CONSULTATION PAPER ISSUED BY

THE INFO-COMMUNICATIONS MEDIA DEVELOPMENT AUTHORITY

ON

SECOND PUBLIC CONSULTATION ON THE DRAFT CODE OF PRACTICE FOR COMPETITION IN THE PROVISION OF TELECOMMUNICATION AND MEDIA SERVICES

Submission by StarHub Ltd to the Infocomm Media Development Authority

19 March 2021

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Introduction:

1. StarHub Ltd ("**StarHub**") thanks the Info-comm Media Development Authority of Singapore (the "**Authority**") for providing the opportunity to comment on its proposed Code of Practice for Competition in the Provision of Telecommunication and Media Services (the "**Proposed Code**").

2. We greatly appreciate the Authority's efforts to draft the Proposed Code, and explain its policy position. StarHub, as a converged operator, welcomes any moves to ensure a consistent and market-friendly regulatory framework is applied to both the telecommunications and media markets in Singapore.

3. On a broad level, we support the regulatory principles espoused by the Authority. Compliance with these regulatory principles is necessary to ensure that the Authority's decisions are transparent, fair and reasoned. We are also grateful that the Authority is recognising the broader trends affecting the market. In particular, it is critical to note that competition has been greatly shaped by the impact of over-the-top ("**OTT**") service providers in both the telecommunications and media markets.

4. However, we are concerned that the Authority does not appear to have adequately considered its own regulatory principles when crafting the Proposed Code. Rather than relying primarily on industry regulation, and ensuring proportionate regulation, the Proposed Code is unfortunately maintaining many legacy obligations which are no longer relevant in the current market context. It is also adding new obligations without providing clear evidence that such obligations are needed to address demonstrable market failures. We respectfully submit that the Authority cannot, on one hand, state that it seeks to rely on market forces, while, on the other hand, impose new and burdensome obligations on the telecommunications and media sectors which are not adequately justified.

5. In addition, while it recognises the impact of OTT service providers, the Authority's Proposed Code does little to reflect this. As the Authority has stated, OTT service providers currently face minimal regulatory requirements in providing services in Singapore. However, instead of levelling the playing field for telecommunications and media market licensees (the "**Licensees**"), the Proposed Code maintains out-dated obligations, while proposing to impose even more onerous regulatory burdens on the industry, making it even more difficult for Licensees to compete with OTT service providers. We respectfully disagree with such an approach (which again flies in the face of the regulatory principles for the Proposed Code).

6. We sincerely fear that the Authority's approach will discourage Licensees from continuing to invest and innovate, while encouraging the market to shift even more towards OTT platforms. We respectfully submit that, where telecommunications and media markets are effectively competitive, the Authority should be actively reviewing its existing regulatory frameworks, to remove or scale-down regulations which are no longer needed or relevant.

Proposed new obligations should also be removed, or applied on a non-discriminatory basis to Licensees and OTT service providers alike to ensure that all parties can compete evenly.

7. StarHub's detailed responses to the Authority's proposals are attached below. We sincerely appreciate the Authority's consideration of our comments.

StarHub's Response to the Authority's Proposals:

Part I: Market Overview and Convergence:

8. Generally, we do not disagree with the Authority's broad review of the competitiveness of the telecommunications and media markets in Singapore.

- Where markets are competitive, reliance on market forces and industry self-regulation should be the norm.

- Where markets are uncompetitive (particularly for business telecommunications services or where there is dominance in the markets), we agree that there should be more stringent oversight.

9. We also agree with the Authority's findings on increased competition from non-traditional digital services and platforms, and the growth of OTT services (including services provided by operators based overseas). We note that the level of competition has only increased over the past two years. In particular, the COVID-19 pandemic has greatly accelerated digital trends, shaping customer behaviour, driving consumers and businesses even more towards OTT platforms as substitutes for many existing telecommunications / media services.

10. However, the Authority's review of the market does not appear to have shaped the Authority's policy positions. Despite the growth in competition in certain markets, the Authority has declined to relieve many legacy obligations, and in fact decided to intervene even more by imposing new and onerous regulatory obligations on Licensees. This makes it even more difficult for the Licensees to compete fairly against OTT service providers.

11. Again, we respectfully request the Authority to review its proposals in greater detail, removing unnecessary regulatory obligations, and ensure a levelling of the playing field between Licensees and OTT service providers.

Part II: Regulatory Principles and Regulatory Review Period:

Regulatory Principles:

12. We have no objections to the Authority maintaining its list of regulatory principles under the Proposed Code. Where markets are uncompetitive, or where there are demonstrable market failures, we have no objections with active regulation by the Authority.

13. However, the Proposed Code does not appear to be aligned with the Authority's regulatory principles. In particular, we note the following:

- "*Reliance on market forces, private negotiations and industry self-regulation*" – in many cases, the Authority has proposed to add more regulatory burdens on competitive markets without providing any evidence of market failure or significant customer dissatisfaction. The Authority's proposed new policies are also unaligned with other sectors, and there is little explanation as to why such policies are needed or justifiable.

- "*Proportionate regulation*", "*Technology neutrality*" and "*Non-discrimination*" – as highlighted above, the Authority has clearly recognised the importance of OTT, and the significant impact that OTT service providers have had on the market. However, rather than adopting a proportionate, technology neutral and non-discriminatory approach, the Authority is adding more regulatory requirements on Licensees while maintaining its "*light touch*" approach for OTT service providers. This is a clear contradiction of the Authority's regulatory principles.

14. In StarHub's earlier submission in May 2019, we had highlighted multiple reports confirming the importance of OTT services such as WhatsApp, YouTube and Netflix. With the COVID-19 pandemic, the reliance on such OTT services has only accelerated, while reliance on traditional telecommunications and media services continue to decline. For example:

- Since its last public consultation on the Proposed Code, retail international call minutes[1] and SMS messaging[2] have both declined by 20%. In contrast, demand for conferencing tools such as Zoom and Skype has grown multiple times since the beginning of the pandemic.[3]

- From the Authority's Consumer Awareness Satisfaction Survey 2018 ("**CASS 2018**"), the Authority highlighted the substitutability of OTT services with telecommunications services. These trends would have greatly accelerated over the past 2-years:

