



StarHub Cable Vision Ltd
(Reg No. 199103398C)
67 Ubi Avenue 1
#05-01 StarHub Green
Singapore 408942
Tel: (65) 6825 5000
Fax: (65) 6721 5002

1 March 2013

Ms Lee Ee Jia
Deputy Director (Competition)
Media Development Authority
3 Fusionopolis Way
#16-22 Symbiosis
Singapore 138633
(Attention: Mr Daryl Singh Puran)

Email: daryl_singh_puran@mda.gov.sg

Dear Ms Lee,

PROPOSED ADVISORY GUIDELINES ON MARKET DEFINITION & ASSESSMENT OF MARKET POWER

We refer to the Authority's public consultation on its proposed Advisory Guidelines on Market Definition & Assessment of Market Power ("**Guidelines**").

StarHub Cable Vision Ltd is grateful for the opportunity to comment on the Guidelines. Our comments on the Guidelines are set out in the attached Paper.

Please do not hesitate to contact me should anything in this letter require clarification or elaboration.

Yours sincerely,
For and on behalf of
StarHub Cable Vision Ltd

A handwritten signature in black ink, appearing to be "TG" with a stylized flourish.

Tim Goodchild
Government & Strategic Affairs

Consultation

“Proposed Advisory Guidelines on Market Definition & Assessment of Market Power”

Comments of StarHub Cable Vision Ltd



1 March 2013

Table of Contents

1.	Summary of Major Points	3
2.	Statement of Interest.....	5
3.	Comments on individual sections of the guidelines	6
3.1	Section 2: Application of Guidelines	6
3.2	Section 3: Evolution of Guidelines	7
3.3	Section 4: General Approach and Section 5: Application of SSNIP Test.....	7
3.4	Section 6: Defining the Product Market – Demand-side Substitution	8
3.5	Section 6: Defining the Product Market – Price Discrimination	11
3.6	Section 7: Defining the Geographic Market	12
3.7	Section 8: Other Factors to be Considered in Defining Markets – Convergence in the Media Industry.....	12
3.8	Section 9: Assessment of Market Power – Other Factors	13
4.	Conclusion.....	14

1. SUMMARY OF MAJOR POINTS:

- 1.1 StarHub Cable Vision Ltd (“**StarHub**”) thanks the Media Development Authority (the “**Authority**”) of Singapore for providing parties with the opportunity to comment on the Proposed Advisory Guidelines on Market Definition & Assessment of Market Power (“**Guidelines**”). We have carefully reviewed the Guidelines, and our specific comments on the individual sections of the Guidelines are set out in this submission. A general summary of StarHub’s comments is as follows.
- 1.2 The media services markets in Singapore have undergone significant changes since the Authority first issued the Media Market Conduct Code (the “**Code**”) in 2003. StarHub supports the issuance of the Guidelines, which will provide clarity on the framework that the Authority will adopt to define markets and assess market power.
- 1.3 Given the significant changes to the market environment, and the impending issuance of the Guidelines, it is timely for the Authority to conduct a detailed review of the media services markets in Singapore. Such a review should:
- (1) accurately define the relevant media service markets in Singapore and the relevant demand substitutions between each market; and
 - (2) assess the current classification of Dominant Persons, to determine whether such Dominant Persons indeed have market power, and whether there is a need for reclassification of their Dominant Person status.
- 1.4 In conducting its review, the Authority should also recognise the following key points:
- (1) Media markets do not operate in silo, and the Authority’s current demarcation of the: (1) free-to-air television services; (2) subscription television services; (3) free-to-air radio services; and (4) newspaper publishing services markets is no longer applicable. In particular, Singaporeans are likely to view free-to-air and subscription television as highly substitutable;
 - (2) Media services providers in Singapore do not simply face competition on a local scale. Their competition is global, and increasingly so, given the growing usage of the Internet¹, and the advancement of technologies such as “over-the-top” (“**OTT**”). This means that companies, who operate overseas and

