Malaysian Communications and Multimedia Commission

Review of Mandatory Standard on Access

Public Inquiry Report

2 December 2016

This Public Inquiry Report was prepared in fulfilment of sections 55, 61, 104 and 106 of the Communications and Multimedia Act 1998

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ABBREVIATIONS AND GLOSSARY

AGCOM	Authority for Communications Guarantees of Italy
ANE	Access to Network Elements
ARD	Access Reference Document, which is a document of the terms and conditions required to be formulated by an Access Provider under MSA 2009
ASO	Analogue Switched-Off
BLR	Base Lending Rate
BR	Base Rate
B2B	Business-to-Business
BT	British Telecommunications plc
BTU	Broadband Termination Unit
CAPEX	Capital Expenditure
CLI	Calling Line Identification
CMA	Communications and Multimedia Act 1998
CNII	Critical National Information Infrastructure
DCIS	Domestic Connectivity to International Services
Draft MSA	The draft Mandatory Standard on Access that was attached as Annexure 3 to the PI Paper in respect of which the MCMC invited submissions as part of this Public Inquiry
DSL	Digital Subscriber Line
DTB	Digital Terrestrial Broadcasting
EOI	Equivalence of Inputs
EU	European Union
HOD	Head of Department
HSBA	High-Speed Broadband Access
HSBB	High-Speed Broadband Network
HSBB2	High-Speed Broadband Network, Phase 2
IMDA	Info-Communications Media Development Authority of Singapore, previously known as Info-Communications Development Authority of Singapore (or IDA)
IPTV	Internet Protocol Television
MAFB	Malaysian Access Forum Berhad
MBB	Malayan Banking Berhad
MCMC	Malaysian Communications and Multimedia Commission
MNO	Mobile Network Operator
MNP	Mobile Number Portability

MNTS	Mobile Network Termination Service
MSA	Mandatory Standard on Access
MSA 2009	The current MSA is set out in two instruments: Commission Determination on the Mandatory Standard on Access, Determination No. 2 of 2005, as varied by Variation to Commission Determination on the Mandatory Standard on Access (Determination No 2. of 2005), Determination No. 2 of 2009
MSAP	Mandatory Standard on Access Pricing
MSAP 2012	Commission Determination on the Mandatory Standard on Access Pricing, Determination No.1 of 2012
MSISDN	Mobile Station International Subscriber Directory Number
MSQoS	Commission Determination on the Mandatory Standard on Quality of Service (Wired Broadband Access Service), Determination No.2 of 2016
MVNO	Mobile Virtual Network Operator
MyIX	Malaysia Internet Exchange
nbn	The wholesale NGN provider in Australia known as nbnco
NGN	Next Generation Network
NGNBN	Next Generation National Broadband Network in Singapore
Ofcom	Office of Communications (United Kingdom)
OLNO	Other Licensed Network Operator
OpCo	Operating Companies
OSA	One Stop Agency
OSS	Operational Support System
PI Paper	Public Inquiry Paper on Review of Mandatory Standard on Access, 9 September 2016
PI Report	This Public Inquiry Report on Review of Mandatory Standard on Access
POI	Point of Interconnection
POP	Point of Presence
PPP	Public Private Partnership
PSTN	Public Switched Telephone Network
QoS	Quality of Service
RAO	Reference Access Offer
RIO	Reference Interconnection Offer
SAO	Standard Access Obligation
SAU	Standard Access Undertaking
SBC	State-Backed Company
SDH	Synchronous Digital Hierarchy
SMP	Significant Market Power

Telecom Competition Code	Code of Practice for Competition in the Provision of Telecommunications Services in Singapore
TPPA	Trans-Pacific Partnership Agreement
UK	United Kingdom of Great Britain and Northern Ireland

Part A Preliminary

1 Overview

Public Inquiry Process

1.1 In its Public Inquiry Paper on the Mandatory Standard on Access Review (**PI Paper**) released on 9 September 2016, the MCMC detailed the approach and methodology it proposed to adopt in this Public Inquiry.

1.2 The purpose of this Public Inquiry has been to solicit views from industry participants, other interested parties and members of the public to assist the MCMC to determine whether the MCMC's approach to regulating terms of access under the previous Mandatory Standard on Access (**MSA**) remained appropriate and, therefore, whether the MSA 2009 should be amended, replaced or withdrawn.

1.3 The PI Paper set out the MCMC's preliminary views on these matters, invited comments on those views, and specifically set out questions for interested parties in Annexure 2 of the PI Paper.

Consultation Process

1.4 The MCMC acknowledges that regulating terms of access, or forbearance from regulating terms of access, has long-term consequences: overall economic implications for industry, financial implications for firms, impacts on consumers and technological innovation. The MCMC has adopted the widest possible consultative approach under the Communications and Multimedia Act 1998 (**CMA**) in order to obtain maximum industry and public input. The MCMC's approach is also designed to promote certainty and transparency in the exercise of its powers.

1.5 The MCMC has consulted widely and openly with all interested stakeholders during this Public Inquiry, including:

(a) an information gathering exercise through an informal questionnaire to industry about the proposed Public Inquiry;

(b) the MCMC's review of feedback from industry during this information gathering phase;

(c) the PI Paper, published on 9 September 2016;

(d) the MCMC's review of all submissions on the PI Paper received by 12 noon, 2 November 2016.

Submissions received

1.6 At the close of the Public Inquiry period at 12 noon, 2 November 2016, the MCMC had received written submissions from the following parties. Subsequently, after the close of the Public Inquiry, the MCMC received another submission, however, that submission was not considered in this PI Report.

Table 1: Summary of submissions received

No.	Submitting party	Referred to in this PI Report as
1	Altel Communications Sdn Bhd	Altel
2	Asia Pacific Carriers' Coalition	APCC
3	MEASAT Broadcast Network Systems Sdn Bhd	Astro
4	Celcom Axiata Berhad	Celcom
5	Ceres Telecom Sdn Bhd	Ceres
6	Digi Telecommunications Sdn Bhd	Digi
7	edotco Malaysia Sdn Bhd	edotco
8	Fiberail Sdn Bhd	Fiberail
9	Maxis Berhad	Maxis
10	MYTV Broadcasting Sdn Bhd	MYTV
11	Net2One Sdn Bhd	Net2One
12	Persatuan Penyedia Infrastruktur Telekomunikasi Malaysia	PPIT
13	Sacofa Sdn Bhd	Sacofa
14	Telekom Malaysia Berhad	TM
15	TT dotCom Sdn Bhd	TIME
16	U Mobile Sdn Bhd	U Mobile
17	webe digital Sdn Bhd	webe
18	YTL Communications Sdn Bhd	YTL

1.7 Having thoroughly reviewed and assessed the submissions received on the PI Paper against its own preliminary views, the MCMC now presents this PI Report within the 30-day requirement of the closing date of submissions, as stipulated under section 65 of the CMA.

Scope of Public Inquiry

1.8 Through this Public Inquiry, the MCMC has:

(a) applied a robust and transparent methodology for determining which new terms of access will be considered for inclusion in the current MSA (MSA 2009), and which existing terms of access should be removed or amended;

(b) considered the state of competition in the Malaysian communications and multimedia industry under the terms of MSA 2009, and assessed whether there are any potential access issues that can be addressed by amending MSA 2009 or adopting a new access instrument model;

(c) analysed likely market structures and outcomes arising from amended terms of access under MSA 2009, in particular whether amending the terms of access in the MSA or adopting a new access instrument model would be consistent with the objects of the CMA; and

(d) amended the Draft MSA to accommodate any changes (i.e. additions, amendments or removals) in the terms of access arising from this Public Inquiry.

1.9 The MCMC has considered:

(a) feedback from industry during the information gathering phase described above;

(b) all submissions received in response to the PI Paper by 12 noon, 2 November 2016; and

(c) the work it carried out in its Assessment of Dominance in Communications Market (including the Market Definition Analysis) and its Access List Review.

Matters outside scope

1.10 Matters outside the scope of this Public Inquiry include:

(a) making determinations on Facilities and Services in the Access List;

(b) making determinations on pricing; and

(c) consideration of exemptions from the Standard Access Obligations (**SAO**), which are subject to the grant by the Minister.

2 Structure of this PI Report

2.1 This PI Report begins with the general introduction in this Part A.

2.2 Part B contains an overview of the key themes of this Public Inquiry which underline many of the changes the MCMC has determined in its review of the MSA.

2.3 Part C contains an overview of the changes to the MSA with detailed changes being described in:

(a) Part D (Operator Access Obligations);

(b) Part E (Service Specific Obligations); and

(c) Part F (Standard Administration, Compliance and Dispute Resolution).

2.4 For each change, the PI Report sets out:

(a) an introduction to the issues discussed in the PI Paper in relation to the change;

(b) a summary of the comments received;

(c) a discussion of any changes to the MCMC's preliminary views regarding the key theme, or the MCMC's rationale for maintaining its preliminary views (as applicable); and

(d) the MCMC's final view on whether that part of the current MSA (MSA 2009) should be amended, replaced or withdrawn.

2.5 Note that references to the MSA in the introduction and summary of comments section are references to the Draft MSA released with the Public Inquiry Paper. References to the MSA in the MCMC discussion and final views sections are references to the final MSA to be released by the MCMC shortly. Some sections of the MSA have been moved so the section references are sometimes not consistent as between the Draft MSA and the final MSA.

3 Legislative Context

3.1 The CMA governs the communications and multimedia industry in Malaysia and establishes the regulatory and licensing framework applicable to the industry.

3.2 Chapter 10 of Part V of the CMA is concerned with the determination of Mandatory Standards. It contains processes for the MCMC to determine a Mandatory Standard which is consistent with the objects and terms of the CMA and any regulatory instruments issued under the CMA.

3.3 The relevant provisions of the CMA for the purposes of this Review of Mandatory Standard on Access are as follows:

(a) section 55 – the general processes for the MCMC to follow in making a determination under the CMA, including the requirement for the MCMC to hold an inquiry;

(b) section 56 – the general processes for the MCMC to follow in modifying, varying or revoking a determination under the CMA (which are the same as the processes that apply to the making of a determination under section 55);

(c) section 58 – the discretion of the MCMC to hold a public inquiry on any matter which relates to the administration of the CMA, either in

response to a written request from a person or on its own initiative if the MCMC is satisfied that the matter is of significant interest to the public or to the industry;

(d) section 60 – the discretion for the MCMC to exercise any of its investigation and information-gathering powers in Chapters 4 and 5 of the CMA in conducting an inquiry, such as issuing directions to persons to produce any information or documents that are relevant to the performance of the MCMC's powers and functions under the CMA;

(e) section 61 – the requirement for the inquiry to be public and for the MCMC to invite and consider submissions from members of the public relating to the inquiry;

(f) sections 62 and 64 – the discretion of the MCMC to conduct an inquiry (or parts of an inquiry) in private in certain cases, to direct that confidential material presented to the inquiry or lodged in submissions not be disclosed or that its disclosure be restricted;

(g) section 65 – the requirement to publish a report into any inquiry undertaken under the previous sections of the CMA within 30 days of the conclusion of the inquiry;

(h) section 104(2) – the MCMC must determine a mandatory standard if it is subject to a direction from the Minister to determine a mandatory standard in place of a voluntary industry code;

(i) section 105 – a mandatory standard determined by the MCMC must be consistent with the objects of the CMA, any relevant instrument under the CMA or any relevant provisions of the CMA or its subsidiary legislation and the mandatory standard must specify the class of licensees who are subject to the mandatory standard; and

(j) section 106 – the MCMC may modify, vary or revoke a mandatory standard if the MCMC is satisfied that the mandatory standard is no longer consistent with the matters listed in section 105(1).

3.4 In accordance with section 58(2), a public inquiry was held as part of this Review of Mandatory Standard on Access, as the review is of significant interest to the public or industry. This process accords with international regulatory best practice.

Objects and national policy objectives

3.5 This Public Inquiry was conducted in accordance with the objects and national policy objectives of the CMA. The objects of the CMA are set out in section 3(1) as follows:

(a) to promote national policy objectives for the communications and multimedia industry;

(b) to establish a licensing and regulatory framework in support of national policy objectives for the communications and multimedia industry;

(c) to establish the powers and functions for the Malaysian Communications and Multimedia Commission; and

(d) to establish powers and procedures for the administration of [the CMA].

3.6 The national policy objectives are set out in section 3(2) as follows:

(a) to establish Malaysia as a major global centre and hub for communications and multimedia information and content services;

(b) to promote a civil society where information based services will provide the basis of continuing enhancements to quality of work and life;

(c) to grow and nurture local information resources and cultural representation that facilitate the national identity and global diversity;

(d) to regulate for the long-term benefit of the end user;

(e) to promote a high level of consumer confidence in service delivery from the industry;

(f) to ensure an equitable provision of affordable services over ubiquitous national infrastructure;

(g) to create a robust applications environment for end users;

(h) to facilitate the efficient allocation of resources such as skilled labour, capital, knowledge and national assets;

(i) to promote the development of capabilities and skills within Malaysia's convergence industries; and

(j) to ensure information security and network reliability and integrity.

4 Overview of previous access arrangements

Regulatory approach and scope of MSA 2009

4.1 MSA 2009 principally imposed obligations on Access Providers and Access Seekers to facilitate the negotiation of Access Agreements in relation to Facilities and Services contained in the Access List.

4.2 MSA 2009 did not specify all the actual terms and conditions that are required to be included in an Access Agreement. It required Access Providers to prepare an Access Reference Document (**ARD**), setting out detailed terms and conditions of access, and left Access Seekers to negotiate an Access

Agreement with the Access Provider based on, and aligned with, the MSA and ARD.

Overview of obligations under MSA 2009

4.3 MSA 2009 contained 3 substantive sections imposing obligations on Access Providers and Access Seekers:

(a) **Disclosure Obligations** – Access Providers were required to prepare an ARD and to make available certain information to Access Seekers during negotiation of an Access Agreement.

(b) **Negotiation Obligations** – Access Providers were required to negotiate with Access Seekers in accordance with certain requirements concerning timeframes and process.

(c) **Content Obligations** – Access Providers were required to include terms and conditions in their ARDs and Access Agreements which are consistent with certain principles and terms specified in the MSA.

Access List alignment

4.4 The MCMC completed a review of the Access List in 2015.[1] As part of this review, several Facilities and Services were added or removed from the Access List.

4.5 Given that the MSA relates specifically to the Facilities and Services in the Access List, the MCMC notes that corresponding amendments to the MSA were required to align with the updated Access List.

4.6 The following Facilities and Services were removed from the Access List:

(a) HSBB Network Service without QoS; and

(b) Transmission Service (this service was made more modular by breaking out into two separate transmission services described below).

4.7 The following Facilities and Services are now included in the Access List:

(a) Trunk Transmission Service;

(b) Duct and Manhole Access;

(c) Layer 3 HSBB Network Service;

(d) End-to-End Transmission Service; and

(e) MVNO Access.

[1] See: MCMC, 'Access List Review – Public Inquiry Report' (7 August 2015).

Part B Key themes

5 Overview

5.1 In making the MSA, the MCMC has had regard to whether any changes to MSA 2009 is required to best promote the national policy objectives for the communications and multimedia industry.

5.2 In particular, the MCMC has had regard to whether there are any issues with, or deficiencies in, MSA 2009 that may need to be addressed by regulation and whether any existing provisions no longer require the force of regulation.

5.3 The MCMC has conducted its review and made the MSA in a manner consistent with international best practice. The MCMC has made the MSA having regard to the regulatory regimes of other jurisdictions under each of these key themes and whether a similar approach might be appropriate in the Malaysian context.

General submissions on the proposed regulatory approach

5.4 The MCMC received the following general submissions commenting on the proposed regulatory approach:

Altel

(a) Altel believes that, for most part, the MSA has been useful and effective in facilitating the negotiation of Access Agreements and, as such, the MCMC needs to re-evaluate the need to amend or retain the MSA terms which have been working well in providing a clearly defined and unambiguous parameters.

Astro

(b) Astro submitted that maintaining regulatory parameters that promote effective competition amongst operators is key to realising the goal of promoting cost effective, innovative and differentiated services for consumers. It submitted that heavy regulatory involvement is crucial to alleviate some of the hardships incurred in acquiring access. Astro also noted that the commercial offers provided to date are prohibitively expensive and urged the MCMC to address these issues.

(c) Astro proposed structural, functional or at the very least operational separation to achieve parity in access as vertically integrated operators do not have the right commercial incentives to provide quality wholesale inputs to their competitors. The form of separation adopted should skew the incumbent's incentives to provide quality wholesale inputs to competitors and have regard to the National Broadband Initiative. Astro cited the various advantages that vertically integrated operators enjoy that can result in unfair treatment such as preferential knowledge of product innovation,

influencing wholesale product and process investment priorities, installers favouring its own retail customers, the wholesale arm withholding information about serviceable addresses, the retail arm having market intelligence of its retail competitors and incentive to allocate higher cost at the wholesale level to products for which they have lower retail market share.

edotco

(d) edotco took the opportunity to highlight a potential abuse of dominance by State-backed companies (SBCs) that use the One Stop Agency (OSA) to manage the acquisition and/or approval of tower sites, or the licensing of towers to other tower providers. edotco highlighted that in some cases, the OSAs act in a discriminatory manner, obtaining approvals only for exclusive partners of certain 'preferred entities'. edotco believes that some of the arrangements breach section 133 of the CMA and reflect exclusive dealings which foreclose a substantial portion of the market. edotco urged the MCMC to take specific action detailed in its submission.

(e) edotco provided specific comments on subsection 6.11.14 of the Draft MSA, which are detailed in section 43 of this PI Report below.

MYTV

(f) MYTV supported regulation of dominant players but believes that regulation should be limited so as not to disrupt the capability and efficiency of the dominant player, especially when the dominant player in question is a new player operating in an industry that is at an infant stage such as MYTV. It submitted that MYTV should not be treated in the same manner as other dominant players that have been in the market for many years and had generated revenue and garnered sustainable profit for a long time. MYTV submitted that it is only allowed to collect revenue from the incumbent CASP licensees after the Analogue Switched-Off ("ASO") exercise by mid-2018, assuming everything goes well as planned. Even prior to ASO, MYTV would face many challenges during the simulcast period as equipment and space for DTB service needs to be shared with analogue service and this deprives MYTV from being able to optimize the DTB network coverage. It submitted that the challenges brought about by analogue equipment would continue post-ASO as they need to be dismantled and moved out before complete DTB service optimization is achieved. MYTV submitted that, therefore, imposing strict rules and conditions on MYTV without any actual precedence to be benchmarked against at this juncture was premature. MYTV opined that the MCMC should avoid imposing an ex-ante regulatory approach on MYTV.

(g) MYTV submitted that the government has been generous to TM despite TM having all the hallmarks of a heavy-hitter, with deep pockets for investment, an existing customer base of 3.5 million, a

strong market presence with an international gateway, a fixed network and back-haul fibre connections. MYTV considered that this was evident from the funding provided by government for HSBB and SUBB projects. On a similar note, MYTV is hoping that there is financial support as well, for the DTB project.

TM

(h) TM stated its belief that the general approach adopted for this Public Inquiry was reactive, instead of being proactive, with the MCMC making reference to complaints received or responses given by Access Seekers. It submitted that there were no proper studies or sufficient proof of any market failure that warrant heavy-handed regulation by the MCMC. TM considered that the approach of this Public Inquiry is mainly to impose heavier obligations on Access Providers rather than to level the playing field for both Access Providers and Access Seekers. TM urged the MCMC to be tactful in considering whether each and every demand from Access Seekers is just. They also believe that detailed terms are best negotiated between Access Seeker and Access Provider, rather than through regulation, as this would provide flexibility.

(i) TM submitted that there are at least four key areas that are very challenging for an Access Provider to comply with: reporting obligations, timeframe parameters, QoS parameters and the MSA itself, which it considered was becoming more rigid and very prescriptive. TM also expressed concern that further regulation had been proposed for the Access to Network Elements (ANE), including the proposed introduction of service-specific obligations. TM proposed a light-handed approach or exclusion from regulation altogether, as it submitted that these services are not being subscribed currently and are at the sunset stage. TM pointed out that the cost to comply with service-specific obligations is significantly high, with no certainty of take up.

(j) TM stated that even if the MAFB has not been effective in formulating a voluntary code, this does not necessarily mean that the MCMC should determine a mandatory standard, as section 96(1) of the CMA empowers the MCMC to determine a voluntary industry code. The MCMC's preference to determine a mandatory standard on access as opposed to a voluntary industry code on access is inconsistent with the CMA's objective of promoting self-regulation. TM proposed that the MCMC should first exercise its powers under section 96(1) of the CMA and not bypass that avenue by determining a mandatory standard.

(k) TM anticipates many challenges to complying with the proposed terms with respect to new services in the Access List such as Duct and Manhole and HSBB Network Services. TM therefore proposed for the MCMC to determine a new MSA which sets out the key principles

and to leave the operators to negotiate the details. TM considered such an approach to be consistent with subsection 2.2 of the MSA.

(l) TM also submitted that the Draft MSA proposes significant changes to the existing timeframes under the MSA without due consideration of practicalities or reasonableness. According to TM, this would also result in considerable internal administrative costs and overheads. Many of the proposed timeframes did not seem to consider the constraints that both Access Providers and Access Seekers may encounter when provisioning the different services requested by the Access Seeker, such as the processes involved to secure approval from local and other authorities, the traffic in Malaysia especially in the Klang Valley, diverse geographic locations and condition in Malaysia and resource availability and skills. TM therefore proposed that the timeframes set out in MSA 2009 is retained and that if the MCMC wished to accelerate, say, the delivery of a particular access service, TM would be pleased discuss a workable process, parameters with the Access Seekers and reflect the agreed terms in operational documents.

(m) TM also suggested that the MCMC coordinate with other governmental agencies to address issues as streamlined processes at different governmental levels would be useful.

(n) TM proposed that in areas such Putrajaya, where the Government of Malaysia has appointed an exclusive operator should be excluded from providing access to ducts and manholes. TM considers this is consistent with the TPPA that allows for regulatory forbearance for reasons involving national safety and security. This approach will give special privileges to the Government of Malaysia when dealing with potential safety and security threats arising from a higher degree of market liberalization upon ratification of Trans-Pacific Partnership Agreement.

TIME

(o) TIME views that the rationale for an access regime is to implement ex-ante regulation in order to prevent any discriminatory action by an Access Provider against an Access Seeker. TIME considers that, while the rationale still exists, the industry has to comply with prices that are mandated and do not reflect the cost of the specific Access Provider—in particular its Weighted Average Cost of Capital, financial reports in compliance with the Accounting Separation and the statutory provisions that prohibit any form of tying and linking of services with other services. TIME therefore urged the MCMC to review the access regime instruments for their effectiveness and the regulatory burden imposed on industry players.

(p) TIME also submitted that there is a need to amend operationalised agreements. Currently, licensees took 6 months to 1 year to conclude Access Agreements to comply with the determinations issued by the

MCMC and described the impracticalities of multiple parties negotiating with each other. TIME submitted that requiring existing Access Agreements to be amended purely for the purposes of compliance is an unreasonable burden and not practical as such agreements are already working. In addition, the requirement to update Access Agreements due to updates of MSA, Access List or MSAP is too frequent. TIME therefore considers that mandating such a requirement may be a futile exercise that serves no real purpose.

(q) TIME also stated the belief that, in the future, Access Agreements should not be subjected to registration with the MCMC. It submitted that registration should only be required when parties sought to negotiate terms of a RAO and not when there is acceptance of a RAO per se. TIME considers that this would reduce the regulatory burden and administrative cost associated with registration.

(r) TIME also considered that, although the MCMC has developed its "Guideline on Lessening of Competition" and "Guideline on Dominant Position", there has not been robust and effective enforcement, which creates a perception that more regulation is needed. TIME also noted that the MCMC also requires operators to submit Regulatory Financial Statements but, so far, there has not been any feedback or report from the MCMC on implementation of Accounting Separation. TIME stated its belief that a status report is important as the industry has spent manpower, time and money responding.

(s) TIME also proposed that the MCMC increase the members of its Access and Competition team to better monitor and enforce regulations, standards, and so on. TIME notes that, in comparison to other regulators, the Access and Competition department is sorely understaffed. TIME considered that, given this situation, it is inappropriate to introduce highly prescriptive regulation.

webe

(t) webe commented that research conducted in the UK indicates that there is trade-off between access regulation and investment. It submitted that, while access regulation reduced barriers to entry, it also reduces incentives to build infrastructure and therefore, uncontrolled access to Access Provider's infrastructure can undermine not only Access Provider's incentives but also Access Seeker's incentives to invest in infrastructure. As business entities, telecommunications providers are responsible not only to their board of directors and shareholders, but also have an impact upon the eco-system. As such, webe submits, besides being subjected to regulation, telecommunication providers should also be allowed to shape their goals and fulfil their commitments to shareholders.

MCMC views

5.5 The MCMC thanks operators for their general submissions on the proposed regulatory approach. While the MCMC notes that some matters raised by

operators (such as structural, functional or operational separation) are beyond the scope of this Public Inquiry, the MCMC considers such feedback as underscoring the need for appropriate regulatory intervention.

5.6 The MCMC has carefully considered the range of views expressed by operators in the context of whether any changes to the MSA are required to best promote the national policy objectives for the communications and multimedia industry.

5.7 The MCMC considers that it has struck the right balance in determining whether there are any issues with, or deficiencies in, the MSA that may need to be addressed by regulation and whether any existing provisions no longer require the force of regulation.

5.8 The MCMC is satisfied that the MSA is consistent with international best practice, having regard to the regulatory regimes of other jurisdictions and considering their appropriateness in the Malaysian context.

5.9 The MCMC appreciates the issues raised by TIME on Regulatory Financial Statements but notes that this matter is outside the scope of this Public Inquiry. The MCMC invites TIME to discuss the matter directly with the MCMC.

5.10 The MCMC more specifically addresses operator feedback and the regulatory approach taken toward particular issues in Parts C to F of this PI Report.

6 Access instrument model

6.1 The MCMC has proposed that the MSA adopt the following approach, involving a combination of mandatory regulated terms and operator-provided terms:

(a) **MSA to include mandatory terms on key rights and obligations**: The MCMC sets out mandatory general and service-specific terms on key rights and obligations in the MSA.

(b) **Access Provider to make Reference Access Offers publicly available**: The MCMC replaces the ARD model in MSA 2009 with a new access instrument model. The new access instrument model requires Access Providers to prepare, maintain and make publicly available the full set of terms and conditions on which the Access Provider is prepared to supply Facilities and Services in the Access List to Access Seekers (a RAO). The RAO includes the same level of detail as an Access Agreement and is capable of being signed as an Access Agreement. The RAO must be consistent with and not inconsistent with the rights and obligations set out in the MSA.

6.2 The MCMC expects that the RAO model will result in greater efficiencies for Access Seekers and Access Providers, particularly in their negotiations of Access Agreements, as it:

(a) is likely to reduce the negotiation period required to agree on the terms and conditions of an Access Agreement; and

(b) provides Access Seekers with an offer that they may sign "as is" to obtain fast-tracked access to Facilities and Services in the Access List.

6.3 The MCMC has made changes throughout the MSA to replace the ARD model with the new RAO model.

General submissions on the proposed regulatory approach

6.4 The MCMC received the following general submissions commenting on the proposed access instrument model:

(a) Net2One considered that it is adequate to maintain some of the terms and conditions of MSA 2009. MSA 2009 had proven to be a useful guide to facilitate the negotiations of Access Agreements between Access Providers and Access Seekers. It also considered that although the RAO would allow for greater transparency and would significantly reduce negotiation periods, such enforcement cannot be made broadly applicable to all operators. Imposing an obligation that Access Providers prepare, maintain and make a full set of terms and conditions openly available is not feasible as it will have an adverse effect on operators' competitive advantage in the market. They also expressed the view that the RAO requirement should not apply to all Access Providers.

(b) TIME considered that the MCMC proposed to introduce a RAO concept to address alleged discriminatory supply by introducing the "equivalence of input" concept, which includes the price charged, processes used and timescales adopted. TIME agreed that these new concepts may be timely, but was concerned that the MCMC may be tweaking the existing framework without undertaking a thorough review. TIME questioned the need to introduce the RAO concept in lieu of the ARD method that has been in existence for a decade.

(c) TIME proposed that the MCMC should approach the access instrument model by reviewing the entire access regime and, if there are good grounds to revise and improve it by switching from an ARD model to a RAO model, then at least industry would understand the rationale and move accordingly.

(d) TIME further noted that the RAO model proposed by the MCMC is a "symmetric model" (by which TIME means the requirement to provide and publish a RAO applies to all Access Providers), which differs from other jurisdictions such as Singapore and Qatar which is based on an "asymmetric model" (by which TIME means the requirement to provide and publish a RAO applies only to dominant operators). TIME proposed that the "asymmetric model" should apply in Malaysia, where such regulatory requirement applies only to dominant operators such as (in its view) TM. TIME submitted that the MCMC should stop using a "one size fits all" concept to regulate the

industry. It expressed the view that the RAO model to be introduced by the MCMC should be more simplified, which will assist Access Seekers and Access Providers during the process of negotiation.

MCMC views

6.5 The MCMC thanks operators for their general submissions on the proposed access instrument model. The MCMC will consider these general submissions together with the specific feedback provided by operators on the RAO model at section 14 of this PI Report and more generally in Parts C to F of this PI Report.

7 Transparency

7.1 The MCMC has strengthened and provided for additional reporting obligations and information-gathering powers in the MSA to enable the MCMC to better monitor operators' compliance with the MSA.

7.2 The MCMC requires operators to notify the MCMC of certain matters as a matter of course — either, on a regular basis in respect of certain services specified in subsection 5.3.13 of the MSA (such as every 6 months) or on the occurrence of certain events (such as when an Access Provider refuses an Access Request).

7.3 The MCMC also requires additional reporting obligations in respect of Facilities and Services which the MCMC considers access is likely to be more contentious—namely, HSBB Network Services, Transmission Services, Network Co-Location Services, Duct and Manhole Access and Digital Terrestrial Broadcasting Multiplexing Service.

7.4 The MCMC expects this approach to increase operator accountability and encourages compliance with the MSA, whilst ensuring that regulation is necessary, proportionate and targeted. The MCMC considers that regular mandatory reporting by operators encourages operators to treat compliance with the MSA as a continuous, on-going requirement and to consider whether their proposed conduct is justifiable before engaging in it.

7.5 The MCMC also expects that this approach will result in a more cooperative relationship between the MCMC and operators, as it will encourage open and regular dialogue with the MCMC. It also provides the MCMC with a level of oversight over the industry, allowing it to better determine whether or not it should exercise its powers, without the need for the MCMC to act only when it suspects a breach of an access obligation.

7.6 The MCMC addresses reporting and information disclosure specifically at section 15 of this PI Report and more generally in Parts C to F of this PI Report.

8 Equivalence

8.1 The MCMC has strengthened the non-discrimination provisions in the MSA to an 'equivalence of inputs' standard, as is common across communications

regulatory regimes internationally, to level the playing field between Access Seekers and an Access Provider's own retail arm as was originally intended.

8.2 The MCMC has also expanded the scope of information that an Access Provider may not require an Access Seeker to provide, to preclude the possibility of such information being used for unfair advantage by the Access Provider's own retail arm, but is not otherwise substantially amending the existing confidentiality or non-permitted information regime.

8.3 The MCMC addresses the 'equivalence of inputs' standard of non-discrimination at section 13 of this PI Report and generally in Parts C to F of this PI Report.

9 Limiting anti-competitive conduct

9.1 The MCMC has strengthened the prohibition on bundling in the MSA to include other forms of bundling in order to address the types of anti-competitive behaviour that may take place in the Malaysian communications and multimedia industry. This includes bundling within the same service, between services or by setting order floors or ceilings.

General submissions on limiting anti-competitive conduct

9.2 The MCMC received the following general submissions commenting on limiting anti-competitive conduct:

(a) edotco stated general support for most of the MCMC's proposed changes aimed at limiting anti-competitive conduct. On bundling, edotco agreed with the changes, but sought certain clarifications on the MCMC's view of the operation of the CMA. edotco also agreed with the MCMC's position to expressly prohibit an Access Provider from requiring an Access Seeker to purchase bundled transmission services; and

(b) U Mobile noted that the MCMC had proposed grounds for refusal in providing access to ducts and manholes infrastructure in Putrajaya and urged the MCMC to ensure that all other infrastructure in other locations should be made available in an open, equitable and transparent manner. In this regard, U Mobile also agreed with proposed subsection 6.7.8 of the MSA which prohibits bundling.

MCMC views

9.3 The MCMC thanks operators for their general submissions on limiting anti-competitive conduct. The MCMC specifically addresses bundling of transmission services at section 39 of this PI Report and bundling more generally at subsection 5.16.14 (previously subsection 5.19.14) of the MSA. Specific submissions about anti-competitive conduct will be considered at a separate time by the MCMC.

10 Conclusion

10.1 The MCMC thanks the operators for their submissions on the key themes of this Public Inquiry. The MCMC addresses the responses provided by operators to the specific questions of this Public Inquiry in the following Parts C, D, E and F of this PI Report, taking into account the general submissions above.

10.2 The MCMC acknowledges that operators are concerned about regulatory burdens imposed by the MSA. In developing the Draft MSA released with the PI Paper, the MCMC carefully balanced regulatory burdens from MSA provisions against continuing unavailability of wholesale inputs to support the vibrant development of the communications and multimedia sector and the fulfilment the national policy objectives. However, in response to specific concerns, the MCMC has made refinements to the MSA to reduce particular regulatory burdens described by operators.

Part C Proposed Changes to the MSA

11 Overview of proposed changes

11.1 The MSA will be determined by the MCMC following this Public Inquiry.

11.2 The MSA will replace the MSA 2009, which are set out in two instruments: *Commission Determination on the Mandatory Standard on Access, Determination No 2 of 2005* and a variation to that determination, set out in the *Variation to Commission Determination on the Mandatory Standard on Access (Determination No 2 of 2005), Determination No 2 of 2009*.

11.3 Where the MSA differs from the MSA 2009, and the change is clear and does not require commentary, there is no further discussion below. For changes that are important or need explanation, 10.1 to Part F of this PI Report set out more detail.

11.4 The matters covered in 10.1 to Part F follow the same sequence of provisions found in the MSA as follows:

(a) Part C: General Principles (section 4 of the MSA)

(b) Part D: Operator Access Obligations (section 5 of the MSA)

(c) Part E: Service Specific Obligations (section 6 of the MSA)

(d) Part F: Standard Administration and Compliance (section 7 of the MSA)

11.5 The focus of this Part C is on the MCMC's changes to:

(a) the dictionary and other introductory sections of the MSA ('Interpretation' and sections 1 to 3); and

(b) the general principles (section 4).

12 Interpretation and introductory sections

Introduction

12.1 In the PI Paper, the MCMC proposed to include new defined terms in the MSA which would introduce new concepts including:

(a) Billing Cycle;

(b) Notice of Acceptance;

(c) Reference Access Offer;

(d) Service Specific Obligations; and

(e) Validity Period.

12.2 The MCMC also proposed to revise the definition of Service Qualification to clarify that the type of Service Qualification required (i.e. desk and/or field study, or interrogation of an Access Provider's Operational Support Systems) will depend on the type of Facility or Service. The MCMC also considered whether the MSA should prescribe the Facilities and Services which may or may not require an Access Provider to provide post-Order Service Qualification.

Submissions received

Question 1: Do you consider any other terms ought to be defined in paragraph 4 of the Determination?

12.3 Altel and Net2One suggested that the MSA should define "Act" and proposed to expand the definition of CLI. They also proposed amendments to "Closed Number Area" and "Network Conditioning".

12.4 The APCC suggested an additional term to be defined, namely Operational and Support Systems.

12.5 Astro is of the view that there is still a lack of clarity on the meaning of HSBB Network Services, as Access Seekers are told that it only applies to the government funded portion (of TM's high speed broadband network) or that it does not apply to upgraded copper network. As such, Astro suggested to define the term "HSBB Network Phase 1", "HSBB Network Phase 2" and Sub-Urban Broadband Network. In addition, Astro also proposed the inclusion of new definitions of Operational Support System, Commercial Information and Commercial Policy.

