

SINGAPORE PRESS HOLDINGS LTD

Submission to the Info-communications Media Development Authority of Singapore on the Public Consultation on a Converged Competition Code for the Media and Telecommunication Markets (the "Proposed Converged Code")

14 May 2019

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14 May 2019

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Dear Sirs

PUBLIC CONSULTATION ON THE PROPOSED CONVERGED CODE

1. Introduction

- 1.1** Singapore Press Holdings Ltd ("**SPH**") welcomes the opportunity to submit its comments on the Consultation Paper for a Converged Competition Code for the Media and Telecommunication Markets (the "**Consultation Paper**") issued by the Info-communications Media Development Authority (the "**IMDA**") on 20 February 2019.

2. Summary of major points

Observations relating to major trends

- 2.1** At the outset, SPH considers that it is critically important to address the prevailing industry dynamics when considering the convergence and revisions of the existing competition codes for media and telecommunications. Media markets have been increasingly digitally disrupted over the last decade, and operate in a very different way to how they originally operated when the Media Market Conduct Code ("**MMCC**") was first introduced. Publishers and traditional media companies face increasing competition from digital and social media platforms such as Facebook¹ and Google², which operate on a largely unregulated medium in both disseminating news and information on the one hand, and competing for advertising clients on the other hand. SPH considers that there exists a regulatory imbalance whereby traditional and mainstream media companies are subject to additional regulatory burdens that do not apply to online media platforms, thus distorting competition in the industry.
- 2.2** As a general point, SPH submits that a broader review of the media markets in the context of a digital economy is merited, and is likely to generate benefits to media markets over and above the static convergence of the existing industry competition codes. In this regard, SPH submits that an inquiry similar to that performed in the United Kingdom³ and Australia⁴, which explores the impact of digital platforms on traditional media companies, would be

¹ Facebook also owns Instagram, another major social media platform.

² Google also owns Youtube, which is a major platform for videos.

³ The Cairncross Review: a sustainable future for journalism, 12 February 2019 (the "**Cairncross Review**").

⁴ Preliminary Report from the Australian Competition and Consumer Commission's Digital Platforms Inquiry, December 2018 (the "**ACCC Preliminary Report**").

timely and relevant in order to level the playing field between all media content providers, irrespective of delivery medium.

Responses to the questions in the Consultation Paper

- 2.3** Against the backdrop of SPH's broader comments above, SPH has the following specific comments in response to the questions in the Consultation Paper.
- 2.4** With regard to Part II and XII of the Consultation Paper, SPH agrees with IMDA's observations relating to the diminishing reach of traditional media platforms. SPH is of the view that in light of the growing dominance of digital platforms, platform neutrality should be the guiding principle for sectoral regulators like IMDA; this ensures a level playing field for all industry players regardless of platform. SPH submits that IMDA should take into account the central role of data and the economics of digital platforms, as well as increasingly global competition, for competition policy in the digital economy.
- 2.5** SPH is of the view that aside from pure competition policy, IMDA should take into account the role of proper journalism to keep the public informed regarding current affairs, and also as a guardian against fake or sensationalist news. In SPH's view, these policy goals cannot be achieved via pure competition policy and it has been noted in other jurisdictions that there currently exists a market-failure in the supply of public interest news.
- 2.6** With regard to Part III of the Consultation Paper, SPH agrees with merging the regulatory principles.
- 2.7** With regard to Part IV of the Consultation Paper, SPH disagrees with the proposal to lower the thresholds for both the presumption of significant market power for media markets as well as extending the definition of significant market power to cover facilities. Additionally, SPH suggests reducing regulatory costs for industry players by eliminating the current *ex ante* duties.
- 2.8** With regard to Part V of the Consultation Paper, SPH generally agrees that harmonising the general test for anti-competitive conduct as well as the wording of the specific instances of anti-competitive conduct helps bring clarity and consistency to industry players and has the added benefit of making the principles more consistent with general competition law. SPH also has no issue with the proposed amendments to the provisions relating to unfair methods of competition. However, SPH urges IMDA to reconsider the following proposed amendments:
- 2.8.1** with regard to predatory pricing, it will be useful to understand the circumstances in which IMDA would employ different cost measures. This could possibly be done in separate detailed guidelines;
- 2.8.2** with regard to extending the prohibition against predatory network alteration to media markets, SPH notes that this may potentially give rise to unintended consequences in the future and is of the view that a better approach would be to craft a nuanced solution when developments in the media market warrants it; and

- 2.8.3** with regard to extending the prohibition against vertical market allocations to media markets, SPH notes that this deviates from the traditional understanding of the generally pro-competitive nature of vertical agreements and is of the view that this extension is not necessary or appropriate.
- 2.9** With regard to Part VI of the Consultation Paper, SPH submits that certain consumer protection provisions from the Telecom Competition Code ("TCC"), as detailed in Section 7 of our response, will not map over to media markets cleanly. SPH agrees with the proposal to remove the anti-avoidance provisions.
- 2.10** With regard to Part VII of the Consultation Paper, SPH generally welcomes the move to streamline and harmonise the procedures and timelines for merger review in the TCC and the MMCC. However, SPH is of the view that greater clarity as to the appropriate regulator (i.e. IMDA or the CCCS) for a notification is still required. Additionally SPH urges IMDA to reconsider the following proposed amendments:
- 2.10.1** Notification and approval. SPH is of the view that imposing extra notification and approval requirements for acquiring an ownership interest in a Regulated Person is unnecessary and that the current approval and notification system is sufficient.
- 2.10.2** Threshold for short form consolidations. SPH is of the view that the threshold to qualify for a short form consolidation should remain at 40 per cent. and not be lowered to 30 per cent.
- 2.11** With regard to Part VIII of the Consultation Paper, SPH agrees with the proposal to limit resource sharing to infrastructure that is considered an "Essential Resource" under the MMCC. However, SPH urges IMDA to narrow the scope of what is required for an effective sharing of infrastructure to avoid undue compliance costs for industry players.
- 2.12** With regard to Part IX of the Consultation Paper, SPH agrees with the proposals in the Consultation Paper.
- 2.13** With regard to Part X of the Consultation Paper, SPH has no substantive comments on the proposed changes.
- 2.14** With regard to Part XI of the Consultation Paper, SPH generally agrees with the proposed changes to harmonise the administrative and enforcement procedures across both codes. However, SPH urges IMDA to reconsider the following points:
- 2.14.1** Reconsideration process. SPH is of the view that subjecting the appeal procedure at the Minister's discretion creates uncertainty in the procedure. SPH submits that a clear sequential appeal procedure would be preferable (i.e. the Minister should only make a decision after IMDA's decision).
- 2.14.2** Dispute resolution process. SPH is of the view that guidance as to when IMDA will expedite the submission of the Petition should be articulated for certainty.

