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**RESPONSE TO INFO-COMMUNICATIONS MEDIA DEVELOPMENT AUTHORITY
PUBLIC CONSULTATION ON A CONVERGED COMPETITION CODE
FOR THE MEDIA AND TELECOMMUNICATION MARKETS**

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SECTION A – SUMMARY OF MAJOR POINTS

The following is a summary of the major points of our submission:

1. The Changing Landscape of the Media Industry

The industry has undergone significant technological and structural changes in recent years, in particular the increased convergence between not only the telecommunication and media markets, but also with technology markets. These technological developments have drastically changed (a) the way in which content is consumed; (b) content delivery methods; and (c) the type of content being delivered. It is crucial for the IMDA to consider these developments when developing the Converged Code, especially in areas such as market definition and assessment of dominance.

2. Dominance Classification and Removal of Ex Ante Regulatory Regime for Media

Given the industry changes, it is imperative that the IMDA embarks on a fresh market definition and assessment exercise and adjusts its conventional market definitions to reflect the recent development of new technologies. Further, an assessment of market power must go beyond market shares and give equal regard to the factors such as barriers to entry, the countervailing bargaining power of the other players in the market (i.e. consumers, content providers and advertisers) and the presence of network effects.

At a more fundamental level, Mediacorp questions the continued need for an ex ante regulatory regime for the media industry.

3. Cross-subsidisation and Anti-competitive Leveraging

Mediacorp disagrees with the IMDA's proposal to extend to the media market the prohibition on cross-subsidisation. As a practical matter, it would be particularly challenging, in the context of the media industry, to conduct cost allocation studies in order to determine whether cross-subsidisation has occurred.

Mediacorp supports the IMDA propositions in relation to unreasonable bundling and anti-competitive leveraging. In line with market changes (such as possible leveraging by technology or social media players), these provisions must be kept broad and cannot be restricted to leveraging between the telecommunication and media markets only.

4. Cross-Carriage Measure (“CCM”)

Mediacorp questions the continued relevance of the CCM and urges the IMDA to remove the CCM entirely and if the IMDA were to continue to keep the CCM in the Converged Code, then we would ask IMDA to clarify that the CCM does not apply to all OTT providers (including Subscription Television Licensees that operate on unmanaged networks).

5. Anti-Hoarding Provisions

Mediacorp strongly disagrees with the IMDA's proposal to introduce the proposed coverage obligations. Based on the current availabilities, there has been sufficient coverage provided to these programmes and FTA TV providers should be allowed some flexibility and commercial discretion to decide how it will meet its anti-hoarding obligations within the parameters that are already set out in MMCC.

6. Competition in a Digital Economy

Mediacorp takes the view that the developments and the new business models arising from the growth of the digital economy are likely to remain in the long-term, with the scale of transformation drastically intensifying. Sectoral regulators should adopt a flexible and forward-thinking approach in enforcing competition in the digital economy. Mediacorp submits that the

current regulatory framework that subjects the traditional media players and local-based players to more regulation and scrutiny than their OTT counterparts, exacerbates the unequal playing field.

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SECTION B – STATEMENT OF INTEREST

1. THE COMMENTING PARTY AND ITS INTEREST

- 1.1 We write on behalf of Mediacorp Pte. Ltd. ("**Mediacorp**") and its group of companies. Mediacorp is grateful for the opportunity to provide feedback to the Info-communications Media Development Authority ("**IMDA**") on the proposed harmonised competition code for the Singapore telecommunication and media markets ("**Converged Code**").
- 1.2 Mediacorp, as the National Broadcaster and a key participant in the media industry, welcomes the consolidation of the Code of Practice for Competition in the Provision of Telecom Services 2012 ("**TCC**") and the Code of Practice for Market Conduct in the Provision of Media Services ("**MMCC**"). This harmonisation reflects the convergence of the telecommunication and traditional media markets in light of the developments in the digital economy.
- 1.3 However, Mediacorp notes that some of the proposed changes may have unintended far-reaching consequences and sought to provide this set of feedback in response to the IMDA Consultation Paper on the Converged Code ("**Consultation Paper**"), with the aim that the IMDA will take further positive steps to ensure a balanced approach in managing competition through the Converged Code in the telecommunication and media markets.
- 1.4 In that regard, we understand that this will be the first of two rounds of consultation and hope that the IMDA will take our feedback and views herein into consideration in its drafting and preparation of the Converged Code.
- 1.5 Unless otherwise stated, Mediacorp adopts herein all of the abbreviations and definitions found in the Consultation Paper, TCC and MMCC.

SECTION C – COMMENTS AND MAJOR ISSUES

2. THE CHANGING LANDSCAPE OF THE MEDIA INDUSTRY

2.1 At the outset, Mediacorp would like to highlight that the industry has undergone significant technological and structural changes in recent years, in particular the increased convergence between not only the telecommunication and media markets, but also with technology markets. The relevant trends have been highlighted by the IMDA in Part II of the Consultation Paper, which Mediacorp broadly agrees with.

2.2 Mediacorp submits that these technological developments have drastically changed (a) the way in which content is consumed; (b) content delivery methods; and (c) the type of content being delivered.

2.3 Content Consumption

2.3.1 With the advent of Internet and smart devices, coupled with enhanced connectivity (i.e. high-speed broadband at home and faster mobile data services through 3G, 4G and now 5G networks), consumers now spend more time online. According to the UK Office of Communications (“Ofcom”) “Communications Market Report 2018”, 88% of adults who use the Internet spend an average of 24 hours each week online.¹ In particular, due to the increased take-up of smart devices that brings the convenience of being able to be “always online” anytime and anywhere, most people are now dependent on their digital devices and require a constant connection to the Internet.

2.3.2 Given digital dependency and the rising time spent online, consumers’ consumption patterns are changing, such that more and more media consumption occurs over the Internet and on digital platforms, as opposed to traditional media platforms. As such, the term “media” today refers not just to traditional media (i.e. television, radio and newspapers), but also new media, which consists of social media, streaming and video sharing services. Consumers are now able to turn to these new avenues for immediate and on-demand consumption of content, something which not even traditional media was capable of previously. This trend is only going to intensify with 5G which, as the IMDA’s recent public consultation paper on 5G highlights, would enable consumers to enjoy on-demand content with more interactive and immersive experiences, as well as anytime, anywhere streaming of high-definition videos. 5G has already been used to provide live streaming at the PyeongChang Winter Olympic Games 2018 and the 2018 US Open.

2.3.3 To accommodate consumers’ expectations of having access to media content anytime and anywhere, the media industry has shifted from a device-specific to a device-agnostic delivery approach, such that the offering of media content is no longer tied to a single particular device. In today’s digital age, consumers are no longer tethered to the television set and are able to consume media content on any device and platform of their choice (televisions, smart phones, laptops and tablets), as long as the device is connected via the telecommunication network or the Internet.

