



STARHUB CABLE VISION LTD'S RESPONSE TO

MDA PUBLIC CONSULTATION PAPER

"PROPOSED AMENDMENTS TO APPENDIX 4

OF

**THE CODE OF PRACTICE FOR MARKET CONDUCT IN THE PROVISION OF
MEDIA SERVICES 2010:**

**IMPLEMENTATION OF THE CROSS-CARRIAGE MEASURE IN THE PAY-TV
MARKET"**

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STARHUB'S COMMENTS TO PROPOSED AMENDMENTS OF APPENDIX 4 OF THE CODE

1. StarHub Cable Vision Ltd ("StarHub") welcomes the opportunity to comment on the Authority's Consultation Paper, on the proposed amendments to Appendix 4 of the Code of Practice for Market Conduct in the Provision of Media Services on Implementation of the Cross-Carriage Measure in the Pay-TV Market ("Code").
2. The Authority's Consultation Paper sets out amendments to paragraphs 5.2.2, 5.2.3, 5.3(b) and 5.4(b) of Appendix 4 of the Code ("Proposed Amendments"), on the charging methodology the Authority will adopt when determining the incremental costs to be borne by Supplying Qualified Licensees ("SQLs") for cross-carriage of SQL's Qualified Content by a Requesting Qualified Licensee ("RQL").
3. StarHub has carefully reviewed the Proposed Amendments. StarHub appreciates and fully supports the additional clarity the Authority sought to provide in the revised wording of the Proposed Amendments, to follow more closely the Authority's policy intent (as set out in the Authority's Closing Note issued on 1 July 2011).
4. However, the revised wording in paragraph 5.2.2 of Appendix 4 of the Code could still potentially be interpreted to the contrary of the Authority's policy intent. In particular, the revised paragraph 5.2.2 could unreasonably restrict the RQL's right to pass through to SQLs the leasing costs incurred by the RQL for carrying Qualified Content of SQLs during the full effective term covered by the RQL's existing arrangement with Singapore Telecommunications Limited ("SingTel") entered into prior to 2 July 2011 (including any amendment or variation thereto).
5. It would be unfair and inequitable to require StarHub (or any RQL) to absorb those leasing costs when they derive no benefit from this. The RQL – through no action or failing on its part – is the unwilling recipient of costs that could not be passed on. This would put the RQL at a grave and unsustainable commercial disadvantage. In this regard, StarHub has identified two areas of concern on the proposed revised wordings in paragraph 5.2.2.
6. Firstly, we note that the insertion of the word "*directly*" before "*attributable to enabling the Receiving Qualified Licensee to cross-carry the Qualified Content of the Supplying Qualified Licensee*" in the revised paragraph 5.2.2 is superfluous, and may have the unintended effect of preventing StarHub (or any RQL) from passing on these leasing costs to the SQLs whose content it is cross-carrying. We would point out that under the Code, the cross-carriage charges would be calculated using the DAIC (paragraph 5.3 of Appendix 4 of the Code) or LRIC (paragraph 5.4 of Appendix 4 of the Code) methodology. Both these methodologies already employ the concept of "*directly attributable*" in the cross-carriage fees, and the leasing costs incurred by the RQLs under paragraph 5.2.2 are expressly included. The insertion of an additional reference to "*directly*" in the revised paragraph 5.2.2 may have the effect of a double or further restriction on the leasing costs to be taken into account.

7. Secondly, we note that a leasing agreement entered into by the RQL with SingTel before 2 July 2011 could be subject to an amendment or variation. However, it is critical that any accrued rights that StarHub (or any RQL) had under its pre-existing arrangement should not be affected. Any other result would be unreasonably prejudicial to StarHub (or any RQL). Therefore, the RQL should have the unencumbered right to pass on the leasing costs for the full effective term covered by the RQL's existing arrangement with SingTel.

8. The wording of the revised paragraph 5.2.2 could give rise to an argument by the SQLs that some subsequent variation or amendment which has nothing to do with cross-carriage will affect the costs to be charged to the SQLs. To prevent such unmeritorious arguments, which would interfere with the accrued rights of the RQLs (and/or impede the RQL's ability to pass through any leasing costs incurred for the effective term of such arrangement), the focus of the wording should be on the variation or amendment **itself** not extending or prolonging the effective term of any such leasing arrangement.

StarHub's Proposed Revision to Paragraph 5.2.2 of Appendix 4 of the Code:

9. To address the two concerns above, StarHub proposes to revise paragraph 5.2.2 of the Code as follows (marked up against the revised paragraph 5.2.2 in the Authority's Consultation Paper):

"To determine the rate of the most cost efficient Relevant Platform in the Singapore market, MDA will compare the efficiencies of all Relevant Platforms of all Receiving Qualified Licensees, using for each either the Directly Attributable Incremental Cost Methodology or the Long Run Incremental Cost Methodology; and will in using either methodology, take into account any leasing costs payable by the Receiving Qualified Licensee in respect of that Relevant Platform for leasing:

(a) optical dark fibre strands in Singapore Telecommunications Limited's network of optical fibre cables; and

(b) duct space in Singapore Telecommunications Limited's underground ducting network

which are ~~directly~~ attributable to enabling the Receiving Qualified Licensee to cross-carry the Qualified Content of the Supplying Qualified Licensee for the purpose of fulfilling its duties under paragraph 2.7 of this Code, under any arrangement with Singapore Telecommunications Limited entered into before 2nd July 2011 (including any amendment, or variation thereto), provided that any such amendment or variation does not extend, renew or otherwise ~~result in re-contracting of the arrangement~~ prolong the term covered by such arrangement(s) entered into before 2nd July 2011."

10. We submit that the above proposed wording would provide greater clarity, avoid potential confusion and dispute, and accurately address the Authority's policy intent.

Conclusion:

11. StarHub believes that a clear and understandable Code is critical to the effective implementation of the Authority's cross-carriage regime. If the regulatory obligations are ambiguous, this will create confusion and raise disputes, imposing unnecessary costs on operators and ultimately end-consumers. The need for clarity is particularly important for cross-carriage, given the evolving nature of the cross-carriage regime.