

# **Media Development Authority of Singapore Act — Code of Practice for Market Conduct**

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**MEDIA DEVELOPMENT AUTHORITY OF SINGAPORE ACT  
(CHAPTER 172)**

**MEDIA DEVELOPMENT AUTHORITY OF SINGAPORE ACT — CODE OF  
PRACTICE FOR MARKET CONDUCT**

In exercise of the powers conferred by section 17(1) of the Media Development Authority of Singapore Act, the Media Development Authority of Singapore hereby issues the following Code of Practice for Market Conduct in the Provision of Media Services:

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**APPENDIX 3: DEFAULT PRICING PRINCIPLES FOR USE IN DISPUTE RESOLUTION**

## 1. — INTRODUCTION

### 1.1 Goals of this Code

This Code is intended to:

- (a) enable and maintain fair market conduct and effective competition in Singapore’s media industry;
- (b) ensure the availability of a comprehensive range of quality media services in Singapore;
- (c) encourage industry self-regulation in Singapore’s media industry;
- (d) foster further investment in, and the development of Singapore’s media industry; and
- (e) safeguard the public interest.

### 1.2 Legal Basis for this Code

This Code is issued by the Media Development Authority of Singapore (“MDA”) pursuant to section 17(1) of the Media Development Authority of Singapore Act (Cap. 172) (referred to in this Code as the “MDA Act”).

### 1.3 Legal Effect of this Code

This Code imposes binding legal obligations on the persons to which it applies. These obligations are in addition to any applicable obligations contained in the MDA Act, other statutes, regulations, directions, licences or codes of practice. To the extent that any provision of this Code is inconsistent with the provisions of the MDA Act or any other statute, or of any regulation, direction, licence or code of practice issued by MDA, the provisions of the statute, regulation, direction, licence or code of practice shall prevail.

### 1.4 Persons Subject to this Code

MDA will apply this Code to Regulated Persons and, to the extent expressly specified herein, to other persons in accordance with the provisions of the MDA Act.

### 1.5 Rules of Construction and Definitions

- (a) MDA will give effect to the provisions of this Code in a manner that promotes the purposes of the Code. MDA will apply this Code in the manner most consistent with the regulatory principles specified in paragraphs 1.6.1 to 1.6.8 of this Code.
- (b) Unless otherwise specifically provided, the following definitions shall apply throughout this Code:
  - (i) “Advertiser” means any person that purchases, or intends to purchase, advertising capacity in, or on, any media service provided by a Regulated Person.
  - (ii) For the purposes of this Code, a person shall be deemed to be an “Affiliate” of another person if:
    - (A) that other person has a direct or an indirect ownership interest in the first-mentioned person of at least 5 percent (the other person being referred to then as the “parent”);
    - (B) the first-mentioned person has a direct or an indirect ownership interest in that other person of at least 5 percent (the other person being referred to then as the “subsidiary”); or
    - (C) the first-mentioned person’s parent has a direct or an indirect ownership interest of at least 5 percent in that other person (the other person being referred to then as the “sibling”).

An ownership interest is direct if it is held directly by a person in another person. An ownership interest is indirect if it is held through another ownership interest (being direct or indirect) in a person that, itself, has an ownership interest in another person (being direct or indirect). However, a person will not be considered an Affiliate of a “sibling” where the 2 persons’ common “parent” has only a passive ownership interest in the 2 “siblings” ( *i.e.* where the parent does not in practice cause either subsidiary to take, or prevent either subsidiary from taking, decisions regarding the management and major operating decisions of the

person).

- (iii) “Ancillary Media Service” means the provision of infrastructure, systems, services, information or other resources that are used or intended to be used in connection with the provision or delivery of any media service. Examples of such Ancillary Media Services include video programmes production and newspaper distribution.
- (iv) “Ancillary Media Service Provider” means any person who provides an Ancillary Media Service.
- (v) “Applicants” means a Regulated Person and any other person with whom it proposes to enter into a Consolidation.
- (vi) “Consolidation” means a transaction that falls within one of the situations specified in paragraph 8.4.1 of this Code.
- (vii) “Consolidation Agreement” means a binding agreement that, upon approval by MDA, and satisfaction of any specified conditions, would result in a Consolidation.
- (viii) “Consolidation Application” refers to any “Long Form” Consolidation Application or “Short Form” Consolidation Application (as the case may be) under Part 8 of this Code.
- (ix) “Consolidation Application Fee” means the fee specified in paragraph 8.9 of this Code.
- (x) “Consolidation Review Period” means the period as specified in paragraph 8.5 of this Code.
- (xi) “Control” means the ability of a person to exercise decisive influence over the activities of another person whether existing by reason of rights, contracts or any other means, or any combination of rights, contracts, or other means. MDA will presume that a person has

Control over another person where the first person has an ownership interest (direct or indirect) of at least 30 percent in the second person, or has the right to exercise or procure the exercise of at least 30 percent of the voting shares of the second person. An ownership interest is direct if it is held directly by a person in another person. An ownership interest is indirect if it is held through a direct or an indirect ownership interest in a person that, itself, has a direct or an indirect ownership interest in another person.

- (xii) “Consumer” means an end-consumer or any other person who purchases goods, services or access (as the case may be) as inputs for that person’s production, resale or provision of any media service.
- (xiii) “Designated Archive Operator” refers to any person who is specified as such by MDA pursuant to section 19(1) of the MDA Act.
- (xiv) “Designated Newspaper Archive Operator” refers to any person who is, by notification in the *Gazette* pursuant to section 19(1) of the MDA Act, specified by MDA to be a Designated Archive Operator in relation to such person’s archive of photographs and articles published in general circulation newspapers in Singapore, being a person who is, or is affiliated with, a person who publishes any general circulation newspaper.
- (xv) “Designated Video Archive Operator” refers to any person who is, by notification in the *Gazette* pursuant to section 19(1) of the MDA Act, specified by MDA to be a Designated Archive Operator in relation to such person’s archive of video programmes, being a person who is, or is affiliated with, a Free-to-Air Television Licensee.
- (xvi) “Dominant Person” means a Regulated Person who, in the opinion of MDA, has Significant Market Power and includes any Regulated Person so specified by MDA by notification in the *Gazette* pursuant to section 21(4) of the MDA Act.

- (xvii) “Essential Resource” means any apparatus, accessory, system, service, information or such other resource of any kind, used or intended to be used in connection with the provision or delivery of any media service provided by a Media Licensee, and which satisfies the criteria set out in paragraph 9.3.1.5 or 9.3.1.6 of this Code and is specified by MDA as an Essential Resource pursuant to section 18(2) of the MDA Act.
- (xviii) “Free-to-Air Radio Licensee” refers to any person licensed under the Broadcasting Act (Cap. 28) to provide a Free-to-Air Radio Service.
- (xix) “Free-to-Air Radio Service” means any free-to-air radio service or special interest radio service which is made available to the audience for whom it is intended without payment of a subscription fee.
- (xx) “Free-to-Air Television Licensee” refers to any person licensed under the Broadcasting Act to provide a Free-to-Air Television Service.
- (xxi) “Free-to-Air Television Service” means any free-to-air television service or special interest television service which is made available to the audience for whom it is intended without payment of a subscription fee.
- (xxii) “Horizontal Consolidation” means a Consolidation that involves 2 or more persons who are current competing providers of the same media service (or media services that are close substitutes), at least one of whom is a Regulated Person.
- (xxiii) “Media Licensee” means any person granted a newspaper permit under the Newspaper and Printing Presses Act (Cap. 206) or who holds a broadcasting licence under the Broadcasting Act (Cap. 28).
- (xxiv) “media market” includes any product or geographic market segment within a media market.



(xxv) “Minister” means the Minister for Communications and Information.

*[S 657/2013 wef 01/11/2012]*

(xxvi) “Non-Horizontal Consolidation” means a Consolidation that involves 2 or more persons who are not current competing providers of the same media service (or media services that are close substitutes), at least one of whom is a Regulated Person.

(xxvii) “person” includes any individual, any company, partnership or association, and any body of persons, corporate or unincorporated.

(xxviii) “Post-Consolidation Entity” means the economic person that would be created if MDA approves the Consolidation Application.

(xxix) “Regulated Person” means any person specified by the Minister under section 16(3) of the MDA Act.

(xxx) “Significant Market Power”, in relation to a Regulated Person who satisfies the criteria specified in paragraph 5.3 of this Code, means the ability to act without significant competitive restraint from its competitors.

(xxxi) “Subscriber” means an end-consumer who agrees to purchase or who has purchased a Subscription Service from a Regulated Person.

(xxxii) “subscription fee” means any form of consideration.

(xxxiii) “Subscription Service” means a service provided by a Regulated Person to an end-consumer upon the payment of a subscription fee.

(xxxiv) “Subscription Television Licensee” refers to any person licensed under the Broadcasting Act to provide a Subscription Television Service.

(xxxv) “Subscription Television Service” means any subscription television service, video-on-demand service or special interest television service which is made available to the audience for whom it is intended only upon payment of a subscription fee.

(c) Various provisions of this Code impose a duty on specified persons to negotiate in “good faith”. The duty of good faith requires that such persons must take diligent measures to maximise the chance of reaching an agreement, on commercially reasonable terms, where feasible.

(d) This Code is divided into 11 Parts:

- (i) Part 1 – Introduction;
- (ii) Part 2 – Public Interest Obligations;
- (iii) Part 3 – Regulated Persons’ Duties to End-Consumers;
- (iv) Part 4 – Prohibition on Unfair Methods of Competition;
- (v) Part 5 – Concept of Dominance;
- (vi) Part 6 – Special Obligations of Dominant Persons;
- (vii) Part 7 – Prohibition of Agreements that Restrict or Distort Competition;
- (viii) Part 8 – Consolidations;
- (ix) Part 9 – Duty to Provide Access to Essential Resources;
- (x) Part 10 – Dispute Resolution and Enforcement Procedures;
- (xi) Part 11 – Revocation, Savings and Transitional.

A reference in this Code to a Part shall be construed as a reference to all the paragraphs within the Part.

(e) Unless otherwise provided, a reference in this Code to a

paragraph shall be construed as a reference to the chapeau of the paragraph (if any) and all sub-paragraphs.

## **1.6 Regulatory Principles**

The following regulatory principles provide the foundation for this Code and will guide MDA's implementation of its provisions:

### **1.6.1 Reliance on Private Negotiations and Industry Self-Regulation**

To the extent feasible, all persons to which the Code applies should first seek to undertake private negotiations in good faith and self-regulate.

### **1.6.2 Basis for Regulatory Intervention**

- (a) MDA recognises that regulatory intervention may be necessary because:
  - (i) the level of competition in Singapore's media industry is limited;
  - (ii) certain Regulated Persons continue to have the ability to exercise Significant Market Power; or
  - (iii) of a need to develop effective competition for the benefit of Consumers, to encourage innovation, and to improve productivity in order to achieve public interest goals.
- (b) Therefore, MDA will intervene in any media industry within its jurisdiction, where necessary, to:
  - (i) ensure that persons subject to this Code fulfil their obligations;
  - (ii) protect Consumers from improper business practices;
  - (iii) prevent Regulated Persons from engaging in

unfair methods of competition;

- (iv) prevent Consolidations that are likely to substantially lessen competition in Singapore's media industry;
- (v) promote competition; or
- (vi) otherwise safeguard the public interest.

### **1.6.3 Proportionality**

To the extent that regulation is necessary, MDA will seek to impose regulatory requirements that are no broader than necessary to achieve its stated objectives.

### **1.6.4 Open and Reasoned Decision-Making**

- (a) MDA will endeavour to apply the provisions of this Code in a transparent manner. In general, MDA will:
  - (i) provide an opportunity to respond to persons who are the parties to any valid complaint or who are affected by any decision of MDA; and
  - (ii) provide a reasoned explanation of the basis for its actions.
- (b) MDA may publicly release information related to any valid complaint. MDA reserves the right to publicly release such information on a case-by-case basis, at its discretion, and will take the necessary steps to ensure that such release does not prejudice any ongoing investigation.

### **1.6.5 Non-Discrimination**

In making decisions pursuant to this Code, MDA will treat similarly situated persons on an equivalent basis. Where appropriate, MDA's decisions and directions will reflect any relevant differences, in MDA's opinion, between such persons.

### **1.6.6 Consultation with Other Regulatory Authorities**

MDA will, where feasible and appropriate, consult other regulatory authorities in Singapore in order to facilitate the development of a consistent regulatory policy that promotes fair and effective competition and, serves the public interest.

### **1.6.7 Avoidance of Unnecessary Delay**

MDA will strive to make all decisions and issue all directions within the timeframes specified herein and, in any case, as soon as reasonably possible.

### **1.6.8 Technological Neutrality**

- (a) MDA's requirements will reflect the phenomenon of convergence which is reducing differences between platforms, including, but not limited to broadcasting, print and on-line services. Regulatory requirements will be based on clear policy objectives and sound economic principles and, to the extent feasible, will be technology-neutral.
- (b) However, the phenomenon of convergence is in its early stages, with different platforms subject to differing degrees of competition. Therefore, objective application of these principles may result initially in the imposition of different regulatory obligations on Regulated Persons who utilise different platforms. In certain cases, public interest may require the imposition of special obligations on Regulated Persons who use different platforms.

## **1.7 Modifications or Elimination of Unnecessary Provisions**

The following provisions describe the means by which MDA will ensure that unnecessary or unduly burdensome regulatory requirements in this Code are reviewed and, to the extent appropriate, modified or eliminated.

### **1.7.1 Regulatory Review**

At least once every 3 years, MDA will review this Code to

ensure the effective attainment of MDA's goals. As part of the triennial review process, MDA will provide an opportunity for industry and public comment. The duration of any public consultation exercise will provide reasonable time for consideration of any change to the Code and for interested parties to submit their written representations to MDA.

### **1.7.2 Requests for Modification or Elimination of Unnecessary Provisions**

Regulated Persons and Ancillary Media Service Providers may petition MDA, in writing, to eliminate or modify any provision of this Code. The petitioner must specify the provisions of this Code that it seeks to eliminate or modify, and must provide a clear and comprehensive statement of the reasons why such action is justified. The petitioner may propose alternative approaches that, if adopted, would achieve MDA's objectives in a less burdensome manner.

## **1.8 Reservations of Authority**

MDA reserves, among others, the following rights:

### **1.8.1 Right to Grant Exemptions from Any Provision of this Code**

Where good cause is shown by any person subject to this Code, MDA may grant such person an exemption from specific provision(s) of this Code. An exemption may be granted on a single-use basis, temporary, permanent, for a fixed period or effective until the occurrence of a specific event, as may be determined by MDA. Where appropriate, MDA may grant exemptions subject to compliance with specific conditions.

### **1.8.2 Right to Amend this Code**

MDA may amend this Code on its own initiative at any time. MDA will generally consult media industry participants before doing so.

### **1.8.3 Right to Waive Code Provisions Where Necessary in the Public Interest**

MDA may waive any provision of this Code which imposes an obligation on MDA in any situation in which such action is necessary to achieve the goals of this Code or otherwise safeguard the public interest.

### **1.9 Effective Date of this Code**

This Code will come into force on 12th March 2010 at 8.30 am (referred to in this Code as the “Effective Date”).

### **1.10 Short Title**

This Code may be referred to as the “Media Market Conduct Code”.

## **2. — PUBLIC INTEREST OBLIGATIONS**

### **2.1 Introduction**

This Part details 5 major public interest obligations to be undertaken by specific Regulated Persons and other specified persons, as outlined below:

#### **2.1.1 Obligation to Broadcast Events of National Significance**

Free-To-Air Television Licensees and Free-To-Air Radio Licensees must broadcast Events of National Significance, in the manner specified by MDA, as set out at paragraph 2.4 of this Code.

#### **2.1.2 Obligation to Make Specified Materials Reasonably Available**

All Designated Archive Operators must make materials in their archives specified by MDA available to certain other persons on reasonable prices, terms and conditions.

#### **2.1.3 Prohibition on Obtaining Exclusive Rights as Specified by MDA**

Regulated Persons who are Subscription Television Licensees must not obtain for their own use any exclusive rights to

programmes as may be specified by MDA from time to time.

#### **2.1.4 Prohibition on Hoarding Specified Programmes**

Regulated Persons who are Free-To-Air Television Licensees must not “hoard” any programmes as may be specified by MDA from time to time.

#### **2.1.5 Obligation to Cross-Carry Content**

Regulated Persons who are Supplying Qualified Licensees must make all their Qualified Content available for transmission and reception on all Relevant Platforms of the nationwide Subscription Television Service of every Receiving Qualified Licensee. Correspondingly, Regulated Persons who are Receiving Qualified Licensees must carry all Qualified Content made available by Supplying Qualified Licensees on all Relevant Platforms of their respective nationwide Subscription Television Services.

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## **2.2 Application**

This Part applies to Regulated Persons providing Free-to-Air Television Services, Free-to-Air Radio Services, or Subscription Television Services and, to the extent expressly specified in this Part, to any person who has been appointed or designated by MDA as a Lead Broadcaster or a Designated Archive Operator.

## **2.3 Definitions**

In this Part:

- (a) “Events of National Significance” means events designated in paragraph 2.4.1.2 of this Code as revised from time to time pursuant to paragraph 2.4.1(b) of this Code, which Free-to-Air Television Licensees and Free-to-Air Radio Licensees are required to broadcast pursuant to their licences, or which Free-to-Air Television Licensees and Free-to-Air Radio Licensees are required to broadcast pursuant to paragraph 2.4.1 of this Code following the Effective Date of this Code.



(b) “General Entertainment” consists of all other programmes that do not constitute either Events of National Significance, or News, Current Affairs or Information Programmes, and includes drama, comedy, game and quiz shows, sporting events, and any other programmes specified by MDA. For the purposes of paragraph 2.5 of this Code, the Designated Video Archive Operator is required only to archive General Entertainment programmes which are of social or cultural significance. If any doubt arises as to whether any General Entertainment programme is of social or cultural significance, MDA’s determination shall be final and conclusive.

(ba) “Group” means a group of 2 or more persons where one person has Control over the other person or persons, as the case may be, in the group;

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(c) “News, Current Affairs or Information Programmes” means news, current affairs or information programmes, other than those designated as Events of National Significance which deal with events of economic, political, social, cultural, or educational significance (as the case may be).

(d) “Qualified Content” means:

(i) any channel or programming content (whether in a linear or non-linear format), including any basic function in support of such channel or programming content that is specified in Part I of Appendix 1, where such channel or programming content is:

(A) subject to sub-paragraph (ii), produced or commissioned by a Regulated Person and where, on or after 1st August 2011, the Regulated Person transmits the same on its Subscription Television Service in Singapore and refuses to allow the channel or programming content to be acquired or otherwise obtained from it for transmission on any Relevant Platform in Singapore by:

- (I) any other Regulated Person; or
  - (II) where the Regulated Person that produced or commissioned the channel or programming content belongs to a Group, any other Regulated Person outside the Group; or
- (B) acquired or otherwise obtained on or after the Effective Date by a Regulated Person for transmission on its Subscription Television Service in Singapore under an arrangement, whether explicit or implicit, which prevents or restricts or is likely to prevent or restrict the channel or programming content from being acquired or otherwise obtained from it for transmission on any Relevant Platform in Singapore by:
- (I) any other Regulated Person; or
  - (II) where the Regulated Person that acquired or otherwise obtained the channel or programming content belongs to a Group, any other Regulated Person outside the Group; and
- (ii) any bundled channels or bundled programming content comprising, in whole or in part, any channel or programming content that is referred to in sub-paragraph (i) of this definition.

For the avoidance of doubt, any channel or programming content is not Qualified Content by virtue only of the incorporation of any value-added service that is specified in Part II of Appendix 1 in the channel or programming content.

For the purposes of sub-paragraph (i)(B) of this definition, for the avoidance of doubt, whilst any channel or programming content that is acquired or otherwise obtained is not Qualified Content if it was acquired or otherwise obtained under or

pursuant to an arrangement referred to in that sub-paragraph before the Effective Date, it is Qualified Content if and from the time such arrangement is extended, renewed, or otherwise re-contracted for on or after the Effective Date.

*Illustration A: A Regulated Person bundles five channels as part of its Subscription Service offering to its Subscribers. One of the five channels is Qualified Content. In this case, the entire bundle comprising all five channels shall be deemed to be Qualified Content.*

*Illustration B: In providing video-on-demand services, a Regulated Person includes one or more movies (which it has acquired as Qualified Content) into its standard video-on-demand “Movie Bundle”. In this case, the entire video-on-demand movie bundle offering shall be deemed to be Qualified Content.*

*Illustration C: A Regulated Person re-contracts with a content provider after the Effective Date, but the new contract does not prevent or restrict (nor is likely to prevent or restrict) another Regulated Person from acquiring or otherwise obtaining channels or programming content. The channels or programming content concerned will not be Qualified Content.*

*The illustrations set out above are non-exhaustive examples.*

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- (e) “Receiving Qualified Licensee” means any Regulated Person who is designated by MDA as a Receiving Qualified Licensee under paragraph 2.7.2 of this Code.

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- (ea) “Relevant Platform” means a managed network over or using any one or any combination of the following:
- (i) hybrid fibre-coaxial;
  - (ii) optical fibre;
  - (iii) the Asymmetric Digital Subscriber Line.

- (f) “Supplying Qualified Licensee” means any Regulated Person who:
- (i) is licensed to provide any Subscription Television Service; and
  - (ii) produces or commissions, or acquires or otherwise obtains, Qualified Content.

## **2.4 Duty of Free-to-Air Television Licensees and Free-to-Air Radio Licensees to Broadcast Specified Events of National Significance**

Free-to-Air Television Licensees and Free-to-Air Radio Licensees must comply with MDA’s requirements regarding the broadcast of Events of National Significance.

### **2.4.1 Designation of Events of National Significance That Must be Broadcast**

- (a) MDA will set out at paragraph 2.4.1.2 of this Code a list of Events of National Significance (which may be revised from time to time by MDA), and will specify the obligations of Free-to-Air Television Licensees and Free-to-Air Radio Licensees to broadcast these events.
- (b) MDA will only designate events of particular national importance or significance as Events of National Significance. Where necessary, MDA may revise the list of Events of National Significance. Upon such revision, MDA shall provide written notification to Free-to-Air Television Licensees and Free-to-Air Radio Licensees of such revised list.

#### **2.4.1.1 Coverage Requirements**

MDA will require Free-to-Air Television Licensees and Free-to-Air Radio Licensees to broadcast Events of National Significance, including either or both “live” and “delayed” broadcasts, as MDA considers appropriate.

MDA may:

- (a) exempt certain Free-to-Air Television Licensees or Free-to-Air Radio Licensees from the duty to broadcast one or more Events of National Significance;
- (b) permit some or all Free-to-Air Television Licensees or Free-to-Air Radio Licensees to broadcast only portions of one or more Events of National Significance; or
- (c) adopt other appropriate requirements as MDA, in its discretion, considers necessary.

#### **2.4.1.2 Designation of Events**

The following events are designated as Events of National Significance for the purposes of this Code:

- (a) National Day Parade;
- (b) National Day Rally;
- (c) Prime Minister's National Day Message;
- (d) Parliamentary proceedings, including Budget Speech and debate;
- (e) General Election, By-Election and Presidential Election; and
- (f) State Funerals.

#### **2.4.2 Selection of Lead Broadcaster Where Multiple "Feeds" are not Feasible**

- (a) In certain cases, MDA may determine that it is not technically or operationally feasible, or is otherwise undesirable in MDA's opinion, for more than one person to locate cameras and other equipment at the site of an Event of National Significance.
- (b) In such situations, MDA will select a Lead Broadcaster

(the “Lead Broadcaster”) who will be given the right to locate cameras and other equipment at the site of the Event of National Significance. In such situations, the Lead Broadcaster will be required to make the “feed” available to all Free-to-Air Television Licensees and Free-to-Air Radio Licensees obligated to broadcast the Event of National Significance, and any other person as MDA may direct as being entitled to obtain access to the “feed” to the Event of National Significance, in accordance with this Code.

#### **2.4.2.1 Use of Competitive Tender, Where Feasible**

If MDA determines that more than one person is capable of operating as the Lead Broadcaster for one or more Events of National Significance, MDA may issue a competitive tender. MDA may conduct an “open tender” in which it will allow any interested person to submit a proposal, or may invite specific persons to submit proposals. MDA may, at its discretion, include minimum terms that any tender must satisfy. In evaluating any responses, MDA will consider:

- (a) the price, if any, that the person would charge MDA or any other person commissioning the coverage to provide the service;
- (b) the prices, if any, that the person would charge Free-to-Air Television Licensees, Free-to-Air Radio Licensees, and any other person whom MDA may direct as being entitled to access the “feed”;
- (c) the person’s experience;
- (d) the technical and operational feasibility of the person’s proposal; and
- (e) any other relevant factor.

#### **2.4.2.2 Appointment of a Lead Broadcaster**

If MDA determines that only one person is capable of operating as the Lead Broadcaster, or that the use of a competitive tender would not be feasible or desirable, MDA will appoint a person as the Lead Broadcaster without conducting a competitive tender.

### **2.4.3 Duty of the Lead Broadcaster to Co-operate**

The Lead Broadcaster has a duty to co-operate with all Free-to-Air Television Licensees and Free-to-Air Radio Licensees that are obligated to broadcast any Event of National Significance, and any other person as MDA may direct as being entitled to obtain the “feed” to that Event of National Significance.