2.3.4 The shift from traditional broadcasting television to content consumption over the Internet is borne out in statistics and survey results. Based on the IMDA’s “OTT Video Consumer Study 2015”, it is evident that there is a trend towards online media content consumption, as seen from 54% of consumers having used OTT video services, with this being highest among millennials (aged 15 to 34) at 89%.² More recently, based on data cited for the period of January to November 2018, it was found that 8 in 10 in Singapore are consuming media content on their

¹ Office of Communications, “Communications Market Report” (2 August 2018), available at https://www.ofcom.org.uk/data/assets/pdf_file/0022/117256/CMR-2018-narrative-report.pdf

² MDA, “OTT Video Consumer Study 2015” (2016), available at <https://www.imda.gov.sg/-/media/imda/files/inner/about-us/newsroom/mda/documents/for-public-release-ott-video-consumer-study-2015-51.pdf?la=en>

smart phones each month; time spent viewing media on smartphones had also increased from 23 to 32 minutes per day within this period.³

2.4 Content Delivery

- 2.4.1 The high usage of Internet by consumers as well as enhanced connectivity, as well as demand for online and on-demand content services, have led to media content being increasingly delivered over the Internet. The result is that the barriers to entry of the media market have been significantly lowered, as the Internet is now a new means for entry to the media market by non-traditional media players, such as OTT TV providers, video services providers, social media platforms and technology firms (collectively "**Digital Media Players**"), as well as telecommunication players. The entry of these non-traditional media players has fundamentally disrupted the competition dynamics in the media market, as elaborated in the following paragraphs.
- 2.4.2 Examples of Digital Media Players that have entered the Singapore media market include global players such as Disney+, Netflix, Apple TV and YouTube. It bears mentioning that many of these social media platforms and technology firms are large global players who have been identified as the largest firms in the world by market capitalisation in September 2018 by the authors of "Competition Policy for the Digital Era", a report commissioned by the European Commission.⁴ These international Digital Media Players are able to leverage their global access to technology, financial resources, their market power in the digital sector, and connections to content players to enter and compete aggressively in the Singapore media markets. At the same time, these global players are not subject to the local regulatory regime. This therefore creates an unequal playing field that Mediacorp urges the IMDA to recognise and address.
- 2.4.3 As an illustration, not only does Google operate YouTube, the online platform with the largest content viewership in the world, it is also one of the globally dominant digital advertisers. YouTube competes with the local media players in Singapore's media market and yet has the competitive advantages of being outside the ambit of the IMDA regulatory regime and the ability to leverage on Google's advertising revenue and market power in digital advertising. As observed by Ofcom in its "Communications Market Report 2018", YouTube's partners include major networks comprising a range of media brands or independent content creators, such as BroadbandTV, Warner Music, UMG, VEVO and SonyBMG.⁵ In contrast, local media players are subject to the local regulatory obligations and do not have the access to vast financial resources nor the backing of major networks.
- 2.4.4 In fact, it is presently the case that these large global players are far more popular with consumers who watch online videos. Based on the IMDA's findings in its "OTT Video Consumer Study 2015", OTT video viewing was largely concentrated on YouTube and social media platforms (e.g. Facebook and Instagram), with 96% of OTT video users using YouTube and 59% using social media. This can be contrasted with the usage of local OTT players, with only 14% of OTT video users using Toggle, and 5% of OTT video users using Singtel TV GO and Starhub Go respectively.⁶ These statistics therefore support Mediacorp's view that the playing field is indeed skewed towards the large global players.
- 2.4.5 Turning to telecommunication players, as the Internet and mobile networks become more commonly adopted for delivering and accessing content, telecommunication players who

³ IMDA Media Release, "Singapore launches first-in-Asia integrated TV viewership data" (30 January 2019), available at https://www.gov.sg/~sgpcmedia/media_releases/imda/press_release/P-20190130-2/attachment/MEDIA%20RELEASE-%20SINGAPORE%20LAUNCHES%20FIRST-IN-ASIA%20INTEGRATED%20TV%20VIEWERSHIP%20DATA.pdf

⁴ Jacques Crémer *et al*, "Competition policy for the digital era" (European Commission, 2019), available at <http://ec.europa.eu/competition/publications/reports/kd0419345enn.pdf>

⁵ Office of Communications, "Communications Market Report" (2 August 2018), available at https://www.ofcom.org.uk/data/assets/pdf_file/0022/117256/CMR-2018-narrative-report.pdf

⁶ IMDA, "OTT Video Consumer Study 2015" (2016), available at <https://www.imda.gov.sg/-/media/imda/files/inner/about-us/newsroom/mda/documents/for-public-release-ott-video-consumer-study-2015-51.pdf?la=en>

control and operate these underlying networks are in a strong position to engage in anti-competitive leveraging and bundling. As barriers to entry are relatively higher in the telecommunications market (due to limited spectrum and the high costs of infrastructure investment), it is easier for a telecommunication player to enter the media market than vice versa. Mediacorp urges the IMDA to recognise this significant imbalance in market power between the telecommunication and media players. As such, Mediacorp is heartened by the IMDA's proposed changes in the Converged Code to address the real risks of anti-competitive bundling and leveraging, but submits that these provisions must go further to address not just leveraging between the telecommunication and media markets, but also the technology markets.

2.5 Type of Content Delivered

- 2.5.1 Mediacorp further submits that the proliferation of digital platforms and the shift towards a device-agnostic approach has resulted in competition shifting from competition between platforms to competition between content. The ability to develop or acquire unique content will become key. In this context, it is important that local media players have the ability to differentiate themselves via their self-produced or commissioned local content, especially in the face of competition from the international players. Due to the distribution and sales channel opportunities created by the Internet, as well as the removal of geographical and physical restrictions, more and more content are being made easily available to the audience at large. Digital Media Players are even able to leverage content that they themselves do not produce. Thus, any study in competition must take into consideration how the competitive landscape has changed and that the traditional methods over which competition had historically taken place may be negated in the new converged markets.
- 2.6 Against this changing landscape of the media industry (including the proliferation of foreign content and platforms), it is also important that the IMDA considers the role of the National Broadcaster and the public interest function it serves in addressing the national public and catering to all population groups. In particular, the regulatory frameworks should facilitate the National Broadcaster in remaining relevant so that it can continue to perform the public interest role that its stakeholders expect it to play.
- 2.7 Based on the foregoing, Mediacorp therefore submits that the IMDA cannot seek to harmonise the existing codes without due regard or consideration to the changing landscape of the media industry. It is crucial for the IMDA to consider these developments when developing the Converged Code, especially in areas such as market definition and assessment of dominance.