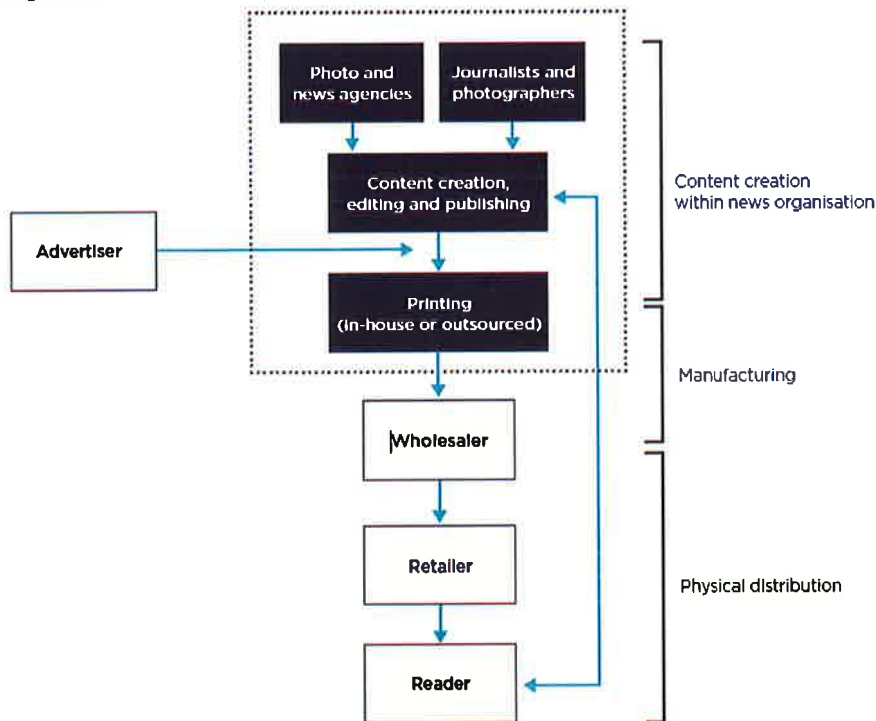
2.14.3 Structural separation. SPH is of the view that IMDA should retain the power to order structural separation, but parties should have the right of appeal to the Minister. Additionally, SPH proposes that guidelines relating to how the power of structural separation will be exercised should be provided.

3. Disruption in the media markets caused by digital platforms

3.1 SPH's observations below relate generally to Part II and Part XII of the Consultation Paper first.

3.2 At the outset, SPH notes that advertising revenue critically underpins the business models of media companies and the ability to deliver content (irrespective of delivery medium or publishing platform). Traditional media companies such as newspapers and magazines rely on advertising revenue from print advertisements in order to fund the production of news and journalistic content. Generally, traditional media companies perform three functions - content creation, manufacturing, and distribution. The traditional newspaper value chain is stylised below in figure 4.1 from the ACCC Preliminary Report. In the past, newspaper and magazine publishers generated the vast majority of their revenue by selling space on their publications for advertisements or classifieds. As seen in figure 4.1 below, this took place after the content creation stage and before the manufacturing and subsequent distribution of their publications.

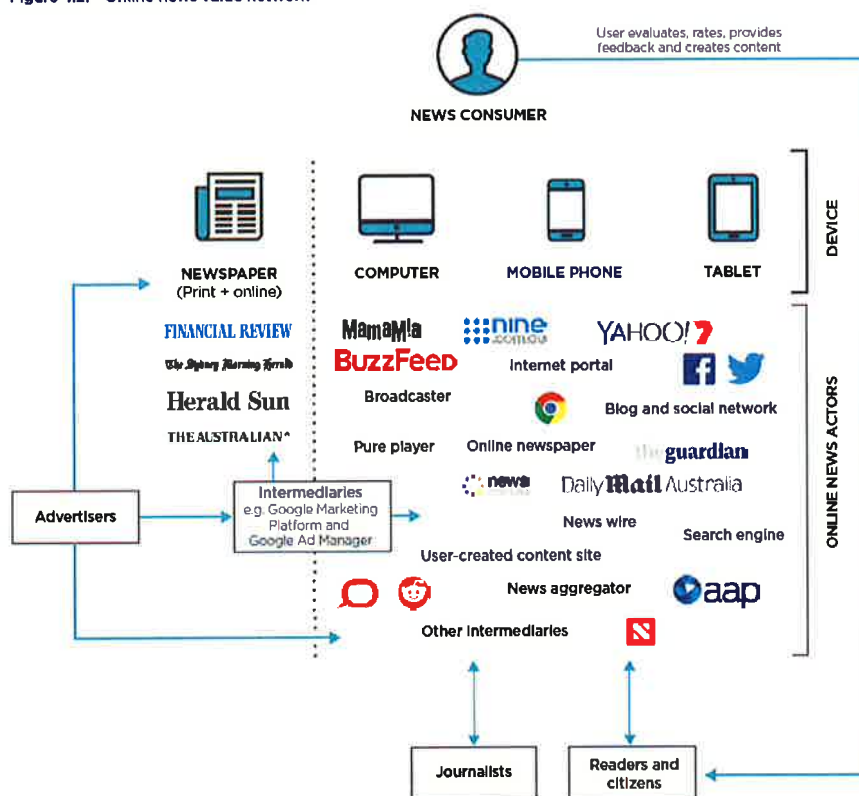
Figure 4.1: Traditional newspaper value chain



Source: Extracted from figure 2.1 'Traditional newspaper value chain' in OECD, 'News in the Internet Age' (2010), p. 56.

3.3 In recent years, the advent of the internet and new technological advancements has fundamentally changed the way consumers access news content, information and entertainment. As observed by the Cairncross Review, “[t]he news publishing industry is now in the throes of a technological revolution”.⁵ Consumers now have a variety of channels and mediums to access the news and the nature of the traditional news value chain has evolved into a value network. Advertising revenue has now increasingly shifted online, thus increasingly marginalising certain steps in the traditional value chain above such as printing and distribution of hard-copy newspapers. This has led to a decline in advertising revenue for traditional media companies and has led to media companies adapting to an online ecosystem.⁶ Advertisers have naturally followed this trend by shifting their advertising revenue online in order to go where consumers spend their time. As the ACCC Preliminary Report states, advertisers are going where ‘the eyeballs’ are.⁷ In this regard, SPH refers to figure 4.2 of the ACCC Preliminary Report (below) that summarises how the online news value network has evolved in Australia and illustrates how advertisers are shifting their investments online.

Figure 4.2: Online news value network



Source: Extracted from figure 3.7 'A stylised online news value network' from OECD, 'News in the Internet Age' (2010), p. 87. Figure has been updated and adjusted as relevant to the Australian context and matters of relevance to the Inquiry.

