

MEDIA DEVELOPMENT AUTHORITY

**CODE OF PRACTICE FOR MARKET CONDUCT IN THE PROVISION OF
MEDIA SERVICES 2010**

ISSUED ON: 12 MARCH 2010

CLOSING NOTE

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CODE OF PRACTICE FOR MARKET CONDUCT IN THE PROVISION OF MASS MEDIA SERVICES 2010

In exercise of the powers conferred by Section 17(1) of the Media Development Authority Act of Singapore (Chapter 172), the Media Development Authority of Singapore ("MDA") issues the Code of Practice for Market Conduct in the Provision of Mass Media Services 2010 ("MMCC 2010"). The MMCC 2010 comes into force on 12 March 2010.

1. Introduction

- 1.1 In March 2007, MDA initiated the first triennial review of the Code with the release of a first version of the revised Code ("1st revised Code") for public consultation. On the same date, MDA conducted briefings on the key differences between the Code of Practice for Market Conduct in the Provision of Mass Media Services 2003 ("MMCC 2003") and the 1st revised Code.
- 1.2 After careful assessment of the comments received in May 2007, MDA made significant changes to the 1st revised Code. In September 2007, MDA released a second version of the revised Code ("2nd revised Code") for a second public consultation. At the close of the second public consultation in November 2007, MDA received four written comments. MDA thanks the respondents for their comments.
- 1.3 A few comments raised new issues, which MDA has fully considered. Where relevant, MDA has made appropriate refinements to address these new issues. MDA has also made further refinements to improve the clarity and organisation of the MMCC 2010. To foster effective competition in the pay TV market, the MDA has inserted an additional Public Interest Obligation in the MMCC 2010 to require cross carriage of exclusive content, after a two-year study and review, with inputs from the industry.
- 1.4 This Closing Note provides MDA's response to the substantive comments received in response to the second public consultation, and a summary of major changes to the MMCC 2010 initiated by MDA to provide clarity.

2. New provision initiated by MDA

2.1 Public Interest Obligation of Regulated Persons and Certain Affiliates

- 2.1.1 MDA had inserted an additional Public Interest Obligation within paragraph 2 of the Code. This will supplement the existing

obligations contained therein, such that regulated persons will now be potentially subject to five major public interest obligations.

- 2.1.2 With immediate effect, the Cross Carriage of Qualified Content Obligation is to be applied in a prospective manner to all new pay TV channels that are acquired or renewed on an exclusive basis.
- 2.1.3 The Cross Carriage of Qualified Content remedy is introduced as a result of MDA's study of the competition issues in the Singapore pay TV market over the past two years. The MDA observed that competition centred around exclusive content has resulted in content fragmentation and rising prices for consumers, as well as increasing content costs for pay TV retailers. The MDA is of the view that the competitive landscape for the pay TV market is evolving, and to the extent possible, the development of the market should be left to market forces. However, so long as the retailers continue to pursue a content exclusivity-centric strategy, the pay TV market is unlikely to correct its inefficiencies and consumer welfare will continue to be affected. It is unlikely that pay TV retailers will voluntarily abandon such a strategy in the near future given that it is deeply entrenched in the way that the pay TV retailers currently compete in the market.
- 2.1.4 By requiring cross carriage of exclusive content, the MDA aims to reduce content fragmentation and its associated problems while allowing pay TV retailers to retain commercial flexibility and control over their product offerings. Over time, consumers will be able to enjoy the convenience of being able to access exclusive content from different pay TV retailers via one set top box. The MDA views that this will also shift competition in the market from exclusivity content-centric strategy to other aspects such as service differentiation and competitive packaging.
- 2.1.5 The concurrent gazetting of the amendments to the MMCC 2010 is done with a view to prevent the circumvention of the remedy by informed industry players, thereby frustrating MDA's policy objectives of introducing the remedy. MDA may make further amendments to the MMCC 2010, pursuant to a review of the feedback received from the industry consultation on the implementation mechanics of the remedy.