3. PART IV – DOMINANCE CLASSIFICATION AND DUTIES OF DOMINANT ENTITIES

3.1 Criteria Used for Dominance Classification

Question 4:1: *IMDA invites views and comments on the proposed standards for dominance classification under the Converged Code.*

- 3.1.1 The IMDA has proposed to adopt the criteria used under the TCC as the common criteria for both telecommunication and media markets. Under the Converged Code, Dominant Entities are entities that either:
- (a) operate facilities used for provision of telecommunication and/or media services that are sufficiently costly or difficult to replicate such that requiring new entrants to do so would create a significant barrier to rapid and successful entry into the telecommunication and/or media market in Singapore by an efficient competitor; or
 - (b) have the ability to exercise SMP in any market in which it provides services pursuant to its telecommunication or media licence.
- 3.1.2 Mediacorp notes that the IMDA does not anticipate any of the existing media licensees to meet the standards specified in criterion (a). Indeed, this must be the case based on the changing landscape highlighted in the preceding section whereby digitalisation has significantly reduced the barriers to entry to transmission facilities. It is critical that in applying this provision, the IMDA must take a technology-neutral approach that is not limited to specific platforms.

3.2 Threshold for the Initial Presumption of Significant Market Power

Question 4:2: *IMDA invites views and comments on the appropriate level for the SMP Presumption Threshold.*

- 3.2.1 Mediacorp is of the view that any initial presumption of SMP (“**SMP Presumption Threshold**”) must be meaningful and reflective of what the market conditions and realities are, especially for the media industry which is fraught with challenges in market definition and assessment of market power.
- 3.2.2 As an initial matter, MediaCorp submits that there is an increased number of players and competitors in the media markets and the media market is in fact getting crowded and the audience is and will be spoilt for choice. In fact, the proliferation of Digital Media Players has increased the number of players in the media markets significantly and have an impact on the market. These cannot be discounted when applying the common SMP Presumption Threshold.
- 3.2.3 However, if IMDA decides to adopt the SMP Presumption Threshold, Mediacorp emphasises that an assessment of market power must give equal regard to the factors such as barriers to entry, the countervailing bargaining power of the other players in the market (i.e. consumers, content providers and advertisers) and the presence of network effects.
- 3.2.4 On network effects, it has been widely identified in literature that platform markets (including media markets) are characterised by competition for the market. Therefore, although high market shares for “winners” could be the norm, they may be quickly unseated by smaller or new players – the threat of “losing” the market acts as a competitive constraint on market players with high market shares, which effectively removes their ability to behave to an appreciable extent independently of competitors, customers and consumers (i.e. market players have no SMP despite having high market shares). Conversely, given the prevalence of network effects in platform markets, a player with a relatively small market share today can quickly cross tipping point and acquire a significant share of the market within a short time.
- 3.2.5 Mediacorp also urges the IMDA to take cognition of data as a source of market power. In today’s digital era where media markets are driven by consumer preferences, having superior access to data can provide a competitive advantage as market players can leverage the customer data

to produce services that are better and more customised to the customer's needs. This is particularly applicable to market players that offer bundled services, who are then able to leverage their customer information and relationships in one market to affect competition in another market.

3.3 “Market-by-Market” Approach to Dominance Classification

Question 4:3: *IMDA invites views and comments on the proposed changes to the dominance regime for the telecommunication and media industries, specifically; (i) to adopt the Market-by-Market approach for the dominance classification of a telecommunication licensee in new markets; and (ii) to require Dominant Persons to demonstrate whether the new service(s) they introduce fall within the market(s) in which they are dominant.*

- 3.3.1 Whilst a Market-by-Market approach has already been taken under the MMCC, the IMDA has proposed to introduce a new requirement for existing Dominant Persons in the media market to demonstrate to the IMDA that the services they introduce are new and do not fall within any existing markets they currently operate in and in which they are classified as dominant.
- 3.3.2 For Mediacorp that has been classified as a Dominant Person in the FTA TV services industry, this presents a chicken and egg problem, as Mediacorp questions the basis on which the existing markets have been defined, and how tenable the existing market definitions are in this era of convergence. Unless the IMDA embarks on a fresh market definition exercise and Mediacorp is privy to the basis on which the existing markets have been defined, Mediacorp is not in a position to assess, much less demonstrate to the IMDA, whether any new services introduced by Mediacorp would fall within the existing markets that Mediacorp operates in.
- 3.3.3 It is therefore imperative that the IMDA embarks on a fresh market definition and assessment exercise and adjusts its conventional market definitions to reflect the recent development of new technologies. Thus far, the IMDA has conveniently relied on its licence categories in the media market to define the relevant markets. Unfortunately, this does not accurately reflect the actual market boundaries based on the principles of demand-substitutability and supply-substitutability.
- 3.3.4 While Mediacorp acknowledges that FTA TV and Pay TV have historically been viewed as independent and separate product markets, Mediacorp would question if it is still tenable for such narrow market definitions to be maintained, in view of the market trends relating to consumers, content rights and advertising revenues. Mediacorp submits that a lot more work and consideration should be undertaken in this review of convergence of the MMCC and the TCC.
- 3.3.5 In terms of competition for consumers, it is an undisputed fact that consumers are increasingly switching between FTA TV, Pay TV, OTT services as well as social media/video sharing websites. In view, FTA TV viewership is challenging, in Singapore as with many other jurisdictions, with the proliferation of content and the means to access such content via different platforms. In 2007, the UK Competition Commission already identified that there could be an all-TV market which included both Pay TV and FTA services as well as video-on-demand. In fact, a recent report on market power in digital platforms by Oxera which was prepared for the European Commission⁷ suggests that digital platform markets may be competing more broadly for consumers' attention, even though they might appear to compete in the market for a specific service, therefore potentially calling for wider market definitions. The report noted that individuals spending time online can be doing a variety of things, such as shopping, gaming or watching videos, and that regardless of what the consumer is doing, the fact that they are online makes them valuable to companies that can successfully engage with them. This could potentially mean that OTT video services are in the same market as social media services, online gaming services as well as online shopping services.

⁷ Oxera, “Market in digital platforms” (30 September 2018), available at <https://www.oxera.com/wp-content/uploads/2018/10/Market-power-in-digital-platforms.pdf>.

- 3.3.6 As the media market is a multi-sided market, substitutability on the other sides of the market must also be considered. With regards to content rights, Mediacorp submits that FTA TV providers, Pay TV providers, OTT TV providers and video service providers are in direct competition, with the intense competition between them to acquire popular content, such as the EPL or the World Cup being a clear case in point. In terms of advertising revenue, Mediacorp submits these markets are all competing for the same source of advertising revenue, case in point; social media platforms are also competing for the same advertising dollar and are competing directly and aggressively with FTA TV providers, etc. This was also acknowledged in the Oxera report which notes that in the example of Google and Facebook, while they do not compete head-to-head on their core services (general search and social media respectively), they do compete to attract the advertisers that ultimately fund their businesses.
- 3.3.7 Given the above, the current market definitions (FTA TV, Pay TV, FTA radio and newspaper publishing) and dominance designations are no longer tenable and must be reviewed and reconsidered again.

