

**PUBLIC CONSULTATION ON  
REVIEW OF CONSUMER PROTECTION MEASURES  
IN MEDIA MARKET CONDUCT CODE**

**SUBMISSION BY  
STARHUB CABLE VISION LTD (“STARHUB”)  
TO THE MEDIA DEVELOPMENT AUTHORITY OF SINGAPORE**

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Contact : Mr Tim Goodchild  
Address : StarHub Cable Vision Ltd.  
67 Ubi Avenue 1  
#05-01 StarHub Green  
Singapore 408942  
Phone : 6825 5016  
Email : [timothy@starhub.com](mailto:timothy@starhub.com)

## 1. INTRODUCTION

- 1.1 StarHub appreciates the opportunity to provide feedback on the Authority's proposed amendments to the consumer protection provisions in the Media Market Conduct Code ("**the proposed amendments**").
- 1.2 StarHub understands that the objective of the proposed amendments is to ensure that consumer interests are safeguarded. In this regard, we would note that the cases in which StarHub has increased retail charges for Pay TV services, or reduced the line-up of content for customers, are relatively uncommon. It is far more common for StarHub to add to its line-up of content at no additional retail charge.
- 1.3 We have carefully reviewed the scope of the proposed amendments, and we are concerned that their scope may be too broad, and will have counter-productive results (in terms of discouraging the launch of new channels, creating uncertainty, generating disputes, etc.). StarHub respectfully submits that it is necessary for the scope of the proposed amendments to be narrowed, and for the definitions to be clarified (to give greater certainty). This will help to meet the objectives of the proposed amendments, whilst avoiding unnecessary costs or inadvertently blocking the growth of the industry.
- 1.4 In particular, StarHub submits that it is necessary to modify the proposed amendments so that:
  - (a) Changes in the availability of channels – and to the content within those channels – are excluded from the scope of the proposed amendments (as such changes are generally not within the Pay TV operators' direct or reasonable control).
  - (b) Should a Pay TV operator cease the carriage of channels/content, customers would not be allowed to exit their contracts without Early Termination Charges ("**ETCs**"), if the channels/content had been provided free-of-charge or added to the channel line-up without increasing retail prices.
  - (c) Should a Pay TV operator cease the carriage of channels/content, customers would not be allowed to exit their contracts without ETCs, if the Pay TV operator has taken "commercially reasonable endeavours".
  - (d) The proposed amendments would apply to only new and recontracting customers; and the proposed amendments would not apply to contracts that were entered into before the proposed amendments are introduced.
  - (e) The scope of the information to be highlighted to the customer would be focused on the subscription fee payable under the agreement and the payment date; and the services that would be chargeable when the minimum service period, promotional period, free trial basis, or complimentary basis, ends.

- (f) The definition of “marketing materials” would be narrowed to marketing pamphlets only; and with a retention period of one year.
- (g) Pay TV operators would still be allowed to exchange Subscriber Service Information (“**SSI**”) for bad debt/fraud management purposes.
- (h) Pay TV operators would have to give customers six months’ notice (in written and/or digital communication) prior to the termination of the Pay TV operator’s operations.
- (i) The obligation to give customers one month’s notice on changes to channels, material content within a channel, and/or price, must be on a “best efforts” basis (given the practical issues the Pay TV operators face).
- (j) The obligations on Pay TV operators in Singapore are the same as the obligations on over-the-top (“**OTT**”) and virtual private network (“**VPN**”) operators, who provide services to customers in Singapore.

1.5 Most importantly, StarHub submits that the Authority should provide Pay TV operators with at least six to twelve months, after the finalization of the proposed amendments, to put in place the necessary changes to established processes and systems. This implementation timeframe is critical to ensure compliance with the finalized amendments.

1.6 Before setting out our comments on the proposed amendments, we believe that it is important to give a clear overview of the Singapore Pay TV market. This information is set out in section 2, and provides context for our comments on the proposed amendments in section 3.

## **2. BACKGROUND INFORMATION – MARKET REALITIES**

2.1 Content agreements. Within the media industry, it is common to find restrictions on packaging set by the Content Provider on the Pay TV operator. It is also industry practice for the Content Provider to reserve its rights to decide on the actual content and programming it would place in its channel, so long as it remains within the same genre. In addition, there may be upstream contractual terms that allow a Content Provider to cease provision of a channel if it is driven by a corporate decision (regionally or globally). Frequently, Singapore acquires the same regional feed as our neighbouring countries as our market is commercially too small to justify a dedicated feed. It is therefore a mistake to assume that a Pay TV operator can control (or even influence) material content on a channel.

