SINGNET PTE LTD

SUBMISSION TO THE MEDIA DEVELOPMENT AUTHORITY OF SINGAPORE

IN RESPONSE TO THE

**CONSULTATION ON PRELIMINARY POLICY POSITION FOR
CROSS-CARRIAGE MEASURE
IN THE PAY – TV MARKET**

DATE OF SUBMISSION: 5 OCTOBER 2010

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SUBMISSION TO THE MEDIA DEVELOPMENT AUTHORITY OF SINGAPORE IN RESPONSE TO ITS CROSS-CARRIAGE MEASURE IN THE PAY TV MARKET CONSULTATION ON PRELIMINARY POLICY POSITIONS ISSUED ON 1 SEPTEMBER 2010

1 BACKGROUND

1.1 On 12 March 2010, the Media Development Authority of Singapore (**MDA**) introduced the mandatory cross-carriage measure (**Measure**) which imposes an obligation on nationwide subscription licensees (**Supplying Qualified Licensees** or **SQLs**) 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 Licensees** or **RQLs**). The Measure was affected via amendments to the Media Market Conduct Code (**MMCC**)[1].

1.2 On 12 March 2010, the MDA also issued its first industry consultation paper in relation to the Measure to which SingNet Pte Ltd (**SingNet**) submitted representations. SingNet broadly supports the Measure and considers that the Measure represents a step towards greater competition in the pay TV market.

1.3 On 1 September 2010, the MDA issued a second consultation paper outlining its preliminary policy positions in relation to the Measure and requesting feedback from the industry. SingNet welcomes the MDA's latest consultation paper on the implementation details of the Measure. The success of the Measure in delivering the intended benefits to the pay-tv segment and pay-tv consumers is likely to heavily depend on the effective implementation of the cross-carriage arrangement. It is for this reason that SingNet has a key interest in this consultation.

1.4 SingNet is a leading Internet service provider (**ISP**) in Singapore and has been at the forefront of Internet innovation since 1994, being the first ISP to launch broadband services in Singapore. It is licensed to offer IPTV services under a nationwide subscription television licence.

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[1] Section 2.1.5 of the MMCC sets out the cross carriage obligation.

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1.5   This submission sets out SingNet's response to the MDA's second consultation paper.

2   EXECUTIVE SUMMARY

2.1   SingNet considers that the MDA's preliminary policy positions for implementing the Measure are overall sound.

2.2   In this submission, SingNet makes a number of practical suggestions for the MDA's consideration that are intended to further improve the implementation and operation of the Measure.

2.3   These suggestions include:

(a)   The MDA should outline the actual investigations that it will undertake against implicit or tacit agreements that undermine or circumvent the Measure.

(b)   Where the MDA believes a party has engaged in anti-competitive behaviour in contravention of the Measure, the MDA should as part of its interim enforcement measure(s), prohibit the broadcast of the relevant content until such time as the MDA's investigations are complete.

(c)   The MDA should re-draft the definition of Qualified Content to avoid any interpretative confusion around re-contracting. That is, the definition of Qualified Content should include situations where the re-negotiation of a contract results in or constitutes an 'acquisition' of exclusive rights and should not cover negotiations in respect of other contractual terms and conditions that do not relate to exclusive rights (e.g. billing, promotional and marketing terms).

(d)   SingNet requests that the MDA provide further guidance on the scope of the definition of "advanced interactive content" to make clear exactly which content is captured by the Measure and to avoid the potential for disputes about the type of content that is captured by this definition.

(e)   The current definition of Regulated Person would capture niche subscription television service licensees and free-to-air broadcast licensees.   The MDA should amend the definition of Qualified Content to apply to Regulated Persons or SQLs only in so far as they are nationwide subscription television licensees.

(f)   SingNet considers that the threshold for classification as an RQL at 10,000 subscribers is too low. SingNet proposes that the MDA set the threshold at 100,000 paying subscribers as this number accurately reflects the fact that a RQL is a nationwide subscription television licensee. The MDA already uses 100,000 as the primary criterion to distinguish between a niche and nationwide licence and this approach should be replicated here. Furthermore, if an RQL obtains access to Qualified Content and does not actually achieve 100,000 or more paying subscribers within 24 months in accordance with the roll-out plan, then that RQL should cease to have status as an RQL.