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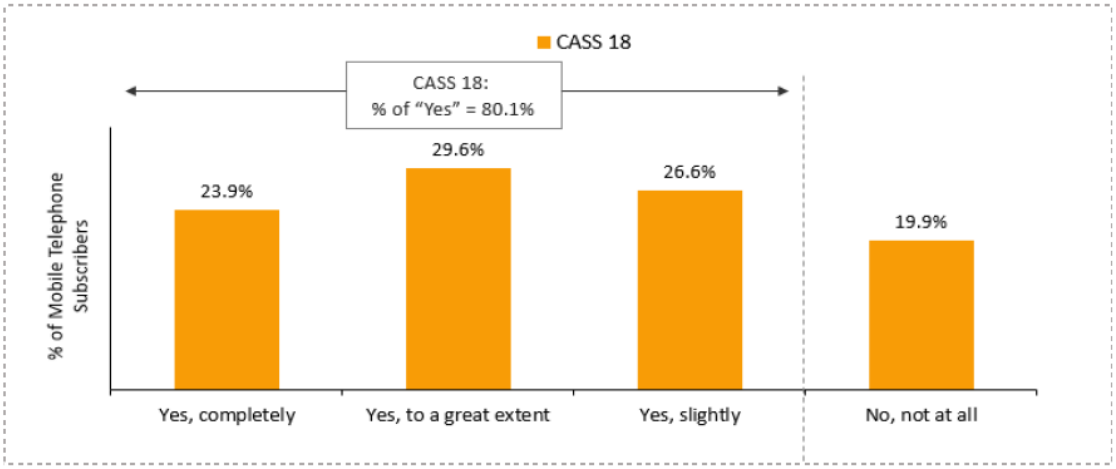
[1] Statistics taken from: https://www.imda.gov.sg/infocomm-media-landscape/research-and-statistics/telecommunications/statistics-on-telecom-services.

[2] Statistics taken from: https://www.imda.gov.sg/infocomm-media-landscape/research-and-statistics/telecommunications.

[3] Reference: https://www.straitstimes.com/tech/video-conferencing-looks-set-to-stay.

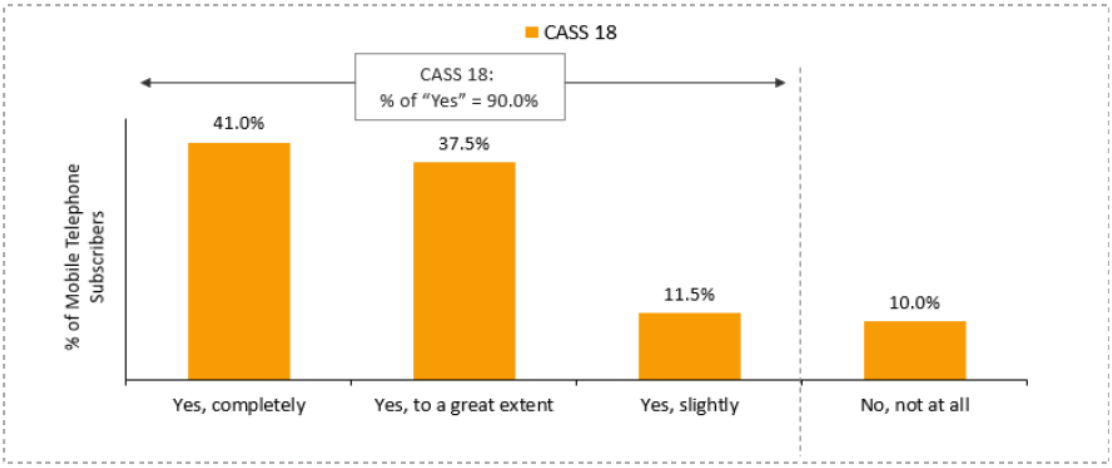
- 80.1% of respondents felt that they could replace mobile voice services with OTT services (see extract below); and

Figure 2-7 : Ability to Replace Mobile Voice Call Services with OTT Services



- 90.0% of respondents felt that they could replace mobile messaging services with OTT services.

Figure 2-8 : Ability to Replace Mobile Message Services with OTT Services



➢ Pay-TV subscriptions in Singapore continue to fall year-on-year.[4] In contrast, surveys indicate that COVID-19 has accelerated the OTT adoption, causing a decline in traditional TV services.[5]

15. In such a market environment, it is illogical that traditional services such as voice, SMS and Pay-TV services are subject to heavy regulation when OTT services providers are not

[4] Reference: https://www.businesstimes.com.sg/companies-markets/singtel-starhub-pay-tv-subscriptions-to-shrink-further-fitch-solutions.

[5] Reference:https://www.businesstimes.com.sg/asean-business/on-demand-video-disrupting-tv-in-south-east-asia-study-finds.

subject to any regulation at all. We respectfully caution that the continued heavy regulation of "traditional" service providers is inappropriate and unsustainable.

16. Rather than continuing (and worsening) this lop-sided approach, we respectfully suggest that the Authority should significantly **reduce** the regulatory obligations imposed on Licensees, to ensure that they can compete on a level-playing field with OTT providers.

Promotion of Facilities-based Competition:

17. We agree with the Authority's continued support for "Promotion of Facilities-based Competition". As the Authority has recognised, 5G networks are an important part of the future of telecommunications in Singapore. To hasten the rollout of 5G, we respectfully seek the Authority's confirmation on its timeline for its review of the Code of Practice for Info-communication Facilities in Buildings ("**COPIF**") to facilitate the deployment of 5G infrastructure in Singapore.

Part III: Dominance Classification and Duties of Dominant Entities:

Dominance Classification:

Criteria Used for Dominance Classification:

18. We have no objections to the proposed criteria used for Dominance Classification. However, we would reiterate that the prevalence and growing importance of OTT service providers needs to be considered by the Authority. If a market is restricted purely to the Authority's Licensees, it may not be an accurate reflection of the actual market conditions, and the variety of choices available to consumers of telecommunications and media services in Singapore.

19. As we highlighted in our previous submission, traditional barriers to entry may no longer be relevant as services and content move to OTT. It is no longer the case that operators need to have physical infrastructure located (or to be licensed) in Singapore, in order to provide services to Singaporeans.

20. In particular, it would be short-sighted to continue defining the Pay-TV sector in Singapore as a standalone market comprising only the two Subscription Nationwide Television Service licensees. The Pay-TV services market is clearly affected by OTT services, and the rise of OTT players such as Netflix have clearly impacted the take-up of Pay-TV services in Singapore. Reports indicate that:

- 51% of all Singaporeans aged 16 and above subscribe to Netflix[6], suggesting that take-up of Netflix services exceeds the number of StarHub's Pay-TV subscribers.