2.2 Competitive Pay TV market. The Pay TV market in Singapore is competitive and dynamic, especially with competition posed by: (a) unlicensed OTT operators, and

(b) operators who promote the use of VPN to circumvent geo-blocking. We note that these unlicensed operators are currently not subject to any obligations imposed by the Authority, creating discriminatory regulatory obligations.

### **3. STARHUB'S COMMENTS**

#### **3.1 Definition of "Material Content within a Channel"**

3.1.1 As outlined above, StarHub has very little control over the Content Providers and the programming within their channels (including the "*material content within a channel*"). Content Providers are not obliged to either: (a) inform StarHub when content within a channel will end, or (b) maintain particular content within a channel. These matters are programming prerogatives of the Content Providers, and are driven by various factors (including the popularity of a programme, the cost of production, the Content Provider's global or regional strategy, and the commercial viability of the content and/or channel). These are all factors outside the direct or reasonable control of the Pay TV operator.

3.1.2 The proposed amendments set out suggestions for defining what may be considered "*material content within a channel*". Unfortunately:

(a) These factors are vague and open to subjective interpretations. Different parties (and different customers) will have very different views on what constitutes "*material content within a channel*";

(b) StarHub currently carries more than 200 channels on its network, and content is added to (and removed from) those channels on an ongoing basis. It would be inefficient, ineffective and burdensome to apply the proposed amendments to "*material content within a channel*" for all of those channels; and

(c) As noted above, decisions in regard to the composition of a channel are in the hands of the Content Provider, and not the Pay TV operator.

3.1.3 Therefore, StarHub respectfully submits that the proposed amendments relating to "*material content within a channel*" must be removed.<sup>1</sup> To impose obligations and penalties on the Pay TV operators for matters outside of their reasonable control would be unworkable, eminently unfair, and inequitable.

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<sup>1</sup> The proposed amendments relating to "*material content within a channel*" are: (a) the option to exit without ETCs, (b) the disclosure requirements, and (c) the notification to subscribers for changes in channel line-up and subscription rates.

## 3.2 Unilateral Contract Variations

3.2.1 Option to Exit without ETCs. Under the proposed amendments, should any Pay TV channel cease (for whatever reason), the Authority may require the Pay TV operator to allow customers to exit their contracts without ETCs.<sup>2</sup> We respectfully submit that this obligation is discriminatory, inappropriate and unworkable; and we would highlight the following points:

- (a) In recent years, StarHub has added a large number of new channels to its Pay TV line-up at no additional charge to its customers. Should StarHub be unable to secure access to those channels in the future, the Authority may oblige StarHub to allow customers to exit their contracts without ETCs, despite the fact that those channels were provided to customers at no additional charge.
- (b) The proposed amendments may result in Pay TV operators having to pay higher fees to procure content, which will (inevitably) flow through into higher retail charges for customers.
- (c) The proposed amendments will strongly discourage Pay TV operators from adding new channels to their line-ups. It is not unusual for Content Providers or the Pay TV operator, after having trialled a particular channel for some time, to decide to discontinue that channel for reasons, such as low viewership, weak performance, excessive duplication, etc. The proposed amendments mean that if a new and innovative channel was trialled, even on a free-of-charge basis, and if that channel was subsequently discontinued, the Authority may require Pay TV operators to allow customers to exit their contracts without ETCs. The proposed amendments will thus significantly reduce the vibrancy and innovation in the Singapore Pay TV market by discouraging the carriage of new or experimental channels.
- (d) The Authority is not seeking to impose this obligation on the OTT and VPN operators in the Singapore market. These operators will have full freedom to change their channels line-ups without the restrictions the Authority is imposing on Pay TV operators in Singapore. This is discriminatory and will put Pay TV operators in Singapore at a significant competitive disadvantage.

3.2.2 Therefore, StarHub strongly submits that the proposed amendment – allowing customers to terminate their contracts without ETCs should a Pay TV operator cease the carriage of a particular channel – should be removed in its entirety.