12.6 Celcom proposed amendments to the Access List Determination concept, to include any of its variations and amendments. Celcom also proposed amendments to the definitions of CLI, Closed Number Area (to address numbers utilised in Pahang, Terengganu and Kelantan) and Far End Handover (to clearly differentiate handover of calls in the fixed and mobile network).

12.7 For clarity purposes, Maxis proposed that the MSA should include definitions of BTU, MVNO, Notice of Breach, Notice of Suspension, Notice of Termination and Operational Support System in the MSA. In addition, Maxis also proposed amendments to Billing Dispute and Service Qualifications definitions. Finally, Maxis also suggested that the MSA should reinstate the definition for ARD and continue with the ARD requirement.

12.8 MYTV proposed that the MSA should include definitions of the "Act" and "DTT" in paragraph 4 of the Determination.

12.9 TIME and webe are of the opinion that the definitions provided in paragraph 4 are adequate.

12.10 U Mobile proposed a definition of Centralised Handover to facilitate routing of all calls at optimal and efficient cost.

Question 2: Do you agree with the MCMC's proposed changes to the Service Qualification definition? Why or why not? If not, please specify what change you consider is required and explain why.

12.11 Altel, Net2One and MYTV opine that Service Qualification should not be classified by specific services and facilities and proposed to maintain the previous definition of Service Qualification.

12.12 The APCC, Astro, Celcom, Digi, Fiberail, Maxis, PPIT, Sacofa, TIME, YTL and U Mobile agree with the proposed changes to the Service Qualification definition.

12.13 Astro believes that the amendment properly associates the type of Service Qualification to the Facility and Service in question. Astro also views that it is necessary to have an understanding of the circumstances when a post-order Service Qualification is required by Facility and Service.

12.14 Celcom stated that changes to the Service Qualification definition is in line with the principle of non-discrimination. Celcom noted Service Qualification can provide strategic commercial information, which may present competitive advantage to downstream markets.

12.15 Digi is agreeable with the clarity provided in part (a) of the Service Qualification meaning. However, Digi strongly disagreed with the MCMC's proposal to broaden the definition of Service Qualification in part (b) which included the interrogation of Access Provider's Operational Support System (OSS). Digi submitted that the proposed amendments will impose security risk and threat to all OSS elements and will introduce additional traffic into their network, which may result in performance issues.

12.16 Maxis agrees to the proposed changes to the Service Qualification definition subject to changes that were proposed above. Maxis noted that for some Facilities/Services such as O&T Services, Interconnect Link Services, MVNO Access etc., Service Qualifications are usually done during the Access Request process but for other services such as Transmission Services, Infrastructure Sharing, etc., Service Qualification is done during the Order and/or proposed Order processes. Maxis proposed an amendment to cater for this situation.

12.17 PPIT agrees that the details of the Service Qualification process vary between Facilities and/or Services as some Facilities and/or Services such as Infrastructure Sharing Services and Duct and Manhole Access may require comprehensive Service Qualification while others such as Origination and Termination Services may not require one. However, PPIT is of the view that both the desk and field study are required rather than being optional.

12.18 TM believes that there is no requirement to change Service Qualification given that there is no delay in providing access to Access Seekers under MSA 2009. Nevertheless, they have no objection to make changes to further clarify the process. TM's main concern is with regards to stringent timeline proposed by the MCMC for certain services.

12.19 TIME believes that the definition provides clearer clarification to both Access Seeker and Access Provider on the requirements for the Service Qualifications.

12.20 webe does not agree with the inclusion of "interrogation of an Access Provider's Operational Support System" as the Operational Support System is their business asset. webe also stated that industry has been practising good faith and trust when dealing with one another.

12.21 YTL agreed with the changes proposed by the MCMC. YTL commented that pre-Order Service Qualification (for example, consisting of traffic forecast/technical information) would suffice, but that post-Order Service Qualification may be appropriate depending on the Facilities or Services.

Discussion

12.22 The MCMC thanks all operators for their submissions.

12.23 The MCMC acknowledges that, in some cases, it is desirable to further clarify certain definitions and modify others to give effect to the terms of the MSA. For example, the MCMC agrees it is appropriate to:

(a) clarify that "Act" means the "Communications and Multimedia Act 1998";

(b) include in the MSA the definitions of the Facilities and Services as defined in the Access List Determination;

(c) include a substantive definition for "BTU", "CLI" and "OSS", rather than simply expanding the acronym;

(d) extend the definition of "Closed Number Area", as Altel and Net2One identically suggested, to include reference to the "09" number range;

(e) better differentiate, within the definition of "Far End Handover", the handover of calls terminating on a fixed network and calls terminating on a mobile network;

(f) include the definition of the "HSBB Network" as set out in the Access List Determination; and

(g) amend the definition of "Service Qualification", as suggested by Maxis, to cater for scenarios where Service Qualification is appropriately performed for certain Facilities and Services during the Order or proposed Order processes.

12.24 In other cases, the MCMC has declined to make a change proposed by an operator. For example, the MCMC does not propose to changes in respect of the following terms:

(a) "Access List Determination", as suggested by Celcom, as the MCMC considers that if the Access List Determination is varied or amended, any consequential changes to the MSA's operation needs to be actively considered, not flowed through without analysis;

(b) "ARD", as suggested by Maxis, as the MCMC is replacing the ARD model with the RAO model in the MSA, as discussed elsewhere in this PI Report;

(c) "Billing Dispute", as suggested by Maxis, as the MCMC considers that cross-referencing another section is more likely to introduce confusion than provide clarity;

(d) "Centralized Handover", as suggested by U Mobile, as the MCMC does not propose to make any change to the MSA at this stage that would require such a term to be defined. This is addressed along with U Mobile's related comments at sections 33.15 and 33.34;

(e) "DTT" or "Digital Terrestrial Television", as suggested by MYTV, as that term is not used in the MSA other than in a reference to the name of a Commission Determination;

(f) "Network Conditioning", which Altel and Net2One suggested should be broadened so that it would apply to "Equipment and Facilities" (not just "Equipment") and all "access services" (not just "O&T Services"), but without having provided any analysis of its effect or any justification as to why the change is required; and

(g) "Notice of Breach", "Notice of Suspension" or "Notice of Termination", as suggested by Maxis, as those terms are not used in the MSA other than the term "notice of termination" which only appears in one section of the MSA and which the MCMC considers should be given its ordinary and natural meaning.

12.25 The MCMC notes broad support by operators for the MCMC's preliminary view of revising the Service Qualification definition.

12.26 The MCMC notes that Service Qualification involving interrogation of an Access Provider's Operational Support Systems is consistent with international best practice, is the only appropriate way of performing Service Qualification for services such as HSBB, and only applies to specified services. The MCMC clarifies that interrogation, in this context, refers to the submission of a query—such as by a business-to-business (B2B) interface—to obtain Service Qualification information. The MCMC considers that, provided that meaningful equivalent access is provided between Access Seekers and an Access Provider's own retail units, an Access Provider can manage queries to avoid operational issues.

12.27 The MCMC notes that operators that disagreed with the MCMC's preliminary view on the Service Qualification definition—for example, because of stated concerns of security, performance or assertions that Service Qualification should not be classified by specific types of Facilities or Services—did not provide any details or evidence supporting their view.

12.28 The MCMC therefore:

(a) confirms its preliminary view that it considers that the type of Facility or Service will affect the type of Service Qualification required (i.e. desk and/or field study or interrogation of an Access Provider's Operational Support Systems); and

(b) agrees with Maxis that the type of Facility or Service will affect when Service Qualification is performed (i.e. during the Access Request or during Order and/or proposed Order processes).

MCMC views

12.29 The MSA will include additional and expanded definitions discussed above.

12.30 As discussed above, the MSA will adopt the MCMC's proposal to define Service Qualification in a service-specific manner with details discussed below.

12.31 In response to Maxis' submission, the MSA will clarify that Service Qualifications requiring a desk/field study may be carried out at the Access Request stage in section 5.4.5 of the MSA as well as that the Order stage in section 5.7 of the MSA. If a Service Qualification is performed at the pre-Order stage, an Access Provider must not require it to be re-performed at the post-Order stage.

13 General principles

Introduction

13.1 In the PI Paper, the MCMC noted the non-discrimination requirements under subsection 149(2) of the CMA and section 4 of MSA 2009 and expressed its concern that, despite such regulated requirements, the MCMC continued to receive complaints from Access Seekers that Access Providers were providing certain services on a discriminatory basis.

13.2 The MCMC noted that such complaints were first raised during the Access List Review and continued to be raised over the course of this Public Inquiry, most notably in respect of the supply of HSBB Network Services but also in respect of the supply of other services including the Wholesale Line Rental Service and Domestic Connectivity to International Services. In the PI Paper, the MCMC proposed to bolster the non-discrimination obligations in the MSA by:

(a) strengthening the non-discrimination obligations in the current MSA (MSA 2009) with obligations of an 'equivalence of inputs' standard; and

(b) including a number of new reporting requirements in the MSA, to provide for greater transparency and to support the MCMC's ability to enforce equivalence of inputs by Access Providers.

Submissions received

Question 3: Do you agree with the MCMC's proposal to strengthen the non-discrimination obligations in the current MSA (MSA 2009) with obligations of an 'equivalence of inputs' standard? Why or why not? If not, please propose an alternative standard of non-discrimination, list any jurisdictions which have adopted that standard, and explain why you consider that standard (and not an 'equivalence of inputs' standard) will best promote the national policy objectives for the communications and multimedia industry.

13.3 Altel, the APCC, Ceres, Net2One and Sacofa are agreeable to the MCMC's proposal.

13.4 The APCC submits that non-discrimination by Access Provider between their own retail operations and Access Seeker is fundamental to the equitable provision of affordable services and efficient allocation of resources that are the objectives of the CMA. Translating the concept or principal of non-discrimination to concrete action, however, is greatly assisted by a practical standard such as equivalence of inputs. Accordingly, the APCC supports the introduction of equivalence of inputs.

13.5 Astro acknowledged that a key remedy to prevent exclusionary effects on retail broadband access market and retail broadband market is an obligation of non-discrimination at the wholesale access level. Equivalence of inputs is a stronger interpretation of non-discrimination and therefore, Astro believes that it should be reflected in the MSA as a standard that Access Providers have to adhere to for access to Facilities and Services in the Access List. Astro suggested that the meaning of non-discrimination in subsection 4.1.6 of the MSA should be amended to reflect equivalence of input as the default standard, unless otherwise consented to by the MCMC. At the very least, the definition of non-discrimination should be the equivalence of input non-discrimination standard insofar as it concerns HSBB Network Services, ANE and Digital Subscriber Line Resale Services.

13.6 Astro submitted that it is particularly difficult to detect and address non-price discriminatory behaviour through mere application of a general non-discriminatory obligation. Non-discriminatory obligations need to be applied strictly and effective means should be employed to monitor and enforce compliance. However, there is a disconnect between the equivalence of inputs standard and non-discrimination standard as set out in subsection 4.1.6 of the Draft MSA. The MSA should provide a definition of equivalence of inputs.

13.7 Astro further noted that the obligation of non-discrimination is already provided in the MSA and that it has failed to produce satisfactory results either because no offer has emerged at all or because offers that exist have resulted in a margin squeeze for operators who are trying to compete with a vertically integrated Access Provider's retail services. Therefore, Astro believes that additional remedies are required in order to make non-discrimination effective in practice. Astro suggested measures such as publication of internal network access, obligation of accounting separation, the MCMC exercising its powers to modify reference offers, price control and

cost accounting obligations. Astro also proposed systematic examination of costs, expenses and plans, which will bring about much needed transparency to the retail and wholesale broadband access and markets.

13.8 Celcom agrees with the MCMC's proposal to strengthen the non-discrimination obligations by introducing "equivalence of inputs" only if the standard applies to dominant operators. For non-dominant operators, Celcom proposed a light handed approach.

13.9 Ceres believe that the 'equivalence of inputs' standards will help to create a level playing field for all service providers. Ceres asserts that, as an Access Seeker of MVNO services, they are required to pay a higher price for Access Provider's services as compared to the price offered to Access Provider's own downstream business units, resulting in Ceres not being able to replicate equivalent products and prices to its own customers. Ceres considers that an Access Provider's new services should be offered to MVNOs at the same time as Access Provider makes it available to its own retail business units and at no additional cost.

13.10 Digi recommended that any consideration for Equivalence of Input obligation should be confined to operators with significant market power (SMP), typically incumbent with essential facilities. Digi cited examples where the European Commission had imposed equivalence of input in the context of Next Generation Access and other regulators such as IMDA (formerly known as IDA) in Singapore, Ofcom in UK and AGCOM in Italy who have imposed equivalence in input for incumbent operators for NGN, broadband and telephone networks. Digi believes that it is unwarranted to consider equivalence of input for mobile access as regulatory authorities have preferred inter-platform competition to intra-platform competition. Based on its research, Digi found that in most cases, mobile access is also not being regulated via equivalence of input or in some cases, a proposed equivalence of input obligation has been withdrawn.

13.11 edotco is of the view that the equivalence of input standard disregards the differentials in the overall supply chain and the disparate evolutionary rate of technology. In addition to being restrictive, it also raises the Access Providers' cost of service provisioning as they will have to enable their Operational Support Systems, Business Support System and Management Information System to comply with this requirement. Due to the far reaching consequences and high implementation cost, it should only be applied where significant problems have been identified. edotco cited NGNBN OpCo Nucleus Connect in Singapore and Openreach in UK to illustrate its point.

13.12 Fiberail stated that Access Providers are already required to comply with this principle due to the requirements under section 149 of the CMA.

13.13 Maxis agrees with the MCMC that the non-discrimination requirements in the MSA have not been fully effective in ensuring that the Access Provider provides access on a non-discriminatory basis. An example is Layer 2 HSBB Network Services. A second example is the reluctance of the incumbent

Access Provider to offer asymmetric Wholesale HSBB Network Services. A third example is where the incumbent took more than eleven months after the launching of their new HSBB2 ports before allowing access to Access Seekers. In the face of the many hurdles that are experienced by Access Seekers, Maxis acknowledges there is a need to strengthen the non-discrimination obligation in the MSA with an obligation of "equivalence of inputs" standard but proposed that such standard is only applied to the incumbent Access Provider for HSBB Services. This would ensure that Access Seekers have the same and fair opportunity and capability with the incumbent Access Provider.

13.14 Maxis submitted that MVNOs are typically not regulated in the absence of dominance. Although MSA 2009 is not fully asymmetric, it has more provisions for HSBB than mobile and this is a move in the right direction. Maxis proposed that a similar approach as Accounting Separation, where the MCMC provides partial exemption for those operators with revenue below the specified threshold, can be considered for the MSA.

13.15 Maxis provided the example in the UK where Ofcom has proposed a full structural separation of BT. Ofcom's proposal is way beyond equivalence of inputs. Although the MCMC's proposal of equivalence of inputs is in the right direction, Maxis requested the MCMC to consider regulatory measures such as those proposed by Ofcom to ensure effective competition for the long-term benefit of end users.

13.16 PPIT is supportive of the MCMC's intention to strengthen the non-discriminatory provisions obligation in the MSA to 'equivalence of inputs' standard as this will create a level playing field for all licensees in the industry. However, the MCMC should be mindful not to view that all licensees are equal.

13.17 Sacofa believes that the terms and conditions should be negotiated and mutually agreed by Access Provider and Access Seeker.

13.18 TM feels that 'equivalence of inputs' is unnecessary as it will only result in more complex processes which are costly to implement. Section 149 of the CMA has imposed clear obligations on licensees to provide access on a non-discriminatory basis and the meaning of "non-discriminatory basis" has been clearly defined. TM submitted that 'equivalence of inputs' is normally implemented in jurisdictions where the providers are accorded with exclusivity and access is provided by way of an undertaking. TM considers that this is different in Malaysia where there is no prohibition on other licensees to deploy infrastructure within the scope of their licence. The reason that TM is still dominant in the fixed market is mainly due to licensees 'cherry picking' of investments that can give them high returns. As such, it is unfair to penalise TM for its continuing dominance in the fixed market by imposing stringent measures in the MSA. TM would like the MCMC to reconsider its proposal to introduce an 'equivalence of inputs' mechanism in the MSA, particularly in respect of legacy PSTN service offerings.

13.19 TM questioned the view expressed by the MCMC in paragraph 8.2 of the PI Paper that an 'equivalence of input' standard is common across communications regulatory regimes internationally while the fact is, it is only implemented in markets which have implemented structural or functional separation. TM also noted that the PI Paper incorrectly paraphrases the European Commission's support for 'equivalence of inputs' in paragraph 8.24 of the PI Paper, when in fact, the European Commission goes on to state in paragraphs (14), (15) and (16) a number of caveats and cautions about the use of equivalence of inputs as an approach.

13.20 TM highlighted that Chapter 3 of Part VI in the CMA already provides the schema and key operative provisions relating to access in Malaysia and the MCMC should not extend it based on the approaches to regulating 'natural monopolies' in foreign markets such as the United Kingdom. Besides, the HSBB PPP Agreement between TM and the Government of Malaysia already provides a number of safeguards and requirements concerning access to the HSBB Network.

13.21 The MCMC would be able to identify any conduct of discriminatory or "preferential treatment", and take appropriate action prior to registration of access agreements to ensure compliance to the MSA. As for commercial agreements such as HSBA, the MCMC still can intervene on a case by case basis upon receiving a complaint from service provider.

13.22 TM also noted that commercial decisions are struck based on the mutually agreed terms between the parties, the type of services required, contract period, volume and so on. TM submitted that businesses would be affected if all Access Seekers were entitled to identical offerings, and different commercial deals with different Access Seekers were considered discrimination and "preferential treatment". TM considers any obligation on Access Providers to notify the MCMC on refusal to supply, and to further provide the MCMC with reasons for the refusal, as highly interventionist and will considerably increase the administrative burden on all Access Providers. Since there is a dispute mechanism already in place, it is redundant to impose this obligation on Access Providers to address non-discriminatory action or conduct.

13.23 In relation to paragraph 4.1.6(b), TM disagrees with the proposed deletion of the words "who are similarly situated". In order to make a comparison of "non-discrimination", the Access Seeker must be similarly situated otherwise an accurate comparison cannot be made.

13.24 TIME disagrees with the MCMC's proposal that intends to provide equal treatment to all Access Seekers. TIME noted that an Access Provider would provide different prices and treatment to their Access Seekers or customers, depending on the volume or capacity of services to be purchased, period of contract and method of payment either upfront payment or periodical payment as well as relationship status i.e. long term and loyal customer as opposed to a new customer without a track record.

13.25 webe is of the opinion that it is important to uphold the principle of non-discrimination when providing similar services. However, it is important to ensure that the service requested internally and externally are exactly similar. webe submits that the current non-discrimination principles in subsection 4.1.5 and subsection 4.1.6 are sufficient to prevent discrimination. When assessing whether prices or terms are discriminatory, it is important to ensure services or facilities are comparable. Therefore, equivalence of inputs should mean the same prices, using the same processes and the same timescales. Access Providers should be allowed to provide different services at different prices and Service Level Guarantees. webe also supports the proposal to prohibit requiring excessive information from Access Seeker but understands the need to provide certain information to the Access Provider. Since no complaints have been made against Access Providers for not complying with the MSA requirement regarding the content of confidentiality agreements, webe believes that the existing regulation is working well.

13.26 U Mobile strongly advocated the adoption of the principle of non-discrimination to enable any-to-any connectivity but noted that the notion of 'equivalence' needs to be handled within context. It fully agrees that more clarity is needed in terms of product uniformity and technical specification, as well as implementation details without adopting an overly prescriptive approach. 'Equivalence' should not lead to an unrealistic expectation from Access Seekers and place an onerous obligation on Access Providers or additional complexity in providing access. Therefore, U Mobile proposed that 'equivalence of input' should only apply to SMP operators and it is more suitable in jurisdictions where there is structural separation. The non-discrimination principle described in subsection 4.2 of the MSA is sufficient.

13.27 YTL agrees to strengthen the non-discrimination obligations on the basis of 'equivalence of inputs' standard as it will promote market entry and reduce barrier to entry. It also promotes transparency. YTL proposed to impose a mechanism to implement equivalence of inputs either by request of Access Seeker or in the Reference Access Order (RAO).

Question 4: Do you consider any other change is required to the General Principles in section 4 of the MSA? If so, please specify what change you consider is required and explain why.

13.28 Altel and Net2One are agreeable to the MCMC's proposal.

13.29 The APCC, Fiberail and Sacofa also do not consider any other change is required to the General Principles section 4.

13.30 Astro responded that there are several other matters that will benefit from the application of non-discrimination principle, namely, post termination decommissioning obligations, criteria for eligibility for the fast track application process in subsection 5.4.21 and churn obligations. Astro also proposed a definition of equivalence of inputs to be included in the MSA.

13.31 Celcom submitted that it does not have any objection pertaining to subsection 4.4.1, except with regard to MVNO Access. Under subsection 4.4.2, Celcom proposed that the re-supplying of facility or service be limited to Access Provider's and Access Seeker's customers only. Celcom further stated that these two clauses are commercially not feasible and will have direct detrimental effect on the MNOs providing the MVNO Access. Celcom is concerned that MVNO with more than one parent MNO will be able to provide 'best from all' services in terms of network quality and coverage.

13.32 With regard to paragraph 4.1.6(b), Digi proposed to retain the current meaning of non-discrimination in the MSA. It stated that the proposed deletion by the MCMC of the qualification "similarly situated" will extend the basis to any Access Seeker regardless of where they are situated thereby imposing obligation beyond reasonableness for the Access Provider.

13.33 edotco disagrees with the proposed amendment to paragraph 4.1.6(b) where the MCMC proposes to delete the words "who are similarly situated". edotco believes that the test of 'non-discrimination' should be based on a comparison on which that thing is provided by the Access Provider to itself and to other Access Seekers who are similarly situated.

13.34 edotco disagrees with the newly added subsection 4.4.1 that imposes a blanket prohibition against exclusivity. It views this subsection as being inconsistent with the MCMC's Guideline on Substantial Lessening of Competition which states that exclusive dealing practices are common and generally are unlikely to raise competition concerns. It also believes that exclusivity can have pro-competitive effects or there could be an efficiency enhancing reason behind the imposition of exclusivity, especially where an exclusive arrangement involves non-dominant market players which is unlikely to result in market foreclosure. Therefore, edotco submits that it may be justified for Access Providers to impose exclusivity on a limited, object driven basis.

13.35 On prevention of resale, edotco supports the spirit of the new subsection 4.4.2 but stated that it has heavy commercial implications to the business of the operator and should be decided by parties by way of commercial negotiations. According to edotco, commercial negotiations, reflect the natural state of the market and imposition of a blanket prohibition against resale restrictions would artificially affect competition in the market. edotco believes that a blanket prohibition on resale restrictions is also inconsistent with international norms.

13.36 Maxis proposed changes to subsections in 4.2, 4.3 and 4.4. On subsection 4.4, for O&T Services and MVNO Access, Maxis does not support the prohibition of resale restrictions that the MCMC proposes to introduce. Since the services are already on the Access List, any third party can seek direct access without the need of resale. The intention is not anti-competitive but to ensure that the Access Provider can fulfil its obligations under the MSA such as QoS.

13.37 For O&T Services, Maxis believes that it is best to go with direct interconnection between Access Provider and Access Seeker. To date, Maxis is not aware of any transit or resale arrangement of originating and terminating service agreed between third party, Access Seeker and Access Provider. This could be due to technical and commercial difficulties.

13.38 With regard to MVNO Access, different MNOs have different network quality and an MVNO with multiple MNO contracts will find it challenging to deal with consumer issues. Examples are SIMs with different quality, integration with various customer portals of the MNO for services such as MNP, Prepaid Registration and Hand-set Blocking.

13.39 MYTV does not agree to subsection 4.4 in totality with regards to No Exclusivity and No restrictions on Resale. For DTB Multiplexing Service, the Access Seeker is not supposed to resell the DTB Multiplexing Service or Channel to another CASP licensee but may do so to a non-licensee. It would contradict the spirit and intent of the award of the designation of Common Integrated Infrastructure Provider to operate the DTB Multiplexing Service.

13.40 PPIT noted that although there is discussion about 'equivalence of inputs' in subsections 4.1.5 and 4.1.6, the MCMC has not included the draft on the proposed inclusion of 'equivalence of inputs' standard. Also, PPIT believes that the new section 4.4.2 is too general and prohibitive. For Infrastructure Sharing, it is natural that Access Seekers are prohibited to re-supply the Facility to third parties/other licensees without the Access Provider's consent and approval as such endeavour will add load and space on the relevant infrastructure, which is detrimental to Access Providers.

13.41 TM agrees with minor changes to clarify certain provisions in subsection 4. However, TM does not support the inclusion of subsection 4.4 "No exclusivity and no restriction on resale". On the issue of no exclusivity, TM believes that the provision is redundant as Section 136 of CMA 1998 already deals with this issues. As for no restriction on resale, TM pointed out that there is a risk that certain Access Seekers may wish to buy significantly more capacity at a particular location or site in order to monopolise supply and resell at a profit. Besides, the terms of the HSBB PPP Agreement between TM and the Government of Malaysia provide a restriction on the mere resale of certain HSBB Services. Any proposal on resale should take into consideration Schedule 11 of the PPP Agreement.

13.42 webe stated that exclusivity may seem prohibitive and negative but some form of control needs to be put in place. Some MVNO models could be very complex and requires a lot of manpower for Access Provider to assess and plan the request. As such, Access Seekers should not be scouting around for the best deals. This does not mean that Access Seekers should be denied options, but the Access Seeker should carry out research to evaluate the best Access Provider that they want to partner with. webe submitted that it is important to minimise mushrooming of parties who only think of short term revenue. As such, certain duration has to be agreed upfront, with an exit clause to allow the cost of engaging with the MVNO to be recovered, at a minimum, where the arrangement terminates prematurely.

13.43 U Mobile agrees with the general principles but does not agree with the no exclusivity and no restriction on resale clause. The idea of wholesale service is to facilitate Access Seeker to provide services to its customers. If an Access Seeker procures services with the intention of resale, it would have deviated from objectives of the Mandatory Standard on Access.

13.44 YTL commented that the General Principles addresses the significant issue reflected in operator access obligations and service specific obligations. Referring to the new subsection 4.4.1, YTL proposed to also include the scenario where existing Access Seekers require the Access Provider to obtain their approval/consent before the Access Provider can provide access to a new Access Seeker. YTL also requested the MCMC to prohibit the practice of "barter" whereby an Operator only provides access to another Operator who is able to provide the same services or facilities to the first Operator. This practice is exclusive and discriminatory to access seekers who do not offer similar services or facilities. YTL highlighted that this is the practice for common in-building infrastructure whereby Access Providers practice exclusivity to predetermined Access Seekers.

Discussion

13.45 The MCMC thanks all operators for their submissions. Operators were overwhelming supportive of the key themes of the Public Inquiry on the MSA. There were specific concerns raised by some operators, which the MCMC acknowledges and responds in the following paragraphs.

13.46 **Application of the non-discrimination principle to OSS.** The MCMC agrees with Maxis to make express in the MSA that Access Providers should make available, to all Access Seekers, the same access to its Operational Support Systems for service fulfilment and service assurance as it provides to itself or to any Access Seeker. The MCMC notes that subsection 4.2.1 of the MSA already provides that the non-discrimination principle applies to service fulfilment and service assurance. As OSS is critical to such processes, the MCMC considers that also expressing in the MSA that access to an Access Provider's OSS in respect of such processes is reasonable.

13.47 **Asymmetric regulation.** A number of operators proposed that some of the key obligations proposed for the MSA should be implemented in an asymmetric manner. This is not an option. The CMA does not implement an asymmetric regulatory scheme and the MCMC does not intend to implement obligations which apply solely to incumbent Access Providers. In particular, the MCMC notes that subsection 149(2) of the CMA creates a single equitable and non-discriminatory standard that applies to all Access Providers as a standard access obligation for Facilities and Services.

13.48 **Equivalence.** Many operators expressed a desire for more direct language incorporating equivalence of inputs. The MCMC agrees that an 'equivalence of inputs' standard is preferable and should be incorporated into the MSA to the extent that it is not already covered by the non-discrimination obligation. In addition, the MCMC agrees that directly including the term

'equivalence of inputs' in the MSA is appropriate to better emphasise the particular standard of non-discrimination that applies in the MSA.

13.49 Some operators submitted that an 'equivalence of inputs' is not suitable in the Malaysian context. For example, TM submitted that an 'equivalence of inputs' is normally implemented where providers are accorded with exclusivity and access is provided by way of undertaking. This is not correct. Equivalence of inputs applies mostly where there has been systemic discrimination and/or rules are imposed on a previously vertically-integrated company to ensure that its retail arm is not favoured. The MCMC considers that this rationale is applicable to the Malaysian communications and multimedia industry. TM also expressed its understanding that 'equivalence of inputs' would mean that all Access Seekers should be entitled to identical offerings. This is not the case. The MCMC notes it is possible for an Access Provider to negotiate and make different options available to Access Seekers, including based on an Access Seeker's request, whilst complying with its non-discrimination obligations. The RAO model contemplates the parties may negotiate an Access Agreement on alternative terms that are different to those offered in a RAO. TM also labelled a requirement for Access Providers to notify the MCMC of refusals to supply as "highly interventionist". However, the MCMC considers that a refusal to supply is a very extraordinary step and that this is an area where the MCMC must be informed of such extraordinary cases.

13.50 **Whether any additional regulation is required.** Some operators suggested that no further regulation was required, as (for example) the terms and conditions of access should be negotiated and mutually agreed by Access Provider and Access Seeker and (as another operator pointed out) Access Providers are already required to comply with the non-discrimination principle under section 149 of the CMA. The MCMC repeats the concern it expressed in the PI Paper that the non-discrimination provisions in MSA 2009 are insufficient to level the playing field between Access Seekers and an Access Provider's own retail arm that they were intended to. For example, despite the non-discrimination obligations in MSA 2009, the MCMC continues to receive complaints from Access Seekers that Access Providers are providing certain services on a discriminatory basis. The MCMC considers that equivalence is particularly important in a country like Malaysia which does not mandate structural or functional separation between wholesale and retail arms of telecommunications businesses.

13.51 **No exclusivity and no restriction on resale.** A number of operators disagreed with the proposed prohibition of exclusivity arrangements. One operator submitted that exclusivity can have pro-competitive effects, or there could be efficiency-enhancing reasons behind the imposition of exclusivity, especially where an exclusive arrangement involves non-dominant market players which is unlikely to result in market foreclosure. Several operators also submitted that prohibiting restrictions on the resale of a Facility or Service would affect competition in the market and would be inconsistent with international norms.

13.52 Consistent with its "Guideline on Substantial Lessening of Competition", the MCMC considers that exclusive dealing arrangements may raise competition concerns in circumstances where, as a result of the exclusive dealing, a substantial proportion of the market is foreclosed to competitors. In addition, the MCMC considers that an exclusive dealing arrangement is more likely to raise concerns if one of the parties to the arrangement is in a dominant position in relation to the acquisition or supply of products or services. The MCMC considers there to be a significant risk of such circumstances arising in respect of Facilities and Services contained in the Access List.

13.53 The MCMC does not consider the arguments against its proposed 'no restriction on resale' provision to be convincing. One submitter noted that Access Seekers could attempt to buy significantly more capacity at a particular location or site in order to monopolise supply and resell at a profit. The MCMC does not consider this to be a real concern as (i) if the Access Provider and Access Seeker are in the same place, the consumer is free to choose the service that offers the best value to the consumer and (ii) if the Access Seeker buys up all the capacity at the price offered by the Access Provider, the Access Provider would make expected revenue with no loss for it and the Access Seeker would still be responsible for any reselling downstream and would be unlikely to be capable of pricing above what the market could bear. Another submitter appeared to suggest that resale should be prohibited for certain Facilities or Services due to potential capacity constraints. The MCMC notes that having insufficient capacity is already a permitted ground for refusal of an Access Request under the MSA and therefore does not intend to add a service-specific exemption to address the same concern. The MCMC therefore considers there are no competition issues with a 'no restriction on resale'. Quite the opposite—it is pro-competitive.

13.54 **'Equivalence of inputs' approach for natural monopolies.** It was submitted that the 'equivalence of inputs' standard is used to regulate natural monopolies in foreign markets such as the United Kingdom and that the European Commission has previously raised caveats in relation to this approach. The MCMC notes that natural monopolies are not a phenomenon isolated to the UK market. Indeed, the MCMC considers that natural monopoly characteristics are arguably more pronounced in countries such as Malaysia, where for example population centres are spread further apart or less densely populated generally, compared with the United Kingdom and that the rationale for strict regulation may therefore be clearer.

13.55 **No alternative standard of non-discrimination provided.** In the PI Paper, the MCMC asked operators who disagreed with the MCMC's proposal of strengthening the non-discrimination obligations in the MSA to propose an alternative standard of non-discrimination. The MCMC notes that, other than the standard under MSA 2009, it has not been presented with any standard of non-discrimination for consideration as an alternative to its proposed 'equivalence of inputs' standard.

13.56 **Matters outside the scope of this Public Inquiry.** Some operators proposed that the MCMC mandate the structural, functional or operational separation of vertically-integrated operators to achieve parity in access to Access Seekers. The MCMC thanks the operators for their views, but notes that this form of regulatory intervention is outside the scope of this Public Inquiry.

MCMC views

13.57 The MCMC confirms its preliminary views and proposes to bolster the non-discrimination obligations in the MSA by:

(a) defining the term "Equivalence of Inputs" and clarifying the term "to itself" in the MSA;

(b) strengthening the non-discrimination obligations by expressly providing that, for the purposes of the MSA, the non-discrimination principle and the term "non-discriminatory" apply on an Equivalence of Inputs basis;

(c) expressly including as an example to which the non-discrimination principle applies "access to Operational Support Systems in respect of service fulfilment and service assurance"; and

(d) including a number of new reporting requirements in the MSA, to provide for greater transparency and to support the MCMC's ability to enforce equivalence of inputs by Access Providers.

13.58 As the MCMC has made clear in the PI Paper and throughout this Public Inquiry, non-discrimination is a key concern and something the MCMC is focused on. The MCMC is open to discussing all investigation and enforcement measures necessary to achieve the objectives of the CMA and the MSA and invites all operators to engage with the MCMC on these topics.

13.59 The MCMC reminds operators that the non-discrimination obligations apply to all dealings between Access Providers and Access Seekers with regard to Facilities and Services in the Access List. If any operator perceives discrimination with regard to any of the processes pertaining to the Facilities and Services, the MCMC welcomes discussion and investigation of the circumstances. If an operator considers that it has observed a breach of the non-discrimination obligations, it must raise a complaint with the MCMC to allow the MCMC to exercise its powers under the CMA.

Part D Operator Access Obligations

14 Reference access offers

Introduction

14.1 In the PI Paper, the MCMC expressed the preliminary view that the current ARD requirements should be replaced by more prescriptive RAO obligations.

14.2 The MCMC also considered that implementing a stronger RAO model provides both Access Seekers and Access Providers with greater certainty on the key terms and conditions of access, while still providing sufficient flexibility to allow for commercial negotiation and differentiated downstream offerings.

14.3 The practical effect of this change would be that Access Providers would need to include all terms and conditions that the Access Provider will require in an Access Agreement, and the Access Provider must not refuse to enter into an Access Agreement with any Access Seeker on the terms of a RAO, subject to certain limited exceptions (e.g. due to legitimate creditworthiness concerns).

14.4 The MCMC noted that the move to a RAO model has a number of benefits, including:

(a) it would enable an Access Seeker to request immediate access under a RAO, thereby cutting out the current requirement to negotiate an Access Agreement based on the terms and conditions of an ARD;

(b) similarly, it would make fast-track negotiation more meaningful as Access Seekers would now be able to accept a RAO if they wanted fast access (i.e. rather than negotiating a fast-track agreement "made in accordance with the Access Provider's ARD"); and

(c) adopting a RAO model would enhance industry certainty and transparency by ensuring that all Operators and the MCMC can assess an Access Providers' compliance with the MSA.