(g)   SingNet agrees with the MDA's preliminary position that the SQL should assume primary responsibility for customer service. However, for practical purposes, SingNet recommends that the processes between the SQL and RQL should provide for circumstances where an end-user contacts the RQL first and for that RQL to then pass the request for Qualified Content to the SQL.

(h)   SingNet proposes that where a SQL is unable, for whatever reason, to secure agreement with its content providers to implement the MDA's marketing and promotion requirement, the SQL should provide promotional materials to the RQL for the limited purpose of informing consumers of channels which are being cross-carried.

(i)   SingNet agrees with the MDA's preliminary position that no mandatory single billing should be required of an RQL and that the default position should be that the SQL is responsible for billing the end-user for Qualified Content. However, SingNet believes that notwithstanding the default position, the SQL and RQL should be free to commercially agree on alternative billing arrangements.

(j)   SingNet agrees with the MDA's preliminary position that RQLs and SQLs should commercially negotiate the channel numbering.

(k)   SingNet agrees with the MDA's preliminary position that any Regulated Person which acquires Qualified Content must obtain the rights (either exclusive or otherwise) for the other delivery platforms that are listed by the MDA as Relevant Platforms. However, SingNet cautions that in relation to exemptions that the MDA may wish to grant, they should only be granted if the content provider of the Regulated Person does not have the relevant rights for other platforms.

(l)   SingNet agrees with the MDA's preliminary position that parties commercially negotiate and agree the cross-carriage fees. Further, SingNet agrees with the MDA's preliminary position of distinguishing between SQLs that are also RQLs and SQLs that are not RQLs. SingNet supports the adoption of the Directly Attributable Incremental Costs (**DAIC**) methodology for SQLs that are also RQLs.

(m)   However, SingNet proposes that for SQLs that are not RQLs the MDA should adopt Long Run Incremental Cost + (**LRIC+**).

(n)   SingNet does not agree with the use of "the most efficient system" run by the RQLs because it is ambiguous, subjective and difficult to determine. SingNet submits that cross-carriage charge should relate to the relevant RQLs' platform/network.

(o)   SingNet agrees with the MDA's preliminary position in relation to retail pricing – that the SQL must charge the same retail price(s) for subscribers on its own platform as well as those on the RQL's platform.

(p)   SingNet agrees with the MDA's preliminary position in relation to bundles and packages - all Qualified Content, regardless of whether it is bundled or packaged, should be subject to the Measure. SingNet also emphasises that the Measure should not be derogated through implementation issues.

(q)   SingNet agrees with the MDA's preliminary position in relation to service standards. However, SingNet notes that there are equally important service standard expectations for an SQL. For example an SQL must make Qualified Content available for cross-carriage at the 'source quality' and the Qualified Content received by the RQL should be as close to source quality as possible to eliminate degradation of quality due to encoding.

(r)   SingNet submits that an RQL should be allowed to encode and encrypt any Qualified Content received and to provide it at a quality no worse than that of the RQL's own procured content. Inherent differences in quality that arise from inherent differences in the platforms on which that content is carried should not constitute non-compliance with service standards by SQLs or RQLs.

(s)   SingNet proposes that different activation timeframes are set for linear and non-linear (**VOD**) Qualified Content.

(t)   SingNet proposes that the MDA fine tunes the notification period for linear channels so that the notification period is 30 working days for a single channel and 60 working days for multiple channels.

(u)   SingNet proposes that for non-linear content (i.e. VOD) SQLs should provide RQLs with the content in format(s) that is suitable for the RQL to deliver / carry to the subscriber. Given that the RQL also needs to correspondingly encode the content, we believe it is reasonable for an SQL to provide the VOD content to the RQL at least five (5) working days before the VOD content is made available to the subscriber on the SQL's own network / platform.

(v)   In terms of the initial set up for cross-carriage of linear and non-linear (VOD) Qualified Content, SingNet proposes that the MDA allows for at least 120 working days notice to be provided by the SQL.

(w)   The MDA should provide transparent guidelines for industry on exemption criteria.