- 91% of video viewers regularly watch free or paid streaming services, versus 86% of viewers who regularly watch video-sharing platforms and 63% who watch TV (free or paid).[7] The viewership of OTT content is therefore significantly higher than viewership of Pay-TV services.

21. Any review of markets and Dominance therefore needs to clearly take into consideration the impact of OTT, and how market share of Licensees is impacted by OTT service providers (whether licensed or otherwise).

22. In its paper, the Authority has argued that the Proposed Code is issued pursuant to the powers granted under the IMDA Act and the Telecommunications Act (the "**Acts**"), and that the Authority "*is of the view that it is not necessary to expand the scope of the Code beyond Telecommunication Licensees and RPs at this juncture*". Respectfully, it is not clear if the Authority is suggesting that the regulation of OTT service providers is outside of the Acts.

[6] Reference: https://www.finder.com/sg/singapores-subscription-addiction.

[7] Reference the SpotX "OTT is for Everyone" report: https://info.spotx.tv/ctv-is-for-everyone-viewership-report-apac.

23. This cannot be the case since a Niche Television Service Licence is applicable for OTT providers, and OTT providers must comply with content codes issued by the Authority.

24. In any case, we are not suggesting that the Authority subject OTT service providers to Dominant Licensee obligations. Rather, our suggestion is that any review of the Dominance of Licensees should clearly take into consideration the competitive impact from OTT. This would clearly be in-line with the Authority's stated goal of proportionate regulation and technological neutrality.

Threshold to be Used for Initial Presumption of SMP:

25. We have no objections with the proposal to set a 50% threshold for the SMP Presumption Threshold. However, the key concern is how the Authority defines markets, and the role OTT service providers play in the markets. Adopting a narrow market definition limited to just Licensees does clear disservice to the actual competition forces present in a market and can overestimate the actual market power a Licensee has to affect competition.

26. We respectfully submit that if the Authority is drawing a "bright line" at the 50% market share threshold, it should be actively reviewing dominance classifications where: (1) Dominant Licensees fall below the 50% market share level; and (2) where non-Dominant Licensees have market share close to or exceeding 50%. Such pro-active regulation is needed to ensure that the Authority's policies continue to be relevant and applicable.

"Market-by-Market" versus "Licensed Entity" Approach to Dominance Classification:

27. We have no objections to the Authority's approach. Again, the issue is how markets are defined. Adopting a narrow definition that only covers (domestically-based) Licensees is not logical given the impact that OTT service providers have had on the local telecommunications and media markets.

Duties to be Applied to Dominant Entities in Both Telecommunication and Media Industries:

28. We appreciate the Authority's removal of the requirements related to provision of access to programme lists and advertising capacity. This is in-line with StarHub's earlier comments. As it has acknowledged in its paper, the market has evolved, and such requirements "*might no longer be essential*".

29. We would respectfully urge the Authority to adopt a similar approach in its review of the other sections of the Proposed Code (particularly sections related to non-Dominant Licensees). Unless requirements are "essential", they should not be imposed. All regulatory obligations impose a compliance cost on Licensees and should be avoided unless absolutely necessary.

30. Indeed, if the Authority is prepared to relieve non-essential obligations on Dominant Licensees, an even lower threshold should be in-place when reviewing obligations on non-Dominance Licensees. We respectfully submit that the Authority **should not** be imposing obligations on non-Dominant Licensees unless there is a clear market failure and

demonstrable need for the new obligation to be in-place. Such an approach would clearly be aligned with the Authority's stated principle of "*reliance on market forces, private negotiations and industry self-regulation*".

Specific Proposals for Tariff Filing for Telecommunication Services:

31. We do not agree with the Authority's proposal to remove the obligation on Dominant Licensees to seek approvals for the vast majority of retail tariffs. It is unclear why the Authority is concerned with providing "*regulatory relief*" for Dominant Licensees when there does not appear to be any evidence that the prevailing tariff filing process has created any significant burdens on the Dominant Licensees.

32. Continued regulation on this area is necessary to influence the Dominant Licensee's behaviour, to ensure that it continues to behave responsibly in the market.

33. As we previously highlighted, if the Authority moves to a notification and publication regime, the Authority will have to rely on after-the-fact complaints and investigations to determine whether any breach has been made. Under such circumstances, commercial contracts may already have been entered-into, which makes it more difficult to reverse any errant behaviour. It is unclear why the Authority is prepared to take such a risk given the limited benefits to the market by relieving this obligation.

34. Again, if the Authority is prepared to relieve key obligations on Dominant Licensees, there is no reason why it should: (1) continue imposing legacy obligations; and (2) impose new regulatory obligations on non-Dominant Licensees.

35. We would also respectfully note that this proposal appears to contradict the Dominant Licensee obligation relating to "*Duty to Allow Resale of End User Services*". Under this requirement, all retail tariffs offered by Dominant Licensees must either: (1) not restrict resale; or (2) if restricting resale, the Dominant Licensees must then file an equivalent resale version of the tariff.

36. Hence, in practice, all retail tariffs must either: (1) already be resale tariffs; or (2) be mapped to an equivalent resale tariff. Hence, allowing a "notification and publication" regime for retail tariffs, while maintaining an approval regime for resale tariffs appears to be contradictory. For consistency, the Authority should simply maintain an approvals process for all retail tariffs as well.

Part IV: Anti-competitive Conduct:

Abuse of Dominant Position:

General Prohibition on Abuse of a Dominant Position:

37. We have reviewed and have no comments on this proposal.

Discrimination:

38. We have reviewed and have no comments on this proposal.

Price Squeezes:

39. We continue to be concerned by the Authority's proposal to use an equally efficient operator ("**EEO**") test. As the Authority has noted in its paper, a "*reasonably efficient, non-affiliated downstream retailer may have higher operating costs due to its smaller scale compared to the integrated Dominant Entity*". This would likely be the case given that the Dominant Licensee already has the lion's share of the market, and can operate at a significantly larger scale (and enjoy cost savings from such scale).

40. If an EEO test is adopted, competing licensees are effectively required to be as efficient as the Dominant Licensee to prove a price squeeze, which is likely to be an impossible hurdle to meet. This could then result in a self-fulfilling prophecy where, as the Dominant Licensee drives more operators from the market, its market share and economies of scale grow even further, making it even more difficult to meet the EEO test.