14.5 The MCMC noted that the current flexibility to negotiate new or additional terms under an Access Agreement would still be available under the MSA. The MCMC is cognisant that retaining such flexibility is necessary to support downstream product and service differentiation, which is a key element of competition.

Submissions received

Question 5: Do you agree with the MCMC's view that the ARD model is no longer the appropriate access instrument model for the Malaysian context? Why or why not? If not, please explain why you consider retaining the ARD model will best promote the national policy objectives for the communications and multimedia industry.

14.6 Altel and Net2One do not have issues with the current ARD model and believe that the ARD is still an appropriate access instrument.

14.7 The APCC agrees that the ARD model is no longer the appropriate instrument. They submit that Access Seekers clearly have faced difficulties and delays in seeking to conclude standard Access Agreements quickly and efficiently under the ARD model, largely due to absence of complete and detailed terms and conditions. In addition, the fast track option was also ineffective.

14.8 Astro is of the view that the principle based approach of ARD has not worked and is of limited value as it doesn't address details.

14.9 Celcom did not agree that ARD model is no longer the appropriate access instrument model in Malaysia. Celcom stated that currently the ARD is used as a reference check but operators prefer to negotiate Access Agreement rather than to accept the ARD. Celcom suggested that the RAO should be implemented to dominant operators, while others can continue with ARD.

14.10 Ceres agreed that RAO is a good model to replace ARD model. Ceres is of the view that the negotiations of Access Agreement is time consuming and the terms and conditions in the Access Agreement are not in line with the published ARD. Ceres urged the MCMC to have a thorough review of the RAOs published by Access Providers to ensure it is in line with the MSA. Ceres views that it is important for Access Providers to set out reasonable pricing and conditions in the RAO with no hidden clause or provide only ceiling prices for the Facilities and Services provided.

14.11 Digi views that ARD requirements should be continued, with the RAO requirement adopted selectively for specific cases that involve dominant or collectively dominant situation where access is prohibitive. Over the long term, Digi views self-regulation as the way forward where MAFB and industry can adopt this role.

14.12 edotco believes that the ARD model still works and is preferable to the RAO model. ARD encourages effective and efficient processes and procedures and facilitates in making commercial arrangements that reflect their particular requirements.

14.13 Fiberail believes that the current ARD model works and disagrees with the MCMC's proposal.

14.14 Maxis suggested that the ARD approach be retained for long established Facilities and Services such as O&T Service, Infrastructure Sharing, Interconnect Link etc. and for new Facilities and Services where there is no dominant operator such as MVNO Access.

14.15 For HSBB Network Services, Maxis is of the view that the ARD model is not sufficient and they support the move by the MCMC to implement RAO model. However, this should only apply to the incumbent Access Provider. This move will help the Government to meet the target set in RMK11. As a benchmark, Maxis submitted that in the UK, for Wholesale Broadband

Access, Ofcom imposed stronger regulation to the SMP operator. Maxis urged the MCMC to adopt a similar approach in implementing the MSA. For HSBB Network Service, Maxis proposed an implementation plan of 3 months after Effective Date. Another example is in the EU where regulators have imposed less stringent requirements on alternative and challenger fibre networks.

14.16 MYTV has no experience with the current ARD model and as such is neutral towards the ARD model but needs more time prior to implementation of a RAO model. MYTV requests for 120 days to allow it to establish the RAO after the MSA comes into effect.

14.17 PPIT believes that the ARD model has thus far facilitated the process of establishing access arrangements especially for new licensees in the industry. However, Access Agreement negotiation is still lengthy and it is not necessarily caused by Access Providers. Thus, PPIT is supportive of the MCMC's initiative to improve the existing regulation regarding access arrangements, so long as it addresses issues faced by both Access Providers and Access Seekers.

14.18 Sacofa is agreeable to the introduction of RAO as it will expedite the negotiation process and rollout of the services for Access Seeker.

14.19 TM submitted that there are two categories of Access Seekers. The first category comprises of Access Seekers who are well versed with the access regime in Malaysia and this group of Access Seekers have prevailing Access Agreements with TM. This group will hardly rely on TM's ARD when Access Agreement is to be reviewed. The ARD only helps Access Seekers to confirm the Services and Facilities that TM provide. ARD, in this respect, becomes just an academic exercise produced by TM to comply with MSA. The second category comprises of Access Seekers who have no knowledge or very limited knowledge about access regime. They would inquire about Facilities and Services from TM and TM will educate, advise and guide them to refer to the ARD. Subject to mutual agreement, TM will thereafter, provide a draft Access Agreement for their consideration and to be used as a basis of negotiation.

14.20 TM considers retaining ARD is appropriate. A new instrument which is more rigid such as RAO would be counterproductive and is against our national policy objective of facilitating the efficient allocation of resource such as labour, capital, knowledge and national assets. TM is of the view that the MCMC has not provided concrete reasons, rationale or data to justify why in the MCMC's view, the current access instrument model is no longer suitable, nor articulated the basis for review and proposed replacement of the current ARD with RAO.

14.21 TIME agrees with the MCMC's view that the ARD model is no longer the appropriate access instrument model for the Malaysian context. However, it noted that the proposed RAO model is not similar to the model that is currently being implemented by other jurisdictions as it still requires parties to follow the processes in the current ARD.

14.22 webe believes that the ARD has served as a good guide for negotiation of Access Agreements in the past as it is practical and a workable model. Therefore, it should be retained. In the event of issues, Access Seekers should exercise their rights under the MSA such as Dispute Resolution.

14.23 U Mobile stated that while the RAO has merits, it is difficult to publish the terms and conditions in sufficient detail without the negotiation process.

14.24 YTL agrees that the RAO model provide a certain extent of certainty and clarity on the terms and conditions of access. YTL is of the view that the RAO model emphasizes transparency, reasonableness and application of non-discriminatory principles via the "equivalence of input". YTL commented that for services and facilities that are subject to Mandatory Standard on Access Pricing, the use of the mandated prices should suffice.

Question 6: Do you agree with the MCMC's proposal to implement a RAO model? Why or why not? If not, please propose an alternative access instrument model, list any jurisdictions which have adopted that model, and explain why you consider that model (and not a RAO model) will best promote the national policy objectives for the communications and multimedia industry.

14.25 Altel is of the view that RAO should not be applied to all Access Providers. The fact that the MCMC had identified several licensees as dominant in the Commission Determination on Dominant Position in a Communication Market indicates that there is asymmetric market power. As such, the requirement to publish RAO should only be applicable to dominant operators. Altel is also concerned that the requirement for operators to publish prices may be abused by an operator with a greater market power to gain unfair advantage over smaller operators.

14.26 Altel and Net2One conceded that if the objective of RAO is to provide greater certainty and transparency, then the requirement to publish RAO should be confined to regulated terms and conditions only. The implementation of RAO must be clear and there should not be any duplication or conflict between the RAO and the Access Agreement. The MCMC should ensure that there is a balance between the need for public access to information and protecting operator's commercially sensitive information.

14.27 The APCC fully supports the MCMC's proposal to introduce RAO and agrees that high level ARDs are less than fully effective in promoting access to facilities and services. The APCC believes that RAOs should reduce negotiation periods and greatly facilitate fast-track access. The APCC also noted widespread support for RAO and cited Best Practice Guidelines for Enabling Open Access promulgated at the 10th Global Symposium for Regulators, which makes specific reference to RAOs as instrumental in the promotion of open access. The APCC believes that a brief transition period would be appropriate for implementation of RAO and suggested 6 months as a reasonable timeframe. However, the APCC cautioned the MCMC to be vigilant to ensure that RAOs are even-handed and do not detract fair standards that MSA seeks to set out for access arrangements.

14.28 Astro submitted that RAO is a huge improvement from ARD. In the absence of RAOs, Access Agreements would be the subject of tedious negotiations. However, the true test of RAO lies in its terms and Astro urged the MCMC to play an active role in ensuring RAOs that are fair, transparent and non-discriminatory which will promote effective retail competition. Astro cited examples of regulators in Qatar and Singapore who play an active role. In terms of publication of the RAO, Astro suggested 60 days instead of 90 days proposed in subsection 7.2.6. On an ongoing basis, Access Providers should provide notice of new Facilities or Services it proposes to offer to itself or third parties at least 30 days prior to the Access Provider making such Facilities or Services available either to itself or third parties. Astro also suggested that the MCMC detail out the specific clauses that should be reflected in the RAO and it cited the Ofcom's requirements for network access as an example and suggested that the same level of detail in Ofcom's instrument, at a minimum, should be adopted in Malaysia.

14.29 Astro noted that TM's present ARD does not contain layer 2 HSBB Network Service and wanted to know if TM would not be obliged to provide RAO for services that it does not have a ARD. Astro viewed that another key reason for the necessity of RAO is that it is likely to be the only way of achieving an effective and non-discriminatory "migration" from a resale offering (Layer 3) to forms of wholesale broadband access (such Layer 2 offering) that include possible service differentiation. Therefore, Astro proposed that migration should be the subject of regulatory attention.

14.30 Celcom submitted that the MCMC has rightly demonstrated through many examples in the PI Paper that RAO framework would be more beneficial for Access Seekers as compared to ARD. However, it noted that in other jurisdictions RAO is applied to either dominant operators or to certain operators offering government subsidised special purpose infrastructure services. As such, Celcom urged the MCMC to apply the RAO model to service providers found to be dominant. A symmetric application of RAO will place an unnecessary burden on non-dominant operators in preparing detailed and tedious RAOs. It also suggested that MVNO Access should not be subject to RAO. Celcom also supported the MCMC's proposal under paragraph 7.3.2(a) where the MCMC will review the RAO for compliance to the MSA.

14.31 Digi views that ARDs should be continued, while the RAO requirement could be adopted selectively for specific cases that involve dominant or collectively dominant situation where access is prohibitive. Digi believes that for Mobile Access, RAO is not warranted as there is infrastructure competition with continued investment on high speed networks among major mobile operators and competitive downstream markets. However, Digi strongly believes that RAO is necessary for NGN.

14.32 edotco's opinion is that the RAO model is unnecessary and is inconsistent with the MCMC's regulatory approach as stated in subsection 2.2.2 of the Draft MSA. The RAO is being imposed on all Access Providers rather than on Access Providers that have been found to be in a dominant position is an overly prescribed approach which might result in undesirable results. It may

negate the flexibility needed by Access Providers and Access Seekers to customise agreements to reflect their peculiarities as well as industry landscape. It is also a departure from regulatory forbearance and gradual removal of ex-ante regulation as recommended by the World Bank and International Telecommunication Union in the Telecommunications Regulatory Handbook. edotco believes that a marketplace with proportionate regulation will likely lead to more innovative, diverse and responsive industry. edotco urged the MCMC to balance the benefits and detriments of implementing any proposed access instrument, particularly the potentially stultifying effect of imposing such regulatory tool indiscriminately on all Access Providers. The RAO may have the unintended effect of raising the standard prices for services. edotco is also unclear of the level of detail that is required to be published in the RAO and wondered whether commercially sensitive and confidential information that gives edotco an edge over its competitors would need to be included in the RAO.

14.33 edotco cited Singapore, European Union and UK where a similar access instrument has been imposed only on operators who are dominant or have SMP.

14.34 Fiberail proposed to maintain the current ARD model but the MCMC can make amendments for certain Facilities and/or Services. It agrees to the point raised in section 13.2 (a) of the PI Paper, i.e. Precedent Access Agreement may lead to overly prescribed terms and conditions.

14.35 MYTV views that the RAO model is beneficial in providing a greater certainty and would expedite an access request process. However, the implementation must be clear to avoid duplicity and conflict between the RAO and Access Agreement. It is also vital for the MCMC to set the appropriate level of information disclosure.

14.36 PPIT is concerned with the challenges in implementing the RAO model, particularly on confidential matters such as non-mandated prices. PPIT also views that it is cumbersome to include all offerings for different infrastructure and that the pricing structures and methodologies may differ between Access Providers. The are other terms and conditions that may not be provided in the RAO but will need to be included in the Access Agreement. As such, although PPIT supports the proposed RAO model, it proposed that the confidentiality issue be addressed.

14.37 Sacofa is agreeable as it will expedite negotiation process and rollout of the services for Access Seeker.

14.38 TM contended that although the MCMC envisage that the RAO would be more transparent and would expedite the process of providing access, Access Seekers are not likely to simply accept a RAO in its original form. Given the number of Access Agreements that TM have to review and new services that need to be incorporated, a RAO would be counter-productive as the resources and cost could be allocated to review the existing agreement.

14.39 TM has doubts that the RAO will work efficiently as all major operators are both Access Seekers and Access Providers at the same time and it is very unlikely that both parties can adopt a single Access Provider's RAO. TM pointed out that when the MCMC introduced a fast track Access Agreement, despite incurring legal cost to develop this agreement, none of the Access Seekers accepted fast track Access Agreement. It anticipates that the RAO would end up with the same fate.

14.40 TM views that the current ARD is transparent enough and is working well as all licensees are able to enter into Access Agreements, which are duly submitted to the MCMC for registration. There is no significant barrier to market entry or any market failure under the current regime and it noted that there has been no formal dispute lodged with the MCMC. TM is therefore strongly of the view that the current access regime does not favour a RAO approach. Since the ARD has served the country well, it should be allowed to continue and enhanced to address weaknesses, if any. Referring to the Australian, Qatari and Singaporean model is inappropriate given that these countries are different in terms of economic development, stage of maturity in the communications sector and demographics.

14.41 TIME commented that RAO model by the MCMC is a combination of the current ARD model, Access Agreements and RAO from other jurisdictions. The resultant document is overly comprehensive and covers most of the terms and conditions as stipulated in the Access Agreement to be signed by the Access Seeker and Access Provider. It noted that the proposed RAO model is not as what is implemented in other jurisdictions i.e. Singapore, UK, Australia and India where the Access Provider only published their simplified version of RAO, which is not as detailed as what has been proposed by the MCMC.

14.42 TIME commented that it will agree with the MCMC proposal to implement the RAO model if there are clear and simplified processes put in place by the MCMC that would reduce the time taken for negotiation and execution of Access Agreement. In addition, it would also help to avoid the MCMC from monitoring or regulating heavily.

14.43 If the MCMC decides to proceed with implementing the proposed RAO model, TIME foresees that the industry would need to go through the same processes and procedures as per the ARD model in order to negotiate and conclude the Access Agreement while at the same time, the parties to the Access Agreement need to comply to the MSA's requirements.

14.44 TIME stated that when parties to an Access Agreement depart from the MSA, the MCMC seeks clarification from the parties to the said Access Agreement and this process takes a significant amount of time.

14.45 TIME also suggested that the MCMC provide a guideline on the implementation of the RAO model and introduce a concept of pre-registered RAO where the RAO will be registered with the MCMC once it is compliant with the MSA. This pre-registration step allows Access Seekers who accept the terms set out in the RAO, by submitting a Notice of RAO Acceptance,

parties shall have formed an Access Agreement (which is evidenced by the RAO and the Notice of RAO Acceptance) and this is deemed registered for the purposes of the CMA.

14.46 webe does not agree to the MCMC's proposal to implement RAO as the current ARD provides the necessary access instrument to the industry. Currently, both parties enter into negotiation of an Access Agreement upon signing Non-Disclosure Agreement. webe does not see that RAO will change the scenario.

14.47 U Mobile welcomes the proposed introduction of RAO, which is a vastly improved version of the ARD. They believe that the proposed standardised timeframe can be beneficial to negotiating parties. However, some of the proposed timeframe needs to be improved, for example 10 Business Days to activate numbering range is too short, as U Mobile usually requires 22 Business Days. As such a blanket 10 days may not be suitable.

14.48 In addition, U Mobile submitted that the RAO should not be a standing offer but a document that provides guidance as to how facility or service is offered and sought. However, a standard model Access Agreement should be presented in the RAO as part of fast track process, which is useful for smaller licensees to seek interconnection. A standard and executable model should only be presented where appropriate, for example in circumstances where the Access Provider is a well-established incumbent or dominant.

14.49 U Mobile believes that while the intention of the RAO model is good, in reality it may not be possible until the terms of a draft Access Agreement are reviewed and agreed upon.

14.50 YTL agrees that the RAO model provide a certain level of certainty and clarity on the terms and conditions of access. YTL is of the view that the RAO model promotes transparency, reasonableness and application of non-discriminatory principles via the "equivalence of inputs" standard. YTL submits that, for regulated services and facilities, including the mandated prices in the RAO should be sufficient.

Question 7: Do you agree with the MCMC's proposed RAO model (particularly in subsections 5.3.3 to 5.3.6)? Why or why not? If not, please specify what change you consider is required and explain why.

14.51 Altel and Net2One expressed concern about the requirement to set out the full terms and conditions for the supply of Facilities and Services as stated in paragraph 5.3.3(a). While they acknowledged that RAO provides greater transparency, it should also allow sufficient flexibility for commercial negotiations. For this reason, they strongly believe that the requirement to make the information available should be confined to terms and conditions which are subject to mandated regulation.

14.52 On subsection 5.3.5, Altel and Net2One noted that since the RAO cannot be treated as contract, it should not take precedence over the Access Agreement which has been negotiated by operators and is legally binding. They disagree with subsection 5.3.5(iii) and submitted that any amendment

to RAO should not be deemed to alter the relevant terms and conditions of an Access Agreement.

14.53 The APCC commented on some possible issues with the RAO model, specifically relating to changes to RAOs and safeguards in the RAO. With regards to changes to RAO, the APCC assumes that changes can be imposed unilaterally by Access Provider without reference or approval by the MCMC. There is only an obligation to notify. As such, the APCC proposed that any changes to RAO must be submitted and approved by the MCMC. With regards to the content of RAO, the Access Provider should not be allowed to draft and publish a RAO which requires Access Seeker to further negotiate any matters of significance.

14.54 Astro agrees with the MCMC's proposed RAO model but recommends several amendments to the model which will promote its effectiveness as a remedy. Astro proposed amendments to paragraph 5.3.3(a) of the MSA and proposed a new paragraph (g). Astro also suggested that paragraph 5.3.3(a) list out in greater detail the terms and conditions that should be reflected in the RAO and a new provision on Internal Reference Offer. Astro also recommended amendments to paragraphs 5.3.4(h) and 5.3.6(b) to ensure that the RAO takes effect from the date it is published on the Access Provider's website and delivered to the MCMC.

14.55 On subsection 5.3.5, Astro noted that in the Draft MSA, Access Provider must provide a copy of any amendment to the RAO to the Access Seeker and the MCMC within the 20 Business Days before the Access Provider proposes to affect the changes. However, there is no mention of providing the MCMC with a copy of the amendments prior to the amendment taking effect in paragraph 5.3.5(a). Astro is concerned that Access Provider can make changes to the RAO which may be prejudicial to the Access Seekers. As such, Astro urged strong involvement of the MCMC in early stages of the implementation.

14.56 Celcom proposed that the term POI under paragraph 5.3.3(b) be stated in full as Point of Interface to provide clarity and not confused with Point of Interconnection. Celcom does not see the rationale of publishing Point of Interconnection as it applies to origination and termination services and there are no competition issues in providing these services.

14.57 Digi reiterates its request for RAO to be exempted for mobile access, particularly paragraph 5.3.3(a) which is overly prescriptive and may deter flexibility and prevent parties from finding a consensual and win-win solution. Digi submitted that the Access Agreement for Mobile Access will vary in accordance with the type of services and complexity of Access Seeker's requirement and cited MVNO Access as an example. RAO will significantly reduce the ability of mobile operators to offer bespoke agreements to suit different types of Access Request. Digi also submits that abrupt transition to RAO model will be extremely challenging and urges the MCMC to consider interim or transitional period from the current regime to the RAO, at minimal of 12 months' period.

14.58 edotco believes that the ARD model still works and is preferred to the RAO model. ARD encourages effective and efficient processes and procedures and facilitates operators in making commercial arrangements that reflect their particular requirements. edotco submits that the requirement to publish prices would be redundant as Access Seekers would still want to negotiate on the pricing of access.

14.59 Fiberail does not agree with the RAO model as it would be overly prescriptive.

14.60 Maxis agrees to the MCMC's proposed RAO model but stated that it should be applicable to the incumbent Access Provider for HSBB Network Services. On that basis, Maxis proposed changes to subsections 5.3.2 to 5.3.7.

14.61 MYTV agrees as it simplifies and speeds up matters. However, the RAO must be flexible to allow for commercial negotiation which is necessary to support downstream product and service differentiation. MYTV strongly believes that the information in a RAO that is publicly available should be confined to terms and conditions which are subject to mandated regulation. Access Providers should not be obliged to publish non-regulated terms and conditions as the information forms valuable trade secret which provides an operator a competitive edge in the market. RAO should also not take precedence over the Access Agreement. Finally, MYTV disagrees with item (iii) of the clarification to subsection 5.3.5 as it believes that any amendment to RAO should not be deemed to alter the relevant terms and conditions of an Access Agreement.

14.62 On subsection 5.5.3, PPIT is of the view that full terms and conditions including the rates, charging principles and methodologies should be included in the RAO only for Facilities and Services where rates are mandated. If rates for Facilities and Services are not mandated, they should only be made available to an Access Seeker upon execution of a Confidentiality Agreement.

14.63 Sacofa and YTL is agreeable to the MCMC's RAO model.

14.64 TM does not support the move to a RAO model and urged the MCMC to revert to the original subsection 5.3.3 in the MSA. The proposed new subsection 5.3.3 is overly prescriptive and fails to provide flexibility toward an Access Seeker's need and an Access Provider's ability to fulfil the access obligation. From TM's perspective, there is no failure to provide access due to ARD.

14.65 Given that Access Providers are required to make the RAO publicly available with full set of terms and conditions, TM may have to commit to certain terms to be imposed by the MCMC and may encounter difficulties in providing access to the Access Seekers. Taking into consideration new services, in particular, Duct and Manhole Access and HSBB Network Services which are mandated by the MCMC, TM might not be able to commit to particular terms without proper survey and study to understand the condition of the Facilities and Services to be offered to the Access Seekers.

In the case of duct and manhole, TM emphasized that it does not have a comprehensive inventory of the service.

14.66 In addition, given that the RAO is intended to be in an executable form, TM doesn't understand the difference between the RAO and Precedent Access Agreement. Given that the proposed RAO is intended to be executed by parties without further negotiation, it is in substance a precedent Access Agreement. Further in the MSA, there is no minimum term as it prescribes almost everything including operational matters.

14.67 On paragraph 5.3.3(a), TM stated that resource charges (subsection 5.7.28) are very nominal and vary and should not be published in the RAO. For rates and charges not mandated in the MSAP, these are made available to the Access Seeker upon receiving the Access Request and the NDA duly signed. Subsequently these rates and charges are commercially negotiated to be incorporated into the Access Agreement. As for Late Delivery (subsection 5.7.33), the Ready for Service Date requested by Access Seekers will normally be revised by TM after site survey and due diligence. The Ready for Service dates are mutually agreed and if the date is not met by TM due to its own fault, Access Seekers are eligible to make claims. However, if it is due to other reasons such as force majeure, rebate is not applicable.

14.68 TM's comments on specific subsections are as follows:

(a) On paragraph 5.3.3(b), TM would like to maintain the current subsection 5.9.2, to only publish POIs for the purpose of network interconnection;

(b) On paragraph 5.3.3(c), TM is not agreeable to include application form as this is not practical given the amendments required from time to time;

(c) On paragraph 5.3.3(d), TM is of the view that confidentiality agreement should be executed prior to publication of sensitive information on the website. TM would like to maintain the existing subsection 5.3.7;

(d) On subsection 5.3.4, TM does not support RAO but have no objections to enhance ARD by reflecting the proposed paragraphs 5.3.4 (f) to (h); and

(e) On subsection 5.3.6, TM is of the view that the MCMC is able to monitor an Access Provider's ARD by checking various Access Provider's website as per current practice.

14.69 TIME will agree with the MCMC's proposal to implement the RAO model if there are clear and simplified processes to be put in place by the MCMC which shall be similar to those that are implemented in other jurisdictions.

14.70 webe has no objection of presentation as proposed provided always that it refers to services and facilities listed in the Access List. Apart from the reporting that has to be submitted to the MCMC, webe does not any grave

concerns regarding subsections 5.3.3 to 5.3.6. However, at the services and facilities section, there are proposals that webe does not agree with. webe strongly support the provisions on creditworthiness.

14.71 U Mobile generally agrees with the spirit of subsections 5.3.3 to 5.3.6 but would prefer that the requirements to submit RAOs to the MCMC are not burdensome. Posting of amended RAOs on the website should suffice.

Discussion

14.72 The MCMC thanks operators for continuing to assist the MCMC in developing its views on the access instrument model under the MSA. The MCMC notes generally positive support from operators for the adoption of the RAO model, either in whole or in part, to replace the ARD model under MSA 2009.

14.73 Several operators who supported the adoption of the RAO model noted their own frustrations, difficulties and delays in obtaining access under the ARD model, which they considered to be ineffective, citing the lack of timeliness in concluding Access Agreements, the absence of complete and detailed terms and conditions in ARDs, non-alignment between Access Agreements and published ARDs, and the ineffectiveness of the ARD fast-track option.

14.74 Indeed, the MCMC notes that it has received submissions, in this and other reviews, from Access Seekers who have experienced difficulties and delays negotiating Access Agreements on the basis of MSA 2009 and the ARD model. The MCMC acknowledges these submissions and agrees that improvements could be made to access instrument model under the MSA to ensure that such access is expeditious and efficient.

14.75 Some operators agreed that the RAO model should be adopted, but only in certain cases—for example, in dominant or collectively dominant situations or only in respect of particular Facilities or Services while excluding others. Other operators suggested that stronger regulation should be applied to incumbent operators or operators with SMP. Other operators again suggested that the RAO should only be a guidance document or only require publication of a subset of mandatory regulated terms, rather than comprising the full terms and conditions of supply. The MCMC notes that the CMA does not implement an asymmetric regulatory scheme. The MCMC does not consider that asymmetric or partial regulation of any of the kinds described above is possible, appropriate or would result in the intended benefits of the RAO model (as outlined in section 14.4 of this PI Paper above) being achieved. The MCMC does not therefore propose to make any of these suggested changes to the MSA.

14.76 Advocates of retaining the ARD model argued that the current model was workable, that it encouraged effective and efficient processes, that it facilitated operators making commercial arrangements that reflect operator requirements, and that the RAO was rigid and over-prescriptive. For example, the MCMC notes that many operators cited the desire to, as an Access Provider, make commercial arrangements to suit a particular Access Seeker's needs. The MCMC reminds operators that the RAO model does not preclude parties from choosing to negotiate an Access Agreement between

themselves should they agree to do so. For example, an Access Provider would be welcome to negotiate bespoke terms with Access Seeker based on the Access Seeker's request, provided that the Access Provider complied with its non-discrimination obligations. The MCMC also reminds operators that Access Providers are capable of amending their RAOs subject to a notification process, enabling RAOs to evolve over time as required.

14.77 The MCMC notes TM's confusion in equating a RAO with a "Precedent Access Agreement" (as that model was considered earlier in this Public Inquiry). The MCMC clarifies that a RAO is prepared by an Access Provider, subject to certain requirements, whereas a Precedent Access Agreement is an instrument set by the MCMC. The RAO model therefore represents a less prescriptive approach to regulation than a Precedent Access Agreement model.

14.78 The MCMC notes that, while some operators support the adoption of the RAO model, some have expressed concerns relating to its implementation. For example, would publication of price give an operator with more market power an unfair advantage, would a RAO require publication of commercially-sensitive or confidential information, whether the MCMC would play an active role in securing RAOs that are fair, transparent and non-discriminatory, and regulatory compliance costs. The MCMC acknowledges the concerns expressed, but does not consider that any of these concerns requires a change to be made to the MSA.

14.79 Some operators have requested changes to certain proposed periods in respect of RAO obligations. For example, that a shorter or longer period to implement a RAO should apply or that a shorter or longer prescribed negotiation period should apply. The MCMC has considered these requests, and the reasons given for them, and is not persuaded there should be any change to either shorten or lengthen the relevant period in the MSA.

14.80 Several operators expressed disagreement with paragraph 5.3.5(b)iii of the MSA, which broadly provides that where the terms and conditions of an Access Agreement are identical to those in a RAO, an amendment to the RAO will be deemed to alter the relevant terms and conditions of that Access Agreement.

(a) Altel, MYTV and Net2One submitted that changes to a RAO should not be deemed to alter the terms of a commercially-agreed Access Agreement. The MCMC clarifies that paragraph 5.3.5(b)iii applies only to those terms in an Access Agreement that are identical to a RAO—in other words, the provision only applies to those parts of the Access Agreement that were not commercially-agreed to be different from the RAO. In any event, an Access Seeker has the right to dispute any change to the RAO under the MSA. In such a case, and given that any change to a RAO would need to be consistent with the MSA, the MCMC is of the view that paragraph 5.3.5(b)(iii) remains appropriate.

(b) The APCC proposed some safeguards to prevent potential abuse of paragraph 5.3.5(b)(iii):

(i) The APCC proposed that changes to a RAO should be submitted to and subject to approval by the MCMC, rather than merely notified. The MCMC notes that a RAO must be consistent with and not inconsistent with the rights and obligations set out in the MSA. The MCMC also notes that an Access Provider is subject to certain notification obligations which apply at least 20 Business Days prior to the changes taking effect, during which time an affected Access Seeker has the opportunity to dispute the change. The MCMC considers these obligations strike the right balance to allow the MCMC to investigate further should it consider the need, but without imposing unnecessary administrative or regulatory burdens on any party. The MCMC therefore declines to make the proposed change.

(ii) The APCC also proposed that Access Providers should not be allowed to draft and publish a RAO which requires Access Seeker to further negotiate any matters of significance. The MCMC notes that, a RAO must include the same level of detail as an Access Agreement, and is capable of being signed as an Access Agreement. However, the MSA also provider two other options, for parties to negotiate further on the terms of a RAO or to negotiate on alternative terms altogether. The MCMC therefore considers that an additional safeguard of this type is not appropriate.

14.81 The MCMC notes that several operators—including Astro, Celcom, Maxis and TM—have proposed drafting changes to parts of the MSA relating to RAOs. The MCMC has considered these proposed drafting changes and has decided against making any of these proposed drafting changes to the RAO sections in the MSA. In many cases, the MCMC considers that the proposed drafting changes are redundant (for example, as they do not change the effect of the relevant obligations or they relate to the ARD model which the MCMC has determined will be replaced with the RAO model). In other cases, the MCMC considers that the proposed drafting change introduces a substantive change that it considers is not justified (for example, extending the scope of the MSA to facilities or services beyond Facilities and Services in the Access List or introducing provisions that are overly detailed and prescriptive).

14.82 The MCMC thanks TIME for its proposal in respect of pre-registered RAOs in this respect. Under TIME's proposal, Access Providers may register an approved RAO with the MCMC, Access Seekers may accept such RAOs without amendment by notice, and such RAO and notice will be sufficient for registration as an Access Agreement. The MCMC agrees with the intent of this proposal. However, the MCMC is also mindful of the administrative burden that such a process may create and the potential for operators to game or abuse such a process, for example, by submitting multiple or

frequent variations of RAOs for the MCMC to review for pre-registration. The MCMC therefore considers that a specific process for pre-registration is not required. However, where:

(a) the MCMC has registered an Access Agreement based on a RAO without amendment; and

(b) the Access Provider submits a subsequent Access Agreement based on the same RAO without amendment for registration,

the Access Provider may inform the MCMC of that fact in order to assist the MCMC in expediting the registration process for the subsequent Access Agreement.

MCMC views

14.83 While the MCMC considers that the ARD model has been somewhat effective in providing Access Seekers with access to Facilities and Services in the Access List, the MCMC agrees with the majority of operators that the access instrument model should ensure that such access is expeditious and efficient.

14.84 The MCMC confirms its preliminary views and proposes to replace the previous ARD requirements by more prescriptive RAO obligations.

14.85 Having carefully considered operator feedback and having performed an international review of access instrument models, the MCMC considers that the stronger RAO model will provide both Access Seekers and Access Providers with greater certainty on the key terms and conditions of access, while still providing sufficient flexibility to allow for commercial negotiation and differentiated downstream offerings, and will best promote the national policy objectives for the communications and multimedia industry.

14.86 The MSA will include the new RAO obligations discussed above.

15 Reporting and information disclosure

Introduction

15.1 In the PI Paper, the MCMC noted that it considers it necessary to include additional reporting and information disclosure obligations to encourage compliance and transparency and thereby enable more effective monitoring of compliance and resolution of issues by the MCMC. The MCMC considers this will enhance the effectiveness of the access regime.

15.2 In particular, the MCMC considered that the reporting requirements applicable to operators should be strengthened to enable an appropriate degree of oversight, including of matters such as:

(a) any Facilities and Services not included in their RAOs;

(b) key details of any Access Agreements entered into, expired or terminated;

(c) all Facilities and Services supplied;

(d) details of any security required; and

(e) any ongoing negotiations and disputes.

15.3 The MCMC considered that requiring operators to report on such matters on a regular six-monthly basis would allow the MCMC to have appropriate degree of oversight of operators' compliance with the MSA.

15.4 In the PI Paper, the MCMC expressed the preliminary view that the reporting and information disclosure obligations should apply generally to ensure a minimum standard of service across all operators at the wholesale level. This would include certain Service Specific reporting obligations (discussed below in Part E) and information disclosure obligations such as regarding refusals of Access Requests and refused requests for physical co-location.

15.5 The MCMC also welcomed views on further strengthening the process by requiring an independent audit of reports submitted.

Submissions received

Question 8: Do you agree with the MCMC's proposal to introduce new reporting obligations as set out at subsection 5.3.12 of the Draft MSA? Why or why not? If not, please specify what change you consider is required and explain why.

15.6 Astro, Ceres and Sacofa agree with the new reporting obligations as set out in subsection 5.3.12 of the Draft MSA.

15.7 Altel and Net2One believe that the various reporting obligations available currently should be sufficient for the MCMC to monitor and conduct industry analysis. The introduction of additional reporting obligations in subsection 5.3.12 of the Draft MSA imposes unnecessary regulatory burdens on the operators. They are confident that the data submitted in fulfilling reporting requirements such as Quality of Service report, License and Spectrum reports, Accounting Separation etc. is sufficient to give the MCMC an insight into operators' status and activities in the market. Instead of reporting requirement, information should only be solicited from operators during instances such as refusal of access request or dispute resolution. They view that the MCMC should move beyond the compliance monitoring role and recognise that effective dispute resolution is increasingly important. Altel pointed out that some information in the reporting obligation such as paragraphs 5.3.12(a) and (b) is already publicly available and there is no reason to include it in the reporting obligation. Also, information listed in paragraphs 5.3.12 (c) to (f) are already provided during the application for registration of Access Agreement.

15.8 The APCC welcomes the MCMC's emphasis on transparency and submits that the MCMC has a duty to ensure sufficient information is available at all times to enable it to confirm compliance with MSA and to take appropriate action in the event of non-compliance. However, the APCC acknowledged

that reporting comes at a cost as it requires activity by the reporting Access Seeker or Access Provider.

15.9 Astro is hoping that the new reporting requirements will result in closer monitoring and appropriate intervention by the MCMC.

15.10 Celcom believes that the detailed reporting obligations should only be applied on the dominant operators as there are already evidences of conduct of a dominant operator in wholesale high speed broadband that prevents entry in the downstream fixed broadband market. Hence, monitoring RAO is really important. Celcom cited examples of IMDA in Singapore that applies this principle to NGNBN and Ofcom in UK that applies it to BT Openreach.

15.11 Ceres applauds the MCMC's move to introduce new reporting obligations and believes that it will provide the MCMC with a better overview of the compliance of access negotiation in the industry. Information such as security requirements and refusal of access request will prevent Access Providers from being irrational when assessing access requests. This will also prevent unnecessary delay in an access negotiation. Ceres submitted that from its experience, the acceptance notice and the formal discussion of an access request always started way after the mentioned timelines set out in the MSA.