3   SCOPE OF THE MEASURE

Definition of Qualified Content

3.1   The MMCC currently defines Qualified Content as follows[2]:

> *"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 SQL on the basis of the SQL 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 an extension, renewal or otherwise re-contracting of existing exclusive rights over such channels or programming content on or after the Effective Date."*

3.2   The MDA is considering revising the definition of Qualified Content to the following[3]:

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[2]   MMCC, section 2.3(d)

[3]   MDA, *Cross Carriage Measure in the Pay TV Market Consultation Preliminary Policy Positions*, 1 September 2010, page 30.

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"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 <u>Regulated Person</u> under an arrangement, whether explicit or implicit, 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. For the avoidance of doubt "Qualified Content" excludes any channels or programming content obtained before the Effective Date, but includes <u>any extension, renewal or otherwise re-contracting on or after the Effective Date</u>."

3.3 SingNet supports the MDA's proposed revision of the definition of Qualified Content to include the acquisition of Qualified Content through either implicit or explicit arrangements which restrict other Regulated Persons from acquiring the same for transmission on any other platform.

<u>MDA remedial action</u>

3.4 The MDA has stated[4]:

"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 the 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 by the Chief Executive Officer of the pay TV retailers (or officers in equivalent capacity), in such form prescribed by the 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 "Qualified Content."

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[4] Ibid, page 31.

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3.5   While these measures are necessary, they may not be sufficient to prevent tacit agreements and efforts to bypass the Measure from being implemented and causing anti-competitive effects.

3.6   SingNet requests that the MDA provide further guidance about the process for investigations it intends to undertake and the type of enforcement action and remedial action that it would take against such agreements.

3.7   SingNet further submits that where the MDA believes that a party has engaged in such anti-competitive behaviour, the MDA should, as part of its interim enforcement measure(s), prohibit the broadcast of the relevant content until the MDA's investigations are complete.

Platform neutrality

3.8   In its previous submission to the MDA, SingNet highlighted the need for the Measure to be platform-neutral in nature.

3.9   SingNet re-iterates that platform neutrality is fundamental and necessary to avoid situations where the Measure could be circumvented.

Clarity required in relation to "re-contracting"

3.10   SingNet considers that there is scope to clarify the phrase "*extension, renewal or otherwise re-contracting after the Effective Date*". Both the current definition and the proposed definition of Qualified Content suggest that the cross-carriage obligation can be triggered in broader circumstances.

3.11   SingNet has previously identified this in our response to the MDA's first consultation. We again highlight that the MDA should clarify that the definition of Qualified Content only covers situations where:

(a)   the SQL re-contracts in such a way that it extends the term of an exclusive contract where the exclusive contract / content was acquired **on or after** the Effective Date (including automatic roll over) ;

(b)   the SQL re-contracts in such a way that extends the term/duration of an exclusive contract / content where the exclusive contract / content was acquired before the Effective Date (including automatic roll over) and

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(c)   the SQL alters the nature of a contract / content that was acquired on or after the effective date such that the contract / content becomes exclusive (where it was previously non-exclusive).

3.12   SingNet submits that the Measure should only apply in situations where the re-negotiation constitutes an "acquisition" of exclusive rights which the SQL would not have had <u>but for</u> the re-negotiation.

3.13   The Measure should not apply to a re-negotiation that does not result in an SQL acquiring exclusive rights.

3.14   Further, if an SQL modifies the terms and conditions of an existing exclusive content arrangement (i.e. acquired before the Effective Date) that <u>do not</u> relate to the exclusive rights, then the content should not constitute Qualified Content. For example, an SQL may have entered into exclusive content arrangements prior to the Effective Date and subsequently revises the contract to modify the terms and conditions relating to marketing and promoting issues or billing terms. Such situations should not make the exclusive content Qualified Content.

3.15   SingNet submits that the MDA should re-draft the definition of Qualified Content to incorporate the above and to avoid any interpretative confusion. SingNet therefore recommends that the definition of Qualified Content be amended as follows:

> *"Qualified Content" means 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 Regulated Person under an arrangement, whether explicit or implicit, 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. 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 channels or programming content where the exclusive rights to broadcast are renegotiated, extended or renewed on or after the Effective Date with the effect that the Regulated Person obtains exclusive rights which it would not have obtained or retained but for the renegotiation, extension or renewal.*

Application to VOD and Interactive Content

3.16   The MDA states that it "*proposes that the Measure will apply to linear and VOD content*"[5].

3.17   SingNet is in broad agreement with the MDA's preliminary position that the Measure will apply to linear and basic VOD content and their supporting services.