41. We therefore respectfully suggest that the Authority should adopt the reasonably efficient operator test benchmark instead. If the Dominant Licensee is pricing its services at such a level where there is cause for concern under the REO test, further investigation should take-place to assess the competitive impact on the market.

Predatory Pricing:

42. We note the Authority's position that it will generally adopt the AIC standard, and agree that it should retain flexibility to review other cost methodologies that may be applicable.

Cross-subsidisation:

43. We have no objections to the Authority's proposal. However, the key issue is that the traditional media market faces competition not from just Licensees. Overseas providers can easily offer competing services via OTT content. Hence, any investigation into cross-subsidisation (or other anti-competitive behaviour) should include players within the broader media market (including overseas players).

Predatory Network Alteration:

44. In its consultation paper, the Authority appears to be taking a position that it does not have any strong evidence that such predatory network alteration can take place in the media sector. Nonetheless, its preference is to impose this obligation as "*there should not be any significant impact*".

45. We respectfully disagree with such a position, and notes that this undermines the Authority's stated regulatory principle of proportionate regulation which states that: "*IMDA will seek to impose regulatory requirements* ***that are carefully crafted to achieve clearly articulated objectives***. ***Such requirements will be no broader than necessary to achieve IMDA's stated goals***" (emphasis added).

46. The Authority should not be seeking to impose new regulatory obligations if there is no justifiable need for the obligation. It cannot simply state (without any supporting evidence) that there is no impact to the obligation, and therefore no harm in imposing it. All regulatory obligations result in additional compliance burdens being imposed on the industry. Licensees need time to review the requirements, brief internal stakeholders, and maintain internal policies highlighting the need to ensure compliance. New regulatory obligations also add to the (growing) list of obligations that needs to be assessed each time a review of the Code occurs.

47. We therefore respectfully suggest that the Proposed Code should not be imposing new obligations which are unnecessary unless there are clear justifications as to why they are needed. This would be aligned with the regulatory principles under the Proposed Code.

Bundling:

48. In our earlier response, StarHub highlighted concerns that the definition of "*unreasonable bundling*" is unclear. Regrettably, the Authority's Proposed Code does not provide any further clarity on this matter.

49. We understand the existing prohibition against "tying", and this is the specific example given in the Authority's consultation paper.

50. However, it is not clear what "*bundling … which results in, or which is likely to result in, the anti-competitive foreclosure of market(s) to competitors and which cannot be objectively justified*" refers to. Before imposing new regulatory obligations, the Authority needs to clearly explain what sort of behaviour it is trying to curtail. Otherwise, this creates difficulties in ensuring compliance.

51. For example, it may be possible that Licensees choose to bundle devices with non-telecommunications or media services. If a Licensee chooses to bundle the latest flagship device with sacks of rice, does it then create a form of bundling which cannot be "*objectively justified*"? In the absence of any precedent or clarification statement, it is unclear: (a) how Licensees are expected to comply with this obligation; and (b) how the Authority will enforce it.

52. Unless the Authority can clearly explain what sort of behaviour it is targeting, the prohibition against "*unreasonable bundling*" should be removed. We would respectfully note that the Authority already retains broad oversight to take action against anti-competitive behaviour. Introducing new requirements to address vague scenarios is unnecessary. For the avoidance of doubt, we have no objections to the existing prohibition on "*tying*".

Anti-competitive Leveraging / Anti-competitive Preferences:

53. We have reviewed and have no objections to this proposal.

Anti-competitive Agreements:

54. In its paper, the Authority has clarified that any assessment of anti-competitive agreements would consider whether there would be "*efficiencies that will likely be passed onto consumers*". If this is the case, then it is unclear why there needs to be a distinction between "*by object*" or "*by effect*" anti-competitive agreements. If the Authority is prepared to even consider the potential efficiencies relating to anti-competitive agreements such as bid rigging and price fixing, then the Authority should simply adopt a "*by effect*" test for all such agreements.

55. As mentioned in our earlier submission, this approach ensures consistency with the tests for abuses of dominance. If a different approach is adopted for anti-competitive agreements versus abuse of dominance cases, this could create a scenario where, for the same action, a licensee may breach one set of rules, but not another. Again, our concern is not limited to just Licensees, but also situations where overseas operators (including overseas OTT operators) engage in anti-competitive behaviour affecting the Singapore market.

Unfair Methods of Competition:

56. In our earlier response, we highlighted concerns over the need to have a specific prohibition against the "*provision of false or misleading information to competitors*", as such issues have not arisen in the past. In the Authority's response, it has stated that the "*absence of past cases does not imply the safeguards are unwarranted*".

57. To be clear, StarHub does not object to the Authority taking action against Licensees who have carried out unfair methods of competition. However, our concern is the Authority maintaining regulatory obligations which are irrelevant to the industry. If all regulatory reviews took place based on the principle noted above, there would be no need to remove any outdated regulatory obligations.

58. However, such an approach clearly goes against the stated principle of proportionate regulation, and removing obligations which are no longer necessary or relevant.

59. In terms of "*improper use of information regarding competing licensee's customers*", we disagree that the Proposed Code needs to retain this clause as it "*does not contradict the policy considerations under the* [Personal Data Protection Act ("**PDPA**")]". We respectfully

note that if specific restrictions are already found in broader legislation, the Authority should not seek to duplicate such requirements under its own requirements. Otherwise, Licensees end up being subject to overlapping requirements, having to respond to multiple regulators on the same issue, while potentially getting penalised twice.

60. We respectfully submit again that if a data privacy issue is already covered by the PDPA, it should not be covered under the Proposed Code.

Part V: Consumer Protection:

Application of Consumer Protection Provisions:

61. As a general comment, we are very concerned by the proposal to impose new consumer protection obligations on the industry. This goes against the Authority's stated goals of proportionate regulation, reliance on market forces and industry self-regulation. In its consultation paper, the Authority has not provided any evidence that the new regulatory obligations are warranted, or that there is a clear market failure to support its new policies.

62. Clear evidence shows growing levels of customer satisfaction with the services provided by Licensees in Singapore. For example:

- The Customer Satisfaction Index of Singapore ("**CSISG**") show a consistent trend of year-on-year improvements in customer satisfaction towards, mobile, broadband and pay-TV services.

