest that the Authority carries out a cost-benefit analysis of the proposed exemption; and

- ➡ State that the exemptions granted, and the basis for the exemption being granted, will be detailed on the Authority's website.

We respectfully submit that these arrangements would promote transparency and clarity for operators, and would therefore benefit the industry.

Appendix 4 / Clause 5.2 – Charging Methodology for Cross-Carriage Costing

To ensure efficient transmission of Qualified Content, MDA will determine the incremental costs to be borne by the Supplying Qualified Licensee based on the most cost efficient Relevant Platform in the Singapore market using either the Directly Attributable Incremental Cost Methodology or the Long Run Incremental Cost (LRIC) Methodology

The Authority has proposed that the cross-carriage charges will be calculated based on "*the most cost efficient relevant platform*" in the market via the DAIC and LRIC methodologies. "*Relevant Platform*" is defined in the Proposed Code as "*…hybrid fibre-coaxial network, managed network using ADSL technology or managed network over optical fibre*." StarHub would respectfully highlight the problems of using the "*most cost efficient Relevant Platform*" to determine reference cross-carriage charges.

It is important to note that different technologies will inevitably have different network capacity requirements and different cost structures. Operators will have different coverage profiles, which will also impact of each operator's cost structures. The services and facilities that operators deploy will also impact on the costs they incur in providing cross-carriage. All of these factors are unrelated to an operator's "efficiency".

Given these factors, StarHub's HFC network costs cannot be comparable with another operators' ADSL or Next-Gen NBN network costs. Similarly, the cost structure of StarHub's HFC network (with its Government-mandated rollout requirements) cannot be compared to a new entrant who can choose their own rollout (and focus only on lower-cost areas).

We therefore submit that the Authority should assess the reference charges based on networks with similar technology platforms, and coverage profiles, rather than considering all networks together without reference to the different technological and costing implications of those networks.

It is also important for the following issues to be taken into account when determining reference cross-carriage charges:

- In order to comply with the principle of "cost causality" it is necessary for RQLs to be able to recover all of the costs they incur in implementing the cross-carriage regime. Contributions to Fixed and Common Costs of television services, as well as the company's overhead contribution, must be reflected in the computation of the reference charges. If this is not done, the RQLs' other services will effectively be cross-subsidizing the cross-carriage charges (and the SQL).

- If charges are cost-based and – in particular – are based on the costs of the most efficient operator, it follows that the two parties must exchange cost information. We would respectfully suggest that requiring competing operators to exchange cost information will raise competition (if not confidentiality) issues.

- The Authority must also take into account the scale of operation when determining the reference charges. StarHub's current mode of operation was due to directions from the Authority, where SCV's subscription TV service was subjected to a universal roll-out obligation and to "must-carry" requirements. This is more onerous than the obligations imposed on other entrants who are able to rollout their networks as they see fit, on a limited geographic basis.

In addition, StarHub would seek clarification on the Authority's definition of "long run" in its calculation of the "long run incremental cost" methodology. Given the rapid technological advancement in the broadcast industry, it is vital that the Authority provides more certainty on its determination of "long run" under this methodology.

SECTION B

STARHUB'S COMMENTS TO OTHER SECTIONS OF THE PROPOSED CODE

Clause 1.5(b)(xxxi) – "Subscription Fee" means any form of consideration.

StarHub believes that the wording *"any form of consideration"* is unnecessarily vague, and could lead to confusion for Regulated Persons and end-users. For example, in exchange for receiving free television services, a customer may be exposed to advertising from the service provider. It could be argued that this form of exchange could be considered a subscription fee.

To avoid confusion on this matter, we submit that subscription fees should be confined to a recurring fee in exchange for the provision of a service (and should not include hardware costs or installation fees).

Such an approach would also be consistent with Clause 3.4.2 of the Proposed Code which specifies that *"A Regulated Person may only charge any Subscriber for the specific Subscription Service or associated equipment that the said Subscriber has ordered."*

We therefore believe that it is necessary for the Proposed Code to have a more specific definition on what constitutes a "subscription fee". StarHub would propose to revise the definition of "subscription fee" to *"forms of payment of fees and charges for receipt of a service."*

Clause 2.3(ba) – "Group" means a group of 2 or more persons where one person has Control over the other person or persons, as the case may be, in the group

We would seek the Authority's clarification as to the scope of this definition. Given that both StarHub and SingTel are related to Temasek Holdings (Pte) Ltd, we would seek the Authority's clarification as to whether all subsidiaries and affiliates under the Temasek Holdings (Pte) Ltd would be considered part of the same Group.

