SingTel

25 May 2011

Ms Eileen Ang
Head (Competition)
Media Development Authority of Singapore

Dear Ms Ang

PROPOSED ADVISORY GUIDELINES ON MAXIMUM CONTRACT TERM AND EARLY TERMINATION CHARGES FOR PAY TV SERVICES OFFERED TO CONSUMERS

1. SingNet Pte Ltd (**SingNet**) refers to the Media Development Authority of Singapore (**MDA**) consultation paper dated 21 April 2011 on Advisory Guidelines on Maximum Contract Term and Early Termination Charges for Pay TV Services Offered to Consumers (**Consultation Paper**).

2. Please find our views and comments enclosed.

Yours sincerely

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encl.

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RESPONSE TO MDA CONSULTATION PAPER – ADVISORY GUIDELINES ON MAXIMUM CONTRACT TERM AND EARLY TERMINATION CHARGES FOR PAY TV SERVICES OFFERED TO CONSUMERS

1. BACKGROUND

1.1. SingNet Pte Ltd (**SingNet**) refers to the Media Development Authority of Singapore (**MDA**) consultation paper dated 21 April 2011 on Advisory Guidelines on Maximum Contract Term and Early Termination Charges for Pay TV Services Offered to Consumers (**Consultation Paper**).

1.2. 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.

1.3. This submission sets out SingNet's response to the MDA Consultation Paper.

2. COMMENTS

There is no market failure to warrant MDA intervention

2.1. The MDA states that its proposal to issue guidelines relating to contract terms and early termination charges (**ETC**) that pay-TV retailers can impose on residential consumer is aimed at maintaining fair market conduct and effective competition in the media market.

2.2. SingNet supports any policies that support fair market conduct and effective competition in the media market. However, SingNet notes the issue of fair market conduct and effective competition is already addressed, for example, in the Media Market Conduct Code 2010 (**MMCC**) which spells out specifically the forms of anti-competitive behaviour that is not tolerated, e.g. prohibited forms of agreement(s) between competitors.

2.3. Specifically, Section 7.1 of the MMCC states that the MDA will or may take enforcement action against any Regulated Person who is party to any agreement, decision or concerted practice that may or has the effect of preventing, restricting or distorting competition in Singapore's media industry. In short, the MDA has in place specific procedures and guidelines to achieve or to address and/or bring about fair market conduct or effective competition.

2.4. Implementing guidelines in relation to the contract terms or ETC for pay-TV service(s) do not in themselves have the effect of addressing or bringing about fair market conduct and effective competition. Contrary to the MDA statement in paragraph 1.3 of its Consultation Paper, the proposed guidelines in fact represent a form of intervention in the commercial arrangements between pay-TV retailers and their consumers.

2.5. SingNet emphasizes that a key principle of Singapore's regulatory framework to date has been regulatory intervention only where necessary, and only to the extent necessary to overcome deficiencies in competition. Accordingly, the regulatory intervention contemplated by the MDA suggests that there is some deficiency in competition evidenced by some market failure which needs to be addressed. SingNet submits that there is no such market failure and the proposed regulatory intervention is not warranted.

2.6. SingNet notes that there is evidence of competition in the pay-TV market as evidenced by the existence of multiple pay-TV retailers in Singapore, for example, StarHub Cable Vision (**SCV**), M1 (OneBox), SingNet (Mio TV), MediaCorp (MOBTV), M2B World (WOW TV), SPH (Razor TV), VeeV, OneIPTV and Creative Zii etc. Furthermore, competition in the pay-TV market is clearly not limited to the pay-TV retailers mentioned above. We note that consumers worldwide, including Singapore, are already making use of devices to access the Internet and display the Internet content on television sets. For example, Google has launched its Google TV service which will combine web surfing with television viewing via a separate device or HD TV sets. Other parties like Apple, Yahoo! intend to offer rival devices. We expect these devices to be widely adopted particularly given their strong brand recognition. As such, there is no lack of competitive offers or services made available to consumers.

2.7. **In an effectively competitive market, pay-TV retailers will devise various tariffs and service schemes (comprising price and non-price terms and conditions including contract terms and ETC) that best address the demands of the market. Consumers will pick and choose the tariffs and service schemes that best address their needs, serve their interests and which gives them the best value for money.** In addition, the impending implementation of the cross carriage requirements will allow customers to have access to the full suite of pay-TV services.

2.8. The guidelines will restrict the pay-TV retailers' ability, flexibility and creativity in developing new and innovative service offers that will benefit consumers and have the likely effect of 'dampening' competition between pay-TV retailers'.