3.2.3 We would also highlight that the scope of the proposed amendments is unclear. StarHub provides its customers with a variety of free content/TV channel(s) and

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<sup>2</sup> Noting that, where channel(s) and/ or material content within a channel is removed, a Pay TV operator “*may be exempted from the prohibition on ETCs*” if there is a: (a) replacement of the removed channel(s) and/or content with a new channel(s) and/or content of a similar genre, and of the same quality and standing as that removed; and/or (b) reduction of retail prices.

value-added services. However, it is unclear whether such free content and value-added services are covered under the definition of “*fixed term contracts*” and “*pay TV service contract*”. As these free content and services are free, and benefit customers at the Pay TV operator’s cost, we would appreciate the Authority’s confirmation that these services and content would not be subject to the proposed amendments. If this is not done, the Authority will be discouraging Pay TV operators in Singapore from investing in providing additional and/or innovative services to improve the Pay TV enjoyment experience for customers. This will be to the detriment of customers and to the growth of Singapore as an innovative media hub.

3.2.4 Safeguards against possible gaming. The proposed amendments set out safeguards to address possible abuse of the option to exit contracts without ETCs. However, StarHub has concerns over the proposed requirement to disclose and bring to attention the amount of the ETCs pertaining to equipment and hardware (not essential to the provision of the Pay TV service) at the point of (re)contracting, especially when read together with the proposed disclosure requirements of terms and conditions of the service to consumers. StarHub’s concerns are set out in paragraphs 3.4.1 to 3.4.5.

3.2.5 Mitigating actions by retailers. The proposed amendments set out – at a very high level – the mitigating actions a Pay TV operator can take, should it be necessary to discontinue a particular channel. Unfortunately, we respectfully submit that the proposed mitigating actions are unreasonable and unrealistic for the following reasons:

- (a) Under the proposed amendments, as a mitigating action, should a Pay TV operator have to discontinue a particular channel/content, it can offer new material content or a channel that has “*substantially the same quality and standing*” as the removed material content/channel. However, the issue of whether the new material content/channel has “*substantially the same quality and standing*” will be controversial and subjective. The fact that individual customers will have wildly different views on individual channels or pieces of content will mean that there will always be some customers who believe that the new material content/channel is not “*substantially the same [in] quality and standing*”. The proposed mitigating actions will lead to prolonged disputes, and will inevitably require ongoing intervention by the Authority. Given the frequency with which content changes on the 200+ channels carried by StarHub, and the 120+ channels carried by our competitors, we believe that the proposed amendments will considerably increase the burden on the Authority (and on Pay TV operators).
- (b) Under the proposed amendments, Pay TV operators can also reduce retail prices as a mitigating action. However, as noted above, StarHub has added a range of content/channels to customers at no additional price. It is therefore not practical nor reasonable for StarHub to reduce retail charges, should it be

necessary to cease the carriage of such content/channels.

3.2.6 Therefore, StarHub respectfully submits that the proposed amendments should be modified such that:

(a) Should a Pay TV operator cease the carriage of channels/content, customers would not be allowed to exit their contracts without ETCs, if the channels/content had been added to the channel line-up without increasing retail prices.

(b) Should a Pay TV operator cease the carriage of channels/content, customers would not be allowed to exit their contracts without ETCs, if the Pay TV operator has taken “commercially reasonable endeavours” (which may include replacing the ceased channels/content with channels/content that it has deemed to be of “*substantially the same quality and standing*”).

3.2.7 Application of the proposed amendments. A central element of Government regulatory policy is to recognize the sanctity of existing contracts. The existing contracts between StarHub and its customers were entered into based on mutually agreeable terms without any element of compulsion. However, the obligations set out in the proposed amendments would have a fundamental impact on the obligations on Pay TV operators, and on their ability to generate a return from their services.

3.2.8 It may be possible to reflect the higher cost of services through different (and possibly higher) pricing structures in contracts for new and recontracting customers. However, it is not possible to take such a step in the contracts for our existing customers. Taking into account the sanctity and certainty of pre-existing contracts, StarHub submits that:

(a) The proposed amendments should only apply to new and recontracting customers; and

(b) The proposed amendments should not apply to contracts that were entered into before the proposed amendments are introduced.

### **3.3 Prohibition against Forced Upgrade of Non-Pay TV Services**

3.3.1 The proposed amendments establish a prohibition on Pay TV operators requiring customers – as a condition of taking Pay TV services – from upgrading non-Pay TV services.

