



SINGNET PTE LTD

SUBMISSION TO THE MEDIA DEVELOPMENT AUTHORITY OF SINGAPORE

IN RESPONSE TO THE

**MEDIA DEVELOPMENT AUTHORITY OF SINGAPORE
THIRD CONSULTATION
IMPLEMENTATION OF THE CROSS-CARRIAGE MEASURE
IN THE PAY – TV MARKET**

DATE OF SUBMISSION: 19 APRIL 2011



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SUBMISSION TO THE MEDIA DEVELOPMENT AUTHORITY OF SINGAPORE IN RESPONSE TO ITS THIRD CONSULTATION ON THE IMPLEMENTATION OF THE CROSS-CARRIAGE MEASURE IN THE PAY TV MARKET ISSUED ON 23 MARCH 2011

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. 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.
- 1.3 On 23 March 2011, the MDA issued a third consultation paper setting out the MDA's responses to the feedback received from industry from the second consultation as well as subsequent discussions with industry. In the third consultation the MDA is seeking comments on the proposed amendments to the MMCC to facilitate implementation of the cross-carriage measure by 30 June 2011.
- 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.
- 1.5 This submission sets out SingNet's response to the MDA's third consultation paper.

¹ Section 2.1.5 of the Media Market Conduct Code (MMCC) sets out the cross-carriage obligation.

2 EXECUTIVE SUMMARY

- 2.1 SingNet considers that the MDA's proposed policy positions for the implementation of the Measure are generally sound. However, SingNet also considers that some further refinements are necessary to ensure that the Measure is readily capable of implementation in a way that serves the best interests of the industry as a whole.
- 2.2 SingNet reiterates its broad support for the Measure and notes that this submission focuses on areas of concern only.
- 2.3 In this submission, SingNet proposes various amendments to the MMCC that are intended to ensure the workability of the Measure from a practical perspective.
- 2.4 In particular, SingNet's proposed amendments focus on the following:
- (a) the scope of the Measure;
 - (b) the timing for implementation of the Measure;
 - (c) the need to balance competition and innovation as part of the implementation of the Measure.
- 2.5 These suggestions include:
- (a) The MDA should amend the definition of Qualified Content (and the definition of SQL) to exclude self-produced or self-commissioned content.
 - (b) The requirement for an SQL to acquire the rights for content to be carried on all Relevant Platforms is fundamental to the workability of the Measure. However, this obligation has been watered down since the MDA's initial consultation. SingNet requests that the MDA includes in the MMCC an express obligation that a Regulated Person that acquires Qualified Content must also acquire the rights to broadcast the Qualified Content on all other delivery platforms that are listed by the MDA as Relevant Platforms.
 - (c) SingNet considers that there is a real risk of competitive harm where pay-TV providers engage in practices that circumvent the Measure. To this end, the MDA should maintain a residual right to declare content Qualified Content where the nature of the contractual terms governing or the commercial arrangements surrounding the acquisition of that content by the potential SQL

effectively or has the effect of preventing RQLs from acquiring the content. SingNet submits that the MDA should treat such practices with caution and should thoroughly assess acquisitions on a case by case basis, as well as reserving the right to declare such content as Qualified Content, given the potentially harmful effects on competition and consumers.

- (d) Particularly, in relation to the example of a pay-TV provider circumventing the Measure by acquiring exclusive rights on other platforms and concurrently non-exclusive rights on a Relevant Platform, the MDA should assess such practices as they are currently occurring in the market. To prevent pay-TV providers from effectively circumventing the Measure, the MDA should consider declaring all content that arise from such practices as Qualified Content. This means that where a pay-TV provider chooses to engage in such a practice, it is still required to make available for cross-carriage the content that it has acquired exclusive rights on other platforms even where it has only acquired non-exclusive rights on a Relevant Platform for that same content.
- (e) The MDA should reconsider the complete exclusion of value added services from the definition of Qualified Content under the MMCC. Where a party acquires exclusive rights to specific value added services that may render the content to which they relate Qualified Content (even if the rights to the underlying content are non-exclusive in nature), namely dubbing, subtitling, commentaries, and pre and post-documentaries which are not standalone programmes (items A-C in Part II of Appendix 1 to the MMCC), then the content (including the value added services) should be designated Qualified Content and therefore subject to the Measure.
- (f) The MDA should amend the definition of SQL so that niche subscription television licensees are not captured by the definition.
- (g) SingNet also considers that the threshold for classification as an RQL at 10,000 subscribers is too low. The MDA should set the threshold at 100,000 paying subscribers
- (h) Certain activities, such as encryption and encoding, are absolutely necessary for RQLs, whether for an RQL's own content or for content that it cross-carries. Therefore, RQLs should be permitted to perform acts in relation to Qualified Content that are necessary for the content to be carried on the RQL's

platform. SingNet submits these acts, as well as any inherent differences in quality that arise from inherent differences in platforms on which content is carried should not constitute non-compliance with service standards by RQLs.