3.4 Removal of Ex Ante Regulatory Regime for Media

- 3.4.1 Mediacorp submits that the above complexities in relation to market definition for the media industry arises because the market definition exercise is being conducted in a vacuum instead of in relation to a focal product which generally happens during a competition assessment with reference to a particular agreement or conduct that is of competition concern. Where a particular conduct and focal product has been identified, it then becomes a more systematic (although still by no means simple) exercise to identify the demand-side and supply-side substitutes for that product. Unfortunately, this process cannot be followed in a dominance classification exercise where a focal product and the specific competition concerns have not been identified.
- 3.4.2 Mediacorp therefore questions if a dominance classification exercise is meaningful for the media industry, and as a more fundamental issue, whether an ex ante regulatory regime for the media industry (which is the purpose of the dominance classification exercise) is even necessary.
- 3.4.3 With reference to international practices, Mediacorp notes that no ex ante regulatory regime similar to that currently under the MMCC has been adopted in the European Union ("EU") and the UK. Under the existing EU regulatory frameworks, there is only ex ante regulatory treatment for the electronic communications market (i.e. the telecommunications market) but not the media market. In the UK, the only semblance of an ex ante regulatory regime for the media market is Section 316 of the Communications Act, which gives Ofcom the power to impose on broadcast licence holders conditions that Ofcom regards as appropriate for the purpose of ensuring fair and effective competition. This is arguably much less far-reaching than the ex ante regulatory regime set out in the MMCC.
- 3.4.4 As a general principle, it has been recognised in the EU that ex ante regulation is only justified where the following three cumulative criteria are fulfilled: (a) the presence of high and non-transitory barriers to entry; (b) the market structure of the relevant market does not tend towards effective competition within a relevant time horizon; and (c) the application of competition law alone would not adequately address the market failure(s) concerned.⁸ In other words, ex ante regulation is only appropriate where structural competition problems persists. These criteria are no longer met in the media industry, especially with the digitalisation of media today.
- 3.4.5 Given the above, Mediacorp urges the IMDA to take a bold approach to reconsider these ex ante obligations that are no longer relevant in today's environment.

⁸ See Recital 11 of Commission Recommendation of 9 October 2014 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services Text with EEA relevance.

4. PART V – ANTI-COMPETITIVE CONDUCT

4.1 Cross-Subsidisation

Question 5:4: *IMDA invites views and comments on the extension of the cross-subsidisation provision to the media industry*

- 4.1.1 Whilst Mediacorp recognises the IMDA's concern with firms abusively leveraging their dominant positions into other markets within the industry, it disagrees with the IMDA's proposal that the prohibition should be extended to the media market. As a matter of principle, Mediacorp is of the view that the TCC provisions should not be blindly extended to the media sector when there has been no identified need to do so.
- 4.1.2 As a practical matter, Mediacorp highlights that it would be particularly challenging, in the context of the media industry, to conduct cost allocation studies in order to determine whether cross-subsidisation has occurred in accordance with the principles articulated in the TCC Competition Guidelines. Consider the case where a media licensee chooses to deliver its content via multiple platforms, such as FTA TV and OTT. As a matter of technology, there is nothing to stop the media licensee from putting its content on multiple platforms. Indeed, the consumer of today expects the content to be made available on multiple platforms (at no extra cost to him) so that he can view the content seamlessly as he moves from his home TV to the tablet in his room, or when he leaves the house completely and wishes to continue watching the content on his mobile phone.
- 4.1.3 Where the content owner and platform owner do not impose any restrictions on the media licensee from providing the content over multiple platforms, it would be difficult to apportion the costs between the various platforms. It is not clear how the IMDA would allocate the costs of providing the content over various platforms – would the IMDA take the position that the costs of content acquisition should be divided equally across multiple platforms regardless of what the reality is?
- 4.1.4 Mediacorp notes that potential competition concerns involving a licensee leveraging its market power in a market that is not subject to effective competition to unfairly restrict competition in a competitive market would already been covered by the other provisions in the Converged Code involving unreasonable bundling and/or anti-competitive preferences/leveraging. There is therefore no need for a further provision on cross-subsidisation to be applied to the media industry.

4.2 Predatory Network Alteration

Question 5:5: *IMDA invites views and comments on the extension of the predatory network alteration provision to the media industry.*

- 4.2.1 Currently, Sub-section 8.2.2.2 of the TCC addresses predatory network alteration concerns, where a telecommunication licensee with SMP alters its network interface that has the primary effect of imposing costs on other licensees and/or impeding other licensees' abilities to interconnect and interoperate. There is no corresponding provision in the MMCC. The IMDA has therefore proposed to extend this prohibition on predatory network alteration to the media industry.
- 4.2.2 As with the provision against cross-subsidisation, Mediacorp submits that as a matter of principle, the IMDA has no basis to extend this prohibition to the media industry. In particular, at paragraph 5.27 of the Consultation Paper, the IMDA has itself recognised that historically, minimal network interconnection is required for the provision of media services.
- 4.2.3 As the concern is not applicable to the media industry, Mediacorp requests the IMDA to remove this amendment.

4.3 Bundling and Anti-Competitive Leveraging / Anti-Competitive Preferences

Question 5:6: *IMDA invites views and comments on the inclusion of unreasonable bundling as an example of an abuse of a dominant position in the Converged Code.*

Question 5:7: *IMDA invites views and comments on the proposed standalone subsection for the provision for anti-competitive leveraging, including the specific practices on anti-competitive leveraging.*

4.3.1 Mediacorp is supportive of the IMDA propositions in Questions 5:6 and 5:7.

4.3.2 Mediacorp also notes that in today's converged environment, there are multiple ways that an entity can leverage its dominant position in one market to unreasonably restrict competition in another market in the telecommunications or media industry. In fact, anti-competitive leveraging is not restricted only to cross-subsidisation from the telecommunication market to the media industry or vice versa, as paragraph 5.26 of the Consultation Paper appears to suggest. It is also possible for a technology or social media player such as Google or Facebook to leverage its market position in a non-telecommunication and non-media market to benefit its OTT platform, for example, by embedding and bundling their OTT platform with their popular applications.

4.3.3 As such, Mediacorp stresses that it is important that the provision on anti-competitive leveraging/anti-competitive preferences under the Converged Code be kept broad (similar to how it is under the TCC today) so as to prohibit a telecommunication or media licensee that is affiliated with any entity that has SMP (whether in the provision of a telecommunication or media service, or otherwise), or that has SMP in a non-telecommunication or non-media market, from using that market position to unreasonably restrict competition in any telecommunication and/or media market in Singapore. This is in line with our representations above that the IMDA's competition analysis must always consider the actual market and the players in that market, based on the specific conduct that the IMDA is assessing, instead of relying on existing, narrow definitions of the market which are limited or defined by the platforms.

4.4 Unfair Methods of Competition

Question 5:10: *IMDA invites views and comments on the proposed changes to the rules governing unfair methods of competition*

4.4.1 Mediacorp agrees in general to the proposed changes to the rules governing unfair methods of competition. In particular, Mediacorp takes the view that the rules should not only apply within each of the telecommunication and media markets but must, given today's converged environment, be designed to prevent entities from engaging in improper practices to obtain a competitive advantage for itself or an Affiliate in the telecommunication and/or media market in Singapore.