SECTOR	2015 SCORE	2016 SCORE	2017 SCORE	2018 SCORE	2019 SCORE
+ INFO-COMMUNICATIONS (SECTOR)	67.4	68.5	69.6	70.4	72.1
MOBILE TELECOM (SUB-SECTOR)	68.4	69.2	70.2	71.1	72.7
Singtel	69.4	72.0	73.0	74.1	75.2
Starhub	69.0	67.5	69.2	69.4	71.9
M1	63.9	65.0	66.6	67.9	69.7
BROADBRAND (SUB-SECTOR)	64.9	67.0	68.2	68.9	70.6
Starhub	66.9	67.0	68.2	68.9	70.9
M1	66.2	67.5	68.2	69.4	70.9
Singtel	64.1	66.9	68.0	68.7	70.2
PAYTV (SUB-SECTOR)	65.1	66.6	67.4	68.1	70.2
StarHub	66.6	67.7	67.6	68.8	70.7
Singtel	64.4	65.8	66.9	67.3	69.7

Source: https://ise.smu.edu.sg/csisg/score-ranking

- The Authority's own CASS 2018 results also mirror this upward trend in customer satisfaction:

Figure 2-10 : Satisfaction with Mobile Voice and Message Services (Mean Score)

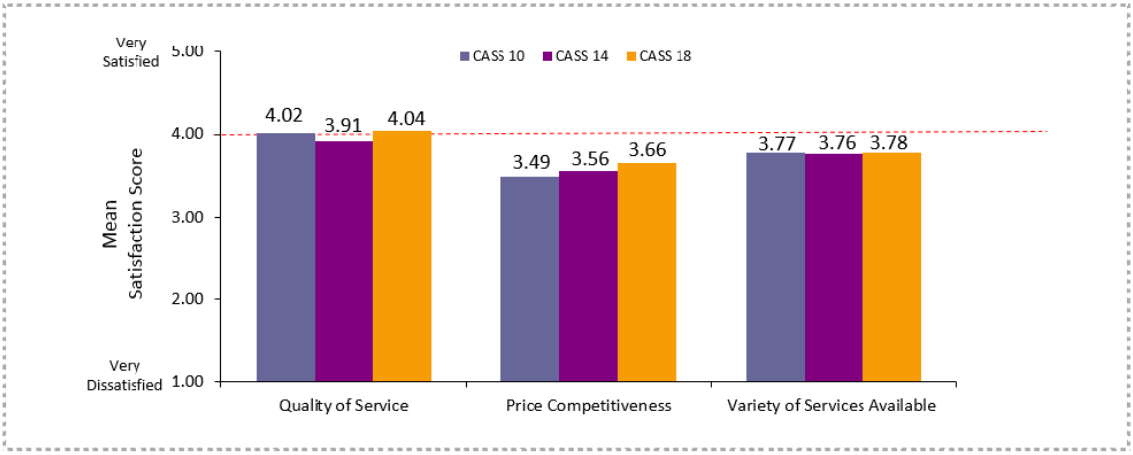
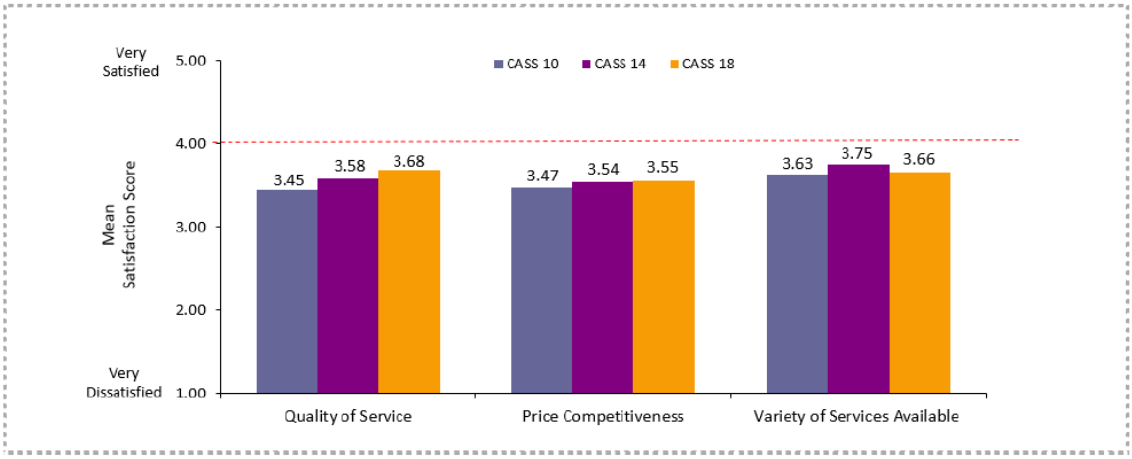


Figure 3-6 : Satisfaction with Fixed Broadband Services (Mean Score)



63. In its paper, the Authority has also justified applying new obligations on Pay-TV business customers by stating that "*it is likely that the current standard business practices of RPs are already in compliance with these provisions, since many of the RPs are also Telecommunication Licensees in the telecommunication markets*". Respectfully, if the Authority's goals are already being achieved without active intervention, this clearly indicate that market forces are working. It goes against the Authority's stated principles if it chooses to impose new regulatory burdens even when its assessment is that the market is already achieving desirable outcomes.

64. In addition, we would note that many business customers rely on individualised negotiations and bespoke contracts. While there may be a standard published set of prices, terms and conditions (which may be applicable to both residential and business customers), the actual prices paid by business customers may be individually agreed upon. Such prices will only be reflected in the actual contracts signed with the business customers due to commercial confidentiality. It is therefore irrelevant to impose requirements related to publication of information on pricing.

65. In its paper, the Authority has also justified the non-application of the consumer protection clauses to OTT TV or content services by stating that "*the OTT media landscape in Singapore is highly fragmented compared to linear Pay TV services that are more pervasive*

and mainstream" and they "*will benefit from having greater flexibility to innovate and compete*". We respectfully request the Authority's review of this statement.

66. As indicated above, surveys show that 51% of all Singaporeans aged 16 and above subscribe to Netflix, suggesting that take-up of Netflix services exceeds the number of StarHub's Pay-TV subscribers. While there are indeed a number of smaller OTT players, this does not derogate from the fact that OTT services are mainstream and pervasive. It would not be reasonable for the Authority to claim otherwise.

67. Furthermore, it is unfair to claim that only OTT service providers need flexibility, and the ability to innovate and compete, while Licensees do not. Clearly Licensees require this as well. Having flexibility to innovate and compete is all the more important given the significant decline in the take-up of Pay-TV services.

68. It is inconsistent and discriminatory for the Authority to maintain a position that it will afford flexibility to services which are increasingly popular, while ramping up regulatory obligations on services which are already on the decline. Such a position will only hasten the decline of traditional media services in the market.