- (i) SingNet agrees with the draft MMCC's position that an RQL should at least remind or inform an end-user wishing to terminate its subscription to Qualified Content to properly terminate its contract directly with the SQL. However, SingNet requests that the MDA amend section 2.7.2A(i) of the draft MMCC to remove the option for RQLs to terminate contracts with SQLs on behalf of end-users. To allow such third party termination would be contrary to the essence of the direct customer relationship between an SQL and an end-user.
- (j) The MDA should provide a transparent set of guidelines for industry on how the exemption provisions will apply in practice because this is likely to be a critical area for both stakeholders and consumers.
- (k) SingNet submits that:
 - (i) Regardless the deadline set out in Section 2.7.1 (a) and 2.7.2 (A) (a) of the draft MMCC, each SQL must provide notification of 120 working days to an RQL as initial set-up time to allow for completion of the processes and implementation necessary to make Qualified Content available for transmission on all relevant platforms;
 - (ii) Post initial set-up, a 30 working day notification period is needed for cross carriage of a single channel that has not yet been transmitted on an RQL's network / platform; and
 - (iii) Post initial set-up, a 60 working day notification period is needed for cross carriage of multiple channels [ie more than one (1) channel] that have not yet been transmitted on an RQL's network / platform.
- (l) The principle underpinning section 2.7.1 of the draft MMCC is that all end-users that wish to contract with an SQL for Qualified Content, whether that end-user is on the SQL's own platform or on another platform, should be able to take up Qualified Content at the same time and experience a comparable level of quality irrespective of whether that content is carried on an SQL's platform or an RQL's platform. It is important for this principle to be properly

articulated in the MMCC. Accordingly, SingNet submits that the MDA should include a statement in the MMCC that an SQL should make its Qualified Content available to all end-users at the same time and at the same quality.

- (m) SingNet agrees with the MDA's proposition that a RQL must ensure that a Subscriber wishing to access the Qualified Content of a SQL through the RQL's Relevant Platform is able to do so within 5 working days of receipt of the Subscriber's request but submits that the MDA should clarify that the 5 working day timeframe commences from the day that the RQL receives the request from the SQL.
- (n) The MDA should delay the implementation of the cross-carriage of VOD content until the end of December 2011.

3 SCOPE OF THE OBLIGATIONS CREATED BY THE MEASURE

Definition of Qualified Content

3.1 The draft MMCC defines Qualified Content as follows²:

“(i) any channel or programming content (whether in a linear or non linear format), including any basic function in support of such channel or programming content that is specified in Part I of Appendix 1, where such channel or programming content is:

(A) subject to sub-paragraph (ii), produced or commissioned by a Regulated Person and where, on or after 30th June 2011 the Regulated Person transmits the same on its Subscription Television Service in Singapore and refuses to allow the channel or programming content to be acquired or otherwise from it for transmission on any other Relevant Platform in Singapore by:

(I) any other Regulated Person or;

(II) where the Regulated Person that produced or commissioned the channel or programming content belongs to a Group, any other Regulated Person outside the Group;

²

MMCC, section 2.3(d).

or

(B) acquired or otherwise obtained on or after the Effective Date by a Regulated Person for transmission on its Subscription Television Service in Singapore 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 or otherwise obtained from it for transmission on any other Relevant Platform in Singapore by:

(I) any other Regulated Person; or

(II) where the Regulated Person that acquired or otherwise obtained the channel or programming content belongs to a Group, any other Regulated Person outside the Group; and

(ii) any bundled channels or bundled programming content comprising, in whole or in part, any channel or programming content that is referred to in sub-paragraph (i) of this definition.”

- 3.2 Subsection (A) of the definition of Qualified Content includes self-produced or self-commissioned content.
- 3.3 SingNet submits that the definition of Qualified Content should be amended to exclude self-produced or self-commissioned content. This is necessary to encourage innovation within the industry and to ensure the promotion and protection of locally produced content.
- 3.4 Content produced by a licensee itself (whether through in-house production or commissioning an external production house) is an effort in competitive differentiation by the licensee and is a way in which a licensee can innovate and promote its own service offerings. The inclusion of self-produced or self-commissioned content within the definition of Qualified Content means pay TV operators will no longer be incentivised to produce such content, or to competitively differentiate their own offerings from those made available by competitors.

- 3.5 The MDA is acutely aware of the importance of content innovation. In fact, one of the key reasons for the introduction of the Measure was concern that competition has come to centre around exclusive carriage arrangements rather than service and content innovation. In its third consultation paper the MDA states³:

“In recent years, MDA observed that competition centred around exclusive carriage arrangements (“ECAs”) has resulted in content fragmentation which 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 providers were diverted away from other aspects of competition such as service and content innovation”(our emphasis).