Clause 2.3(e) – "Relevant Platforms" means (i) a hybrid fibre-coaxial network; (ii) a managed network using Asymmetric Digital Subscriber Line technology; or (iii) a managed network over optical fibre.

StarHub would seek the Authority's confirmation that the definition of "*Relevant Platforms*" would exclude Internet TV (the delivery of TV content over the public Internet) and "Mobile TV" (e.g., 3G, DVB-H, MBMS).

Clause 2.7.1(f) - A Supplying Qualified Licensee must publish and maintain a list of its Qualified Content on its website, and on its viewing guide.

Clause 2.7.2A(e) - A Receiving Qualified Licensee must:

(i) in the case of Qualified Content referred to in paragraph 2.7.1(*g*)(i) of this Code, publish on its website and viewing guide, a list of all such Qualified Content that is carried on all the Receiving Qualified Licensee's Relevant Platforms; and

(ii) in the case of Qualified Content referred to in paragraph 2.7.1(*g*)(ii) of this Code, where the consent of the person from whom the Supplying Qualified Licensee acquired or otherwise obtained the Qualified Content has been obtained pursuant to that paragraph, publish on its website and viewing guide, a list of such Qualified Content carried on each of the Receiving Qualified Licensee's Relevant Platforms, for the limited purpose of informing consumers of the Qualified Content available on the Receiving Qualified Licensee's Relevant Platforms.

The Proposed Code requires the SQL and RQL to publish, on their respective websites, a list of the cross-carried QC. Whilst we agree with this principle, we would note that there could be circumstances where this obligation is impractical. For example, if the QC consists of: (a) an individual programme within a linear channel; or (b) an individual VoD title, it would not be possible for the SQL/RQL to list this information on their respective websites. We would therefore respectfully suggest that this obligation should be limited to QC channels.

Clause 2.7.1(h)(ii) - A Supplying Qualified Licensee must ensure that a Subscriber is able to access the Qualified Content through a Receiving Qualified Licensee's Relevant Platform within 5 working days of receipt of such Subscriber's request;

Clause 2.7.2A(f) - A Receiving Qualified Licensee must ensure that a Subscriber wishing to access the Qualified Content of a Supplying Qualified Licensee through the Receiving Qualified Licensee's Relevant Platform is able to do so within 5 working days of receipt of such Subscriber's request.

StarHub would submit that this obligation should only apply to linear channels. VOD content, given its nature, should be immediate available when requested by the customer. If a customer has to wait 5 working days before they are able to access VoD content, this will defeat the objectives of the Proposed Code.

> Clause 2.7.2(a) – MDA may designate any Regulated Person to be a Receiving Qualified Licensee if the Regulated Person:
>
> (i) is licensed to provide a Nationwide Subscription Television Service on any Relevant Platform; and
>
> (ii) has or had, at any point in time, 10,000 or more Subscribers on any of its Relevant Platforms.

StarHub would submit that the wordings *"… has or had, at any point in time, 10,000 or more subscribers…"* creates uncertainty as to the specific definition of RQL. For example, does this Clause mean that a Nationwide Subscription TV Licensee which, at some point in the past had 10,000 Subscribers, would be considered a RQL in perpetuity?

For consistency purpose, StarHub would respectfully propose that RQLs should be defined as a Regulated Person *"<u>which currently has</u> 10,000 or more Subscribers on any of its Relevant Platforms."*

> Appendix 1, Part II – The following services are the value-added services for the purposes of the definition of "Qualified Content" in paragraph 2.3(*d*) of this Code, the incorporation of which in any channel or programming content will not of its own render the channel or programming content Qualified Content:

StarHub supports the idea of "*Value-Added Services*", to allow operators to differentiate their channels, without changing the essentially "non-exclusive" nature of the underlying content. We believe that this concept will be welcomed by the industry and consumers.

However, StarHub would respectfully submit that "Local Content" should be included within the definition set out in Appendix 1, Part II, of the Proposed Code. Including Local Content within this definition will help operators to localise their content, thereby benefiting the industry and their customers, without changing the "non-exclusive" nature of the underlying content.