3. Response to comments received in the second public consultation

3.1 Market-based approach

- 3.1.1 One respondent detailed that MDA should adopt an integrated three-stage analytical approach, i.e. (a) define relevant market, (b) assess

competition in that market to determine market power/dominance of the relevant licensee, and (c) assess whether the conduct under review has an anti-competitive purpose or effect, as such an approach was consistent with international best practices. MDA concurs with the respondent and clarifies that the integrated three-stage analytical approach has always been a necessary starting point of all our competition investigations.

- 3.1.2 The same respondent also requested MDA to provide clarity on what constitutes a “relevant media market” and what factors would be considered in determining a “relevant media market” in a competition analysis. To provide greater clarity, MDA has provided at Paragraph 10.6.2.8 of the MMCC 2010 that MDA will include the rationale for any “relevant media market” definition provided by MDA in any Preliminary Decision, Revised Preliminary Decision, Draft Final Decision or Final Decision. Furthermore, MDA will issue a set of advisory guidelines on definition of “relevant media markets”. MDA will seek public comments on this set of advisory guidelines before finalising it.

3.2 Public Interest Obligations

3.2.1 Events of National Significance

- 3.2.1.1 MDA had proposed to extend the Lead Broadcaster’s duty to make the “feed” of Events of National Significance (“ENS”) available to Free-To-Air Television Licensees, Free-To-Air Radio Licensees, or any other person as MDA may direct as being entitled to obtain the ENS “feed” (“ENS access group”). One respondent suggested that MDA extend the Lead Broadcaster’s duty to make the ENS “feed” available to all Regulated Persons as this would give ENS exposure over multiple platforms. Given the national significance of ENS, MDA believes it will be more appropriate to retain discretion over which persons are able to gain access to ENS “feeds”.
- 3.2.1.2 Another respondent raised concerns that Paragraph 2.4.3.1(c)(iii) of the 2nd revised Code imposed unfair and restrictive conditions on the Lead Broadcaster as the Lead Broadcaster was unable to restrict the ENS access group’s ability to rebroadcast ENS “feeds”. MDA notes that the MMCC 2010 does not impede the Lead Broadcaster from conducting commercial negotiations with the ENS access group in the first instance. In fact, MDA will expect the Lead Broadcaster and the ENS access group to conduct commercial negotiations in good faith. MDA will only step in when the Lead Broadcaster and any person from the ENS access group fail to reach an agreement, and seeks MDA’s Conciliation/Dispute Resolution services. MDA will judiciously apply the pricing principles stated in Appendix 3 of the MMCC 2010.

3.2.2 Obligations of the Designated Video Archive Operator

- 3.2.2.1 MDA had proposed that the Designated Video Archive Operator (“DVAO”) be required to archive video programmes before and after 1 June 2001. One respondent had argued against such a requirement because it was deemed to be a “gargantuan and daunting task”. The respondent also requested for at least six months to comply with such a requirement if MDA did not revise such requirement.
- 3.2.2.2 MDA has ascertained that the above requirements are not unreasonable since broadcasters typically archive an extensive range of self-produced video programmes across a wide range of genres. MDA assessed that the requirements are necessary obligations to institute in order to promote industry growth. MDA will provide the DVAO with a longer timeframe, i.e. one-year timeframe, to archive all ENS and “News, Current Affairs or Information Programmes” after 1 June 2001 so as to allow the DVAO more time to comply with this obligation.
- 3.2.2.3 MDA had also proposed to narrow the obligation of the DVAO to archive “General Entertainment” video programmes to those that are of social/cultural significance. The same respondent sought clarity on what “General Entertainment” encompasses. As such, MDA would develop guidelines in consultation with the DVAO to specify which types of “General Entertainment” video programmes would be of social/cultural significance, so as to give the DVAO certainty.