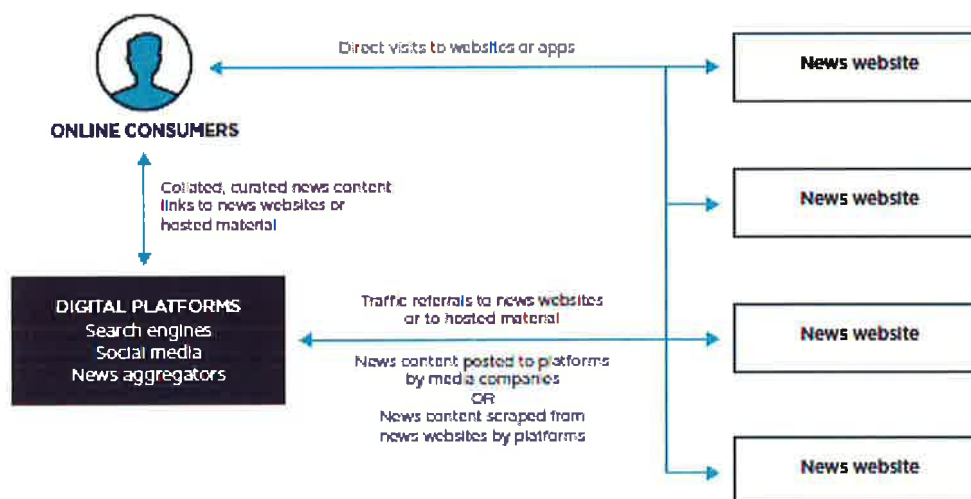
⁵ Cairncross Review at p 39.

⁶ In this regard, SPH notes that SPH's online initiatives have been recognised at paragraph 16 of Annex A of the Consultation Paper.

⁷ ACCC Preliminary Report at p 67.

- 3.4** SPH is of the view that these observations are equally applicable to trends in Singapore; the Reuters Institute Digital News Report 2017 (the “**Reuters Report**”)⁸ estimates that the majority (85 per cent.) of Singaporeans reported going online for news, with 61 per cent. obtaining news from social media.⁹ Only slightly more than half turn to print (53 per cent.) and TV (57 per cent.) for news. Three-quarters of Singaporeans access news on their smartphones. Despite their preference for digital news, only a small percentage (16 per cent.) was willing to pay for online access.
- 3.5** In light of the abovementioned trends, in response to Question 2:1, SPH agrees with the observations regarding the diminishing reach of traditional media platforms at paragraph 2.10 of the Consultation Paper.
- 3.6** One of the most significant trends in recent years is the meteoric rise of digital platforms like Google and Facebook. Digital platforms now form one of the key avenues by which consumers get the news. Figure 1.6 from the ACCC Preliminary Report summarises how the modern consumer reaches new websites via digital platforms.

Figure 1.6: How consumers access news online



- 3.7** Google and Facebook have evolved within this space to be dominant in online advertising. Broadly speaking, online advertising comprises classified advertising, display advertising and search advertising. These modes of online advertising can be further broken down into general advertising and specific advertising.¹⁰ The recently published Cairncross Review

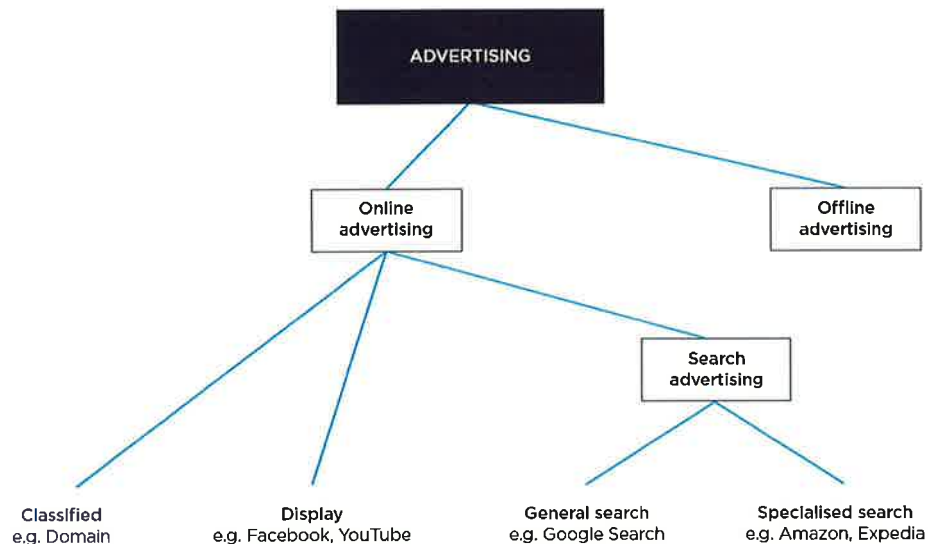
⁸ <http://www.digitalnewsreport.org/survey/2017/singapore-2017/>

⁹ According to the Reuters Report, the top social media brands for news are Facebook (55 per cent.), WhatsApp (38 per cent.), YouTube (26 per cent.), Instagram (9 per cent.) and Facebook Messenger (8 per cent.).

¹⁰ Search advertising can be divided into two types—general and specialised. General search advertising is the advertising that appears on the search results of general search engines, such as those of Google and Bing. Specialised search advertising is the advertising that appears alongside the search results of search engines that perform more specialised functions, such as the search engines on the platforms of Amazon or Expedia (which are also examples of vertical search).

and the ACCC Preliminary Report both highlight how Google and Facebook have captured a large proportion of online advertising revenue (excluding classified advertising). The ACCC Preliminary Report estimates that for every \$100.00 spent by advertisers on digital advertising, \$47.00 goes to Google and \$21.00 goes to Facebook. The remaining \$32.00 is split among all other websites.

Figure 2.5: The varieties of advertising



3.8 One of the key reasons that Google and Facebook have been able to become so dominant in online advertising is their access to a considerable amount of user data, which cannot feasibly be replicated by traditional media providers. Google's and Facebook's business model for consumer facing services, such as Google Search, YouTube, the Facebook platform and Instagram, is to charge a zero monetary price to consumers in return for the collection of customers' data, and the subsequent ability to sell targeted advertising opportunities. Users effectively pay for these services by allowing Google and Facebook to collect and use their data and by viewing advertisements.¹¹ This is a cross-subsidy, with individual users being charged a zero monetary price so as to enable them to increase the revenue earned from advertisers. By not charging a monetary price to consumers, Google and Facebook are able to attract a high number of consumers to the platform. This increases the revenue that they are able to obtain from advertisers because:

3.8.1 by gaining the attention of more consumers, Google and Facebook increase the supply of advertising opportunities available to be sold;

Classified advertising can also be divided into general and specific services. A classified advertising service is said to be specific if it focuses on a specific type of product.