69. Again, we are not asking for OTT service providers to be subject to stringent new obligations. Rather, the Authority needs to ensure a level playing field, by reducing the amount of regulatory obligations on Licensees, rather than adding new ones.

Duty to Comply with Quality of Service ("**QoS**") Standards:

70. We reiterate the position that StarHub strongly disagrees with the imposition of QoS standards on Pay-TV services. It is illogical to impose stringent regulatory obligations on declining Pay-TV services when: (1) Pay-TV services are **entertainment** services; (2) the same requirements are not imposed on OTT providers; and (3) there has been no evidence of significant customer complaints related to the quality of Pay-TV services.

71. Again, we would respectfully refer the Authority to its own regulatory principles of ensuring proportionate regulation is imposed on the industry. We strongly request that this clause (as well as the overall QoS regime imposed on Pay-TV licensees) should be removed.

Restrictions on Service Termination or Suspension:

72. In its Proposed Code, the Authority has proposed that business customers should not be allowed to "cross-terminate" between telecommunications and media services.

73. We do not believe that this is reasonable, particularly when business customers may have entered into multiple high-value contracts. If there is any failure to pay for one contract, Licensees must have the right to cease services in other contracts to ensure that the business customers honour their payment agreements. Furthermore, in many cases, the telecommunications and media services may be linked (e.g., the business customer may rely on a broadband service to view Pay-TV services). If the business customer fails to pay for the broadband service, there would be a natural suspension of the Pay-TV services.

74. We therefore respectfully request the Authority to remove this requirement on business customers.

Duty to Prevent Unauthorised Use of End User Service Information ("**EUSI**")

75. In its paper, the Authority has clarified that the PDPA only governs the personal data of individuals, not the EUSI of business End Users. Hence, "*solely relying on the provisions of the PDPDA as it currently stands will not fully give effect to IMDA's policy intent to protect EUSI of all End Users*".

76. Respectfully, the Government has explicitly limited the scope of the PDPA to personal information. This was done to limit the impact to companies and recognising that there is no specific need to protect business-related information. It is therefore unclear why the Authority believes that the business information for telecommunications and media companies is so unique that specific clauses are required to protect that information.

77. Furthermore, having acknowledged that the PDPA does cover personal information, the Authority should be looking at streamlining its regulatory requirements, to remove obligations that are already covered under the PDPA. As mentioned previously, if similar clauses are found in both the PDPA and the Proposed Code, this creates significant confusion, and a licensee may end-up facing penalties from multiple agencies for the same event.

Disclosure Requirements including CIS:

78. We have reviewed and have no objections to this proposal.

Prohibition on Charging for Services Supplied on Free Trial or Complimentary Basis:

79. We strongly disagree with the proposal that Licensees must send out additional reminders to customers before the end of free trials / complimentary service periods. Such an additional requirement is unnecessary and cannot be justified. While the Authority has stated that it has made this proposal due to "*feedback received from End Users*", no evidence of such feedback has been provided.

80. From a StarHub-perspective, we have not seen any significant number of such complaints being made. We would be very concerned if the Authority is proposing to introduce new industry-wide obligations based on sporadic / limited number of feedback from customers. Again, this goes against its regulatory principles of ensuring proportionate regulation.

81. The Authority would note that, under its existing framework, Licensees are already required to:

(1) Obtain explicit consent from customers before charging them for any services (whether on a free trial basis or otherwise).

(2) Provide service agreements to the customer explaining the terms and conditions of the service.

(3) Provide additional details in customer bills, informing them of the expiry of the free trials (under new rules under the Proposed Code).

82. Requiring the provision of an **additional** reminder message is simply an unnecessarily burden on the industry.

83. In crafting its proposal, the Authority also appears to be taking reference from the Consumer Protection (Fair Trading) (Opt-Out) Practices Regulations (the "**Consumer Protection Regulations**"). However, the Authority's proposed requirement is inconsistent with the existing Consumer Protection Regulations in the following ways:

- The Consumer Protection Regulations only applies to residential customers. However, the Authority is seeking to impose obligations on both residential and business customers. Business customers in particular are typically well-informed with a keen understanding of the contracts they have signed-up to. It is especially unnecessary to impose this requirement on business customers.

- Being imposed on contracts where early termination charges ("**ETCs**") are applicable. The Consumer Protection Regulations only applies to contracts where no ETCs are applicable during the free trial period.

- Specifying that reminders should be sent based on 3 / 14 days. In comparison the Consumer Protection Regulations specifies that the sending of reminder messages is based on **working** days. This creates potential conflict between the Authority's requirements and the Consumer Protection Regulations.

Provisions to be Extended from One Market to the Other:

Mandatory Contract Provisions:

84. Again, we submit that the Authority must streamline its requirements on handling of EUSI. If the requirement is already found under the PDPA, it should be removed from the Proposed Code. If the requirement is specific to protection of business information, it should be removed altogether, taking into consideration the overall Government policy that business information need not be specifically protected.

85. Having additional data protection rules just for the telecommunications / media sector is unnecessary. In particular, it is illogical and impractical for the Authority to set obligations in regard to business information that apply just to Licensees.

Billing Period:

86. We are disappointed with the Authority's proposal to impose additional requirements related to billing information.

87. The Authority has stated that the "*proposed list of minimum billing information is limited to key information that most service providers already provide in their bills today*". If indeed this is already existing industry practice, there is then no need for the Authority to mandate this as a regulatory requirement. This would be in-line with its regulatory principle of relying on market forces and allowing industry self-regulation.

88. The Authority has not provided any evidence of systemic issue that need to be addressed by imposing this new regulatory requirement. Furthermore, requiring Licensees to provide information on free trials in their bills while also requiring Licensees to send out reminders before the end of the free trials is excessive and unnecessarily burdensome.

Procedures to Contest Charges and for Private Dispute Resolution:

89. We have reviewed and have no objections to this proposal.

Duty to Notify of Certain Events – Advance Notice for Advantageous Service Changes:

90. We fully accept that it can be sensible for licensees to advise customers of advantageous changes to their prices, terms and conditions. However, this should not be a regulatory obligation.

91. The Authority has claimed that it has received "*feedback from End Users who have expressed dissatisfaction that they were not informed before … changes were made*", and that "*the definition of advantageous may be subjective and … there have been instances where* [Licensees] *unilaterally made changes which they perceived to be advantageous without informing End Users in advance, only for End Users to disagree with the change*".