3.18   SingNet also broadly agrees with the MDA's preliminary position that the Measure should not apply to "advanced interactive content". However, SingNet requests that the MDA provide further guidance on the scope of the definition of "advanced interactive content" to make clear exactly which content is captured by the Measure and to avoid a situation where licensees seek to characterise conduct as "advanced interactive content" as a means of avoiding application of the Measure.

Qualifying criteria for SQL

3.19   The MDA has proposed to change the definition of Qualified Content such that any reference to an "SQL" is replaced by "Regulated Person". The MDA also provides a definition of SQL as:

(a)   *Any Regulated Person who acquires or otherwise obtains Qualified Content;*

(b)   *Any Regulated Person who:*

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

   (ii)   *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*

3.20   It is not currently clear, however, where the definition of an SQL would apply in the MMCC. Nonetheless, the current definition of Regulated Person includes both niche subscription television licensees and free to air broadcast licensees. Therefore, with the proposed amendment to the definition of Qualified Content, the Measure would apply to both niche subscription licensees and free-to-air broadcast licensees.

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5   Ibid, page 32.

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3.21   SingNet notes that niche subscription licensees are not nationwide subscription television licensees. They have a much smaller customer base given that they are not obliged to rollout to a nationwide audience. In addition, non-nationwide subscription television licensees have more flexible licensing conditions, for example they pay a lower performance bond, do not have a must-carry obligation or ownership conditions and have no cap on advertising revenues.

3.22   Non-nationwide subscription television licensees do not need to commit to a nationwide rollout and meet requirements in relation to providing services to the entire population. As such, the ability for a non-nationwide subscription television licensee to enjoy the privilege of making available their content to subscribers on another party's platform is not commensurate with the level of commitment they make to the development of the nationwide subscription television segment in Singapore.

3.23   Free-to-air broadcast licensees are also not nationwide subscription television licensees. Furthermore, given that the Measure pertains to the cross-carriage obligation in the pay-TV segment, there is no reason for free-to-air broadcast licensees to be captured by the definition of Regulated Person.

3.24   SingNet therefore proposes that the Measure should only apply to nationwide subscription television licensees. SingNet submits that the MDA should amend the definition of Qualified Content in order to reflect that the Measure only applies to Regulated Persons or SQLs in so far as they are nationwide subscription television licensees.

Qualifying criteria for RQL

3.25   MDA proposes that an RQL must be a nationwide subscription television licensee that has fulfilled the following criteria[6]:

(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 the Service Standards (specified in paragraph 3.9 of the consultation paper).

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[6]   Ibid, page 34.

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3.26   SingNet agrees with MDA's preliminary position in respect of criteria (b) and (c) above but considers that criteria (a) should be revised to capture the scale of nationwide subscription television licensees.

3.27   The proposed subscriber threshold of 10,000 is very low and is unreasonable in the context of the Measure.

3.28   SingNet submits that an RQL should have at least 100,000 paying subscribers or more because this number accurately reflects the fact that a RQL is a nationwide subscription television licensee.

3.29   A 100,000 subscriber threshold is consistent with the MDA licensing framework which provides that niche licensees are required to have no more than 100,000 subscribers whilst nationwide subscription television licensees can have an unlimited number of subscribers.

3.30   Given that nationwide subscription television licensees would have a significantly greater number of subscribers than 10,000, setting 10,000 subscribers as the threshold for qualification as a RQL is overly low.

3.31   The implementation of the Measure is costly and operationally and technically complex, and the benefits of implementing these arrangements in respect of RQLs with a limited number of subscribers are likely to be limited relative to the costs. Therefore, the obligation should only be applicable once a RQL has built up sufficient scale in its subscriber base. This is consistent with the principles that underpin the licence regime and also ensures that this regulatory solution is consistent in principle with the rollout obligation in a licence.

3.32   SingNet therefore submits that the MDA should set criteria (a) for qualification as an RQL at 100,000 paying subscribers, in order to reflect the proper scale of an RQL for the purpose of the Measure. SingNet further submits that if an RQL obtains access to Qualified Content and does not actually achieve 100,000 or more paying subscribers within 24 months in accordance with the roll-out plan, then that RQL should cease to have status as an RQL.