#### **2.4.3.1 Duty to Share the “Feed” and Requirements Imposed on the Lead Broadcaster, and the Person Receiving the “Feed” from the Lead Broadcaster, Including Compensation**

- (a) The Lead Broadcaster must make the “feed” available to all Free-to-Air Television Licensees and Free-to-Air Radio Licensees that are obligated to broadcast the Event of National Significance, and any other person as MDA may direct as being entitled to obtain the “feed” to the Event of National Significance.
- (b) MDA may also direct, on a case-by-case basis, the prices, terms and conditions on which the Lead Broadcaster must make the “feed” available.
- (c) Additionally, the following requirements are imposed on the Lead Broadcaster:
  - (i) the “feed” must be of the same technical quality as the “feed” that the Lead Broadcaster provides to itself or its Affiliates;
  - (ii) the Lead Broadcaster must attempt, in good faith, to satisfy any reasonable technical or operational specification

requested by any Free-to-Air Television Licensee, Free-to-Air Radio Licensee or any other person as MDA may direct as being entitled to receive the “feed”; and

(iii) the Lead Broadcaster may not impose any unreasonable restrictions on the ability of a Free-to-Air Television Licensee, Free-to-Air Radio Licensee or any other person as MDA may direct as being entitled to re-broadcast all or part of the “feed”.

(d) The following requirements are imposed on the party receiving the “feed” from the Lead Broadcaster:

(i) the Free-to-Air Television Licensee, Free-to-Air Radio Licensee or such other person as MDA may direct as being entitled to receive the “feed” has an obligation to compensate the Lead Broadcaster for reasonable costs incurred in providing the “feed” to the said Free-to-Air Television Licensee, Free-to-Air Radio Licensee or other person that are not otherwise compensated; and

(ii) the Free-to-Air Television Licensee, Free-to-Air Radio Licensee or other person as MDA may direct as being entitled to receive the “feed” must identify the source of the “feed” in a reasonable and unobtrusive manner.

#### **2.4.3.1.1 Duty on Both Persons to Negotiate in Good Faith**

(a) Unless the prices, terms and conditions on which the Lead Broadcaster will



provide the “feed” have been established by MDA in its acceptance of a competitive tender, the Lead Broadcaster and the Free-to-Air Television Licensee, Free-to-Air Radio Licensee or such other person as MDA may direct as being entitled to receive the “feed” will have a duty to negotiate in good faith in order to reach an agreement regarding the prices, terms and conditions on which the Lead Broadcaster will provide the “feed” to the said Free-to-Air Television Licensee, Free-to-Air Radio Licensee or other person.

- (b) Where feasible, the relevant persons should initiate such negotiations at least 180 working days prior to the date of the Event of National Significance. A copy of any agreement reached pursuant to this paragraph (if any) must be submitted to MDA within 30 working days after its execution by the relevant persons.

#### **2.4.3.1.2 Confirmation by the Lead Broadcaster of Acceptance of Prices, Terms and Conditions**

The Lead Broadcaster must provide confirmation to MDA and to the Free-to-Air Television Licensee, Free-to-Air Radio Licensee or such other person as MDA may direct as being entitled to receive the “feed” with whom negotiations have taken place, as to whether the prices, terms and conditions negotiated with the said Free-to-Air Television Licensee, Free-to-Air Radio Licensee or other person and upon which the Lead Broadcaster will provide the

“feed” are acceptable, at least 60 working days prior to the date of the Event of National Significance.

#### **2.4.3.1.3 Conciliation/Dispute Resolution**

Pursuant to the requirement contained in paragraph 2.4.3.1.2, in any case in which the Lead Broadcaster confirms that the prices, terms and conditions on which the Lead Broadcaster will provide the said “feed” to any Free-to-Air Television Licensee, Free-to-Air Radio Licensee or other person as MDA may direct as being entitled to receive the “feed” are unacceptable and therefore an agreement cannot be reached, the relevant persons may jointly request MDA to provide conciliation services pursuant to paragraph 10.4 of this Code. The Free-to-Air Television Licensee, Free-to-Air Radio Licensee or such other person as MDA may direct as being entitled to receive the “feed” may also request MDA to initiate a Dispute Resolution pursuant to paragraph 10.5 of this Code. In any Dispute Resolution, MDA will apply the pricing principles as specified in Appendix 4 of this Code.

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## **2.5 Designated Video and Newspaper Archive Operators**

### **2.5.1 Specification of Designated Archive Operators**

By notification published in the *Gazette*, MDA may, from time to time, specify persons to be Designated Video Archive Operators and Designated Newspaper Archive Operators. Such designations will only be made where, in MDA’s opinion, the contents of the relevant operators’ archives are of a level of significant public interest which justifies facilitating third party

access to such content.

## **2.5.2 Fulfilment of Obligations and Specific Requirements**

The Designated Video Archive Operator must comply with the requirements specified in paragraphs 2.5.3 to 2.5.5 of this Code. In the event that MDA specifies any person as a Designated Newspaper Archive Operator, MDA will revise this Code to specify the requirements applicable to the Designated Newspaper Archive Operator.

## **2.5.3 General Duty of the Designated Video Archive Operator**

- (a) A Designated Video Archive Operator must take reasonable and effective action to make the contents of its archives available on reasonable prices, terms and conditions which must include at a minimum:
  - (i) for Events of National Significance:
    - (A) the preparation of a catalogue that lists the contents of the Designated Video Archive Operator's archive;
    - (B) allowing Regulated Persons and any other person as MDA may direct to view the catalogue and the archived materials; and
    - (C) licensing the archived materials to Regulated Persons and any other person as MDA may direct for the purposes of broadcasting;
  - (ii) for News, Current Affairs or Information Programmes or General Entertainment:
    - (A) the preparation of a catalogue that lists the contents of the Designated Video Archive Operator's archive;
    - (B) allowing Media Licensees and Ancillary

Media Service Providers to view the catalogue and the archived materials; and

(C) licensing the archived materials for use by Media Licensees and Ancillary Media Service Providers for the purposes of broadcasting.

(b) In fulfilling these duties, the Designated Video Archive Operator must comply with any applicable quality of service standard issued by MDA.

#### **2.5.4 Conditions to be Satisfied by the Designated Video Archive Operator**

The Designated Video Archive Operator must take the following actions:

##### **2.5.4.1 Electronic Catalogue**

(a) The Designated Video Archive Operator must compile and maintain an electronic catalogue of archived video programmes.

(b) The archived video programmes in the electronic catalogue shall be classified under one of the following categories:

(i) Events of National Significance;

(ii) News, Current Affairs or Information Programmes; or

(iii) General Entertainment.

##### **2.5.4.2 Viewing at Cost-Based Charges**

The Designated Video Archive Operator must allow the persons described in paragraph 2.5.3 of this Code to view the archived materials upon reasonable request. The Designated Video Archive Operator may charge a

reasonable fee for providing this service.

#### **2.5.4.3 Duty to License Certain Materials for Broadcast**

The Designated Video Archive Operator must license or otherwise make available the following material for broadcast on reasonable prices, terms and conditions:

- (a) To Regulated Persons or any other person as MDA may direct:
  - (i) any programme that falls within the category of Events of National Significance, regardless of the date on which it was originally broadcast; and
- (b) To Media Licensees or Ancillary Media Service Providers:
  - (i) any programme that falls within the category of News, Current Affairs or Information Programmes; and
  - (ii) any programme that falls within the category of General Entertainment.

#### **2.5.4.4 Protection of Licensing and Intellectual Property Rights**

- (a) Nothing in this paragraph requires any Designated Video Archive Operator to license or otherwise make available any material where doing so would cause the Designated Video Archive Operator to either:
  - (i) violate the terms of a valid existing licence with an entity which is not an Affiliate of the Designated Video Archive Operator; or
  - (ii) otherwise infringe on the intellectual property rights of any third person.

- (b) However, the Designated Video Archive Operator and any Affiliate of the Designated Video Archive Operator must use their best efforts to limit the extent to which any licence with any rights holder restricts the ability of the Designated Video Archive Operator to comply fully with the requirements contained in paragraph 2.5 of this Code.

## **2.5.5 Compensation for Licensing Archived Material**

Any person seeking to obtain a licence to broadcast any archived material has an obligation to compensate the Designated Video Archive Operator for any reasonable costs incurred in licensing the broadcast of its archived material.

### **2.5.5.1 Duty on Both Persons to Negotiate in Good Faith**

The Designated Video Archive Operator and the person seeking to obtain a licence to broadcast any archived material have a duty to negotiate in good faith in order to reach an agreement regarding the appropriate compensation for the licence.

### **2.5.5.2 Default Pricing Principles for Determining Compensation**

If the Designated Video Archive Operator and the person seeking to obtain a licence to broadcast the archived material are unable to reach an agreement regarding the appropriate compensation for the archived material, both persons may jointly request MDA to provide conciliation services pursuant to paragraph 10.4 of this Code. The person seeking to broadcast the archived materials may also request MDA to initiate a Dispute Resolution pursuant to paragraph 10.5 of this Code. In any Dispute Resolution, MDA will apply the pricing principles as specified in Appendix 4 of this Code.

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## **2.6 Public Access to Specified Programmes**

## **2.6.1 Restriction on Acquisition of Certain Programme Rights by Subscription Television Licensees (“Anti-Siphoning”)**

MDA will provide all Free-to-Air Television Licensees and Subscription Television Licensees with a list of programmes in respect of which Subscription Television Licensees are restricted from obtaining certain exclusive rights. MDA will update this list through the use of a notice as and when required. The notice will classify the programmes into the following 2 categories:

### **2.6.1.1 Programmes in Which a Subscription Television Licensee May Not Obtain for Its Own Use Any Exclusive Broadcast Right**

Category A will consist of programmes in respect of which a Subscription Television Licensee may not obtain for its own use any exclusive right to broadcast the programme, or any part thereof, whether including either or both “live” and “delayed” broadcasts, as MDA considers appropriate.

### **2.6.1.2 Programmes in Which a Subscription Television Licensee May Not Obtain for Its Own Use Exclusive Rights to Any Delayed Broadcast Package**

- (a)* Category B will consist of programmes in respect of which a Subscription Television Licensee may not obtain for its own use the exclusive right to broadcast any package that the rights holder may offer that allows for the “delayed” broadcast of all or part of the programme.
- (b)* When a programme is included in Category B, the Subscription Television Licensee is free to obtain the exclusive right to broadcast the programme “live” or the non-exclusive rights to any “delayed” broadcast package that the rights holder may offer or both.

### **2.6.1.3 Criteria for Imposing Anti-Siphoning Restrictions**

The objective of imposing anti-siphoning restrictions is to increase the opportunities for viewers in Singapore to gain access to certain programmes. In determining whether to restrict Subscription Television Licensees from obtaining rights in certain programming, MDA will consider all relevant issues which include, but are not limited to:

- (a) whether imposing the proposed restrictions will increase the likelihood that viewers in Singapore will be able to access the programming over free-to-air television;
- (b) whether viewers in Singapore have a reasonable expectation of being able to access the programme over free-to-air television;
- (c) whether a significant portion of the viewers in Singapore would be likely to watch the programme if it was made available on free-to-air television;
- (d) whether the programme involves major international sporting events, international sporting events in which a Singapore team or personality is participating, or significant local sporting events; and
- (e) the extent, if any, to which restricting the ability of Subscription Television Licensees from obtaining certain exclusive rights would be likely to adversely affect the ability of Subscription Television Licensees to provide a commercially viable service.

#### **2.6.1.4 Procedures for Designating Additional Programmes or Removing Designation**

Any Free-to-Air Television Licensee may submit a petition to MDA requesting that additional programmes be added to the list of programmes in which Subscription



Television Licensees are restricted from obtaining certain exclusive rights. Similarly, any Subscription Television Licensee may file a petition with MDA requesting that an event be removed from the list of programmes in which Subscription Television Licensees are restricted from obtaining certain exclusive rights. Any petition should discuss the criteria specified in paragraph 2.6.1.3 of this Code. If appropriate, MDA will seek industry comments and will generally make a determination within 60 working days of receiving a request.

## **2.6.2 Prohibition on “Hoarding” of Listed Programmes**

### **2.6.2.1 Obligation of Free-to-Air Television Licensees with Exclusive Rights**

A Free-to-Air Television Licensee that obtains any exclusive broadcast right in connection with a programme classified as a Category A or B programme must broadcast a reasonable portion of the programme on its service. MDA will conclude that a Free-to-Air Television Licensee has failed to broadcast a reasonable portion of the programme:

- (a) if the Free-to-Air Television Licensee fails to broadcast a substantial portion of the programme, including “live” excerpts, for which it purchased the exclusive broadcast rights without a reasonable business justification; and
- (b) if the Free-to-Air Television Licensee had shown a greater portion of the programme, a significant number of viewers would have been likely to watch the programme.

### **2.6.2.2 Duty to Offer Unused Rights to Other Holders of Television Licences at Cost**

- (a) A Free-to-Air Television Licensee that has obtained any exclusive broadcast right in connection with a programme classified as a

Category A or B programme is obliged to provide schedules that will resemble the final schedule as closely as possible for the broadcast of Category A or B programmes to all other Free-to-Air Television Licensees and all Subscription Television Licensees, as the case may be, as soon as feasible and, where possible, at least 4 months prior to the scheduled broadcast of each Category A or B programme.

- (b) Where a Free-to-Air Television Licensee will not be able to broadcast a reasonable portion of the programme on its service, to the extent permitted by its agreement with the rights holder, the Free-to-Air Television Licensee must make the exclusive broadcast right available to all other Free-to-Air Television Licensees:
- (i) as soon as feasible and, where possible, at least 4 months prior to the time the programme is to be broadcast; and
  - (ii) at a reasonable price that is no greater than the Free-to-Air Television Licensee's actual cost, or the portion of that Free-to-Air Television Licensee's total programme acquisition costs reasonably attributable to the programme being sub-licensed.
- (c) If no other Free-to-Air Television Licensee agrees to acquire the rights on these terms within 3 weeks of the offer, the Free-to-Air Television Licensee must offer to make the rights to broadcast the programme available, on similar terms specified above, to any Subscription Television Licensee.
- (d) The Free-to-Air Television Licensee or any person negotiating on its behalf must use its best efforts to limit the extent to which licences with any rights holder restrict the ability of the Free-to-

Air Television Licensee to comply with the requirements contained in paragraph 2.6.2 of this Code.

### **2.6.2.3 Duty to Negotiate in Good Faith**

With reference to paragraph 2.6.2.2 of this Code, the Free-to-Air Television Licensee that has obtained an exclusive broadcast right over a Category A or B programme and the other Free-to-Air Television Licensee or Subscription Television Licensee, as the case may be, have a duty to negotiate in good faith in order to reach an agreement on the prices, terms and conditions for acquiring the rights to broadcast the subject programme.

## **2.7 Obligation to Cross-Carry Qualified Content**

Every Supplying Qualified Licensee and every Receiving Qualified Licensee must comply with MDA's requirement to cross-carry Qualified Content.

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### **2.7.1 Duties of Supplying Qualified Licensee**

- (a) A Supplying Qualified Licensee must, from and including 1st August 2011, make available all its Qualified Content for transmission and reception on all Relevant Platforms of the nationwide Subscription Television Service of every Receiving Qualified Licensee.
- (b) A Supplying Qualified Licensee must ensure:
  - (i) that it has the right to broadcast all its Qualified Content on every Relevant Platform of every Receiving Qualified Licensee for the purpose of enabling the cross-carriage of the Qualified Content on such Relevant Platforms; and
  - (ii) that it can so broadcast all its Qualified Content without violating or infringing any intellectual

property rights owned by any of the persons from whom it acquired or otherwise obtained the Qualified Content.

- (c) The Supplying Qualified Licensee:
  - (i) must make its Qualified Content available to Receiving Qualified Licensees:
    - (A) in its entirety and in an unmodified and unedited form;
    - (B) at the same time as the Supplying Qualified Licensee makes the Qualified Content available to its Subscribers; and
    - (C) at a level of quality that is not inferior to the level of quality at which the Qualified Content is made available by the Supplying Qualified Licensee to its Subscribers; and
  - (ii) at all times, must not perform any act, or omit to perform any act, where the performance of or omission to perform the act may diminish, impair or otherwise degrade the viewing or customer service experience of any Subscriber accessing the Supplying Qualified Licensee's Qualified Content through any of the Receiving Qualified Licensee's Relevant Platforms.
- (d) A Supplying Qualified Licensee must not bundle any channel or programming content together with any channel or programming content referred to in subparagraph (i) of the definition of "Qualified Content" without first having acquired all relevant rights from the channel or content provider of the firstmentioned channel or programming content for the cross-carriage of the same.
- (e) A Supplying Qualified Licensee must:

- (i) notify MDA of its Qualified Content in such form and manner as specified by MDA within 5 working days after a channel or programming content, or bundled channel or bundled programming content, becomes Qualified Content (whether in linear or non-linear format);
- (ii) notify every Receiving Qualified Licensee of its Qualified Content that is in linear format within the following periods (except that the Supplying Qualified Licensee may, in any particular case, agree with a Receiving Qualified Licensee to a shorter period):
  - (A) where the Receiving Qualified Licensee has yet to receive any Qualified Content from the Supplying Qualified Licensee, no later than 80 working days, or, where the Receiving Qualified Licensee needs to acquire equipment to effect the crosscarriage, 120 working days, prior to the date that the Qualified Content will be first transmitted by the Supplying Qualified Licensee to Subscribers on its own platform; and
  - (B) where the Receiving Qualified Licensee has previously received Qualified Content from the Supplying Qualified Licensee, no later than 30 working days, or, where the Receiving Qualified Licensee needs to acquire equipment to effect the crosscarriage, 60 working days, prior to the date that the Qualified Content will be first transmitted by the Supplying Qualified Licensee to Subscribers on its own platform; and
- (iii) notify every Receiving Qualified Licensee of its Qualified Content that is in non-linear format within the following periods (except that the

Supplying Qualified Licensee may, in any particular case, agree with a Receiving Qualified Licensee to a shorter period):

(A) where the Receiving Qualified Licensee has yet to receive any Qualified Content from the Supplying Qualified Licensee, no later than 120 working days prior to the date that the Qualified Content will be first transmitted by the Supplying Qualified Licensee to Subscribers on its own platform; and

(B) where the Receiving Qualified Licensee has previously received Qualified Content from the Supplying Qualified Licensee, no later than 30 working days, or, where the Receiving Qualified Licensee needs to acquire equipment to effect the crosscarriage, 60 working days, prior to the date that the Qualified Content will be first transmitted by the Supplying Qualified Licensee to Subscribers on its own platform.

(f) A Supplying Qualified Licensee must publish and maintain a list of its Qualified Content on its website, and on its viewing guide.

(g) A Supplying Qualified Licensee must:

(i) to the extent the Qualified Content comprises any channel or programming content that is produced or commissioned by the Supplying Qualified Licensee, allow every Receiving Qualified Licensee to publish, on the Receiving Qualified Licensee's website and viewing guide, a list of such Qualified Content of the Supplying Qualified Licensee carried on the Receiving Qualified Licensee's Relevant Platforms; and

- (ii) to the extent the Qualified Content comprises any channel or programming content that is acquired or otherwise obtained by the Supplying Qualified Licensee, negotiate with the person from whom the Qualified Content was acquired or otherwise obtained to allow every Receiving Qualified Licensee to publish, on the Receiving Qualified Licensee's website and viewing guide, a list of such Qualified Content of the Supplying Qualified Licensee carried on the Receiving Qualified Licensee's Relevant Platforms,

for the limited purpose of informing consumers of the Qualified Content available on the Receiving Qualified Licensees' platforms.

(h) A Supplying Qualified Licensee must:

- (i) enter into a customer service arrangement with and provide Qualified Content to Subscribers accessing such content through any Relevant Platform of a Receiving Qualified Licensee, at prices (including all applicable discounts and promotions), terms and conditions that are the same as the prices, terms and conditions at which the Supplying Qualified Licensee provides such content to Subscribers on its own platform, and not discriminate in any manner in favour of Subscribers viewing Qualified Content on its own platform;
- (ii) ensure that a Subscriber is able to access the Qualified Content through a Receiving Qualified Licensee's Relevant Platform within 5 working days of receipt of such Subscriber's request; and
- (iii) in respect of any feedback or complaint received from a Subscriber in respect of any Qualified Content of the Supplying Qualified Licensee, deal with the feedback or complaint on a non-discriminatory basis and as if it were feedback or

complaint received by the Supplying Qualified Licensee in respect of any channel or programming content transmitted directly by it to the Subscriber.

- (i) Unless it is able to agree with any Receiving Qualified Licensee otherwise, a Supplying Qualified Licensee shall bear:
  - (i) its own cost in complying with its obligation to make its Qualified Content available to the Receiving Qualified Licensee; and
  - (ii) all incremental costs directly incurred by the Receiving Qualified Licensee in providing its Subscribers with access to the Supplying Qualified Licensee's Qualified Content.
- (j) Where any Qualified Content, being crosscarried in accordance with the obligations of this Code, ceases to be Qualified Content, the Supplying Qualified Licensee must provide MDA, every Receiving Qualified Licensee and every affected Subscriber, with notice that the channel or programming content will no longer be Qualified Content no later than 21 working days prior to it ceasing to be Qualified Content.

*[S 380/2011 wef 02/07/2011]*

### **2.7.2 Designation of Receiving Qualified Licensee**

- (a) MDA may designate any Regulated Person to be a Receiving Qualified Licensee if the Regulated Person:
  - (i) is licensed to provide a nationwide Subscription Television Service on any Relevant Platform; and
  - (ii) has or had, at any point in time, 10,000 or more Subscribers on any of its Relevant Platforms.
- (b) MDA will publish a list of Receiving Qualified Licensees on its



website.

### **2.7.2A Duties of Receiving Qualified Licensee**

- (a) A Receiving Qualified Licensee must, from and including 1st August 2011, carry all Qualified Content made available by Supplying Qualified Licensees on all Relevant Platforms of its nationwide Subscription Television Service.
- (b) A Receiving Qualified Licensee must ensure that it does not, in receiving and transmitting Qualified Content of a Supplying Qualified Licensee, violate or infringe any intellectual property rights that are owned:
  - (i) to the extent the Qualified Content comprises any channel or programming content produced or commissioned by the Supplying Qualified Licensee, by the Supplying Qualified Licensee; and
  - (ii) to the extent the Qualified Content comprises any channel or programming content acquired or otherwise obtained by the Supplying Qualified Licensee, by the person from whom the Supplying Qualified Licensee acquired or otherwise obtained the Qualified Content.
- (c) A Receiving Qualified Licensee:
  - (i) must carry Qualified Content on all its Relevant Platforms:
    - (A) in its entirety and in an unmodified and unedited form;
    - (B) at the same time as the Supplying Qualified Licensee makes the Qualified Content available to its Subscribers, to the extent technically feasible for the Receiving Qualified Licensee; and
    - (C) at a level of quality that is not inferior to the level of quality at which the Qualified Content is made available to it by the Supplying Qualified

Licensee, to the extent technically feasible for the Receiving Qualified Licensee; and

(ii) at all times, must not perform any act, or omit to perform any act, where the performance of or omission to perform the act may diminish, impair or otherwise degrade the viewing experience of any Subscriber accessing the Supplying Qualified Licensee's Qualified Content through any of the Receiving Qualified Licensee's Relevant Platforms.

(d) A Receiving Qualified Licensee must ensure that it has a content protection system for each of its Relevant Platforms that covers the matters specified in Part III of Appendix 1 which will reasonably prevent the security of all Qualified Content made available to it by any Supplying Qualified Licensee from being compromised.

(e) A Receiving Qualified Licensee must:

(i) in the case of Qualified Content referred to in paragraph 2.7.1(g)(i) of this Code, publish on its website and viewing guide, a list of all such Qualified Content that is carried on all the Receiving Qualified Licensee's Relevant Platforms; and

(ii) in the case of Qualified Content referred to in paragraph 2.7.1(g)(ii) of this Code, where the consent of the person from whom the Supplying Qualified Licensee acquired or otherwise obtained the Qualified Content has been obtained pursuant to that paragraph, publish on its website and viewing guide, a list of such Qualified Content carried on each of the Receiving Qualified Licensee's Relevant Platforms,

for the limited purpose of informing consumers of the Qualified Content available on the Receiving Qualified Licensee's Relevant Platforms.

(f) A Receiving Qualified Licensee must:

- (g) A Receiving Qualified Licensee must, upon being notified by a Supplying Qualified Licensee of any feedback or complaint received from a Subscriber in respect of any Qualified Content that the Supplying Qualified Licensee has made available to the Receiving Qualified Licensee, deal with the feedback or complaint on a non-discriminatory basis and as if it were feedback or complaint received by the Receiving Qualified Licensee in respect of any of its own channels or programming content transmitted by it to its Subscriber.
- (h) A Receiving Qualified Licensee must not impose any form of charge on any Subscriber who subscribes to any Qualified Content made available to the Receiving Qualified Licensee by a Supplying Qualified Licensee.
- (i) Where a Subscriber who subscribes to any Qualified Content made available to the Receiving Qualified Licensee by a Supplying Qualified Licensee informs the Receiving Qualified Licensee that it wishes to terminate its subscription to the Qualified Content, the Receiving Qualified Licensee must inform the Subscriber that the Subscriber is to terminate such subscription directly with the Supplying Qualified Licensee.