15.12 Digi views the MCMC's inclusion of a reporting obligation as significantly burdensome due to the elaborate reporting required and bi-yearly reporting. Digi suggested reporting on a yearly basis and for the report to include only a list of Facilities and Services in the RAO, names and details of the party that each Facility and Service which has been supplied under the Access Agreement and each Access Agreement that has expired or terminated since previous reporting.

15.13 edotco believes that the introduction of additional reporting obligations is drawing away from prevalent international best practices. edotco noted that reporting obligation will impose undue burden on licensees and would result in significant administrative compliance costs. edotco currently has invested in an asset life management platform which is central to the smooth and efficient operations. The proposed reporting obligation will require customization of this platform, which is a major undertaking in terms of time, effort and capital expenditures. edotco believes that the MCMC should already have sufficient degree of oversight under the MSA, given that all Access Agreements are required to be registered with the MCMC under section 150 of the CMA. Therefore, the MCMC should only impose reporting obligations on an operator when there have been complaints made.

15.14 Fiberail submits that the reporting obligations place heavier burden on Access Providers as the information highlighted in paragraphs 5.3.12(a) to (m) is currently undertaken by Access Providers. Instead, the information required can be provided to the MCMC on a need basis instead of submitting repetitively twice each year. Since Fiberail only provides three services in the Access List, they do not anticipate many changes.

15.15 Maxis agrees to the reporting obligations proposed by the MCMC under subsection 5.3.12 but proposed that these obligations apply to the incumbent Access Provider for HSBB Network Services. This will assist the MCMC in implementing the appropriate degree of targeted regulation to specific Access Provider only and not overly regulate other Access Providers. Similarly, the audit of reports submitted should only apply to the incumbent Access Provider for HSBB Network Services.

15.16 MYTV disagrees with reporting obligations as it believes that the existing reporting tools are adequate in providing the MCMC with an appropriate degree of oversight. The new reporting obligations imposes unnecessary regulatory burden on the operators. MYTV highlighted that some information in the reporting obligation such as paragraphs 5.3.12(a) and (b) is already publicly available and there is no reason to include it in the reporting obligation. Also, information listed in paragraphs 5.3.12(c) to (f) are already provided during the application for registration of Access Agreement.

15.17 PPIT submitted that the term 'Facility' and 'Service' used in subsection 5.3.12 are not defined in the Draft MSA and they believe that these definitions should be included in the definitions of 'Facilities' and 'Services'. In addition, PPIT is of the view that the reporting period of 6 months for updates on the RAO and Access Agreements may be too frequent and suggested annual reporting instead.

15.18 TM views that information disclosure obligations (as in subsection 5.3 and various subsections under specific service obligations) are being imposed unnecessarily on Access Providers with no clear objectives. These obligations will require extra resources, are time consuming and come with a huge cost to implement, which outweighs the benefit of such obligations. TM pointed out that Chapter 5 of Part V in the CMA already provides for the MCMC to gather information. Some of the proposed information is not readily available such as information associated with ducts and manhole. Besides, some of the information including HSBB and Duct and Manhole is already provided to the MCMC for the purpose of statistical and data population for National Network Database. The frequencies to report twice a year is also onerous to the industry players and it proposes that if the information is required to address regulatory matters such as dispute or conduct, it should be done on a case by case basis. The information contained in the report is unnecessary as it is very premature for the MCMC to intervene and the MCMC should only intervene as and when there is a dispute. TM believes that it is a waste of regulatory resource for the MCMC to micro manage this matter. Further, it provides comments as follows:

(a) On paragraph 5.3.12(a), the MCMC can obtain the necessary information from TM's website;

(b) On paragraph 5.3.12(b), if it is not regulated, it should not be part of the MSA;

(c) On paragraphs 5.3.12(c) and (d), the MCMC already has access to the information given that signed Access Agreements are lodged with the MCMC;

(d) On paragraph 5.3.12(e), the Access Seeker would only be able to terminate the Access Agreement upon getting approval from the MCMC;

(e) On paragraph 5.3.12(f), TM does not understand the rationale for this request and submitted that in most cases, the Access Provider is also an Access Seeker and when risk exposure is balanced, security sum will be waived;

(f) On paragraphs 5.3.12(g), (h) and (k), TM does not see the value of this information other than increasing workload;

(g) On paragraphs 5.3.12(i) and (j), TM consider this requirement as overly prescriptive and interventionist. TM is also concerned with the availability of information and will not be able to comply with the reporting obligations. This is due to age of the assets, manual systems etc. While TM's information is getting better on records such as Access Seeker tagging, duct/sub-duct identification, availability of ducts and sub-ducts and utilization and information on manhole and ducts may not be tied to any addresses/areas; and

(h) On paragraph 5.3.12(l), TM does not keep records for infrastructure inventory and would require survey for each request by Access Seeker.

15.19 TIME does not agree with the MCMC's proposal to introduce new reporting obligations as set out at subsection 5.3.12 of the Draft MSA as most of the information required to be reported to the MCMC are already made available to the MCMC via Access Agreement or published on operators' website. With the new periodical reporting, the industry will incur additional manpower costs in order to monitor and do the required reporting in addition to the current periodical reporting with regards to other compliance matters, i.e. Mandatory Standard on QoS, USP implementation status etc., that need to be submitted to the MCMC.

15.20 webe stated that the reporting requirement is too onerous and unnecessary. It believes that the progress updates should only come in when there is failure. Imposing periodic reporting is not necessary and impractical. If need be, the current registration form can be amended to include the time taken to negotiate, if it exceeds the prescribed timeframe. Imposing a requirement for the report to be endorsed by an external auditor is really unwarranted.

15.21 U Mobile does not agree with the reporting obligations proposed by the MCMC to keep track of the status of access negotiations and to ensure timely intervention. However, U Mobile urges the MCMC to ensure that the reporting obligations does not become burdensome to licensees. It proposed that annual reporting, indicating status and number of access request being negotiated, closed or refused should be sufficient.

15.22 YTL is agreeable to the proposed new reporting obligations but submitted that the reporting should be just once a year, either on 1st April or 1st October. The requirements in subsection 5.3.6 enables the MCMC to be aware of the recent changes in the RAO as well as promotes operator accountability and compliance.

Question 9: Do you agree with the MCMC's proposal to amend the information disclosure obligations as set out at subsection 5.3.7 of the Draft MSA? Why or why not? If not, please specify what change you consider is required and explain why.

15.23 Altel, the APCC, Astro, Celcom, MYTV, Net2One and Sacofa are agreeable to the MCMC's proposal.

15.24 The APCC, however, noted that under the MSA, the Access Seeker will be relying on the Access Provider to provide additional information on a timely and complete basis. Therefore, it should not be open to Access Provider to provide incomplete information after the 10-Business Day period. The APCC believe that effective sanctions should be available, which is currently missing in the MSA.

15.25 Astro believes that Access Seekers must be given the ability to pursue all required information to facilitate access.

15.26 Digi reiterates its request for RAO to apply only for NGN or transmission related services. Digi recommended that subsection 5.3.7 to be applied specific to Service Specific Obligations in subsections 6.4, 6.5, 6.6, 6.7, 6.10, 6.11 and 6.12 only. For mobile access, Digi opines that any supplementary information would mostly be non-standard information and there is more complexity in providing such information. Digi cited MVNO Access as an example where there are many different business models that have different commercial and technical set-up and requires customisation. As such, Digi views that it is difficult to establish such certainty within the limited timeframe of ten (10) Business Days. Digi proposed a longer timeframe of 60 to 90 Business Days for MVNO Access.

15.27 In relation to Mobile Access and specific to paragraph 5.3.6(b), Digi has a strong concern on the inclusion of the term "discount for inferior service level or surcharge for enhanced service level'' as it is technically complicated to determine the possible scenario that will lead to inferior service level.

15.28 edotco disagrees with the amendments to subsection 5.3.7, as the scope of the information to be provided to the Access Seeker based on "any supplementary details" is drafted too broadly. This approach has the potential to violate the protection of sensitive information. As such, it proposed that the MCMC state express and unequivocal definitions in the MSA. In addition, edotco also notes that the timeframe of 10 Business Days is too short to achieve compliance and proposed 15 days instead.

15.29 Fiberail stated that the information cannot be provided to Access Seeker and can only share such critical information with the MCMC.

15.30 Maxis agrees with the MCMC's proposal to amend the information disclosure obligations as set out in subsection 5.3.7 with a minor amendment.

15.31 TM is concerned with the extensive information disclosure obligations particularly in relation to commercial and other sensitive/confidential terms required to be provided to Access Seekers without any confidentiality obligations in place. They sought clarification on how the MCMC intends to address and protect the confidential information of Access Providers. In addition, TM is also concerned with the timeline due to the complexity of the information requested.

15.32 In general, TM does not have a strong objection to disclose the necessary information provided that it is required to facilitate access requests. However, TM is not comfortable with the requirements to provide supplementary information (e.g. paragraph 5.3.7(e)) and the level of detail as mentioned by the MCMC in various subsections unless the supplementary information required is critical for gaining access. TM is of the view that the existing provision in subsection 5.3.6 in the MSA 2009 is adequate. In short, TM believes that information disclosure should be upon request and on a needs basis only.

15.33 TIME disagrees with the MCMC's proposal as TIME is of the view that the RAO should be kept simple and not be as comprehensive as an Access Agreement as this will defeat the whole purpose of having a RAO in place. The Access Seeker should be able to get all the necessary information from the "Operation and Maintenance Manual" after they have agreed to accept the RAO. These processes and procedures are currently being implemented in other jurisdictions i.e. Singapore, Australia, UK and India.

15.34 webe opines that the 10-day timeframe is too short as it covers extensive information. Often, plans are developed based on what each Access Provider has to offer and this results in extensive request for information from Access Seeker that requires time to produce but ended up not being used. Information that is a trade secret cannot be disclosed indiscriminately. The proposed paragraph 5.3.7(d) touches upon internal operational process that are P&C and disclosing such information to third party would be of concern to webe.

15.35 U Mobile agrees but only where the additional information is relevant to the provision and acceptance of that particular service.

15.36 YTL agrees with the timeline of 10 Business Days for information disclosure for most of the information except for information on charges. According to YTL, this is because disclosure of information on charges may require more than 10 days, probably up to 20 days due to the internal procedures involved.

Question 10: Do you agree the MCMC's proposed general notification obligations at subsections 5.4.1, 5.4.19, 5.9.4 and 5.9.9 of the Draft MSA are necessary and proportionate? Why or why not? If not, please explain why and specify what change you consider is required.

15.37 Altel, Digi, Fiberail, MYTV, Net2One and Sacofa are agreeable to the MCMC's proposed general obligations in subsection 5.4.1, 5.4.19, 5.9.4 and 5.9.9.

15.38 Altel and Net2One suggested that paragraph 5.9.4(c) be extended to stipulate an obligation on an Access Provider to submit a report detailing information with regard to the space constraints and notify the MCMC of the status of its space availability at the location where an Access Provider claims that there is lack of space.

15.39 With one exception, the APCC supports the proposed general notification obligations. With regard to subsection 5.4.1, the APCC does not believe that it is necessary for both Access Seekers and Access Providers to report the commencement of access negotiations to the MCMC. Instead, the obligation to report should solely be that of the Access Provider. The APCC is satisfied with the proposed timeframes in the references sections, including the shortened time of 60 days for negotiation where there is already a commercial agreement in place.

15.40 Astro believes that these are proportionate as this reporting relates to areas that have been highlighted to the MCMC as areas that have stymied access. Astro highlighted that failure to negotiate, citing excuses such as lack of space are issues faced by many Operators seeking access. To address issues such as this, Astro believes that it is important for the MCMC to receive immediate reporting of order rejections during the forecasting and ordering stages.

15.41 Astro proposed inclusion of new paragraphs under subsection 5.3.12 to include evidence that demonstrates the application of the new equivalence of input standard, order rejection rates and characteristics and pricing details of all retail prices that comprise an element of wholesale broadband access.

15.42 On timing of negotiation obligations in subsection 5.4.1 of the Draft MSA, Astro requested the MCMC to provide further clarify the timelines to remove any ambiguity. Astro also proposed the timeframe for conclusion of an Access Agreement should be reduced to 60 days from the current 120 days and if there is an existing commercial agreement between the Operators, the timeframe of 30 days is sufficient.

15.43 On paragraph 5.4.11(a), Astro sought clarification on what constitutes 'original supply of Access to Facilities and Services' and it also believes that the term compensation is misleading and should be deleted.

15.44 On subsection 5.4.15, Astro proposed inclusion of new clauses to further enhance the subsection.

15.45 Finally, Astro also proposed enhancements to subsections 5.4.16, 5.4.19, 5.9.4 and 5.9.9.

15.46 Celcom agrees to the MCMC's proposed notification obligations because they provide transparency in the event Access Provider refuses access. However, these obligations should only apply to dominant operators.

15.47 edotco disagrees with the proposed amendments to subsections 5.3.12, 5.4.1(a), 5.4.7, 5.4.19, 5.9.4 and 5.9.9 of the Draft MSA as the general notification obligations are both unnecessary and would impose significant compliance costs on all operators. In particular, edotco views that amendments to subsections 5.9.4 and 5.9.9 of the Draft MSA are not necessary and instead, the operators should use dispute resolution procedures available in the existing MSA. If they fail to avail themselves to these mechanisms, the MCMC should study why this is the case and take steps to promote awareness. edotco further noted that the IMDA of Singapore does not impose any reporting obligations for interconnection between Non-dominant operators and reporting obligations only apply to Dominant Licensees.

15.48 edotco requested that the obligation imposed under subsection 5.4.1 be removed. If the provision is not removed, the MCMC should add clarity on the 120 days, i.e. whether this is only Business Days or if this timeline is applicable for differing projects. They noted that Greenfield projects would generally take longer than 120 days.

15.49 Maxis agreed with subsections 5.4.19, 5.9.4 and 5.9.9 but proposed deletion of paragraph 5.4.1(a) (regarding notification to the MCMC of when Access Agreement negotiations begin) and a minor amendment to paragraph 5.4.1(b) to provide some flexibility to mutually agree on the timeframe.

15.50 TM does not agree to the additional reporting obligations imposed on Access Providers. TM considers that subsections 5.4.1, 5.4.7, 5.4.19, 5.9.4 and 5.9.9 should not be introduced as they are impractical and administratively burdensome. TM believes that these operational matters should be left to the operators to address unless there is a dispute by an Access Seeker.

15.51 TM has grave concerns and does not agree with MCMC's proposal to shorten the negotiation period from 120 days to 60 days. Given the increase in the number of operators and Access Seekers in the market, it is impossible to complete negotiation periods within a shorter timeframe. At any time, larger Access Providers negotiate with at least 10 Access Seekers concurrently and it is impractical to require negotiations to be completed within such a shorter period. From past experience, the negotiation period is likely to extend beyond 120 days. Therefore, TM would like to propose to maintain the negotiation period of 120 days.

15.52 TIME disagrees with the MCMC’s proposed general notifications obligations as these are not in accordance with the current practice of the industry. TIME is of the opinion that, with the improved relationship between all the industry players, it is timely for the MCMC to promote self-regulation.

15.53 webe commented that reporting at every step of negotiation between parties will be too cumbersome and is unnecessary. It is totally against the principle of light handed regulation and self-regulation.

15.54 U Mobile is agreeable that a status report is submitted once a year in a standard format and contain updates on the status of each service offered

in the RAO, including physical co-location, space available etc., where applicable.

15.55 YTL agrees with the notification obligations but commented that notification should not absolve the Access Provider from its other obligations under subsection 5.4 and POI procedures under subsection 5.9.

Discussion

15.56 The MCMC continues to hold the view that the new reporting and information disclosure obligations will enhance the effectiveness of the access regime by encouraging compliance and transparency and thereby enabling more effective monitoring of compliance and resolution of issues by the MCMC.

Reporting

15.57 While the MCMC notes general support for the new reporting obligations, the MCMC acknowledges there is a particular concern by many operators that the volume of reporting may be too burdensome.

15.58 Several operators have suggested alternatives, for example:

(a) the reporting frequency should be reduced to an annual cycle;

(b) reporting obligations should only be imposed on operators against whom complaints have been made;

(c) reporting obligations should only be imposed on dominant or incumbent operators;

(d) reporting obligations should only be imposed in respect of particular Facilities and Services; and

(e) no reporting obligations should apply, with information disclosure only as requested by the MCMC.

15.59 In the PI Report, the MCMC discussed the importance of the reporting obligations to enhance the effectiveness of the access regime. In addition, the MCMC considers the transparency provided by regular reporting will enable the MCMC to better determine the reasonableness of operator complaints (including, in the absence of a dispute) and to reach a view as to when an investigation may be warranted.

15.60 However, while the MCMC considers the new reporting obligations remain appropriate for inclusion in the MSA, the MCMC is mindful of the administrative burden that the new reporting obligations will place on operators.

15.61 The MCMC therefore considers that a flexible mechanism is required to achieve an appropriate balance. To calibrate the level of reporting with concerns that arise from time to time, the MCMC will amend the MSA to provide that the reporting obligations apply to only a subset of Facilities and Services (described below at section 15.76 of this PI Report), with the ability

to extend the reporting obligations to other Facilities and Services if the MCMC considers it appropriate.

15.62 The MCMC notes that it does not intend to adopt reporting obligations which apply solely to dominant or incumbent Access Providers, as proposed by some submissions, as this form of asymmetric regulation is not permitted in the access regime.

15.63 The MCMC also notes the concern of several operators in respect of certain matters to be reported on.

(a) One operator suggested that the requirement for operators to register Access Agreements should provide the MCMC with a sufficient degree of oversight under the MSA. The MCMC does not consider the requirement for operators to register Access Agreements as a substitute for the new reporting obligations, particularly as many matters to be reported on may not relate to the terms of a registered Access Agreement.

(b) A few operators submitted that information on certain matters that are publicly available (for example, on an operator's website), or otherwise available to the MCMC in other contexts, should not need to be reported on. The MCMC considers that matters submitted for other purposes may not be suitable for the MCMC to rely on for the purpose of overseeing or enforcing the MSA. The new reporting obligations have also been drafted to create consistency in the information to be provided by all operators, irrespective of what information any particular operator may provide in other contexts.

15.64 The MCMC also acknowledges that some Access Agreements may not have an expiry date. The MCMC will amend paragraph 5.3.12(e) of the MSA to provide that Access Providers must report on expired or terminated Access Agreements "if any" to reflect the discussion above.

Information disclosure

15.65 In respect of information disclosure requirements, several operators commented on the difficulty or complexity in compiling and providing certain information and asked for a longer time period to respond to the requests from Access Seekers.

15.66 The MCMC notes that the matters that are the subject of the information disclosure obligation in subsection 5.3.7 of the MSA are matters that an Access Provider can prepare at the same time as the Access Provider prepares its RAO, which is well in advance of receiving an Access Seeker's request. The MCMC therefore considers that a longer time period to respond to an Access Seeker's request is not warranted.

15.67 Some operators also expressed concern over the type of information that an Access Provider would be required to provide in response to an Access Seeker's request. The MCMC considers that the standard of "supplementary", as used in subsection 5.3.7 of the MSA, sufficiently

describes the type of information to be provided and its relationship to the Access Request without being overly prescriptive. The MCMC considers that the standard of information proposed by TM, for example, "critical for gaining access" is too high a standard and, is likely to be more restrictive than the type of information that a vertically-integrated operator provides to its own retail arm.

15.68 The MCMC does not agree with Maxis' proposal to remove the obligation to notify the MCMC of when Access Agreement negotiations begin. The MCMC notes that this obligation does not require operators to notify the MCMC of the entire negotiation schedule or of every meeting, as Maxis argued.

General notification

15.69 The MCMC notes overwhelming support for the general notification obligations and, in fact, notes several submissions requesting for additional or enhanced notification obligations to be adopted.

15.70 The MCMC notes that some submissions under this questions addressed the timeframe for negotiations of an Access Agreement. The MCMC has considered such submissions under section 17 of this PI Report.

Other matters

15.71 The MCMC acknowledges that the regulated timeframes may be impacted by necessary third-party involvement or other matters reasonably outside a party's control—for example, where approval from local or other authority is required. The MCMC determines that, in the case of a timeframe overrun caused by a third party, the Access Provider must notify the MCMC of such timeframe overrun and such third-party involvement, and provide the contact details of such third party, to permit the MCMC to investigate such overruns. This will assist the MCMC in determining whether to grant an extension, and whether it should be subject to any conditions, as described above.

15.72 A number of operators expressed the view that certain notification obligations were impractical or administratively burdensome and therefore should not be introduced. The MCMC is of the view that the notification obligations in question are for the protection of both Access Providers and Access Seekers, as they will better enable the MCMC to reach a view on the reasonableness of any operator's complaints, for example, in the case where negotiations are not completed within the prescribed period or access is refused. The MCMC therefore confirms its preliminary view on these general notification obligations.

15.73 The MCMC confirms the reference to "days" (in lower case) in subsection 5.4.1 of the MSA to mean "calendar days". The term "Business Days" is capitalised and separately defined.

MCMC views

15.74 The MCMC has carefully considered the range of views expressed by operators and considers that, while the new reporting and information disclosure obligations are likely to introduce significant benefits to the industry, there are good reasons for making some changes to those obligations.

15.75 The MCMC is mindful of balancing the benefits of the new reporting obligations against the administrative burden that they will place on operators.

15.76 The MCMC therefore confirms that the new reporting obligations shall apply but only in respect of a subset of Facilities and Services, those being:

(a) HSBB Network Services;

(b) Transmission Services;

(c) Network Co-Location Service;

(d) Duct and Manhole Access;

(e) Digital Terrestrial Broadcasting Multiplexing Service;

(f) MVNO Access; and

(g) such other Facilities and Services that the MCMC may nominate from time to time.

15.77 The MCMC will also introduce a new section 4.5 to address necessary third-party involvement causing or contributing to non-compliance of a regulated timeframe by an Access Provider.

15.78 The MCMC confirms its preliminary views on the general notification obligations at subsections 5.4.1, 5.4.19, 5.9.4 and 5.9.9 of the MSA.

16 Security, insurance requirements and creditworthiness

Introduction

16.1 In the PI Paper, the MCMC proposed amendments to the security and credit provisions under the MSA that seek to strike a balance between the needs of both Access Providers and Access Seekers.

16.2 The proposed amendments are intended to address both:

(a) an Access Provider's need for greater security to limit its exposure to credit risks presented by a particular Access Seeker; and

(b) the ability of an Access Seeker to request access to a Facility or Service without the imposition of an unreasonably high security sum

by an Access Provider (which may be designed to, or have the effect of, denying that Access Seeker's access to a Facility or Service).

16.3 The MCMC did not propose any changes to the insurance requirements in the MSA, but did invite feedback on whether the prescribed comprehensive general liability insurance limit of RM20 million remains appropriate or whether it ought to be adjusted to reflect any changes in commercial practice or otherwise. The MCMC noted that most operators were silent on insurance issues, which the MCMC interpreted as meaning that the industry is relatively satisfied with the insurance requirements in the MSA.

Submissions received

Question 11: Do you agree with the proposed changes to the security and creditworthiness provisions of the current MSA (MSA 2009)? Why or why not? If not, please specify what change you consider is required and explain why.

16.4 MYTV, PPIT and Sacofa agree with the proposed amendments.

16.5 Altel and Net2One submitted issues with the drafting in subsection 5.3.9 of the Draft MSA. They submitted that terms such as "commercially reasonable" and "minimum period" are very broad and ambiguous and would allow an Access Provider to set unreasonably high security requirements.

16.6 With regards to insurance requirements, Altel submitted that to their knowledge, there are currently no occurrence of claims that would justify an adjustment of comprehensive general insurance limit of RM20 million. Therefore, Altel recommended to retain the current insurance limit.

16.7 Altel and Net2One believe that the decision to change the comprehensive general liability insurance limit must not be based on commercial practice alone. It should also be based on factors such as occurrence of losses incurred by operators and the magnitude of risk involved.

16.8 The APCC agreed with the proposed changes to the security and creditworthiness provisions. However, it noted that the MCMC has introduced a "reasonableness" test and proposed that the Access Provider be required to have regard to certain information about the Access Seeker such as length of incorporation, credit rating by reputable rating agency, history of trading with Access Seeker and history of defaults. With regard to insurance provision of RM20 million, the APCC considers it to be excessive and proposed that it be reduced to RM7.5 million.

16.9 Astro supports the amendments to the Security requirements in subsection 5.3.9 and the associated amendments to subsection 5.3.10. Astro welcomes prohibition against security requirements that have the effect of denying or delaying access to Facilities and Services. Astro stated that the current cap on insurance of RM20 million is high and proposed lowering the cap which will lower new entrants' costs.

16.10 Celcom agrees that security requirements should be flexible. Currently, security is not required for operators with satisfactory creditworthiness and Celcom submitted that discrimination should not arise because each Access Seeker has different creditworthiness.

16.11 Ceres agreed with the MCMC's proposal to only impose a security requirement when the potential Access Seeker presents a credit risk. However, Ceres opined that the phrase credit risk is too subjective and could be abused by Access Providers. Therefore, Ceres requested the MCMC to provide guidelines or define the phrase 'credit risk'. Ceres also suggested that the MCMC include a mechanism to calculate security sum to prevent any irrational request in security sum. Ceres cited an example where the Access Provider had requested a pre-fixed security sum prior to entering into any pricing discussion or order forecasting.

16.12 On subsection 5.3.9, Digi submitted that the current security requirement which is determined over a 90-day period would constitute a reasonable commercial estimate, which is in line with Digi's billing practice. Therefore, a security/BG taking into account a 90 day or 3-month traffic forecast or utilisation whichever is higher serves to protect any default payment over only 1-month payment.

16.13 edotco agrees with the proposed amendments to the security and creditworthiness requirements. However, under subsection 5.3.9 which applies the test where Access Provider "acting reasonably" determines that the Access Seeker presents credit risk fails to take into account the newly formed Access Seekers. This introduces uncertainty for newly formed Access Seekers, as they would have little to no credit history for the Access Provider acting reasonably to assess its creditworthiness.

16.14 Fiberail submits that the proposed changes are acceptable and stated that general liability insurance limit of RM20 million ought to be maintained.

16.15 Maxis agrees with the proposed changes to the security and creditworthiness provision of MSA 2009. However, it proposed an inclusion of an additional paragraph under subsection 5.3.9 to provide flexibility to commercially agree on a reasonable estimate for Facilities and/or Services that do not have a minimum period such as O&T Service and MVNO Access. Maxis also submitted that the estimation of security amount should also include the existing Facilities and/or Services provided by the Access Provider to the Access Seeker. Finally, Maxis reiterated the importance that Access Seeker be sufficiently creditworthy in the communications and multimedia industry which is CAPEX intensive.

16.16 TM is strongly opposed to the MCMC's proposed changes and submitted that the current security mechanisms are both measurable and transparent. From TM's perspective, the MCMC needs to balance the interest of both parties. The proposed amendment that security sum be "a commercially reasonable estimate" introduces uncertainty as each party will have their own view as to what is a reasonable estimate. This will then become an issue of contention between the parties which will further delay

negotiations. In addition, the proposal that security sum is only imposed when there is a credit risk introduces further uncertainty.

16.17 TM submitted that the security sum is the forecasted amount for 3 months' usage which will be retained by the Access Provider for a certain period. Given that the Access Provider is, in almost all of the cases, also an Access Seeker, the Security Sum will be mutually agreed to be waived when the risk exposure is almost in balance.

16.18 TM's Credit Management Policy provides that a credit assessment must be carried out on all TM's customers on a non-discriminatory basis using TM's internal system. Assessments and calculations comprise both qualitative and qualitative components. In addition, the policy also requires TM to collect collateral (Bank Guarantees and Deposits) which are calculated based on TM's internal system. The collateral requirements depend on the customer category and the credit rating of the customer in question

16.19 In relation to subsection 5.3.10, TM is of the view that the Comprehensive General Liability Insurance limit of RM20 million should remain and is appropriate given the risk exposure as almost all TM's services are listed in the Access List including the newly listed services such as Ducts and Manhole Service and HSBB Network Service.

16.20 TIME agrees with the proposed changes to the security and creditworthiness provisions of MSA 2009 because it is more reasonable and provide more flexibility to both parties to negotiate and determine the appropriate amount of security sum to be imposed, or not, based on creditworthiness and present credit risk of the Access Seeker.

16.21 U Mobile submits that a commercially reasonable estimate would be similar to the 90-day limit if the minimum period of 90 days is used. This is a preferred way as Access Seeker's creditworthiness may be put in jeopardy after the signing of a RAO.

16.22 webe suggested that a certain formula be set to determine security deposit to avoid unprincipled amount and additional burden to the Access Seeker. webe is agreeable to the existing arrangement whereby the amount of security sum is based on average of 3 months' invoices but proposed that a bank guarantee is pledged for a limited timeframe to allow Access Seeker to demonstrate their credibility.

16.23 YTL agrees to the changes to security and creditworthiness provisions and where required, should be based on reasonable estimate such as based on traffic, average of recurrent charges, set up fee within the specified time period.

Discussion

16.24 The MCMC acknowledges that the security requirements in subsection 5.3.9 continue to permit a degree of flexibility which could be misused by an Access Provider. However, these requirements set a standard which is capable of being objectively determined based on market reality.

16.25 The MCMC agrees with Maxis that subsection 5.3.9 should include some provision where there is no minimum period defined in an Access Agreement.

MCMC views

16.26 The MCMC proposes that where an Access Agreement does not include a minimum term for a facility or service, any security must be calculated by reference to a commercially reasonable estimate of the value of the Facility or Service over a single billing period for that Facility or Service.

17 Negotiation obligations

Introduction

17.1 The negotiation obligations in subsection 5.4 of the MSA are intended to broadly regulate the key elements of the negotiation process where an Access Seeker requests access to Facilities or Services offered by an Access Provider.

17.2 In the PI Paper, the MCMC summarised, at a high level, the previous negotiation regime and the fast-track application and agreement process, which was designed to allow an Access Seeker to request quick access under a fast-track agreement made in accordance with the Access Provider's ARD process.

17.3 The key changes to subsection 5.4 of the MSA proposed by the MCMC relate to the proposed move to a RAO model. The detailed changes to the negotiation regime proposed by the MCMC that would be required to implement a RAO model include:[2]

(a) timing: additional notice requirements to allow for greater transparency and passive monitoring by the MCMC to ensure both parties work together to complete negotiations within a reasonable timeframe;

(b) forecasting and other retail information:

(i) making forecasting a requirement for ordering and provisioning, but not as a prerequisite for entering into an Access Agreement; and

(ii) requiring an Access Seeker to provide "preliminary information regarding the scale and scope of Facilities and Services that the Access Seeker expects to acquire from the Access Provider pursuant to the Access Request", to support the objective of ensuring that an Access Request only includes the minimum information necessary to supply a service at the

[2] The broad reasons for moving to a RAO model are discussed in sections 6 and 14 above. This section focuses on the detailed changes to the negotiation regime that would be required to implement a RAO model.

wholesale level without including details that may lead to a competitive disadvantage downstream.

(c) access request and response: adopting a RAO model, which would amend the negotiation process in subsection 5.4 as follows:

(i) an Access Seeker makes an Access Request, which includes notice of whether the Access Seeker would like to:

(A) accept immediate access on the terms set out in a RAO;

(B) begin negotiation of an Access Agreement by amending an Access Provider's RAO; or

(C) begin negotiation of an Access Agreement on alternative terms that are different to those offered in a RAO;

(ii) the Access Provider then notifies the Access Seeker that it:

(A) is willing to provide access in accordance with a RAO (as requested);

(B) is willing to proceed to negotiate an Access Agreement based on amendments to its RAO or on alternative terms (as requested); or

(C) rejects the Access Request and provides reasons for the rejection; and

(iii) where agreed by the parties, the Access Provider and Access Seeker commence negotiating an Access Agreement based on amendments to a RAO or on alternative terms (as applicable).

(d) fast-track application and agreement: subject to the necessary security being provided, requiring the parties to agree on a fast-track agreement "on the terms of the Access Provider's published RAO", which would give Access Seekers the option to obtain immediate access if they considered the terms and conditions in a RAO are reasonable.

Submissions received

Question 12: Under paragraph 5.4.5(b)i. of the Draft MSA, is the 4-month period to renegotiate a subsequent agreement still appropriate and what are the typical commercial practices for renegotiating an Access Agreement?

17.4 The APCC views the 4-month period to renegotiate a subsequent agreement as too short and proposes 6 months instead.

17.5 Astro is of the view that this provision is not necessary. Based on other jurisdictions, Astro believes that the main agreement should be indefinite until terminated.

17.6 Celcom, Digi and Fiberail agree with the 4-month period proposed under paragraph 5.4.5(b)i. in the Draft MSA.

17.7 edotco disagrees with the 4-month period to renegotiate a subsequent agreement and proposed 6 months instead as this extended timeline will enable edotco to recalibrate its pricing for each of the towers that an Access Seeker is using.

17.8 Maxis stated that all their Access Agreements executed with other operators are on perpetuity basis and they have not come across any situation whereby the agreement will expire or terminate in 4 months. However, they believe that the existing timeline in paragraph 5.4.5(b) is still appropriate.

17.9 PPIT opined that 4-month period may be sufficient if no additional terms are involved but may not be so if it involves negotiations of major terms.

17.10 Sacofa proposed not to include a timeframe as parties can negotiate earlier before expiry of the agreement and some agreements have stated timeline for renegotiation.

17.11 TM is of the view that the current timeframe is appropriate and should continue to apply.

17.12 TIME is of the view that the timeline given is not appropriate as in practice, it usually takes between 6 to 12 months to renegotiate before both parties could agree to conclude the definitive Access Agreement.

17.13 webe highlighted that currently the Access Agreements between parties are mostly bilateral and do not have expiry dates. All subsequent amendments are resulting from changes in regulations. In addition, licence condition also mandates interconnection and as such, there is no need to state expiry date.

17.14 U Mobile proposed to maintain the 120 days with the option to seek additional extension.

17.15 YTL commented that renegotiation usually happens when new facilities and services are offered by Access Provider or subjected to standard access obligations due to inclusion in the Access List. In such scenario, a new agreement may be required to avoid the Access Provider from denying access to these facilities and services. According to YTL, addition or deletion in the Access List involves shorter negotiation period as it merely requires updating the Access Agreement. However, it will likely take longer to conclude negotiation for changes which have yet to be included in the Access List or RAO. For these changes, 120 days is acceptable.

Question 13: Are there any particular problems with including the proposed RAO negotiation process under subsection 5.4 of the Draft MSA?

17.16 MYTV and Sacofa do not have any issues with the proposed RAO negotiation process under subsection 5.4 of the Draft MSA.

17.17 The APCC does not perceive any problem with including the proposed RAO negotiation process under subsection 5.4 but suggested a shorter

negotiation period under subsection 5.4.1 if Access Seeker is prepared to accept RAO.

17.18 Astro submitted that there is still use of broad language in the Draft MSA that gives an Access Provider the ability to deny access.

17.19 Celcom agrees provided that the RAO is only imposed on dominant operators.

17.20 In relation to timing under subsection 5.4.1, Digi noted that the 120-day period should remain and agrees with the MCMC's proposed amendment. Digi feels that there is no basis for a shorter timeframe if there is already a commercial agreement as the current supply conditions in commercial agreement may vary due to the evolving nature of the Mobile Access technology. Digi is agreeable with the MCMC's consideration that the option to seek for extension if there are valid reasons for any delays in negotiation to be granted under paragraph 5.4.1(d).

17.21 edotco is of the opinion that the MCMC's proposed amendments are too restrictive and unduly onerous on the operators in the market.

17.22 Fiberail views that some terms introduced are rather cumbersome for Access Providers as they are subjected to overly prescriptive terms and conditions. Under subsection 5.4.1, Fiberail views that the 120 days is suitable, but to apply a shorter timeframe if there is an existing commercial agreement is also acceptable.

17.23 PPIT noted that although the RAO is intended that "an Access Seeker would be able to request access on full terms set out in the RAO", in reality there will likely be additional information required as stated in subsection 5.3.7.