Guidelines could confuse the market

2.9. SingNet further notes that whilst the proposed guidelines have no legal effect and are advisory in nature, ie there is no legal obligation on the pay-TV retailers to adhere to these guidelines. However, the MDA would apply as standards, these proposed guidelines, in order to assess if the pay-TV retailers comply with their obligations as set out in Section 3.5 of the MMCC.

2.10. SingNet is concerned that the net effect will be to confuse pay-TV retailers and consumers and to restrict the pay-TV retailers' ability, flexibility and creativity in developing new and innovative service offers that benefit consumers and have the likely effect of 'dampening' competition between pay-TV retailers'.

No barriers to entry in the Next Gen NBN environment

2.11. The MDA also indicates that the proposed guidelines aims to lower the entry barrier for new pay-TV market entrants in the Next Generation National Broadband Network (**Next Gen NBN**) environment. However, SingNet submits that the concerns about market foreclosure or barriers to entry are not borne out in market evidence:

(a) **that barriers to entry are low**. As indicated, this is evidenced by the existence of multiple pay-TV operators in Singapore, for example, StarHub

Cable Vision (SCV), M1 (OneBox), SingNet (Mio TV), MediaCorp (MOBTV), M2B World (WOW TV), SPH (Razor TV), VeeV, OneIPTV and Creative Zii etc. As mentioned, consumers are now accessing Internet content using devices provided by Google, Apple and Yahoo!. These devices have strong branding and are already available or will be easily available to consumers. In any case, open access to the Next Gen NBN promotes entry and prevents foreclosing behaviour.

(b) **the existence of wholesale products suitable for the delivery of video services**. This is evidenced by tariffed wholesale services made available by operators including SingTel - such as the Wholesale B-Access service – which support video delivery. The Next Gen NBN OpCo, Nucleus Connect, also offers a competing wholesale offering on IDA approved terms and conditions. So, not only is foreclosure not possible, operators are actually encouraging entry through the existence of wholesale products which promote multiple service provider delivery models.

2.12. SingNet submits that the MDA stated concern about entry barriers is not consistent with the market evidence and does not justify the proposal to restrict or to interfere in the commercial offerings by existing pay-TV retailers. In any case, there is strong evidence in the market that entry is occurring, barriers to entry are low and wholesale products are available for the delivery of video services in Singapore.

2.13. In summary, the introduction of the proposed guidelines by the MDA is not warranted. There is no deficiency in competition evidenced by some market failure which needs to be addressed by the MDA vide these guidelines.

2.14. Without prejudice to SingNet's views above, SingNet also provides, below, its specific comments to the MDA proposed guidelines.

3. SPECIFIC COMMENTS

The contract term for pay-TV services offered to residential consumers should not exceed 24 months

3.1. As indicated above, consumers have the choice to take-up a tariff or service scheme that best serves their needs and interests. They can subscribe to services on shorter contract terms if they do not wish to subscribe to a service for terms longer than twenty-four (24) months. For example, SingNet currently offers contracts ranging from one (1) month to twenty-four (24) months for its current mio TV offering. Consumers have the choice to choose the service package and contract term that best meets their requirements.

3.2. In relation to promotional service packages that are bundled with attractive premiums, the tenure of the contract and the monthly subscription are inter-dependent. The optimal combination of tenure of contract and the monthly subscription is one that is commercially viable to the pay-TV retailer and at the same time attractive to the customers. Restricting contract terms to a maximum of 24 months (for promotional service packages bundled with equipment or premiums) would result in certain promotional services packages not ever being offered and/or being offered at a higher monthly subscription or with less attractive premiums. Either situation would be undesirable from a consumer benefit perspective. The introduction of this guideline would, in effect, deprive consumers of the opportunity to obtain attractive premiums such as equipment/gadgets and/or services at a lower monthly subscription.

3.3. Pay-TV retailers should have full flexibility to develop innovative service packages and consumers should have the opportunity and choice to avail themselves of these service packages. MDA intervention to restrict the tenure of contracts to a maximum of 24 months simply limits consumer choice.

ETCs for pay-TV services offered to consumers (of contract periods longer than 3 months) should be graduated

3.4. SingNet submits that the ETCs that are put in place today are already fully compliant with Section 3.5 of the MMCC. Accordingly, SingNet does not agree with the MDA's apparent premise upon which the guideline for ETCs is proposed.

3.5. Section 3.5 of the MMCC states the following:

> *A Regulated Person may enter into an agreement pursuant to which it provides a Subscriber with a reasonable discount or special consideration in*

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return for the said subscriber's agreement to commit to a minimum service period for a Subscription Service. Such agreements may contain provisions providing for termination liability in the event that the said Subscriber terminates the agreement prior to the agreed-upon termination date. However, the amount of any such early termination liability must be reasonably related to the extent of the discount or special consideration that such Regulated Person has provided and the duration of the period during which the said subscriber took the Subscription Service.