4.4.2 For example, the sub-section on degradation of service availability or quality should effectively require converged players to provide access to their telecommunication network on a fair, reasonable and non-discriminatory basis to not just competing telecommunication licensees but also competing OTT content service providers. Otherwise, it may be possible for a mobile service provider or broadband Internet service provider to degrade the quality and speed of access when the user is accessing a competing OTT service provider's content services. This is in line with the general principle of net neutrality that Internet service providers should treat all Internet communications equally and not discriminate or charge differently based on user, content, website, platform, application, type of equipment, or method of communication.

4.4.3 The same principle should apply to the other provisions. For example, a telecommunication licensee should not provide information to a media licensee that is false or misleading, and vice versa, in order to obtain an unfair advantage for itself.

5. PART VI – CONSUMER PROTECTION

5.1 Exclusion of OTT TV Providers from Consumer Protection Provisions

Question 6:1: *IMDA seeks views and comments on the:
(c) proposal to continue to not apply the Consumer Protection Provisions in the Converged Code to OTT TV or content services.*

- 5.1.1 Mediacorp supports the IMDA's proposal to continue to not apply the Consumer Protection Provisions in the Converged Code to OTT TV or content services.

6. PART VII – MERGERS AND ACQUISITIONS

6.1 General Comments

- 6.1.1 As a general matter, Mediacorp supports the IMDA's proposals to harmonise the M&A provisions as it is increasingly likely in today's converged environment that a transaction may affect both the telecommunication and media markets. With the proposed changes, Mediacorp assumes that merger parties will only need to be concerned with making a single consolidation application to the IMDA, which would reduce regulatory costs and confusion. The IMDA will also have the mandate to take a broader and long-term perspective on the competition effects of a transaction on both the telecommunication and media markets, even if the transaction is between players that currently operate only in one industry.

6.2 Proposed Criteria for the Short Form Application

Question 7.2: *IMDA invites views and comments on the proposed criteria for the Short Form and Long Form application.*

- 6.2.1 To enable a harmonised approach, Mediacorp supports the adoption of a unified market share threshold below which a Short Form Consolidation Application may be submitted. At paragraph 7.16 of the Consultation Paper, the IMDA has proposed to adopt the harmonised criteria that a Short Form may be submitted where none of the applicants individually hold, and/or the post-consolidation entity will not hold, a share of:
- (a) 30% or more of any telecommunication or media market in Singapore or elsewhere; or
 - (b) between 20% to 30% when the combined market share of the largest 3 Regulated Persons and/or AMSPs is 70% or more of any telecommunication or media market in Singapore.

("Proposed Short Form Criteria")

- 6.2.2 Mediacorp notes that the proposed threshold of 30% is lower than the indicative market share thresholds for notification under the general Competition Act of 40%. Mediacorp does not see the basis for adopting a lower market share threshold of 30% under the Converged Code and seeks more clarity on how this 30% threshold was derived.
- 6.2.3 As a matter of implementation, Mediacorp also seeks clarification from the IMDA on how the Proposed Short Form Criteria will be applied. Consider the example of a merger between Licensee A which has 5% market share in a telecommunication market and 80% market share in a media market, and Licensee B which has 5% market share in the same telecommunication market and is not operating in the media market at all. In this case, the post-consolidation entity will have a 10% market share in the affected telecommunication market, which falls below the Short Form thresholds; at the same time, the post-consolidation entity will continue to have 80% market share in a media market (and although this market share is above the Short Form thresholds, it is not affected by the transaction). It is currently not clear if this transaction would be eligible for application under the Short Form.

7. PART VIII – RESOURCE SHARING

7.1 Types of Resources Applicable

Question 8:1: *IMDA invites views and comments on the proposal to limit Media Resource to only infrastructure (akin to Section 7 of the TCC) for the purposes of sharing amongst media licensees.*

- 7.1.1 For the purpose of resource sharing, Section 9.1(a) of the MMCC currently defines “Resource” as referring to any “apparatus, accessory, system, service, information or such other resource of any kind required to provide its media service”. In contrast, the resource sharing provision in the TCC, that is Section 7, covers only infrastructure.
- 7.1.2 In this respect, the IMDA has proposed to limit the definition of Media Resources, and correspondingly the definition of “Essential Resources” to only infrastructure, in line with the position under the TCC.
- 7.1.3 Mediacorp views this proposal positively and shares the IMDA’s view at paragraph 8.5 of the Consultation Paper that only infrastructure is likely to be a potential resource that a media licensee cannot produce or lease within the foreseeable future in order to provide a media service.

7.2 Proposed Criteria for the Determination of Essential Resource

Question 8:3: *IMDA invites views and comments on the proposed criteria in the determination of both Essential Resource and Critical Support Infrastructure.*

- 7.2.1 Whilst Mediacorp recognises the various benefits and efficiencies associated with infrastructure sharing (e.g. cost savings, facilitation of competition for the provision of media services and lower retail prices), due regard must be given to the principle of proportionality and the reduction of long-term incentives to invest and develop new technologies. In this respect, Mediacorp submits that compared to the current criteria under the MMCC, the proposed criteria under the Converged Code are unduly wide. This has the effect of imposing onerous and costly obligations on the Entity Controlling Resources, which are disproportionate to any benefits that may arise.
- 7.2.2 First, the proposed criteria in the Consultation Paper omits the consideration under Sub-section 9.3.1.5(a)(iii) of the MMCC that the Entity Controlling Resources should be able to provide access without causing technical or operational harm to its own operations. Mediacorp submits that it would not be reasonable to require the Entity Controlling Resources to share its infrastructure with a third party where it would cause harm to its own operations and compromise its own ability to offer service. By way of comparison, the position taken in the EU is that a network operator’s refusal to allow access by undertakings providing electronic communications networks to its existing physical infrastructure can be justified on the grounds of technical unsuitability and the risk of serious interferences with the provision of other services using the same physical infrastructure.⁹ Mediacorp respectfully submits that this consideration must be provided for under the Converged Code.
- 7.2.3 Second, the proposed criteria also omit the consideration under Sub-section 9.3.1.5(a)(vi) of the MMCC and Sub-section 7.3.1(e) of the TCC that failure to require access to the Resource would unreasonably restrict competition. Mediacorp submits that this criterion should be included in the Converged Code. The decision to impose the duty to provide access to Essential Resources should be based on objective competition principles, such that access is mandated only when refusal to share or excessive pricing for resources adversely affects competition in the markets for the provision of downstream services. Otherwise, there is no justifiable basis to override the entity’s freedom to protect its investments.

⁹ See Article 3(3) of Directive 2014/61/EU of the European Parliament and of the Council of 15 May 2014 on measures to reduce the cost of deploying high-speed electronic communications networks Text with EEA relevance.