4   CUSTOMER RELATIONSHIP

Customer relationship between SQL and subscribers

4.1   MDA states that[7]:

> *"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."*

4.2   SingNet agrees with the MDA's preliminary position in respect of customer relationship. In its response to the MDA's initial consultation, SingNet pointed out that the intent of the Measure is to enable SQLs to provide their Qualified Content directly to *residential and / or business subscribers* via the RQL's network/platform. ,

4.3   SingNet agrees that matters, such as customer service and technical assistance related to channels/ programming that are Qualified Content, should be rendered by the SQL to subscribers and the SQL should be responsible to content providers for the provision of any subscriber related data.

4.4   The MDA has indicated that an end-user will contact the SQL with a request for Qualified Content.

4.5   SingNet acknowledges that for practical purposes the end-user will enter into a contract with the SQL however, end-users residing on the RQL network may not always contact the SQL on issues regarding the Qualified Content.

4.6   Therefore, while SingNet agrees that the SQL should retain the primary responsibility, including being responsible for the cost of providing customer service, the customer should be allowed to contact the RQL.

4.7   On this basis, RQLs and SQLs should put in place appropriate processes to verify the details and status of the subscriber etc. before the Qualified Content can be carried to the subscriber.

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[7]   Ibid, page 35.

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Marketing and Promotion

4.8   MDA has stated that[8]:

>   *"To facilitate customer education and minimise confusion, MDA is proposing that the SQLs maintain and publish a list of 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 the SQLs Qualified Content for the limited purpose of informing consumers of channels which are being cross-carried."*

4.9   SingNet agrees with the MDA's preliminary position in relation to marketing and promotion.

4.10   In addition, SingNet proposes that where a SQL is unable, for whatever reason, to secure agreement with its content providers to implement the MDA's requirement, the SQL should provide its promotional materials to the RQL for the limited purpose of informing consumers of channels which are being cross-carried.

No Mandatory Single Billing

4.11   SingNet agrees with the MDA's preliminary position that single billing by the RQL should not be a mandatory requirement. The obligation for the RQL to provide a single bill containing the charges for the RQL's own services and the charges for Qualified Content offered by the SQL may create some practical implementation issues. Therefore, as a default position, the SQL should be the party responsible for invoicing subscribers for their Qualified Content, including those subscribers that are connected to the RQL's platform.

4.12   Notwithstanding the default position, SingNet believes that the parties should be free to commercially agree alternative billing arrangements for subscribers receiving Qualified Content on the RQL's platform.

Channel Numbering

4.13   SingNet agrees with the MDA's preliminary position that RQLs and SQLs should commercially negotiate the channel numbering.

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[8]   Ibid.

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5 PLATFORM RIGHTS ACQUISITION

5.1 The MDA proposes to require any Regulated Person which acquires Qualified Content to obtain the rights (either exclusive or otherwise) for the other delivery platforms that are listed as Relevant Platforms.[9]

5.2 SingNet strongly agrees with the MDA's preliminary position.

5.3 In our submission responding to the MDA's first consultation, SingNet stressed that this principle is fundamental to the Measure. Where it is not properly set out, licensees would be able to circumvent the Measure by making content exclusively available on limited platforms thereby preventing subscribers on other platforms from accessing the content.

5.4 SingNet also notes that the MDA has indicated that it intends to take remedial actions against parties who wish to circumvent the Measure, including

(a) SQL to make a statutory declaration that there is no other arrangement that prevents or restricts another Regulated Person from acquiring or otherwise obtaining the same channel / programming content for transmission on any of the Relevant Platforms;

(b) Regulated Person(s) to apply for exemption and to demonstrate that its content provider does not have the relevant broadcast rights for Singapore and other neighbouring countries.

5.5 However, SingNet cautions that in relation to (b), an exemption should only apply if the content provider does not have the relevant rights for other platforms (i.e. the content provider must prove that it only has the rights for, for example, the coaxial cable platform and not the IPTV platform).

6 CROSS-CARRIAGE FEE

6.1 SingNet agrees with the MDA's preliminary position that parties reach their own agreement on the quantum of cross-carriage fees[10].