3.3.2 We would highlight that there will be cases when a Pay TV service can only be provided if the customer takes a particular non-Pay TV service. For example, in order to obtain StarHub’s fibre-based IPTV services, a customer will need to take StarHub’s fibre broadband service in order to comply with requirement for security

and encryption within a closed end-to-end network. It may also be necessary for a customer to upgrade their broadband plan in certain cases (for instance, where the customer needs a higher-capacity broadband link in order to carry the content).

- 3.3.3 Based on our reading of the Authority’s consultation paper, we understand that it is not the Authority’s intention to prohibit “valid” upgrades of non-Pay TV services (for example, when there is a technical requirement for the service). If our understanding is correct, StarHub has no objections to the Authority’s proposed prohibition against forced upgrades of non-Pay TV services. But we would request clarification in the proposed amendments to avoid any misinterpretation.

### **3.4 Lack of Awareness of Important Terms and Conditions of Service**

- 3.4.1 Disclosure requirements. It is important that regulatory obligations do not impose unreasonable delays and/or hindrances on a Licensee’s business operations. Unfortunately, the proposed disclosure requirements would cause delays and frustration in the processing of service applications by new and recontracting customers.

- 3.4.2 StarHub understands the importance of providing customers with information on the contractual terms for its services, and devotes considerable time and effort to this goal (for example, by making all of its contracts available to customers online). However, the disclosure requirements in the proposed amendments are overly broad and impractical. If every item set out in paragraph 3.2C of the proposed amendments must be brought to the attention of all new (and recontracting) customers, this will cause:

- (a) Significant delays in the processing of customers (given the amount of information to be communicated to customers);
- (b) Significant levels of customer frustration, given those delays; and
- (c) Increased levels of customer complaints to Pay TV operators (and the Authority).

- 3.4.3 We respectfully submit that the benefits of this proposal would be outweighed by the costs (and frustration) it would generate. We would also highlight that there are no indications that customers are unable to obtain information on StarHub’s contractual terms. Therefore, to reduce the likely customer frustration, StarHub would respectfully suggest that the scope of the information to be highlighted to the customer be focused on:

- (a) The subscription fee payable under the agreement and the payment date; and
- (b) The services that would be chargeable when the minimum service period, promotional period, free trial basis, or complimentary basis, ends.



- 3.4.4 In addition, we would seek the Authority’s clarification on the interpretation of “*bring to the attention of the Subscriber*” (paragraph 3.2C of the proposed amendments). We would raise two scenarios (to give context to our clarification request):
- (a) A customer signs up for a Pay TV service, and the customer service representative explains the details of the contract to the customer. The customer cuts short the explanation and signs the contract.
  - (b) A customer signs-up for a Pay TV service online. The customer does not read the terms and conditions, and confirms his agreement to the contract.
- 3.4.5 In such cases, will StarHub be deemed to have brought to the customer’s attention the relevant details? In the event that the customer has a dispute over a subsequent detail, can the customer argue that StarHub had failed in its duty to bring to his attention the details? In such instances, StarHub’s view is that reasonable endeavours should suffice.
- 3.4.6 Retention of marketing materials. The proposed amendments would require Pay TV operators to retain records of their marketing materials (including marketing collaterals, advertisements, call centre and other scripts, screen shots of web pages, and audio and visual recordings) for at least three (3) years. We respectfully submit that this requirement is onerous and impractical.
- 3.4.7 We would respectfully note that there is no indication of any significant problem related to the current retention of marketing materials, and the objective of this obligation is unclear. Complying with this obligation would require a substantial investment in archival systems, when this investment could be better spent improving services to customers.
- 3.4.8 We would also highlight that the Authority has already capped the maximum contractual term for residential Pay TV contracts at two (2) years. Therefore, a retention period of three (3) years is entirely unnecessary. We do not believe that there is any likelihood of a customer complaining about StarHub’s advertising materials three (3) years after that material was published. StarHub submits that there is no need to retain marketing materials for three (3) years.
- 3.4.9 If the Authority is of the view that Pay TV operators should be obliged to retain marketing materials, we submit that the Authority should:
- (a) Narrow the definition of “marketing materials” to marketing pamphlets only; and
  - (b) Reduce the retention period to one (1) year. This would be in alignment with the Info-communications Development Authority of Singapore’s current

practice, whereby an End User has one (1) year to dispute any charge for telecommunications services that the End User reasonably believes to be incorrect.<sup>3</sup>

### **3.5 Relevance of Duty to Protect SSI Provisions**

3.5.1 StarHub takes its responsibility to protect the privacy of its customers seriously, and has put measures in place to protect its customers' privacy at all times. StarHub is generally agreeable with the proposal to remove from the Media Market Conduct Code those provisions relating to the protection of SSI. However, we would like to clarify if Pay TV operators will still be able to exchange SSI for bad debt/fraud management purposes, without seeking prior consent from our residential customers, if paragraph 3.6.2(a)(ii) of the current Media Market Conduct Code is removed.