17.24 Apart from its feedback in Question 10, TM raised a few other concerns. By virtue that the MCMC made provisions for negotiations when at the same time the MCMC expect that RAO is adopted as an Agreement, this clearly indicates that the MCMC has anticipated that the RAO would not be accepted as Access Agreement and Access Seeker would prefer to negotiate terms and conditions in the Access Agreement. (Also see TM's response to Question 6 and 7). This is the reason why RAOs will become an academic exercise which will cause unnecessary burden to the Access Provider and the MCMC. Hence, TM wishes to recommend that the ARD, which has a good track record and has served the industry efficiently for the past years, be maintained.

17.25 TM is of the view that the current negotiation process should be retained in accordance with the ARD which has been well accepted by parties. The MCMC has not provided data, statistics and other compelling information to justify the need for a review of the current process. From its past experience, all Access Seekers would request to negotiate the Access Agreement, hence it would be a duplication of work for parties to draft and negotiate RAO and Access Agreement. TM considers that, as all major operators are both Access Providers and Access Seekers, it doubts that the RAO model will efficiently work as expected by the MCMC as it is very

unlikely that both parties can adopt a single Access Provider's RAO. This will lead to an increase of cost and additional resources, be time consuming and would create confusion. In that regard, TM proposed wordings to paragraph 5.4.6(c) to reflect its position.

17.26 TIME is of the opinion that the negotiation process in subsection 5.4 of the Draft MSA is a mixture/hybrid of processes between RAO and ARD which will create confusion to the Access Provider and Access Seeker.

17.27 webe has no issue having the negotiation placed under subsection 5.4 but suggested to leave it to negotiating parties to negotiate. The indicative timeframe of 120 days should remain as 60 days is too short.

17.28 U Mobile stated that with regards to section 16.9 of the PI Paper on the provision of information that has already been provided in a commercial agreement, Access Seeker should provide the relevant information where necessary to ensure consistency and accuracy.

17.29 YTL does not foresee any problems yet, as the process seems reasonable, from notification to the MCMC prior to negotiation to keeping the MCMC in the loop and allowing fast track application via acceptance of RAO. However, YTL highlighted that paragraph 5.4.11(d) on the grounds for refusal due to national interest should be defined further i.e. defining the scope of national interest.

Question 14: Are there any improvements that can be made to the proposed RAO negotiation process under subsection 5.4 of the Draft MSA (e.g. to make it faster, to account for practical difficulties that may arise in the finalisation of an Access Agreement, etc.)?

17.30 PPIT and Sacofa did not have any suggestions for improvements on the proposed RAO.

17.31 Astro urged the MCMC to reduce the negotiation period from 120 days to 60 days and 30 days where there is already a commercial agreement in place. The criteria for fast track procedure is not clear.

17.32 Celcom proposed that negotiation is implemented first to gauge its effectiveness.

17.33 edotco submits that the ability to accept an Access Seeker's request on the terms of the ARD has to reflect the potential timing delays caused by obtaining state authority approvals. It noted that the MCMC has recognised the lack of homogeneity and has proposed a range of indicative delivery times that would apply as New Service Specific Obligations. edotco requested the MCMC to apply the same reasoning to allow for flexibility of negotiation process. They proposed the removal of negotiation timeframe to allow both parties to negotiate commercially, failing which the negotiation timeframes are amended to distinguish between the types of sites offered.

17.34 Maxis believes that the RAO should only be applicable to the incumbent Access Provider for HSBB Network Services. For other Access Providers,

Maxis proposed to retain the existing ARD model as it has proven to be effective to facilitate access negotiations. Maxis proposed changes to subsection 5.4.6 and proposed reinstating the forecast capacity information to be provided by the Access Seeker to the Access Provider during the Access Request process as this information is needed by the Access Provider to study and evaluate whether the forecasted capacity can be fulfilled. Maxis also submitted that any misuse of forecast capacity information should be covered under subsection 5.4.16 (Non-permitted information) and subsection 5.3.8 (Confidentiality Agreement). In addition, Maxis also proposed some changes to paragraph 5.4.15(b) and under paragraph 5.4.20(b)ii., Maxis proposed to change the timeline from 5 to 10 Business Days.

17.35 Though PPIT did not have suggestions for improvement, their main challenge in negotiating the Access Agreement is in terms of volume and resource constraints.

17.36 TM considers that the current negotiation process relating to ARD and Access Agreement is working well and the timeframes are practical and achievable. In fact, TM is unclear about the alleged issues faced by Access Seekers and what they consider as a reasonable negotiation period. It wishes to highlight that the "perceived" delay as alleged by Access Seekers could also be contributed by the Access Seekers' failure to provide the required information. TM highlighted that the industry has reached a maturity stage and very limited new entrants enter into the market. At this stage, where an Access Provider is also an Access Seeker, it is in both parties' interest to expedite the negotiation and conclude the agreement within a reasonable timeframe.

17.37 TM does not consider that provisions such as notification to the MCMC on response, refusal, etc. is necessary particularly given that the MSA and Access Agreement provides for dispute resolution mechanisms. TM is specifically opposed to the proposed amendments to subsection 5.4.2 which purports to add to the common law about what constitutes good faith negotiations. The common law definition of good faith is already well established and the new additions appear simplistic without taking into consideration the applicable context.

17.38 TIME proposed that the process should follow other jurisdictions where the Access Provider should provide and publish a simple RAO which only comprises Head Terms, Product Catalogue (comprising Product Descriptions and Service Descriptions, Product Technical Specifications, Service Levels Schedule, Price List and Fair Use Policy), Operations and Maintenance Manual and Credit Policy. The Access Seeker could accept the RAO and sign an acceptance letter, which together with the RAO forms an Access Agreement or they could submit a request to negotiate on the "Operations and Maintenance Manual" to suit their requirement.

17.39 webe expressed concern about the proposed timeline for negotiating Access Agreements and recommended that both parties are given flexibility on timing based on mutual agreement. Only in cases where one party is not

agreeable to an extension of time and there is suspicion that delay is intentional that it reports to the regulator.

17.40 U Mobile commented that the service description should be detailed and consistent with the Access List. Previously there has been disagreement on the nature of services such as Transmission and HSBB Services. A clear description will ensure faster negotiations. In this regards, detailed information in RAO is desirable but it should apply to dominant operators only.

17.41 YTL submitted that the practical difficulties on imposing security sum has been well addressed in the proposed subsection 5.3.9.

Question 15: Should the parties be required to only negotiate the terms and conditions under a RAO rather than having an option to request negotiation on totally different terms? (If the answer is "yes", please explain your concerns with allowing operators to negotiate on alternative terms.)

17.42 Altel and Net2One are of the view that parties should be given an option to request negotiation on totally different terms.

17.43 The APCC submitted that parties should not be required to negotiate terms only under a RAO and it supports the provisions under paragraph 5.4.7(b) that makes provisions for the parties to negotiate on alternative terms.

17.44 Astro doesn't agree that parties should be required to only negotiate the terms and conditions under a RAO rather than having an option to request negotiation on totally different terms. Astro opined that non-vertically integrated Access Providers have less incentive to introduce discriminatory terms. As such, there should be enough flexibility within the access regime for parties who are incentivised to conclude an agreement to do so on terms that they are able to secure.

17.45 Celcom feels that parties should be required to only negotiate terms and conditions under a RAO because it is monitored by the MCMC.

17.46 edotco agrees with the MCMC's position that parties should be given freedom to negotiate Access Agreements on entirely new terms. They noted that in Singapore, RIO is only one option as the requesting licensees can also obtain access pursuant to existing Interconnection Agreement or an Individualised Interconnection Agreement.

17.47 Fiberail proposes that parties be allowed to mutually negotiate and agree on any commercially justifiable terms that works for the provisioning of the facilities and services.

17.48 Maxis prefers the existing approach proposed by the MCMC in subsection 5.4 where parties are allowed to negotiate based on Access Provider's RAO/ARD or to negotiate amendments to the RAO/ARD or to negotiate on alternative terms.

17.49 MYTV wishes to establish that the parties should be given an option to request negotiation on totally different terms. Different operators have different requirements and an Access Agreement should be flexible enough to cater to the differences.

17.50 PPIT believes that the implementation of RAO needs to be firm. In addition, in the spirit of self-regulation, parties should be allowed to enter into alternative process and/or terms. The role of MSA is to facilitate the process and should not be too prescriptive.

17.51 Sacofa stated that the Access Seeker may have different and new requirements which are not captured in the RAO and both parties need to negotiate the terms that are not captured in the RAO.

17.52 TM does not understand why this Question is included considering that paragraph 5.4.6(c) provides for alternative terms. TM hopes that the MCMC is seriously considering providing some flexibility to allow Access Provider and Access Seeker to negotiate alternative terms. Given that the RAO is rigid and overly prescriptive, TM does not see any room for flexibility to negotiate unless the MCMC can accept totally different terms than the MSA or at least limited deviation from the MSA.

17.53 Accordingly, if the RAO model is introduced, TM is of the view that parties should only negotiate the terms and conditions for Facilities and Services under a RAO given that these are offerings by an Access Provider who know their own products best. It is unusual and would not be viable for an Access Seeker to dictate the service offerings of the Access Providers.

17.54 In addition, the MCMC should allow both Access Seekers and Access Providers to negotiate a fresh set of terms and conditions which varies from the ARD, and any amendments should be within the framework of the MSA (which should not be overly prescriptive and allow flexibility). If this is permitted, the Access Provider would be able to customize Access Seekers' requirements based on Access Provider's capabilities.

17.55 TIME is of the opinion that the parties should be required to only negotiate the terms and conditions under the RAO. If the parties have an option to request negotiation on totally different terms, this will defeat the purpose of having the RAO model proposed in the PI Paper.

17.56 webe proposed that parties should only be limited to negotiating the terms and conditions under a RAO. If parties wish to negotiate totally different terms, they should consider commercial agreements.

17.57 YTL is of the view that there could be instances whereby the RAO can be negotiated on totally different terms rather than just accepting the RAO based on common terms, dependent on the nature of the terms that reflects the respective facilities or services. However, YTL further commented that a request to negotiate on totally different terms should not be unreasonable.

Question 16: Are there any other Facilities and/or Services that should be made the subject of a fast-track application under paragraph 5.4.21(c) in the Draft MSA?

17.58 Astro, Celcom, Maxis, PPIT, Sacofa and YTL agree with the proposed list.

17.59 Astro agrees with the MCMC that HSBB Network Services, Digital Subscriber Line services and ANE should be included. It should also include ancillary services required to provision these services.

17.60 Maxis believes that the proposed list of Facilities and/or Services which are subject to the fast track application in the MSA in subsection 5.4.21(c) are sufficient. In addition, Facilities and/or Services that are long established such as Fixed Network Termination, Transmission, Interconnect Link, DSL Resale and ANE should be able to be provided on fast track basis. Maxis noted that if HSBB Network Services can be provided on fast track options, it would really help the Government to achieve RMK11 targets. Services such as MVNO Access and Ducts and Manhole are new services and should not be included under fast track.

17.61 TM does not consider it is necessary to provide fast track application for the listed services. Since the given RAO model is intended to be in an executable form, it is then redundant to even have a fast-track application process as the RAO is essentially a fast track agreement since all terms are readily available on the website.

17.62 TM considers that HSBB Services, Digital Line Resale Service and ANE should not be part of the fast track process as these services are complicated and more time is required for discussions and negotiations. In case the MCMC still sees the importance of fast track, then TM would propose to limit the services to Fixed Network Termination, Mobile Network Termination, Transmission and Interconnect Link Service.

17.63 TIME is of the opinion that there is no need for fast-track since RAO contains all the terms and arrangement is an offer that an Access Seeker can accept.

17.64 webe believes that fast track should be preserved but does not have any suggestions to add any new services.

Question 17: Do you agree with the MCMC's proposed changes to the Negotiation Obligations set out at subsection 5.4 of the Draft MSA? Why or why not? If not, please specify what change you consider is required and explain why.

17.65 Altel, Net2One and Sacofa are agreeable to the MCMC's proposal.

17.66 The APCC agrees to the proposed change to the Negotiation Obligations including the MCMC's notes under paragraphs 5.4.6(f) and 5.4.6(l). However, under paragraph 5.4.7(d), the APCC proposed that a test on reasonableness is added to the process and pointed out that under subsection 5.4.14, the terms "Facilities" and "Services" should be amended to facilities and services as the subsection is dealing with facilities and services which are not on the Access List.

17.67 Astro believes that if these changes are enforced, it will bring about huge improvements to the negotiation process.

17.68 On subsection 5.4.7, Astro recommended that the timeframe is shortened from 10 to 5 Business Days. In paragraph 5.4.10(c), the timeframe to meet to discuss refusal response should be shortened from 7 to 3 Business Days. On subsection 5.4.11, Astro proposed deletion of paragraphs 5.4.11(f) as it is too broad and paragraph 5.4.11(g) as national interest should be from government/the MCMC, not Access Provider. Astro also proposed some enhancements to subsections 5.4.17, 5.4.18, 5.4.19 and 5.4.21.

17.69 Celcom does not agree to the requirement to notify the MCMC when negotiations begin unless it is negotiations involving a dominant operator.

17.70 Digi agrees with amendments proposed to subsections 5.4.2, 5.4.7, 5.4.19 and 5.4.20. Digi provides other comments as follows:

(a) On paragraph 5.4.6(f), Digi views that forecasting of the capacity that the Access Seeker will reasonably require is a critical prerequisite to entering into an Access Agreement. Digi submitted that capacity planning could be materially affected if forecasting is allowed at a later stage. In relation to transmission services, Digi is supportive of providing its forecasting requirement to an Access Provider in order to help plan and facilitate better capacity planning. Additionally, Digi also thinks that it is imperative to seek Access Seeker's proposed service launch date, particularly for MVNO Access;

(b) On paragraph 5.4.11(a), Digi is unclear in which situation the Access Provider will be able to determine an 'alternate offer' and sought clarity from the MCMC; and

(c) On subsection 5.4.16, Digi believes that commercial launch date is crucial as the tenure of Access Agreement begins from the commercial launch date. Also, commercial launch dates will help Access Providers to plan the technical support resources needed.

17.71 MYTV agrees in general but proposes to include one paragraph in subsection 5.4.11 with regards to grounds for refusal if the Access Provider has reasonable grounds to believe that the Access Seeker may resell the DTB Multiplexing Service to another licensee.

17.72 PPIT supports the 120 days' period to conclude the negotiations between parties with extensions allowed. With respect to shorter timeframes, PPIT stated that it would depend on the type and scope of commercial agreement in place. As for paragraph 5.4.6(f), PPIT proposed for it to be more specific in details. For Infrastructure Sharing, forecasts from Access Seeker is important to evaluate the space and loading factors. Sharing of forecast information with retail arm is not an issue for SBCs as they do not have retail arm.

17.73 TM has material concerns on the proposed highly interventionist role of the MCMC which would require constant reporting to the MCMC on the negotiation process. The proposed on-going monitoring and reporting requirements however, means that the MCMC will monitor even from the commencement of negotiation process which is against the spirit of self-

regulation and stifles commercial negotiations. The proposed amendments go further than all of the global jurisdictions TM has assessed.

17.74 TM maintains its position that it should be ARD rather than RAO. With regards to subsection 5.4.14, TM would like to maintain the original provision in MSA 2009.

17.75 TIME is of the opinion that the negotiation process in subsection 5.4 of the Draft MSA is a mixture/hybrid of processes between RAO and ARD which will create confusion to the Access Provider and Access Seeker.

17.76 webe is concerned about the reporting requirements imposed in the MSA and wondered whether they would actually bring the intended benefits or are merely an additional burden. The reporting obligations are inconsistent with the spirit self-regulation.

17.77 YTL agrees on the MCMC's proposed changes as it is elaborated with clarity and importantly, transparent dealing is made available.

Discussion

17.78 The MCMC thanks the operators for their submissions and notes the variance in submissions on various aspects of the Negotiation Obligations.

17.79 Regarding the timeframe within which an Access Provider may require an Access Seeker to provide an Access Request to renegotiate a subsequent Access Agreement, the MCMC notes a range of views from the industry, including:

(a) Access Agreements should have an indefinite term until terminated;

(b) the MSA should adopt a 6-month period to renegotiate a subsequent agreement;

(c) the MSA should retain the 4-month period to renegotiate a subsequent agreement;

(d) the MSA should not include a timeframe for re-negotiation or provide that the timeframe is subject to agreement by the parties.

17.80 The MCMC considers that none of the submissions on this point indicated any obvious deficiency with this timeframe. The MCMC therefore considers that the 4-month timeframe remains appropriate for the purposes of the MSA.

17.81 Regarding the length of time to complete Access Agreement negotiations, the MCMC received submissions expressing a range of views, including:

(a) support for the MCMC's proposed negotiation period of 120 days and, if there is already a commercial agreement in place, 60 days;

(b) a request to shorten the negotiation period to 60 days and, if there is an existing commercial agreement in place, 30 days;

(c) a suggestion that the negotiation period be mutually agreed; and

(d) a request to retain the negotiation period of 120 days, including if there is already a commercial agreement in place.

17.82 The MCMC has considered the range of views expressed on the negotiation period and determines that:

(a) 90 days is appropriate in the case where there is already a commercial agreement in place between the operators. The MCMC has reached this view for a number of reasons, including that:

(i) while the MCMC considers a negotiation of 60 days will likely be appropriate in many cases, Access Providers may be subject to resource constraints from having to conduct multiple concurrent negotiations with Access Seekers;

(ii) the MCMC determines that the timeframe within which an Access Provider may require an Access Seeker to provide an Access Request to renegotiate a subsequent Access Agreement is 4 months (see above); and

(iii) for exceptional cases, the MCMC has the power to grant extensions to this period subject to such conditions as it determines;

(b) 90 days is also appropriate in the case where there is already an Access Agreement in place between the operators. The MCMC also considered that the shorter timeframe is equally applicable to an existing Access Agreement for the reasons mentioned above; and

(c) 120 days is appropriate in the case where there is no commercial agreement or Access Agreement in place between the operators.

17.83 Some operators repeated their submission that the ARD model should be retained or that the RAO model should only apply to dominant operators or to particular Facilities or Services. The MCMC acknowledges these submissions and has properly addressed them in section 14 of this PI Report.

17.84 The MCMC does not agree with TM's submission in this regard and also has considered TM's submission regarding increased cost, resources and time required to implement the RAO model (particularly where two Access Providers seek access to each other's Facilities and Services) and that, in TM's view, these outweigh any potential efficiencies. The MCMC considers that this argument ignores the industry-wide benefits of certainty and transparency that would be achieved by adopting the RAO model. Regarding the scenario with two Access Providers, the MCMC considers that there is nothing stopping each Access Provider from requesting access on the terms of the other party's RAO, if it so chose, which would realise the efficiency of the RAO model.

17.85 The MCMC thanks operators for their submissions on the proposed negotiation process under subsection 5.4 of the MSA.

17.86 One operator submitted that regulated timeframes should reflect the potential timing delays caused by obtaining state authority approvals. As discussed in section 15.71 of this PI Report, the MCMC agrees that necessary third-party involvement or other matters reasonably outside a party's control—for example, where approval from local or other authority is required—are relevant. However, the MCMC does not consider that removing the negotiation timeframes is the best way to address this consideration. Instead, the MCMC will adopt the approach discussed in section 15.71 of this PI Report.

17.87 The MCMC disagrees with Digi's view that an Access Seeker's proposed service launch date should be disclosed to an Access Provider. Service launch dates are often critically confidential, the disclosure of which can lead to serious competition concerns. The MCMC notes that both MSA 2009 and Draft MSA includes the Access Seeker's proposed service launch date as "non-permitted information".

17.88 The MCMC also disagrees with MYTV's proposal to include an additional ground to refuse access on the basis that the Access Provider has reasonable grounds to believe the Access Seeker may resell a particular service. As discussed in sections 13.51 to 13.53 of this PI Report, the MCMC maintains its view on no exclusivity and no restriction on resale.

17.89 The MCMC notes strong support by operators for providing parties with the option to request negotiation on totally different terms as an alternative to negotiating the terms and conditions under a RAO. Of the few operators that disagreed, one operator considered that, if the parties have an option to request negotiation on totally different terms, this would defeat the purpose of having the RAO model. The MCMC does not agree. The MCMC considers that the publication of a RAO has pro-competitive effects and is of benefit to Access Seekers even if a particular Access Seeker chooses to negotiate an Access Agreement on alternative terms. The MCMC therefore maintains its preliminary view that it is appropriate to permit parties the freedom to negotiate a fresh set of terms and conditions which varies from a RAO.

17.90 The MCMC also notes strong support for the proposed list of Facilities and Services to be made the subject of a fast-track application. Some operators proposed the addition of further Facilities and Services. On the other hand, others proposed that the fast-track process would not be necessary if the RAO model were to be adopted. The MCMC considers that the RAO model complements, but does not replace the need for, the fact-track process which applies to only a sub-set of Facilities and Services. The MCMC also agrees with the weight of submissions that the proposed list of Facilities and Services is appropriate for the purposes of the MSA. The MCMC agrees with Maxis that the fast-track process should apply to key Facilities and Services under the Access List (including the HSBB Network Service) and well-established Facilities and Services (such as O&T Services and Transmission Services), while new Facilities and Services on the Access List that may be

complex and subject to multiple access (such as MVNO Access and Duct and Manhole Access) need not be included. The MCMC is therefore satisfied that it has identified the right Facilities and Services for inclusion in the fast-track process.

17.91 The MCMC does not agree to reinstate the requirement for an Access Seeker to provide forecast capacity information to the Access Provider during the Access Request stage, as it considers the Access Request stage too early for an Access Seeker to have to provide such information.

17.92 The MCMC also does not agree with Maxis that the technical capability of the Access Provider should be a permitted ground for refusing to negotiate access to Facilities or Services.

17.93 The MCMC acknowledges the range of views from operators and thanks operators for their continuing engagement on the Negotiation Obligations.

MCMC views

17.94 The MCMC maintains its preliminary views on the Negotiation Obligations, except that it will adopt the negotiation period for Access Agreements as follows:

(a) 120 days in the case where the operators negotiate on a new Access Agreement (and there was no commercial agreement or Access Agreement in place); and

(b) 90 days in the case where there is already a commercial agreement or Access Agreement in place between the operators.

18 Forecasting obligations

Introduction

18.1 In the PI Paper, the MCMC noted that it intended to continue regulating the forecasting obligations in the MSA.

18.2 The MCMC expressed the preliminary view that the provision of forecast information by an Access Seeker remains necessary to allow an Access Provider to undertake network planning to ensure sufficient capacity is available to meet the demands of one or more Access Seekers for a particular Facility or Service.

18.3 However, the MCMC also recognised the strategic value that having detailed forecasting information can provide an Access Provider in downstream markets. Therefore, the MCMC proposed a number of amendments to the forecasting obligations in the MSA to limit the ability of an Access Provider to use the forecasting requirements in such a way that it gives the Access Provider's retail operations a strategic advantage in downstream markets.

18.4 The MCMC also proposed to include new Service Specific Obligations that would include detailed forecast requirements for each of the Facilities and Services under a new section 6 of the MSA. Further, the MCMC proposed to

clarify that the current timing requirements in the MSA are to apply as a maximum, so that an Access Provider may not require an Access Seeker to forecast over a longer time period, apply longer intervals in its forecasts or update its forecasts at a higher frequency than the Access Provider provides to itself. These changes are intended to support the MCMC's objective of improving equivalence between an Access Seeker and an Access Provider's own retail arm in downstream markets.

Submissions received

Question 18: Have any Access Seekers been charged by an Access Provider for over-forecasting in accordance with subsection 5.6.14 of the current MSA (MSA 2009)? Do you agree with the MCMC's proposed changes to subsection 5.6.16 of the Draft MSA? If not, please explain why and specify what changes (if any) should be made to this subsection as part of the present review of the MSA.

18.5 Maxis, Sacofa, webe and YTL are not aware of instances where Access Seekers have been charged for over-forecasting and agree with the proposed changes to subsection 5.6.16.

18.6 Altel and Net2One submitted that it has not been imposed with any charges by an Access Provider for over-forecasting under the subsection 5.6.14. Altel suggested that the MCMC include a paragraph to subsection 5.6.16 which clarifies that recovery for over-forecasting shall not be allowed unless the Access Seeker has confirmed its forecast in accordance with subsection 5.6.3. Altel agrees to the MCMC's proposed amendments for paragraph 5.6.16(c).

18.7 Celcom submitted that it has never charged an Access Seeker for over-forecasting. Celcom also stated that it does not have any objection to the MCMC's proposed changes to subsection 5.6.16 as it states a fair condition where Access Provider shall not be required to mitigate its loss for any greater period than the relevant Forecast period.

18.8 edotco submitted that the current and proposed position in subsection 5.6.16 of the Draft MSA is inherently unfair to the Access Provider. The mechanics in place for the recovery of over-forecasting suggests that even after reasonable efforts have been undertaken by the Access Provider to mitigate its losses, it could only recover 75% of such losses that cannot be mitigated. Since the fault of over-forecasting was caused by the Access Seeker, edotco is of the view that the Access Provider should be allowed to claim such losses caused by the over-forecasting of the Access Seeker.

18.9 edotco pointed out the general principle on compensation for loss or damage caused by a breach of contract as set out in Section 74 of the Contracts Act 1950 which states that when a contract is breached, the innocent party is entitled to receive compensation from the party who has breached the contract. The general principle of mitigation of loss dictates that a party should be allowed to claim its remaining losses after it has mitigated its losses.

18.10 With that said, edotco recognizes that common law requires the innocent party to mitigate its losses, where possible. According to edotco, to further impose an additional cap on top of the mitigated losses would be against the fundamental principles of contract law. Therefore, to achieve fairness, edotco proposes to remove the paragraph 5.6.16(c) of the Draft MSA altogether.

18.11 TIME submitted that it does not have any knowledge of any Access Seekers that have been charged for over-forecasting. TIME is proposing that the Forecasting Obligations be removed from the Draft MSA as it is not a requirement in any other jurisdiction.

18.12 TIME is of the view that the RAO model should not require the Access Seeker to provide forecast at the time of accepting the RAO. Instead, the Access Seeker should place an order once they have agreed to accept the RAO and concluded the Access Agreement with the Access Provider. TIME added that forecasting can be part of the Access Provider's Operation and Maintenance requirement.

18.13 TM is of the view that the MSA should not be overly prescriptive on forecasting procedures and it is important for the parties to set their own forecasting procedures which are highly dependent on their business objectives. TM also stated that the forecasting is useful for inter-operator requirement especially for network dimensioning in Access Provider's network to ensure that there is no traffic congestion and for the necessary planning to be conducted accordingly.

18.14 In any event, TM views that forecast procedures must be fair and the non-binding requirement on forecast should apply reciprocally to both Access Seekers and Access Providers.

Question 19: Do you agree with the MCMC's proposed changes to the forecasting obligations set out at subsection 5.6 of the Draft MSA? Why or why not? If not, please specify what change you consider is required and explain why.

18.15 MYTV and YTL agree with the MCMC's proposed changes to the forecasting obligations set out at subsection 5.6 of the Draft MSA.

18.16 Astro supports moving the requirement for forecasting information to the order and provisioning phase as it should not be a pre-requisite to entering into an Access Agreement. Astro is of the view that there has to be a greater clarity on what the distinction is between "preliminary information regarding the scale or scope of Facilities and Services that the Access Seeker expects to acquire from the Access Provider pursuant to Access Request" and "forecasting information". Additionally, Astro would like the timeframe to reject forecast from the date of the receipt of the Forecast to be shortened from 15 Business Days to 7 Business Days.

18.17 Astro also stated that it supports the MCMC's proposal to make forecasting a post-agreement event and welcomes the setting of limits for forecasts required to limit the flow of confidential commercial information to an Access Provider.

18.18 For subsection 5.6.16, Astro suggests including the phrase *"and provided that such costs and expenses are documented and provided to Access Seekers for verification"* after word "Provider" in paragraph 5.6.16(a).

18.19 Celcom does not agree with the proposed change, in particular for paragraph 5.6.6(b)ii, where the total periods of time covered by each Forecast as specified in service-specific obligations have been proposed in the range of 3 months to 1 year. Celcom is of the opinion that it requires a Forecast of more than one year to facilitate network planning as it may need to cater for more than one access request. Celcom has proposed to delete paragraph 5.6.6(b)ii.

18.20 Maxis agrees with the MCMC's proposed changes to the forecasting obligations set out at subsection 5.6 of the Draft MSA but with some proposed changes.

(a) On subsection 5.6.1, Maxis proposes to include *"providing access or accepting…"* and remove "*but not as prerequisite for entering into an Access Agreement"* in view of the forecast information that needed by the Access Provider during the Access Request process;

(b) On subsection 5.6.9, Maxis proposes to replace Chief Executive Officer or Chief Operating Officer with the respective Head of Department ('HOD') as it views that the records certified by the respective HOD would be sufficient for operational matters; and

(c) On subsection 5.6.11, Maxis proposes to replace 5 Business Days with 15 Business Days to allow ample of time for the Access Provider to carefully review and consider the Forecast Information submitted by the Access Seeker.

18.21 TIME submitted that it does not have any knowledge of any Access Seekers that have been charged for over-forecasting. TIME is proposing that the Forecasting Obligations be removed from the Draft MSA as it is not a requirement in any other jurisdiction.

18.22 TIME is of the view that the RAO model should not require the Access Seeker to provide forecast at the time of accepting the RAO. Instead, the Access Seeker should place an order once they have agreed to accept the RAO and concluded the Access Agreement with the Access Provider. TIME added that the forecasting can be part of the Access Provider's Operation and Maintenance requirement.

18.23 TM has provided specific comments to the subsections listed as follows:

(a) On subsection 5.6.2, Access Seekers should provide forecasts based on their requirements and should not depend on Access Provider's information. Access Seekers may seek access from other service providers or build on their own if the Access Provider is not in the position to meet the Access Seeker's requirements. TM added that HSBB service is offered on a supply-driven basis, not demand-driven. HSBA's rollout was based on PPP agreement between TM and

Government of Malaysia, therefore forecast is not required. However, forecast is required for provision of Broadband Termination Units to facilitate TM to provide HSBA services to the Access Seekers;

(b) On paragraph 5.6.6(e), TM has grave concerns with the proposal for forecast to be updated regularly. For example, for effective delivery of transmission services, confirmed forecast must be provided as frequent changes would disrupt network planning, disturb the ongoing work of securing budget and awarding contracts to vendors which will lead to delay in overall deliverables. Thus, frequent changes of forecasts proposed by the MCMC on monthly basis would render forecasts to be meaningless;

(c) On subsection 5.6.7, TM currently requires forecasts on bandwidth requirements (Mbps / Gbps), capacity requirement (number of ports) and location of port deliverables for transmission forecasts. This information is merely required for network planning purposes and to enable effective delivery of the service;

(d) On subsection 5.6.9, TM commented that it is unreasonable to continuously submit forecasts for purposes of updating the MCMC because it is challenging to ensure data accuracy especially when forecasts change continuously. Requiring senior management to endorse such documents is impractical and likely to result in severe delay. TM highlighted that the forecasting information provided by the Access Seekers is protected under confidentiality obligations and that there is always the avenue in the court if the Access Seeker considers that there has been a breach of confidentiality obligations. TM views imposing any other requirement is redundant and not necessary; and

(e) TM is concerned with the short timeframe set out in subsection 5.6.11. TM submitted that paragraph 5.6.11(b) does not align with subsection 5.6.13 whereby the Access Provider has 15 Business Days to reject a forecast given that the latter is not linked to the time the Access Provider receives the forecast. TM proposes to maintain the timeframe in the existing MSA of 15 days so that the time of acceptance is consistent with the time of rejection.

18.24 webe submitted that it agrees with MCMC's proposed changes whereby forecasting should not be a prerequisite for entering into Access Agreements. webe noted the importance of a service provider having their own network planning to configure their own network architecture diagram. As an example, webe pointed out the existence of Central Infrastructure Management System and National Network Database where a licensee can check the availability of infrastructure in areas where they plan to roll out their network and approach the infrastructure owner to check on its availability for sharing based on the forecast rollout timing.

18.25 webe also added that the forecast information is necessary for the Access Provider to evaluate its capability of facilitating the request received, thus,

the information about the timing when the Facilities or Services is required so that it could be incorporated in the Access Provider's planning. webe submitted that it totally agrees that the declaration of actual launch date is unwarranted but that the tentative month is crucial for planning purposes.

Discussion

18.26 The MCMC notes general support by operators for its proposed changes to the Forecasting Obligations.

18.27 The MCMC thanks operators for informing its view on charges for over-forecasting. Based on the submissions, the MCMC is not aware of any instance in which an Access Provider has charged an Access Seeker for over-forecasting. The MCMC therefore considers there is no demonstrable need to amend the recovery elements of the Forecasting Obligations.

18.28 While the majority of operators agreed with the MCMC's proposed changes, a few operators expressed some suggested changes or disagreement with some element of the Forecasting Obligations. Such submissions covered a range of issues and, for example, included:

(a) removing the 75% cap on recovery of costs and expenses incurred due to its acceptance of a Forecast which could not be mitigated;

(b) completely removing the Forecasting Obligations from the MSA and not requiring an Access Seeker to provide forecasts under the RAO model;

(c) ensuring that the forecast procedures are fair and non-binding on the Access Seeker or Access Provider and ensuring the forecasting procedures are not overly prescriptive;

(d) shortening the timeframe to reject a forecast from 15 Business Days to 7 Business Days;

(e) increasing the forecast period to more than 1 year to facilitate network planning;

(f) reverting to requiring certain forecasts as a prerequisite to an Access Provider accepting an Access Request;

(g) increasing the timeframe for notifying an Access Seeker whether their Forecast complies with the Forecast Request from 5 Business Days to 15 Business Days; and

(h) removing the ability for an Access Seeker to request preliminary information from an Access Provider about the availability and capacity of its Facilities and Services to the extent the Access Seeker requires such information to provide Forecasts.

18.29 The MCMC notes that the 75% cap applies to costs and expenses incurred due to the Access Provider's acceptance of a Forecast from an Access Seeker if the Forecast is not met by the Access Seeker. That is, it only applies in

respect of a Forecast that the Access Provider has accepted—and not rejected as being inaccurate in accordance with the MSA. The MCMC considers that the 75% cap represents a fair estimate of what the verifiable costs would approximately equate to in such a case. The MCMC is not aware of any operator's experience in which the 75% cap, as carried across from MSA 2009, has been a cause of concern.

18.30 The MCMC also notes TM's concerns regarding the disruptive effect of regular forecast updates, citing Transmission Services as an example. The MCMC notes that the update frequency for Transmission Services is once per year. The MCMC does not consider such an update frequency to be unduly disruptive. The MCMC further addresses other timeframes in the service-specific parts of this PI Report.

18.31 The MCMC also noted a number of submissions raising areas of concern, but without specifying any proposed change or alternative to the relevant provisions.

18.32 The MCMC acknowledges the range of operator views and suggested improvements to the Forecasting Obligations. The MCMC did not note any particular provision attracting concern from more than one or a few operators. The MCMC takes this to indicate that the Forecasting Obligations are generally sufficient for inclusion in the MSA.

MCMC views

18.33 The MCMC determines to adopt its preliminary view on the changes required to the Forecasting Obligations.

18.34 The MCMC considers it has struck the right balance in the Forecasting Obligations to provide an Access Provider with the information necessary to allow them to undertake network planning while limiting their ability to use the forecasting requirements in such a way that it gives their retail operations a strategic advantage in downstream markets.

18.35 For any particular area of clarification or concern, the MCMC welcomes engagement by operators on the matter.

19 Ordering and provisioning obligations

Introduction

19.1 In the PI Paper, the MCMC noted that it considers that ordering and provisioning are central to an Access Seeker's ability to plan for and supply in a downstream market. As such, the MCMC considered it is important for an Access Provider to treat each Access Seeker (including an Access Provider's own retail arm) in a non-discriminatory and equivalent manner to ensure no one Access Seeker is given an advantage over another. The MCMC noted that a number of its proposed amendments to subsection 5.7 are designed to further incorporate the 'equivalence of inputs' concept into the way ordering and provisioning obligations are applied under the MSA.