6.2 SingNet also agrees with the MDA's preliminary position of distinguishing between SQLs that are also RQLs and SQLs that are not RQLs.

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[9]   Ibid, page 36.
[10]   Ibid, page 37.

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6.3   In relation to the proposed costing methodology to apply in the event that parties are unable to reach commercial agreement and the matter is referred to the MDA for resolution, SingNet supports the adoption of the Directly Attributable Incremental Costs (**DAIC**) methodology in relation to SQLs that are also RQLs.

6.4   However, SingNet proposes that for SQLs that are not RQLs the MDA should adopt a Long Run Incremental Cost + (LRIC+) methodology. LRIC+ is different to LRIC because LRIC+ fully compensates the SQL for all of its attributable costs including fixed and common costs in connection with the provision of the cross carried content, as well as a reasonable rate of return.

6.5   SingNet does not consider that a pure LRIC based approach is appropriate in this specific context as the purpose of LRIC based pricing is to create a correct market signal to those access seekers that genuinely face a choice between 'build' and 'buy' possibilities. In circumstances where an RQL is not an SQL this 'build' v 'buy' distinction does not arise and it therefore follows that SQLs in these circumstances should not obtain the windfall gain associated with a pure LRIC based price.

6.6   However, SingNet does not agree with the MDA's proposal that the cross-carriage charges should be calculated based on "the most efficient system" operated by the relevant RQLs. SingNet considers that cross-carriage charges should relate to the relevant RQLs' platform/network.

7   RETAIL PRICING

7.1   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.

7.2   SingNet agrees with the MDA'S preliminary position in relation to retail pricing[11].

7.3   SingNet notes that this is the correct and appropriate option to ensure that the Measure is effective, treats all subscribers in a non-discriminatory manner and achieves the desired policy outcome.

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[11]   Ibid, pages 38-39.

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8 CROSS-CARRIAGE OF PACKAGES AND BUNDLES

8.1 MDA proposes that[12]:

> *"...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' platform 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 Qualified Content which best services its commercial interests."*

8.2 SingNet agrees with the MDA's preliminary position that all Qualified Content, regardless of whether or not it is bundled or packaged will be subject to the Measure.

8.3 As SingNet stated in its submission responding to the MDA's first consultation, the reasons that bundled or packaged Qualified Content should be subject to the Measure include:

(a) in most cases it would not be feasible to separate exclusive content from non-exclusive content; and

(b) it would be extremely difficult to determine appropriate pricing for individual items of content which are priced by the SQL as part of a bundle, rather than separately (but also potentially acquired from a content service provider).

8.4 SingNet also stated in its previous submission that it is opposed to a policy where the SQL does not offer the same bundles, packages and / or discounts to its subscribers on an RQL network/platform; given that the subscriber is contracting with the SQL, they will expect the same treatment to be accorded. Denying the subscriber the bundles, package and/ or discounts available would make the subscriber a 2nd-class subscriber, which is clearly not the intent of the Measure.

8.5 Furthermore, it is important to ensure that the SQL is not given an opportunity to unbundle the Qualified Content from its existing bundles, packages or discounted provisions and only offer for cross-carriage that unbundled content - this would create a loophole which could be used to effectively undermine and significantly reduce the effectiveness of the Measure, ie an SQL could offer the Qualified Content on an ala-carte basis which is highly unattractive as compared with a bundle/package available

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[12] Ibid.

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on the SQL platform;

8.6 Furthermore, the SQL should not pick and choose which bundles and packages (that has Qualified Content) to offer for cross-carriage; all bundles and packages (that has Qualified Content) should be subject to the Measure.

8.7 Finally, all Qualified Content, regardless of whether or not it is bundled or packaged, should be subject to the Measure from the date of implementation. There should be no interim period where bundles or packages containing Qualified Content are exempt from the Measure. .

9 SERVICE STANDARDS

9.1 SingNet agrees with the MDA's preliminary position in relation to the need for service standards. However, whilst the MDA has identified the service standard expectations for an RQL, SingNet notes that there are equally important service standard expectations for an SQL which would be necessary for a smooth implementation of the Measure.