3.5.2 StarHub strongly believes that this exemption must be retained. We would note that the current wording in the Second to Fourth Schedules of the Personal Data Protection Act ("PDPA") may not be sufficient to cover such an exchange of information. Specifically, the PDPA provides that the collection use and disclosure of personal data without consent can only take place where it is:

- *"for the organization to recover a debt owed by the individual to the organization or for the organization to pay to the individual a debt owed by the organization"; or*
- *"disclosed by a member of a credit bureau to the credit bureau for the purpose of preparing credit reports".*

3.5.3 The exchange of bad debt information between Licensees is generally preventive in nature (i.e. the information is exchanged before further debt is incurred). The Authority will understand that the management of bad debt/fraud is an integral part of service provisioning. Without this exemption, the problem of bad debt and fraud will increase, which increases the Pay TV operators' cost of providing service, and retail prices to customers. It will cause undue alarm if Licensees are required to seek end-user consent for the exchange of SSI with other Licensees for bad debt/fraud management services. We would also note that such exchanges of information – for credit management purposes – are already carried out in industries, such as the banking sector.

### **3.6 Rationalisation of the Broadcasting Licence and the Media Market Conduct Code**

3.6.1 Termination of operations or any part of its service. StarHub notes that the proposed amendments would require Pay TV operators to give six months' written notice before the *"termination of operations, or any part of its service."* However,

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<sup>3</sup>Please see section 3.3.4 of the Code of Practice for Competition in the Provision of Telecommunication Services 2012.

we would note that:

- (a) In the event of a contractual breach by the customer (for example, non-payment of amounts owed), it will be necessary for the Pay TV operator to terminate service to that customer. While written notice will be given for such a termination, it is not possible to give six months' written notice.
- (b) Pay TV operators may need to change the content they offer from time-to-time due to upstream supply issues (for example, by removing video-on-demand ("VOD") content from its line-up). It would be impractical (and unnecessary) to give customers six months' written notice of such a termination of part of its service.
- (c) In terms of notifying customers, written letters may not be the most effective or appropriate means of communication. Notifications via: (i) SMS, (ii) email, (iii) webpage/social media notifications, and (iv) crawlers on relevant TV channels, may be more suitable.

3.6.2 We would therefore strongly request that the Authority revise the proposed amendments to require licensees to provide "*six months notice (in written and/or digital communication) before the termination of operations*". The reference to "*operations*" should be clarified as referring to the entire Pay TV service.

### 3.6.3 **Notification to Customers for Changes in Channel Line-up and Retail Prices**

3.6.3.1 Channel line-up. It is StarHub's standard practice to provide its customers with prior notice of the cessation of any channel. However, there will be situations – beyond StarHub's control – in which StarHub will not be able to comply with the one month's notice. For instance, a Content Provider may decide to cease provision of a channel to StarHub with less than one month's notice due to unforeseen circumstances; or the Authority may require StarHub to stop providing a channel immediately. StarHub therefore submits that the Authority considers requiring Pay TV operators to notify subscribers one month before stopping the provision of any channel on a "*best efforts*" basis.

3.6.3.2 "Material content within a channel". As highlighted above, the requirements relating to "*material content within a channel*" would have a significant detrimental impact on the industry, and should be removed from the proposed amendments. We would also highlight that the proposal for operators to notify customers one month before stopping the provision of "*material content within a channel*" would be impractical, for the following reasons:

- (a) There is no certainty as to what will be considered "*material content within a channel*";
- (b) It is highly unlikely that a Pay TV operator will be aware – one month in

advance – of all cases where content is terminated from a channel. Content in a channel is dynamic in order to cater to the audience’s fancy; and

- (c) Not even the Content Provider will necessarily be aware – one month in advance – of all cases where content is to be terminated from a channel. In many cases, the Content Provider may simply be aggregating content from other Content Providers, such as studios and production houses.