3.6. SingNet's ETC(s) for pay-TV services take into consideration the discount quantum, the value of premium(s) offered and the committed tenure of the term involved. Proposing graduated ETCs is premised on the assumption that a service provider would have offered the service package with the attractive premium(s) regardless of whether the full tenure of the term would be honoured i.e. if the full term were not honoured,. This assumption is incorrect. This would effectively turn a service contract into a "pay-as-you-use" scheme – this is not the pay-TV retailers' intent.

3.7. Pay-TV retailers develop and offer service packages and attractive premium(s) on the basis and the assumption that the customer will honour the full term of the contract. For example, a pay-TV retailer would not offer a service package with attractive premium(s) for a 30-month contract term if customers were in fact only going to honour 14 months of the 30-month contract term. If indeed, customers were only going to honour 14 months of the 30-month contract term, then it is highly likely that the pay-TV retailer would not offer that particular service package and attractive premium(s) at all or would only offer it on different terms such as a shorter contract term and a higher ETC and/or less attractive premium(s).

3.8. SingNet would also note that a graduated ETC is also not simple or straightforward. For example, a pay-TV retailer may offer a service package with attractive premium(s) for a 30-month term. The monthly recurring charge for the 30-month term may be the same as that for a 12-month term – the only difference being the attractive premium(s). If, for example, the customer terminates after only 12 months, the pay-TV retailer has not realised any gains at all – the pay-TV retailer has earned the same amount of revenue as it would have earned under the 12-month contract. It would therefore be inappropriate to then use a graduated ETC.

3.9. For the reasons outlined above, SingNet does not support the proposed graduated ETCs. Service packages with attractive premium(s) are developed and offered on the basis that the consumer will honour the full contract term. If a consumer wants greater flexibility, the consumer should subscribe to other service packages with shorter contract terms. The structure of ETCs should be left to the pay-TV retailer to determine.

ETCs for contracts of more than 3 months should not include costs that will be avoidable by the pay-TV retailer when a subscriber terminates the service

3.10. SingNet cautions against the MDA proposal involving 'avoidable costs'. There is a presumption that costs in providing services can be easily itemised and certain costs such as therefore necessarily avoidable. This is not the case. Whether a cost is avoidable is subject to debate – it is not always clear.

3.11. Further, the cost of the network infrastructure, i.e. the capital or network investment is typically 'lumpy' in nature. Indeed, committed contract terms assist in providing pay-TV retailers with the commercial certainty to make investments over a period of time in the necessary infrastructure to support the provision of services. Network infrastructure costs do not decrease when one customer terminates a service. The network cost remains and these costs that must be considered and recovered.

3.12. Another type of cost incurred for the provision of pay-TV service is content acquisition costs. Such costs are typically based on long-term contracts between the content provider and the pay-TV retailer and cannot be easily identified and avoided if a specific customer chooses to terminate its contract with the pay-TV retailer.

3.13. As highlighted in our response to the second question, structuring the ETC in the manner as proposed by the MDA effectively turns a service contract into a "pay-as-you-use" scheme. This increases the business risks of the pay-TV retailer and may result in a highly monthly subscription vis-à-vis the scenario whereby consumers complete the contract term for the pay-TV service. Increased business risks means either the pay-TV retailer will not accept the risk and therefore no longer be prepared to offer certain service packages and attractive premium(s) or will expect a higher return in the form of higher pay-TV subscription rates. This would be to the ultimate detriment of consumers.

3.14. As previously indicated, the structure of ETCs should be left to pay-TV retailer to determine.

4. OTHER COMMENTS

The proposed guidelines will apply to all pay-TV licensees

4.1. The MDA states that the proposed guidelines should apply to residential consumer contracts offered by all pay-TV retailers, i.e. nationwide subscription television licensees as well as niche licensees.

4.2. SingNet supports this. The application of any proposed guidelines (should they be implemented) to all pay-TV retailers provides a level and fair playing field for pay-TV retailers. Furthermore, it ensures that consumers are not confused or misled when comparing the service schemes or tariffs of the various pay-TV retailers.

The proposed guidelines will apply to only residential consumer contracts

4.3. The MDA states that the proposed guidelines should apply to only residential consumer contracts.

4.4. SingNet supports this. As the MDA has pointed out, business and corporate consumers tend to negotiate for customised agreements, with variations to the price and non-price terms and conditions. Business and corporate consumers also tend to have higher countervailing power against their pay-TV retailer. They generally dictate the terms and conditions of their service contracts, negating any ability by a single party to leverage on its market power, if any.

4.5. The MDA proposed guidelines should not apply to business/corporate consumer contracts for pay-TV services.