¹ According to statistics by the Infocomm Development Authority of Singapore, as of 2011, 85% of households in Singapore have access to the Internet (link: <http://www.ida.gov.sg/Infocomm-Landscape/Facts-and-Figures/Infocomm-Usage-Households-and-Individuals.aspx>).

may not be licensed by the Authority, can have a significant impact on the competitive landscape of the media services market in Singapore;

- (3) Online piracy has a significant impact on the media services markets in Singapore. Any definitions of markets and reviews of market power by the Authority should take online piracy into account;
 - (4) The Authority should consider actual evidence of market entry, as well as changing market shares and customer switching, as part of its market power assessment; and
 - (5) Subscription television service providers rely heavily on the content provided by content providers in order to attract and retain customers. Content providers who own particularly desirable content can have a significant impact on the eventual prices, terms and conditions imposed on customers. Hence, any increase in subscription television costs may not be indicative of market power being exercised by subscription television service providers, but rather reflective of the increasing cost of the underlying content.
-

2. STATEMENT OF INTEREST:

- 2.1 StarHub Cable Vision Ltd (“StarHub”), a wholly-owned subsidiary of StarHub Ltd, is a media and infocomms company with a \$600 million nationwide broadband network built in Singapore. As a testament to the strategic importance of this network, which was completed in September 1999, the company was designated a public telecommunications licensee by IDA in April 2000. StarHub is also the first in Singapore to be awarded the ISO 9001:2000 certification for both its media and infocomms operations.
- 2.2 Currently, StarHub offers StarHub TV, the multi-channel pay TV services (including Digital Cable and High Definition Television) launched in June 1995, broadband services and also offers pay TV through a wireless delivery via Digital Terrestrial Television (DTTV) system.
-

3. COMMENTS ON INDIVIDUAL SECTIONS OF THE GUIDELINES

3.1 Section 2: Application of Guidelines

- 3.1.1 StarHub agrees with the Authority's comment that 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"* and that *"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 precedent"*.
- 3.1.2 There have been rapid and significant changes in the media services market since the Code was introduced in 2003, and subsequently reviewed in 2010. This has been recognised by the Ministry of Communications and Information ("**MCI**") which has stated that: *"[m]edia convergence has drastically changed the way content is delivered and how consumers access content. With high-speed broadband connection and portable Internet-enabled devices, consumers can now access media content across geographic boundaries, anytime, anywhere and however they want it"*.²
- 3.1.3 Specifically, StarHub has been classified as a Dominant Person in the "subscription television services industry" since 2003. The Authority has similarly classified other media services providers as Dominant Persons in the "free-to-air television services", "free-to-air radio services" and "newspaper publishing services" markets.³
- 3.1.4 In-line with the stated intent of the Authority's statement above, the Authority's previous market definitions and classifications of Dominant Persons *"may have limited value as precedent"*, and are therefore no longer appropriate given the *"prevailing state of the relevant market"*.
- 3.1.5 The introduction of the Guidelines is therefore timely, and we urge the Authority to review its current market definitions and classifications of Dominant Persons. Such a review would be consistent with Section 5.5.2 of the Code, which states that the

² Paragraph 2 of MCI's press release "Government to review industry-led panel recommendations on media convergence" (link: http://www.mci.gov.sg/content/mci_corp/web/mci/pressroom/categories/press_releases/2012/government_to_reviewindustry-ledpanelrecommendationsonmediaconve.html).

³ As specified in the Media Development Authority of Singapore (Regulated Persons) (Dominant and Non-Dominant Positions) (Amendment) Notification 2008 (link: [http://www.mda.gov.sg/Documents/PDF/MDA_\(DVAO\)_\(Amendment\)_2008_final_4_publication.doc.pdf](http://www.mda.gov.sg/Documents/PDF/MDA_(DVAO)_(Amendment)_2008_final_4_publication.doc.pdf)).