*[S 380/2011 wef 02/07/2011]*

### **2.7.3 Agreements for Cross-Carriage of Content and Conciliation/Dispute Resolution**

- (a) Nothing in paragraph 2.7.1 or paragraph 2.7.2A of this Code prevents a Supplying Qualified Licensee and a Receiving Qualified Licensee from entering into a mutually acceptable cross-carriage agreement in connection with their respective obligations under those paragraphs, provided that the terms of the agreement are not inconsistent with any such obligation. For this purpose, the terms of the agreement and any such obligation are inconsistent if:
  - (i) it is not possible to comply with both the terms and the obligation; or
  - (ii) the terms and the obligation require the same, or

substantially the same, action to be taken at different times or in a different way.

- (b) Where a Supplying Qualified Licensee and a Receiving Qualified Licensee are unable to reach a mutually acceptable cross-carriage agreement referred to in paragraph 2.7.3(a) of this Code, both parties may jointly request MDA to provide conciliation services pursuant to paragraph 10.4 of this Code. The Supplying Qualified Licensee or the Receiving Qualified Licensee may also request MDA to initiate a Dispute Resolution pursuant to paragraph 10.5 of this Code.
- (c) In any Dispute Resolution involving the computation of all incremental costs to be borne by the Supplying Qualified Licensee under paragraph 2.7.1 (i)(ii) of this Code, MDA may adopt the pricing principles specified in Appendix 4 of this Code for the purpose of resolving the dispute.
- (d) Notwithstanding the Supplying Qualified Licensee and the Receiving Qualified Licensee are unable to reach a mutually acceptable cross-carriage agreement, and whether or not conciliation services are being provided or a Dispute Resolution has been initiated, the Supplying Qualified Licensee and the Receiving Qualified Licensee must continue to comply with their respective obligations under paragraphs 2.7.1 and 2.7.2A of this Code.

*[S 380/2011 wef 02/07/2011]*

#### **2.7.4 Applications for Exemption from Obligation under Paragraph 2.7**

- (a) A Regulated Person may apply to MDA to seek exemption from its obligation to make available all its Qualified Content for transmission and reception on every Receiving Qualified Licensee's Relevant Platform, or to carry on its Relevant Platform all Qualified Content made available by Supplying Qualified Licensees, as the case may be. In seeking any such exemption, the Regulated Person must clearly establish to MDA's satisfaction one or more of the following circumstances:
  - (i) an exemption from the obligations under paragraph 2.7

of the Code will benefit the public and the media industry (for example, how the exemption will enhance consumer welfare or promote innovation);

- (ii) technical constraint prevents or restricts a party from fulfilling its obligations under paragraph 2.7 of this Code and it is not possible to remove such constraint without it incurring serious and irreparable harm;
  - (iii) in relation to any request for exemption from paragraph 2.7.1(a) of this Code by a Supplying Qualified Licensee, demonstrate that the channel or content provider does not have the relevant broadcast rights for Singapore and other neighbouring countries; and
  - (iv) in relation to any request for exemption from paragraph 2.7.2A(a) of this Code by a Receiving Qualified Licensee, demonstrate that the Supplying Qualified Licensee has failed to comply with paragraph 2.7.1(b).
- (b) After receiving a request for exemption, MDA will notify the Regulated Person making the request for exemption whether it must provide additional information before the request can be accepted. MDA reserves the right to provide an opportunity for public comment before issuing its decision to grant or deny the request. MDA may grant the request in full or in part, and subject to any appropriate condition that MDA may impose.
- (c) Where a Regulated Person provides proprietary or commercially sensitive information in the context of a request for exemption under paragraph 2.7.4(a), the Regulated Person making the request for exemption should put such information in a separate appendix and request for confidential treatment in respect of the information, pursuant to paragraph 10.8 of this Code.
- (d) MDA reserves the right to publish any decision made in respect of an exemption request.
- (e) This paragraph is without prejudice to the generality of paragraph 1.8.1 of this Code with regard to the granting of any

exemption by MDA from any particular obligation imposed on a Regulated Person under paragraph 2.7 of this Code, including the granting of an exemption for a period of time from the obligation to make available Qualified Content for transmission and reception, or to carry Qualified Content made available, as the case may be.

*[S 380/2011 wef 02/07/2011]*

## **2.8 Enforcement Measures**

In any case where a Lead Broadcaster, a Designated Archive Operator, a Free-to-Air Television Licensee, a Free-to-Air Radio Licensee, a Subscription Television Licensee, a Supplying Qualified Licensee or a Receiving Qualified Licensee contravenes any provision of this Code or a direction issued by MDA pursuant to Part 2 of this Code, MDA may take such enforcement actions as it considers appropriate pursuant to section 26(2) of the MDA Act.

### **3 — Regulated Persons' Duties to End-consumers**

#### **3.1 Introduction**

All Regulated Persons must comply with the requirements in this Part, which are designed to ensure that they act fairly and reasonably in their dealings with Consumers, provide end-consumers with quality service and accurate and timely bills, and do not use subscriber information (referred to in this Part as “SSI”) for unauthorised purposes.

#### **3.2 Application**

This Part applies to all Regulated Persons.

#### **3.2A Publication of Information on Subscription Service**

- (a) A Regulated Person must, without charge, make available to the public up-to-date information about any Subscription Service offered by it, including:
  - (i) a description of and the subscription fee for the

Subscription Service; and

- (ii) the terms and conditions upon which the Subscription Service is offered, including:
  - (A) where the Subscription Service offered is or includes a broadcasting service, the channels in the Subscription Service;
  - (B) the specifications of any discount or other promotion offered, including the period(s) during which such discount or other promotion will be offered and the applicable charge(s) payable after such period(s); and
  - (C) whether any of the terms and conditions may be unilaterally varied by the Regulated Person.
- (b) A Regulated Person must publish the information referred to in paragraph 3.2A(a) of this Code:
  - (i) within such time and in such form and manner as the Authority may direct; or
  - (ii) in the absence of any such direction, in a timely manner and in a form and manner that ensures that the information is current, accessible and easy to understand.

### **3.2B Duty to Offer Option of Short Term Agreements**

- (a) A Regulated Person must not offer to provide to any person a Subscription Television Service only on the basis of a term exceeding 12 months (referred to in paragraph 3.2B of this Code as a “Long Term Agreement”).
- (b) For the avoidance of doubt, the channels on a Subscription Television Service offered to a person for a term of 12 months or less (referred to in paragraph 3.2B of this Code as a “Short Term Agreement”) must be the same in all aspects as the channels on a Subscription Television Service offered to that person under a Long Term Agreement by the Regulated Person; and the Regulated Person must comply with all requirements

contained in this Part, including in paragraphs 3.2C and 3.2D of this Code, whether the Regulated Person enters into a Long Term Agreement or a Short Term Agreement with the person.

### **3.2C Duty Not to Act Unreasonably in Contracting**

- (a) Subject to paragraphs 3.2C(b) and 3.2C(c) of this Code, a Regulated Person must not require a Subscriber to agree to amend the terms of or to terminate any existing agreement for the provision by the Regulated Person of any non-Subscription Television Service to the Subscriber, before the Regulated Person will:
- (i) enter into a new agreement with the Subscriber for the provision by the Regulated Person of any Subscription Television Service to the Subscriber; or
  - (ii) amend the terms of an existing agreement with the Subscriber for the provision by the Regulated Person of any Subscription Television Service to the Subscriber.
- (b) Paragraph 3.2C(a) of this Code applies only during the minimum service period which the Subscriber has committed to for the provision of the non-Subscription Television Service.
- (c) Paragraph 3.2C(a) of this Code does not apply if:
- (i) it is the Subscriber who requests for the amendment to the terms of the existing agreement for the provision of the Subscription Television Service; and
  - (ii) the amendment requested for is an addition (comprising one or more channels or any content package) to the Subscription Television Service of the Subscriber, which is not already offered by the Regulated Person to Consumers as an addition to their existing Subscription Television Service.

### **3.2D Duty to Inform Subscriber of Certain Matters Before Contracting**

- (a) Without prejudice to paragraph 3.2A of this Code, prior to



entering into an agreement with a Subscriber for the provision of any Subscription Television Service, a Regulated Person must provide and draw the Subscriber's attention to critical information about the agreement including all of the following information:

- (i) the subscription fee payable under the agreement and the payment date;
- (ii) where the agreement is for or includes a broadcasting service, the channels provided under the agreement;
- (iii) the specifications of any of the following services provided by the Regulated Person under the agreement:
  - (A) any service provided on a continuous basis — being any service which the Subscriber elects or is deemed to elect for the Regulated Person to continue to provide after the expiry of the minimum service period specified by the Regulated Person for the service;
  - (B) any service provided on a promotional basis — being any service provided at a discounted rate for a period of time specified by the Regulated Person, after which the Regulated Person continues to provide the service at the applicable subscription fee without any election by the Subscriber;
  - (C) any service provided on a free trial basis — being any service provided without charge for a period of time specified by the Regulated Person, after which the Subscriber may elect to subscribe to the service;
- (iv) the specification of any service provided by the Regulated Person on a complimentary basis — being any service which is not part of the agreement but is provided without consideration for a period of time specified by the Regulated Person, after which the

Subscriber may elect to subscribe to the service;

- (v) the terms and conditions which will apply upon the expiry of the minimum service period or period of time (as the case may be) referred to in paragraph 3.2D(a)(iii) of this Code, including:
  - (A) in the case of a service provided on a continuous basis:
    - (AA) the subscription fee for the service; and
    - (AB) whether, and the circumstances in which, the Subscriber will be deemed to have elected for the continued provision of the service upon the expiry of the minimum service period; and
  - (B) in the case of a service provided on a promotional basis or free trial basis, the subscription fee for the service;
- (vi) where the Regulated Person provides the Subscriber with a Subscription Television Service and some other Subscription Service as a bundle or package of services, and the Subscriber terminates the Subscription Television Service pursuant to paragraph 3.5A of this Code, the subscription fee payable for the other Subscription Service and the payment date;
- (vii) where the Regulated Person provides the Subscriber with a Subscription Television Service with or without any other Subscription Service, whether the Subscriber will be subject to any early termination charges permitted under paragraphs 3.5 and 3.5A of this Code in the event the Subscriber terminates the Subscription Television Service prior to the expiry of the minimum service period applicable to the Subscription Television Service;
- (viii) whether the agreement or any part of the agreement may be unilaterally varied by the Regulated Person.

- (b) All the critical information referred to in paragraph 3.2D(a) of this Code must be published in an accurate, clear and easy to understand summary (referred to in paragraphs 3.2D and 3.2E of this Code as “Critical Information Summary”). The Regulated Person must obtain and keep evidence of the Subscriber’s confirmation that the Subscriber has read and understood the Critical Information Summary. Within 14 days after the conclusion of the agreement, the Regulated Person must provide the Subscriber with a physical or an electronic copy of both the agreement and Critical Information Summary.
- (c) Paragraph 3.2D(b) of this Code applies in relation to agreements for the provision of any Subscription Television Service entered into on or after 30 April 2017.

**3.2E Records of Marketing Materials, Agreement, etc.**

- (a) A Regulated Person must maintain a record of every marketing material it uses, for not less than 2 years after the Regulated Person ceases to use such material.
- (b) A Regulated Person must maintain a record of all the details of an agreement brought to the attention of a Subscriber in compliance with paragraph 3.2D of this Code, for not less than 2 years after the Regulated Person enters into the agreement with the Subscriber.
- (c) The record in paragraph 3.2E(b) of this Code must include:
  - (i) a physical or electronic copy of the agreement;
  - (ii) the Critical Information Summary referred to in paragraph 3.2D(b) of this Code relating to the agreement; and
  - (iii) call centre recordings relating to the agreement.

**3.2F Express Agreement Required for Continued Provision of Services Provided on Free Trial Basis or Complimentary Basis**

In the case of any service provided on a free trial basis (referred to in

paragraph 3.2D(a)(iii)(C) of this Code) or complimentary basis (referred to in paragraph 3.2D(a)(iv) of this Code), a Regulated Person must not charge a Subscriber for the service upon the expiry of the period of time referred to in paragraph 3.2D(a)(iii)(C) or 3.2D(a)(iv) of this Code, as the case may be, unless the Subscriber expressly agrees to subscribe to the service at the subscription fee and on the terms and conditions, brought to the attention of the Subscriber under paragraph 3.2D of this Code.

### **3.3 Duty to Comply with Minimum Quality of Service Standards**

Every Regulated Person must comply with any applicable quality of service standard specified from time to time by MDA.

### **3.4 Billing Practices**

#### **3.4.1 Duty to Provide Accurate, Timely and Clear Statements of Charges**

A Regulated Person who provides any Subscription Service must provide accurate, timely and clear statements of charges to its Subscribers.

#### **3.4.2 No Charges for Unsolicited Services or Equipment**

A Regulated Person may only charge any Subscriber for the specific Subscription Service or associated equipment that the said Subscriber has ordered.

#### **3.4.3 Procedures to Contest Charges**

All Regulated Persons must adopt reasonable and effective procedures that will allow any Subscriber to withhold and dispute any charge for any Subscription Service or associated equipment that the said Subscriber reasonably believes to be incorrect.

#### **3.4.4 Termination Procedures**

Where feasible, a Regulated Person must provide advance written notice and a reasonable opportunity to resolve the dispute before terminating service to any Subscriber.

### **3.5 Prohibition on Excessive Early Termination Liabilities**

A Regulated Person may enter into an agreement pursuant to which it provides a Subscriber with a discount or special consideration in return for the Subscriber's agreement to commit to a minimum service period for a Subscription Service. Subject to paragraph 3.5A of this Code, such agreements may contain provisions providing for termination liability in the event that the said Subscriber terminates the agreement before the expiry of the minimum service period. However, the amount of any such early termination liability must be proportionate to:

- (a) the reasonable value of the discount or special consideration provided by the Regulated Person; and
- (b) the duration of the period for which the Subscriber had consumed the Subscription Service.

#### **3.5A Prohibition on Early Termination Charges in Certain Cases**

- (a) Subject to paragraph 3.5A(b) of this Code, a Regulated Person must not require a Subscriber to pay any amount for terminating a Subscription Television Service provided to a Subscriber before the expiry of any minimum service period referred to in paragraph 3.5 of this Code applicable to the Subscription Television Service, where:
  - (i) the termination is consequent upon any one of the following events:
    - (A) the Regulated Person exercises or seeks to exercise its right to unilaterally increase the subscription fee, or to cease the provision of any material channel, under the agreement;
    - (B) the Regulated Person ceases to provide or removes 20% or more of the total channels in the Subscription Television Service;
    - (C) the Regulated Person ceases to provide or removes any material sports content in any channel from the Subscription Television Service,

except where the cessation or removal satisfies all of the following:

- (CA) the period of availability or available season for the material sports content comes to an end;
  - (CB) the Regulated Person notified the Subscriber of such period or season prior to the Subscriber contracting for the provision of the material sports content; and
- (ii) the Subscriber terminates the Subscription Television Service or the agreement within 30 days after the occurrence of any one of the events referred to in paragraph 3.5A(a) of this Code.
- (b) The prohibition in paragraph 3.5A(a) of this Code applies only to the termination of a Subscription Television Service that is contracted for on or after 30 April 2016.
- (c) A termination under paragraph 3.5A(a) of this Code does not permit the Regulated Person to require the Subscriber to pay any amount that pertains to equipment which was not necessary for the provision of the Subscription Television Service, but which was provided to the Subscriber in addition to and on account of the Subscription Television Service, unless:
- (i) prior to the Subscriber contracting for the Subscription Television Service, the Regulated Person:
    - (A) brought to the attention of the Subscriber the Subscriber's liability to pay such amount in the event of such a termination; and
    - (B) offered to provide to the Subscriber the same Subscription Television Service without the provision of the equipment; and
  - (ii) the amount satisfies the requirements of paragraph 3.5 of

this Code for early termination liability.

### **3.5B Prohibition on Excessive Charges in Certain Cases**

- (a) Where a Regulated Person provides a Subscriber with a Subscription Television Service and one or more other Subscription Service(s) as a bundle or package of services, and the Subscriber terminates the Subscription Television Service in the bundle or package of services, the subscription fee payable for the other Subscription Service(s) must not exceed the subscription fee which the Subscriber paid for both the Subscription Television Service and the other Subscription Service(s) before the termination of the Subscription Television Service.
- (b) Paragraph 3.5B(a) of this Code only applies where the termination by the Subscriber is pursuant to paragraph 3.5A of this Code.

### **3.5C Duty to Notify of Certain Events**

#### **3.5C.1 Cessation of channel, material content or business**

- (a) Subject to paragraph 3.5C.1(b) of this Code, where a Regulated Person intends to cease providing any channel or material sports content, the Regulated Person must give to all its Subscribers to whom the channel or material sports content of the channel is provided, notice in writing of its intention to do so not less than one month before the date on which the Regulated Person intends to cease the provision, as the case may be.
- (b) Where a Regulated Person intends to cease its operations, or cease providing any broadcasting service in respect of which it has (or is exempt from the requirement to have) a broadcasting licence under the Broadcasting Act (Cap. 28), the Regulated Person must give Consumers notice in writing of its intention to do so not less than 6 months before the date of the cessation.

#### **3.5C.2 Change in subscription fee**

- (a) Where a Regulated Person intends to increase any subscription fee for any service it provides (other than any service provided on an interactive basis), the Regulated Person must give all its Subscribers to whom it provides the service notice in writing of its intention to do so not less than one month before the date of the increase.
- (b) Before increasing the subscription fee for any service provided on an interactive basis, a Regulated Person must give all its Subscribers to whom it provides the service reasonable notice in writing of its intention to do so.

### **3.6 Duty to Protect Subscriber Service Information**

All Regulated Persons have a duty to protect SSI from unauthorised usage.

#### **3.6.1 Definition**

SSI consists of all the information about any Subscriber which a Regulated Person obtains as a result of the said Subscriber's use of a Subscription Service. This includes, but is not limited to, information regarding:

- (a) the services and equipment ordered by the said Subscriber;
- (b) the said Subscriber's usage of the services; and
- (c) the said Subscriber's billing name, address, and credit information and history.

#### **3.6.2 Restriction on Use**

- (a) Unless a Subscriber has provided authorisation as provided for in paragraph 3.6.3 of this Code, a Regulated Person may only use the said Subscriber's SSI for the purposes of:
  - (i) planning, provisioning and billing for the



Subscription Service ordered by the said Subscriber;

- (ii) managing bad debt and preventing fraud in relation to the provision of the Subscription Service;
  - (iii) facilitating any co-operation between Regulated Persons which may be required by any governmental or regulatory authority; or
  - (iv) providing assistance to law enforcement or other government agencies.
- (b) All Regulated Persons must adopt commercially adequate procedures to ensure that, unless the said Subscriber has provided authorisation, the Regulated Person will not:
- (i) use the said Subscriber's SSI for the development or marketing of other goods or services;
  - (ii) disclose or make available the SSI to any Affiliate or third person; or
  - (iii) approve, permit or suffer any act of omission or circumstance which would result in the disclosure or making available of the SSI to any Affiliate or third person.

### **3.6.3 Subscriber Authorisation**

- (a) A Subscriber will be presumed to have withheld consent to the use of its SSI for any purpose other than those specified in paragraph 3.6.2(a) of this Code unless the said Subscriber affirmatively grants its consent.
- (b) At the time a Regulated Person enters into an agreement with a Subscriber for the purposes of providing any Subscription Service on the Effective Date of this Code, the Regulated Person must obtain the consent of the said

Subscriber if it intends to use its SSI for any other lawful purpose. All Regulated Persons must also develop and inform their said Subscribers of easy-to-use procedures by which such Subscribers can subsequently grant or withdraw consent to the use of their SSI.

### **3.7 Anti-avoidance**

A Regulated Person must not enter into any agreement or arrangement or a series of agreements or arrangements with the primary purpose of avoiding the application of any paragraph in this Part.

### **3.8 Determining Material Channel and Material Sports Content**

- (a) For the purposes of this Part, the factors to be taken into consideration (except where irrelevant) in determining whether any channel is a material channel include, but are not limited to, the following:
- (i) the viewership of the channel;
  - (ii) the level of consumer interest in the channel;
  - (iii) the actual or potential value of the channel to the Regulated Person;
  - (iv) the degree to which the channel has been marketed and advertised.
- (b) For the purposes of this Part, the factors to be taken into consideration (except where irrelevant) in determining whether any sports content of a channel is material sports content include, but are not limited to, the following:
- (i) the viewership of the sports content;
  - (ii) the level of consumer interest in the sports content;
  - (iii) the actual or potential value of the sports content to the Regulated Person;
  - (iv) the degree to which the sports content has been marketed

and advertised.

- (c) The Authority may issue advisory guidelines as to how the factors listed in paragraphs 3.8(a) and 3.8(b) of this Code should be applied.
- (d) In the event of any dispute between a Regulated Person and a Subscriber as to whether a channel or any sports content is material, either party may write to MDA to express its opinion on the same. Any position taken by the Regulated Person or the Subscriber and expressed to MDA under this sub-paragraph must specify the considerations on which the position is based.

*[S 186/2016 wef 30/04/2016]*

#### 4 — Prohibition on Unfair Methods of Competition

##### 4.1 Introduction

This Part provides standards that MDA will use to determine whether a Regulated Person has contravened this Code by engaging in an unfair method of competition. Where this occurs, MDA (either upon its own initiative or at the request of a private person) may take such enforcement actions as it considers appropriate pursuant to section 26(2) of the MDA Act.

##### 4.2 Application

This Part applies to all Regulated Persons.

##### 4.3 General Prohibition on Unfair Methods of Competition

A Regulated Person must not engage in unfair methods of competition. An unfair method of competition is a practice by which a Regulated Person seeks to obtain a competitive advantage in any media market in Singapore, for itself or any Affiliate that provides media services in Singapore, by adopting or utilising methods unrelated to the availability, price or quality of the media service which the Regulated Person or its Affiliate offers.

##### 4.4 Specific Practices

In particular, a Regulated Person may not engage in the following unfair methods of competition:

###### 4.4.1 Use of Media Services to Disseminate False or Misleading Claims

- (a) A Regulated Person must not use any media service that it is

authorised to provide, to disseminate any claim or suggestion that is false, or is reasonably likely to mislead the public, with regards to any aspect (including the availability, price or quality) of:

- (i) any media service that it provides; or
- (ii) any media service provided by any of its Affiliates or another Media Licensee.

(b) Where a Regulated Person uses any media service that it is authorised to provide to disseminate such a false or misleading claim or suggestion, in addition to any other sanction pursuant to the MDA Act, MDA may require the Regulated Person to do the following:

- (i) make a public retraction of the claim over the same medium, in the case of a false or misleading claim or suggestion regarding any media service that it or its Affiliate provides; or
- (ii) provide Media Licensees with reasonable access to the media service it provides, in the case of a false or misleading claim or suggestion regarding any media service provided by the Media Licensee. This shall be provided at no charge in order for the Media Licensee to respond adequately to the claim.

#### **4.4.2 Degradation of Service Availability or Quality**

A Regulated Person must not take any action, or induce any other person to take any action, that has the effect of either:

(a) degrading the availability or quality of any media service provided by another Media Licensee; or

(b) raising another Media Licensee's costs of providing its media service, without a legitimate business, operational or technical justification.

#### **4.4.3 Provision of False or Misleading Information**

Whilst Regulated Persons are not required to disclose proprietary or commercially sensitive information to their competitors, a Regulated Person must not provide information to any Media Licensee that is false or misleading.

#### **4.4.4 Interference with Relationships Involving Consumers, Advertisers or Ancillary Media Service Providers**

A Regulated Person must not seek to induce any person (whether an Advertiser, a Consumer or an Ancillary Media Service Provider) to do business with it, or with any of its Affiliates, or to cease doing business with another Media Licensee, by:

- (a) engaging in coercive or intimidating conduct; or
- (b) providing false or misleading information.

#### **4.5 Prohibition on Predatory Pricing**

Whilst vigorous price competition is a hallmark of a competitive market, a Regulated Person must not engage in a strategy of predatory pricing.

##### **4.5.1 Standards**

(a) The issues that MDA will consider in determining whether a price is predatory include, but are not limited to, those where:

- (i) the Regulated Person is selling a media service at a price or otherwise receiving revenue for that media service at a level that is less than the marginal cost of the media service;
- (ii) there is a likelihood that such price cutting will drive efficient rivals from the media market or deter future efficient rivals from entering the media market; and
- (iii) the entry barriers are so significant that, after driving efficient rivals from any media market or deterring entry, the Regulated Person could impose an increase in prices sufficient (in amount and duration) to enable itself to recoup the full amount of the loss that it incurred during the period of such price-cutting.

(b) For the purposes of applying paragraph 4.5.1(a)(i) of this Code, MDA will assume that average variable cost is a reliable estimate of marginal cost.

##### **4.5.2 Presumptions**

(a) In assessing a claim of predatory pricing, MDA will make the following presumptions:

- (i) Where any Regulated Person's share of the relevant media market is 25 percent or less, MDA will presume that, regardless of the level at which that Regulated Person's pricing is set, it is unlikely that the Regulated Person's pricing will drive efficient rivals from any media market or deter future efficient rivals from entering the relevant media market. Where the price cutting is undertaken collectively by Regulated Persons who are affiliated, MDA will consider the Regulated Person's and its Affiliates' total share of the relevant media market.
- (ii) Where the Regulated Person has been classified as a Dominant Person in any media market, MDA will presume that if the Regulated Person prices its media services at a level below its own marginal cost, it is likely that the Regulated Person's pricing will drive efficient rivals from the relevant media market or deter future efficient rivals from entering the relevant media market.

(b) The presumptions in paragraphs 4.5.2( a)(i) and 4.5.2(a)(ii) of this Code above may be rebutted by persuasive evidence regarding the actual or likely effect on competition of the Regulated Person's pricing decisions.