3.2.3 Anti-hoarding

- 3.2.3.1 MDA had proposed to require a Free-To-Air Television Licensee to provide its schedules (that will resemble the final schedule as closely as possible) for the broadcast of programmes on the Category A and B lists to all other Free-To-Air Television Licensees and Subscription Television Licensees (as the case may be) at least six months in advance of the scheduled broadcast of such programmes. One respondent pointed out that the six-month timeframe was impractical as certain types of programmes cannot be scheduled so far in advance. In addition, the respondent suggested that such requirement be imposed on Subscription Television Licensees to level the playing field.
- 3.2.3.2 MDA agrees with the respondent that certain programmes, such as sports programmes, cannot be scheduled too far in advance. MDA will shorten the timeframe to four months on a best endeavours basis by the Free-To-Air Television Licensee. It is not necessary to impose such a requirement on Subscription Television Licensees because the anti-siphoning obligations set out in Paragraph 2.6.1 of the MMCC

2010 prevents Subscription Television Licensees from obtaining exclusive broadcast rights to programmes on the Category A and B lists.

3.3 Consolidations

3.3.1 One respondent highlighted that MDA should align the Consolidation Application process in the MMCC with the approval processes related to ownership changes pursuant to the Broadcasting Act (Cap. 28) to minimize unnecessary duplication of efforts and inconsistencies in decisions. The principles and concerns behind the Broadcasting Act's ownership requirements and Part 8 of the MMCC 2010 on Consolidations are different, thus the two approval processes should be kept separate.

3.3.2 Another respondent feedback that certain Consolidations involve transactions that are highly confidential, thus the respondent advocated that applicants to Consolidation requests be given flexibility, i.e. applicants be able to exercise discretion over whether to be considered on an *ex ante* or an *ex post* basis. The MDA has ascertained that it is more appropriate for all Consolidations in the media industry to be considered on an *ex ante* basis given that the media industry plays an important role in safeguarding the socio-political interests of the nation.

3.4 Administrative review of MDA's acts, directions and decisions

3.4.1 To continue with the spirit of the MMCC 2003, MDA has provided in Paragraphs 10.6.2.4 to 10.6.2.7 of the MMCC 2010 for relevant parties to have the ability to make more than one representation before MDA issues its final decision. One respondent sought clarifications on the procedures for such administrative review. MDA has revised the procedures to provide greater clarity for media players (see Paragraph 10.9 of the MMCC 2010).

4. Other changes initiated by MDA

4.1 Notification of Denial of Confidential Treatment

4.1.1 In MMCC 2003, if confidentiality is denied, MDA may on its discretion not give guidance and return the confidential information for which confidentiality was requested. In MMCC 2010, MDA revised the provision such that an enforcement proceeding can continue meaningfully by stating that if confidential treatment request was rejected, MDA may require the person to resubmit a revised non-

confidential version of that information for which confidential treatment was sought and rejected. This is necessary so that MDA can continue to consider the case with minimal disruption and for sharing or public disclosure, should the need arise.

- 4.1.2 MDA will not be obliged to give any guidance or decision if a person fails to revert with the revised non-confidential version within the time period allowed. This person shall be guilty of an offence under Section 55 of the MDA Act, for non-compliance to an information request by the MDA.
- 4.1.3 In situations where confidential request is accepted, MDA is not precluded from requiring the person to resubmit a revised non-confidential version at any subsequent point in time for sharing or public disclosure.

5. Next Steps

- 5.1 This document concludes the first triennial review of the Code. Based on the constructive feedback respondents had provided, the MMCC 2010 will remain an effective tool to enable and maintain fair market conduct and effective competition in the media industry.
- 5.2 In the immediate future, MDA will work jointly with the DVAO to develop a set of advisory guidelines on which "General Entertainment" video programmes that are of social/cultural significance should be archived. MDA will also seek public comments before finalising and issuing a set of advisory guidelines on definition of relevant media markets.
- 5.3 The implementation mechanics of the Cross Carriage of Qualified Content Obligation is currently under industry consultation. MDA may make further amendments to the MMCC 2010 upon review of the feedback from the industry.
- 5.4 Going forward, MDA will continue to monitor developments in the media industry to ensure that the MMCC 2010 remains an effective tool to promote competition in the media industry.

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