8. PART IX – PUBLIC INTEREST OBLIGATIONS

8.1 General Comments on Cross-Carriage Measure (“CCM”)

- 8.1.1 Mediacorp is familiar with the rationale and background for the introduction of the CCM, having participated actively in the public consultations by the then-MDA on the introduction of the CCM. Mediacorp notes that the key concern which the CCM seeks to address is content fragmentation in Singapore. This situation arose from the Pay TV providers' strategies to obtain channels and content on an exclusive basis, and in turn delivering the content through closed networks. Without the CCM, consumers wishing to access their desired content from their multiple Pay TV subscriptions will have to incur ancillary costs and inconvenience arising from additional cabling, installation and set-top box rentals. By implementing the CCM, consumers are able to access the full suite of content through a single set-top box, thus avoiding the additional costs and inconvenience.
- 8.1.2 Against this underlying policy rationale of the CCM, Mediacorp notes that the CCM has in practice only been applied between Singtel and StarHub for the cross-carrying of certain key sports content (namely (a) UEFA Euro 2012; (b) English Premier League Seasons 2013 to 2016, and Seasons 2016 to 2019; and (c) FIFA World Cup 2014), and respectfully questions if the CCM should continue to be imposed in its current broad-brush form. Mediacorp sees the current CCM policy as having an inadvertent chilling effect on local content creation without any offsetting benefits being realised in practice, as elaborated below.
- 8.1.3 Importantly, Mediacorp continues to question the asymmetrical treatment between the classification of Receiving Qualified Licensees (“RQLs”) and Supplying Qualified Licensees (“SQLs”), which in return would have a much wider implication and impact on the scope of the CCM than the stated policy reason. In the media market where access to content and diversity of content is key, this creates an unequal playing field to the advantage of the Pay TV providers on a Relevant Platform who will have the ability to provide its customers with access to a wider range of content as opposed to the SQL who is not operating on a Relevant Platform.
- 8.1.4 In connection with the above, there is simply no justification to impose the CCM on unmanaged networks / OTT platforms which operate openly over the unmanaged Internet, enabling anyone in Singapore with Internet access to receive their services – on a Connected TV, set-up box, PC or mobile (computing devices), thus averting the issues of content fragmentation caused by exclusive content made available only on closed platforms. Consumers who wish to access any content on these unmanaged platforms can simply sign up with the OTT service provider at a relatively low monthly fee (generally with no minimum contract and no registration fee) and without having to procure any additional equipment or set-top box. By way of example:

OTT service provider	Subscription Fees
Toggle	Toggle Prime - \$9.90/month
	HBO Go - \$13.98/month
SingTel Cast	HBO Go - \$13.98/month
Netflix	\$10.98/month
Viu	\$6.90/month

As such, unmanaged networks (including Mediacorp's OTT platform, Toggle) should not be classified as an SQL as it creates an unreasonable financial burden to deliver a service that is already readily available via other means (i.e. direct subscription with the OTT service provider).

- 8.1.5 Accordingly, Mediacorp would like the IMDA to clarify and confirm that an OTT service, such as Mediacorp's Toggle, are expressly excluded from the CCM and that the CCM does not apply to Mediacorp's Toggle.

- 8.1.6 In this regard, Mediacorp highlights that Toggle operates in the same manner as, for example, Netflix. Mediacorp understands that Netflix, who operates no differently from any other OTT provider, is not licensed as a Subscription Television Licensee. At the same time, most of the content which is produced, commissioned, acquired or otherwise obtained by Netflix is unlikely to be made available on any of the Relevant Platforms - Netflix has published a list of more than 850 titles that are streamed exclusively on Netflix and has widely publicised that it is committed to providing more original shows. Indeed, Netflix's ability to produce original content which is exclusive to its platform has been touted as a major reason for its success and ever-increasing subscriber numbers and all with the benefit of exclusive content that it does not need to make available to other players under the CCM. With respect to CCM and OTT, Mediacorp submits that local OTT providers such as Mediacorp's Toggle should be treated no differently from Netflix.
- 8.1.7 In fact, over and on top of what we have expressed above, Mediacorp respectfully highlights that the definition of "Relevant Platform" under the CCM as a managed network over or using any one or any combination of the following: (i) hybrid fibre-coaxial; (ii) optical fibre; (iii) the Asymmetric Digital Subscriber Line, has become obsolete. Singtel had shut down its ageing ADSL network more than one year ago in April 2018 while StarHub has announced that it will cease the provision of cable services after 30 June 2019. With two out of the three Relevant Platforms ceasing to exist, and it is also very likely that such managed platforms / networks will also migrate to the OTT environment, it is necessary for the IMDA to undertake a complete review of the relevance of the CCM and whether it should be fundamentally revised or removed completely to align with the changing media landscape.
- 8.1.8 Given the above, Mediacorp urges the IMDA to remove the CCM entirely and if the IMDA were to continue to keep the CCM in the Converged Code, then we would ask IMDA to clarify that the CCM does not apply to all OTT providers (including Subscription Television Licensees that operate on unmanaged networks).

8.2 Application of the Cross-Carriage Measure to Content of All Genres

Question 9:1: *IMDA invites views and comments on continuing to apply the CCM to content of all genres.*

- 8.2.1 Mediacorp submits that its comments as set out in Section 8.1 above would equally be applicable to this Question 9:1.

8.3 Offering OTT Services that Contain Qualified Content ("QC") on a Standalone Basis

Question 9:2: *IMDA invites views and comments on the proposal to require the SQL to offer the cross-carried subscribers access to the QC on its OTT platform, if part of the QC is on the Relevant Platform, on non-discriminatory basis i.e., on the same price and terms offered to the SQL's customers.*

- 8.3.1 Our comments in Section 8.1 are applicable herein. In fact, Mediacorp reiterates that the CCM should not apply to OTT TV providers whether as SQL or otherwise. The policy intent is to catch the situation applicable to the Relevant Platforms and the Qualified Content. OTT should be excluded from the CCM wholly.
- 8.3.2 If the IMDA is concerned about circumvention of the CCM by Pay TV providers in the manner described, then perhaps the recourse and principles that should be applied would be with respect to bundling instead of an expansion of the CCM.