Notice of receipt timeframes

19.2 The MCMC noted that there appeared to be relatively strong support for updating the acknowledgement of receipt and notice of receipt timeframes under the MSA.

19.3 The MCMC proposed to apply a range of acknowledgement of receipt times that would apply as new Service Specific Obligations (see Part E of this PI Report).

19.4 The MCMC considered there to be key differences between the Facilities and Services covered by the MSA, which will have an effect on an operator's ability to assess its capacity and confirm whether it will be able to fulfil an Order. For example, an order for O&T Services should be easier to confirm than an order for access to infrastructure, and this difference was reflected in the MCMC's proposed acknowledgement of receipt timeframes under the Service Specific Obligations. The MCMC welcomed operator feedback on the appropriateness of the MCMC's proposed timing requirements.

Service qualifications

19.5 In the PI Paper, the MCMC noted that service qualifications can provide valuable strategic commercial information, which may present a competitive advantage in downstream markets if an Access Provider provides such information to itself without also offering that information to an Access Seeker.

19.6 To address these issues, the MCMC proposed to amend the service qualification provisions to provide operators with the ability to conduct a service qualification:

(a) **Pre-order** - the MCMC considered that an Access Seeker should be provided with service qualification information prior to placing an order if such information is made available by an Access Provider to its own retail arm (for example, for marketing purposes); and

(b) **Post-order** - the MCMC proposed to continue to apply the existing service qualification process under subsection 5.7.8 for the period after an order has been placed by an Access Seeker.

19.7 The MCMC also invited operator feedback on whether post-Order Service Qualification should be prescribed for certain Facilities and Services rather than relying on the general process under subsection 5.7.8 for all Facilities and Services.

Indicative delivery times

19.8 The MCMC noted that there appeared to be relatively strong support for updating the indicative delivery times under the subsection 5.7.14 of the MSA.

19.9 In the PI Paper, the MCMC proposed to remove the one-size-fits-all timeframes in MSA 2009 by tailoring indicative delivery times for each

Facility or Service as a new Service Specific Obligation (see Part E of this PI Report). The intention of that approach is to acknowledge that there are key differences between the various services covered by the MSA, which in turn will account for differences in the time in which an operator may supply those services.

19.10 For those Facilities and Services to which only one order type is relevant, the MCMC set out a single timeframe. For those Facilities and Services to which two order types may be relevant (e.g. HSBB Network Services and Transmission Services), the MCMC set out two timeframes. The MCMC also proposed that each of the service specific indicative delivery timeframes would be subject to any shorter timeframe within which the Access Provider delivers or activates equivalent Facilities or Services for itself.

Continuing necessity of the "other uses" provision

19.11 In the PI Paper, the MCMC noted broad industry support for maintaining the "other uses" provision and therefore proposed to retain subsection 5.7.21 of the MSA.

19.12 The MCMC did not propose to make any amendments to the existing provision, such as to extend the option to apply this provision to both an Access Provider and Access Seeker as one operator had proposed. The MCMC noted that it considers that if capacity is available, and it is technically feasible for an Access Provider to permit connection with another network service, then the Access Provider should comply where an Access Seeker exercises its option to request "other uses".

Cancellation and variation of orders

19.13 In the PI Paper, the MCMC stated that it did not propose to expressly separate the order cancellation and variation processes under section 5.7.25 of the MSA, but instead proposes to clarify that such provisions apply subject to the cancellation penalty provisions under subsection 5.7.26.

Cancellation penalties

19.14 In the PI Paper, having observed that in some Access Agreements the Access Provider would charge a cancellation penalty for the minimum period for the Facilities and/or Services, the MCMC requested feedback from operators on the reasons for taking this approach and whether amendments are required for subsection 5.7.26 of the MSA to align more closely with standard industry practice.

19.15 The MCMC considered the proposal to include a 10 year "lock-in period" (as included in one operator's standard Access Agreement) too long and in fact, that it exceeded the minimum term provided for under subsection 5.14.2 (previously subsection 5.17.2).

19.16 However, the MCMC also considered that the existing cancellation penalty provision is unclear and, therefore, proposed an update to this provision to clarify that an Access Provider may impose a charge of up to the lesser of

(i) the sum of costs necessarily incurred by the Access Provider as a result of the cancellation or variation and (ii) the sum of charges that would have been payable for the cancelled or varied Order in the six months immediately following the cancellation or variation, in each case, which amount must then be reduced to the extent those costs have been or would have been mitigated by the Access Provider using its best endeavours to do so.

Late delivery rebates

19.17 The MCMC proposed to require the methodology and unit rates for calculating late delivery rebates to be set out in an Access Provider's RAO. The MCMC welcomed feedback on this proposed approach, including whether operators would prefer a fixed cap being expressly set out in the MSA.

Submissions received

Question 20: Under subsection 5.7.5 of the MSA, should exemptions be made for shorter acknowledgement of receipt times for orders made in relation to Facilities or Services (e.g. acknowledge receipt of an HSBB Network Services and/or ANE order within 24 hours)?

19.18 The APCC agrees with the proposal above and notes that this point appears to have been addressed appropriately by facilitating the different acknowledgement of receipt times in each of the Service Specific Obligations.

19.19 Astro is of the view that the acknowledgement of receipt does not require a longer period since it is consistent with the strict timeframes prescribed in the Determination on the Mandatory Standards for Quality of Service Wired Broadband Access Service Determination No.2 of 2016 ('MSQoS) Standards').

19.20 Celcom has no objection for shorter acknowledgement of receipt times for orders made in relation to Facilities or Services, for example, for HSBB Service – one hour within a Business Day or start of the next day whichever is applicable.

19.21 edotco submitted that the proposed 2 Business Days to provide an acknowledgement of receipt is too short and proposes to increase it to 5 Business Days instead.

19.22 Maxis agrees with subsection 5.7.5 in which the period for acknowledgement of receipt for order should be depending on the type of Facilities and/or Services as specified in the respective Service Specific Obligations.

19.23 Sacofa does not agree that exemptions are made for shorter acknowledgement of receipt times for orders made in relation to Facilities or Services (e.g. acknowledge receipt of an HSBB Network Services and/or ANE order within 24 hours).

19.24 TIME is of the opinion that the time to acknowledge receipt of orders for Facilities or Services should be standardized for all Facilities and Services. This makes the regulation more efficient and easy to be complied.

19.25 TM is of the view that the current timeframe of 2 Business Days for acknowledge of receipt is needed because the Access Provider would need to provide Notice of Receipt together with the Acknowledgment of Receipt as accordance to subsection 5.7.6 and definition of "Notice of Receipt" in subsection 5.7.6.

19.26 webe noted that 2 Business Days is reasonable for Access Provider to provide acknowledgement receipt but not an agreement to provide the request as these may take longer time depending on the type of service or facilities requested.

19.27 YTL submitted that it has no issues with acknowledgement of receipt times contained in the MSA.

Question 21: Have Access Seekers experienced any issues with an Access Provider rejecting an Order on the grounds that the Access Seeker had not obtained the necessary related agreements from the Access Provider (under paragraph 5.7.17(e) of the MSA)?

19.28 Astro, Celcom, Maxis and Sacofa submitted that they have not experienced any issues with an Access Provider rejecting an Order on the grounds that the Access Seeker had not obtained the necessary related agreements from the Access Provider.

19.29 Astro wanted to know why this provision is necessary since all of the ancillary services have to be provided to gain access to a particular Facility or Service. Astro added that at the stage of order provisioning the ground to reject an Order should no longer exist.

19.30 TIME submitted that its standard practice requires an Access Seeker to sign an agreement before they could place their order based on the agreed terms and conditions to avoid any dispute at the later stage.

19.31 webe submitted that the Access Providers are normally quite flexible in providing services or facilities in the event that Access Agreement has been signed even though the specifics requested is not available in the signed Access Agreement yet. However, the Supplementary Agreement is usually in progress simultaneously. webe also added that it is reasonably difficult to facilitate request for service or facilities in cases where no agreement is signed.

19.32 YTL pointed out that there were cases where the Access Provider has not been able to provide point of interface at / or near the requested point but has instead suggested other points, which if implemented, will add costs to the access request and hence defeat the viability of the access request. Hence, there should be sufficient provisions in the MSA that limits the ground for rejection of point of interface requests.

Question 22: Where an Access Provider notifies an Access Seeker that a delivery date will be delayed, is the current 14-day period before an Order can be cancelled without penalty under paragraph 5.7.24(a)ii. acceptable or should it be made shorter/longer (generally or for particular Facilities or Services)?

19.33 The APCC does not agree with the current timeline and submitted that the periods in which an Order can be cancelled without penalty should follow the timelines for delivery. The APCC provided examples for HSBB's Service Specific Obligations which has the timeframe of 3 Business Days and Infrastructure Sharing and MVNO's Access of 40 Business Days. The APCC indicated that the timeframes indicate the speed with which the MCMC has determined the Access Provider to provide a particular service. As such, it would be sensible that the period before an order can be cancelled without penalty is varied to approximately follow the timelines for delivery.

19.34 The APCC suggested 3 Business Days for HSBB, Wholesale Line Rental and ANE services, 5 Business Days for DSL Resale, Domestic Connectivity to International and Duct and Manhole Access, 10 Business Days for Origination and Termination Services, Interconnect Link Service, Transmission Service, Infrastructure Sharing, Network Co-location, Digital Terrestrial Broadcasting Multiplexing Service and MVNO Access.

19.35 Celcom submitted that is agreeable to shortening the 14-day period to 3 days to allow the Access Seeker to make the necessary arrangements or adjustments.

19.36 Maxis proposed five (5) Business Days instead of the current fourteen (14) days delay period to allow the Access Seeker to cancel the Order without penalty. This is to protect the interest of the Access Seeker and because the delivery dates have been agreed after the Access Provider did the necessary Service Qualification during the Notice of Acceptance issued to the Access Seeker. As such, rightfully it should not be any delay by the Access Provider to the earlier agreed and confirmed delivery date.

19.37 MYTV opines that the delay period be extended to ninety (90) days as many issues have yet to be learned and understood. MYTV added that DTB is totally new especially with DVB-T2 and many more issues that will surface only after Analogue Switch-Off.

19.38 Sacofa submitted that the current timeline should not cover for any delays beyond the control of the Access Provider.

19.39 TIME submitted that the current 14-day period is acceptable and that the delivery dates should be standardized for all Facilities and Services in order to ease the monitoring and implementation processes.

19.40 TM submitted that the current 14-day period is fair and reasonable as TM does not see any compelling rationale for any change. However, TM is proposing that the Access Seeker should permit the Access Provider to cancel the Order if the delay exceeds the 14 days and that the Access Seeker should compensate the Access Provider on any cost incurred to provide access to the related service. The proposal is for the purposes of

reciprocating paragraph 5.7.24(a) and for fairness towards both the Access Provider and Access Seeker.

19.41 webe submitted that the proposed timeframe of 14-day period is reasonable.

19.42 YTL agreed with the 14-day period, however it is of the view that the Access Providers and Access Seekers should be allowed to negotiate shorter terms.

Question 23: Have Access Seekers experienced any issues with the resource charges under subsection 5.7.28 (e.g. unverifiable or excessive charges)?

19.43 Altel, Celcom, Maxis, Net2One, TIME, TM and webe submitted that they have not experienced any issues with resource charges.

19.44 Altel and Net2One stated that the resource charges imposed were reasonable. Altel asserted that the requirement of paragraph 5.7.28(b) is unwarranted as the operational cost of an operator should not be regulated. The resource charge varies depending on the element of costs incurred by an Access Provider for allocation of manpower and other resources during the course of providing a service.

19.45 Astro submitted that the MSA should list out the circumstances when the one-off fee should be charged and that the methodology should include an assessment of the time to complete the task i.e. man hours and the charge rate based on the skill required.

19.46 TM submitted that as an Access Seeker, it has not experienced any issues with the resource charges. However, TM pointed out that the Access Provider should be given the right to charge the Access Seeker the relevant cost incurred by the Access Provider (either one time or recurring) as the result of obtaining access from the Access Provider such as providing escort for the Access Seeker to enter into the Access Provider's premises.

19.47 webe submitted that at present it has not been imposed with any of the resource charges.

19.48 YTL submitted that the resource charges are set by mutual agreement depending on the facilities or services set up based on the agreed methodology

Question 24: Do you agree with the MCMC's proposed changes to the ordering and provisioning obligations set out at subsection 5.7 of the Draft MSA? Why or why not? If not, please specify what change you consider is required and explain why.

19.49 MYTV and Sacofa submitted that they agree with the proposed amendments by the MCMC.

19.50 Except for paragraph 5.7.28(b), Altel and Net2One submitted that they generally agree with the proposed changes to the ordering and provisioning obligations set out at subsection 5.7 of the Draft MSA. Altel and Net2One sought the MCMC's consideration to reformulate the indicative delivery timeframes by factoring in the preparation time required by an operator in

delivering the Service or deployment of Facilities. Both parties also added that the MCMC should take into account the external factors that would impact the delivery timeframes of the access of Facilities and Services.

19.51 The APCC submitted that it agrees with the proposed changes by the MCMC, subject to its comments in subsections 5.7.9, 5.7.12 and paragraph 5.7.26(b)i. In relation to subsection 5.7.9, the APCC supports the reduction in time for the completion by the Access Provider of the Service Qualification. With respect to subsection 5.7.12, the APCC supports the change to a more flexible set of time periods for acceptance or rejection of Orders by the Access Providers. For paragraph 5.7.26(b)i., the APCC proposes that the subsection should be altered to: "…the sum of reasonable costs necessarily incurred by the Access Provider which are directly attributable to the cancellation or variation; or…"

19.52 Astro agreed with the proposed changes to the orders and provisioning provisions by the MCMC. Astro stressed that the amendments proposed by the MCMC will offer rapid benefits if pre-order Service Qualifications, address database and appointment to book access are all given on a fully equivalent of input basis.

19.53 Astro provides comments on subsection 5.7 as follows:

(a) On subsection 5.7.1, Astro would like to clarify if the expansion of the contact points for orders will impact the treatment of Orders within a single queue;

(b) On subsection 5.7.5, the acknowledgement of receipt of an Order should be made instantaneously upon receipt of the Order for Facilities or Services including HSBB services to avoid unnecessary delays. Astro supports the proposal for shorter acknowledgement time;

(c) On subsection 5.7.9, Astro pointed out the potential reasons that caused delays since there is no prescribed timeframe for the commencement of Service Qualification and the circumstances that require Service Qualifications are not clearly not spelt out;

(d) On subsection 5.7.10, Astro submitted that the time period of 14 days for withdrawals of orders without penalties appears to be reasonable;

(e) On subsection 5.7.13, Astro requests clarification as to what is meant by indicative time for delivery, and whether it includes the securing appointment for BTU installation and activation;

(f) On subsection 5.7.15, Astro requires the ability to confirm the Order post acceptance for HSBB Services;

(g) On paragraph 5.7.17(e), Astro recommends deletion of this provision as it understands that all ancillary services have to be provided in order to gain access to a particular Facility or Service. Astro added

that the ground to reject an order should no longer exist at the stage of order provisioning;

(h) On paragraph 5.7.26(a), Astro has incurred issues for variation of orders or cancellations where it was held to the increased Order despite requiring less capacity later on. Astro stated that this could occur during seasonal capacity needs. Astro provided an example that it experienced during the Olympics where it required additional capacity to run parallel channels. The additional capacity will not be needed post-Olympic season. Astro explained that the ability to vary the order will promote efficient utilization of bandwidth. Access Seekers should not be held to any capacity requirements (whether it arose as a result of increase or otherwise), without the ability / option to reduce as the need arises. Astro would like the charges to be borne to be on a verifiable cost incurred basis;

(i) Astro recommended that the charges at paragraph 5.7.26(a) should be lesser of the costs incurred or sum of prospective charges for 3 months following cancellation. This is to ensure that there is an existing incentive to compute the costs incurred so that the costs are not defaulted to the 6 months' prospective charges term that could serve as a penalty;

(j) On subsection 5.7.28, Astro sought clarification of the meaning of 'new Facilities and Services' for the purposes of resource charges under subsection 5.7.28. Astro would like to know if it is being referred to the services that the Access Provider does not provide to itself or if it refers to the services requested by a new Access Seeker. Astro submitted that the MSA should clarify and list out the circumstances when the one-off fee should be charged. The methodology should involve a stringent and justified assessment of the time taken to complete the tasks and assessment of the charge rate based on the skill required. Astro also recommended the insertion of the words "and provided that such one-off fee is justified by Access Provider to Access Seeker as necessary for the Access provider to provide new Facilities or Services requested by Access Seeker" after the word Order in paragraph 5.7.28(a);

(k) On subsection 5.7.32, Astro commented that the Access Provider must specify their plans to expand their capacity in the Capacity Allocation Policy and that capacity constraint should not be used as a perpetual excuse by the Access Provider; and

(l) On subsection 5.7.33, Astro pointed out that the delays by the Access Provider could result in delays in service launch date / ready-for-service date where rebates from access charges alone may be insufficient. Astro stated that in addition to any loss of potential revenue from the customers, the Access Seeker may have invested considerable sums of monies in infrastructure set up for the service to be ready by a specified date, marketing activities and other ancillary costs and expenses would also be incurred for the

provisioning of the services by the specified date. In that regard, Astro submitted that a compensation mechanism should be available where Access Providers that are unable to meet the Service Fulfilment and Service Restoration timelines should be subject to a compensation mechanism for non-delivery. The principles should be specified in the MSA. Firstly, if agreed service levels are not met, provision should be made for compensation to be on a pre-estimate of an average Access Seeker's loss. Secondly, Access Seekers should be entitled to make a claim for additional loss. Thirdly, compensation should be paid on a per-event basis. Fourthly, compensation payments should be made proactively or automatically. Fifthly, the MSA should permit efficient cost recovery by providing for an accelerated dispute resolution process to deal with compensation claims by the Access Seekers, as a deterrence to the Access Provider.

19.54 Apart from the above, Astro submitted that order rejections do not require immediate reporting to the MCMC even when it is on the grounds of lack of capacity. Astro requested that the MCMC consider making repeated Order rejections a reportable event (e.g. more than twice) and within 3 Business Days from the second order rejection. This is because there is potential for a vertically integrated Access Provider to prefer an Order to its own downstream operations or deny an Order on the grounds of lack of capacity.

19.55 Astro finally sought that the MCMC clarify on whether the pre-order Service Qualification contemplated in paragraph 18.11 of the PI Paper is based on the same information in the portal that has been envisaged in paragraph 6.6.8 of the Draft MSA. Astro would also like the MCMC to clarify if 'equivalence' should apply to both the proposed queue and also to the information about serviceable addresses.

19.56 Celcom submitted that it does not have any objections to the proposed changes by the MCMC especially subsection 5.7.24 on delayed delivery dates as it provides a more detailed process for both Access Seeker and Access Provider.

19.57 Digi is agreeable with the clarity provided in part (a) of the definition of "Service Qualification" but strongly disagrees with the MCMC's consideration to broaden the definition of Service Qualification in part (b) which includes the interrogation of Access Provider's Operational Support System (OSS). Digi outlined the severe impacts as follows:

(a) The network systems that are connected as an external party may experience risks such as malware or virus threats and potential unauthorized breach into Digi's critical network systems if security risk and threat is imposed to all OSS elements e.g. Radio Access Network, Core Network, value added service and international gateway etc.; and

(b) Interrogation into all OSS systems will significantly introduce additional traffic into Digi's network and may introduce possible performance issue, particularly during high traffic period.

19.58 Digi agrees with subsections 5.7.2 and 5.7.5. Digi proposes the following amendments to subsection 5.7:

(a) On paragraph 5.7.1(c), Digi viewed that both parties must effectively inter-operate to support any inter-operability requirements if the web portal or B2B gateway is being used for ordering;

(b) On subsection 5.7.4, Digi does not have any major concerns and is agreeable that all orders are based on a single queue for a given type of Facility or Service whether the Orders and Service Qualifications are required for itself or any Access Seekers. Digi provided example for the case of Mobile Network Termination Service ('MNTS') where having a single queue is reasonable to ensure that all Orders for MNTS will be treated equally;

(c) On subsection 5.7.8, Digi disagrees with the proposed amendment in this subsection and states that any commercially sensitive or customer-related information that Access Provider made to itself shall be restricted and not shared with Access Seeker as part of Service Qualification. Digi would like the original timeframe proposed in the earlier MSA in paragraph 5.7.8(b) to remain;

(d) On paragraph 5.7.10(b), Digi is agreeable with the proposed amendment in subsection 5.7.10 but with slight changes by adding the following sentence at the end of paragraph 5.7.10(b), "and any civil works to be conducted must subject to the issuance of notice in writing by Access Provider"; and

(e) On subsection 5.7.29, Digi is agreeable with MCMC's proposed amendment as long as the said single queue refers specifically to a given type of Facility or Service.

19.59 edotco submitted that subsection 5.7.33 should be amended to remove the proposed amendments by the MCMC, namely, the methodology and the unit rates for calculating rebates. edotco is of the view that the methodology is already stipulated in subsection 5.7.33 i.e. "the rebate shall be for an amount equivalent to the recurring charges payable…". As such, edotco views the proposed amendments as redundant. edotco added that the late delivery rebate requirement should only be imposed on dominant players in the market if the requirement has to be specified in the RAO.

19.60 Maxis agrees with the proposed changes in subsections 5.7.2, 5.7.4, 5.7.5, 5.7.6, 5.7.7, 5.7.8, 5.7.10, 5.7.16, 5.7.17, 5.7.18, 5.7.19, 5.7.20, 5.7.22, 5.7.24, 5.7.28, 5.7.29, 5.7.30, 5.7.31, 5.7.32 and 5.7.33. In addition, Maxis provides other comments to subsection 5.7 as follows:

(a) On subsection 5.7.1, Maxis strongly agrees with the MCMC's proposal to include new mechanisms such as website, self-service portal and access to the Access Provider's Operational Support System for Service Fulfilment (e.g. Service Qualification, Ordering and Installation). However, these new mechanisms should also be extended for Service Assurance (e.g. Fault Reporting, Response

Time, Restoration Time). The new mechanisms should be made available by the Access Provider to the Access Seeker as it provides to itself, its own retail arms, subsidiaries, etc. to ensure non-discriminatory and equivalence of input between the Access Provider's retail arm/subsidiaries and the Access Seeker. Based on its experience, having access to the Access Provider's Operational Support System improves timeframes and effectiveness of both Service Fulfilment and Service Assurance provided that access is provided on a similar basis as that provided to itself or its own retail arm. Further, this access should be sufficiently dimensioned, i.e. with the same response time as that of the incumbent's retail arm, sufficient passwords or log-in IDs as required, as there have been incidents in the past;

(b) On subsection 5.7.9, Maxis proposes minor changes to clarify that the timeframes for completing the Service Qualifications depends on the type of Facilities and/or Services, the work required and the respective timeframes in the Service Specific Obligations. With respect to subsections 5.7.12 and 5.7.13, Maxis agrees with the proposed changes and proposes that the timeframe must be shorter of the Service Specific Obligations with the "timeframe used by the Access Provider for itself, its retail arm and its subsidiaries". Maxis also proposes a minor amendment to subsection 5.7.14 to clarify that the commencement of delivery timeframes depends on the Facilities and/or Services; and

(c) Maxis proposes that as Access Providers can also cancel or vary orders after the Notice of Acceptance has been accepted by the Access Seeker, similar type of protection should also be provided to the Access Seeker, in the form of compensation or penalty. This is especially so in the case of the Access Provider intentionally cancelling orders due to strategic or commercial reasons. Hence, Maxis proposes minor amendments to subsections 5.7.25 and 5.7.26.

19.61 TIME noted that it agrees with the proposed changes by the MCMC because they have improved most of the processes which benefits both the Access Seeker and Access Provider. TIME noted that it is more practical for implementation purposes and some of it have been agreed and included in the Access Agreement between the operators.

19.62 TM has provided its specific comments on the subsection 5.7 as follows:

(a) On subsection 5.7.1, TM would like to highlight that paragraph (c) is inconsistent with subsection 6.4.9 which requires electronic interface between the Access Provider and Access Seeker to be developed jointly. TM suggested a provision that requires the Access Seeker to ensure that the Access Provider's systems could interface with Access Seeker's systems to help the Access Seeker to place an order and for the Access Provider to process and provide access instead of restricting the Access Provider from requesting the Access Seeker to

procure similar technology or systems for the purposes of inter working;

(b) On subsection 5.7.2, TM submitted that it is impossible to comply with paragraph 5.7.2(e) i.e. in the case of HSBB and Transmission Services and perhaps some other services as well. TM proposes maintaining the original provision as per MSA 2009. In the event the request from the Access Provider is not necessary from the Access Seeker's perspective, the Access Seeker should be able to deny the request and initiate a dispute if necessary;

(c) On subsection 5.7.4, TM disagrees with this subsection because there is no system to support this requirement. TM anticipated that it will not be able to recoup the investment given the uncertain or very limited volume of demand if it invests to procure the system for the purposes of compliance;

(d) On subsection 5.7.8, TM is of the view that the current subsection in the MSA is sufficient for the purpose of providing and seeking access. Detail of pre order and post order may need to be customized as terms such as timeframe may vary from one service to another and from one service provider to another service provider;

(e) On subsection 5.7.9, TM commented that it will not be able to meet the shorter proposed period of 15 Business Days. TM noted that the current provision is sufficient since the resources has been dimensioned towards current process and timeline;

(f) On subsection 5.7.10, TM considers that this provision unfairly penalizes the Access Provider because the Access Provider would have completed some work and would have incurred costs in engaging the contractors and ordering equipment once the order is accepted. Before the acceptance of Order and service delivery stage, there is sufficient grace period to cancel the Order although all costs due to works that have been undertaken prior to cancellation shall be chargeable to Access Seekers. The current provision is sufficient for TM and it stated that the proposed changes is for the purposes of protecting the Access Seeker;

(g) On subsection 5.7.14, TM prefers to maintain the current provision in the MSA which is 8 months for all orders involving the provision of new Facilities and infrastructure relevant to the Services that are the subject of the Order and 60 days for all orders involving augmentation of capacity on existing Facilities and infrastructure relevant to the Services that are the subject of the Order. TM also noted that if a shorter period of time is required, then both the Access Provider and Access Seeker need to negotiate to mutually agree on the delivery timeframe. TM would like this to be reflected in the Operation & Maintenance Manual as the MSA would be too prescriptive. This is also to avoid unnecessary exposure to the Access

Provider on the risk of non-compliance due to a mandatory rigid timeline;

(h) On subsection 5.7.15, TM is of the view that the confirmation of order by the Access Seeker is required at this stage to avoid potential dispute in the future. TM would like the Access Seeker to be given an opportunity to decide on the acceptance or rejection of the Order upon receiving the notice of acceptance from the Access Provider;

(i) On paragraph 5.7.16(c), TM submitted that the proposed amendment favours the Access Seeker without valid reason or appropriate assessment on the impact to the Access Provider. TM finds that it is not consistent with any Act or Law and that it will not promote the National Policy Objective. The new proposal will discharge the Access Seeker from the obligation to provide accurate information as there is no consequence for providing inaccurate or erroneous information. TM hopes that the MCMC will retain the current provision for fairness towards both parties;

(j) On paragraph 5.7.26(b)(ii), TM finds this proposed amendment is another attempt by the MCMC to provide unfair provision to the Access Provider which restricts the claim to a maximum of 6 months notwithstanding the actual cost incurred which may exceed this duration. TM requested that MCMC maintains the current provision for fairness to the Access Provider and Access Seeker;

(k) On subsection 5.7.29, TM submitted that the current policy is on first come first serve basis and that it does not have a proper system to monitor this as there are no issues about queuing. TM also added that it is uneconomical for the company to procure such a system;

(l) On subsection 5.7.32, TM disagrees that the capacity allocation policy must be disclosed to the MCMC as it is an operational matter; and

(m) On subsection 5.7.33, TM proposed to add a provision to be fair to both the Access Provider and the Access Seeker as the Draft MSA only catered for the Access Seeker's interest. TM proposed that the Access Seeker pays the amount equivalent to the charges to be imposed for the period the service is delayed, calculated from the agreed delivery date or any agreed extended delivery date notified to the Access Provider if the delay is caused by the Access Seeker.

19.63 webe submitted that service qualifications can provide valuable strategic commercial information which may represent a competitive advantage in downstream market. Due to the nature of business confidentiality, both the Access Seeker and Access Provider normally would not reveal certain information, thus, webe stated that it is impractical to mandate the Access Provider to provide service qualification information prior to placing an order to the Access Seeker. webe also added that the paragraphs 5.7.10(a) and (b) are confusing because the commencement of work could be within 14 days after the Service Qualification report is issued.

19.64 YTL noted that it agrees with MCMC's proposed changes but pointed out that there should be a mechanism to establish equivalence for the proposed changes to have material effect on access.

Question 25: Do you agree the parties should have the option to agree that Access Seeker confirmation of Orders is not required? Do you consider the Service Specific Obligations should prescribe whether or not Access Seeker confirmation of Orders is required for each type of Facility or Service? Why or why not?

19.65 Altel and Net2One disagree with the MCMC's proposal to give parties the option to agree that the Access Seeker's Confirmation of Orders is not required. According to Net2One, an Order is merely a stated intention to engage in a commercial transaction and Order confirmation represents an acceptance for the order to be a contract. Altel and Net2One submitted that the confirmation of Order is vital for realistic network planning and control by the Access Provider in the course of fulfilling the Access Seeker's order.

19.66 The APCC agreed that the parties should have the option to agree that the Access Seeker's confirmation of Orders is not required. The APCC also agreed that the Service Specific Obligations should prescribe whether or not an Access Seeker's confirmation of Orders is required for each type of Facility or Service as it allows greater flexibility for the parties to amend the requirement according to the particular service.

19.67 Celcom agreed that the parties should have the option to agree that the Access Seeker's confirmation of Orders is not required. It provided an example where its process for the MVNO Access Service does not require confirmation of Orders from the Access Seekers as arrangements have been made earlier and both parties have mutually agreed during the discussion.

19.68 Digi is of the view that it is important to reinstate the requirement for confirmation of Orders because the network resources are limited under certain situations and the confirmation would ensure sufficient provision of resources for commencement of services.

19.69 edotco submitted that there should not be an option for Access Seekers and Access Providers to agree that confirmation of Orders is not required. edotco believes that the confirmation of Order is required to provide the certainty and assurance that is needed by an Access Provider in providing its Facilities and Services. edotco added that the requirement under subsection 5.7.15 to have the confirmation of an Order to be provided within the validity period of not less than 3 months is excessively long. Thus, edotco proposes that a confirmation of Order is provided by the Access Seeker within 5 Business Days after the notice of acceptance have been received.

19.70 Maxis is of the view that the Access Seeker confirmation should not be required anymore because the Order submitted is already considered as the confirmed Order in most scenarios. Maxis elaborated that if there are cases where there are changes proposed by the Access Provider, such as

in terms of charges, technical configuration, technical specification and delivery, then this confirmation could be considered on a case by case basis. For example, where the Access Provider has delayed the delivery dates specified in subsection 5.7.24, or has exceeded the estimated charges specified in subsection 5.7.16, then subsection 5.7.15 may be applicable and it may be necessary to require further confirmation from the Access Seeker before the Access Provider can proceed with the Order.

19.71 Otherwise Maxis is of the view that confirmation from the Access Seeker should not be required because Maxis does not want the Access Providers to intentionally delay the delivery dates by using the reason that the Access Seeker's confirmation has yet to be obtained. As such, Maxis is of the view that it is not necessary for the Service Specific Obligations to prescribe whether or not the Access Seeker's confirmation of Orders is required for each type of Facility or Service.

19.72 MYTV agreed that the parties should have the option to agree that the Access Seeker's confirmation of Orders is not required as it is fair to both parties within the validity period.

19.73 Sacofa submitted that there should be a confirmation of Order to avoid any dispute.

19.74 TIME disagrees that the parties should have the option to agree that the Access Seeker's confirmation of Orders is not required. TIME noted that the Access Seeker should confirm its order to enable the Access Provider to prepare to deliver the order accordingly because this will ensure that the Access Seeker does not cancel the order unnecessarily after they have confirmed it.

19.75 TIME provided information on the current industry practice where the Access Provider will revert back with the details of the Order including the scope or details of the Facility and/or Service i.e. capacity and charges when the Access Seeker submit its Order. The Access Seeker will also provide confirmation once it has agreed with the details given by the Access Provider so that the Access Provider can proceed to prepare and deliver the Order.

19.76 TM submitted that it is not necessary for the Access Seeker to reconfirm the order once the Access Seeker submits an Order and the Access Provider accepts the Order without changes. Confirmation should only be required if there are material changes to the Order submitted by the Access Seeker in order for the Access Provider to fulfil the Order. The ordering confirmation by the Access Seeker includes the Access Provider acknowledging receipt of Order, performing, accepting or withdrawing the Service Qualification and in relation to subsection 5.7.15. Thus, TM is of the view that the confirmation by the Access Seeker is important and compulsory.

19.77 For subsection 5.7.15, TM also noted that the Access Seeker should be given an opportunity to decide whether to accept or reject the order upon receiving the notice of acceptance from the Access Provider indicating the

agreed delivery time, date of the commencement of the civil work and the applicable charges to fulfil the order to avoid potential dispute in the future.

19.78 webe is of the opinion that such confirmation is required to avoid unnecessary time wasted on works by the Access Provider if the Access Seeker changed its plan.

19.79 YTL submitted that it agrees that the Service Specific Obligations should be prescribed if the Access Seekers confirmation of orders is required.

Discussion

Notice of receipt timeframes

19.80 The MCMC notes that its proposal to apply a range of acknowledgement of receipt times as new Service Specific Obligations was generally well-received by operators. One operator stated its preference for a standardized timeframe for all Facilities and Services, which it considered would make the regulation more efficient and easy to comply with. The MCMC does not agree. The MCMC considers that a standardized timeframe would lead to inefficiencies where differences between Facilities and Services affect an operator's ability to assess its capacity and confirm whether it will be able to fulfil an Order.

19.81 The MCMC also notes general support for the timeframes it proposed as Service Specific Obligations. Three operators disagreed. Of those, two submissions proposed longer acknowledgement of receipt timeframes: 2 Business Days (TM) and 5 Business Days (edotco). TM submitted that the proposed 1-hour timeframe (for an HSBB Network Service) is not possible and that an Access Provider would not comply with the MSA.

19.82 The MCMC has considered the submissions and considers that a 1 Business Day timeframe for acknowledgement of receipt for HSBB Network Services is reasonable in the circumstances. The MCMC notes that this timeframe now aligns with other Facilities and Services such as ANE and Digital Subscriber Line Resale Service.

Rejection of Order on grounds of not having obtained necessary related agreements (paragraph 5.7.17(e) of the MSA)

19.83 The MCMC did not receive any submission from an operator indicating they had experienced an issue with the operation of this provision.

19.84 The MCMC therefore does not consider this provision requires amendment.

Delivery date delay—period for Order cancellation without penalty (paragraph 5.7.24(a)ii of the MSA)

19.85 The MCMC received a wide range of views on whether the 14-day period should be made shorter or longer, including:

(a) shortening the period to 3 days;

(b) shortening the period to 5 Business Days;

(c) retaining the period of 14 days;

(d) lengthening the period to 90 days;

(e) that that the period in which an Order can be cancelled without penalty should follow the timelines for delivery (varying between Facilities and Services); and

(f) that the current timeline should not cover for any delays beyond the control of the Access Provider.

19.86 The MCMC also received a submission that the Access Seeker should permit the Access Provider to cancel the Order if the delay exceeds the 14 days and that the Access Seeker should compensate the Access Provider on any cost incurred to provide access to the related service.

19.87 The MCMC considers it reasonable to align the period of Order cancellation without penalty to the timelines for delivery of Facilities and Services and will adopt this position in the MSA.

Resource charges (subsection 5.7.28)

19.88 The MCMC did not receive any submission from any operator indicating they had experienced an issue with the operation of this provision.