The ACCC Preliminary Report uses the term 'display advertising' to refer to a residual category of online advertising—in particular, online advertising other than classifieds and search. Display advertising includes banner advertisements, video advertisements, as well as advertisements that appear on social media platforms.

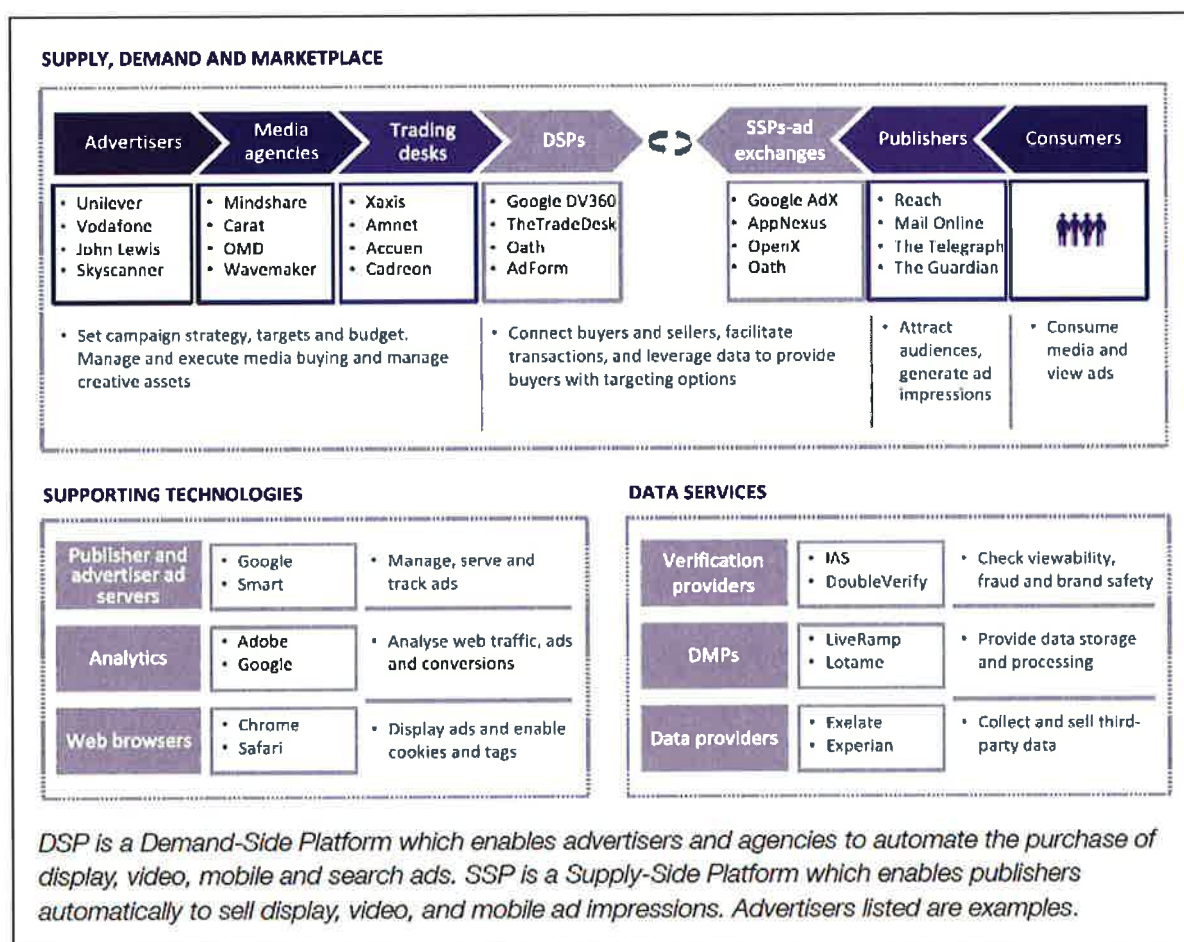
¹¹ See in general, the ACCC Preliminary Report from pp 38 to 40.

- 3.8.2** a higher number of consumers increases the quantity of consumer data accessible to Google and Facebook, allowing them to provide higher quality ad targeting services;
 - 3.8.3** a higher number of consumers increases the quantity of traffic for an advertising campaign, which reduces the average fixed costs of advertising, making the platform more attractive to advertisers.
- 3.9** As Google collects more data on users, it is able to improve the relevance algorithm of its search service, which allows it to attract more users. Similarly, if Facebook obtains more data on users, it may be able to improve the quality of its news feed algorithm, which, in turn, may allow it to attract more users. These effects give rise to positive feedback loops.
- 3.10** This model ensures that Google and Facebook are able to leverage on its tremendous data and dominate search and display advertising. Specifically, in the context of display advertising, Google and Facebook also have market power across the value chain when it comes to the intermediaries services used for programmatic advertising.¹² A stylised representation of the value chain, as used in the Cairncross Review, for programmatic advertising is produced below.¹³

¹² Programmatic advertising is the automated buying, selling and serving of advertising, which occurs in real time and allows advertisers, publishers and intermediaries to utilise various data sources for targeting users. It involves the use of different interfaces, advertising technology (ad tech) and software to facilitate the advertising process. Both display ads and search ads can be purchased programmatically.