92. We would respectfully note that if the Authority's concern is that Licensees may make contract changes which some customers may perceive to be disadvantageous, this is already addressed under the Authority's existing requirements. Licensees are already prohibited from making disadvantageous changes to the terms of existing contracts. If a Licensee has breached this obligation, enforcement actions can be taken against that Licensee.

93. There is simply no need to add an additional regulatory burden on the industry to mandate advising customers of actual advantageous changes. Again, the Authority should be focusing on industry self-regulation, rather than adding new regulatory obligations which do not address specific market failures.

Duty to Notify of Certain Events – Advance Notice for Cessation of Service or Operations:

94. We have no specific objections to this proposal. However, we would note that, for some business customers, a 3-month advance notice period may be insufficient. In fact, certain business contracts may only allow termination of services under specific circumstances. Nonetheless, such contractual matters would be outside of the scope of the Proposed Code.

Provisions to be Retained or Included for a Specific Market:

Prohibition on "Slamming":

95. We have reviewed and have no objections to this proposal.

Prohibition of Detrimental or Disadvantageous Mid-contract Changes for the Telecommunications Markets:

96. Again, we would highlight our serious concerns that the existence of such requirements amplifies the disparity between the heavy regulation of licensees, as compared to the complete lack of regulation on OTT players.

97. In its response, the Authority appears to be seeking to address StarHub's concern by stating that "*this provision will only apply to the telecommunications markets and not the media markets as there are similar provisions for the media market*". However, this statement ignores the fact that there are also OTT players in the telecommunications sector, not just in media markets.

98. The onset of the COVID-19 pandemic has seen the rise of OTT providers (such as Zoom and Webex) which provide conferencing services over the Internet. This is on top of the exiting OTT providers in the telecommunications sector. These OTT providers do offer services on a long-term contract basis, and nothing stops them from changing their terms in the middle of the contract.

99. If the Authority believes that such requirements are indeed justifiable, they need to be applied to all service providers (including overseas providers). Otherwise, Licensees should be exempt from this requirement.

One-month Advance Notice for Detrimental Mid-contract Changes for the Media Markets:

100. We have reviewed and have no objections to this proposal. We agree that customers should be notified in advance if there are detrimental changes.

101. However, we cannot agree with a mandatory obligation to provide upfront notification for advantageous changes. This would be unnecessarily burdensome.

Prohibition on ETCs in Certain Cases for the Media Market:

102. We reiterate our concern that this requirement unfairly discriminates against Pay-TV operators, while benefitting OTT providers. This is a legacy obligation which should be removed to provide flexibility to Licensees.

Duty to Offer Option of Short-Term Agreements:

103. Similarly, we object to such a legacy obligation that unfairly discriminates against Pay-TV operators. Licensees need to be afforded flexibility to ensure that their services can remain competitive in the face of growing competition from OTT service providers.

Duty Not to Act Unreasonably in Contracting:

104. We have reviewed and have no specific concerns with this proposal.

Provisions to be Removed:

Service Quality Information Disclosure Requirements:

105. We support the removal of legacy requirements that are no longer applicable. More such removals need to take place to ensure that the Authority is aligned with its regulatory principles.

Anti-avoidance of Obligations

106. We welcome the Authority's moves to remove regulations which are no longer necessary in today's market environment.

Part VI: Mergers and Acquisitions:

Applicability of Consolidation Provisions:

Transactions Subject to IMDA's Review:

107. In the Authority's paper, it is stated that "*there are unique features of the telecommunication and media markets that are different from the general market. Specifically, the telecommunication and media markets involve the extensive deployment of infrastructure which creates a high barrier of entry*".

108. Respectfully, a "*high barrier of entry*" may be applicable for multiple different industries. The Competition & Consumer Commission of Singapore has already assessed multiple mergers and acquisitions ("**M&A**") transactions involving markets with high barriers of entry, such as:

- Stock exchanges.
- Airline companies.
- Ship building companies.
- Car manufacturers.

109. Furthermore, as acknowledged in the Authority's paper, many telecommunication and media markets have seen an influx of competition, from: (1) OTT service providers; (2) providers offering services over the Nationwide Broadband Network; and (3) Mobile Virtual Network Operators. Such operators do not deploy extensive infrastructure in Singapore (some may even be physically located overseas), and the entry barrier for such operators is low.

110. Hence, there is no reason why the Authority needs to have specific rules governing M&As involving such operators.

111. We therefore respectfully suggest that the Authority ensure greater alignment with other markets in Singapore by removing sector specific M&A provisions that apply just for telecommunication / media markets.

Notification / Approval Requirements:

112. As stated above, the Authority should not be adopting sector specific M&A provisions. Its requirements should be aligned with the broader economy.

Other Amendments to M&A Provisions:

Short Form and Long Form Consolidation Application:

113. As stated in our earlier consultation response, we have no specific objections to this proposal, but we would urge the Authority to: (a) align its M&A provisions with the wider

economy; and (b) adopt a more expansive view of telecommunication and media markets taking into account competition from overseas players (particularly OTT operators).

Consolidation Review Period:

114. Again, an expansive view of the market (taking into consideration competition posed by overseas players) should be considered as part of any consolidation review.

Part VII: Resource Sharing:

Applicability:

Types of Resources Applicable:

115. We have no objections to this proposal.

Licensees on which the Resource Sharing Provisions Apply:

116. We have no objections to this approach, and its potential application to Services-based operator licensees.

Criteria for Designation:

117. We have no objections to this proposal.

Part VIII: Public Interest Obligations:

The Cross-Carriage Measure ("CCM"):

Restricting the CCM by Content Genre:

118. We support the Authority's proposal to limit the application of CCM to only live programmes that are acquired on an exclusive basis. This is in-line with StarHub's earlier suggestion. We believe that the Authority has taken the correct approach on this matter, in focusing the regulatory measure on the type of content generating the regulatory concern. In this way, the impact on other types of content is minimised.

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

119. In its response, the Authority has acknowledged that the industry has broadly disagreed with its proposal, highlighting the lack of any customer dissatisfaction or any other justification to impose CCM on OTT platforms. However, the Authority has decided to implement its proposal, citing the need to ensure "*platforms are treated in a non-discriminatory manner*". We respectfully note that this proposal is discriminatory, as it imposes additional obligations on Pay-TV operators, while not imposing any obligations on OTT providers.