3.6.3.3 StarHub therefore recommends that the proposed requirement to notify customers one month before stopping the provision of “*material content within a channel*” should be removed. If the Authority wishes to retain this obligation, despite its impracticability, we would suggest that this obligation be limited to a “*best efforts*” basis only.

3.6.3.4 Price increases. It is StarHub’s standard practice to provide customers with prior notice of any retail price increase (other than for services provided on an interactive basis). However, there will be situations – which are beyond StarHub’s control – where StarHub will not be able to comply with a one month notice period. An example would be the launch of the 2010 World Cup, where negotiations with the Content Provider were only concluded just prior to the telecast of the first match. Therefore, StarHub submits that, should Pay TV operators be obliged to notify customers one month before effecting price increases, this obligation must be on a “*best efforts*” basis.

3.6.3.5 In addition, as noted above, StarHub is unable to control when or which customers decide to watch VOD content. For VOD content, the customer can simply decide not to buy if she/he disagrees with the price. We therefore submit that the notification obligation should be limited to subscription fees only. We would also seek the Authority’s clarification that “*notice in writing*” would include digital communications (as highlighted above).

### **3.7 Others**

3.7.1 Typographical errors in the proposed amendments. StarHub would suggest the following corrections:

- (a) Paragraph 3.2B: “enter into *an* agreement...” – “n” being StarHub’s suggested insertion.
- (b) Paragraph 3.5B(d): “...in writing of its intention to do so ~~to~~ *in* not less...” – strikeout of “to” and insertion of “in” being StarHub’s suggested edits.

3.7.2 Unlevel playing field. As highlighted above, the Pay TV operators in Singapore face direct competition from (unlicensed) OTT operators and operators who promote the use of VPN to circumvent geo-blocking. StarHub respectfully notes that the Authority is imposing increasingly onerous obligations on local Pay TV operators,

but is failing to regulate OTT and VPN operators. We submit that it is unfair for legitimate local Pay TV operators, who invest substantially to comply with the Authority's regulations, to be subject to additional regulatory obligations, when their overseas competitors are not. Such an approach is discriminatory and (ultimately) unsustainable. We would therefore urge the Authority to ensure that Pay TV operators in Singapore operate on a level playing field with their overseas competitors.

#### **4. CONCLUSION**

- 4.1 It is necessary for the Authority to ensure that the proposed amendments are: (a) no broader than is necessary to meet the Authority's objectives, (b) clear – to facilitate compliance and reduce the number of disputes, and (c) practical – to ensure effective implementation. As set out above, we have identified several areas where the proposed amendments are unnecessarily broad in scope, unclear in definitions/interpretations, or impractical to implement.
- 4.2 It is therefore necessary to narrow the scope of the proposed amendments to: (a) the Authority's key areas of concern; and (b) those matters that are within the Pay TV operators' direct control. For example, while matters, such as the retail pricing of Pay TV services are (largely) under the control of the Pay TV operators, matters related to the availability and structuring of content are certainly not. Attempting to impose regulatory obligations which are impractical or which are outside the Pay TV operators' control would harm the industry, to the ultimate detriment of the consumer.
- 4.3 Given the complexities involved in this matter, and the Authority's stated preference for "*private negotiation and industry self-regulation*",<sup>4</sup> it is unclear why the Authority is seeking to tighten regulation via the Media Market Conduct Code. The Authority has highlighted examples of other territories - such as Hong Kong - which have implemented consumer protection measures via voluntary industry codes. These industry codes have the advantage of being flexible and responsive to market changes, without detracting from the Authority's regulatory powers. We would respectfully suggest that the Authority seriously considers the idea of implementing consumer protection measures via an industry code.
- 4.4 StarHub takes its regulatory obligations seriously. We would therefore request a meeting with the Authority to discuss the proposed amendments. We would also respectfully suggest that the Authority meets with the Content Providers and industry groups on this matter, given the impact that the proposed amendments will have on them.
- 4.5 StarHub is grateful for the opportunity to comment on this matter, and would be

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<sup>4</sup> Please see Paragraph 1.6.1 of the Media Market Conduct Code.

happy to provide clarification or elaboration on anything in this submission.

**StarHub**  
**5 November 2014**