19.89 Nevertheless, the MCMC received several differing submissions on this provision, including:

(a) that the MCMC's proposed requirement for Access Providers to specify in its RAO the methodology and unit costs for calculating any resource charge fees was unwarranted;

(b) that the MSA should list out the circumstances when a resource charge fee would be charged and that the methodology should include an assessment of the time to complete the task (i.e. man hours and assessment of the charge rate based on the skill required);

(c) that the Access Provider should be given the right to charge the Access Seeker the relevant cost incurred by the Access Provider (either one-time or recurring) as the result of obtaining access from the Access Provider, such as providing escort for the Access Seeker to enter into the Access Provider's premises; and

(d) resource charges should be set by mutual agreement for each Facility and Service and charged based on the agreed methodology.

19.90 The MCMC agrees with Astro that resource charges must be justified by the Access Provider as necessary for the Access Provider to provide new Facilities or Services requested by the Access Seeker. The MCMC will adopt wording to this effect in paragraph 5.7.28(a) of the MSA.

19.91 The MCMC considers that the changes it had proposed in the PI Paper to the resource charges provision of the MSA strikes a fair balance between an Access Provider's interest to recover the costs it incurs and an Access

Seeker's interest to be informed in advance of how such costs are calculated. Also, provided that an Access Provider complies with its non-discrimination obligations, the parties may agree to set resource charges by mutual agreement.

19.92 In light of the above, and given that no operator has indicated they had experienced an issue with the operation of this provision, the MCMC considers that its proposed changes to the resource charges provision are appropriate for inclusion in the MSA.

Ordering and provisioning obligations (subsection 5.7 of the MSA)

19.93 The MCMC notes general agreement by operators with the MCMC's proposed changes to the ordering and provisioning obligations set out at subsection 5.7 of the Draft MSA.

19.94 However, the MCMC received a wide range of submissions suggesting particular changes to the ordering and provisioning obligations. For example, that:

(a) the first limb of the cancellation and variation penalty should be limited to the "the sum of reasonable costs necessarily incurred by the Access Provider which are directly attributable to ~~as a result of~~ the cancellation or variation";

(b) certain portions of the ordering and provisioning obligations should be clarified or changed, including:

(i) specifying the circumstances where Service Qualifications may be required and by Facilities and Services;

(ii) specifying when an Access Provider is required to commence a Service Qualification;

(iii) specifying what is meant by the indicative time for delivery; and

(iv) making repeated Order rejections a reportable event (e.g. within 3 Business Days from the second order rejection);

(c) adopting a compensation mechanism where Access Providers that are unable to meet the Service Fulfilment and Service Restoration timelines should be subject to a compensation mechanism for non-delivery;

(d) the late delivery rebate should only be imposed on dominant operators;

(e) paragraph 5.7.2(e)(i) to (iii), which sets out the information the Access Provider may not require as part of an Order, should be deleted;

(f) the maximum timeframe for Service Qualification completion should remain 21 Business Days instead of being reduced to 15 Business Days; and

(g) the commencement of delivery timeframes should revert to the indicative delivery timeframes of 8 months / 60 days as under MSA 2009.

19.95 The MCMC agrees to amend subsection 5.7.9, which previously provided a timeframe for completion of Service Qualification based on when it was commenced without relation to any other part of the ordering and provisioning process. The MCMC determines that a Service Qualification must be completed within 15 Business Days after the date of the Notice of Receipt, or such earlier time based on a non-discriminatory standard.

19.96 The MCMC agrees with Astro that the Capacity Allocation Policy of an Access Provider should also set out the Access Provider's plans to expand their capacity over time (if any). The MCMC considers that such information should be provided to Access Seekers on a non-discriminatory basis in terms of its content and frequency of updates.

19.97 The MCMC also agrees to limit the cancellation and variation penalty to incurred costs which are directly attributable to (as opposed to simply being a result of) the cancellation or variation.

19.98 The MCMC does not agree with a number of operators that any additional or general compensation should be provided by an Access Provider to Access Seekers, for example, for delay / late delivery. The MCMC notes that subsection 5.7.33 already adequately addresses this issue.

19.99 In respect of the level of detail to be included in Service Qualifications, the MCMC considers it adequate for an Access Provider to provide such Service Qualification information to Access Seekers on a non-discriminatory basis and therefore does not consider it appropriate to specify any more detailed requirements in the MSA.

19.100 The MCMC agrees with Digi that, as both the Access Provider and the Access Seeker need to effectively inter-operate for ordering and provisioning, it is appropriate that both parties reasonably work together in order to support any inter-operability requirements. The MCMC will therefore provide that the Access Provider should not require the Access Seeker to "unreasonably invest" (as opposed to "invest" per se) in specialized technology or systems, such as an automated interface between the OSS of the operators.

19.101 The MCMC also agrees with Digi that, in order to assist with the operation of paragraph 5.7.10(b), any civil works to be conducted must be subject to the issuance of a notice in writing by the Access Provider.

19.102 The MCMC has further carefully considered the range of submissions received on the ordering and provisioning obligations. The MCMC notes that the submissions cover a range of disparate issues and take distinct positions

that do not reveal any obvious deficiencies with the ordering and provisioning obligations.

19.103 In addition, the MCMC finds it difficult to give much weight to unsubstantiated claims that a particular timeframe or requirement is impossible to comply with, simply because an Access Provider's current practices, processes or systems are dimensioned around another standard, such as MSA 2009. The MCMC acknowledges that the MSA may require an operator to take steps in order to comply with it. In this respect, the MCMC discusses the adoption of a grace period or transition period in section 46 of this PI Report.

19.104 In response to Digi's concern regarding "interrogation", the MCMC refers Digi to section 12.26 of this PI Report which may help clarify any misunderstanding in terminology.

Option to agree that Access Seeker confirmation of Orders is not required

19.105 The MCMC notes a split in opinion by operators on whether parties should have the option to agree that Access Seeker confirmation of Orders is not required.

(a) Some operators considered that Access Seeker confirmation should not be required anymore as a submitted Order is considered a confirmed Order in most scenarios, unless there were changes proposed by the Access Provider. This would also prevent an Access Provider from intentionally delaying a delivery date by using the reason that the Access Seeker's confirmation has yet to be obtained.

(b) Some operators considered that parties should be given the option to agree whether Access Seeker confirmation was required, which would allow greater flexibility for the parties to amend the requirement according to the particular service.

(c) Some operators considered that Access Seeker confirmation should always be required:

(i) for network planning and control by the Access Provider;

(ii) because network resources are limited under certain situations and the confirmation would ensure sufficient provision of resources for commencement of services; or

(iii) to avoid any dispute and unnecessary time wasted on works by the Access Provider if the Access Seeker changes its plans.

19.106 The MCMC agrees with Maxis and TM that it is not necessary for the Access Seeker to reconfirm the order once the Access Seeker submits an Order and the Access Provider accepts the Order without changes. A change may include such things as delayed delivery dates, exceeding estimated charges, a post-Order Service Qualification is required or any matter that requires further confirmation from the Access Seeker before the Access Provider can proceed with the Order.

19.107 The MCMC does not agree that it is appropriate for an Access Provider to require Access Seeker confirmation for the purposes of network planning or control by the Access Provider.

MCMC views

19.108 The MCMC confirms the adoption of its preliminary view on the ordering and provisioning obligations in the MSA, with the additional changes discussed above, being that:

(a) a 1 Business Day timeframe should apply for acknowledgement of receipt for HSBB Network Services;

(b) the Access Seeker's confirmation of an Order will not be required if the Access Provider accepts the Order without changes.;

(c) the period of Order cancellation without penalty shall be aligned to the timelines for delivery of each Facility and Service;

(d) resource charges must be justified by the Access Provider as necessary for the Access Provider to provide new Facilities or Services requested by the Access Seeker;

(e) a Service Qualification must be completed within 15 Business Days after the date of the Notice of Receipt, or such earlier time based on a non-discriminatory standard;

(f) the Capacity Allocation Policy of an Access Provider should also set out the Access Provider's plans to expand their capacity over time (if any);

(g) the cancellation and variation penalty shall be limited to incurred costs which are directly attributable to (as opposed to simply being a result of) the cancellation or variation;

(h) amend paragraph 5.7.1(c) to replace the word "invest" with "unreasonably invest"; and

(i) amend paragraph 5.7.10(b) provide that any civil works to be conducted must be subject to the issuance of a notice in writing by the Access Provider.

20 Network conditioning obligations

Introduction

20.1 The Network Conditioning obligations were set out under subsection 5.8 of the MSA. For the purposes of the MSA, 'Network Conditioning' refers to the conditioning, equipping and installation of equipment in an Access Provider's network to enable the provision of services.

20.2 In the PI Paper, the MCMC expressed the preliminary view that the current Network Conditioning obligations in the MSA continue to operate well and

do not require any substantive changes or updates except for the clarification that the Network Conditioning obligations are of limited practical relevance to the O&T Services only.

20.3 The MCMC noted that it would consider whether the Network Conditioning obligations under subsection 5.8 of the MSA should be relocated to the Service Specific Obligations for O&T Services under subsection 6.1 of the MSA (with consequential amendments to limit the definition of Network Conditioning so that it only applies to O&T Services).

20.4 In addition, consistent with the MCMC's broader objective of incorporating the 'equivalence of inputs' concept into the MSA, the MCMC proposed to clarify that number range activation should be provided within the shorter of:

(a) the time that the Access Provider would activate a number range for itself; and

(b) 10 Business Days of being requested to do so by the Access Seeker.

Submissions received

Question 26: Do you agree with the network conditioning obligations under subsection 5.8 of the MSA are of practical relevance to O&T Services only? Do you agree these obligations should be relocated to subsection 6.1 (O&T Services)?

20.5 The APCC, Celcom, Maxis, TM, U Mobile, webe and YTL submitted that they agree with the relevance of Network Conditioning Obligations to O&T Services and that the obligations should be logically relocated to subsection 6.1.

20.6 Altel and Net2One submitted that they do not agree with the MCMC's proposal to limit the network conditioning obligations under subsection 5.8 of the MSA to O&T Services only and to relocate the obligations to subsection 6.1. Both parties noted that the activity as described in the definition of network conditioning, such as equipping and installation of Equipment is also relevant in provisioning of other access facility and services. For example, network conditioning is relevant in the provisioning of the Interconnect Link Service and installation of Equipment is required in the provisioning of the Transmission Service.

20.7 TIME is of the opinion that the Network Conditioning Obligations fall under operational obligations and it should be stated in the Operation and Maintenance manual instead of in the main RAO.

20.8 TM submitted that it is agreeable with the proposal to relocate the services to subsection 6.1 under O&T Services as the network conditioning stated in subsections 6.1.7 to 6.1.15, namely, the handover principles, CLI, number range activation etc. are relevant to the O&T services only and therefore, no changes are required to network conditioning obligations.

Question 27: Do you agree with the MCMC's preliminary view that the current Network Conditioning obligations in the MSA continue to operate well and do not require any substantive changes or updates, other than their relocation to form a part of the Service Specific Obligations in subsection 6.1 (O&T Services)? If not, please specify what change you consider is required and explain why.

20.9 Altel and Net2One submitted that both parties agree that the current Network Conditioning obligations in the MSA continue to operate well and added that the relocation to subsection 6.1 is unwarranted.

20.10 The APCC agreed that the current Network Conditioning obligations do not require substantive changes.

20.11 Celcom, U Mobile and YTL agreed with the MCMC's preliminary view that the current Network Conditioning obligations in the MSA continue to operate well and do not require any substantive changes or updates, other than their relocation to form a part of the Service Specific Obligations in subsection 6.1 (O&T Services).

20.12 Maxis submitted that it agrees with the MCMC's preliminary view that the current Network Conditioning obligations in the MSA continue to operate well. However, Maxis would like to propose a few changes (related to transit calls via a third party operator) to the subsections for Network Conditioning which it has highlighted in its feedback under subsection 6.1 (O&T Services).

20.13 TIME submitted that it agrees with the MCMC's preliminary view but that the Network Conditioning Obligations should be stated in the Operating and Maintenance Manual instead of in the main RAO.

20.14 TM reiterated its comments given in Question 26 and considers that the current obligations operate well, thus no changes or amendments are required.

Question 28: Do you agree with the proposed changes to the number range activation provision? Why or why not?

20.15 Altel and Net2One submitted that the operators currently abide by the 10 Business Days activation timeline as stipulated in the MSA. Both parties also stated that operationally, the operators require at least 10 Business Days prior to the activation date to conduct testing of the code or number range in its network. Altel and Net2One recommended that the following process is incorporated in paragraph 6.1.10(a):

"use its best endeavours to activate in the Access Provider's Network the code or number range within the shorter of the timeframe that the Access Provider would activate the code or number range for itself or ten (10) Business Days after the agreed testing date of the said code or number range"

20.16 The APCC agrees with the proposed changes to the number range activation provision.

20.17 Celcom is not agreeable with the proposal to shorten the number activation timeframe as it considers 10 to 30 Business Days is appropriate. Celcom added that each operator must make the necessary arrangements on network elements involving different business units within an operator, thus the shorter timeframe is not practical.

20.18 Maxis submitted that it does not agree with the proposed changes to the number range activation provision. Maxis is of the view that the existing number range activation provisions are sufficient and have been proven effective within the industry but that it should only be applicable to PSTN and MSISDN numbers.

20.19 TIME submitted that it agrees with the proposed changes because it could help to avoid discriminatory conduct by the Access Provider with its retail arm and the Access Seeker.

20.20 TM submitted that it is agreeable for activation of numbers by the Access Providers within 10 Business Days which is consistent with the current timeframe. TM added that it also accepts urgent requests from the Access Seekers for number activation which is shorter than 10 Business Days subject to the submission of complete information / documentation by the Access Seekers such as the Letter of Advice and the MCMC Level Assignment Letter and also subject to the Access Seeker meeting TM's internal process on the urgency and successful testing and CDR verification at billing.

20.21 U Mobile does not agree to the 10 Business Days activation of numbers due to the time required to complete the full activation cycle. U Mobile specified that it requires 2 days for verification of new numbers, 15 Business Days for network and billing activation and 5 Business Days for joint testing. As such, it requires a total of 22 Business Days.

20.22 webe submitted that it can be very challenging to determine the exact timeframe if the question is referring to the new number range opening level. Opening new number level normally will require both the Access Provider and the Access Seeker to individually perform the testing. webe pointed out the challenge to get the dates from the individual providers for testing. However, it noted that setting a tentative timeframe is definitely possible and as such, the propose addition of the shorter timeframe clause in the Draft MSA is unnecessary.

20.23 YTL submitted that it agrees with the proposed changes to the number range activation provision. YTL also stated that the Access Provider should facilitate the Access Seeker on this within the same timeframe that the Access Provider provides such activation to its retail arm, that is, within 10 Business Days.

Discussion

20.24 The MCMC notes overwhelming support for its view that the Network Conditioning obligations under subsection 5.8 of the MSA continue to operate well and do not require substantive changes or updates, other than

their relocation to form a part of the Service Specific Obligations in subsection 6.1 (O&T Services).

20.25 The MCMC received two alternative views from operators.

(a) With regard to Altel and Net2One's submission that equipping and installation of Equipment applies to other Facilities and Service, in reading the definition in isolation, it can be interpreted broadly. However, the MCMC remains of the view that the Network Conditioning obligations as previously set out in subsection 5.8 of MSA 2009 are specific to O&T Services.

(b) With regard to TIME's comment that network conditioning obligations fall under the Operation and Maintenance manual instead of the RAO, the MCMC disagrees. The Network Conditioning obligations are not of such a nature, or at a level of detail, that they should not be determined in the MSA or require operator-specific agreement.

20.26 The MCMC notes general support from operators for its proposed changes to the number range activation provisions. A number of operators noted that the 10 Business Day timeframe is consistent with the timeframe in MSA 2009. The MCMC noted some variance in submissions which requested longer number range activation timeframes, with one operator requesting an extension to 30 Business Days. On the other hand, TM stated that in addition to complying with the 10 Business Days timeframe, it also accepts urgent requests from the Access Seekers in certain cases for number activation which is shorter than 10 Business Days.

MCMC views

20.27 The MCMC confirms its preliminary view that the Network Conditioning obligations continue to operate well and do not require any substantive changes or updates except for the following two clarifications, as previously set out in the PI Paper:

(a) the Network Conditioning obligations will be clarified to apply only to O&T Services and be relocated to form a part of the Service Specific Obligations in subsection 6.1 (O&T Services); and

(b) number range activation should be provided within the shorter of:

(i) the time that the Access Provider would activate a number range for itself including on an urgent basis; and

(ii) 10 Business Days of being requested to do so by the Access Seeker.

21 Point of interface procedures

Introduction

21.1 In the PI Paper, the MCMC noted that preliminary feedback from industry did not raise significant issues with the current point of interface procedures,

but that some specific issues and concerns were identified by particular operators. Note that a number of subsections have been moved from subsection 5.9 of the Draft MSA into subsections 6.9 and, in one instance, subsection 6.1. Hence, when reading this Public Inquiry Report, readers are reminded that references in this Introduction and Submissions received sections refer to the draft MSA, whereas references in the Discussion and MCMC views sections refer to the MSA to be published by the MCMC following this PI Report.

"Deemed Access Provider"

21.2 The MCMC considered the proposal to clarify that a deemed Access Provider should remain responsible for the acts and omissions of any sub-lessees that are co-located at a point of interface. The MCMC noted it would welcome comments from other operators on this proposal, including in relation to the specific wording proposed for inclusion in subsection 6.9.14 (previously subsection 5.9.3) in the Draft MSA.

Provision of Physical co-location

21.3 The MCMC proposed to require Access Providers to justify any denials of an interconnection request due to a lack of space under subsection 6.9.15 (previously subsection 5.9.4.) Under the current regime, once an Access Provider uses its "best efforts" to accommodate all Access Seekers, the Access Provider is excused from providing physical interconnection if it claims that there is a lack of space at a particular location. In the PI Paper, the MCMC proposed an express requirement for an Access Provider to notify the MCMC if it intends to deny an interconnection request due to a lack of space, and the extent to which an Access Provider is excused from its interconnection obligations will be determined by the MCMC.

21.4 The MCMC considered the proposed changes to limit the ability of an Access Provider to deny a physical interconnection request by an Access Seeker on unreasonable or unfair grounds. Further, where an Access Provider has valid grounds for refusal, the proposed requirement to notify the MCMC that the Access Provider intends to refuse physical co-location due to a lack of space should ensure that the Access Provider has used its "best efforts" to accommodate an Access Seeker's request before notifying the MCMC.

Transit services

21.5 The MCMC expressed the preliminary view that no amendment to subsection 6.1.12 (previously subsection 5.9.10) was required. The MCMC did not consider this subsection a hindrance to the industry's current practice and noted that it leaves open the possibility for transit traffic arrangement in the future.

Security and Critical National Information Infrastructure (CNII)

21.6 The MCMC proposed to include new security and CNII provisions that seek to balance the possible security risks of widely sharing information of particular points of interface against the need to provide Access Seekers

with sufficient information to be able to make an informed decision prior to submitting an interconnection request. These new provisions would also include safeguards (e.g. ability to enter into a confidentiality agreement before disclosing the location of a secure facility) to limit any risks to the secure facility.

Submissions received

Question 29: Have Access Seekers requested access to an alternative Point of Interface under subsection 5.9.5? If so, what was the outcome of the request (including any reasons given for rejection and whether the Access Seeker was satisfied by those reasons)?

21.7 Fiberail, Maxis and Sacofa comment that their Access Seekers have not requested access to an alternative Point of Interface under subsection 5.9.5.

21.8 Altel and Net2One submit that based on their experience, the reason for rejection to a request for an alternative Point of Interface is constraint of capacity. Though it is valid, an Access Provider should be obliged to notify the Access Seeker once capacity is available at the requested location. In addition, an Access Seeker should be allowed to reserve capacity and be placed on the Access Provider's waiting list to enable interconnection, once the Access Provider is in a position to accommodate the Access Seeker's request.

21.9 Celcom comments that it has received requests from Access Seekers to interconnect at a POI in the Central region instead of a POI nearest to the location of the "B" number (i.e. far-end handover). The requests were acceptable because certain Access Seekers who are on the IP network have only one POI in the Central region.

21.10 Fiberail's Access Seekers have not made a request to other alternative POIs under the Access Agreement. Under normal circumstances, if a request was rejected, it could be due to additional cost to be incurred that is either not feasible or viable, such as high CAPEX investment on the new last mile or the system design.

21.11 TIME comments that its Access Seekers have requested access to alternative Points of Interface under subsection 5.9.5, and it normally agrees with the requests if TIME has coverage in the requested areas.

21.12 TM comments that there are currently early discussions with at least one operator to move to IP interconnection and over time, it is likely that such moves will be implemented once all technical and operational parameters are assessed and agreed upon. This is similar to current reduction in POI which is being managed by the industry in moving to IP based core networks and traffic.

21.13 webe comments that it has requested access to an alternative Point of Interface, and thus far, the Access Provider has been very facilitative.

21.14 YTL comments that most of the time it will consider physical co-location requests except where there are areas of business concern.

Question 30: The MCMC is seeking feedback on the use of the Third Party Point of Interface provisions under subsection 5.9.7 of the Draft MSA – specifically, is it common for an Access Seeker to nominate a third party for the purposes of interconnection, in what circumstances would such a nomination be made and are there any improvements that can be made to the terms of subsection 5.9.7?

21.15 Celcom and Sacofa have not encountered the situation where an Access Seeker would nominate a third party Point of Interface for the purposes of interconnection.

21.16 Altel and Net2One comment that the common use of a third party for the purposes of interconnection is at a neutral data centre, where it is easy to interconnect with major operators located at that location. An example of a third party Point of Interface is at Menara Aik Hwa, which is owned by AIMS.

21.17 Celcom has never received any request from an Access Seeker to use a third party POI. In the IP environment, operators would not need to have a POI in each region and hand-over of calls would be on a near-end handover basis. Thus, it views that there may not be a need to use a third party POI.

21.18 Fiberail comments that this is common due to three circumstances. Firstly, the third party has a physical presence at the customer premises. Secondly, the customer has business or interest with the third party. Thirdly, third party has a good track record with the customer.

21.19 Maxis comments that most operators prefer not to use third party Point of Interface for interconnection, due to difficulties in determining network boundary, operation and maintenance purposes, additional capacity, cost, fault restoration etc. However, operators, who do not have their own infrastructure, opt to use the third party Point of Interface for the purpose of interconnection. An example is AIMS that is used by a few operators as their Point of Interface for interconnection.

21.20 Nevertheless, Maxis distinguishes the use of third party Point of Interface with the transit call via a third party's network, as there are differences in technical aspects, e.g. call routing, network element used, POI and commercial arrangements such as rates, revenue sharing, billing disputes etc. The transit call via the third party network is more complicated and is not preferred by the industry.

21.21 TIME commented that it is a common practice for an Access Seeker to nominate a third party for the purposes of interconnection, i.e. AIMS data centre, CSF and VADS where most of the operators have their POI at these locations and it is mutually agreed upon. Usually the Access Seeker will make an arrangement with the third parties and pay for cross-connect charges to the third parties. TIME views that no improvement is required as it is an existing industry practice.

21.22 TM and webe view that third party Point of Interface can be seen as transit traffic provided by Operator A to Operator C through the operator's existing POI with Operator B. They view that the Access Seeker should be given the flexibility to interconnect with the Access Provider either through direct Point

of Interface or through third party Point of Interface (transit). They consider that though third party Point of Interface is well accepted by mobile operators in respect of MVNO, the industry is reluctant to adapt it in the case of mobile operator-to-mobile operator interconnection although the arrangement is similar. Although subsection 5.9.10 of the MSA allows transit interconnection, however, in actual fact only direct interconnection is allowed in the case of mobile operator-to-mobile operator or mobile operator-to-fixed operator or fixed operator-to-fixed operator arrangements.

21.23 U Mobile comments that often the Access Seeker has no choice but to seek interconnection via a third party. This provision makes it more conducive to ensure any-to-any connectivity. For example, in Kuching, only Sacofa is allowed to construct fibre and operators have to lease from Sacofa. U Mobile is not allowed to establish in-span or full-span interconnection, and without its own infrastructure, it has to route its traffic via a third party. In Johor Bahru, where the local council has appointed Navia as a one-stop agency to permit, construct and maintain fibre cables, a telco that needs to obtain the necessary approval is required to build an extra duct for Navia, leading to delays and cost overruns. In such a situation, it is necessary for operators to seek a third party for interconnection with other operators. Hence, U Mobile strongly supports the third party Point of Interface as stipulated in subsection 5.9.7 of the MSA.

21.24 YTL comments that third party Point of Interface is mutually agreed by both parties, hence the cost and omission at the Point of Interface is borne by both parties.

Question 31: Do you agree with the MCMC's proposed changes to the point of interface procedures set out at subsection 5.9 of the Draft MSA? Why or why not? If not, please specify what change you consider is required and explain why.

21.25 Celcom, Fiberail, Sacofa and TIME agree with the MCMC's proposed changes to the point of interface procedures set out at subsection 5.9.

21.26 The APCC agrees with the proposed changes in subsection 5.9, apart from subsections 5.9.3 and 5.9.9. In relation to subsection 5.9.3, the APCC notes that the deemed Access Provider would be responsible for the acts and omissions of an Access Seeker. Hence, a likely response by deemed Access Provider would be to seek indemnity from the Access Seeker to whom access has been provided. An alternative would be to require the Access Seeker to sign short-form terms of access with the principal Access Provider. With regard to subsection 5.9.9, the APCC notes that the refusing Access Provider should only notify the Access Seeker and the MCMC. The APCC proposes that this subsection should go further and require the refusing Access Provider to at least add additional facilities to address the demand for additional physical co-location and to investigate and make a report to the MCMC on the outcome of its investigations.

21.27 Celcom does not have any objection to the proposed changes, in particular with regard to subsection 5.9.3, where the Access Seeker shall be fully

responsible for the acts and omissions of its sub-lessee and shall ensure that the sub-lessee complies with all the Access Seeker's obligations with respect to the co-located space. The deemed Access Provider in this case would be responsible to the Access Provider for all acts and omissions of its Access Seekers (or sub-lessees). This has already been adopted by all operators.

21.28 Digi supports subsections 5.9.2 and 5.9.3 for the Access Provider to be transparent in sharing the availability of point of interface. However, it notes that maintaining databases online and open public access poses certain security risks. Hence, it proposes that such requirements be made available only on request. On subsection 5.9.11, Digi views that access to confidential co-location be limited to Access Seekers that have signed confidentiality agreements.

21.29 edotco proposes to delete the proposed amendments in subsection 5.9.4 on lack of space and to delete subsection 5.9.9 on notice of refusal in its entirety.

21.30 Maxis agrees with the proposed changes in subsections 5.9.4, 5.9.5, 5.9.8 and 5.9.9. In relation to paragraph 5.9.2(c), Maxis proposes to allow the Access Seeker to choose the type of POI that it prefers, between virtual co-location or in-span interconnection. Maxis has difficulty understanding subsection 5.9.3 and suggests simplifying the subsection to avoid confusion and for easy comprehension and compliance by the operators. With regard to subsection 5.9.10, Maxis suggest that this subsection be relocated to subsection 6.1, as it is more relevant to O&T services.

21.31 Maxis strongly agrees with subsection 5.9.11, and this subsection should be retained in the MSA to ensure that there is appropriate documentation or procedures in place for access to national or operational security areas. Maxis highlights that there are different tiers of control under Majlis Keselamatan Negara, hence, lower tiers such as "Kawasan Larangan" should not enjoy the same restrictions as high security tiers like Level 1 restriction or "Keutamaan 1". Maxis also highlights the recent development in the UK, where there was a similar requirement in the draft Proposed Guidance under the Communications – Access to Infrastructure Regulations 2016 dated 26 July 2016. With regard to paragraph 5.9.11(a)i., Maxis proposes that the Access Provider must provide the proof of designation of the facility as Critical National Information Infrastructure by the relevant authority, e.g. Majlis Keselamatan Negara, to the other operators on request.

21.32 TIME agrees with the proposed changes as it provides a clearer understanding and could ease the negotiation and arrangement between the parties.

21.33 TM noted that under Section 19 of the PI Paper on Point of Interface, the MCMC acknowledged the importance to consider the need for special measures when establishing a co-location services for the purpose of POI for interconnection in certain location that is identified as high securities area. TM appreciates the MCMC's recognition as it is important to safeguard

high security areas due to the critical facilities being deployed within the said areas. As noted by the MCMC in the PI Paper, the MCMC allows for virtual co-location where the sites are deemed critical by the Access Provider. TM believes that there is a need for the MCMC to view the co-location policy in a bigger picture in the advent of TPPA to ensure national interest such as security assets and key telecommunication infrastructure sites are protected. TM hereby supports the MCMC's approach to allow virtual co-location mainly for the purpose to address the safety, security and CNII.

21.34 TM provides feedback to subsection 5.9 as follows:

(a) On paragraph 5.9.2(a), TM already publishes the list of POIs in the ARD for the purposes of network interconnection. This information is critical for Access Seekers, especially new entrants in planning their network rollout. However, other POI locations are not necessary and cumbersome for the Access Provider to publish, given that there may be many possible POI locations and the actual POI would be mutually agreed and established with the Access Seeker. The Access Seeker would need to plan their POIs based on their needs, i.e. POI for transmission capacity, and it may be in the form of in-span, at the exchange or base station, rather than referring to TM's established POI locations;

(b) On paragraph 5.9.2(c), TM proposes to have physical co-location, virtual co-location or in-span interconnection to be mutually agreed. It appears that the current drafting indicates that virtual co-location and in-span interconnection is the secondary option and only granted when physical co-location is not available. TM submits that there are instances where Access Seekers choose in-span interconnection even though physical co-location is available;

(c) In relation to subsections 5.9.4 on lack of space and 5.9.9 on notice of refusal, TM views that the obligation to notify the MCMC as unnecessary as these are purely operational matters and access could be offered in a different form such as virtual co-location or "meet me" fibre or in-span interconnection. The MCMC should only request for any information required on a case by case basis. It is also unnecessary to inform the MCMC in relation to paragraphs 5.9.11(a)iii. and 5.9.11(b)i.; and

(d) On paragraph 5.9.8(c), TM views that it is not appropriate for the MCMC to dictate the number of POIs for every Closed Number Area. In practice, the number of POIs are mutually agreed, and it is provided at the most economical point which is also technically feasible. In addition, with the industry moving towards NGN, the number of POIs would be reduced to increase efficiency.

21.35 U Mobile provides comments on subsections 5.9.9 and 5.9.11. With regard to subsection 5.9.9, the Access Provider should not be unduly burdened by the need to declare their capacity publicly. In relation to subsection 5.9.11,

U Mobile comments that there should be a clear definition of what constitutes a "secure facility" or Critical National Information Infrastructure. Without a stringent qualification, this subsection will not be effective.

21.36 webe understands that the MCMC is trying to address possible intentional refusals by the Access Provider. However, these obligations exist in MSA 2009, where Access Providers are required to provide reasons for refusal. As refusals is not an industry issue, webe urges that Access Seekers be given the avenue to directly complain to the MCMC rather than imposing an obligation on the Access Provider to report on refusals. webe suggests that based on the number of reports lodged by the Access Seekers, the MCMC can review on the need to impose reporting obligations on the industry as a whole. However, without actual reports, it is difficult to gauge the severity of the problem as proposed in subsections 5.9.9 and 5.9.11.

21.37 YTL provides that most of the time it will consider physical co-location requests except where there are space and capacity constraints and in-span interconnection is an option.

Discussion

21.38 The MCMC is pleased to note the generally positive experience of operators when requesting access to an alternative Point of Interface under subsection 5.8.3 (previously subsection 5.9.5) of the MSA. The MCMC considers that this provision appears to be working well and that no improvement to that provision is required.

21.39 Similarly, the MCMC considers that the Third Party Point of Interface provisions under subsection 5.8.5 (previously subsection 5.9.7) of the MSA is operating well and that no improvement to that provision is required. The MCMC considers that the provision of a transit option is an important option to be available to Access Seekers.

21.40 In respect of the MCMC's proposed changes to the point of interface procedures set out at subsection 5.8 (previously subsection 5.9) of the MSA, operators were again generally in support of the MCMC's proposed changes. The MCMC acknowledges the few submissions from operators suggesting potential improvements to subsection 5.8 (previously subsection 5.9).

21.41 The MCMC agrees with Maxis to amend section 5.8.2 (previously subsection 5.9.2) to clarify that the Access Seeker has the option to request either virtual co-location or in-span interconnection where physical co-location cannot be granted.

21.42 The MCMC also agrees with Maxis that subsection 6.1.12 (previously subsection 5.9.10) should be relocated to subsection 6.1, as it is relevant only to O&T services.

21.43 The MCMC confirms its preliminary view to maintain the existing obligation on Access Providers to publish their POI locations and does not agree with TM to reduce this obligation as submitted.

21.44 The MCMC has considered the other changes suggested by operators and determines that no further change is required. For example, the MCMC does not consider it appropriate to introduce a blanket requirement on an Access Provider who refuses a request for physical co-location to add additional facilities to address the demand for additional physical co-location.

MCMC views

21.45 The MCMC thanks operators for their helpful feedback on the point of interface procedures. The MCMC is encouraged by the generally positive operator submissions on these procedures. The MCMC notes there is no demonstrable deficiency with these provisions.

21.46 The MCMC determines the MSA will:

(a) relocate subsection 6.1.12 (previously subsection 5.9.10) of the Draft MSA to the Service Specific Obligations in subsection 6.1, as it is relevant only to O&T services; and otherwise

(b) reflect the proposed changes in the PI Paper in respect of the point of interface procedures.

22 Decommissioning obligations

Introduction

22.1 In the PI Paper, the MCMC noted that it does not propose to make any substantive changes to the decommissioning obligations under subsection 5.10 of the MSA, other than proposed changes to clarify the operation of the current subsection 5.10.1.

Submissions received

Question 32: Do you agree with the MCMC's preliminary view that the current decommissioning obligations in the MSA continue to operate well and do not require any substantive changes or updates? If not, please specify what change you consider is required and explain why.

22.2 Altel, the APCC Celcom, edotco, Fiberail, Maxis, Net2One, Sacofa, TIME, U Mobile and YTL are agreeable to the MCMC's proposal.

22.3 edotco and Sacofa also highlighted the circumstances whereby decommissioning may be due to local authorities' instruction or directive. edotco pointed out that this can be very short notice period, hence this circumstance is proposed by edotco to be excluded from subsection 5.10.1 of the MSA.

22.4 TIME is agreeable to the MCMC's preliminary view and proposal but stated that Decommissioning Obligations should be stated in the Operating and Maintenance Manual instead of the RAO.

22.5 TM considers that the current processes are working well as such does not propose any changes.

Question 33: Do you agree with the proposed clarification? Why or why not?

22.6 Altel, Net2One, U Mobile and YTL is agreeable to the MCMC's.

22.7 Celcom does not have objection with the proposed clarification and amendments made to subsection 5.10.1.

22.8 edotco proposed amending 5.10.1 to take into account the situation where an Access Provider is required to vacate a site as a result of notice from local authorities. edotco notes that such notice to vacate can be as short as 14 days. edotco submitted this circumstance should be included as an additional exception to the decommissioning obligations under subsection 5.10.1 of the draft MSA.

22.9 Maxis agrees with the proposed changes by the MCMC on Decommissioning Obligations from subsection 5.10.1 to 5.10.5.

22.10 Sacofa commented that decommissioning may also be due to local and/or government's instruction or directive.

22.11 TIME agrees with the proposed clarification which allow Access Seeker to have more time to make arrangement to relocate its network due to decommissioning of Access Provider facilities and/or services.

22.12 TM considers that the current processes are working well as such does not propose any changes.

Discussion

22.13 The MCMC notes the majority operators agreed with the MCMC's preliminary view that the current decommissioning provisions are operating well and do not require substantive updates.

22.14 The MCMC acknowledges the concerns of Sacofa and edotco that an Access Provider may sometimes be required to vacate a site by a local government authority and that, in such circumstances, decommissioning may need to be carried out in a shorter timeframe than 6 months or 1 year. The MCMC agrees that a notice of this type is akin to a notice to vacate from a third-party landlord (under an arm's length tenancy agreement) and, therefore, that it should be treated in the same way for the purposes of the Decommissioning Obligations under subsection 5.9.1 (previously subsection 5.10.1) of the MSA.