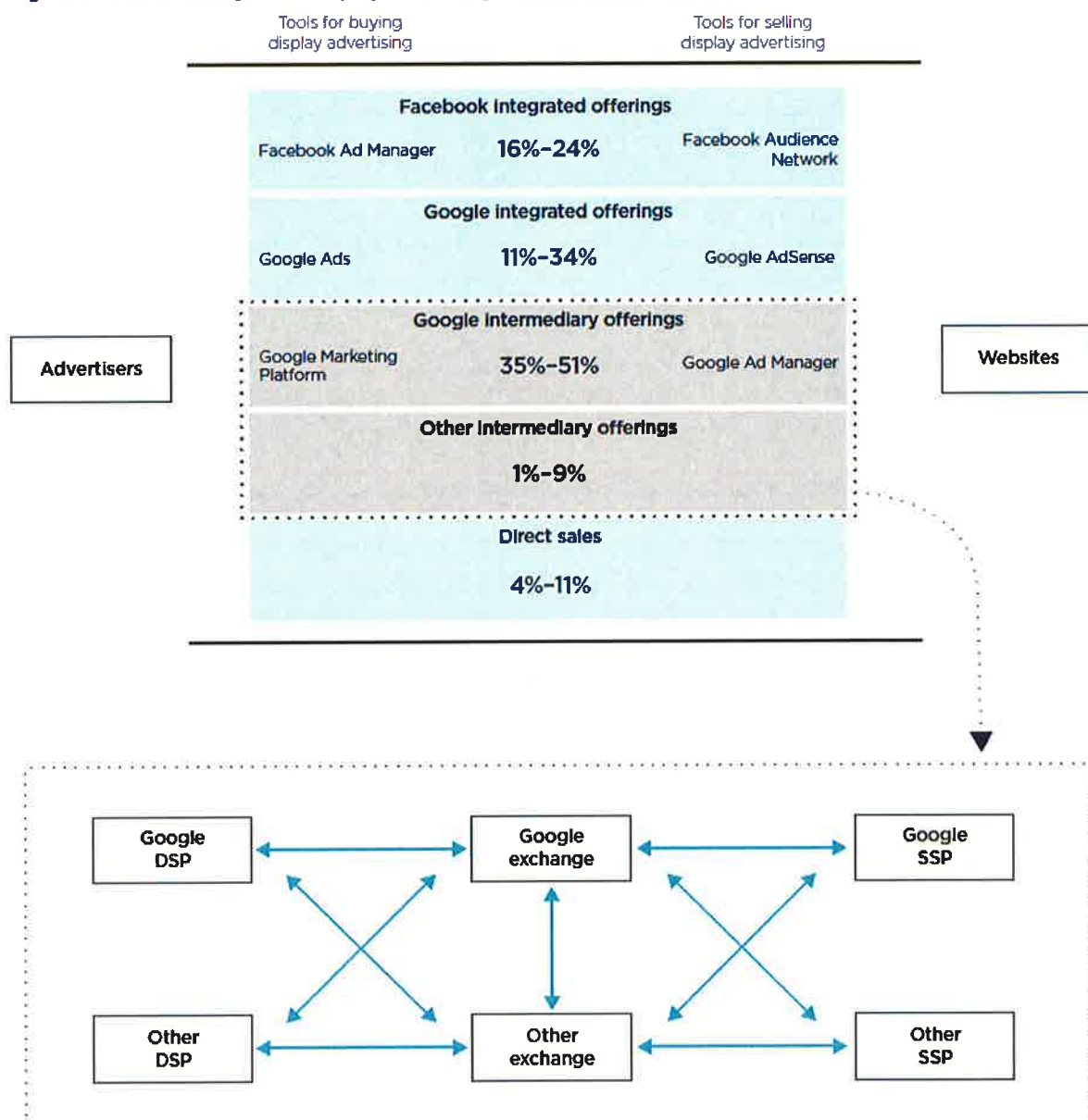
¹³ Cairncross Review at p 59.

Programmatic online display advertising value chain – simplified and generalised²⁰¹



3.11 The ACCC Preliminary Report has prepared Figure 3.3 below to give a sense of how dominant Google and Facebook are across the value chain for programmatic advertising, and display advertising in general.

Figure 3.3: Channels by which display advertising is purchased in Australia



The regulatory imbalance between digital platforms and traditional media companies

- 3.12** The trends highlighted above illustrate how the dynamics of online advertising have been disrupted by digital platforms. The strain on publishers and traditional media companies globally (including SPH) has been acute. These differing market dynamics make it increasingly difficult to compete with the scale and targeted advertising offered by these tech giants, which have an enormous amount of data about their users due to their platform's global reach.
- 3.13** Against this backdrop of disruption, any meaningful review of the MMCC has to recognise that powerful digital platforms such as Google and Facebook are threats to competition in

light of the platform-publisher imbalance in terms of access to data and their impact on the ability of traditional media companies to fund the development of content.

- 3.14** SPH is of the view that it currently operates in an environment of uneven regulation, when compared to the online digital platforms. To illustrate, SPH is classified not only as a Regulated Person under the MMCC¹⁴, but has also been designated a Dominant Person under the Media Authority of Singapore (Regulated Persons) (Dominant and Non-Dominant Positions) Notification 2003 ("**Dominance Notification**") in respect of the newspaper publishing services industry and is bound to comply with the relevant regulations applicable to those classified as such, while digital platforms such as Google and Facebook have not been classified and are not subject to any of the above regulations.
- 3.15** SPH considers that the asymmetric application of regulation in this manner is not reflective of prevailing industry dynamics and competition. It places an additional regulatory burden on traditional media companies like SPH that constrains their ability to compete with digital platforms. As an example, SPH has a duty to provide access to advertising capacity to any media licensee on reasonable and non-discriminatory prices, terms and conditions in the market for newspaper publishing services under section 6.3.3 of the MMCC. A similar condition is proposed in the Proposed Converged Code. However, SPH submits that there is no compelling policy, or competition-related, reasons why SPH should be subject to such obligations when digital platforms are not.
- 3.16** In addition, SPH highlights that digital platforms are beginning to overlap with the functions of traditional media companies, but yet are not subject to the same regulations. As noted by the ACCC Preliminary Report¹⁵:

"Digital platforms actively participate in the online news ecosystem by performing a wide range of functions other than news referral services, some of which overlap with the functions of media companies. This means that digital platforms are considerably more than mere distributors or pure intermediaries in the supply of news and journalistic content in Australia."

...

"On balance, although digital platforms may not currently produce original news and journalistic content in the same way as Australian news media businesses, it is clear that digital platforms perform increasingly important functions that are part of the supply of news and journalistic content to Australians. That is, digital platforms have an active role in the supply of news media content in Australia and should not be regarded as pure distributors or mere intermediaries in Australian media markets."

¹⁴ "Regulated Person" is defined in paragraph 1.5(b)(xxix) of the MMCC to mean "any person specified by the Minister under section 16(3) of the MDA Act". Pursuant to the Media Development Authority of Singapore (Regulated Persons) Notification 2003, such Regulated Persons include, *inter alia*, any person who holds a broadcasting licence granted under the Broadcasting Act (Cap. 297), whether before, on or after 1 January 2003, to provide (*inter alia*) subscription nationwide television services. The Info-communications Media Development Authority (Saving and Transitional Provisions) Regulations 2016 provides for the Media Development Authority of Singapore (Regulated Persons) Notification 2003 to be in force, and deems the same to be made under section 2 of the Info-communications Media Development Authority Act 2016.

¹⁵ ACCC Preliminary Report at p 126.

Digital platforms also have considerable influence in shaping Australian consumers' online news choices. This results from the combination of digital platforms' role as online intermediaries for news content...and their media-like functions in selecting and curating content, evaluating content based on specific criteria, and ranking and arranging content for display to their users ... That is, the role of digital platforms as gateways to news media on the internet for a large number of Australians increases the impact and importance of their media-like functions on Australian media markets."