Anti-Siphoning Scheme:

120. We note the constraints faced by the FTA TV operators. Nonetheless, to prevent abuse, there must be a transparent and rapid process in-place to make available the unused Category A / B programmes to other operators.

Designated Video and Newspaper Archive Operators:

121. We have no objections to the removal of these obligations as they are no longer relevant in the current market environment. We respectfully urge the Authority to consider removing other legacy obligations which are no longer relevant to the market.

Part IX: Telecommunication Interconnection:

Removal of Services from the Schedule of Interconnection Related Services and Mandated Wholesale Services:

122. We support this proposal which is aligned with the Authority's principle of proportionate regulation.

Relevance of Interconnection Related Services Regulated under the Code:

123. StarHub supports this proposal. We note that some Licensees may still continue to rely on the Regulated Services provided by Dominant Licensees in the market.

Validity Period of Reference Interconnection Offer:

124. We support the proposal which is aligned with our earlier comments.

Harmonisation of the Voice Termination Regime to Bill-and-Keep ("BAK") and Change of Interconnection Charging Regime for Fixed Call Termination from Calling-Party-Pays ("CPP") to BAK:

125. StarHub is agreeable to move to a BAK model, if it is implemented across all operators on a fair and non-discriminatory basis. BAK simplifies billing, and removes a source of potential dispute over charges.

126. However, we would highlight the following issues for the Authority's consideration:

- Any removal of charges for termination of international voice traffic will encourage undesirable forms of traffic into Singapore (such as fraudulent and "scam" traffic). We therefore submit that BAK should be implemented only between domestically originated and terminated traffic.

- The move to BAK should not be tied to moving towards IP-based interconnection. We believe that moving towards IP-based interconnection is significantly more complex, and can only be implemented at a later date.

Implementation of IP-based interconnection:

127. We fully agree that more assessment and technical discussions will be needed on the move towards IP-based interconnection. We expect that it will take several years for the technical standards to be finalised, before the actual systems can be changed out.

Update of Principles Governing the Pricing of IRS, Critical Support Infrastructure and Essential Resource:

128. We agree that there is a need to mandate access to IRS, CSI and Essential Resources. However, we strongly disagree that Historical Cost Accounting ("**HCA**") or Regulated Asset

Base ("**RAB**") should be the appropriate costing methodology for network elements that are more passive and civil-based infrastructure in nature. Adopting an HCA / RAB methodology may zero-ise historical costs, which then trivialises the actual costs incurred by the owner (including third-party costs) in deploying the infrastructure.

129. If the Authority's goal is to promote facilities-based competition, it needs to appropriately reward Licensees who incur costs and take risks to deploy key infrastructure in Singapore.

Administrative Changes:

130. We have reviewed and have no objections to the proposals.

Part X: Administrative and Enforcement Procedures:

Changes to Decision and Reconsideration Process:

131. We note the explanation that "*all matters that fall under the Code are considered competition and consumer protection matters and will therefore be subject to the revised process*". However, this appears to suggest that media-related decisions made outside of the Code are not subject to a reconsideration process.

132. We respectfully note that this still creates a non-alignment between the telecommunications and media regulatory frameworks. It may be entirely possible that a decision from the Authority spread across both the telecommunication and media markets and across different regulatory frameworks. It would be confusing if only certain elements of a decision were subject to reconsideration, while others had to go directly to appeal.

133. As a fully converged regulator, the Authority needs to ensure that, where feasible, it has a consistent framework throughout. As the Authority will already need to make changes to its legislation to implement the Proposed Code, we respectfully suggest that it takes this opportunity to ensure a full alignment between the telecommunications and media sectors on this matter.

Dispute Resolution:

134. We have no objections to the Authority's proposed approach. We reiterate our position that matters should only move towards dispute resolution if there is indeed a demonstrable failure to act within a reasonable time period by one party, or if that party has failed to act in good faith.

Informal Guidance:

135. We have no objections to this proposal. However, we respectfully request that the Authority set-out the timelines it seeks to follow for "*Informal Guidance*" requests.

136. In many cases, Licensees will only seek informal guidance from the Authority if they have genuine and time-sensitive issues that require urgent clarification. To prevent itself from being a bottleneck in a fast-moving industry, the Authority should strive to provide certainty on when it expects to respond to requests for guidance.

Structural Separation:

137. We have no objections to this proposal.

Request for Enforcement by a Private Party:

138. In its paper, the Authority has suggested that it would seek to streamline the enforcement process for "*clear-cut situations*". As this is a new term, we would urge the Authority to clarify what situations it would deem as "*clear-cut*". Our concern is that this may

potentially disfavour one of the parties to the enforcement request, and greater clarity will be needed on the Authority's proposal.

Conclusion:

139. A summary of StarHub's key comments on the Proposed Code are as follows:

- StarHub supports the move towards a converged regulatory landscape for the telecommunication and media markets. Where feasible, there should be an alignment of the regulatory obligations applicable for both the telecommunications and media markets. In particular, we respectfully submit that the process for reconsideration requests should apply for **all** telecommunications and media regulatory matters (whether within or outside of the Proposed Code).

- A key part of supporting Licensees and supporting facilities-based competition is a revision to the COPIF to accommodate and facilitate the deployment of 5G networks. We urge the Authority to hasten its review on this matter.

- It is critical that the Authority ensure consistency with its own regulatory principles.

    - Where markets are competitive, the Authority should be looking at facilitating industry self-regulation and relying on market forces. Where the market has already moved towards optimal outcomes, regulations should be removed. It is unreasonable to justify the imposition of new regulatory requirements by stating that the regulations would have no impact because the market is already meeting the desired outcomes.

    - Any regulatory requirements should be proportionate. Imposing industry-wide obligations to address sporadic or limited feedback is impractical and counter-productive.

    - Regulatory policies need to be technology neutral and non-discriminatory. Continuing to impose "legacy" obligations on Licensees while foregoing regulation on OTT service providers is neither fair nor reasonable.

- While the Authority has clearly acknowledged the changes in the market, it is necessary for policies changes to reflect this. In particular,

    - The Authority should ensure a level playing exists between Licensees and overseas players who provide competing services. StarHub's strong suggestion is to level the playing field by reducing the obligations imposed on Licensees in Singapore, to allow them to better compete in the market.

    - Competition in the telecommunications and media markets must take into consideration the impact of OTT service providers. An expansive view needs to be taken to ensure that markets are correctly defined.

140. StarHub is grateful for the opportunity to comment on this matter and we appreciate the Authority's consideration of our comments.