Authority may: *“in its discretion and at any time, make an assessment as to whether any Regulated Person classified under paragraph 5.5.1 of this Code should be reclassified”*.⁴

- 3.1.6 A review of the current classification of Dominant Persons, ensuring that Regulated Persons without market power are relieved of their Dominant Persons status, would also be in-line with the Authority’s stated intent in the Code that it *“will seek to impose regulatory requirements that are no broader than necessary to achieve its stated objectives”*.⁵

3.2 Section 3: Evolution of Guidelines

- 3.2.1 The Authority has noted that it will review the Guidelines every three years as part of the triennial review of the Code, or *“whenever there is sufficient evidence of market development to warrant an interim review”*.

- 3.2.2 Apart from reviewing the Guidelines themselves, it is also important for the Authority to frequently review its existing market definitions and classification of Dominant Persons. This will also ensure that the Authority puts the Guidelines to practical use.

3.3 Section 4: General Approach and Section 5: Application of SSNIP Test

- 3.3.1 The Authority has noted that *“media markets can frequently be characterised as a two-sided market, and that the econometric models employed in the application of the SSNIP test may have to be adapted as a result of the two-sided nature of the market”*.

- 3.3.2 StarHub understands that two-sided markets refer to markets for services which have two distinct user groups, each obtaining value from interacting with the other group. Such markets may include television services, which provide services to both viewers and advertisers. Viewers may value the information provided by the television advertisements, while advertisers hope to attract as many viewers as possible to their advertisements.

- 3.3.3 While the concept of two-sided markets is mentioned by the Authority, it is not further explained how the Authority would adapt a SSNIP test to cater to such two-sided markets. In order to provide the market with clarity and transparency, we believe that it is necessary for the Authority to set out in the Guidelines how it will adapt a SSNIP test to cater to such two-sided markets.

⁴ Section 5.5.1 (Classification) of the Code states that the Authority may: *“in its discretion and at any time, issue a notification classifying any Regulated Person whom it considers to have a dominant or non-dominant position in any media market, as having such a dominant or non-dominant position, as the case may be”*.

⁵ As stated in Section 1.6.3 (Proportionality) of the Code.

3.3.4 Furthermore, based on the current classification of Dominant Persons by the Authority, the fact that certain markets may be two-sided in nature does not seem to be addressed. As such, a detailed review of the relevant markets is necessary in order to consider how two-sided markets would feature in the current media market landscape in Singapore.

3.4 Section 6: Defining the Product Market – Demand-side Substitution

3.4.1 We agree with the Authority’s statement that “*products may be seen as substitutes even though they may not have very similar physical characteristics*” and that “[p]rice similarity is also not a conclusive factor for determining substitutability”. We also note that the Authority has recognised that online products could cause a competitive constraint on traditional forms of media.

(A) Media Services in Singapore do not form Stand-Alone Markets

3.4.2 In this regard, StarHub believes that the current approach by the Authority, which defines four separate media markets (i.e., (1) free-to-air television services; (2) subscription television services; (3) free-to-air radio services; and (4) newspaper publishing services), with Dominant Persons for each market, does not accurately reflect the complex and intertwined nature of the media market landscape in Singapore. Such narrow market definitions suggest that the individual markets operate in silo, with no interactions between them.

3.4.3 Specifically, StarHub would note that consumers may find free-to-air television and subscription television services to be strong substitutes for each other. This conclusion is borne out by the Authority’s own “Consumer Experience Study”⁶ where one of the most common reasons put forward by consumers for not subscribing to Pay TV, is that “*MediaCorp is enough*” (i.e., free-to-air television acts as a sufficient substitute for subscription television services).

3.4.4 Similarly, overseas studies have recognised strong substitutability between free-to-air and subscription television services, and have urged detailed analysis by regulatory authorities to review media market definitions.⁷

⁶ Link: <http://www.mda.gov.sg/Reports/Documents/Media%20Consumer%20Experience%20Study.pdf>.