- 3.6 The MDA has correctly identified that competition in the industry should properly be focused on content innovation. Therefore, it would be illogical if the Measure removed licensees’ incentives to self produce or self commission content by including self-produced and self-commissioned content within the definition of Qualified Content. This does not represent the ‘bottleneck’ that the cross carriage obligation is seeking to address.
- 3.7 It is necessary to strike a balance between the need for more open competition across platforms through cross-carriage and the need to ensure that there is still competitive differentiation between content providers. Promoting local content is one way of achieving this competitive differentiation in what would be an otherwise largely homogenous environment.

Platform Rights Acquisition

- 3.8 In its preliminary policy paper dated 1 September 2010, the MDA proposed to require any Regulated Person who acquires Qualified Content to obtain the rights (either exclusive or otherwise) for that content to be carried on the other delivery platforms listed as Relevant Platforms. However, this obligation has been watered down in the third consultation. Section 2.7.1. (b) of the draft MMCC now states⁴:

³ MDA, Third Consultation Implementation of the Cross-Carriage Measure in the Pay TV Market, 23 March 2011, p 3.

⁴ MMCC, section 2.7.1(b).

“A Supplying Qualified Licensee must ensure:

(i) that it has the right to broadcast all its Qualified Content on every Relevant Platform of every Receiving Qualified Licensee for the purpose of enabling the cross-carriage of the Qualified Content on such Relevant Platforms; and

(ii) that it can so broadcast all its Qualified Content without violating or infringing any intellectual property rights owned by any of the persons from whom it acquired or otherwise obtained the Qualified Content.”

- 3.9 SingNet is concerned that the drafting of section 2.7.1(b) of the MMCC can be interpreted as not requiring an SQL to proactively obtain the rights for broadcast on Relevant Platforms to enable cross-carriage. Rather, the wording seems to imply that an SQL can take a passive approach to acquiring rights, such that it only has to acquire the rights for its own platform and not for all Relevant Platforms. As such, an SQL could take the position that it only has to acquire the rights for broadcast on its own platform and therefore does not need to make that content available for cross-carriage on other platforms.
- 3.10 In its previous submissions, SingNet has emphasised that the requirement for an SQL to acquire the rights for content to be carried on all Relevant Platforms is fundamental to the workability of the Measure. If this obligation is not clearly set out, a pay-TV provider would be able to circumvent the Measure by simply acquiring rights for its own or limited platforms and make content exclusively available on those limited platforms, thereby preventing subscribers on other platforms from accessing the content.
- 3.11 In light of the above, SingNet requests that the MDA includes in the MMCC an express obligation that a Regulated Person who acquires Qualified Content must also acquire the rights to broadcast the Qualified Content on all other delivery platforms that are listed by the MDA as Relevant Platforms.

MDA assessments of Qualified Content

3.12 In its Third Consultation paper the MDA states⁵:

“...MDA is aware of the possibility that a pay TV retailer may enter into an agreement (formal or otherwise) with a content provider whereby the subsequent pricing of the channels or programming content or other contractual terms and conditions are set at such a levels to prevent another interested pay TV retailer from being able to afford the channels or programming content. MDA will, upon becoming aware of such instances, assess whether the content in question amounts to Qualified Content, and therefore be subject to the Measure.”

3.13 SingNet notes that in subsection (i)(B) of its revised definition of Qualified Content, the MDA attempts to capture situations where pay-TV providers engage in explicit or tacit anti-competitive practices which may restrict or prevent, or have the effect of restricting or preventing, content being acquired by other providers. SingNet supports the MDA’s position.

3.14 In respect of the specific examples set out in the MDA’s third consultation paper⁶, SingNet submits that there is a real risk of harm to competition and consumers where pay-TV providers engage in practices that circumvent the measure. These include practices where:

- (a) a pay-TV provider deliberately agrees to acquire content on a non-exclusive basis but at a price that is proportionately high;
- (b) a pay-TV provider structures the commercial aspects of a non-exclusive agreement with a content provider in such a way that the content provider indirectly commits not to offer the content on more favourable terms than what the first pay-TV provider obtained; and
- (c) a pay-TV provider may agree with content providers to acquire exclusive rights on other platforms [ie not a Relevant Platform] and non-exclusive rights on a Relevant Platform and possibly paying a premium to content providers for such arrangements.

⁵ MDA, Third Consultation Implementation of the Cross-Carriage Measure in the Pay TV Market, 23 March 2011, page 7.

⁶ Ibid, paragraphs 3.3.1.2, 3.3.1.22.

Acquiring content on a non-exclusive basis but at a price that is proportionately high to circumvent the Measure

- 3.15 Rather than putting in place an exclusive content arrangement (that would be subject to the Measure), pay-TV providers may deliberately agree to acquire the content on a non-exclusive basis but at a price that is disproportionately high. This effectively means that:
- (a) content providers can be disproportionately rewarded by pay-TV providers for premium, but technically non-exclusive content;
 - (b) other pay-TV providers are unable to pay the high price for the content which has been set by the first pay TV retailer; and
 - (c) the first pay-TV provider has indirectly avoided application of the Measure because while the content is not classified as Qualified Content, the disproportionately high price precludes other pay-TV providers from acquiring the content.