- 3.17** The regulatory disadvantage faced by traditional media companies has been observed by regulators in other jurisdictions. The ACCC Preliminary Report highlights that the uneven regulatory playing field in Australia currently prejudices traditional media companies:

*"Digitalisation and the increase in online sources of news and media content have highlighted the inconsistencies in the sector-specific approach to media regulation. This results in regulatory disparity that provides digital platforms with an unfair advantage because they operate under fewer regulatory restraints and have lower regulatory compliance costs than other media businesses when performing comparable functions."*¹⁶

Approach to regulatory reform in media markets

- 3.18** While SPH generally welcomes the convergence of competition regulations applicable to both the telecommunications and media industry, SPH considers it is important and timely for the review of such regulations to acknowledge the fundamental changes that have taken place with regard to how such markets operate (in order to prevent the convergence activity being a static merging of existing, but outdated regulations).
- 3.19** While the Consultation Paper does make reference to pertinent issues such as data network effects at paragraph 12.10, unsustainable business models funded by venture capital at paragraph 12.6, and predatory innovation at paragraph 12.9 distorting the market, further reform is required beyond the scope of the present Consultation Paper.
- 3.20** While telco services are to a large extent local, the media industry by contrast is consistently subject to competition on a regional and global basis. SPH submits that any regulation or policies governing the production and distribution of news content needs to recognise that the relevant business model is in advertising, which itself has become a race for data. In other words, any player that wields significant market power where data is concerned has sway over the future of the media industry.
- 3.21** SPH submits that IMDA ought to undertake a broader review of the codes and legislation applicable to media markets, rather than simply seeking to statically converge existing regulations.

¹⁶ ACCC Preliminary Report at p 91.

- 3.22** As to the specific questions regarding competition in a digital economy in Part XII of the Consultation Paper, in response to Question 12:2, SPH is of the view that regulatory neutrality between digital platforms and traditional media platforms should be the philosophy adopted by sectoral regulators in the digital economy. The current imbalance in regulation impedes the ability of traditional media companies to compete on a level playing field with unregulated digital giants like Google and Facebook.
- 3.23** In response to Question 12:3, SPH agrees that non-price dimensions as well as the importance of data should play a bigger role in any regulation moving forward. Additionally, tools to assess how multi-sided platforms operate as well as the importance of data as an essential resource should be key concepts that should be addressed in future competition policy.
- 3.24** SPH also recommends exploring a data portability requirement to allow media companies to access the data of its readers. In this regard, SPH notes that the Competition and Consumer Commission of Singapore (the “**CCCS**”) and the Personal Data Protection Commission have started exploring introducing a data portability requirement in a recent Consultation Paper. SPH recommends that IMDA likewise consider the viability of a data portability requirement in media markets.
- 3.25** In response to Question 12:4, in the context of the media industry, SPH is of the view that the quality of news should be a broader public interest consideration that should be considered. Proper journalism serves the important role of informing the public of crucial issues and to be the credible source in the proliferation of fake news on many social media platforms. With decreasing advertising revenue, it has become increasingly difficult for traditional media companies to sustain quality journalism. These concerns have been echoed in other jurisdictions. The Cairncross Review highlights that with the disruption caused by digital platforms, it has become difficult for traditional news media to produce quality journalism and thus there is market-failure in the supply of public-interest news. Similarly, the ACCC Preliminary Report highlights that news and journalism risk under-provision for a number of reasons, including the public nature of news and information and the general inability of commercial news media businesses to monetise societal benefits of journalism. Digital platforms have significantly altered the incentives for the production of different aspects of journalistic coverage. There are relatively poor incentives online for types of coverage that may have smaller audiences, regardless of their significant contributions to the public interest (e.g. local news, court reporting).

3.26 In the following sections, SPH responds to specific questions in Parts III to XI of the Consultation Paper.

4. Regulatory principles

4.1 In response to Question 3:1, SPH agrees with merging the regulatory principles in the Proposed Converged Code given that they are similar in both codes.

5. Dominance classification

Criteria used for dominance classification

5.1 In response to Question 4:1(a), SPH notes that the Proposed Converged Code will include a facilities-based standard of dominance. Although IMDA states it does not anticipate any media licensee to meet the standards, SPH is of the view that this standard is unnecessary in light of the reality that most new entrants for media markets are digital, and thus are unlikely to require access to facilities.

5.2 In response to Question 4:1(b), SPH notes that Proposed Converged Code will classify an entity as a Dominant Entity if the entity has the ability to exercise SMP in any market in which it provides services pursuant to its telecommunication or media licence. Specifically, in determining whether an entity has SMP, IMDA will assess whether the entity fulfils the relevant criteria as set out under Sub-section 2.2.1 of the TCC, and Sub-section 5.3 of the MMCC. In this regard, SPH, alongside other industry players, were previously specified as Dominant Entities via the Dominance Notification; this was done in the absence of a market definition assessment, a corresponding market power assessment, and without a public consultation process.

5.3 In light of the new trends in the industry as highlighted above, SPH submits that the Dominance Notification, which was issued in 2003, should no longer apply. SPH proposes that IMDA should instead withdraw the Dominance Notification and reassess in a transparent manner whether the specified Dominant Entities actually have SMP with an opportunity for parties to respond, in the light of the competition from digital platforms.

Presumption of Significant Market Power ("SMP")

5.4 With regard to Question 4:2, SPH proposes that IMDA retains the 60 per cent. threshold percentage. The lowered threshold for media markets increases the regulatory burden for SPH in new media markets and thus exacerbates the already uneven regulatory landscape traditional media companies face in an increasingly challenging advertising market dominated by online social media players. Additionally, SPH notes that the 60 per cent. threshold is in line with the present CCCS' guidelines. SPH proposes that, as far as possible, sectoral competition regimes should be aligned with Singapore's general competition law. This is because in the long run, the eventual hope is for the sectoral competition laws to converge into a unified, general competition law.

Dominance classification

- 5.5** With regard to Question 4:3(ii), SPH notes that at paragraph 4.19 of the Consultation Paper that existing Dominant Entities will continue to be classified as dominant for existing services and will have to file for a request for an exemption with IMDA. Additionally, existing Dominant Entities will have to prove whether the new service(s) they introduce fall within the market(s) in which they are dominant.
- 5.6** With regards to the requirement for an exemption, SPH repeats its proposal from above regarding the withdrawal of the Dominance Notification and a subsequent assessment of SMP. If the entity is found to be dominant after an assessment, then SPH agrees that a requirement to file for an exemption would be appropriate.
- 5.7** With regards to the requirement for current Dominant Entities to prove whether the new service(s) they introduce fall within the market(s) in which they are dominant, SPH disagrees with this approach, especially when it comes to specified Dominant Entities under the Dominance Notification, for the following reasons:
- 5.7.1** SPH notes that the market definition in the Dominant Notification itself is unclear. For example, the Dominance Notification states that SPH is dominant in the industry of newspaper publishing. This "industry" definition is potentially broad enough to capture the markets for print advertising as well as provision of news via printed newspapers. The lack of clarity regarding the "industry" definition currently already imposes regulatory uncertainty and costs. To require Dominant Entities to assess whether any new activities it conducts are within this "industry" definition would just add another layer of regulation and potentially impedes its incentive to introduce new services.
- 5.7.2** SPH also notes that the MMCC does not satisfactorily define "media market". This vague definition engenders confusion because it tends to confine the definition to traditional media. Additionally, this vague definition gives rise to further compliance costs as it makes it difficult for parties to determine whether their activities are within a media market.
- 5.8** In light of the above, SPH proposes that the Dominance Notification be either withdrawn as suggested earlier. Additionally, SPH proposes that IMDA consider clarifying the definition of "media market" in a future Consultation Paper. SPH notes that IMDA is considering holding a separate consultation for the concept of joint dominance and SPH proposes that the definition of a media market should likewise be part of that separate consultation.