(c) In any case in which a Regulated Person's share of the relevant media market is above 25 percent, but the Regulated Person is not a Dominant Person, MDA will determine the actual or likely effect on competition in the relevant media market(s) of such Regulated Person's pricing on a case-by-case basis.

#### **4.6 Prohibition on Anti-competitive Leveraging**

(a) A Regulated Person falling within one or both of the following categories must not engage in anti-competitive leveraging:

- (i) who is affiliated with a person providing a media service, an Ancillary Media Service or a non-media service and such an Affiliate is in a dominant position in that relevant market (within or located outside Singapore); or

- (ii) who is itself in a dominant position in an Ancillary Media Service market or a non-media market.

(b) A Regulated Person is deemed to be engaging in anti-competitive leveraging when the Regulated Person uses the dominant position of its Affiliates or itself, in a manner that enables or is likely to enable it to, unreasonably restrict competition in any media market in Singapore other than the media market in which the market power giving rise to the dominant position exists.

(c) For the purposes of paragraph 4.6(a) of this Code, MDA will assess each incidence of potential anti-competitive leveraging on a case-by-case basis. Following MDA's assessment, MDA will pursue only the relevant Regulated Person involved in the prohibited act as set out in Part 10 of this Code.

#### **4.7 Special Provisions Applicable to Regulated Persons Affiliated with Ancillary Media Service Providers**

A Regulated Person whose Affiliate provides an Ancillary Media Service that, as a practical matter, is necessary for either itself or its competitors to efficiently develop or distribute a media service:

(a) may not obtain such Ancillary Media Services unless they are obtained on the basis of non-discriminatory prices, terms and conditions and such Ancillary Media Services are also available to the Regulated Person's competitors; and

(b) may not obtain such Ancillary Media Services at a price that is so far above the Affiliate's cost that efficient competing non-affiliated Regulated Persons could not profitably provide media services to their Consumers if they were required to purchase the Ancillary Media Service at the same price as the Regulated Person.

#### **4.8 Imposition of Structural Separation or Non-Structural Safeguards**

To prevent a Regulated Person or its Affiliate(s) from using its market position to unreasonably restrict competition in Singapore's media industry within the jurisdiction of MDA, MDA may, but is not obliged to, require any Regulated Person to:

(a) structurally separate its operations (including personnel, management, property, plant, equipment and finances) from those of any of its Affiliates;

(b) deal with its Affiliate(s) on commercial terms and at arm's length; or

(b) adopt accounting separation, cost allocation rules and other forms of behavioural safeguards governing its relationship with its Affiliate(s).

## 5 — Concept of Dominance

### 5.1 Introduction

This Code distinguishes between Regulated Persons who are able to act without significant competitive restraints from competitors and are therefore subject to special regulatory obligations given their dominant positions, and those Regulated Persons who are not able to act without significant competitive restraints from competitors and are therefore subject to a lesser degree of regulation given their non-dominant positions.

### 5.2 Application

This Part applies to all Regulated Persons.

### 5.3 Dominant Position

(a) A Regulated Person is in a dominant position when, in the opinion of MDA, that Regulated Person has Significant Market Power in any relevant media market. In assessing whether a Regulated Person has Significant Market Power, due regard shall be accorded to all relevant matters including, but not limited to, the following matters:

- (i) the proper definition of the relevant media market which includes all reasonable substitutes;
- (ii) the structure and nature of the relevant media market (such as the level of market concentration and product diversification);
- (iii) the market shares of all competitors in the relevant media market over time;
- (iv) unilateral conduct, such as evidence of the Regulated Person's ability to unilaterally raise prices, reduce prices, reduce quality of services provided or otherwise act independently of competitive market forces;
- (v) the extent to which the Regulated Person acts in concert with or has Control of another Regulated Person or any other person; and
- (vi) the extent to which the Regulated Person's ability to exercise Significant Market Power in the relevant media market is constrained by:



- (A) the ability and incentive of competitors to take actions (such as increasing the output of programmes or advertising space) that would render it unprofitable for that Regulated Person to carry out unilateral conduct, such as unilaterally raising prices, reducing prices, reducing quality of services provided, or otherwise acting independently of competitive market forces;
- (B) the extent to which new entrants can enter the relevant media market in a timely and effective manner;
- (C) the ability of Consumers to switch to alternative providers; and
- (D) the ability of Ancillary Media Service Providers to switch to alternative clients.

(b) Subject to the matters above, it shall be a rebuttable presumption that a Regulated Person has Significant Market Power if it holds a market share exceeding 60 percent of the relevant media market. However, the existence of Significant Market Power may also be established below this level if competitors within the relevant media market are in a considerably weaker position or there are high barriers to entry into that market.

#### **5.4 Duties of Dominant Persons**

A Regulated Person who is a Dominant Person must comply with the special obligations applicable to Dominant Persons contained in Part 6 of this Code.

#### **5.5 Classification and Reclassification of Regulated Persons**

##### **5.5.1 Classification**

MDA may, in its discretion and at any time, issue a notification classifying any Regulated Person whom it considers to have a dominant or non-dominant position in any media market, as having such a dominant or non-dominant position, as the case may be.

##### **5.5.2 Reclassification**

(a) MDA may, in its discretion and at any time, make an assessment as to whether any Regulated Person classified under paragraph 5.5.1 of this Code should be reclassified. Before doing so, MDA will request the relevant Regulated Person to provide information that will assist it in determining whether or not the Regulated Person meets the criteria specified in paragraph 5.3 of this Code. The ways in which reclassification may occur include the following:

- (i) MDA may make a determination that a relevant Regulated Person ought to be reclassified in the course of MDA's investigation, guidance, regulatory intervention or where MDA deems necessary to achieve its stated objectives in this Code.
- (ii) Any Media Licensee or Ancillary Media Service Provider ("the Reclassification Petitioner") may petition MDA to have a relevant Regulated Person reclassified ("the Reclassification Petition"). The Reclassification Petitioner must provide information demonstrating whether or not the Dominant Person or the Regulated Person meets the criteria specified in paragraph 5.3 of this Code.

(b) MDA may seek public comments prior to reclassifying a relevant Regulated Person.

### **5.5.3 Criteria for Reclassification**

MDA will apply the following standards in any reclassification undertaken pursuant to paragraph 5.5.2 of this Code:

- (a) Where the relevant Regulated Person is not currently classified as a Dominant Person, MDA may only reclassify it as a Dominant Person if it determines that the Regulated Person satisfies the criteria specified in paragraph 5.3 of this Code.
- (b) Where the relevant Regulated Person is currently classified as a Dominant Person, MDA may reclassify it as non-dominant if the Regulated Person does not satisfy the criteria specified in paragraph 5.3 of this Code.
- (c) Where the relevant Regulated Person is currently classified as a Dominant Person, MDA may reclassify it as dominant in another media market if the Regulated Person satisfies the criteria specified in paragraph 5.3 of this Code for that media market.

## **5.6 Exemption from Application of Dominant Person Obligations**

A Regulated Person who is a Dominant Person may seek an exemption from the special obligations applicable to Dominant Persons specified in Part 6 of this Code by way of an exemption request.

### **5.6.1 Types of Exemptions**

### **5.6.1.1 Exemptions Applicable to Specific Markets**

MDA will exempt a Dominant Person from complying with the special obligations applicable to Dominant Persons in any media market in which the Dominant Person demonstrates that it lacks Significant Market Power in that media market.

### **5.6.1.2 Exemption from Specific Obligations**

MDA will exempt a Dominant Person from specific obligations applicable to Dominant Persons in some or all media markets in which the Dominant Person participates, in any case in which the Dominant Person demonstrates that compliance with the obligation is not necessary to prevent it from using its market position in a manner that will harm Consumers or unreasonably restrict competition in any media market in Singapore.

## **5.6.2 Procedures**

### **5.6.2.1 Exemption Request**

A Dominant Person seeking exemption from the special obligations applicable to Dominant Persons must submit an exemption request to MDA. The exemption request must identify the obligations from which the Dominant Person seeks to be exempted and the media markets involved. The Dominant Person must demonstrate that it satisfies the requirements specified in paragraph 5.6.1.1 or 5.6.1.2 of this Code.

### **5.6.2.2 Review by MDA**

MDA will generally provide an opportunity for industry comments before granting any exemption request. MDA will generally issue its decision within 90 working days of receiving the exemption request.

## **6 — Special Obligations of Dominant Persons**

### **6.1 Introduction**

As they are not subject to competitive market forces, Dominant Persons will be subject to additional regulatory obligations and prohibitions designed to prevent them from using their market position in a manner that will harm Consumers or unreasonably restrict competition in any media market in Singapore.

### **6.2 Application**

This Part applies to all Dominant Persons.

## **6.3 Duties of Dominant Persons**

### **6.3.1 Duty to Provide Media Services on Reasonable Request**

A Dominant Person must provide its media service, upon reasonable request, to any prospective Consumer.

### **6.3.2 Fair Access to Programme Lists**

(a) A Dominant Person who publishes one or more general circulation newspaper(s) in Singapore must provide fair coverage of the programmes provided by any Regulated Person that provides Free-to-Air Television Services or Free-to-Air Radio Services in any programme list contained in the general circulation newspaper(s) that the Dominant Person makes available to its Consumers.

(b) In determining whether coverage in the programme list contained in any general circulation newspaper is fair, MDA will consider all relevant factors including, but not limited to:

- (i) the amount of space that the Dominant Person devotes to the coverage of Free-to-Air Television Services or Free-to-Air Radio Services provided by itself or its Affiliates compared to the amount of space that the Dominant Person devotes to the coverage of Free-to-Air Television Services or Free-to-Air Radio Services provided by a Regulated Person that competes against the Dominant Person or its Affiliates; and
- (ii) the prominence (in terms of placement or other relevant factors) of the coverage that the Dominant Person provides to Free-to-Air Television Services or Free-to-Air Radio Services provided by itself or its Affiliates compared to the prominence of the coverage that the Dominant Person provides to Free-to-Air Television Services or Free-to-Air Radio Services provided by a Regulated Person that competes against the Dominant Person or its Affiliates.

(c) Nothing in paragraph 6.3.2 of this Code prevents a Dominant Person from providing additional or more prominent coverage to Free-to-Air Television Services or Free-to-Air Radio Services provided by itself or its Affiliates when such coverage is justified on a reasonable, objective and non-discriminatory basis.

### **6.3.3 Duty to Provide Access to Advertising Capacity**

(a) A Dominant Person must provide any Media Licensee with the ability to purchase advertising capacity to promote its media service(s) on reasonable and non-discriminatory prices, terms and conditions. However, advertising capacity may be declined on reasonable grounds which include, but are not limited to, the following:

- (i) editorial grounds provided that these are justifiable and on a non-discriminatory basis; and
- (ii) in cases that credit checks carried out on the Media Licensee reveal a bad credit rating at the time of application.

(b) However, a Dominant Person does not need to carry an advertisement that contravenes any applicable codes, guidelines or standards set out by the Advertising Standards Authority of Singapore or MDA pertaining to advertising conduct or content.

(c) In addition, exceptions are permitted where a Dominant Person may impose specific restrictions on advertisements promoting certain media services as detailed in Appendix 2 of this Code.

*[S 380/2011 wef 02/07/2011]*

(d) For the purposes of interpretation of paragraph 6.3.3 of this Code, its contents are applicable to Dominant Persons with respect to only the specific media markets in which they are considered to be Dominant Persons.

## **6.4 Prohibition on Abuse of Dominant Position**

### **6.4.1 General Prohibition**

A Dominant Person must not use its position in any media market in a manner that unreasonably restricts competition in, or has the object or effect of preventing, restricting or distorting competition in, or in any part of, a media market or Ancillary Media Services market.

### **6.4.2 Specific Practices**

A Dominant Person must not undertake the practices referred to in paragraphs 6.4.2.1 to 6.4.2.4 of this Code as such practices would constitute the abuse of a dominant position by the Dominant Person and are prohibited pursuant to section 21(1) of the MDA Act. Paragraphs 6.4.2.1 to 6.4.2.4 of this Code are not

exhaustive and MDA will consider any complaints regarding the abuse of a dominant position on a case-by-case basis.

#### **6.4.2.1 Discrimination**

A Dominant Person shall not provide any media service on prices, terms and conditions that are discriminatory. This requires that, except where otherwise permitted or required by MDA, differences in the prices, terms and conditions for comparable media services provided to Consumers must be based on objective criteria, such as variations in the cost to provide the media service, variations in the quality or quantity of the media service provided or variations in the duration of the period in which the media service will be provided.

#### **6.4.2.2 Price Squeezing**

A Dominant Person that provides an input or distribution channel that, as a practical matter, is necessary for its competitors or its Affiliate's competitors to provide a media service or an Ancillary Media Service may not price or provide access to the input or distribution channel at a price that is so far above the Dominant Person's cost that efficient competing non-affiliated persons could not profitably provide such media services or Ancillary Media Services to their Consumers if they were required to purchase the input or access the distribution channel at such prices.

#### **6.4.2.3 Mandatory Bundling**

A Dominant Person must not, expressly or effectively, require a Consumer who wants to purchase any media service, or an Advertiser who wants to purchase advertising capacity, to additionally purchase or lease any other separate service, advertising capacity, or equipment, as a condition for purchasing the media service or advertising capacity, whether provided by the Dominant Person or another person. However, the Dominant Person may offer Consumers or Advertisers the option of purchasing such group selling or packaging services where the purchase of such a package is not mandatory, and the separate services, advertising capacity or equipment comprised within the package can be purchased individually.

#### **6.4.2.4 Imposition of Abusive or Over-Reaching Contract Terms**

A Dominant Person must not require any Consumer to agree to any contract term regarding the provision of media services or Ancillary Media Services that is abusive or over-reaching. MDA will find a contract term to be abusive or over-reaching where, in MDA's opinion, the Dominant Person requires the other person to accept obligations or restrictions that either:

- (a) are grossly disproportionate to the consideration received or provided by the other person (as the case may be); or
- (b) bear no rational relationship to the subject matter that forms the basis of the contract.

## 7 — Prohibition of Agreements That Restrict or Distort Competition

### 7.1 Introduction

MDA may take enforcement action (either pursuant to a request from any person or on its own motion as a regulator) against any Regulated Person who is party to any agreement, decision or concerted practice (collectively and individually referred to in this Part as an “Agreement” unless the context otherwise requires) with another Regulated Person or any other person which has the object or effect of preventing, restricting or distorting competition in Singapore’s media industry. MDA will assess such Agreements based on their likely competitive effects.

### 7.2 Application

This Part applies to all Regulated Persons.

### 7.3 General Prohibition

Any Agreement which has as its object or effect the prevention, restriction or distortion of competition in, or in any part of, Singapore’s media industry is prohibited pursuant to section 20(1) of the MDA Act.

### 7.4 Determining the Existence of an Agreement

#### 7.4.1 Types of Agreements

- (a) In this part, an Agreement may exist on one of 3 bases:
  - (i) an Agreement can be established through direct evidence of an express agreement, such as a signed document;
  - (ii) an Agreement can be established using circumstantial evidence that demonstrates the existence of an express agreement; or
  - (iii) an Agreement may be tacit, *e.g.* even in the absence of an actual agreement, persons may co-ordinate their supply and pricing decisions in order to restrict or distort competition within the relevant media market.

(b) For the purposes of paragraph 7.4.1(a)(iii) of this Code, the existence of similar output and pricing decisions is not, on its own, proof that a tacit Agreement is in place. Such pricing decisions may have been made based on an efficient response to changing market conditions. However, MDA may consider that a tacit Agreement is in place if the Regulated Persons have employed “signaling devices”, such as the sharing of price and output information and which have facilitated coordinated behaviour.

#### **7.4.2 Exception**

For the purposes of this Part, an arrangement between a Regulated Person and an Affiliate over which it can exercise Control shall not constitute an Agreement.

#### **7.5 Prohibited Agreements**

The following types of Agreements are specified, for purposes of section 20(1) of the MDA Act, to have as their object or effect the prevention, restriction or distortion of competition and are accordingly prohibited:

##### **7.5.1 Price Fixing**

Agreements in which a Regulated Person agrees with another Regulated Person to fix prices for, or restrict output of, any media service regardless of the levels agreed to.

##### **7.5.1.2 Bid Rigging**

Agreements in which a Regulated Person agrees with another Regulated Person or Ancillary Media Service Provider to co-ordinate responses to any tender, including co-ordinating any separate or independent bids, for any right that may be auctioned by MDA, or for any asset, resource, advertising capacity, good, service, or for any Ancillary Media Service, regardless of the price levels agreed to.

##### **7.5.3 Market and Consumer Allocation**

Agreements in which a Regulated Person agrees with another Regulated Person not to compete to provide any media service or part of any media service, or any advertising capacity:

- (a) to specific Consumers;
- (b) during specific time periods; or
- (c) in specific geographic areas;

regardless of the prices, terms and conditions on which the Regulated Persons agree.



#### **7.5.4 Group Boycotts**

With the exception of lawful or otherwise legally sanctioned agreements (*e.g.* boycotts undertaken by any industry association in accordance with the association's rules or regulations), agreements in which the persons who are subject to this Code agree not to do business with a Regulated Person, Advertiser, Consumer or Ancillary Media Service Provider within Singapore.

#### **7.5.5 Resale Price Maintenance**

Agreements with Ancillary Media Service Providers regarding either the price at which:

- (a) any Regulated Person will resell an input provided by an “upstream” entity; or
- (b) a “downstream” distributor will resell any Regulated Person's media service,

where this would unreasonably restrict competition in any media market.

#### **7.5.6 Foreclosure of Access**

Agreements with Ancillary Media Service Providers which substantially foreclose access to an input, or a channel of distribution, where this would prevent, restrict or distort competition in any media market. Whether a foreclosure is “substantial” will depend on an assessment of all relevant factors including, but not limited to:

- (a) the percentage of the relevant media market for the subject services that is foreclosed;
- (b) the duration of the Agreement;
- (c) whether the Agreement serves any legitimate business purpose;
- (d) whether the principal effect of the Agreement is to foreclose competitors' access to inputs or distribution channels; and
- (e) whether as a practical matter, the Regulated Person's competitors can gain access to substitutable inputs or methods of distribution from other providers on reasonable and non-discriminatory prices, terms and conditions.

#### **7.5.7 Agreements Not Prohibited if Ancillary to Legitimate Collaborative Ventures**

- (a) Nothing in paragraphs 7.5.1 to 7.5.6 of this Code prohibits an Agreement from being entered into by any Regulated Person where it is necessary for the efficiency-enhancing integration of economic activity,

provided that the Agreement does not impose restrictions, which have as their object or effect the prevention, restriction or distortion of competition, that are broader than necessary for the attainment of such efficiency-enhancing integration.

(b) Examples of efficiency-enhancing integration activities include the establishment of joint research, purchasing or production ventures designed to develop new media services, or to increase the availability, reduce the price or improve the quality of existing media services provided within Singapore.

## **7.6 Other Agreements Between Competitors**

(a) Unlike the types of Agreements described in paragraphs 7.5.1 to 7.5.6 of this Code which typically serve no purpose other than to unreasonably restrict competition, many Agreements between competitors have the potential to benefit Consumers by, for example, lowering costs or allowing for the development of new or improved media services that no single Regulated Person could have developed independently.

(b) MDA will assess whether such Agreements are prohibited pursuant to section 20 of the MDA Act. In doing so, MDA will consider, but will not be limited to, the matters discussed in this Part and their competitive effects.

(c) In conducting this assessment, MDA will consider all relevant factors which include, but are not limited to, the following:

### **7.6.1 Business Purpose of the Agreement**

Where the genuine business purpose of the Agreement appears to be to develop new media services, or to increase the availability, reduce the price, or to improve the quality of existing media services, MDA is likely to conclude on analysis of the circumstances that the Agreement does not contravene this Code.

### **7.6.2 Likelihood of Competitive Harm**

(a) Where an Agreement has the potential to result in higher prices or reductions in output or quality of any media service, MDA will conduct a more detailed assessment. In particular, MDA will consider all relevant factors which include, but are not limited to, the following:

- (i) whether (and, if so, to what extent) the persons to the Agreement retain the ability to act independently of the agreed-upon venture;

- (ii) the duration of the Agreement;
- (iii) whether, in the event the persons act anti-competitively, other persons would be likely to enter the relevant media market and provide the subject media service in a timely and sufficient manner to counteract any competitive harm; and
- (iv) any other factors that help predict the likely anti-competitive effect of the Agreement.

(b) If, after assessing these factors, MDA concludes that the Agreement poses no risk of preventing, restricting or distorting competition in the relevant media market providing the subject media services, MDA will generally conclude that the Agreement is not prohibited pursuant to section 20 of the MDA Act.

### **7.6.3 Efficiencies**

(a) Where the Agreement has the potential to result in some reduction in the availability and quality, or some increase in prices, of media services, MDA will consider whether the Agreement is necessary to achieve significant efficiencies. Such efficiencies could include, but are not limited to, reductions in the cost of developing, producing, marketing and delivering media services.

(b) If efficiencies are significant and their potential anti-competitive effect is relatively limited, MDA will generally conclude that the Agreement is not prohibited where such efficiencies could not reasonably be achieved through measures that reduce competition to a lesser extent. However, if such efficiencies are not significant and their potential anti-competitive effects are significant, or if the efficiencies could reasonably be achieved through measures that reduce competition to a lesser extent, MDA will generally conclude that the Agreement is prohibited.

## **7.7 Effect of Agreements that Prevent, Restrict or Distort Competition**

Where a Regulated Person has entered into an Agreement which has as its object or effect the prevention, restriction or distortion of competition in, or in any part of, Singapore's media industry and such Agreement is not exempted pursuant to section 22 of the MDA Act, the Agreement is void pursuant to section 20(3) of the MDA Act. Prior to such Agreement being made, MDA may either on its own initiative or in response to a request from the subject Regulated Person(s), exempt

the Agreement pursuant to section 22 of the MDA Act. Such an exemption may be granted subject to conditions or obligations as MDA considers appropriate.

## 8 — Consolidations

### 8.1 Introduction

(a) In competitive markets, enterprises often seek to merge with, acquire or otherwise consolidate with other enterprises. In many cases, such Consolidations can have pro-competitive effects, such as creating economies of scale and scope. In other cases, however, such Consolidations may harm competition. For example, such Consolidations could create or strengthen a Dominant Person, or could facilitate unlawful collusion amongst competing persons.

(b) All Regulated Persons seeking to enter into a Consolidation with another Regulated Person, or Ancillary Media Service Provider, must submit a Consolidation Application pursuant to paragraph 8.4 of this Code. Where MDA concludes, based on the evidence, that a proposed Consolidation is likely to result in a substantial lessening of competition, MDA will reject the Consolidation Application or will impose appropriate conditions.

(c) Any reference in this Code to a Regulated Person entering, proposing to enter or seeking to enter into a Consolidation shall include the Regulated Person doing so through a person over which it has Control.

### 8.2 Application

This Part applies to all Regulated Persons or Ancillary Media Service Providers, but excludes Consolidations or restructuring of 2 or more entities under the Control of a common entity.

### 8.3 Prohibition on any Regulated Person Entering Into Any Consolidation Likely to Substantially Lessen Competition

A Regulated Person may not enter into a Consolidation that is likely to substantially lessen competition in any media market in Singapore.

### 8.4 Duty to Obtain Approval of MDA Prior to Entering Into Certain Consolidations

A Regulated Person may not enter into a Consolidation with another Regulated Person or with any Ancillary Media Service Provider, without MDA's prior written approval pursuant to section 23(1) of the MDA Act.

#### 8.4.1 Situations that Constitute a Consolidation

A Consolidation means a merger, acquisition, take-over or other similar transaction

that results in 2 or more persons that were previously independent economic entities becoming, in effect, a single economic entity. A Consolidation can take the form of a Horizontal Consolidation or a Non-Horizontal Consolidation. A Consolidation falling within paragraph 8.4 of this Code can involve:

- (a) the creation of a single legal person; or
- (b) the obtaining of Control by one person over another person; or
- (c) the acquisition by another person of all or substantially all of the media assets (including goodwill) utilised by a Regulated Person, or the transfer to a new legal person of significant assets (including goodwill) from 2 or more persons, (*i.e.* corporate joint ventures).

#### **8.4.2 Statement that Consolidation Agreement is Subject to Approval of MDA**

Any Regulated Person who proposes to enter into a Consolidation Agreement must include language in the Consolidation Agreement, or in the event that the Regulated Person is acting through a person over which it has Control, procure the inclusion of language in the Consolidation Agreement, expressly stating that the Consolidation will not be consummated unless and until such time as MDA grants its written approval. The Regulated Person should include similar language in any public statement to be made regarding the proposed Consolidation.

##### **8.4.2.1 Joint Application Requirement**

The Applicants must submit a joint Consolidation Application. However, the Applicants may choose to submit proprietary or commercially sensitive information separately.

##### **8.4.2.2 Timing of the Consolidation Application**

The Applicants must submit a Consolidation Application not prior to, but within 30 working days after the day, on which they enter into a Consolidation Agreement. However, the Applicants may seek informal guidance from MDA pursuant to paragraph 8.8 of this Code prior to submitting the Consolidation Application.

#### **8.4.3 “Short Form” Application Procedure**

In those cases in which a proposed Consolidation is unlikely to result in the Post-Consolidation Entity having:

- (a) a market share of 40 percent or more of any media market in Singapore; or
- (b) a market share of between 20 percent to 40 percent of any media market in Singapore and the post-Consolidation combined market share of

the largest 3 Regulated Persons or Ancillary Media Service Providers, or a combination thereof, is 70 percent or more of any media market in Singapore;

the Applicants may use the short form application procedure. MDA will generally grant approval for any Application that is eligible for this procedure without significant review.