Structuring the commercial aspects of a non-exclusive agreement with a content provider to circumvent the Measure

- 3.16 Similarly, when a pay-TV provider structures the commercial aspects of a non-exclusive agreement with a content provider in such a way that the content provider indirectly commits not to offer the content on more favourable terms than what the first pay-TV provider obtained [as described in paragraph 3.3.1.22 of the MDA's third consultation paper], the net effect of such an arrangement is to circumvent the measure and harm competition.

Acquiring exclusive rights on other platforms [ie not a Relevant Platform] and concurrently non-exclusive rights on a Relevant Platform and possibly paying a premium for such arrangements to circumvent the Measure

- 3.17 A pay-TV provider may also circumvent the Measure in the following way:
- (a) acquiring exclusive rights for a content on other platforms [ie not a Relevant Platform] and concurrently non-exclusive rights on a Relevant Platform and paying a premium for such arrangements;

- (b) the arrangements will clearly render it non-viable for a content provider to reach agreement with other pay-TV providers for the same content. For example, a content provider that has been offered a premium with pay-TV provider A for its content to be broadcast exclusively on pay-TV provider A's other platforms (e.g. mobile and/or internet platforms) and non-exclusively on the same provider's Relevant Platform will not be able to offer any rights to pay-TV provider B for broadcast on pay-TV provider B's other platforms (e.g. mobile and/or internet platforms) even if pay-TV provider B was desirous of negotiating such rights and /or paying a reasonable premium.
- (c) furthermore, the same content provider, given that it would not be able to extract similarly high premium(s) as those offered by pay-TV provider A, has little incentive to enter into negotiations with an alternative pay-TV provider.

3.18 Such arrangements are clearly designed to circumvent the Measure.

3.19 SingNet submits that the practices described above would effectively render content out of the reach of other providers. To this end, the MDA should maintain a residual right to declare content Qualified Content where the nature of the contractual terms governing or the commercial arrangements surrounding the acquisition of that content by the potential SQL effectively or has the effect of preventing RQLs from acquiring the content.

3.20 Particularly, in relation to the example of a pay-TV provider circumventing the Measure by acquiring exclusive rights on other platforms and concurrently non-exclusive rights on a Relevant Platform, the MDA should assess such practices as they are currently occurring in the market. To prevent pay-TV providers from effectively circumventing the Measure, the MDA should consider declaring all content that arise from such practices as Qualified Content. This means that where a pay-TV provider chooses to engage in such a practice, it is still required to make available for cross-carriage the content that it has acquired exclusive rights on other platforms even where it has only acquired non-exclusive rights on a Relevant Platform for that same content.

3.21 Last, SingNet submits that the MDA should treat such practices with caution and should thoroughly assess acquisitions on a case by case basis, as well as reserving the right to declare such content as Qualified Content, given the potentially harmful effects on competition and consumers.

Value Added Services

3.22 The draft MMCC states⁷:

“For the avoidance of doubt, any channel or programming content is not Qualified Content by virtue only of the incorporation of any value added service that is specified in Part II of Appendix 1 in the channel or programming content.

3.23 Part II of Appendix 1 of the MMCC lists the following services as value added services for the purposes of the definition of Qualified Content:

- (a) subtitles;
- (b) dubbing;
- (c) commentaries, and pre and post-documentaries which are not standalone programmes;
- (d) enhanced interactive features, including contest and voting services, and enhanced television features such as a button feature which allows consumers to view programmed associated data relating to the content (for example, programme synopsis);
- (e) promotional trailers, programme advertisements, press conferences, on-screen advertisements and crawler messages produced for and associated with the content;
- (f) footages and talk shows including snippets, interviews (for example with artists) and previews and reviews produced for and associated with the content;
- (g) format upgrades (including upgrades to HD format or 3D format); and
- (h) user generated content, including short message services, multi-media message services, emails, video clips, audio clips and discussion forums relating to content.

⁷ MMCC, Section 2.3(d).