⁷ As stated in paragraph 2.4.52 of “Market Definition in the Media Sector - Report by Europe Economics for the European Commission, DG Competition”:

“In summary, there is no reason in principle why the supply of a pay-television subscription should not be constrained by free-to-air television. Analysis is required to assess whether the viewing patterns available to a consumer with access to both the pay-television package and free-to-air television are good substitutes for the viewing patterns available to a consumer with access to free-to-air television alone. A key indicator of this would be evidence (e.g. from consumer surveys) that seeks to identify the extent to which consumers’ viewing of free-to-air television reduces when they subscribe to a particular pay-television package”.

(B) Media Services are no longer Platform-Specific

3.4.5 The Authority has recognised that products may be viewed as substitutes even though they may not have similar physical characteristics. Hence, the Authority should recognise that traditional broadcasting platforms, like television, radio and print, are increasingly being substituted by alternative platforms.

3.4.6 In terms of television services, customers no longer view programmes solely on their television sets, through content transmitted over fixed infrastructure (such as cable, copper or fibre). Content is now readily available over wireless networks and over the Internet, and broadcast “on-the-go”, via mobile devices.

3.4.7 In particular, the Authority would note the increasingly popularity of OTT content providers, such as iTunes, Youtube, Hulu and Netflix. This has been recognised by the Authority’s Media Convergence Review Panel, which had noted that “Singaporeans increasingly have access to content from all around the world through [OTT] video services”.⁸ Service providers in Singapore have also offered their own OTT solutions in order to compete vigorously in the market. OTT solutions are now being offered not just by subscription television operators (e.g., StarHub’s “TV Anywhere” service⁹), but also by:

(a) The free-to-air television service provider. On 1 February 2013, Mediacorp launched “Toggle”, its own OTT service¹⁰; and

(b) Internet service providers, such as Viewqwest. Viewqwest not only offers a Virtual Private Network solution (which allows Singaporean viewers to access geographically-locked overseas OTT content¹¹), it has also recently announced a tie-up with an overseas OTT provider, for direct “VIP” access to that providers’ content.¹²

(http://ec.europa.eu/competition/sectors/media/documents/european_economics.pdf).

⁸ Paragraph 4.1.1 of the Media Convergence Review Final Report (link: <http://www.mda.gov.sg/Reports/Documents/Media%20Convergence%20Review%20Final%20Report.pdf>).

⁹ Link: <http://www.starhub.com/tv/internettv.html>.

¹⁰ Link: <http://mediacorp.sg/en/media/EDC130201-0000099/MediaCorpLaunchesToggle,itspersonalentertainmentsonmultipledevices>.

¹¹ Viewqwest offers a “Freedom VPN” service which enables users to watch geographically specific content from both the US and UK, such as Netflix, Hulu, BBC iPlayer and Pandora (link: <http://www.hardwarezone.com.sg/tech-news-viewqwest-launches-freedom-vpn-and-bundles-iptv-and-voice-fibernet>).

3.4.8 It is therefore critically important that the Authority recognise the competitive impact of OTT content on subscription, and free-to-air, television providers in Singapore, and factor in the availability of OTT services in any market definition exercises.

(C) Impact on Content Piracy on Market Competition

3.4.9 The importance of content provided over the Internet is also reflected in the growth in online piracy rates. Various reports show that Singapore has one of the highest online piracy rates in the world.¹³ The issue of online piracy has also been noted by the Minister of Law, who noted that “[t]here is evidence that the consumption of online pirated material is not insignificant here”.¹⁴ The Authority’s Media Convergence Panel has also noted the need to develop policy and regulatory response to copyright and digital piracy, failing which, such “copyright challenges ... could undermine the economic viability of the media industry, and the effectiveness of media in forging social cohesion”.¹⁵

3.4.10 We strongly believe that online content piracy acts as a significant constraint on the provision of media services in Singapore. This is particularly true for subscription television service providers, who have to entice customers to pay for content, which is already available free online.