Ex ante Dominant Entity duties

- 5.9** With respect to Question 4:4, SPH proposes that IMDA remove *ex ante* duties for Dominant Entities from the Proposed Converged Code. SPH notes that these *ex ante* duties places traditional media companies at a significant regulatory disadvantage compared to unregulated digital platforms.

- 5.10** More specifically, the *ex ante* duties fail to recognise that advertising revenue has increasingly shifted online where advertising takes place in extremely different ways (as described earlier). By way of example, the duty to provide access to advertising capacity unfairly burdens and limits the advertising revenue of newspapers and magazines publishers which already have extremely limited advertising space. In contrast, digital platforms that advertise online do not face similar space constraints. The difference in advertising capacity was likewise pointed out in the Cairncross Review.
- 5.11** In light of the changing dynamics of media markets and advertising practices, SPH proposes that IMDA consider removing, or at least reviewing the scope and relevance of *ex ante* duties.

6. Anti-competitive conduct

Test for discrimination

- 6.1** In response to Question 5:1, SPH agrees that a unified, effects-based test for discrimination should be used. The current test of discrimination in the MMCC, which only requires evidence of discriminatory prices, terms and conditions to provide the presence of discrimination, is out of line with general competition law principles.

Price squeeze

- 6.2** In response to Question 5:2, SPH agrees that the test should be the equally efficient operator test instead of the current reasonably efficient operator test. SPH agrees that a more objective and reasonable benchmark is welcome. SPH also agrees that not including the pass-on criterion is welcome.

Predatory pricing

- 6.3** In response to Question 5:3, SPH agrees that predatory pricing should be limited to entities with SMP. However, SPH notes that although it is true some media services are expected to be provided over a telecommunication network or service, this is certainly not the case for printed newspapers or magazines. Thus, the proposed Average Incremental Cost measure may not be suitable for all situations. We note that IMDA retains the flexibility to adopt other cost standards. In this regard, we propose that IMDA clarifies whether the Average Variable Cost standard will continue to apply to newspapers and magazines.

Cross-subsidisation

- 6.4** In response to Question 5.4, SPH agrees that cross-subsidisation can be abusive conduct. However, SPH would like to highlight that the fact that this obligation is imposed on SPH but not digital platforms serves to reinforce the regulatory imbalance that SPH experiences. This is especially because digital platforms are recognised to take part in cross-subsidisation.

Predatory network alteration

- 6.5** In response to Question 5.5, SPH disagrees with the proposal to extend the prohibition on predatory network alteration to media markets. SPH notes that IMDA has proposed the extension because it currently does not foresee any disadvantage or concern with the extension presently, and that the prohibition is meant to cater for future issues that may arise in media markets.
- 6.6** SPH submits that this extension may have unintended consequences. While disadvantages or concerns of an extension are not presently discernible, this does not mean that such a disadvantage or concern will not eventuate. Additionally, IMDA is assuming that an outright prohibition would be the solution for any future issue in media markets. SPH submits that such an assumption is unwarranted, and an outright prohibition is potentially too blunt an instrument. SPH submits that a better approach would be to review the extension of the prohibition on predatory network alteration as and where there are developments in media markets which suggest that such an extension is required. This has the benefit of enabling IMDA to craft a nuanced solution based on the state of development of the media markets.

Bundling prohibition

- 6.7** In response to Question 5:6, SPH notes that this only applies to “unreasonable unbundling” which results in, or is likely to result in, the anti-competitive foreclosure of market(s) to competitors and which cannot be objectively justified. In this regard, SPH has no issue with the unreasonable bundling standard.

Anti-competitive leveraging

- 6.8** In response to Question 5:7, SPH has no issue with the proposed standalone provision for anti-competitive leveraging.

“Object” or “effect” test

- 6.9** In response to question 5:8 SPH agrees with the proposal to align the test for anti-competitive agreements with the general object and effect test. This encourages coherence between the different competition regimes.

Proposed revisions to the anti-competitive agreements

- 6.10** In response to Question 5:9(a), SPH has no issue harmonising the language of the Proposed Converged Code.
- 6.11** In response to Question 5:9(b), SPH would like to make comments on the following changes:
- 6.11.1** Group boycott agreements. SPH has no issue with the clarified scope of the exception for group boycott agreements.

- 6.11.2 Vertical market allocation. SPH disagrees with the proposal to extend the provisions relating to vertical market allocation to the media industry. Vertical agreements are generally recognised to be pro-competitive in nature; this is one of the key reasons why vertical agreements are exempted under Singapore's general Competition Act. SPH proposes that the Proposed Converged Code either removes, or does not extend, the provisions relating to vertical market allocation. This is in accordance with the prevailing understanding of the economics of vertical agreements, as well as ensures coherence with the current practices of the Competition Act.

SPH proposes that IMDA should instead adopt the claw-back mechanism that is currently used in the Competition Act as a safeguard against vertical market allocations that have, or is likely to have, an effect on competition. SPH is of the view that this solution minimises the compliance costs for industry players while providing adequate safeguards against adverse competitive effects from vertical market allocations.

- 6.11.3 Exclusive dealing. SPH has no issue harmonising the approach to exclusive dealing for the Proposed Converged Code.
- 6.11.4 Void agreements. SPH agrees that only the relevant provision in the agreement should be void, and not the whole agreement.

Unfair methods of competition

- 6.12 In response to Question 5:10, SPH generally agrees with the following proposed amendments:

- 6.12.1 Degradation of service quality. SPH agrees that such a provision should stay in the Proposed Converged Code to ensure fair trading in media markets.
- 6.12.2 Provision of false or misleading information to competitors. SPH agrees with the recommendation to remove Sub-section 4.4.1 and section 4.4.4 of the MMCC as this clarifies which legislation to refer to for false or misleading information to customers. SPH notes that with the changes, the Consumer Protection (Fair Trading) Act will address fair trading with consumers while the Proposed Converged Code will ensure fair trading with competitors.
- 6.12.3 Improper use of information regarding competing licensee's customers. SPH has no issue extending this provision to the media market.