#### **8.4.3.1 Materials Required**

(a) Applicants using the short form application procedure must submit an Abbreviated Description, Competitive Impact and Public Interest Statement (referred to in this Part as “the Abbreviated Statement”) that provides a clear, accurate and comprehensive description of the proposed Consolidation, a good-faith description of the basis on which the Applicants believe that the proposed Consolidation does not substantially lessen competition, and a brief discussion of why approval of the proposed Consolidation would serve the public interest.

(b) The competitive assessment should generally include information regarding:

- (i) the markets in which the Applicants and their Affiliates participate;
- (ii) the other market participants in those markets; and
- (iii) the market shares of the Applicants and their Affiliates in those markets.

(c) The Applicants may include any additional relevant information that demonstrates that the proposed Consolidation would not substantially lessen competition and would serve the public interest. MDA reserves the right to release the Abbreviated Statement to the public. If the Abbreviated Statement contains proprietary or commercially sensitive information, the Applicants should put such information in a separate appendix and request for confidential treatment pursuant to paragraph 10.8 of this Code.

#### **8.4.4 “Long Form” Application Procedure**

Where a Consolidation is likely to result in the Post-Consolidation Entity having:

(a) a market share of 40 percent or more of any media market in Singapore; or

(b) a market share of between 20 percent to 40 percent of any media market in Singapore and the post-Consolidation combined market share of the largest 3 Regulated Persons or Ancillary Media Service Providers, or a combination thereof, is 70 percent or more of any media market in Singapore;

the Applicants are required to file a Consolidation Application following the long form application procedure. To do so, the Applicants must comply with the minimum information requirements applicable to the Applicants as specified in Appendix 3 of this Code.

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## **8.5 Consolidation Review Period**

### **8.5.1 Consolidation Review Period Does Not Begin Until Receipt of Complete Consolidation Application**

The Consolidation Review Period will be considered to have begun on the date on which the Applicants submit a Consolidation Application that contains all information and materials required pursuant to this Part.

### **8.5.2 Length of Review Period**

MDA will ordinarily complete its review of the Consolidation Application within 30 working days after the start of the Consolidation Review Period. In any case in which MDA determines that a Consolidation Application raises novel or complex issues, MDA will notify the Applicants that it intends to extend the Consolidation Review Period by up to 90 working days to a maximum of 120 working days from the start of the Consolidation Review Period. MDA will seek to provide this notification within 21 working days after the start of the Consolidation Review Period. In extraordinary cases, MDA may extend the Consolidation Review Period by an additional 60 working days and will seek to provide notification by the 110th day of the Consolidation Review Period.

### **8.5.3 Tolling of Consolidation Review Period Due to Failure to Adequately Respond to Supplemental Information Requests**

(a) During the course of the Consolidation Review Period, MDA may request that the Applicants provide additional information. In any case in which MDA requests additional information, it will specify a reasonable period of time within which the Applicants are to provide the information. If the Applicants do not provide all requested information by the date specified, the Consolidation Review Period will be suspended as of the day

on which the information was due until such time as the Applicants provide all requested information.

(b) If the Applicants believe that the information request is overly broad or additional time is necessary in order to provide MDA with the requisite information, they may submit a written request to MDA to narrow the scope of the information request or extend the time for satisfying the information request (“Consolidation Information Reconsideration Request”). The Applicants must submit the request to MDA within 5 working days of receiving the information request, stating the additional time necessary to complete the information request. In any case in which an Applicant submits a Consolidation Information Reconsideration Request, MDA will consider the Consolidation Review Period to be suspended on the day on which the Consolidation Information Reconsideration Request was submitted to MDA. The Consolidation Review Period will resume on the day on which MDA either grants or denies the request or on the day on which the Applicants submit the requested information.

(c) MDA will inform the Applicants of the specific day on which the Consolidation Review Period is suspended. Once the Applicants have provided all required additional information, the Consolidation Review Period will recommence.

## **8.6 Analytical Framework**

MDA will use the following analytical framework to assess a proposed Consolidation.

### **8.6.1 Horizontal Consolidations**

(a) Horizontal Consolidations pose the greatest threat to competition. In carrying out its review, MDA will generally seek to identify:

- (i) the relevant media market;
- (ii) the relevant media market participants;
- (iii) the relevant media market participants’ market shares and how these may have changed over time; and
- (iv) the market share of the Post-Consolidation Entity.

(b) All things being equal, a Post-Consolidation Entity with a larger



market share will be more likely to be considered to create or strengthen a Dominant Person than a Post-Consolidation Entity with a smaller market share. However, MDA will also consider any market-specific factor that would be likely to increase or decrease the ability of the Post-Consolidation Entity to:

- (i) unilaterally exercise Significant Market Power or cause a substantial lessening of competition in any media market; or
- (ii) exercise Significant Market Power or cause a substantial lessening of competition by coordinating its behaviour in concert with other market participants in any media market.

### **8.6.2 Non-Horizontal Consolidations**

Non-Horizontal Consolidations can often facilitate competition. Therefore, MDA will generally seek to limit such Consolidations only if any of the Applicants is a Dominant Person. In such cases, MDA will consider whether the Post-Consolidation Entity would be likely to:

- (a) prevent the development of effective competition in any media market by precluding the future entry of an effective competitor;
- (b) restrict the ability of competitors to access:
  - (i) an “upstream” input necessary to provide a competing media service; or
  - (ii) a “downstream” distribution channel necessary to deliver their media services to Consumers;
- (c) facilitate collusion between Regulated Persons or other persons in any media market;
- (d) create a conglomerate Consolidation which would be likely to result in the situation where the market power deriving from the portfolio of brands of the Post-Consolidation Entity exceeds its parts giving rise to portfolio power, increase the feasibility of anti-competitive strategies or facilitate collusion in any media market; or
- (e) allow an Applicant with Significant Market Power to distort

competition in any media market or cause a substantial lessening of competition.

### **8.6.3 Considerations Applicable to All Consolidations**

(a) In the case of both Horizontal and Non-Horizontal Consolidations, MDA will also consider additional factors influencing competition. These include, but are not limited to:

- (i) the likelihood that other persons would enter the relevant media market, or expand existing production, within a reasonably short period of time to the extent necessary to offset any effort by the Post-Consolidation Entity to exercise Significant Market Power;
- (ii) the extent to which the Consolidation would result in significant efficiencies, not the result of an anti-competitive reduction in output, that could not have been achieved in the absence of the Consolidation which either:
  - (A) result in an increase in rivalry in the market so that no substantial lessening of competition occurs; or
  - (B) result in net economic efficiencies in the media market in Singapore, although a substantial lessening of competition is not necessarily averted;and that are likely to be passed on, to a reasonable extent, to Consumers;
- (iii) whether one of the Applicants is a “failing undertaking” or “failing division” that would otherwise exit any media market; and
- (iv) the extent to which the market power of the Post-Consolidation Entity will be offset by any Consumer or supplier power that exists in the relevant media market.

(b) In considering these issues, MDA has the right to consult all persons affected by the proposed Consolidation including, but not limited to, Consumers, suppliers and competitors.

#### **8.6.4 Other Relevant Factors**

In conducting any review of any Consolidation, MDA will consider any other relevant factor based on reliable information that will enable it to assess the likely competitive impact of the proposed Consolidation. This may include anticipated changes in the legal or regulatory environment, anticipated introduction of new services or technologies or changing consumption patterns.

#### **8.6.5 Public Interest Considerations**

Notwithstanding the result of its analysis of the likely competitive impact, MDA may, if it concludes that doing so will serve the public interest, grant its approval to the Consolidation Application, subject to such conditions as MDA may specify, or deny the Consolidation Application. In any case in which MDA grants its approval to the Consolidation Application subject to conditions or denies the Consolidation Application, it will provide an explanation of the basis for its decision.

### **8.7 Disposition of Consolidation Applications**

At the conclusion of the Consolidation Review Period, MDA will take one of the following actions:

#### **8.7.1 Grant of the Consolidation Application**

MDA may grant its approval to the Consolidation Application in part or in full.

#### **8.7.2 Denial of the Consolidation Application**

MDA may deny the Consolidation Application.

#### **8.7.3 Grant of the Consolidation Application, Subject to Conditions**

MDA may grant the Consolidation Application, subject to the Applicants' agreement to conditions designed to reduce any substantial lessening of competition from the Consolidation. Conditions that MDA may impose are described below:

##### **8.7.3.1 Structural Conditions**

MDA may impose any of the following structural conditions:

###### **8.7.3.1.1 Structural Separation**

As a condition of its approval of the Consolidation Application, MDA may require the Applicants to agree that the Post-Consolidation Entity will conduct certain operations through a structurally separate Affiliate. The separate Affiliate may be required to have separate facilities, separate officers, separate personnel, separate credit lines and other appropriate forms of separation.

### **8.7.3.1.2 Partial Divestiture**

As a condition of its approval of the Consolidation Application, MDA may require any of the Applicants to agree to the divestiture of certain operations and assets of any of the Applicants, or of a person over whom an Applicant has Control. In order for a partial divestiture to constitute an adequate remedy, the Applicants must agree that:

- (a) the divestiture will involve the sale of sufficient assets to eliminate the risk that the Consolidation will create, preserve or increase the Post-Consolidation Entity's ability to substantially lessen competition;
- (b) the divestiture will be made to a person that, in MDA's opinion, has the ability and incentive to operate the divested operations and assets as a viable and competitive business; and
- (c) the operations and assets will be divested on reasonable commercial terms.

### **8.7.3.2 Behavioural Safeguards**

Behavioural safeguards are conditions that govern the Post-Consolidation Entity's conduct. Limited behavioural safeguards may be appropriate where a Consolidation is generally pro-competitive, but raises specific competitive concerns that do not warrant either denial of the Consolidation Application or the imposition of structural conditions by MDA.

#### **8.7.3.2.1 Accounting Separation**

As a condition of its approval of the Consolidation Application, MDA may require the Applicants to agree that the Post-Consolidation Entity will account separately for revenues from operations that are subject to effective competition and operations that are not subject to effective competition, and to comply with rules governing allocation of joint costs and transactions between the competitive and non-competitive operations. MDA may also condition its approval on the Applicants' agreement that the Post-Consolidation Entity will contract for independent audits to confirm compliance or to self-certify its compliance periodically.

#### **8.7.3.2.2 Non-Discrimination Requirements**

(a) As a condition of its approval of the Consolidation Application, MDA may require the Applicants to agree that the Post-Consolidation Entity will either:

- (i) provide access to infrastructure, information, services or other resources to any Regulated Person, other persons (not being Regulated Persons), or Consumers, on a non-discriminatory basis; or
- (ii) reject any preferential access to infrastructure, information, services or other resources from an Affiliate.

(b) MDA also may condition its approval on the Applicants agreeing that the Post-Consolidation Entity will contract for independent audits to confirm compliance or to self-certify its compliance periodically.

#### **8.7.3.2.3 Limitations on Joint Directors or Managers**

A Consolidation may result in the Post-Consolidation Entity having a direct or indirect ownership interest in 2 or more competing Regulated Persons or Ancillary Media Service Providers. Such joint ownership could impact upon competition within any media market. In this situation, as a condition of its approval of the Consolidation Application, MDA may require the Applicants to agree that the Post-Consolidation Entity will not permit the same individual to hold a directorship or serve in an executive management position in 2 or more of the competing providers at any one time.

#### **8.7.3.2.4 Limitations on Information Sharing**

In any Consolidation that results in 2 or more competing Regulated Persons or Ancillary Media Service Providers being under partial or total common ownership by the Post-Consolidation Entity, as a condition of its approval of the Consolidation Application, MDA may require the Applicants to agree that measures will be taken to ensure that the competing providers neither provide nor receive from each other any non-public information, whether directly or indirectly.

#### **8.7.3.2.5 Termination or Modification of Restrictive Existing Agreements**

As a condition of its approval of the Consolidation Application, MDA may require the Applicants to agree to terminate or modify any existing agreement that, following the Consolidation, would be likely to substantially lessen competition. For example, MDA could require an Applicant to agree to terminate or modify existing agreements that:

- (a) impose early termination penalties on Subscribers who seek to switch to rival providers;
- (b) require Consumers to make all or a specified portion of their purchases of specific services from the Applicant or its Affiliate; or
- (c) require suppliers to make all or a specified portion of their sales to the Applicant.

#### **8.7.3.2.6 Other Behavioural Safeguards**

MDA may require the Applicants to agree to any other condition that, in its opinion, is designed to preserve or, in appropriate cases, increase competition.

### **8.7.4 Consultation with Applicants Prior to Rejection or Imposition of Significant Conditions**

MDA will generally consult the Applicants prior to rejecting, or imposing any condition in relation to the grant of approval to, a Consolidation Application. As part of the consultation process, MDA will generally describe the actions it proposes to take and the basis on which it proposes to take them, and will provide the Applicants with an opportunity to express their views and provide any additional relevant information so long as they provide their information within 30 working days of receipt of such notice from MDA.

### **8.7.5 Notification by MDA**

Once MDA has concluded its review of the Consolidation Application, it will notify the Applicants in writing as to whether their Consolidation Application has been approved, rejected or approved subject to conditions. In any case in which MDA rejects or approves a Consolidation Application subject to conditions, the notification will provide an explanation of the basis on which MDA made its decision. MDA's decision will not be effective until conveyed to the Applicants in written form.

### **8.7.6 Notification by Applicants of Acceptance or Rejection of Conditions**

In any case in which MDA approves a Consolidation Application subject to conditions, the Applicants will have 14 working days from the date on which MDA issues its decision to notify MDA as to whether they accept the conditions or wish to withdraw their Consolidation Application.

### **8.8 Informal Guidance Prior to Filing of Consolidation Application**

Any person who is considering entering into a Consolidation may ask MDA to provide Informal Guidance, pursuant to paragraph 10.3 of this Code, prior to the time at which a Consolidation Application must be filed. This may include guidance regarding the likelihood that MDA will approve, reject or impose conditions on the proposed Consolidation. Where sufficient information is available, MDA will seek to provide reliable, but non-binding guidance. However, the Informal Guidance process cannot substitute for a full review following submission of a complete Consolidation Application.

### **8.9 Consolidation Application Fee**

Each Long Form Consolidation Application must be accompanied by a certified cheque, directing payment to MDA, in the amount of S\$10,000. Each Short Form Consolidation Application must be accompanied by a certified cheque, directing payment to MDA, in the amount of S\$2,500.

## **9 — Duty to Provide Access to Essential Resources**

### **9.1 Introduction**

(a) Each Media Licensee is generally expected to produce or acquire, on a commercial basis, every apparatus, accessory, system, service, information or such other resource of any kind required to provide its media service(s) (referred to in this Code as “Resource”).

(b) In certain cases, however, a Media Licensee must use a Resource in order to provide a media service, but cannot create the Resource itself within the foreseeable future, or obtain the Resource from a third person through a commercial transaction at a cost that would allow it to compete efficiently.

(c) In such cases, Media Licensees may ask MDA to declare the Resource to be an Essential Resource and require the person who owns or controls the Resource to provide other Media Licensees with access to that Resource on reasonable and non-discriminatory prices, terms and conditions.

(d) MDA may, on its own initiative, also designate a Resource to be an Essential Resource where MDA determines this is in the public interest.

## **9.2 Application**

This Part applies to any person (including Regulated Persons) who owns or controls any Resource used or intended to be used in connection with the provision or delivery of any media service provided by a Media Licensee (referred to in this Code as an “Entity Controlling Resources”).

## **9.3 Procedures for Obtaining Access to Essential Resources**

The following procedures govern requests to obtain access to Resources pursuant to this Part:

### **9.3.1 Requesting Access**

A Media Licensee who seeks access to a Resource must follow the procedures set forth below.

#### **9.3.1.1 Request to Entity Controlling the Resource**

(a) Any Media Licensee (referred to in this Code as “Requesting Person”) who wants to access a specific Resource must first submit to the Entity Controlling Resources a written request to negotiate an agreement to obtain access to the Resource (referred to in this Code as “Access Agreement”).

(b) The persons must seek to negotiate an Access Agreement in good faith. If they are unable to do so, they may jointly request MDA to provide conciliation services pursuant to paragraph 10.4 of this Code in order to assist them in reaching a voluntary Access Agreement.

#### **9.3.1.2 Request to MDA**

(a) If the persons are unable to reach a voluntary Access Agreement within 30 working days after the Requesting Person submits the request to the Entity Controlling Resources, the Requesting Person may, but is not required to, submit a written request to MDA (“Access Request”) for obtaining access to the Resource.

(b) The Requesting Person must provide the following:

- (i) a clear explanation of the specific Resource to which it seeks access;
- (ii) a clear explanation of the physical



means by which it proposes to access the Resource;

- (iii) a clear explanation of the basis on which it concludes that it should be given a right to access the Resource on reasonable and non-discriminatory prices, terms and conditions, pursuant to paragraph 9.3.1.5 or 9.3.1.6 of this Code; and
- (iv) a copy of the Access Request to the Entity Controlling Resources at the same time that it submits the Access Request to MDA.

### **9.3.1.3 Response**

(a) Unless MDA dismisses the Access Request on its own motion based on a finding that the Access Request clearly does not satisfy any of the criteria specified in paragraph 9.3.1.5 or 9.3.1.6 of this Code, the Entity Controlling Resources will have 15 working days from the date on which the Access Request is filed with MDA to:

- (i) submit to MDA a written response to the Access Request and stating why a voluntary Access Agreement was not reached; and
- (ii) simultaneously provide a copy of the reply to the Requesting Person.

(b) The Entity Controlling Resources must respond to all points made by the Requesting Person and must provide a full explanation as to the reasons why it does not believe it should be required to provide access to the requested Resource on reasonable and non-discriminatory prices, terms and conditions.

### **9.3.1.4 Decision to Require Access to Specific Resources**

(a) MDA may, at any time, request either person to submit additional information pursuant to the procedures specified in

paragraph 10.7 of this Code. MDA may also seek industry and public comments.

(b) Within 30 working days after receiving all requested additional information from the persons, MDA will endeavour to issue a decision as to whether the Entity Controlling Resources is required to provide access to the Requesting Person.

(c) Where MDA concludes that a Resource constitutes an Essential Resource, MDA will publish, by notification in the *Gazette*, its decision declaring the Resource to be an Essential Resource.

#### **9.3.1.5 Criteria to be Applied**

(a) In making any decision on whether to specify a Resource to be an Essential Resource, MDA has the discretion to consider all relevant factors, including, but not limited to, the following:

- (i) the Requesting Person, as a practical matter, requires access to the Resource in order to provide a media service;
- (ii) the Requesting Person cannot create the Resource itself within the foreseeable future, or obtain the Resource from a third person through a commercial transaction, at a cost that would allow it to compete efficiently;
- (iii) the Entity Controlling Resources can provide access without causing technical or operational harm to its own operations;
- (iv) the Entity Controlling Resources has not fully and efficiently utilised the Resource;
- (v) the Entity Controlling Resources has no legitimate business justification for denying access to the Resource; and
- (vi) failure to require access to the Resource

would unreasonably restrict competition.

(b) For the purposes of paragraph 9.3.1.5(a)(v) of this Code, an Entity Controlling Resources may demonstrate that it has a “legitimate business justification” for denying access to a Resource by submitting evidence to MDA demonstrating that it has specific plans to use the Resource for its own business purposes within the next 24 months.

(c) It should be noted that the above criteria are set out here for guidance only and that MDA will not be limited by such criteria in reaching its decision.

### **9.3.1.6 Public Interest Determination**

MDA will generally not require an Entity Controlling Resources to provide access to resources that do not satisfy the criteria specified in paragraph 9.3.1.5 of this Code. In exceptional cases, however, MDA may determine that the public interest requires that a Media Licensee has access to certain resources. This may occur, in situations involving, but not limited to, environmental concerns which preclude the duplication of Resources, such as poles or towers. Therefore, in such cases, MDA will issue a written statement as to the basis on which the public interest requires that the Entity Controlling Resources provides access to such Resources and MDA will publish, by notification in the Gazette, its decision in declaring the Resource to be an Essential Resource.

### **9.3.1.7 Designation of Essential Resources**

(a) MDA may at any time specify, by notification published in the *Gazette*, that any Resource be deemed an Essential Resource and that any Media Licensee must be granted access. The notification may also specify the prices, terms and conditions on which such access must be granted. MDA will only issue a notification where it has first:

- (i) determined that the criteria specified in either paragraph 9.3.1.5 or 9.3.1.6 of this Code has been satisfied;
- (ii) provided the Entity Controlling

Resources with notice of the proposed obligation to be imposed (including, where applicable, the prices, terms and conditions on which Media Licensees must be granted access) and the basis on which MDA has imposed this obligation; and

- (iii) provided the Entity Controlling Resources and other interested persons with an opportunity to make representations regarding the need for imposing an access requirement and, if applicable, the proposed prices, terms and conditions on which Media Licensees must be granted access.

(c) In any case in which MDA has issued a notification pursuant to paragraph 9.3.1.7(a) of this Code, any Media Licensee need only submit a written request for access to the Essential Resource to the Entity Controlling Resources in order to gain access to that Essential Resource.

## **9.3.2 Implementation of MDA's Access Requirements**

### **9.3.2.1 Voluntary Negotiations**

In any case in which MDA has designated a Resource as an Essential Resource pursuant to paragraph 9.3.1.4 or 9.3.1.7 of this Code, but has not specified the prices, terms and conditions on which access must be granted, the Entity Controlling Resources must, when requested by any Media Licensee, negotiate an Access Agreement. Both persons must negotiate such an Access Agreement in good faith.

### **9.3.2.2 Dispute Resolution**

(a) If the persons are unable to reach a mutually acceptable Access Agreement within 90 working days after the date on which a request to negotiate was made, the Requesting Person may request MDA to initiate a Dispute Resolution pursuant to paragraph 10.5 of this Code.

(b) In any such Dispute Resolution, MDA will apply the pricing principles specified in Appendix 4 of this Code. Pending resolution

of the dispute, MDA may require the Entity Controlling Resources to provide access to the Essential Resource on an interim basis on terms to be decided by MDA.

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## **9.4 Enforcement Measures**

In any case in which an Entity Controlling Resources contravenes any provision of this Code or a direction issued by MDA pursuant to Part 9 of this Code, MDA may take such enforcement actions as it considers appropriate pursuant to section 26(2) of the MDA Act.

# **10 — Dispute Resolution and Enforcement Procedures**

## **10.1 Introduction**

This Part describes the means by which MDA will implement the Code by providing Informal Guidance, assisting in resolving disputes and, where necessary, imposing sanctions.

## **10.2 Application**

This Part applies to all Regulated Persons and to other persons (not being Regulated Persons) under the jurisdiction of MDA.

## **10.3 Request for Informal Guidance**

(a) All persons are expected to make reasonable efforts to understand their rights and obligations under this Code and, where necessary, seek relevant professional advice. However, in any case in which any person whose commercial interest could be directly and immediately affected, and who has a genuine and substantial question regarding the application of any provision of this Code to its own specific factual situation, the person may ask MDA to provide informal guidance on the matter (“Informal Guidance”).

(b) Such Informal Guidance can include inquiries as to whether a particular course of action would contravene this Code or to MDA’s likely response to an application or request made pursuant to this Code.

### **10.3.1 Procedures for Requesting Informal Guidance**

(a) A person who seeks Informal Guidance should submit a written request to MDA that:

- (i) states that the person has a genuine and substantial

question regarding the application of a provision of this Code to its specific factual situation;

- (ii) demonstrates that the person's commercial interest would be directly and immediately affected by resolution of the question;
- (iii) indicates the specific issues on which the person seeks guidance; and
- (iv) contains all relevant available information.

(b) MDA will generally treat all information submitted as confidential. In addition, MDA will generally not disclose the fact that the person has requested Informal Guidance nor any Informal Guidance it provides unless the person receiving the Informal Guidance chooses to publicly disclose this information. However, MDA may, with a view to better consider the request, consult with other persons. Where necessary, MDA may require the person seeking Informal Guidance to provide a non-confidential version of its written request to MDA within specified time periods as MDA considers appropriate. Persons seeking Informal Guidance may also wish to submit a non-confidential version of its written request on its own initiative when submitting the written request for Informal Guidance to MDA.

### **10.3.2 Guidance at the Discretion of MDA**

(a) MDA will provide Informal Guidance at its discretion. MDA will not provide Informal Guidance in response to any request if the pre-conditions specified in paragraph 10.3.1 of this Code have not been met. In addition, MDA will not provide Informal Guidance in any situation in which the person seeking the Informal Guidance cannot provide, or has not provided, sufficient information for MDA to make an adequate assessment or in any case in which MDA concludes that the request is frivolous.

(b) MDA may find a request to be frivolous in situations including, but not limited to the following:

- (i) the request relates to a hypothetical or unlikely situation;
- (ii) the person making the request does not have any

commercial interest that would be affected by the Informal Guidance;

- (iii) the request relates to a matter on which, through reasonable diligence, the person making the request could ascertain the answer; or
- (iv) the request does not appear to have been made in good faith in order to resolve a genuine uncertainty.