3.4.11 The value-proposition of online pirated content has also significantly increased over the years. It is no longer the case that pirated content means poor-quality videos, shot via a hand-held camera. Instead, high-definition content, with professional translations (of foreign language content) is available shortly after the initial broadcast of the content. The fact that pirated online content is frequently available in its original uncensored form, and not cut to Singapore’s standards, is another factor driving demand for pirated content.¹⁶

¹² Link: <http://www.hardwarezone.com.sg/tech-news-viewqwest-enhances-freedom-vpn-adds-vip-access-pptv>.

¹³ As reported in the following news reports: (<http://www.asiaone.com/News/Latest%2BNews/Singapore/Story/A1Story20121130-386728.html>), (<http://news.asiaone.com/print/News/Latest%2BNews/Singapore/Story/A1Story20120503-343530.html>).

¹⁴ Speech by the Minister for Law, on 6 March 2012, during the Committee of Supply Debate 2012.

¹⁵ Paragraph 1.4(d) of the Media Convergence Review Final Report.

¹⁶ E.g., to comply with the Authority’s Subscription Television Programme Code, the uncut version of Game of Thrones cannot be broadcast in Singapore. However, this uncut version is readily available online, and was the most-pirated entertainment title of 2012 (link: <http://torrentfreak.com/game-of-thrones-most-pirated-tv-show-of-2012-121223/>).

3.4.12 In setting competition policy, overseas authorities have recognised that the issue of the “informal sector” (which includes content piracy) has an identifiable impact on the definition of markets, and the computation of market shares.¹⁷ For the purposes of the Guidelines, StarHub would therefore urge the Authority to explicitly recognise that online pirated content:

- (a) should be included in any market definitions of media services markets in Singapore; and
- (b) serves as an effective restraint on any exercise of market power.

3.5 Section 6: Defining the Product Market – Price Discrimination

3.5.1 The Authority has stated that the ability of a hypothetical monopolist to price discriminate can result in the creation of separate markets. For example, the Authority has noted that *“a pay-TV broadcaster could price discriminate between residential and commercial customers, thus creating separate markets for residential pay-TV and commercial pay-TV services”*.

3.5.2 To be clear, charging of different amounts to different customers is not prima facie evidence of price discrimination. Neither is it conclusive evidence that customers who pay different prices belong in different markets.

3.5.3 Differentiated prices may occur due to differences in the cost of supply (e.g., content rights costs, costs of infrastructure) and the different conditions attached to sale of the service (e.g., service level guarantees). Differentiated pricing may also reflect healthy competition in the market, as service providers adopt different pricing strategies in order to best match customer preferences.¹⁸

3.5.4 To determine whether seemingly similar services, with different prices, do lie in different markets, it is important for the Authority to conduct the necessary demand-substitutability tests. The Authority should not rely solely on evidence of pricing differentiation to conclude that services reside in different markets.

¹⁷ See OECD report on “Competition Policy and the Informal Economy” (link: <http://www.oecd.org/daf/competition/44547855.pdf>), which states that: *“Many countries reported that the presence of the informal sector created issues for defining the relevant market and the computation of market shares. Competition authorities can play a useful role in attacking the underlying causes of informality by calling for wider government initiatives aimed at improving a variety of regulations that affect firms and competition in markets”*.

¹⁸ E.g., some customers may prefer content to be available at their fingertips and are prepared to pay more for the convenience. Such customers may hence be prepared to pay additional for video-on-demand services.

3.6 Section 7: Defining the Geographic Market

- 3.6.1 We appreciate the Authority's recognition that markets for certain media services may be global as *"services delivered over the Internet ... are accessible anywhere in the world"*.
- 3.6.2 As we have highlighted earlier, the increasing prevalence of OTT and online piracy means that media service providers in Singapore face significant competition, not just from each other, but also regional and global players. This has also been recognised by the MCI, as well as the Authority's Media Convergence Review Panel.
- 3.6.3 Accordingly, there cannot be a narrowly defined media services market focused solely on Singapore as the geographic locale. It is necessary for the Authority to adopt a broader market definition, which comprises services offered on a regional and global basis, which act as demand-substitutes for local content service offerings.