8.4 Coverage Obligations to Complement the Existing Anti-Hoarding Provisions

Question 9:3: *IMDA invites views and comments on the proposal to introduce coverage obligations to complement the existing anti-hoarding provisions.*

- 8.4.1 At paragraph 9.11 of the Consultation Paper, the IMDA has proposed to (a) require FTA TV providers with exclusive rights to Category A programmes to broadcast the entire event live ("**Live Broadcast Obligation**"); and (b) for Category B programmes, FTA TV providers are required to broadcast the entire event within 48 hours (collectively "**Coverage Obligations**").
- 8.4.2 Mediacorp strongly disagrees with the proposal to introduce the Coverage Obligations, which are far too onerous and may be near impossible to comply with in any case.
- 8.4.3 To assess the practical impact of the IMDA's proposal, it is important to recognise that the multi-sport events identified as Category A programmes, i.e. Summer Olympic Games, Asian Games, Commonwealth Games and Southeast Asian Games (collectively the "**Games**") are characterised by multiple sporting events taking place concurrently. The imposition of a Live Broadcast Obligation must consider the following:
- (a) Mediacorp would need to essentially shut off all regular programming on its FTA channels (including news) just to carry the entire Category A programmes live. Mediacorp highlights that its group of companies operate six FTA TV channels which are mass market channels that carry many programming obligations under its licence. Mediacorp also has wider obligations to its various stakeholders, including its audience and commercial partners, which the IMDA should have regard to.
 - (b) Even if Mediacorp were to shut off all regular programming, for events such as the Olympics with so many events taking place live at the same time, it is still not possible to broadcast the entire event live with Mediacorp's current stable of FTA channels. Mediacorp respectfully submits that it is not practical, possible nor reasonable for Mediacorp to establish new FTA TV channels to meet this obligation. Even though the proposed policy allows for the FTA TV licensee to conduct delayed broadcast where there are simulcast events, this provision does not help with events, such as the Olympics, which have so many simulcast events that even the delayed broadcast will also face backlog.
 - (c) Live broadcasting must take into consideration the vagaries of events due to bad weather, extra time or other delays, which will cause disruptions to the broadcasting schedule. The need to concurrently broadcast multiple events live on multiple channels will exacerbate the implementation difficulties for Mediacorp.
- 8.4.4 As a matter of policy, Mediacorp questions the necessity of the Coverage Obligations. Mediacorp respectfully submits that alleged problem of the failure to broadcast Categories A and B programmes in a timely manner and of sufficient coverage is exaggerated by self-interested parties. Mediacorp invites the IMDA to engage it on a case-by-case basis where the IMDA has identified actual concerns about Mediacorp's coverage requirements for specific events.
- 8.4.5 Mediacorp submits that the solution cannot be the current broad-brushed proposal that fails to take into consideration the characteristics of the specific programme (including the timing of events, the number of events taking place simultaneously and the public interest in watching the event live). The reality is that there will not be enough public interest in watching ALL events live, to justify the costs incurred by Mediacorp to meet the excessive Coverage Obligations that simply assumes that there is public interest.
- 8.4.6 The existing anti-siphoning requirements under Sub-section 2.6.2.1 of the MMCC already set out the principles by which Mediacorp will be deemed to be hoarding – Mediacorp should be allowed some flexibility and commercial discretion to decide how it will meet its anti-hoarding obligations within these parameters. By way of example, in the last Olympics 2016, Mediacorp

had taken the initiative to rope in across channels the bandwidth to carry as much as possible to the tune of what Singapore would generally want to have access to and ensure that Team Singapore obtained maximum coverage – such as the extensive coverage Mediacorp did of Joseph Schooling's winning swim.

- 8.4.7 In summary, Mediacorp reiterates that the proposed Coverage Obligations are excessive and to implement them would in fact be against the public interest. FTA TV providers should be allowed some flexibility and commercial discretion to decide how it will meet its anti-hoarding obligations within the parameters that are already set out in MMCC.
- 8.4.8 Please also see our further representations and submissions in the Confidential annexure.

9. PART XI – ADMINISTRATIVE AND ENFORCEMENT PROCEDURES

9.1 Introduction of the Reconsideration Process to Media Licensees

Question 11:1: *IMDA invites views and comments on the introduction of the reconsideration process to media licensees on IMDA's decisions on matters pertaining to competition and consumer protection.*

- 9.1.1 Mediacorp supports the IMDA's proposal to align the decision and appeal process between the TCC and MMCC under the Converged Code, in recognition of the increased convergence of the telecommunication and media markets.
- 9.1.2 In particular, Mediacorp views the IMDA's proposal of introducing the reconsideration process for media-related decisions as a positive one, as this provides media licensees an additional option to engage the IMDA on its decision instead of having to go directly to the Minister to appeal.

9.2 Dispute Resolution

Question 11:2: *IMDA invites views and comments on the broad changes to the dispute resolution process under the Converged Code and to set out the detailed dispute resolution procedures in a separate set of guidelines.*

- 9.2.1 Mediacorp agrees with the IMDA's proposal to harmonise the dispute resolution processes. Moving forward, disputing parties will only have to be concerned with a single dispute resolution process, especially for disputes involving both the telecommunication and media markets.

10. PART XII – COMPETITION IN A DIGITAL ECONOMY

10.1 Business Models and Market Changes

Question 12:1: *Do the above observations about business models and market changes resonate with your experiences in the digital economy? Do you think that these business models are here to stay or are these developments likely to only remain in the short to medium term?*

- 10.1.1 Mediacorp broadly agrees with the IMDA's observations about the business models and market changes in its Consultation Paper. Mediacorp takes the view that the developments and the new business models arising from the growth of the digital economy are likely to remain in the long-term, with the scale of transformation drastically intensifying. In particular, Mediacorp highlights below the key trends that are driving, and will continue to drive, the digitalisation of the media industry.
- 10.1.2 From the consumer side of things, due to an increased mobile Internet usage worldwide, there has been a significant change in consumer behaviour and expectations. Consumers now demand for access to media content from across the world, anywhere and at any time. The change in how media is consumed is the key driver of media players' digitalisation of media products and services, diversification of media channels and expansion into new industries and markets transcending geographic locations.
- 10.1.3 From the business side of things, technological advances have also transformed the way in which businesses are conducted in the media industry. To illustrate, media players are now able to tap on the value of customer relationships by offering content curation and enhanced customer experience e.g. by using data to provide personalised services and products. Technology has also accelerated the way in which content is produced and delivered to consumers, particularly through the Internet and mobile applications. It also means that data will increasingly become a source of market power, as the access to customers and their data will drive the ability to offer personalised products.
- 10.1.4 Based on the above, given how the consumer technology has permeated societies and influenced people's lives in almost every aspect, it is undeniable that these developments are here to stay, at increasing speed and scale of disruption.

10.2 Competition Policy and Philosophy in the Digital Economy

Question 12:2: *What competition policy and philosophy should sectoral regulators adopt in the digital economy?*

- 10.2.1 Mediacorp submits that sectoral regulators should adopt a flexible and forward-thinking approach in enforcing competition in the digital economy. As the digital economy is constantly changing, the regulatory system in place ought to be amenable to change in order not to stifle innovation and the dynamism of the digital economy.
- 10.2.2 At present, Mediacorp takes the view that the current regulation of the media market is not sufficiently flexible and fails to take into account the realities on the ground. Under the MMCC, traditional media players and local-based players are subject to more regulation and scrutiny than their OTT / digital counterparts. In this respect, Mediacorp cautions against the current indiscriminate and inflexible regulation of traditional media players without a proper analysis of the prevailing state of the media market, which has fundamentally changed in recent years. It is unfair for traditional media players to bear the brunt of additional obligations, especially when the market is fundamentally changing into a flourishing one with lower barriers to entry, increased innovation and more robust competition. It is equally unfair for local OTT players to be subject to licensing and other regulatory requirements but not their foreign counterparts, when both sets of players are essentially offering the same type of services over similar platforms to consumers in Singapore. To this end, Mediacorp submits that all media players should be similarly regulated based on an objective set of principles. Any additional regulations

or obligations should only be imposed where necessary, after a proper market review and impact assessment has been conducted.