- 3.24 Similarly, in paragraph 3.11.1.5 of its third consultation paper, the MDA indicates that the inclusion of value added services into a channel that is otherwise not Qualified Content should not cause the channel to become Qualified Content on the basis that the value added services are supporting features only.
- 3.25 SingNet submits that at a preliminary glance, this appears to be a reasonable position. However, SingNet reminds the MDA that the critical test for establishing whether particular content is Qualified Content is whether there is foreclosure of access to that content once a pay TV retailer engages in an activity in respect of that content.
- 3.26 In its Preliminary Policy Position dated 1 September 2010, the MDA indicated that Qualified Content would include situations where a Regulated Person enjoys any rights that result in foreclosure of access to the content.
- 3.27 SingNet submits that the following is a more appropriate position in respect of value added services: where a pay-TV provider obtains rights to specific value added services, it must be assessed whether those rights have the effect or likely effect of rendering the content to which they relate Qualified Content (i.e. where a party obtains exclusive rights to value added services, does this have the potential effect of foreclosing access to the content to which those value added services relate).
- 3.28 By way of example:
- (a) Pay-TV provider A acquires Content X on 1 January 2011
 - (b) The rights to broadcast Content X in Language 1 are non-exclusive (e.g. Hokkien)
 - (c) The rights to broadcast Content X in Language 2 (e.g. Mandarin), or to subtitle it in languages other than Language 1 (e.g. subtitle it in English) or to offer commentaries on Content X are exclusive to pay-TV provider A.
- 3.29 The rights described in paragraph (c) above are exclusive and as a result of this exclusivity there is, or is likely to be, foreclosure of access to the content in respect of which the value added services apply. Under this example, another pay-TV provider would effectively be precluded from acquiring the content given that it cannot broadcast Content X in Language 2 and cannot subtitle the content in any other language other than Language 1 and cannot offer commentaries on the same programme(s). Therefore, the exclusive rights in respect of Language 2, subtitling and

commentaries etc have the effect or likely effect of foreclosing access to the content as a whole as the content would not have any specific value or utility in the absence of access to the associated value added services. In such a situation, both the content and the value added services should properly be classified as Qualified Content and be subject to the Measure.

- 3.30 SingNet submits that where the rights to the underlying content are non-exclusive, an important distinction must be made between value added services rights which are exclusive and value added services rights which are non-exclusive. In the former situation, the value added services render the content to which they relate Qualified Content because the value added services are acquired in such a way that forecloses access to the content, even if the rights to the underlying content are non-exclusive in nature. However, in the latter situation, the content to which the value added services relate should not be classified as Qualified Content because there is no foreclosure effect.
- 3.31 SingNet agrees, however, that not all value added services would have the effect of rendering the content to which they relate Qualified Content simply because a pay-TV provider acquires or obtains exclusivity to those value added services. SingNet submits that the MDA should reconsider the list of value added services set out in Part II of Appendix 1 of the MMCC to take account of the following:
- (a) where a party acquires exclusive rights to specific value added services that may render the content to which they relate Qualified Content (even if the rights to the underlying content are non-exclusive in nature.), namely dubbing, subtitling, commentaries, and pre and post-documentaries which are not standalone programmes (items A-C in Part II of Appendix 1 to the MMCC), then the content (including the value added services) should be designated Qualified Content and therefore subject to the Measure.
 - (b) the other value added services (items D-H in Part II of Appendix 1 to the MMCC) do not materially alter the nature of the content acquired therefore, the acquisition of these value added services should not result in the content to which they relate or the value added services being designated Qualified Content.

- 3.32 For the avoidance of doubt, in situations where a pay-TV provider acquires or obtains non-exclusive rights to any value added services and subsequently engages or procures, on an exclusive basis, the services of a third party vendor to produce the value added services, the value added services and the underlying content should not be rendered Qualified Content.

Definition of Supplying Qualified Licensee

- 3.33 The draft MMCC defines Supplying Qualified Licensee as follows⁸:

“any Regulated Person who:

(i) is licensed to provide any Subscription Television Service; and

(ii) produces or commissions, or acquires or otherwise obtains, Qualified Content.”

- 3.34 First, SingNet submits that the definition of SQL should be amended to exclude self produced or self commissioned content.
- 3.35 Secondly, the definition of SQL would capture niche subscription television licensees. In its submission of 5 October 2010 responding to the MDA’s second consultation, SingNet submitted that niche licensees should be excluded from the definition of Regulated Person and therefore from the operation of the Measure.
- 3.36 As previously stated, 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.
- 3.37 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, they should not enjoy the privilege of being able to make their content available on another party’s platform. This would not be commensurate with the level of commitment they make to the development of the nationwide subscription television segment in Singapore.

⁸ Ibid, Section 2.3(f).

- 3.38 SingNet therefore submits that the definition of SQL should be amended such that niche subscription licensees are not captured by the definition.

Designation of Receiving Qualified Licensee

- 3.39 The draft MMCC states⁹:

“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.”

- 3.40 In its submission of 5 October 2010, SingNet expressed concern that the threshold of 10,000 Subscribers is very low and is unreasonable in the context of the Measure.
- 3.41 SingNet emphasises that requiring an RQL to have at least 100,000 paying subscribers is reasonable and accurately reflects the fact that a RQL is a nationwide subscription television licensee.
- 3.42 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.
- 3.43 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 an RQL is overly low.
- 3.44 SingNet also notes that 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 an RQL has built up sufficient scale in its subscriber base. This is consistent with the principles

⁹ Ibid, section 2.7.2(a).

that underpin the license regime and also ensures that the Measure is consistent in principle with the rollout obligation in a license.