3.7 Section 8: Other Factors to be Considered in Defining Markets – Convergence in the Media Industry

- 3.7.1 We agree with the Authority that the convergence of platforms means that suppliers have increasing number of ways to distribute content.
- 3.7.2 Apart from a supplier-side analysis, convergence of different platforms also has an impact on demand-side substitution. As we have highlighted in paragraph 3.4.6 above, multi-platform content delivery, over wired, wireless and Internet platforms, is already happening today. Rather than focusing on a single platform, it is important for the Authority to review whether viewers see content, which is being delivered via different platforms, as being demand substitutes.
- 3.7.3 We would also highlight that the deployment of the Next Generation Nationwide Broadband Network ("**Next Gen-NBN**") has assisted new entrants in providing a readily available, price-regulated and high-speed, platform over which they can provide IPTV and Internet TV services. The roll-out of IPTV and Internet TV services on top of the Next Gen-NBN has been already stated as part of the iN2015 vision by the Infocomm Development Authority ("**IDA**") of Singapore.¹⁹
- 3.7.4 Accordingly, the Authority should note the important role of the Next Gen-NBN in reducing barriers to entry to media services markets.

¹⁹ Link: http://www.mci.gov.sg/content/mci_corp/web/mci/media/developing_media/key_projects/iptv.html.

3.8 Section 9: Assessment of Market Power – Other Factors

3.8.1 The Authority has provided a non-exhaustive list of the various factors that it would consider in its assessment of whether a relevant undertaking has market power.

3.8.2 We would urge the Authority to include the following key factors in any market power assessment:

- (a) Actual evidence of market competition, including evidence of successful new entry, changes in market share over time etc.²⁰

Such evidence would provide the Authority with both qualitative and quantitative data to determine whether an undertaking does indeed have market power. This would be in-line with the IDA's Reclassification and Exemption Guidelines, which states that evidence of actual competitive entry would prove to be "*especially persuasive*" in any determination on whether a party has the ability to exert market power; and

- (b) The power of content providers to dictate the prices, and terms for desirable content, and to impact on the overall costs of content.

The Authority would recognise that media service providers in Singapore, particularly subscription television providers, are heavily reliant on the content provided by content providers to attract and retain customers. Such content providers are not regulated by the Authority, and are free to set prices, terms and conditions for content as they see fit. This means that content providers can have a significant impact on the eventual prices, terms and conditions imposed on customers.

Hence, any price increases for subscription television services may not be indicative of market power being exercised by subscription television service providers. Rather, it could be a reflection of the market power of the content provider, and beyond the control of the media services provider.

The Authority should recognise this factor in any assessment of market power in media services markets.

²⁰ Such factors are specified in Section 2.2.2(c)(viii) of the IDA's Reclassification and Exemption Guidelines (link: http://www.ida.gov.sg/~media/Files/PCDG/Practice%20Guidelines/Guidelines/IDA_Reclassification_and_Exemption_Guidelines.pdf).

4. CONCLUSION:

- 4.1.1 StarHub appreciates the opportunity to comment on the Authority's Guidelines. We are generally agreeable with the theoretical framework set out in the Guidelines. We also believe that the Guidelines will assist to clarify the Authority's thinking in terms of market definition and market power assessments.
- 4.1.2 However, in its definition of markets, we would strongly urge the Authority to consider the impact of OTT content, and online piracy on competition on media services in Singapore. The Authority should also recognise that content providers have a significant role in determining pricing in the market.
- 4.1.3 Given the rapid changes in the media market landscape in Singapore, we would also urge the Authority to apply the framework set-out in the Guidelines and conduct a detailed review of the current media services markets in Singapore. Such a review would determine whether:
- (a) The Authority's current demarcation between the four strictly-defined media markets is still relevant; and
 - (b) The Authority's current classification of Dominant Persons is still valid and appropriate.

StarHub Cable Vision Ltd
March 2013