

MEDIA DEVELOPMENT AUTHORITY OF SINGAPORE

**PROPOSED ADVISORY GUIDELINES ON MARKET DEFINITION & ASSESSMENT OF MARKET
POWER**

PUBLIC CONSULTATION

25 January 2013

- 1. INTRODUCTION**
- 2. PROPOSED ADVISORY GUIDELINES**
- 3. INVITATION TO COMMENT**

1. INTRODUCTION

- 1.1 The Media Development Authority of Singapore ("MDA") first issued the Code of Practice for Market Conduct in the Provision of Media Services ("MMCC") in 2003, with one of the objectives of the MMCC being to enable and maintain fair market conduct and effective competition in Singapore's media industry. Specifically, Parts 4 to 8 of the MMCC set out the provisions in relation to the prohibition of unfair methods of competition, the concept of dominance and the obligations on dominant persons, the prohibition of agreements that restrict or distort competition, and consolidations.
- 1.2 During the public consultations arising from the last triennial review of the MMCC, MDA received comments from industry players requesting clarification and transparency in how MDA would define and determine a "relevant media market" in a competition analysis undertaken pursuant to the relevant MMCC provisions. To this end, MDA intends to issue a set of advisory guidelines on the definition of "relevant media markets" (the "Advisory Guidelines").
- 1.3 The Advisory Guidelines will set out the analytical framework used by MDA in defining markets in the media sector for the purpose of assessing competition cases, designating Dominant Person(s), assessing consolidations, and assessing whether to grant exemption requests as provided for in the MMCC. MDA recognises that market definition is often the first step in a competition analysis, and the Advisory Guidelines will primarily focus on MDA's approach in (a) defining the relevant market, and (b) assessing market power of the party under review in the relevant market.
- 1.4 MDA is now launching this public consultation to seek comments on the proposed Advisory Guidelines.

2. PROPOSED ADVISORY GUIDELINES

- 2.1 The proposed Advisory Guidelines aim to provide further explanation and clarity on the approach and standards that MDA will use to (a) define the relevant media market(s) and (b) assess the market power of the party under review, when performing competition analyses under the provisions of MMCC. Some of the relevant MMCC provisions include:

- a. **Part 4 of the MMCC**, which contains a general prohibition against a Regulated Person¹ engaging in unfair methods of competition to obtain a competitive advantage in any media market in Singapore for itself or any Affiliate² that provides media services in Singapore. Part 4 of the MMCC also contains a non-exhaustive list of practices that would constitute unfair methods of competition.
- b. **Part 5 of the MMCC**, which provides a detailed explanation of the criteria for designating a Regulated Person who is able to act without significant competitive restraints from competitors as a "Dominant Person". Specifically, a Regulated Person is in a dominant position when, in the opinion of MDA, that Regulated Person has Significant Market Power ("SMP") in any relevant media market. Part 5 of the MMCC also contains a non-exhaustive list of factors which MDA will take into consideration when assessing whether a Regulated Person has SMP.
- c. **Part 6 of the MMCC**, which sets out the special obligations imposed on a Dominant Person to prevent the use of its market position in a manner that will harm consumers or unreasonably restrict competition in any media market in Singapore. Part 6 of the MMCC also contains a non-exhaustive list of practices that would constitute abuse of dominant position.
- d. **Part 7 of the MMCC**, which contains a prohibition against any Regulated Person from entering into anti-competitive agreements with another Regulated Person or any other person. Part 7 of the MMCC also contains a non-exhaustive list of agreements that would have as its object or effect the prevention, restriction or distortion of competition.
- e. **Part 8 of the MMCC**, which contains the analytical framework for assessing a proposed Consolidation³ between Regulated Persons or between a Regulated Person or an Ancillary Media Service Provider⁴. Specifically, MDA may withhold its approval to a proposed Consolidation or may impose appropriate conditions in granting its approval if it concludes that a proposed Consolidation is likely to result in a substantial lessening of competition.

2.2 Rather than being overly detailed, the Advisory Guidelines aim to outline the general conceptual framework within which MDA will carry out these assessments and investigations. To arrive at a precise market definition, MDA will endeavour to obtain the full facts and circumstances and adopt an evidence-based approach in applying the Advisory Guidelines. In cases where it is apparent that the conduct under assessment

¹ A "Regulated Person" means any person specified by the Minister under section 16(3) of the *Media Development Authority of Singapore Act* (Cap. 172).

² As defined in paragraph 5 of the MMCC.

³ As defined in paragraph 8.4.1 of the MMCC.

⁴ An "Ancillary Media Service Provider" means any person who provides infrastructure, systems, services, information or other resources that are used or intended to be used in connection with the provision or delivery of any media service (i.e. Ancillary Media Services).

is not likely to have an adverse effect on competition, or that the Regulated Person(s) does not possess SMP under any sensible market definition, it would not be necessary to formally establish a definition of the relevant media market.

- 2.3 MDA will endeavour to apply the Advisory Guidelines in a coherent and consistent manner. However, the definition of market and assessment of market power is an empirical exercise that needs to be undertaken on a case-by-case basis, based on the prevailing state of the relevant market. As such, previous determinations of MDA on market definition or assessment of market power (under these guidelines or otherwise) will not be binding, and may have limited value as a precedent. MDA will approach each case on the basis of its own facts.
- 2.4 In the event of a conflict between the MMCC and the Advisory Guidelines, the provisions found in the MMCC will prevail.

3. INVITATION TO COMMENT

- 3.1 MDA would like to seek comments from the industry and members of the public on the proposed Advisory Guidelines. Respondents should clearly identify the provisions of the proposed Advisory Guidelines on which they are commenting. Where appropriate, respondents are encouraged to suggest changes to the proposed Advisory Guidelines. The proposals should be accompanied by reasons for the suggested changes.
- 3.2 The written comments submitted in response to this consultation paper should be in the following format:
 - a. Cover Page;
 - b. Table of Contents;
 - c. Summary of major points;
 - d. Statement of interest;
 - e. Comments; and
 - f. Conclusion.
- 3.3 All comments should be submitted to MDA on or before 5 pm, **15 February 2013**. All comments must be submitted in softcopy (in Microsoft Word format compatible with Microsoft Office Version 2003). All respondents should include their personal or company particulars, their correspondence address, contact number and email address on the cover page of their comments. All comments should be addressed to:

Ms Lee Ee Jia
Deputy Director (Competition)
Media Development Authority of Singapore

(Attention: Mr Daryl Singh Puran)

Email: daryl_singh_puran@mda.gov.sg

- 3.4 MDA reserves the right to make public all or parts of any written comment and to disclose the identity of the respondent. Respondents may request confidential treatment for any part of the comment that the respondent believes to be proprietary, confidential or commercially sensitive. Any such information should be clearly marked and placed in a separate annex. If MDA grants the request for confidential treatment, it will consider, but it will not publicly disclose, the information. If MDA rejects the request for confidential treatment, it will provide the reason for its decision, and request for resubmission of a non-confidential version of the relevant document within 14 working days. As far as possible, respondents should limit any request for confidential treatment of information submitted. MDA will not accept any comment that requests for confidential treatment of all or a substantial part of the comment.