- 10.2.3 Sectoral regulators must also ensure that the market definition analysis accounts for the unique characteristics of the digital economy that are now present in the media market. These include multi-sided markets, network externalities, the presence of strong economics of scope, the importance of innovation and the role of data. Mediacorp highlights the need to ensure that the market definitions used are sufficiently forward-looking and are constantly updated so as to take into account any future changes, thus accurately reflecting the prevailing state of the media market.
- 10.2.4 Additionally, with the advent of smartphones and pervasive connectivity, consumers are now increasingly digitally literate. With technology at their fingertips and access to an abundance of information and opportunities, consumers are no longer passive recipients of services and products. Consumers are now more in control of their media content consumption and have the freedom to decide where and what to consume. This shift to a consumer-centric market has resulted in more consumers switching from the traditional television broadcasting to new media, such as OTT media services. As such, Mediacorp emphasises the need for sectoral regulators to have regard to these changes (i.e. the increase in consumers' buyer power) and to adjust their enforcement policy accordingly.
- 10.2.5 Lastly, Mediacorp respectfully submits that the IMDA should adopt a forward-looking approach when developing the Converged Code, and in doing so, recognise that an ex ante regulatory regime may no longer be appropriate in the media market. This has been discussed in detail in section 3 above.
- 10.2.6 With the removal of the need for ex ante regulation for the media market, and likely the telecommunication market within the medium term of three to five years, Mediacorp suggests that a sectoral competition code may no longer be necessary. Instead, the ex post competition regulation may be shifted to the purview of the generic competition regulator which is increasingly dealing with competition issues in the digital and e-commerce environment.

10.3 Key Traditional Competition Concepts in the Digital Economy

Question 12:3: *What are some of the key, traditional competition concepts that need to be reviewed and relooked in a digital economy? For example:*

- a) Taking account of non-price dimensions in competition assessments;*
- b) Data as an input and qualifying as an essential resource or facility; and*
- c) New bottlenecks that might be pivotal to affording a platform market power;*

- 10.3.1 Mediacorp broadly agrees with the issues raised by the IMDA in Part XII of the Consultation Paper. In this respect, Mediacorp has further identified certain key established concepts that should be relooked at and refined.
- 10.3.2 First, Mediacorp submits that the analysis of the market definition may require adaptation. As submitted earlier, the market boundaries are increasingly blurred in the digital economy, as opposed to traditional economies. Importantly, digital markets are often multi-sided in nature. In media markets, the multi-sidedness is reflected by the two distinct groups of participants, the consumers (i.e. the audience) and the advertisers. As noted in economics literature, different approaches may be used to capture the structure of multi-sided markets, including defining separate markets for each market side or defining a single market encompassing all customer groups of a platform. It is important that the IMDA consider these issues carefully when defining markets in the digital economy.
- 10.3.3 Second, the assessment of market power should be revisited in the context of the digital economy due to the rise of data, such that superior access to consumers' data may be indicative of market power. Mediacorp agrees with the IMDA's observation at paragraph 12.10 of the Consultation Paper that data may be regarded as a key input as the use of AI becomes more pervasive, resulting in "data network effects" that operate to entrench the first mover advantage

in the technology platform market. A point to note here is the potential introduction of a data portability requirement in Singapore, which is currently being studied by the Personal Data Protection Commission and Competition and Consumer Commission of Singapore. While the aim of introducing the right to data portability is to level the playing field by reducing the switching costs when consumers turn to other service providers and to allow other market players to have access to, so as to leverage on, consumer data, Mediacorp submits that the data portability is not a panacea in preventing the entrenchment of the incumbent's market power. This is because the purported benefits will only be realised if consumers choose to exercise their right to data portability. However, consumers may be unwilling to invoke this right in the first place. In practice, in deciding whether to switch service providers, consumers do not only consider the portability of data, but also other factors, such as the convenience of subscribing to a bundle of services through a single service provider, as well as the value of a particular platform attributed by its usage levels.

- 10.3.4 Furthermore, as submitted at paragraph 10.2.4 above, the digital economy is uniquely consumer-centric. Moving forward, it is therefore pertinent to have greater regard to consumer behaviour when assessing market power, such as whether they are biased towards default options and their need for instant gratification, thus reflecting market realities.
- 10.3.5 Third, as market players diversify their service offerings and participate in various parts of the value chain, it is important to consider the impact of tying and bundling, especially where they involve dominant players. The traditional standards of establishing abusive conduct such as predatory pricing will also need to be relooked. As recognised by the IMDA at paragraph 12.7 of the Consultation Paper, online channels allow for rapid price changes as well as personalised pricing. This creates difficulties in determining whether a Dominant Entity is engaging in predatory pricing as the relevant benchmark is unclear. There may also be instances whereby the provision of additional services by a social media platform entails very low variable costs. The traditional test of pricing below AVC is therefore not appropriate as predatory pricing may never be established, or only in very rare instances. Conversely, the fact that a particular service is provided to consumers for free does not necessarily mean that no price is charged at all. Service providers may in fact profit from charging for premium features or by commoditising personal data. Given the inability of the traditional frameworks to take these unique features of the digital economy into consideration, Mediacorp submits that moving forward, it may be preferable to adopt a more flexible approach, instead of prescribing cost benchmarks that may not be applicable to the digital economy.
- 10.3.6 Fourth, Mediacorp notes that in this digital era, the advertising industry is moving towards a digital advertising market and online advertising. It was recognised by the UK's House of Lords Select Committee on Communications in its report, *UK Advertising in a Digital Age*, that advertisers, including media owners, are increasingly reliant on a few large digital intermediaries to serve as their online advertising platforms. It was noted that digital intermediaries, such as Google and Facebook, are present throughout the entire advertising value chain and themselves dominate the digital advertisement market. This leaves advertisers vulnerable to these digital intermediaries abusing their dominant positions by affording preferential treatment to its own advertisements, similar to the *Google Search (Shopping)* case in the EU. In *Google Search (Shopping)*, Google was found to have leveraged its dominant position in the online search market for comparison shopping services by reserving the preferential placement of comparison shopping results for itself on Google's generic search page. This could potentially be the case in the advertising market, where digital intermediaries favour their own advertisements over third party advertisements. Mediacorp therefore urges the IMDA to recognise that even in the advertising market, technology firms are now dominant players.

SECTION D – CONCLUSION

Mediacorp stresses the importance of addressing the issues raised in this response so as to ensure that all market players compete on a level playing field, thereby enabling them to operate their businesses effectively and in a commercially viable manner.

Mediacorp appreciates the opportunity to respond to the Public Consultation and trusts that the proposals and suggestions provided will assist the IMDA in developing the Converged Code. Mediacorp would be happy to meet with and discuss the various issues raised further with the IMDA at its convenience. The primary contact for this purpose at Mediacorp is:

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