RQL to carry Qualified Content

3.45 The draft MMCC states¹⁰:

“A RQL must carry such Qualified Content on all its Relevant Platforms:

(A) in its entirety and in an unmodified and unedited form;

(B) at the same time as the SQL makes the Qualified Content available to its subscribers; and

(C) at a level of quality that is not inferior to the level of quality at which the Qualified Content is made available to it by the SQL.”

3.46 SingNet has previously submitted that RQLs should be permitted to perform acts in relation to Qualified Content that are necessary for the content to be carried on the RQL’s platform, for example, encoding and encryption, as long as the RQL provides the Qualified Content at a quality no worse than that of the RQL’s own procured content.

3.47 The MDA has not specifically addressed this point, however, the draft MMCC states¹¹:

“The Supplying Qualified Licensee:

must make its Qualified Content available to Receiving Qualified Licensee’s:

at a level of quality that is not inferior to the level of quality at which the Qualified Content is made available by the Supplying Qualified Licensee to its Subscribers.”

¹⁰ Ibid, section 2.7.2A(c).

¹¹ Ibid, section 2.7.1(c)(i)(C) and section 2.7.2A(c)(i)(C).

and

“A Receiving Qualified Licensee:

must carry such Qualified Content on all its Relevant Platforms:

at a level of quality that is not inferior to the level of quality at which the Qualified Content is made available to it by the Supplying Qualified Licensee.”

3.48 SingNet agrees with this principle of non-discriminatory treatment by SQLs and RQLs. However, SingNet stresses that certain activities, such as encryption and encoding, are absolutely necessary for an RQL, whether for its own content or for Qualified Content that it cross-carries. It is also highly likely that inherent differences in quality would arise from inherent differences in the platforms on which content is carried. End-users may mistakenly perceive these differences as an RQL offering a lower grade of quality for Qualified Content compared to what other end-users receive on an SQL’s platform..

3.49 Accordingly, SingNet submits that acts described above and inherent differences should not be interpreted as altering the Qualified Content, breaching any IPRs, or acts that impair or degrade the quality of the Qualified Content by RQLs, that is, these should not constitute non-compliance with service standards by RQLs

Termination of Qualified Content

3.50 The draft MMCC states¹²:

“Where a Subscriber who subscribes to any Qualified Content made available to the RQL by a SQL informs the RQL that it wishes to terminate its subscription to the Qualified Content, the RQL must:

(i) inform the Subscriber that the Subscriber is to terminate such subscription directly with the SQL; or

(ii) offer to terminate such subscription on behalf of the Subscriber with the

¹² Ibid, section 2.7.2A(i).

SQL, and , if the Subscriber agrees, to do so.

3.51 The MDA's third consultation paper on implementation of the Measure states¹³:

“While MDA is agreeable to removing the obligation for the RQL to notify SQLs in the event of a service termination by a subscriber, for subscriber's convenience, MDA will require:

(a) the RQL to offer subscribers the option of authorising the RQL to update the SQL upon service termination; and

(b) the RQL to remind subscribers, as part of termination, to terminate their Qualified Content via the RQL's platform.”

3.52 SingNet notes that the intent, as evidenced in the draft MMCC, is for an RQL to offer either of the following options: (i) RQL to remind the end-user to terminate the contract for Qualified Content with the SQL, or, (ii) RQL to terminate the contract on behalf of the end-user.

3.53 SingNet agrees with the draft MMCC in that an RQL should at least remind or inform the end-user to properly terminate its contract for Qualified Content with the SQL.

3.54 However, SingNet notes that the second option (i.e. the RQL may terminate the contract on behalf of the end-user), is not consistent with the MDA's position on the contractual relationship in relation to Qualified Content. As the MDA has noted in its second and third consultation papers, the relevant contractual relationship in respect of Qualified Content is between the end-user and the SQL.

3.55 SingNet has indicated previously that an end-user must first contract / subscribe with the SQL, agree with the SQL as to the terms and conditions on which the Qualified Content is to be delivered and thereby become an SQL end-user. This ensures there are no disputes between a SQL, RQL and the end-user arising from the carriage of Qualified Content to the end-user without proper contractual arrangements being put in place.

¹³ MDA, Third consultation paper on Cross-carriage Measure, pp 30-31.

- 3.56 SingNet submits that to allow a third party to terminate an end-users' contract with an SQL would be contrary to the direct nature of the contractual relationship between the SQL and the end-user. A third party should not be allowed to terminate a contract between end-users and SingNet except in very limited circumstances. Similarly, SingNet does not engage in the practice of terminating, on behalf of its end-users, contracts that its end-users have entered into with third parties. This practice ensures that the rights of the contracting parties are properly protected and that both parties are clear as to the nature and extent of their rights and obligations under the contract.
- 3.57 SingNet therefore does not support the second option for termination set out in section 2.7.2A(i) of the MMCC and requests that the MDA removes this option.