### **10.3.3 Informal Guidance Does Not Bind MDA**

The provision of Informal Guidance does not preclude MDA from subsequently taking actions that are inconsistent with the views contained in the Informal Guidance. This is especially likely, but not limited to instances, where:

- (a) the request for Informal Guidance does not disclose all material facts;
- (b) there are changes to the applicable law or policy after the date on which MDA provides the Informal Guidance; or
- (c) there are changes to market conditions or other relevant factors after the date on which MDA provides the Informal Guidance.

## **10.4 Request for Conciliation**

Persons to the following disputes may jointly request MDA to provide conciliation services (“Conciliation”) to assist in resolving the dispute:

- (a) failure to reach an agreement regarding the prices, terms and conditions upon which the Lead Broadcaster will provide access to the “feed” of an event designated as an Event of National Significance pursuant to paragraph 2.4 of this Code;
- (b) failure to reach an agreement regarding the prices, terms and conditions upon which a Designated Archive Operator will provide access to archived material that must be made available pursuant to paragraph 2.5 of this Code;
- (c) any dispute arising out of the Free-to-Air Television Licensees’ and Subscription Television Licensees’ obligations pursuant to the “anti-siphoning” and “anti-hoarding” provisions specified in paragraph 2.6 of this Code;
- (d) failure to reach a mutually acceptable cross-carriage agreement referred to in paragraph 2.7.3 of this Code; or
- (e) failure to reach an agreement regarding the prices, terms and conditions upon

which an Entity Controlling Resources will provide access to an Essential Resource, when required to do so pursuant to Part 9 of this Code.

#### **10.4.1 Procedures for Requesting Conciliation**

Persons seeking Conciliation must submit to MDA a joint statement describing the disputed issues and the position of each person.

#### **10.4.2 Discretion of MDA**

MDA will provide Conciliation at its discretion.

#### **10.4.3 Role of MDA**

MDA's role in any Conciliation will be to assist the persons to reach a mutually acceptable resolution that is consistent with this Code rather than advocating any specific position.

### **10.5 Dispute Resolution**

While all persons are encouraged to resolve disputes through good-faith commercial negotiations, MDA will provide dispute resolution services at its discretion ("Dispute Resolution") in connection with specific disputes described in paragraph 2.7.3 and 10.4 of this Code.

*[S 380/2011 wef 02/07/2011]*

#### **10.5.1 Timing and Procedures for Requesting Dispute Resolution**

A person that seeks to enter into negotiations with a Lead Broadcaster, a Designated Archive Operator, a Free-to-Air Television Licensee, a Subscription Television Licensee, a Supplying Qualified Licensee, a Receiving Qualified Licensee or an Entity Controlling Resources must first send the Lead Broadcaster, Designated Archive Operator, Free-to-Air Television Licensee, Subscription Television Licensee, Supplying Qualified Licensee, Receiving Qualified Licensee or Entity Controlling Resources (as the case may be) a written request to negotiate. The request must:

- (a) specify the duty that the person wants the aforementioned subject person to fulfil (the person should cite the relevant provisions of this Code and describe, in reasonable detail, the specific action that it wants the Lead Broadcaster, Designated Archive Operator, Free-to-Air Television Licensee, Subscription Television Licensee, Supplying Qualified Licensee, Receiving Qualified Licensee or Entity Controlling Resources to take);
- (b) propose a date on which negotiations will be initiated; and
- (c) indicate the name and address of the person who will be responsible



for conducting the negotiations on behalf of the person submitting the request.

#### **10.5.1.1 Duty to Negotiate in Good Faith**

All persons must negotiate in good faith to resolve any dispute.

#### **10.5.1.2 Petition for Dispute Resolution**

(a) Where the relevant persons fail to reach a voluntary agreement within 90 working days after the date on which a request to negotiate has been made, the person that made the request may (but is not required to) submit a petition for Dispute Resolution with MDA (the “Petition”). (The person filing the Petition shall be referred to in paragraph 10.5 of this Code as the “Petitioner”. The person to which the Petition has been filed against shall be referred to in paragraph 10.5 of this Code as the “Respondent”.)

(b) The Petition must describe in detail each issue on which the persons have reached agreement and each issue on which the persons have not reached agreement. Each issue should be clearly described and framed as narrowly as reasonably possible. For example, disputes regarding price and non-price terms should be described separately. If a price dispute involves multiple prices for discrete services or service elements, the dispute regarding each price should be described separately.

(c) For those issues on which the persons disagree, the Petition must provide a clear statement of the Petitioner’s position.

(d) The Petitioner must provide a copy of the Petition to the Respondent at the same time that it submits the Petition to MDA.

(e) By submitting the Petition, the Petitioner submits to the jurisdiction of MDA to the extent necessary to resolve the dispute that provided the basis for the Petition.

(f) Notwithstanding the foregoing, MDA may, in appropriate cases where the relevant persons fail to reach a voluntary agreement, allow the person who made the request, to submit a Petition within a period of time less than 90 working days after the date on which a request to negotiate was made.

(g) In addition, where the Petitioner seeks to obtain a licence from a Designated Video Archive Operator to broadcast archived material within Singapore, it shall comply with the applicable procedures set out in paragraphs 3.2.1 and 3.3.1 of Appendix 4 of

this Code.

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### **10.5.1.3 Response to the Petition**

(a) The Respondent will have 15 working days, from the day on which it receives the Petition from the Petitioner, to submit to MDA (with a copy to the Petitioner) a written response to the Petition (referred to in this Part as the “Response”).

(b) For each point in the Petition on which the Petitioner claims that the persons are in agreement, the Response must indicate whether the Respondent agrees or disagrees. If the Respondent disagrees, it must provide a statement of its position.

(c) For each point in the Petition on which the Petitioner claims that the persons disagree, the Respondent must provide a clear statement of the way in which its position differs from that of the Petitioner.

(d) In addition, where the Respondent is a Lead Broadcaster, Designated Video Archive Operator or Entity Controlling Resources, it shall comply with the applicable procedures set out in paragraphs 2.2, 3.2.1, 3.3.1 or 4.2 of Appendix 4 of this Code, where relevant.

*[S 380/2011 wef 02/07/2011]*

### **10.5.1.4 Settlement Conference**

(a) Following receipt of the Petition and the Response, MDA will not proceed with the Dispute Resolution if it concludes that neither person has negotiated in good faith.

(b) In such a case, MDA will specify a further period (not exceeding 90 working days) in which the persons are required to make further good faith efforts to resolve their dispute, failing which the Petitioner may re-initiate the process for the Dispute Resolution in paragraph 10.5.1 of this Code.

(c) Where MDA determines that one or both persons has negotiated in good faith, MDA may choose to schedule a meeting (referred to in this Part as the “Settlement Conference”), at any time after it receives the Response, at which representatives of both persons are required to be present. In the event that one of the persons is not present, MDA may in its sole discretion proceed with the conduct of the Settlement Conference. During any such meeting,

MDA will seek to identify each issue in dispute and, to the extent feasible, assist the persons in resolving all outstanding disputes.

#### **10.5.1.5 Statement of Issues**

Within 5 working days after the day on which any Settlement Conference is held, the persons must submit to MDA a joint statement identifying and fully describing any issue on which the persons have either:

- (a) reached an agreement; or
- (b) modified their initial positions.

#### **10.5.1.6 MDA's Right to Request Additional Information**

MDA may request either or both persons to submit additional information at any time during the course of the Dispute Resolution. Unless a person requests confidential treatment of any information submitted to MDA during the Dispute Resolution pursuant to paragraph 10.8 of this Code, any submission of information by one person must be made available to the other person at the time such information is submitted to MDA.

#### **10.5.1.7 Binding Effect of Submissions**

The positions taken by a person in its Dispute Resolution submissions made pursuant to paragraph 10.5 of this Code shall be binding on that person, unless the changes to its position taken in submissions are mutually agreed to by both persons.

#### **10.5.1.8 Effect of Failure to Submit Required Information**

If either person fails to submit any relevant information as may be required by this Code or requested by MDA in the course of the Dispute Resolution, MDA may draw adverse inferences from such failure to submit the information and MDA may base its decision on such relevant information as may be provided by the other person. In the event that the other person has not submitted any or insufficient relevant information, MDA will base its decision on the best publicly available information.

#### **10.5.1.9 Resolution by MDA**

MDA will use the following procedure to conduct the Dispute Resolution:

##### **10.5.1.9.1 Scope of the Dispute Resolution Procedure**

Provided that they are consistent with the terms of this Code, MDA will not re-open any issue on which the persons have reached agreement. Rather, the Dispute Resolution will be limited to those issues on which the 2 persons are unable to reach agreement.

#### **10.5.1.9.2 Timing of the Dispute Resolution Procedure**

MDA will generally complete the Dispute Resolution, issue a decision resolving each of the unresolved issues, and specify any further actions that the persons must take within 60 working days of receiving all necessary information.

#### **10.5.1.9.3 Standards to be Applied**

(a) To the extent that an issue in dispute is addressed by a provision of this Code, MDA will apply that provision.

(b) To the extent that an issue in dispute is not addressed by any provision of this Code, MDA retains full discretion to impose any solution that it deems appropriate (including solutions not advocated by either person).

#### **10.5.1.9.4 Interim Resolution**

(a) Where appropriate, MDA may impose an interim resolution on the persons, pending conclusion of the Dispute Resolution (an “Interim Resolution”). Where feasible, MDA will give the persons reasonable advance notice of the proposed Interim Resolution.

(b) Any Interim Resolution will be no more extensive than is necessary to avoid serious harm to either of the persons or to the public interest. The Interim Resolution will only be in effect up to and until the conclusion of the Dispute Resolution.

### **10.5.2 MDA’s Right to Impose Administrative Fees**

MDA may impose administrative fees as it considers necessary to cover costs incurred in the course of any Dispute Resolution.

### **10.6 Enforcement Actions**

(a) MDA has complete discretion as to whether or not to initiate any investigation

and as to the time and manner in which MDA will conduct such investigation and any related or consequential enforcement action. In exercising its discretion, MDA will consider:

- (i) the seriousness of the alleged contravention;
- (ii) the availability and verity of evidence to support the allegation;  
and
- (iii) all other relevant factors.

(b) For the avoidance of doubt:

- (i) MDA has complete discretion in the prioritisation of cases; and
- (ii) MDA may launch an investigation following a complaint by any person, or under its own direction, where it believes that a contravention of the Code is occurring, may have occurred or is likely to occur.

### **10.6.1 Private Requests for Enforcement**

Where any person has been injured or is likely to be injured as a direct result of the contravention of any provision of this Code by a Regulated Person, such a person which has been injured or is likely to be injured may submit a request asking MDA to take enforcement action. Where MDA receives 2 or more requests against the same Regulated Person which arise out of the same action or course of action by that Regulated Person, MDA may consider the requests in a single consolidated proceeding.

#### **10.6.1.1 Procedures for Private Requests for Enforcement**

(a) Any person who requests MDA to take enforcement action (referred to in paragraph 10.6.1 as the “Complainant”) must submit a written and signed request (“Request for Enforcement”). The Request for Enforcement must allege facts that, if proven to be true, would constitute a contravention.

(b) Whenever possible, the Complainant should attach to the Request for Enforcement copies of all relevant documents necessary to prove the allegations of fact contained in the request. Where this is not possible, the Complainant must provide a statement explaining why it cannot provide the supporting documentation.

(c) The Request for Enforcement must include a signed statement that:

- (i) the Complainant has used reasonable diligence in collecting the facts;
- (ii) the facts alleged are true to the best of the Complainant's knowledge;
- (iii) the Complainant believes, in good faith, that the facts alleged, if proven, would constitute a contravention of the provisions of this Code as cited in the Request for Enforcement; and
- (iv) the Complainant has made an effort, in good faith, to resolve the underlying dispute through direct negotiation with the Regulated Person being complained against.

(d) In an appropriate case, MDA may require the Complainant to provide a statutory declaration attesting to the facts that provide the basis for the Request for Enforcement within 7 working days from the date of MDA's written request.

(e) The Complainant should note that the provision of information which is false or misleading in a material particular is an offence pursuant to section 57 of the MDA Act.

#### **10.6.1.2 Non-Disclosure of Identity**

The Complainant may request for non-disclosure of its identity to the Regulated Person being complained against and the public. MDA will consider each request on a case-by-case basis, but will not unreasonably refuse such a request.

#### **10.6.1.3 Deferment of Consideration for Request for Enforcement**

In an appropriate case, MDA may defer its consideration of a Request for Enforcement. Where MDA defers its consideration of a Request for Enforcement, MDA will notify the Complainant and provide a written explanation.

#### **10.6.1.4 Withdrawal of Request for Enforcement**

(a) The Complainant may, at any time, withdraw its Request for Enforcement. To withdraw its Request for Enforcement, the Complainant must notify MDA in writing of its request for withdrawal and provide reasons for its request.

(b) The Complainant's decision to withdraw its Request for Enforcement does not preclude MDA from taking enforcement action on its own initiative in the case that MDA concludes it is in the public interest to do so. In such a case, while MDA will initiate a separate enforcement proceeding pursuant to paragraph 10.6.2 of this Code, MDA may continue to rely on the submissions made by relevant persons in the previous discontinued enforcement proceeding.

#### **10.6.2 Procedures for Enforcement Actions**

Where appropriate, MDA will take enforcement action against a Regulated Person whom it believes is contravening, has contravened or is likely to contravene this Code. MDA will use the following procedures in any enforcement action:

##### **10.6.2.1 Notification and Requests for Information**

MDA will provide a written notification to the Regulated Person(s) against whom enforcement action is being taken (referred to in paragraph 10.6.2 as the "Respondent") which will identify the basis and purpose of the request for information.

##### **10.6.2.2 Requirement to Respond**

(a) A Respondent will have 15 working days to respond in writing to MDA's information request.

(b) Where the said Respondent demonstrates good cause, MDA may grant an extension of time for such period as MDA considers reasonable for making its response, taking into account the amount and complexity of the information requested. Any request for an extension of time must be made in writing to MDA as soon as practicable and in any case before the expiration of the period in which the said Respondent must submit its response.

(c) MDA will generally seek to inform the said Respondent of its decision within 2 working days of the date of receipt of the request for extension.

##### **10.6.2.3 Request for Additional Information**

(a) After reviewing the response provided by the Respondent following an information request, MDA may request additional information. Such requests will be limited to information necessary to resolve those issues that remain in dispute.

(b) In addition, MDA has the right to seek information from any person who, in MDA's opinion, would enable it to reach a decision in relation to any issue in dispute (as directed in paragraph 10.7 of this Code).

#### **10.6.2.4 Preliminary Decision and Ability to Provide Further Representations on Facts of Case**

(a) Following an examination of all the available evidence, MDA will issue a preliminary decision to the Respondent and all other parties to the action.

(b) MDA will generally issue a preliminary decision within 60 working days of receiving all necessary information. Where appropriate, MDA may, by written notice to the parties to the action before the expiry of the 60 working days period, extend the time by which MDA will issue its decision. In such cases, MDA will specify the number of working days by which it is extending the examination period.

(c) Following the issue of the preliminary decision, the parties to the action will subsequently have 30 working days to make further representations to MDA regarding the facts of the case.

(d) If no representation is received by MDA within the time specified in paragraph 10.6.2.4(c) of this Code or if any representation made under paragraph 10.6.2.4(c) of this Code is withdrawn, MDA will issue a draft final decision within the next 30 working days.

#### **10.6.2.5 Revised Preliminary Decision and Ability to Provide an Additional Set of Further Representations on Facts of Case**

(a) After due consideration, MDA may issue a revised preliminary decision within 30 working days of receiving all further representations referred to in paragraph 10.6.2.4(c) of this Code regarding the facts of the case. Where MDA decides not to vary or reverse any part of its preliminary decision, MDA will confirm its preliminary decision through the issuance of a draft final decision.

(b) Where appropriate, MDA may, by written notice to the parties



to the action before the expiry of the period of 30 working days, extend the time by which MDA will issue its decision. In such cases, MDA will specify the number of working days by which it is extending the examination period.

(c) Following the issue of a revised preliminary decision, the parties to the action will subsequently have 30 working days to make an additional set of further representations to MDA regarding the facts of the case.

#### **10.6.2.6 Draft Final Decision and Reconsideration Request**

(a) After due consideration, MDA may issue a draft final decision within 30 working days of receiving all further representations regarding the facts of the case following a revised preliminary decision (as the case may be).

(b) Where appropriate, MDA may, by written notice to the parties to the action before the expiry of the 30 working days period, extend the time by which MDA will issue its draft final decision. In such cases, MDA will specify the number of working days by which it is extending the examination period.

(c) Following the issue of a draft final decision, the parties to the action will subsequently have 14 working days to request MDA to reconsider its draft final decision (“Reconsideration Request”).

(d) Any person making a Reconsideration Request may not present new facts or raise new arguments for the first time in a Reconsideration Request if the person:

- (i) could have presented the fact or raised the argument before MDA issued its draft final decision; and
- (ii) cannot demonstrate that it had good cause for failing to do so.

(e) If no Reconsideration Request is received by MDA within the time specified in paragraph 10.6.2.6(c) of this Code or if any Reconsideration Request made under paragraph 10.6.2.6(c) of this Code is withdrawn, MDA will issue a final decision within the next 30 working days.

#### **10.6.2.7 Final Decision**

(a) MDA will issue a final decision within 30 working days of receiving the Reconsideration Request (if any). In appropriate cases, MDA may provide any interested person with an opportunity to file comments on the Reconsideration Request. In such cases, MDA will similarly provide the person who filed the Reconsideration Request with an opportunity to submit a final written response to MDA. In such cases, MDA will seek to issue a decision within 30 working days of receiving all comments.

(b) Where appropriate, MDA may, by written notice to the parties to the action, before the expiry of the 30 working days period, extend the time by which MDA will issue its final decision. In such cases, MDA will specify the number of working days by which it is extending the examination period.

#### **10.6.2.8 Relevant Market Definition**

For the purposes of paragraph 10.6.2 of this Code, where relevant, MDA will include the rationale for the market definition used by MDA in any Preliminary Decision, Revised Preliminary Decision, Draft Final Decision or Final Decision.

#### **10.6.2.9 Interim Direction to Cease and Desist**

At any time during an enforcement proceeding, MDA may issue an interim direction directing any Regulated Person to cease and desist from any specified conduct. In determining whether to issue such an interim direction, MDA will consider factors including, but not limited to, the following:

- (a) there is prima facie evidence that such Regulated Person has contravened the provisions of this Code;
- (b) continuation of such conduct by such Regulated Person is likely to cause serious harm to any person;
- (c) the potential anti-competitive harm from allowing the Regulated Person to continue its conduct outweighs the burden on such person of ceasing its conduct; or
- (d) issuance of the interim direction is in the public interest.

#### **10.6.3 Timeliness of Enforcement Action**

(a) The following time limits must be complied with in respect of every enforcement action:

- (i) In any case in which a person files a Request for Enforcement pursuant to paragraph 10.6.1 of this Code, the person must do so within 2 years after the date of the occurrence of the action that constitutes the alleged contravention of this Code.
  - (ii) In any case in which MDA initiates enforcement action on its own motion, MDA will issue written notification provided for in paragraph 10.6.2.1 of this Code within 2 years after the date of the occurrence of the action that constitutes the alleged contravention of this Code.
- (b) In determining the date of the occurrence of the action that constitutes the alleged contravention of this Code, the following will apply:
- (i) Where the alleged contravention could not reasonably have been discovered at the time it was committed, the earlier of the date on which the conduct was, or reasonably should have been, discovered will constitute the date on which the alleged contravention occurred.
  - (ii) Where a Regulated Person engages in an on-going course of conduct that allegedly contravenes this Code, the date of the most recent action taken as part of that course of conduct will constitute the date on which the alleged contravention occurred. For example, where conduct undertaken pursuant to an agreement is continuing, MDA may bring an enforcement action while the conduct is continuing, or at the latest, within 2 years from the date on which the Regulated Person ceases its conduct, under the agreement.

#### **10.6.4 Binding Effect of Representations**

(a) Any Regulated Person or any other person who is a party to an Enforcement or Dispute Resolution proceeding under this Code must, in its initial submission, to MDA:

- (i) in relation to a Request for Enforcement pursuant to

paragraph 10.6.1 of this Code, make all relevant allegations of contravention that the person is aware of at the time of the submission of the Request for Enforcement;

- (ii) in relation to further representations provided by relevant persons to MDA pursuant to paragraph 10.6.2.4 or paragraph 10.6.2.5 of this Code, raise all relevant grounds of contravention or to dispute the allegations of contravention; and
- (iii) in relation to a Petition for Dispute Resolution and a Response to a Petition for Dispute Resolution pursuant to paragraph 10.5 of this Code, raise all relevant issues in dispute and submit all relevant information to substantiate the person's position taken on the issues in dispute.

(b) MDA reserves the right to reject the relevant portion of any subsequent submission made by the person in the course of the relevant proceeding that:

- (i) in relation to an enforcement proceeding, makes any new allegation of contravention not previously disclosed in the Request for Enforcement or raises any new ground not previously disclosed to dispute the allegations of contravention, which could have been disclosed or raised in its initial submission, and the person cannot demonstrate that it had good cause for failing to do so;
- (ii) in relation to a Dispute Resolution proceeding, raises any new issue in dispute not previously disclosed in the Petition for Dispute Resolution or Response to the Petition for Dispute Resolution, which could have been raised in its initial submission, and the person cannot demonstrate that it had good cause for failing to do so;
- (iii) contains information that could have been submitted in its Request for Enforcement or initial submission for Dispute Resolution; or

- (iv) takes any position that is inconsistent with its initial submission.

## **10.6.5 Enforcement Measures**

In the event that MDA concludes that any Regulated Person is contravening, has contravened or is likely to contravene any provision of this Code, MDA may take such enforcement measures as it considers appropriate pursuant to section 26(2) of the MDA Act. Such enforcement measures include, but are not limited to, the following enforcement actions:

### **10.6.5.1 Warnings**

MDA may issue a warning to any Regulated Person. The warning will contain a statement of MDA's basis for concluding that the Regulated Person is acting, has acted or will be acting in contravention of any provision of this Code, but will impose no further sanction.

### **10.6.5.2 Orders to Cease and Desist**

Where appropriate, MDA will direct the Regulated Person to cease engaging in conduct that is, or if continued will constitute, a contravention of any provision of this Code.

### **10.6.5.3 Directions**

Where appropriate, MDA will direct any Regulated Person to take specific remedial action.

### **10.6.5.4 Financial Penalties**

MDA may impose financial penalties of up to S\$1 million on a Regulated Person who contravenes any provision of this Code. Financial penalties will be determined on the length of and seriousness of any contravention, and will be proportionate to the harm done.

#### **10.6.5.4.1 Relevant Factors**

In imposing financial penalties, MDA will consider factors, including, but not limited to:

- (a) the severity of the contravention;
- (b) the duration of the contravention;

- (c) whether the contravention resulted in adverse consequences to third persons;
- (d) whether the Regulated Person acted knowingly, recklessly or in a grossly negligent manner;
- (e) whether the Regulated Person has a previous history of contraventions;
- (f) whether the Regulated Person took prompt action to remedy the contravention;
- (g) whether the Regulated Person made any effort to conceal the contravention;
- (h) whether the Regulated Person received or is likely to receive any gain, profit or gratification from the contravention;
- (i) whether the contravention was not intentional; and
- (j) whether the Regulated Person voluntarily disclosed the contravention to MDA.

#### **10.6.5.5 Structural Separation**

In appropriate cases where MDA concludes that any Regulated Person is contravening, has contravened or is likely to contravene any provision of this Code, MDA may require such person to perform one or both of the following:

- (a) adopt accounting separation rules, cost allocation rules and other forms of behavioural safeguards;
- (b) structurally separate its operations (including personnel, management, property, plant, equipment and finances).

### **10.7 Information Gathering Procedures**

(a) For the purposes of this Code, MDA may require the production of specified documents or the provision of specified information within a specified timeframe. All information submitted by any person pursuant to such requests by MDA must, to the best of that person's ability and knowledge, be accurate and complete. At the time it submits the information, a person must simultaneously submit a statement, in a form acceptable to MDA, certifying that it has satisfied this obligation.

(b) Where MDA considers it necessary to ascertain the veracity of any information or documents submitted, MDA may require such person or a specified officer of the person (as the case may be) to provide a statutory declaration in the manner as required by MDA to affirm the accuracy and completeness of the information or documents submitted.

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### **10.7.1 Request for Response to Specific Questions**

MDA may submit written questions to any person. To the extent that the person possesses (or through reasonable diligence can obtain) information that will enable it to respond, it must provide accurate and complete written answers.

### **10.7.2 Document Requests**

(a) MDA may request any person to provide internal documents. MDA may request production of specific documents or may request production of all documents that fall within a particular category.

(b) The person who receives the request must make all reasonable efforts to locate and produce all requested documents. The person may produce either the original documents or accurate photocopies.

(c) MDA may take copies of or extracts from any document produced.

(d) MDA may require any person to state, to the best of that person's knowledge and belief, where any document that MDA considers relates to any matter relevant to the investigation can be found.

(e) MDA may require any document which is stored in any electronic form to be produced in a form in which it can be read and can be taken away.

### **10.7.3 Interviews**

MDA may request any person (including any of its owners, officers or employees) to participate in an interview. Following the interview, MDA may require the interviewee to provide written answers to specific questions.

### **10.7.4 Inspection Requests**

MDA may require any person to allow MDA to physically inspect its facilities, operations, or the documents requested pursuant to paragraph 10.7.2 of this Code. MDA will generally provide at least 3 working days advance notice unless this is likely to lead to concealment of

the facts.