9.2 As the MDA would acknowledge, SQLs and RQLs may broadcast content using different types of networks and systems, and accordingly format or encrypt their content in ways which make them incompatible with each other's networks and systems, or otherwise prevent identical quality and/or precisely synchronised broadcast from being achieved. In fact, all subscription television licensees would, after obtaining the source content from a content provider, perform certain acts, including encoding, required to make Qualified Content available to subscribers on their own service / network. The encoding, for example, may be required to ensure that the content conforms with their own network specifications. Qualified Content that has been encoded by the SQL that is then made available to RQL "without alteration" (as required by paragraph 2.7.1(a)(i) of the Code) will actually not fit the RQL's own network specifications. In those circumstances, one or other of the SQL and RQL would be unable to comply if the obligation to make content available and carry content "without alteration" is given a strict and literal interpretation.

9.3 SingNet therefore requests that the MDA considers the following points which SingNet made in its previous submission responding to the MDA's initial consultation:

(a) SQLs should be obliged to make Qualified Content available for carriage on RQLs platforms at the "source quality" (i.e. the quality that the SQL received from the content provider) rather than the level of quality at which the SQLs themselves broadcast it; and

(b) the Qualified Content received by the RQL should be as close to the source quality as possible so as to eliminate any degradation of quality arising from the encoding processes.

9.4   SingNet further submits that RQLs should be permitted to perform acts in relation to Qualified Content that are necessary in order for the content to be carried on the RQLs platform for example, encoding and encryption, as long as it provides the Qualified Content at a quality no worse than that of the RQL's own procured content.

9.5   SingNet also submits that inherent differences in quality that arise from inherent differences in the platforms on which that content is carried should not constitute non-compliance with service standards by SQLs or RQLs. Hence, this should not be interpreted as altering the Qualified Content, breaching any IPRs or acts that impair or degrade the quality of the Qualified Content.

Activation of cross-carriage of qualified content

9.6   MDA has stated that[13]:

> *"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 the 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 has 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 channel/programming content ceases to be Qualified Content, notification of no less than 30 days should be provided to the RQLs and the affected subscribers."*

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[13]   Ibid, pages 40-41.

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9.7   SingNet proposes that different activation timeframes are set for linear and non-linear (**VOD**) Qualified Content.

9.8   For linear channels, SingNet agrees with the MDA's preliminary position of not less than 30 day timeframe however, it submits that the MDA should take into account the following when stipulating a 30 day timeframe:

(a)   The notification period should be <u>30 working days</u> rather than 30 calendar days;

(b)   30 working days is sufficient for the cross-carriage of a single channel that has not yet been transmitted on the RQL's network / platform;

(c)   Where multiple channels need to be cross-carried the notification period should be at least 60 working days.

9.9   For non-linear content (i.e. VOD), SQLs should provide the content to RQLs in a format that is suitable for the RQL to deliver / carry to the subscriber. Given that the RQL also needs to correspondingly encode the content, we believe it is reasonable for an SQL to provide the VOD content to the RQL at least five (5) working days before the VOD content is made available to the subscriber on the SQLs own network / platform.

9.10   Finally, SingNet submits that when an RQL is initially asked to cross-carry both linear and non-linear (VOD) Qualified Content the MDA should give priority towards both parties having sufficient time and notification. Therefore, SingNet recommends that for the initial set up and implementation, 120 working days notification should be given.

10   EXEMPTIONS FROM THE MEASURE

10.1   The MDA has stated that it is only minded to grant an exemption in exceptional circumstances and has given some examples of what it may consider to be exceptional circumstances[14]:

(a)   SQL can demonstrate channel innovation and content origination would not or could not take place as a result of the Measure;

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[14]   Ibid, page 42.

(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.

10.2   SingNet requests further information from the MDA on the circumstances in which an exemption may be granted. A transparent set of guidelines for industry would be beneficial and would reduce uncertainty in this area.

11   CONCLUSION

11.1   Overall, SingNet supports the MDA's initiative to introduce the Measure and considers that it is a positive step towards greater competition in the pay-TV market.

11.2   SingNet considers that there are some practical issues in terms of the implementation of the Measure and we have proposed a number of suggestions in this submission to address these.

11.3   SingNet requests that the MDA take account of our comments as it continues the process of fine-tuning the Measure and the Measure's implementation details.