Exemptions

- 3.58 The draft MMCC states¹⁴:

“A Regulated Person may apply to the MDA to seek exemption from its obligation to make available all its Qualified Content for transmission and reception on every RQL’s Relevant Platform, or to carry on its Relevant Platform all Qualified Content made available by SQLs, as the case may be. In seeking such an exemption, the Regulated Person must clearly establish to MDA’s satisfaction one or more of the following:

(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;

(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.”

¹⁴ MMCC, Section 2.7.4.

- 3.59 The MDA has stated that, as a matter of principle, it is only minded to grant an exemption under exceptional circumstances. Further, it considers that the principles and examples provided in the Second Consultation paper should have sufficiently demonstrated MDA's thinking as to how it will assess applications for exemptions¹⁵.
- 3.60 In its submission of 5 October 2010 responding to the MDA's second consultation paper, SingNet requested further information from the MDA on the circumstances in which an exemption may be granted. SingNet also noted that a transparent set of guidelines for industry would be beneficial and would reduce uncertainty in this area.
- 3.61 SingNet reiterates its request for the MDA to provide detailed guidelines as to how the exemption provisions will apply in practice. Given that this is likely to be a key area for both stakeholders and consumers, SingNet considers that detailed guidelines are necessary in order to ensure the successful implementation of the Measure.

4 IMPLEMENTATION TIMEFRAMES

- 4.1 In its third consultation, the MDA has retained the requirement that the SQL should make Qualified Content available for transmission on both its own platform and the RQL's platform simultaneously, i.e. the Qualified Content should be available or launched at the same time on both the SQL and RQL's platforms¹⁶. This is consistent with the MDA's preliminary policy position outlined on 1 September 2010¹⁷.
- 4.2 However, SingNet notes that the way the draft MMCC is worded to give effect to this fundamental principle is not clear and may give rise to interpretative confusion.

Initial set-up time

- 4.3 The draft MMCC states:

“A Supplying Qualified Licensee must, from and including [30th June 2011], make available all its Qualified Content for transmission and reception on all Relevant Platforms of the nationwide Subscription Television Service of every

¹⁵ MDA, Third Consultation Paper on Cross-Carriage Measure, pp 33-34.

¹⁶ Ibid, paragraph 3.10.12.1.

¹⁷ MDA, *Cross-carriage Measure in the Pay TV Market: Consultation on Preliminary Policy Positions*, 1 September 2010, paragraph 7.16.

Receiving Qualified Licensee.”¹⁸

“A Receiving Qualified Licensee must, from and including [30th June 2011], carry all Qualified Content made available by Supplying Qualified Licensees on all Relevant Platforms of its nationwide Subscription Television Service.”¹⁹

“The Supplying Qualified Licensee must make its Qualified Content available to Receiving Qualified Licensees at the same time as the Supplying Qualified Licensee makes the Qualified Content available to its subscribers.”²⁰

- 4.4 The draft MMCC further provides that a SQL is to give 60 working days notice to the RQL for initial set-up²¹.
- 4.5 First, SingNet stresses that whatever deadline the MDA selects for implementation of the Measure as set out in Sections 2.7.1 (a) and 2.7.2 (A) (a) of the draft MMCC, there needs to be adequate notification for the initial set-up to be completed (i.e. the first notification that an SQL gives an RQL when it has acquired Qualified Content). As SingNet stated in its submission of 5 October 2010 responding to the MDA’s second consultation, initial set-up time is required to make Qualified Content available for transmission and reception on all Relevant Platforms.
- 4.6 SingNet emphasises that this initial set-up time is necessary for a variety of activities before any Qualified Content can be carried, including:
- (a) system configuration to allow for the inclusion of new SQL and electronic programme guide;
 - (b) billing system set- up;
 - (c) content set- up;
 - (d) implementation process flow;
 - (e) cross-carriage testing; and

¹⁸ MMCC, section 2.7.1(a).

¹⁹ Ibid, section 2.7.2A(a)

²⁰ Ibid, section 2.7.2A(C)(I)(b).

²¹ Ibid, section 2.7.1(e)(ii)(A).