### **10.7.5 Request for Reconsideration**

(a) Any person who believes that any information request is unnecessary, burdensome or overly broad may submit a written request to MDA to reconsider or narrow the information request (“Information Reconsideration Request”).

(b) The person should submit the Information Reconsideration Request to MDA within 5 working days of receiving the information request. The Information Reconsideration Request should specify the basis for the objection of the person and, where feasible, propose alternative means by which MDA can obtain the information necessary to make any required determination.

(c) In any case in which a person submits an Information Reconsideration Request, MDA will deem any applicable review period to have stopped running on the day on which the Information Reconsideration Request was submitted to MDA. The review period will resume on the day on which MDA either grants or denies the Information Reconsideration Request, or the person agrees to submit the requested information.

### **10.7.6 Sanctions for Failure to Comply with Information Requests**

(a) Failure to comply with MDA’s information requests and the intentional or reckless destruction, disposal, falsification or concealment of requested documents, or the causing or permitting of the destruction, disposal, falsification or concealment of such documents are offences punishable pursuant to the MDA Act.

(b) Additionally, the failure of a person to respond accurately and completely to MDA’s information request within the time period specified by MDA in such request can provide a basis for MDA to refuse to take the action requested.

### **10.7.7 Consultation with Other Interested Persons**

MDA may use the following information gathering procedures:

#### **10.7.7.1 Industry Consultation**

Where appropriate, MDA will provide the industry with an opportunity to comment on any proceeding (an “Industry Consultation”).

#### **10.7.7.2 Private Consultation**

In those cases in which MDA does not conduct an Industry Consultation, it



may nonetheless request or accept comments from persons, as appropriate. MDA does not assume any obligation to consider unsolicited comments, but may choose to do so where these are factually relevant and can be supported with evidence.

## **10.8 Confidential Treatment**

### **10.8.1 Procedures for Requesting Confidential Treatment**

(a) Any person submitting information to MDA, whether voluntarily, or pursuant to a request from MDA, may request that such information which has been submitted, or any part thereof, be treated as confidential. Any person requesting confidential treatment of information must identify the specific document, or portion thereof, or other information for which confidential treatment is sought and give reasons why the information is confidential. Such person requesting confidential treatment of information must also submit a non-confidential version of the relevant documents submitted.

(b) MDA will generally not accept requests to treat all information submitted as confidential. Any request for confidential treatment of information must indicate that the request satisfies the standards contained in paragraph 10.8.2 of this Code.

### **10.8.2 Standards Governing Grant of Confidential Treatment**

(a) MDA will grant a request for confidential treatment if the disclosing person demonstrates, with reasonable specificity, that the information for which it requests confidential treatment is either proprietary, contains commercially sensitive information (including information that is subject to a pre-existing non-disclosure agreement with a third person), or that disclosure would otherwise have a material adverse impact on the disclosing person.

(b) Information is proprietary if it constitutes the person's legally protected intellectual property.

(c) Information is commercially sensitive if:

- (i) it is not otherwise available to the public; and
- (ii) there is a reasonable possibility that disclosure would cause harm to the person or otherwise provide a commercial benefit to the person's competitors.

(d) For example, information which describes the disclosing person's business procedures, practices, plans, or its assessment of market conditions or similar matters, is generally regarded as commercially sensitive.

### **10.8.3 Notification of Denial of Confidential Treatment**

(a) If MDA rejects a request for confidential treatment of any item of information, MDA will provide the person who submitted the information with a reason for its decision. Within 14 working days from the date of MDA's rejection of the request for confidential treatment of information (the "Deadline"), such person shall resubmit a non-confidential version of the relevant document with that item of information (for which confidential treatment was requested) included in an appropriately revised form acceptable to MDA (referred to in this paragraph 10.8.3 as the "Revised Non-Confidential Version").

(b) If a person is unable to resubmit the Revised Non-Confidential Version by the Deadline, such person should submit a request for extension of time to MDA prior to the expiry of the Deadline.

(c) If such person fails to resubmit the Revised Non-Confidential Version within the Deadline (or within any extensions of time granted), MDA may immediately cease to review any request or Application in respect of which the information was submitted or in respect of which the MDA had requested for such information.

(d) Even if MDA allows any item of information to be treated as confidential, it may, at any subsequent point of time, require such person to resubmit a Revised Non-Confidential Version. Under such circumstances, paragraphs 10.8.3(b) and 10.8.3(c) of this Code shall apply.

(e) MDA may, where appropriate, disclose to third parties any information submitted by any person in respect of which confidential treatment has not been sought or any information in the Revised Non-Confidential Version resubmitted under paragraphs 10.8.3(a) and 10.8.3(d), whether by publishing such information on the MDA website or through other means.

(f) MDA's decision not to grant confidential treatment of information does not excuse a person from complying fully with any obligation that it may have to provide complete and accurate information to MDA.

(g) Any failure by a person to provide MDA with information required in paragraph 10.8.3 of this Code may amount to an offence under section 55 of the MDA Act.

#### **10.8.4 MDA’s Powers to Deal with Information**

Nothing in this Code shall in any way constrain MDA’s ability to deal with any information required for the purpose of investigations or other enforcement actions undertaken in accordance with the provisions of the MDA Act or any other written law.

#### **10.9 Administrative Review of MDA’s Acts, Directions and Decisions**

In accordance with section 27 of the MDA Act, any person who is aggrieved by any act, direction or decision of MDA may, within 14 days of the date on which he is notified thereof or such longer period as the Minister may allow, appeal to the Minister. Unless the Minister orders otherwise, the act, direction or decision of MDA appealed against shall be complied with until the determination of the appeal.

### **11 — Revocation, Savings and Transitional**

#### **11.1 Introduction**

This Part describes the savings and transitional rules governing the implementation of the provisions of this Code.

#### **11.2 Revocation**

The Media Market Conduct Code (Code 1) is revoked.

#### **11.3 Savings Provision**

Except as otherwise provided, and so far as it is not inconsistent with the provisions of this Code, any action, approval, decision, designation, direction, exemption or notification taken, granted, issued, made, published or approved by MDA, in relation to any matter under the revoked Media Market Conduct Code, will continue in effect and will be deemed to have been taken, granted, issued, made, published or approved by MDA under the corresponding provisions of this Code until so amended, cancelled, modified, revoked or otherwise varied by MDA.

#### **11.4 General Transitional Rules**

##### **11.4.1 Status of Pre-Code Agreements**

Parties to agreements which were made before the Effective Date of this Code (“Pre-Code Agreement”) will automatically be given a period of 6 months (or such longer period as MDA may specify) from such effective date (“Transitional Period”) to review their agreements and, where necessary, renegotiate or amend their agreements or otherwise comply with the terms of this Code. During the Transitional Period, MDA shall not take any enforcement measures against parties to a Pre-Code Agreement which

infringes this Code. Nothing in this paragraph shall constrain MDA's ability to take enforcement measures against parties to a Pre-Code Agreement which continues to be or purports to be in effect after the Transitional Period.

#### **11.4.2 Contraventions before the Effective Date of this Code**

(a) Subject to paragraph 11.4.3 of this Code, a person will not be found to be in contravention of any provision of this Code in respect of any agreement entered into, or act or conduct that occurred, before the Effective Date of this Code.

(b) Nevertheless, such a person shall remain liable for any contravention under the revoked Media Market Conduct Code in respect of such agreement, act or conduct, as if the revoked Media Market Conduct Code had not been revoked. Any such enforcement action is subject to a 2 years time limitation from the date of the occurrence of the action that constitutes the alleged contravention of the revoked Media Market Conduct Code, as determined under paragraph 10.6.3(b) of this Code.

(c) In this respect, any enforcement proceeding commenced before the Effective Date of this Code may be continued and completed under the provisions of the revoked Media Market Conduct Code as if the revoked Media Market Conduct Code had not been revoked. However, any right of appeal in relation to that proceeding shall be exercised, heard and determined under paragraph 10.9 of this Code.

(d) Where the investigation in relation to an enforcement proceeding is commenced after the Effective Date of this Code, the procedures set out in paragraphs 10.6 through 10.9 of this Code shall apply to the enforcement action.

#### **11.4.3 Application of this Code to Continuing Agreement, Act and Conduct**

Subject to paragraph 11.4.1 of this Code, any agreement entered into, act or conduct which occurred prior to the Effective Date of this Code, but which continues after the Effective Date of this Code, will be governed by the terms of this Code from the Effective Date of this Code. MDA will not take enforcement action against a person under both the revoked Media Market Conduct Code and this Code for the same contravening agreement, act or conduct.

#### **11.4.4 Uncompleted Proceedings under the Revoked Media Market Conduct Code**

(a) Without prejudice to paragraph 11.4.2 of this Code, any proceeding commenced before the Effective Date of this Code, but which remains uncompleted after the Effective Date of this Code, will be deemed to have been commenced and proceeded under the corresponding provision of this Code and governed by this Code, provided that MDA is able to complete the proceeding in a manner that is consistent with the provisions of this Code.

(b) Where MDA is unable to complete a proceeding in a manner that is consistent with the provisions of this Code, MDA will notify the persons within 30 working days of the Effective Date of this Code and the proceeding shall be deemed withdrawn by the persons. In such an event, the persons may initiate a new proceeding under the corresponding provision of this Code. Where necessary, MDA may issue directions to the persons of any uncompleted proceeding to specify additional transitional rules for the purposes of completing such proceeding under the corresponding provision of this Code.

(c) Where a proceeding commenced under the revoked Media Market Conduct Code has been completed before the Effective Date of this Code, but any right of appeal is exercised after the Effective Date of this Code, such right of appeal in relation to that proceeding shall be exercised, heard and determined under paragraph 10.9 of this Code.

## APPENDIX 1

### MATTERS RELATING TO CROSS-CARRIAGE

#### **PART I BASIC FUNCTIONS**

1. The following are the basic functions for the purposes of the definition of “Qualified Content” in paragraph 2.3(d) of this Code:

- (a) Electronic programme guide and synopsis;
- (b) Multiple languages (for example, dual-sound option);
- (c) Subtitles;
- (d) Stereo/surround sound formats;
- (e) Navigational access, including Left, Right, Up, Down, OK, Enter, Exit; and
- (f) Time elapsed and time remaining.

#### **PART II**

## VALUE-ADDED SERVICES

1. The following services are the value-added services for the purposes of the definition of “Qualified Content” in paragraph 2.3(d) of this Code, the incorporation of which in any channel or programming content will not of its own render the channel or programming content Qualified Content:

- (a) Subtitles;
- (b) Dubbing;
- (c) Commentaries, and pre and post-documentaries which are not standalone programmes;
- (d) Enhanced interactive features, including contest and voting services, and enhanced television features such as a button feature which allows consumers to view programmed associated data relating to the content (for example, programme synopsis);
- (e) Promotional trailers, programme advertisements, press conferences, on-screen advertisements and crawler messages produced for and associated with the content;
- (f) Footages and talkshows, including snippets, interviews (for example, with artistes) and previews and reviews produced for and associated with the content;
- (g) Programme highlights, including fillers and programme-related previews and reviews of the content;
- (h) Format upgrades (including upgrades to high definition (HD) format or three-dimensional (3D) format);
- (i) User generated content, including short message services, multi-media message services, emails, video clips, audio clips and discussion forums relating to the content.

## PART III

### CONTENT PROTECTION SECURITY REQUIREMENTS

#### 1. General Principles

- (a) In accordance with paragraph 2.7.2A(d) of this Code, MDA sets out the following content protection security principles.
- (b) The Receiving Qualified Licensee must provide end-to-end protection of Qualified Content from the point of handover from the Supplying Qualified Licensee to the Subscriber’s premises. In order to do so, the Receiving Qualified Licensee must provide adequate:
  - (i) Headend security, to ensure that Qualified Content is adequately protected from physical or digital theft while in its headend;
  - (ii) Content Protection Delivery System (“CPDS”) security, to protect Qualified Content while it is transmitted from its own headend to its Subscribers’ premises; and
  - (iii) Set-top box security, to protect Qualified Content against unauthorised access once Qualified Content has been decrypted by an authorised set-top box.

## 2. Security Standards

- (a) Network operator headend security requirements should include the following elements:
- (i) A management control environment that defines security policies, procedures and controls for the secure handling of Qualified Content;
  - (ii) Security to prevent the physical theft of Qualified Content while present at the headend; and
  - (iii) Security to prevent the digital theft of Qualified Content while present at the headend.
- (b) CPDS security should include the following elements:
- (i) A suitable content encryption algorithm;
  - (ii) The ability to revoke unauthorised devices and to renew the security of the CPDS in case of a breach;
  - (iii) A process to monitor when a compromise of the CPDS has taken place and ability to re-secure the system in case of compromise; and
  - (iv) Security devices to deter piracy.
- (c) Set-top box content protection security should securely manage the output, storage, copying and recording of decrypted Qualified Content received from the CPDS, including the following elements:
- (i) Qualified Content should not be transmitted from the set-top box via analogue or digital means unless in a manner which does not breach the requirements specified by the CPDS;
  - (ii) Set-top box receivers should not copy, record, or store decrypted Qualified Content except as permitted under requirements specified by the CPDS; and
  - (iii) The set-top box receivers should be robust to effectively frustrate attempts to gain access to decrypted Qualified Content or the keys to gain access to such Qualified Content.

## 3. Other considerations

- (a) A Receiving Qualified Licensee should ensure its compliance with the principles set forth in this Part and submit a certification, in a form acceptable to MDA, confirming such compliance.

*[S 380/2011 wef 02/07/2011]*

## APPENDIX 2

### RESTRICTIONS THAT MAY BE APPLIED ON ADVERTISEMENTS PROMOTING CERTAIN MEDIA SERVICES

#### 1. OVERVIEW

Paragraph 6.3.3 of the Code provides that there are certain exceptions whereby a Dominant Person may impose specific restrictions on advertisements promoting certain media services.

#### 2. APPLICATION

The restrictions are applicable for advertisements promoting any broadcasting service licensed under the Broadcasting Act (Cap. 28) or any newspaper authorised for publication under the Newspaper and Printing Presses Act (Cap. 206) (hereinafter each referred to as “Licensed Media Service”).

#### 3. NON-DISCRIMINATION

A Dominant Person may exercise the right to impose the restrictions. However, once exercised in relation to any specific Licensed Media Service, the restrictions must be applied on a non-discriminatory basis to ALL advertisements promoting other similar Licensed Media Service, including advertisements promoting similar Licensed Media Service provided by the Dominant Person or its Affiliates.

#### 4. RESTRICTIONS

- (a) Advertisements promoting any Licensed Media Service should not make comparison with other media services, directly or by implication, so as to disparage or denigrate such other media services.
- (b) The following restrictions are only applicable to advertisements promoting any broadcasting service licensed under the Broadcasting Act:
  - (i) the advertisement should not include a call to action, such as asking the viewers to switch to the subject broadcasting service;
  - (ii) the advertisement should not state any specific time and date of the programmes broadcast on the subject broadcasting service; and
  - (iii) the advertisement promoting any programme broadcast on the subject broadcasting service should not be broadcast during the broadcast of any programme of the same genre on the Dominant Person’s broadcasting service.

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## APPENDIX 3

### PROCEDURE FOR FILING AND INFORMATION REQUIREMENTS FOR CONSOLIDATION APPLICATIONS

#### 1. ADMINISTRATIVE REQUIREMENTS

- (a) In submitting the Consolidation Application, the Applicant is required to submit one master copy, 6 photocopies, and one soft copy (in CD-ROM) of the following:
- (i) the Consolidation Application and its supporting documents (including any ancillary agreements which are the subject of the Consolidation Application), with any confidential information in the Consolidation Application or documents clearly identified;
  - (ii) a non-confidential version of the Consolidation Application and its supporting documents, with confidential information removed; and
  - (iii) a separate annex to the non-confidential version of the Consolidation Application or document, identifying the confidential information and furnishing reasons as to why the information should be treated as confidential.
- (b) The soft copies of the Consolidation Application (and the non-confidential version) are to be in Microsoft Word format. Supporting documents accompanying the Consolidation Application must, where possible, be in a format which allows for text to be edited. Non-confidential versions need not be filed if the Applicant is of the view that the relevant Consolidation Application or document can be shared in its entirety with third persons either by publishing them on MDA's website or through other means.
- (c) If the Applicants engage legal assistance to file the Consolidation Application on the Applicants' behalf, MDA should be furnished with a letter of authorisation signed by the Applicants. The Applicants should appoint a joint representative. Where the joint Applicants have appointed separate representatives, the Applicants should explain why a joint representative could not be appointed.

#### 2. APPLICATION PROCEDURE

When submitting a Consolidation Application, Applicants must follow the application procedure set out in this paragraph (the "Application Procedure"). To do so, the Applicants must submit a Consolidation Application and must provide the information specified in the paragraphs below in Appendix 4 of this Code. The structure of an Application will be as follows:

##### 2.1 Cover Page

The Application must contain a title page setting out the full names of the Applicants, the title "Consolidation Application" and the date of the application.

##### 2.2 Table of Contents

The application must contain a fully detailed table of contents.

### **2.3 General Contact Information**

The application must set out the following general contact information:

#### **2.3.1 Summary Information Regarding the Application**

- (a) Please state which of the Applicants is an acquiring person or an acquired person;
- (b) Please state if the Consolidation is a cash tender offer. If not, please state the mode of payment for the Consolidation;
- (c) Where applicable:
  - (i) please state if the Consolidation is a result of bankruptcy or insolvency of one of the Applicants;
  - (ii) please state if the Consolidation is subject to filing requirements of a local or foreign authority other than MDA. If yes, please state the country and authority to which the filing is made or to be made, and all decisions and directions issued by the local or foreign authorities in respect of the Consolidation; and
  - (iii) please state whether ancillary restrictions are notified as part of this application.

#### **2.3.2 General Contact Information**

- (a) For each Applicant making the application, the joint representative of the Applicants (where appointed) or separate representatives for the Applicants (where appointed), please provide the following:
  - (i) full name, address (registered office or principal place of business, where appropriate), telephone and fax numbers, and e-mail address (where available) of the joint or separate representative(s);
  - (ii) full name, address, telephone and fax numbers, and email address of, and designation or position held by, a contact person; and
  - (iii) address for service to which documents and, in particular, MDA's correspondences may be delivered, as well as the full name, telephone and fax numbers, and email address of a person at each address who is authorised to accept service.
- (b) For each Applicant:

- (i) indicate if each Applicant is a partnership, sole proprietorship or other unincorporated body trading under a business name;
- (ii) provide a brief description of the nature of each Applicant's business; and
- (iii) provide the full name(s) and address(es) of the partners, proprietor(s), or director(s), quoting any reference which should be used.

(c) Where any representative(s) has been authorised to act for the Applicants, please indicate clearly whom the representatives represent and in what capacity (*e.g.* a solicitor). Where separate representatives have been appointed in a joint application, please explain why a joint representative could not be appointed.

(d) Where the declaration set out in this Appendix is signed by a solicitor or other representative of the Applicant(s), please provide written proof of that representative's authority to act on the Applicant(s)'s behalf. The written proof must contain the name and position of the persons granting such authority.

## **2.4 Summary of the Application**

The Application must set out a brief summary of the following information:

- (a) the nature of the Consolidation and other general information;
- (b) information on markets;
- (c) information on the groups to which the Applicants belong; and
- (d) additional information set out in paragraph 2.6 of this Appendix.

## **2.5 Description, Competitive Impact and Public Interest Statement**

The Applicants must submit a statement (referred to in this Appendix as the "Statement") that provides a clear, accurate and comprehensive description of the Consolidation, a good-faith assessment of the likely impact of the Consolidation on competition in any relevant media market, and a discussion of why approval of the Consolidation would serve the public interest. The competitive assessment should generally include, but is not limited to, information as set out below:

### **2.5.1 General Information**

- (a) Describe the nature of the Consolidation. In doing so, please state:
  - (i) the Applicants;
  - (ii) the nature of the Consolidation, for example, whether the Consolidation is an acquisition of sole or joint Control, a full-function joint venture or a contract, or other means of conferring direct or indirect Control;

- (iii) the value of the Consolidation (the purchase price or the value of all the assets involved, as the case may be);
- (iv) for each of the Applicants and their Affiliates, the relevant media markets and other markets in which they participate and turnover worldwide and in Singapore for the last financial year;
- (v) whether the whole or parts of the business of the Applicants are subject to the Consolidation;
- (vi) the markets on which the Consolidation will have an impact (including the main reportable media markets as set out in paragraph 2.5.2 of this Appendix);
- (vii) a brief explanation of the economic and financial structure of the Consolidation;
- (viii) the proposed, expected or past dates of major events designed to bring about the completion of the Consolidation; and
- (ix) any efficiencies that would likely result from the Consolidation.

(b) Where applicable, please also state:

- (i) whether any public offer for the securities of an Applicant by another Applicant has the support of the former's supervisory boards of management or other representation of that person;
- (ii) any financial or other support received from any source (including public authorities) by any of the Applicants, and the nature and amount of this support; and
- (iii) the strategic and economic rationale of the Consolidation, and why the Consolidation should be allowed to proceed.

## **2.5.2 Information on Markets**

Information on markets should include information on all reportable media markets:

### **2.5.2.1 Market Definition**

Identify all "reportable media markets". A reportable media market comprises a relevant product or geographic media market, as well as plausible alternative relevant product or geographic market(s), on the basis of which:

- (a) 2 or more of the Applicants and their Affiliates are engaged in business

activities in the same relevant market (horizontal relationships); or

(b) one or more of the Applicants and their Affiliates are engaged in business activities in a product market which is upstream or downstream of a market in which the Applicants and their Affiliates are engaged, regardless of whether there is or is not any existing supplier and customer relationship between the Applicants and their Affiliates (vertical relationships).

#### 2.5.2.2 Reportable Media Market Information

(a) For each reportable media market, please provide:

(i) an estimate of the total size of the market in terms of sales value (in Singapore dollars) and volume (*units*)<sup>1</sup>, for the preceding year. Indicate the basis and sources for the calculations and provide documents, where available, to confirm these calculations;

<sup>1</sup> The value and volume of a market should reflect output less exports plus imports for the geographic areas under consideration where possible.

(ii) the sales in value and volume for the preceding year, as well as an estimate of the market shares, of each of the Applicants. Indicate if there have been significant changes to the sales and market shares for the last 3 years; and

(iii) an estimate of the market share that the Post-Consolidation Entity is likely to have.

(b) Where applicable, please also provide:

(i) estimates of the market shares in value (and, where appropriate, volume) for the preceding year of the 3 largest competitors, suppliers and Consumers, including the basis for the estimates. Provide the name, address, telephone number, fax number and e-mail address of the head of the legal department (or other person exercising similar functions, and in cases where there is no such person, the chief executive) for these entities;

(ii) whether the Consolidation could be expected to have an impact on the relevant media market;

(iii) the level of concentration of the relevant media market and how it has changed over time;

(iv) the market structure and the extent to which it facilitates unilateral conduct or concerted action by multiple Regulated

Persons or Ancillary Media Service Providers;

- (v) information regarding the likelihood that existing market participants or new entrants would respond to a significant and non-transitory price increase by the Post-Consolidation Entity entering the market; and
- (vi) set out the likelihood of Consumers switching in response to a significant and non-transitory price increase (where the Post-Consolidation Entity will be a seller) or the likelihood of sellers switching in response to a significant and non-transitory price decrease (where the Post-Consolidation Entity will be a Consumer).

### **2.5.3 Optional Information**

The following information may be included, if applicable, but is optional:

#### **2.5.3.1 Information on Groups to which the Applicant Belongs**

Please provide:

(a) A list of all persons belonging to the same group to which each Applicant belongs, specifying the nature and means of Control for each person (including any preferential or special rights). Persons belong to the same “group” when one person Controls another or when the persons concerned are under common Control. This list should include all persons Controlling or Controlled by each of the Applicants, directly or indirectly

(b) The information sought in paragraph 2.5.3.1(a) of this Appendix may be illustrated by the use of organisation charts or diagrams. Applicants who are unable to submit such information pertaining to the other persons should provide reasons for the inability to do so.

#### **2.5.3.2 Market Information on Groups to which the Applicant Belongs**

(a) Please provide a list of all persons active in each reportable media market identified in paragraph 2.5.2.1 of this Appendix, that is Controlled, directly or indirectly, by:

- (i) each of the Applicants; and
- (ii) any other persons identified in paragraph 2.5.3.1 of this Appendix;

specifying the nature and means of Control for each person (including any preferential or special rights).

(b) With respect to the Applicants and each person identified in response to paragraph 2.5.3.1 of this Appendix, where applicable, please provide:

- (i) a list of all other persons who participate in each reportable media markets in which persons of the group hold, individually or collectively, 5 percent or more of the voting rights, issued share capital or other securities. In each case, also identify the holder and state the percentage held; each of the Applicants; and
- (ii) for each person, a list of the members of their boards of directors (or equivalent) who are also members of the boards of directors (or equivalent) of any other persons in each reportable media market. In each case, also identify the other persons and the positions held by the members of the boards of directors; and
- (iii) for each person, a list of acquisitions of undertakings in each reportable media market made during the last 3 years.

(c) The information sought in paragraph 2.5.3.2(a) of this Appendix may be illustrated by the use of organisation charts or diagrams to provide a better understanding.

#### **2.5.4 Supporting Documents**

(a) The Applicants must also submit:

- (i) if paragraph 2.3.2(c) of this Appendix applies, written proof of the representative's authority to act on the Applicant(s)' behalf;
- (ii) copies of the final or most recent version of all documents bringing about the Consolidation, whether by agreement between the Applicants, acquisition of a Controlling interest or a public bid;
- (iii) copies of the most recent annual report and accounts (or equivalent for unincorporated bodies) or audited financial statements for the current and previous 2 years for all the Applicants; and
- (iv) copies of all business plans for each Applicant for the current year and the preceding 5 years which should include all financial projections.