7. Consumer protection

Service termination or suspension

- 7.1 In response to Question 6:3, there are provisions in Sub-section 3.2.4 of the TCC that may not be applicable to providers or end users of media services, such as:

- 7.1.1 Sub-section 3.2.4.3 (Termination or Suspension for Illegal or Improper Activities) in relation to the prohibition on termination or suspension of services on the ground that the end user is using the service to engage in illegal or immoral activities given that there are limited circumstances in which end users of media services, unlike telecommunication services, could conceivably use such services to engage in illegal or immoral activities; and
- 7.1.2 Sub-section 3.2.4.5 (Service Termination Due to a Licensee's Discontinuance of Operations or Specific Services) in relation to the option to transition service to another service provider.

Procedure to contest charges and for private dispute resolution

- 7.2 In response to Question 6:8, SPH disagrees with extending the provision in Sub-section 3.3.4(c) which relates to the ability of users to dispute any charge for any subscription service for a timeframe of one year to providers of media services. This provision is more relevant in the context of providers of telecommunication services given that the amount billed may fluctuate or vary on a month-to-month basis depending on the usage level of such services. In the case of newspaper or magazine subscriptions, the amount billed to a subscriber does not fluctuate based on usage level and given that the monthly subscription fees would have been made known to subscribers as the outset, it would be unduly onerous to provide a one-year timeframe for subscribers to dispute such charges.

Duty to notify of certain events – advance notice for service charges

- 7.3 In response to Question 6:9(b), SPH agrees with the proposal to introduce an advance notice requirement for any advantageous change that may have a long-term impact on the End User's service, but would suggest that in light of the fact that this proposal relates to advantageous changes, it would suffice for such notices to be published on the service provider's website (rather than require service providers to provide notice in writing to End Users of each such change).

Anti-avoidance provisions

- 7.4 In response to Question 6:17, SPH has no concern with the proposal to remove the anti-avoidance provision under sub-section 3.7 of the MMCC.

8. Mergers and acquisitions

Clarity as to appropriate regulator

- 8.1 As a general point, SPH would like to have more clarity as to the appropriate regulator for the purposes of a merger notification. In this regard, we note that the Competition Markets Authority in the UK has provided specific guidance on how it will interact with the sectoral

regulator for media mergers (the UK's Office of Communications).¹⁷ SPH proposes that similar guidelines be provided by IMDA.

Transactions subject to IMDA's scrutiny

- 8.2** In response to Question 7:1(a), SPH disagrees with imposing extra notification and approval requirements for acquiring an ownership interest in a Regulated Person. This adds unnecessary regulatory and compliance costs for industry players. SPH is of the view that the current notification and approval requirements are adequate.
- 8.3** In response to Question 7:1(b), SPH agrees with harmonising the *pro forma* notification requirement in the Proposed Converged Code.

Short form and long form consolidation

- 8.4** In response to Question 7:2, SPH agrees that unifying the rules will help reduce uncertainty for industry players. However, SPH disagrees that the threshold for a short form application should be lowered from 40 per cent. to 30 per cent. In this regard, the CCCS Guidelines on the Substantive Assessment of Mergers 2016 at paragraph 5.15 states that a substantial lessening of competition is unlikely to arise when the post-merger entity has a market share of below 40 per cent. SPH is of the view a similar standard and rationale should be applied for the Proposed Converged Code. In addition, from SPH's experience, the 40 per cent. has worked well, and there seems to be no in-principle basis for a different threshold to be introduced.

Consolidation review timeline

- 8.5** In response to Question 7:3, SPH agrees that a unified and shortened consolidation review for the Proposed Converged Code will provide greater regulatory certainty to industry players.

9. Resource sharing

- 9.1** In response to Question 8:1, SPH agrees any resource sharing between media licensees should be limited to infrastructure that is considered an "Essential Resource" under the MMCC. However, SPH submits that the scope of "resources required for the effective sharing of infrastructure" at paragraph 8.7 is unclear. Guidelines as to what is considered required resources would be helpful for industry players to understand what is required to be shared. This obligation, in SPH's view, could potentially be interpreted to become extremely onerous. For example, resources could be interpreted to hiring extra staff or conducting extra training to help ensure that there is an "effective" sharing of infrastructure. SPH urges IMDA to consider regulatory and compliance costs when determining what resources are required for an effective sharing of infrastructure.

¹⁷ Mergers: Guidance on the CMA's jurisdiction and procedure (CMA2).

10. Public interest obligations

- 10.1** In response to Question 9:4, SPH agrees with the removal of Sub-sections 2.5 and 10.4(b) of the MMCC. SPH agrees that general competition provisions within the Converged Code to regulate anti-competitive behaviour with regard to the licensing of archived material to other media licensees for broadcast is sufficient.

11. Administrative and enforcement procedures

Changes to decision and reconsideration process

- 11.1** In response to Question 11:1, SPH agrees that introducing a reconsideration process for media licenses is a positive change. However, SPH notes that where IMDA and the Minister receives an appeal request at the same time, the Minister has the discretion to either wait for IMDA's decision or consider the appeal without IMDA's decision. SPH is of the view that this process creates uncertainty in the process because it is not clear under what situations the Minister will exercise his discretion. SPH proposes that instead, the Minister should only be able to make a decision after IMDA has made their decision.

Dispute resolution process

- 11.2** In response to Question 11:2, SPH agrees that harmonising the dispute resolution process will lead to more coherence and clarity. With regards to the procedure for the Submission of Petition in the Proposed Converged Code, SPH notes that IMDA will be given the flexibility to "expedite the submission of the Petition" after the request to negotiate. SPH proposes that guidance as to when IMDA will choose to expedite the submission of the Petition should be set out in the informal guidance provisions.
- 11.3** With regard to the proposal to set out the detailed dispute resolution guidelines in a separate set of guidelines, SPH has no issue with this approach.

Structural separation

- 11.4** In response to Question 11:4, SPH agrees that structural separation is an extremely onerous and costly process. However, SPH is of the view that the power to issue structural separation should remain with IMDA. In this regard, we note that the CCCS also has the power to issue behavioural and structural remedies. SPH is of the view that IMDA, as a sectoral regulator, can perform a similar role and that parties can appeal to the Minister if they disagree with the structural separation ordered by IMDA.
- 11.5** For clarity, SPH proposes that IMDA issues guidelines relating to how and when the power to order structural separation will be exercised. For example, the CCCS Guidelines on the Substantive Assessment of Mergers 2016 sets out the structural and behavioural remedies the CCCS can impose as well as the considerations the CCCS takes into account when designing the appropriate remedy. SPH is of the view that similar guidelines can be adopted. In particular, cost of and proportionality of the remedy should always be a factor that IMDA takes into account.

12. Conclusion

- 12.1** SPH welcomes the opportunity to participate in the public consultation exercise for the Proposed Converged Code. SPH trusts that its views and submissions on the Proposed Converged Code will be carefully considered and addressed by IMDA.
- 12.2** Please do not hesitate to contact the undersigned (Email: limmlg@sph.com.sg) if you have any queries or require any clarification.

Yours faithfully



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