- (f) head-end set-up, including the installation of encoders, digital amplifiers, monitoring, acquisition subsystems and audio amplifiers etc.
- 4.7 When an SQL notifies an RQL that it has Qualified Content, it must factor into the notification the initial set-up time so as to allow the RQL to make necessary preparations and carry out the activities listed above, and to ensure that the launch of Qualified Content can be concurrent on both the SQL and RQL platforms.
- 4.8 The effect of this is that as at 30 June 2011 or whichever date that the MDA sets out in Sections 2.7.1 (a) and 2.7.2 (A) (a) of the draft MMCC, if an SQL has not provided the first notification to the RQL, no Qualified Content can be cross-carried.
- 4.9 Secondly, while the principle underlying section 2.7.1(c)(i)(B) of the draft MMCC is to ensure that all end-users can take up Qualified Content at the same time, whether on the SQL or RQL's platform, the drafting of the section implies that an SQL would simply transmit to the RQL the Qualified Content at the same time that content is broadcast to the SQL's own customers. The drafting does not take into account the fact that it is necessary for the SQL to provide a prior notification. Again, SingNet submits that this is unworkable in practice and an initial set-up time is required.
- 4.10 Finally, SingNet reiterates its previous submission that 120 working days is a reasonable time frame for initial set-up and implementation. This was also acknowledged by the MDA in its discussions with industry on 4 March 2011. SingNet therefore submits that regardless the deadline set out in Section 2.7.1 (a) and 2.7.2 (A) (a) of the draft MMCC, each SQL must provide a notification of 120 working days to an RQL as the initial set-up time and for initial set-up implementation activities.

Notification period post initial set-up

- 4.11 The draft MMCC also provides that where the RQL has previously received Qualified Content from the SQL, the SQL must notify the RQL of its Qualified Content no later than 21 working days prior to the date that the Qualified Content will be first transmitted by the SQL to Subscribers on its own network²².
- 4.12 SingNet submits that the 21 working day notice period post initial set-up is unworkable in practice. As indicated in our response to the MDA's second consultation, once the initial set-up is complete, the following time frames should

²² Ibid, section 2.7.1(c)(B).

apply for the cross-carriage of Qualified Content:

- (a) 30 working days is a sufficient notification period for the cross-carriage of a single channel that has not yet been transmitted on the RQL's network / platform;
- (b) Where multiple channels [ie more than one (1) channel] need to be cross-carried, the notification period should be at least 60 working days.

4.13 SingNet notes that the above 30 and 60 working day timeframes for notification post initial set-up are necessary to allow for the following activities to be carried out:

- (a) system changes to recognize the introduction of new content in the RQL's system, introduction of new channel numbering;
- (b) changes to billing systems for the new content;
- (c) implementation of changes to EPG;
- (d) testing of the delivery of content to head-end; and potentially
- (e) purchase of additional encoders / hardware etc.

SQL responsibilities

4.14 SingNet is concerned that the fundamental principle of SQLs making Qualified Content available to end-users is buried within the drafting of section 2.7.1(c) of the MMCC which outlines the responsibility of an SQL to make its Qualified Content available to RQLs.

4.15 As outlined above, the principle underlying section 2.7.1(c) of the MMCC is that all end-users should be able take up Qualified Content at the same time and experience the same quality irrespective of whether that content is carried on an SQL's platform or an RQL's platform. SingNet submits that it is important for this principle to be properly articulated in the MMCC. The MDA should therefore include a statement within the MMCC that SQLs should make Qualified Content available to all end-users at the same time and at the same quality.

Access by end-user

4.16 The draft MMCC states²³:

“A RQL must ensure that a Subscriber wishing to access the Qualified Content of a SQL through the RQL’s Relevant Platform is able to do so within 5 working days of receipt of such Subscriber’s request.”

4.17 SingNet agrees with this proposition but submits that the MDA should clarify that the 5 working day notification period commences from the day that the RQL receives the request from the SQL.

VOD Content

4.18 In its submission of 6 May 2010 responding to the MDA’s initial consultation on the Measure, SingNet expressed its support for the application of the Measure to VOD content. However, implementation of the cross-carriage obligation in respect of VOD content will attract significant costs, as well as involving a complex implementation process with a low level of initial consumer benefit. SingNet therefore recommended that there should be a delayed implementation date for the cross-carriage of VOD content.

4.19 SingNet notes that to date, the focus of industry in terms of implementation efforts has centred on linear channels given that demand is principally for linear channels. SingNet also points out that there will be issues around the technical implementation measures required for the cross-carriage of VOD content and industry participants will need time to review and discuss these issues.

4.20 In particular, SingNet notes that significant time and effort will be required to:

- (a) assess what internal systems modifications are necessary to support the cross-carriage of VOD content;
- (b) liaise and collaborate with equipment vendors to identify the changes necessary to support cross-carriage of VOD content; and
- (c) design inter-operator and end-user processes to support the cross-carriage of

²³ Ibid, section 2.7.2A(f).

VOD content.

- 4.21 In light of the above, SingNet submits that the MDA should postpone the implementation of cross-carriage of VOD content until the end of December 2011.

5 CONCLUSION

- 5.1 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.
- 5.2 SingNet considers that some further fine tuning is required to ensure that the Measure is implemented in such a way that best serves the interests of the industry as a whole.
- 5.3 In this submission, SingNet had provided some suggestions which are intended to ensure the workability of the Measure in practice and focus on the scope of the obligations created by the Measure as well as the relevant timeframes for implementing the Measure.
- 5.4 SingNet kindly requests that the MDA take account of our comments as it works to finalise its position on the Measure.