(b) Where applicable, the Applicants must also submit:

- (i) in the case of a public bid, a copy of the offer document. If it is unavailable at the time of notification, it should be submitted as soon as possible and not later than when it is posted to

shareholders;

- (ii) copies of any supporting document that would assist MDA in assessing the likely competitive effect of the Consolidation which, at a minimum, must include copies of all analyses, reports, studies, surveys, or any comparable documents, prepared by or for any member(s) of the board of directors (or equivalent), other person(s) exercising similar functions (or to whom such functions have been delegated or entrusted), or the shareholders' meeting, for the purpose of assessing or analysing the Consolidation with respect to market shares, competitive conditions, competitors (actual and potential), the rationale of the Consolidation, potential for sales growth or expansion into other product or geographic markets, and general market conditions; and a chart indicating each Applicant's Affiliates and the relevant ownership interests. For each of these documents, indicate (if not contained in the document itself) the date of preparation and, the name and title of each person who prepared the document; and
- (iii) copies of any agreement that, while not directly addressing the Consolidation, are an integral part of the Consolidation (such as covenants not to compete or licensing agreements), or that are necessary to fully assess the likely competitive impact of the Consolidation.

(c) Where applicable, the Applicants should also indicate any situation in which the ownership interest grants the holder a special or preferential right. Applicants should also indicate any pending changes in the ownership structure of either Applicant in addition to the change that is the subject of their Application.

(d) Where applicable, the Applicants should also indicate whether they wish to propose any possible conditions (such as partial divestiture or the imposition of behavioural safeguards) that could reduce any potential adverse competitive impact of the Consolidation. If the Applicants choose to propose such conditions, they should provide a complete description of the proposed conditions and an assessment of why such conditions would be adequate to address any competitive concern that might arise from the Consolidation.

## **2.6 Additional Information to be Provided (Where Applicable)**

### **2.6.1 Ancillary Restrictions**

(a) The following information should be provided in regard to ancillary restrictions, where applicable:

- (i) details of each ancillary restriction;



- (ii) an explanation as to why each ancillary restriction is directly related and necessary to the implementation of the merger; and
- (iii) an explanation of why each ancillary restriction may contravene any part of this Code.

### **2.6.2 Cooperative Effects of a Joint Venture (To be Completed if the Consolidation is a Joint Venture)**

(a) Please state whether 2 or more parent companies retain activities in the same market as the joint venture or in a market which is upstream or downstream from that of the joint venture, or in a neighbouring market closely related to this market.

(b) Where applicable, provide for each of the markets referred to:

- (i) the activities retained by the parents;
- (ii) the turnover of each parent in the preceding financial year and the expected turnover of the joint venture; and
- (iii) the market share of each parent.

(c) Where applicable, please provide reasons why, in your view, the creation of the joint venture does not lead to an agreement that restricts or distorts competition under the Code.

### **2.6.3 Any Other Information**

Please provide any other information which may be relevant to the Consolidation Application. Supporting documents should be included, where relevant.

## **2.7 Duty to Update Pending Consolidation Applications to Reflect Material Changes**

During the period between the date on which the Applicants submit the Consolidation Application and the date on which MDA issues its decision (referred to as the “Consolidation Review Period”), the Applicants must promptly inform MDA, in writing, of any new or different fact that is reasonably likely to have a material impact on MDA’s consideration of the Consolidation Application. In the event that MDA determines that the Applicants’ subsequent submission has substantially altered the terms of the Consolidation, MDA may require the Applicants to withdraw the pending Consolidation Application and file a new Consolidation Application. The Applicants will not be entitled to a refund of the Consolidation Application Fee and will be required to pay an additional Consolidation Application Fee at the time they file the new Consolidation Application.

## **2.8 Applicants Required to Make Reasonable and Diligent Efforts**

The Applicants should make reasonable and diligent efforts to collect all necessary information to fulfil the above criteria. The applicants should note that MDA may, at its discretion, make the Statement available to the public. If the Statement contains proprietary or commercially sensitive information, the Applicants should put such information in a separate appendix and request for confidential treatment of such information pursuant to paragraph 10.8 of this Code, pending a

written explanation as to why the information should be treated as confidential.

### 3. DECLARATION

The following declaration should be included in all Consolidation Applications:

“Under section 57 of the MDA Act (Cap. 172), it is an offence, punishable by a fine or imprisonment or both to provide information which is false or misleading in a material particular if the undertaking or person providing it knows that it is false or misleading, or is reckless as to whether it is. If the undertaking or person is a body corporate, its officers may be guilty of an offence under section 57 of the MDA Act.

#### **Declaration**

The undersigned declare and confirm that all information given in this Form and all pages annexed hereto are correct to the best of their knowledge and belief, and that all estimates are identified as such and are their best estimates based on the underlying facts.

Signature(s) \_\_\_\_\_

Name(s) (in block capitals):

Designation(s):

Date:”.

*[S 380/2011 wef 02/07/2011]*

## APPENDIX 4

### Default pricing principles for use in dispute resolution

#### 1. OVERVIEW

Paragraph 10.5 of this Code provides that, in certain situations in which persons are unable to negotiate a commercial agreement, one person may request MDA to initiate a Dispute Resolution. This Appendix sets out the procedures and the pricing principles that MDA will apply when conducting a Dispute Resolution to determine the price or costs to be paid to:

- (a) a Lead Broadcaster that is supplying access to a “feed” of an Event of National Significance as provided for in paragraph 2.4.3.1.3 of this Code;
- (b) a Designated Video Archive Operator for a licence to broadcast archived material as provided for in paragraph 2.5.5.2 of this Code;
- (c) an Entity Controlling Resources for access to a Resource as provided for in paragraph 9.3.2.2 of this Code; and
- (d) a Receiving Qualified Licensee, by a Supplying Qualified Licensee, for the purpose of carrying Qualified Content of the Supplying Qualified Licensee on the Receiving Qualified

Licensee's Relevant Platform, as provided for in paragraph 2.7 of this Code.

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## **2. PRICING OF ACCESS TO “FEEDS” COVERING EVENTS OF NATIONAL SIGNIFICANCE**

### **2.1 Introduction**

(a) In accordance with paragraph 2.4.2 of this Code, MDA may select a Lead Broadcaster who will be given the right to locate cameras and other equipment at the site of a specific Event of National Significance. Pursuant to paragraph 2.4.3.1 of this Code, the Lead Broadcaster must provide access to the “feed” of the Event of National Significance to all Free-to-Air Television Licensees and Free-to-Air Radio Licensees who are obligated to broadcast the Event of National Significance, and any other person as MDA may direct as being entitled to obtain the “feed” to the Event of National Significance, subject to the discretion of MDA.

(b) Paragraph 2.4.3.1 of this Code further provides that any Free-to-Air Television Licensee, Free-to-Air Radio Licensee, or any other person as MDA may direct, who receives the “feed” from the Lead Broadcaster has an obligation to compensate the Lead Broadcaster for the reasonable costs that the Lead Broadcaster incurred in providing the “feed”.

(c) Paragraphs 2.4.3.1.1 and 2.4.3.1.3 of this Code further provide that in any case that, despite good-faith negotiations, the Lead Broadcaster and Free-to-Air Television Licensee, Free-to-Air Radio Licensee or any other person as MDA may direct are unable to reach an agreement regarding the price at which the Lead Broadcaster will provide access to the “feed” of the Event of National Significance, MDA will apply the following procedures.

### **2.2 Procedure**

(a) At the time the Lead Broadcaster submits a Response pursuant to paragraph 10.5.1.3 of this Code, the Lead Broadcaster must specify a proposed price payable for access to the “feed” of the Event of National Significance. In developing its proposed price, the Lead Broadcaster must apply the pricing principles specified in paragraph 2.3 of this Appendix. The Lead Broadcaster must also provide relevant cost support data. In accordance with paragraph 10.5.1.6 of this Code, MDA may subsequently request the Lead Broadcaster to provide additional information to substantiate its proposed price (including, but not limited to, the Lead Broadcaster's internal management accounts). MDA will then review the respective persons' submissions.

(b) If MDA concludes that the Lead Broadcaster has appropriately applied the pricing principles specified in paragraph 2.3 of this Appendix in developing its proposed price, MDA will accept its proposed price as the determined price payable for access to the “feed” of the Event of National Significance. If MDA concludes that the Lead Broadcaster has not appropriately applied the pricing principles specified in paragraph 2.3 of this Appendix in developing its proposed price, MDA will reject its proposed price and instead specify the determined price payable for access to the “feed”

of the Event of National Significance.

(c) For the avoidance of doubt, the determined price payable will only be binding on the persons to the Dispute Resolution for the specific Event of National Significance that is the subject of the dispute.

## **2.3 Pricing Principles**

### **2.3.1 Cost Components**

The Lead Broadcaster is entitled to recover:

(a) an appropriate allocated portion of the operating costs attributable to the coverage and production of the Event of National Significance which has not been otherwise compensated by MDA or by other sources of public funding; and

(b) the incremental costs associated with providing access to the “feed” of the Event of National Significance to additional persons.

### **2.3.2 Operating Costs**

The appropriate allocated portion of the operating costs attributable to the coverage and production of the Event of National Significance may include the costs of coverage crew (such as cameramen, sound engineers, technicians, support crew, video tape recorder operators, managers and coverage directors), as well as the costs of leasing of fibre optics for “live” events.

#### **2.3.2.1 Treatment of Operating Costs**

Operating costs will be calculated on a per day basis, unless another charging basis (such as on an hourly basis) would more accurately reflect the way in which the costs are incurred. Market rental values for specific resources and facilities may be used as an appropriate proxy for the Lead Broadcaster’s operating costs.

### **2.3.3 Incremental Costs**

The Lead Broadcaster is also entitled to recover any incremental cost that it incurs which can be directly attributed to the delivery of the “feed” of an Event of National Significance to a Free-to-Air Television Licensee, Free-to-Air Radio Licensee or any other person as MDA may direct. These incremental costs may include, but are not limited to:

(a) costs associated with the transmission of the “feed” to an acceptable interconnection point, including but not limited to, any costs of leasing microwave, fibre optics or satellite capacity;

(b) costs incurred to physically connect at the point of interconnection; and

(c) any incremental personnel required to deliver the “feed” of an Event of National Significance to the Free-to-Air Television Licensee, Free-to-Air Radio Licensee or any other person as MDA may direct.

## **3. PRICING OF ARCHIVED VIDEO MATERIALS**

### **3.1 Introduction**

- (a) In accordance with paragraph 2.5.3 of this Code, the Designated Video Archive Operator must license or otherwise make available the material set out in paragraph 2.5.3 for broadcast on reasonable prices, terms and conditions.
- (b) Paragraph 2.5.5 of this Code further provides that the Designated Video Archive Operator is entitled to reasonable compensation for licensing the broadcast of its archived material.
- (c) MDA will apply the following procedures and pricing principles in any situation in which a person seeking the licence, despite good-faith negotiations, is unable to reach an agreement with the Designated Video Archive Operator regarding the price at which the Designated Video Archive Operator will license the archived material for broadcast.

### **3.2 Events of National Significance**

The following procedures and pricing principles apply to licensing of archived Events of National Significance.

#### **3.2.1 Procedures**

- (a) At the time the Designated Video Archive Operator submits a Response pursuant to paragraph 10.5.1.3 of this Code, the Designated Video Archive Operator must specify a proposed licence fee payable for the right to broadcast the archived material. In developing its proposed price, the Designated Video Archive Operator must apply the pricing principles specified in paragraph 3.2.2 of this Appendix. The Designated Video Archive Operator must also provide relevant cost support data. In accordance with paragraph 10.5.1.6 of this Code, MDA may subsequently request the Designated Video Archive Operator to provide additional information to substantiate its proposed licence fee (including, but not limited to, the Designated Video Archive Operator's internal management accounts). MDA will then review the persons' submissions.
- (b) If MDA concludes that the Designated Video Archive Operator has appropriately applied the pricing principles specified in paragraph 3.2.2 of this Appendix in developing its proposed licence fee, MDA will accept its proposed licence fee as the determined licence fee payable for the licence of the archived material for broadcast.
- (c) If MDA concludes that the Designated Video Archive Operator has not appropriately applied the pricing principles specified in paragraph 3.2.2 of this Appendix in developing its proposed licence fee, MDA will reject its proposed licence fee and instead specify the determined licence fee payable for the licence of the archived material for broadcast.
- (d) For the avoidance of doubt, the determined licence fee payable will only be binding on the persons to the Dispute Resolution for the specific licence of archived material for broadcast that is the subject of the dispute.

#### **3.2.2 Pricing Principles**

The Designated Video Archive Operator is entitled to be compensated only for an appropriate allocation of the costs of storing archived Events of National Significance

for future use. Archive storage costs may include electricity, personnel, preservation and maintenance costs, and similar expenses, directly related to the maintenance of the archive. Such archive storage costs should be based on the Designated Video Archive Operator's costs for the most recent calendar or financial year.

### **3.3 News, Current Affairs or Information Programmes**

The following procedure and principles apply to licensing of archived News, Current Affairs or Information Programmes.

#### **3.3.1 Procedure**

(a) At the time when a person seeking to obtain a licence to broadcast archived material submits a Petition pursuant to paragraph 10.5.1.2 of this Code, the person must also submit to MDA its proposed licence fee payable to the Designated Video Archive Operator. MDA will not disclose to the Designated Video Archive Operator the person's proposed licence fee until after the Designated Video Archive Operator has submitted its Response pursuant to paragraph 10.5.1.3 of this Code.

(b) At the time when the Designated Video Archive Operator submits a Response pursuant to paragraph 10.5.1.3 of this Code, the Designated Video Archive Operator must specify a proposed licence fee payable for the right to broadcast the archived material.

(c) When a person or a Designated Video Archive Operator submits its proposed licence fee to MDA, that person or Designated Video Archive Operator must also provide MDA with supporting evidence and documentation to explain the basis of its proposed licence fee.

#### **3.3.2 Appropriate Criteria**

The person and the Designated Video Archive Operator must support their proposed licence fees with reference to the following criteria:

(a) recent examples of comparable sales of archived material in Singapore or elsewhere;

(b) estimated commercial value based on potential domestic demand;

(c) whether a reduced licence fee is justified based on social and political considerations, and public service obligations;

(d) potential likely sales of the programme in which the licensed archived material is incorporated;

(e) potential advertising revenue derived from the programme in which the licensed archived material is incorporated;

(f) evidence regarding the costs of producing the archived material; and

(g) any other relevant factor.

#### **3.3.3 Pricing of Licence Fee**

MDA will generally determine the licence fee payable by adopting one or other of the proposed licence fees after reviewing the respective submissions of:

- (a) the person seeking to obtain a licence; and
- (b) the Designated Video Archive Operator.

## **4. PRICING OF ACCESS TO ESSENTIAL RESOURCES**

### **4.1 General Principle**

(a) In accordance with the MDA Act as well as paragraphs 9.3.1.4 and 9.3.1.7 of this Code, MDA may require an Entity Controlling Resources to provide any Requesting Person with access to an Essential Resource on reasonable and non-discriminatory prices, terms and conditions.

(b) MDA will apply the following procedures in any situation in which, despite good-faith negotiations, a Requesting Person seeking access to an Essential Resource is unable to reach agreement with the Entity Controlling Resources regarding the price at which the Entity Controlling Resources will provide the Requesting Person with access to the Essential Resource.

### **4.2 Procedures**

(a) At the time the Entity Controlling Resources submits a Response pursuant to paragraph 10.5.1.3 of this Code, the Entity Controlling Resources must specify a proposed access fee. The Entity Controlling Resources must indicate the pricing methodology used to develop the proposed price and must also provide relevant cost support data.

(b) In accordance with paragraph 10.5.1.6 of this Code, MDA may subsequently request the Entity Controlling Resources to provide additional information (including, but not limited to, the Entity Controlling Resources' internal management accounts). MDA will determine the access price that the Entity Controlling Resources can charge using the methodology that is most appropriate given the circumstances.

### **4.3 Charging Methodology**

MDA will generally seek to apply a cost-based methodology to determine the access price. MDA will generally use a fully allocated cost or incremental cost methodology.

#### **4.3.1 Fully Allocated Cost Methodology**

(a) In any case in which MDA applies a fully allocated cost methodology, MDA will first determine the costs that the Entity Controlling Resources has incurred to construct or acquire the Essential Resource. MDA will then allocate the costs amongst the individual services and products using an appropriate set of criteria such as relative capacity utilisation, minutes of use or proportionate revenues generated.

(b) MDA will typically apply a fully allocated cost methodology to determine the appropriate access price where:

- (i) there is no proportional relationship between the supply of the Essential Resource and the level of demand (*i.e.* where an increase in the demand for the Essential Resource does not require an incremental supply of the same service or product);
- (ii) despite reasonable efforts, the detailed cost information necessary for an incremental cost analysis cannot feasibly be obtained given available time and resources; or
- (iii) MDA considers it to be in the public interest to allow the Entity Controlling Resources to recoup a portion of its historical costs from users of the Essential Resource.

#### **4.3.2 Incremental Cost Methodology**

(a) In any case in which MDA applies an incremental cost methodology, MDA will determine the additional direct costs that the Entity Controlling Resources has incurred in providing the Requesting Person with access to the Essential Resource.

(b) MDA will typically use an incremental cost methodology to determine the appropriate access price where:

- (i) there is a proportional relationship between the supply of the Essential Resource and the level of demand;
- (ii) the joint and common costs can be readily allocated between the different services and products provided by the Entity Controlling Resources; or
- (iii) MDA considers it to be in the public interest to require the Entity Controlling Resources to price the Essential Resource at the level that would exist in a fully competitive market.

(c) MDA will select the appropriate incremental cost methodology which it considers most appropriate based on its understanding of the circumstances and characteristics of the specific Essential Resource.

#### **4.4 Applicable Cost Components**

After MDA has selected the appropriate cost methodology, it will determine the access price through an analysis of the cost structure of the Entity Controlling Resources.

#### **4.5 Return on Capital**

(a) MDA will determine a reasonable return on capital that will be applied to determine the access price. This will reflect the Entity Controlling Resources' cost of capital.

(b) MDA will generally calculate the cost of capital of the Entity Controlling Resources



based on a weighted average of the cost of debt and equity finance typically consisting of a risk free rate and a specific company risk premium.

(c) In accordance with paragraph 10.5.1.6 of this Code, MDA may subsequently request the Entity Controlling Resources to provide information on its cost of capital. However, in the absence of any information on capital transactions that the Entity Controlling Resources has undertaken, MDA may consider the cost of capital incurred by owners of comparable Resources in other countries, adjusted to reflect the market situation in Singapore and the specific characteristics of the Entity Controlling Resources.

## **5. PRICING OF COSTS OF CROSS-CARRIAGE**

### **5.1 General Principle**

(a) In accordance with paragraph 2.7.3 of this Code, MDA may adopt the following pricing principles for determining the incremental costs to be borne by the Supplying Qualified Licensee as referred to in paragraph 2.7.1(i)(ii) of this Code.

(b) In determining the incremental costs to be borne by the Supplying Qualified Licensee, MDA will adopt the following broad principles:

- (i) the incremental costs must be costs incurred by the Receiving Qualified Licensee as a direct result of its compliance with its cross-carriage obligation in relation to Qualified Content of the Supplying Qualified Licensee; and
- (ii) the pricing principles are to be applied in a transparent, fair and non-discriminatory manner.

(c) Following MDA's determination of the incremental costs to be borne by the Supplying Qualified Licensee, MDA reserves the right to publish its determination on its website for the industry's reference.

### **5.2 Charging Methodology**

5.2.1 Subject to paragraph 5.2.3 of this Appendix, to ensure efficient transmission of Qualified Content, MDA will determine the incremental costs to be borne by the Supplying Qualified Licensee based on the rate of the most cost efficient Relevant Platform in the Singapore market.

5.2.2. To determine the rate of the most cost efficient Relevant Platform in the Singapore market, MDA will compare the efficiencies of all Relevant Platforms of all Receiving Qualified Licensees, using for each either the Directly Attributable Incremental Cost Methodology or the Long Run Incremental Cost Methodology; and will, in using either methodology, take into account any leasing costs payable by the Receiving Qualified Licensee based on such rates as at 21st June 2012 in respect of that Relevant Platform for leasing:

- (a) optical dark fibre strands in Singapore Telecommunications Limited's

network of optical fibre cables; and

- (b) duct space in Singapore Telecommunications Limited's underground ducting network,

which are attributable to enabling the Receiving Qualified Licensee to cross-carry the Qualified Content of the Supplying Qualified Licensee for the purpose of fulfilling its duties under paragraph 2.7 of this Code, under any arrangement with Singapore Telecommunications Limited entered into before 2nd July 2011 and any subsequent amendment or variation to the arrangement, provided that such leasing costs are incurred before the first of the following dates which applies:

- (i) 1st April 2020;
- (ii) 1st April 2017, if any change is made (directly or indirectly) before that date to the provision as at 2nd July 2011 in respect of the automatic renewal of the arrangement for the period from 1st April 2017 to 31st March 2020; or
- (iii) the date of termination of the arrangement.

For the avoidance of doubt, any leasing costs payable by the Receiving Qualified Licensee to Singapore Telecommunications Limited to enable the Receiving Qualified Licensee to cross-carry the Qualified Content of the Supplying Qualified Licensee shall be passed through to the Supplying Qualified Licensee by the Receiving Qualified Licensee without any mark-up, variation or additional charge.

5.2.3. Where:

- (a) a Relevant Platform of a Receiving Qualified Licensee is not the most cost efficient Relevant Platform; and
- (b) the Receiving Qualified Licensee incurs leasing costs in respect of its Relevant Platform referred to in paragraph 5.2.2 of this Appendix,

the Authority will take into account, as the incremental costs to be borne by the Supplying Qualified Licensee in respect of that Relevant Platform, the lower of the following:

- (i) the rate of the most cost efficient Relevant Platform, and the leasing costs referred to in paragraph 5.2.2 of this Appendix; or
- (ii) the rate for its Relevant Platform determined in accordance with paragraph 5.2.2 of this Appendix.

### **5.3 Directly Attributable Incremental Cost (DAIC) Methodology**

- (a) Where the Supplying Qualified Licensee is also designated as a Receiving Qualified Licensee, MDA will determine the incremental costs to be borne by the Supplying Qualified Licensee based on the DAIC methodology.
- (b) In calculating the incremental costs, MDA will include the incremental capital expenses and operating expenses of the Receiving Qualified Licensee directly attributable to the cross-carriage of the Qualified Content of the Supplying Qualified Licensee including the leasing costs incurred by the Receiving Qualified Licensee that is referred to in paragraph 5.2.2 of this Appendix.
- (c) Under the DAIC methodology, MDA will determine the incremental costs in a manner which captures only the costs directly attributable to the Qualified Content of the Supplying Qualified Licensee. Therefore, the relevant increments in the DAIC methodology will exclude other TV-related services (for example, the transmission by the Receiving Qualified Licensee of content other than Qualified Content of the Supplying Qualified Licensee) and any other non TV-related services.

#### **5.4 Long Run Incremental Cost (LRIC) Methodology**

- (a) Where the Supplying Qualified Licensee is not designated as a Receiving Qualified Licensee, MDA will determine the incremental costs to be borne by the Supplying Qualified Licensee based on the LRIC methodology.
- (b) In calculating the incremental costs, MDA will include the incremental capital expenses and the operating expenses of the Receiving Qualified Licensee directly attributable to the cross-carriage of the Qualified Content, as well as such portion of the costs as relates to the use of the transmission network of the Receiving Qualified Licensee for the transmission of the Qualified Content of the Supplying Qualified Licensee including the leasing costs incurred by the Receiving Qualified Licensee that is referred to in paragraph 5.2.2 of this Appendix.
- (c) For the LRIC methodology, MDA will determine the relevant increments in a manner which includes the carriage of the TV services provided by the Receiving Qualified Licensees. Increments in the LRIC methodology will exclude any other non-TV related services.

*[S 320/2012 wef 10/07/2012]*

#### **5.5 Cost Standards**

MDA will endeavour to undertake the following approach to determine the actual value of the incremental capital expenses:

- (a) In determining the actual value of the incremental capital expenses of the Receiving Qualified Licensee, MDA will use replacement costs of the transmission network of the Receiving Qualified Licensee to reflect the forward looking nature of the obligation to cross-carry Qualified Content. This will ensure that replacement costs would be achievable by a new entrant seeking to compete with established Receiving Qualified Licensees.

(b) To annualise the replacement costs, MDA will adopt such tilted annuities approach as MDA believes best suits the circumstances of the Receiving Qualified Licensee and the Supplying Qualified Licensee. MDA believes that a tilted annuities approach will allow market conditions such as the expectations of new technologies and changes in asset prices, to better reflect the depreciation and replacement costs of the relevant assets. MDA will adopt as the annualised costs of the transmission network of the Receiving Qualified Licensee, such annualised costs as is represented by the most cost efficient Relevant Platform in the Singapore market.

(c) For the purpose of the tilted annuities approach, MDA will use the Weighted Average Cost of Capital (“WACC”) specific to the Receiving Qualified Licensee’s subscription nationwide television business.

*[S 380/2011 wef 02/07/2011]*

Made this 11th day of March 2010.

TAN CHIN NAM  
*Chairman,*  
*Media Development Authority of Singapore.*

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