MCMC views

22.15 The MCMC determines that, instead of the usual 6-month or 1-year notice period that would otherwise apply, where an Access Provider is required to vacate a site as a result of a local government authority's notice, the Access Provider must provide all relevant Access Seekers with as much notice as possible prior to the relevant decommissioning.

22.16 Apart from this change, the MCMC confirms its preliminary view that the Decommissioning Obligations continue to be effective and that there is no need for substantive changes to the Decommissioning Obligations.

23 Network change obligations

Introduction

23.1 In the PI Paper, the MCMC noted that it does not propose to make any substantive amendments or additions to the network change obligations under subsection 5.11 of the MSA, other than a proposed change to clarify the testing provisions under subsection 5.11.5.

Submissions received

Question 34: Have operators either experienced or imposed a relevant change to which subsection 5.11 applies? If so, please: a) describe the network change and any Facilities or Services that were affected; b) discuss whether the network change processes were followed; c) discuss how successful network change process was; and d) discuss any improvements that may be made to the network change processes.

23.2 Astro submitted that it did experience network change with less than a month's notice period. Astro claimed that the incumbent Access Provider underwent a network upgrade without informing the other Operators and Astro was only alerted through its own customer complaints. Astro had then approached the Access Provider and was only informed about the network upgrade then. There was no solution provided by the Access Provider to minimize the disruption. Astro proposed that subsection 5.11.3 should also require the Access Provider to disclose to the Access Seeker on the expected completion date of the network upgrade.

23.3 Celcom said that it has adopted subsection 5.11 in its Access Agreement without any amendments.

23.4 Fiberail mentioned that no changes have been made to subsection 5.11.

23.5 Maxis is of the view that the existing subsection 5.11 continues to operate well without requiring any substantive changes or updates. However, Maxis propose a minor amendment to subsection 5.11.2(d) to include the Service Assurance systems as one of the proposed network changes under the scope described in subsection 5.11.1 of the MSA.

23.6 Sacofa submitted that it has not experienced or imposed any relevant network change.

23.7 TIME said that it has changed its Synchronous Digital Hierarchy (SDH) network platform to Metro E, and from Metro-E to IP Core platform. It has also changed its voice network from different vendors. TIME mentioned that it has imposed and applied subsection 5.11 such as issuing notification to the other operators on planned activity and also inform its own customers about the changes. TIME further mentioned that it has also experienced changes in its internal processes for registration of customers due to changes made to its OSS system, whereby registration of customers was upgraded from manual to automatic registration. However, this change only involved its end customers and not the other operators who have interconnection agreements with TIME.

23.8 TM is of the view that the current provision in the MSA is sufficient. TM also considers that Access Providers and Access Seekers may discuss and agree on action plans for any network change not covered under the MSA and instances that require a diversion from the MSA.

23.9 webe submitted that no changes have been imposed on them.

23.10 YTL said that subsection 5.11 is relevant and can cater for situations that may arise.

Discussion

23.11 The MCMC thanks operators, including Astro, Maxis and TM, for their engagement on the question of whether the Network Change obligations are working effectively. The MCMC considers based on the submissions that there do not appear to be any substantial issues with the operation of subsection 5.10 (previously subsection 5.11).

23.12 Many of the operators did not discuss any improvements to be made to subsection 5.10 (previously subsection 5.11) except for Maxis which requested a minor amendment to subsection 5.10.2(d) (previously subsection 5.11.2(d)) to include Service Assurance systems in the scope and Astro which proposed that subsection 5.10.3 (previously subsection 5.11.3) includes requirement for the Access Provider to disclose to the Access Seeker on the expected completion date of the network upgrade.

23.13 TM highlighted that discussion and agreement between Access Provider and Access Seeker can be considered for network change not covered under the MSA. Astro highlighted its experience whereby a network change was imposed on them which did not comply with the requirements in subsection 5.10 (previously subsection 5.11) while TIME stated that it had adhered to the requirements in subsection 5.10 (previously subsection 5.11) when it went through its network changes.

23.14 In respect of information to be provided in respect of a Relevant Change, the MCMC considers it reasonable for an operator to be required to expressly include in its Change Notice information on the expected completion date of a Relevant Change to its Network.

23.15 In respect of changes to any of the Operational Support Systems used in inter-carrier processes, the MCMC considers based on the submissions that there do not appear to be any substantial issues with the operation of this subsection and, as the OSS Change list is inclusive and without limitation, does not consider there is a strong reason to make this change.

MCMC views

23.16 The MCMC determines that a Change Notice described in subsection 5.10.3 (previously subsection 5.11.3) will be required to expressly include the expected completion date of a Relevant Change.

23.17 Apart from this change, the MCMC confirms that no substantive changes are required to subsection 5.10 (previously subsection 5.11).

24 Network facilities access and co-location

Introduction

24.1 In the PI Paper, the MCMC noted that as part of its broader proposal to apply a number of the existing content obligations as Service Specific Obligations under the MSA, subsection 5.13 would be moved to section 6. Most of the provisions under subsection 5.13 would be included in subsection 6.9 on Network Co-Location Service. However, certain subsections would also be included in subsection 6.8 on Infrastructure Sharing, subsection 6.10 on Domestic Connectivity to International Services and subsection 6.11 on Duct and Manhole Access.

24.2 The MCMC proposed changes to the content which was previously in subsection 5.13 to ensure that an Access Seeker's personnel are provided with equivalent access as an Access Provider provides to itself. The MCMC considers these changes are necessary to ensure an Access Provider does not use processes and procedures to unfairly or unreasonably deny access.

24.3 The MCMC proposed to include a requirement for an Access Provider to publish the locations at which Network Co-Location Services are available. If the Access Provider cannot publish for security reasons, it must make available the information to Access Seekers on request subject to a confidentiality agreement being in place.

24.4 The MCMC noted that it was seeking further views on whether the proposed changes to the timeframes for providing escort services in certain circumstances (e.g. at unmanned and remote sites, etc.) were appropriate, or whether operators considered that making these changes would be too limiting. The MCMC also welcomed further views on whether more flexibility should be introduced into the escort provisions in the MSA, such as at sites with less security requirements.

Submissions received

Question 35: Do Access Seekers find the physical access obligations under subsection 6.9.8 (formerly subsection 5.13.3) helpful and do Access Seekers regularly request access to an Access Provider's network facilities under this provision?

24.5 Altel and Net2One are agreeable to the obligations under subsection 6.9.8. However, they proposed that physical access should only be allowed at the Access Provider's network facilities which house the Access Seeker's equipment.

24.6 Celcom said that it has not experienced any issue with regard to physical access obligations as an Access Seeker. Celcom mentioned that this provision would be applicable to co-location at Access Provider's submarine cable landing station but Celcom does not have such arrangement.

24.7 Digi is of the view that the obligations under subsection 6.9.8 are acceptable and that Access Seeker's personnel be granted equivalent of access.

24.8 Maxis is agreeable with the obligations under subsection 6.9.8 and finds them helpful. However, for clarity purposes, Maxis proposed to add "…. for the purpose of clarification, the Access Seeker must follow and comply with all the Access Provider's Security Access rules and regulation for physical access."

24.9 Sacofa and TIME stated that they find the physical access obligations under subsection 6.9.8 helpful and Access Seekers do regularly request access to an Access Provider's network facilities under this provision.

24.10 TM commented that there is considerable difficulty in providing network co-location in premises where there is high level of security requirement due to national interest i.e. CNII premises and other premises such as certain cable landing stations and hill stations where safety and security is most important. TM proposed for the MCMC to allow the Access Provider to provide other types of co-location or another alternative to replace the current physical network co-location.

24.11 U Mobile finds the physical access obligations under subsection 6.9.8 helpful and Access Seekers do regularly request access to an Access Provider's network facilities under this provision.

24.12 webe commented that it understood the requirements under subsection 6.9.8 and the potential issue concerning national and operational security reason if the sites are accessed without escort. webe further proposed that the former subsection 5.13.3 should be retained in its entirety, allowing physical access 24 hours a day, 7 days a week. webe also opines that such access should be provided to the Access Seeker during fulfilment of order i.e. before Access Seeker acquires the service.

24.13 YTL submitted that the subsection is necessary especially for Access Seekers.

Question 36: Do Access Provider's find it difficult to provide physical access to network facilities 24 hours a day, 7 days a week under subsection 6.9.8 (formerly subsection 5.13.3)? Are Access Providers generally able to make an escort available for such inspections when an escort is determined to be necessary in accordance with subsections 6.8.7, 6.9.9, 6.10.10, 6.11.8 (formerly subsection 5.13.4)? Please respond based on the respective Service Specific Obligations.

24.14 Altel and Net2One submitted that physical access to network facilities 24 hours a day, 7 days a week under subsection 6.9.8 and providing an escort when required, is possible as long as the Access Seeker abides by the security procedures set by the Access Provider.

24.15 Celcom as an Access Provider does not have any difficulties providing physical access to network facilities 24 hours a day, 7 days a week under subsection 6.9.8. Celcom adopts this subsection in its Access Agreements. Celcom further mentioned that it is an Access Seeker for Network Co-location service and Infrastructure Sharing but is neither an Access Seeker nor Access Provider for Domestic Connectivity to International Service.

24.16 Digi finds the requirements under subsection 6.9.8 are acceptable. However, Digi highlighted that although paragraph 6.8.10(c) states that the Access Provider must ensure that power supply is to be provided, in practice, both Access Seeker and Access Provider would acquire their own supply of electricity or power. Referring to paragraph 6.8.10(e), Digi commented that due to the large number of sites, on-site security arrangement is only available at all Super Critical Collection Point (SCCP) sites.

24.17 edotco submits that the timeframe for Access Providers to provide escort should be differentiated between Access Seekers' critical and non-critical sites (i.e. collector versus cell sites). edotco commented that the site design between mobile and fixed network operators are different and edotco finds it difficult to comply with the 30-minute timeframe stated in subsection 6.8.8. For example, fixed network operators may not require certain premises (i.e. hill stations) to be manned whereas mobile operators may consider hill station sites as critical sites. Referring to both subsection 6.8.8 and 6.9.10, edotco commented that Access Seeker should not in any situation proceed to enter an Access Provider's property without an escort or without the Access Provider's permission.

24.18 edotco proposed amendment to subsection 6.8.8 and 6.9.10 as follows: "Absence of escort: For the purposes of subsection 6.8.7, if an escort does not arrive at the Access Provider's property within a reasonable time, as stipulated in paragraph 6.8.7(b), the Access Seeker's staff may proceed to enter the Access Provider's property without an escort subject to having obtained the Access Provider's approval, whether in writing or otherwise.

24.19 edotco also proposed amendment to paragraph 6.8.7(d) and 6.9.9(b) as follows: "have such escort service on call within a reasonable period of time, taking into account the remoteness and distance of the site, to attend at the Access Provider's property) outside ordinary business hours; and"

24.20 Fiberail commented that it does encounter difficulties in providing physical access to network facilities 24 hours a day, 7 days as many of Fiberail's facilities are unmanned and manpower resources are limited. The site access as per its standard operating procedures is 5 to 7 working days for planned work. However, Fiberail finds the requirements in subsection 6.8.7, 6.9.9, 6.10.10 and 6.11.8 acceptable.

24.21 Maxis is of the view that whether it is difficult to provide physical access to network facilities 24 hours a day, 7 days a week under subsection 6.9.8 is dependent on the network facilities provided. For manned premises, it is usually not difficult to meet the requirement in subsection 6.9.8 provided that appropriate advance notice is given to the Access Provider. However, for unmanned premises especially at remote sites, it is difficult to provide 24 hours a day, 7 days a week physical access to the Access Seeker.

24.22 MYTV agrees with the MCMC's proposals with regard to the Point-of-Interface as it applies to the Digital Broadcasting Multiplexing Service.

24.23 Sacofa does not find it difficult to meet the requirement under subsection 6.9.8.

24.24 TIME does not have difficulties in providing physical access to network facilities 24 hours a day, 7 days a week. However, TIME disagrees with the requirement to have an escort ready within 30 minutes outside the ordinary business hours. The reason is that some co-location areas are located either in secluded areas or in the middle of traffic congested areas where longer timeframe is needed for the escort to reach the site. TIME is of the view that costs for such escort are to be borne by Access Seeker instead of Access Provider since the access to the location site is for maintenance or upgrade purposes required by the Access Seeker.

24.25 TM has concerns about the proposed conditions in the MSA in relation to timing and escort requirements. TM highlighted that due to safety and security reasons, it is imperative that an escort is present and approval or permits need to be obtained from TM when Access Seekers enter TM's premises. TM finds it impractical and impossible to comply with the 30 minutes' response time and strongly oppose the proposal of allowing Access Seekers to enter the Access Provider's premises without an escort.

24.26 TM commented that it is impossible to comply with the 30-minutes response time because time is required to make arrangement for manpower, transportation and to factor in travel time to these locations. Response times are dependent on the location of site (remote sites, hill sites, etc.), traffic conditions and distance from command base (applicable to remote and unmanned sites).

24.27 TM has concerns over paragraphs 6.9.9(a) and 6.9.9(b). TM highlighted that it has many shared sites which fall under 3 different categories based on the location of the equipment: exchanges with office inside; exchanges with equipment only; and totally unmanned sites without security posts. Locations of these sites may be rural or remote.

24.28 To comply with subsection 6.9.9(a), TM requires minimum of 5 Business Days prior notification. In the case where escorts are not available during emergency, TM proposed that Access Seeker to comply to all necessary procedures and to provide a report to the Access Provider within 48 hours from the time they gain access to the premise. The report should include among other things: time entered and leaving premises; number and details of authorize person entering the premise; and purpose, work and activities carried out in the premise.

24.29 TM is only able to comply with the proposed subsections 6.8.7, 6.9.9, 6.10.10 and 6.11.8 for the exchanges or premises which are manned and with the necessary prior notification mentioned above. For subsection 6.9.10, TM proposed to substitute 30 minutes with 2 hours' response time. TM is of the view that paragraphs 6.8.7(c), 6.9.9(c), 6.10.10(c) and 6.11.8(c) are unfair and warrants a new provision that is fair to both parties. TM proposed that Access Provider should be able to recover all relevant costs from the Access Seeker if the Access Provider is to provide escort for the Access Seeker to access the premise.

24.30 U Mobile agrees with the requirements and the MCMC's proposals in subsections 6.9.8, 6.9.9, 6.10.10 and 6.11.8.

24.31 webe submitted that it is currently an Access Seeker and is of the view that it is crucial that the Access Seekers should have physical control and access over their equipment located at the Access Provider's premises on a 24 hours a day, 7 days a week basis. webe further commented that if the Access Provider has concerns over security issues, the Access Provider can request Access Seeker to provide early notice in order for the Access Provider to arrange for escorts.

24.32 YTL is of the view that physical access to network facilities on 24 hours a day, 7 days a week is important but sufficient notice must be given to the Access Provider. According to YTL, the timeframe of 30 minutes may be sufficient for manned sites but for remote locations, longer time may be required. The timing can be mutually agreed between the Access Provider and Access Seeker. Referring to subsection 6.9.8, YTL commented that as an Access Seeker, there were problems faced during physical access to sites due to landlord prohibitions and the Access Provider's unwillingness and uncooperative attitude towards enabling physical access to the Access Seeker.

Question 37: How do Access Seekers feel about the reservation and allocation of space provisions under subsections 6.9.12 and 6.9.13 (formerly subsections 5.13.7 and 5.13.8), including the operation to date of the requirements under subsections 6.9.12 – 6.9.15 (formerly subsections 5.13.7 – 5.13.10)?

24.33 Altel, the APCC, Celcom, Digi, Maxis, Net2One, TIME, U Mobile, webe and YTL all supported the reservation and allocation of space provisions under subsections 6.9.12 and 6.9.13.

24.34 Maxis and TIME also submitted that the operation to date of the requirements under subsections 6.9.12 to 6.9.15 are sufficient.

24.35 However, TIME commented that it faced difficulties on how to justify the grounds for not allowing access in the situation where the Access Provider needs to reserve space for its current and future need, as well as to cater to the needs of other Access Seekers who are occupying or have ordered space from the Access Provider.

24.36 TM commented that space requirements are provided based on availability of space upon request on a first come first serve basis.

24.37 YTL also commented that Access Providers who require Access Seekers to install the facilities must provide sufficient space for the Access Seeker.

Question 38: How is "preparatory work" carried out in practice by Access Seekers (under subsection 6.9.17 or the former subsection 5.13.12) and Access Providers (under subsection 6.9.18 or the former subsection 5.13.13)?

24.38 Altel and Net2One substantiate that the "preparatory work" processes set out in subsections 6.9.17 and 6.9.18 are as currently practiced.

24.39 Celcom commented that an example of "preparatory work" by Access Seeker is where the Access Seeker source electricity or other ancillary services due to delay by the Access Provider in providing the service. Examples of "preparatory work" by Access Provider includes fencing, drainage, preparation for distribution board and antennae bracket.

24.40 Digi is of the view that the "preparatory work" carried out is reasonable in practice.

24.41 Maxis said that the "preparatory work" is usually carried out as per mutually agreed between the Access Provider and Access Seeker. Maxis is of the view that subsections 6.9.17 and 6.9.18 are sufficient for both Access Seeker and Access Provider to date.

24.42 TIME stated that both Access Providers and Access Seekers currently carry out the "preparatory work" in accordance with the MSA 2009. However, referring to paragraph 6.9.18(b), TIME proposed that the percentage for the estimated charges should be more than 30% of the original estimate before the Access Provider permits the Access Seeker to withdraw the request without penalty.

24.43 TM submitted that for "preparatory work", Access Seeker's employees or contractors are required to follow the procedures for site entry and are subject to the policies and guidelines provided by TM which is consistent with global practice. For the purpose of fairness TM proposed to insert new paragraph 6.9.19(d): "In the event the delay is caused by the Access Seeker, the Access Seeker shall compensate the Access Provider for the cost it has incurred as a result of delay, subject to the Access Provider using reasonable endeavours to mitigate those costs."

24.44 YTL commented that "preparatory work" is mutually agreed by the Access Provider and Access Seeker. The Access Provider generally allows the Access Seeker to carry out preparatory work or it may undertake the "preparatory work" on behalf of the Access Seeker subject to agreed specifications, key performance indicators and service level agreements.

Question 39: Are operators getting sufficient access to power, back-up power, etc. under the existing utilities and ancillary services provisions in subsection 6.9.20 (formerly subsection 5.13.15)?

24.45 Altel and Net2One have not faced any issue with regard to the utilities and ancillary service provision in subsection 5.13.15.

24.46 Celcom highlighted that in some cases, the Access Seeker has to conduct its own arrangements to get access to power etc. in order to avoid delays which may jeopardize service provision to customers.

24.47 Digi commented that it is industry practice that both Access Seeker and Access Provider would acquire their own supply of electricity power.

24.48 edotco proposed for paragraphs 6.9.20(e) and 6.8.10(e) to be amended as follow: "security, taking reasonable care to ensure that its agents, representatives or subcontractors do not damage any Equipment, and keeping the location secure and protected from vandalism or theft. For the avoidance of doubt, the Access Provider shall not be held responsible for any matters or incidents which result from circumstances beyond the reasonable control of the Access Provider; and"

24.49 In addition, edotco also proposed amendment to subsection 6.8.11 and 6.9.21 as follows: "The utility costs and ancillary costs in respect of the network facilities as contemplated in subsection 6.8.10 shall be apportioned (in accordance with fair and equitable principles) against the utility and ancillary costs charges to other Access Seekers at the relevant location".

24.50 Maxis submitted that it has not faced any major issues in terms on access to power, back-up power, etc. and is of the view that subsection 6.9.20 is sufficient for both Access Seeker and Access Provider.

24.51 Sacofa stated that operators are getting sufficient access to power, back-up power, etc. under the existing utilities and ancillary services provisions in subsection 6.9.20.

24.52 TIME commented that there are no issues currently to get sufficient access to power, including provision of back-up power, environmental services, security and site maintenance. In the event of insufficient supply, both Access Provider and Access Seeker will discuss and agree on alternative ways.

24.53 Fiberail said operators get sufficient access to power, back-up power, etc. under the existing utilities and ancillary services provisions in subsection 6.9.20.

24.54 TM obtains its own power supply directly from TNB to serve its own equipment for current and future use. However, there are instances where TM provides power to its Access Seeker's equipment when the existing capacity of the site is sufficient for both TM and its Access Seeker's requirements. For TM's future capacity and expansion requirements, TM will need to upgrade the power capacity. This may interrupt the power supply shared with its Access Seekers. Therefore, TM finds it more practical and strongly encourages Access Seekers to seek power supply directly from TNB to avoid interruption to the Access Seeker's requirement.

24.55 webe submitted that usually power and backup power are shared on temporary basis while waiting for Access Seeker to arrange permanent supply by themselves. webe is of the opinion that service providers do provide sufficient access to power, back-up power etc.

24.56 YTL commented that although operators do get sufficient access to power, back-up power, etc. under the existing utilities and ancillary services provisions in subsection 6.9.20, there are some cases where the charges imposed are over and above the costs. YTL proposed that for power supply, separate metering should be encouraged whereby other costs such as security, site maintenance and air-conditioning must be shared on an equitable basis. According to YTL, road access has been an issue at certain places where the land owner had demanded separate payments which are not included in the Access Agreement between the Access Seeker and Access Provider.

Question 40: Have Access Seekers had any issues with maintenance and extending their network facilities under subsection 6.9.25 (formerly subsection 5.13.19)?

24.57 Celcom submitted that as an Access Seeker, it does not have any issues with maintenance of its equipment and extending network facilities to the extent where technically feasible.

24.58 Digi finds subsection 6.9.25 acceptable. However, for subsection 6.9.26, Digi is of the view that although an Access Provider shall reasonably permit Access Seeker to extend network facilities at Access Seeker's cost, it is important that the Access Seeker obtain the necessary notification/approval from the Access Provider in order to ensure space is efficiently allocated.

24.59 Maxis does not have any major issues with the maintenance of its equipment at or on the network facilities to which it has been granted access. Maxis is of the view that subsection 6.9.25 is sufficient for both the Access Seeker and Access Provider.

24.60 Sacofa does not have any issues with the maintenance of its equipment and extending its network facilities under subsection 5.13.19.

24.61 TIME has no issue with maintenance and extending network facilities as an Access Seeker. However, TIME suggests that Access Seeker should take responsibility to ensure and prove to the Access Provider that only authorized personnel (i.e. external contractors or other third parties) are allowed to access the co-location site for equipment maintenance.

24.62 TM submitted that for the purpose of maintenance work, authorized Access Seeker's employees or contractors are required to follow the procedures, policies and guidelines provided by TM.

24.63 U Mobile commented that Access Seekers have no issues with maintenance and extending their network facilities under subsection 6.9.25.

24.64 YTL commented that Access Seeker does face issues with maintenance and extending their network facilities in certain places, whereby other Access Seekers require the Access Provider to obtain their consent first before allowing any other Access Seeker to access for network extension. YTL is of the view that such practice should not occur.

Discussion

24.65 The MCMC agrees with Altel's submission that the obligations under subsection 6.9.8 should be limited to locations at which the Access Seeker's equipment is, or will be, co-located. However, the text of subsection 6.9.8 already provides for this limitation and the MCMC does not think any change is required for this purpose.

24.66 The MCMC agrees with submissions from operators including Maxis and TM that Access Seekers must follow security rules and processes when accessing an Access Provider's sites. However, such matters can be included in a RAO and/or Access Agreement or manuals issued under them. The MSA sets out the limits of the security provisions that may be imposed in such documents – for example, see subsection 6.9.8.

24.67 The MCMC rejects TM's submission that non-physical forms of interconnection can be a complete substitute for physical co-location. The MCMC has been very clear on this matter and it refers to its comments in the PI Paper on this matter. Protection of CNII must not be used to hold back the development of the industry. TM may look to precedents internationally and at other Access Providers in Malaysia for security processes and procedures that can be used to protect infrastructure while complying with access obligations and providing meaningful access to Access Seekers.

24.68 With regard to Digi's and edotco's submissions, the MCMC notes that the provisions of subsection 6.8.12 (previously subsection 6.8.10) apply to the extent that:

(a) the Access Provider itself benefits from utilities and ancillary services at a given site; and

(b) the utilities and ancillary services are within the Access Provider's control at a given site.

24.69 The MCMC acknowledges the need for escorted physical access timeframes, for example, in subsections 6.8.9 (previously subsection 6.8.7) and 6.9.10 (previously subsection 6.9.9) to permit additional travel time for unmanned

sites. The MSA will be amended to provide that for specified Facilities and Services, such as Network Co-Location:

(a) if an Access Provider does not require escorts when it is accessing a site itself, it must not require an escort for Access Seekers;

(b) if an Access Provider requires escorts for itself and Access Seekers, it must provide an escort on the following basis:

Site Type	**Emergency Maintenance**	**Planned Maintenance**
Manned – urban	Immediate 24/7 access	2 Business Days' notice. Escorts to attend within 30 minutes of requested time
Unmanned - urban	Access within 30 minutes of requested time + variance permitted for travel	5 Business Days' notice. Escorts to attend within 30 minutes of requested time + variance permitted for travel
Manned – outside urban area	Immediate 24/7 access	2 Business Days' notice. Escorts to attend within 30 minutes of requested time
Unmanned – outside urban area	Access within 30 minutes of requested time + variance permitted for travel	5 Business Days' notice. Escorts to attend within 30 minutes of requested time + variance permitted for travel

(c) if the Access Provider permits shorter notices periods or faster escorted access to a site than specified above when it is accessing the site itself, it must provide the same shorter notice periods or faster escorted access to Access Seekers; and

(d) where variance is permitted for travel time, the Access Provider must give an estimate of the travel time variance to the Access Seeker.

24.70 The MCMC proposes no change for the Duct and Manhole Access Service timeframes to permit escorted physical access, because it is usual practice internationally to permit duct and manhole access on an unescorted basis subject to the Access Seeker notifying and obtaining the Access Provider's permission. This is efficient and ordinary practice. Provided there is an audit trail of such access requests, given all operators are licensees under the CMA and have obligations to protect all network facilities, the MCMC considers that any security and similar concerns can be addressed through the diligent co-operation of operators.

24.71 The MCMC is not satisfied that there is a reasonable argument to adopt TIME's proposal that an Access Provider's estimate must vary by 30% before

an Access Seeker can withdraw a request. The MCMC considers its original proposal of a 10% variation allowance is appropriate.

24.72 The MCMC acknowledges TM's proposal that Access Seekers bear the cost incurred by Access Providers from preparatory works delays where Access Seekers have contributed to such delays. However, the MSA contains obligations of this nature where necessary to incentivise actions where there is no commercial incentive. In this case, Access Seekers are commercially motivated to ensure that preparatory works conducted by the Access Provider is done without delay, where it is at all possible. Accordingly, there is no work for the MSA to do in this regard.

24.73 The MCMC reject's TM's proposal to require Access Seekers to seek power directly from TNB. The MCMC maintains its view that Access Seeker should have the option of obtaining power and other ancillary services at co-location spaces from the Access Provider on a non-discriminatory basis or otherwise.

MCMC views

24.74 The MCMC will change the service-specific obligations on physical access on a case by case basis as discussed above.

25 Billing and settlement obligations

Introduction

25.1 In the PI Paper, the MCMC expressed the preliminary view that the existing billing and settlement obligations under subsection 5.14 remain largely appropriate. The MCMC proposed to make only minor amendments to subsections 5.14.

25.2 The MCMC considered whether the current default requirement for monthly billing should be made more specific. In particular, the MCMC proposed to apply the billing cycle timeframes as Service Specific Obligations under a new section 6 of the Draft MSA.

25.3 The MCMC proposed to clarify that any billing errors must be notified "promptly" and the necessary adjustments to correct that error made within 30 days of notification.

25.4 Finally, the MCMC proposed to expand on the current provisional billing provisions to incorporate the concept of an "Adjustment Period". The proposed changes to the current subsection 5.14.17 would set out a mechanism for addressing circumstances where a provisional bill is higher or lower than the actual amount owed.

25.5 The MCMC did not propose to substantially amend subsection 5.14.11. The MCMC considered that regulating the withholding of disputed amounts remains an important protection for Access Seekers in case a dispute arises with an Access Provider. The MCMC noted that parties may agree to a longer withholding period where accepted by both parties, which appears to be

common practice in the industry. A minor amendment has been made to provide this flexibility to the operators.

Submissions received

Question 41: Have operators experienced any issues with the set-off practices as set out under subsection 5.14.10?

25.6 Altel and Net2One have no issue with the set-off practices as set out under subsection 5.14.10.

25.7 Celcom does not implement set-off invoices in accordance with subsection 5.13.10 of the existing MSA.

25.8 Fiberail said that circumstances in which an Access Seeker would not agree to the off-set payment arrangement is more due to their accounting system limitations and check and internal control. This is especially so for large organizations.

25.9 Maxis has not experienced any issues with the no set-off practices set out under subsection 5.14.10. According to Maxis, most operators prefer not to set-off in order to avoid complexity and difficulties to manage the account information such as invoices, payment tracking payment record, billing adjustments etc.

25.10 MYTV said that it has no prior experience on set-off practices.

25.11 Sacofa submitted that the set-off practices can be mutually agreed by the Access Seeker and Access Provider and not limited to the practice of liquidation cases only.

25.12 TIME has not experienced any issues with the set-off practices.

25.13 TM disagrees with the proposed amendment in subsection 5.14.10. According to TM, the agreement between the Access Provider and Access Seeker regarding set-off invoices can be in other forms such as written letter as and when required and not necessary to be discussed during the negotiation of the Access Agreement. Hence, TM proposed for the current provision in the existing MSA to be maintained.

25.14 webe commented that it has not faced any issues with the set-off practices set out under subsection 5.14.10. According to webe, invoices are paid in full in normal circumstance to ease operation.

25.15 YTL submitted that set-off practices will help small operators against the big operators in situation whereby the absence of subsection 5.14.10 will allow big operators to take advantage and demand full amount of their invoices despite having outstanding amount with the smaller operators. Hence, with the availability of subsection 5.14.10, the smaller operators can pay smaller amount instead of the full amount. This enables cash flow on both sides.

Question 42: Do you agree with the MCMC's proposed changes to the billing and settlement obligations set out at subsection 5.14 of the Draft MSA? Why or why not? If not, please specify what change you consider is required and explain why.

25.16 Altel and Net2One submitted that withholding of disputed amounts by an Access Seeker may force an Access Provider to suspend the supply of services and/or facilities in order to protect its pecuniary interests. Nevertheless, for the long-term benefit of end users, Access Provider is still obligated to continue providing the services to the Access Seeker. According to Altel and Net2One, this is the reason for the industry to agree on prohibition of withholding dispute amounts.

25.17 Altel and Net2One proposed for a time limit to be established to avoid higher level financial risks. Altel proposed to amend subsection 5.14.11 to reflect that withholding disputed amount shall only be allowed for billing disputes that take longer to be resolved, signifying the severity and complication of the matter in dispute.

25.18 Altel and Net2One proposed to add the following condition before paragraph 5.14.11(a): "The Operators are not able to settle a billing dispute within ninety (90) calendar days (or such other period as the Operators may agree) from the date on which the Notification of Billing dispute is received; and"

25.19 The APCC agrees with the proposed changes to the billing and settlement obligations at subsection 5.14. The APCC considers the proposed changes to be fair and reasonable.

25.20 Celcom is agreeable to MCMC's proposed changes to the billing and settlement obligations set out at subsection 5.14. Celcom commented that it has adopted the provision in its existing Access Agreements to address adjustments for provisional billing.

25.21 Digi stated that the proposed amendment of "promptly" may have subjective interpretations and may indirectly grant unnecessary longer timeframe.

25.22 Fiberail accepts the MCMC's proposed changes to the billing and settlement obligations set out in subsection 5.14 of the Draft MSA.

25.23 Maxis agrees with the MCMC's minor proposed changes to the billing and settlement obligations set out in subsection 5.14 of the Draft MSA which provides more clarity on the billing and settlement processes and procedures. Maxis is of the view that the subsection 5.14 is sufficient and works well for both Access Provider and Access Seeker.

25.24 Maxis highlighted that currently banks maintain Base Lending Rate (BLR) as a reference rate but prefer to use Base Rate (BR). However, in the future, if the BR is used, the quantum above BR for late payment interest should be higher because BR (3%) is lower than BLR (6.65%). Maxis does not recommend BR + 2% (6.65%) as it will be lower than BLR + 2% (8.65%). Maxis is of the view that using BR + 2% will create late payment by Access Seekers as the Access Seeker may opt to pay a vendor first before paying

the Access Provider for interconnection used. Therefore, Maxis requested the MCMC to monitor this and issue further guidance when BLR is removed in the future.

25.25 MYTV agrees that it may deem necessary for it to bill the Access Seekers quarterly charges upfront since MYTV incurred huge CAPEX and is only able to bill post Analogue Switch Off (ASO).

25.26 Sacofa agrees on the proposed changes to subsection 5.14 of the Draft MSA but suggested to amend the Malayan Banking Berhad's (MBB) BLR to BR as MBB has replaced BLR with BR.

25.27 TIME agrees with the proposed changes to the billing settlement obligations. However, TIME stated that the obligations should be included in the 'Operation & Maintenance Manual' which is to be executed or negotiated after the Access Seeker accepts and signed off the RAO.

25.28 TM commented on subsection 5.14.7 on Billing Error. TM is of the view that the proposed timeline of 30 days of notification is insufficient and TM proposed 90 days for sufficient time to verify the information and rectify error in order to avoid unnecessary dispute between the Operators.

25.29 U Mobile agrees with the proposed changes to subsection 5.14 of the Draft MSA.

25.30 webe is agreeable to the proposal of monthly billing for all facilities and services as a ground rule. webe also supports the proposal to correct the billing error by way of issuance of Debit or Credit Note. However, in the case of the Adjustment Period, webe insists on actual bill instead of taking the provisional amount as actual amount, unless there is strong basis for doing so.

25.31 YTL submitted that it agrees to the proposed changes as most of it addresses current practical concerns. YTL commented that subsection 5.14.18 on the Adjustment Period reduces the timeframe of settlement to just 90 days from the existing practice of 180 days, allowing reimbursement or payment of differences (free of interest) within 90 days.

Discussion

25.32 While most operators stated that they did not use set-off as a general practice, some operators stated that they would find it useful to have access to such practices. Accordingly, the MCMC considers it is appropriate to retain the set-off provision in subsection 5.11.10 (previous subsection 5.14.10) of the Draft MSA.

25.33 The MCMC acknowledges the differing interests that need to be balanced if an Access Seeker is permitted to withhold a disputed amount. With regard to Altel's proposal to limit this right to long-running disputes, the MCMC notes that a dispute may be for an amount which is significant for the Access Seeker, and the Access Seeker would then need the right to apply from the time the bill is raised.

25.34 The MCMC understands Digi's concern about the word "promptly" to relate to subsection 5.11.7 (previously subsection 5.14.7) on Billing Errors. While the MCMC acknowledges Digi's concern, it is important to understand that this obligation on the Access Seeker goes together with the right to withhold payment, so the MCMC thinks this is a reasonable compromise.

25.35 The MCMC has considered the submissions and is of the view that the Base Rate + 2% per annum represents standard lending rates in the Malaysian market. The MCMC will amend the interest provision in the MCMC to reflect this view and maintaining and an additional 1% per annum on the interest amount in the case of amount overdue by more than 60 days.

25.36 The MCMC acknowledges TM's concern about the time that may be required to identify and verify some billing errors. However, TM has not provided any material to support its submission. As other operators have agreed with the timeframe, the MCMC has no basis on which to vary its original proposal.

25.37 The MCMC acknowledges webe's concern with provisional billing. The MCMC confirms that actual finalised bills should be provided wherever possible. Provisional billing should be used as a last resort. However, the new subsection 5.11.18 (previously subsection 5.14.18) is not intended to be a new right for Access Providers. Rather, it is intended to clarify the content that was previously included in short form in the preceding subsection in MSA 2009.

MCMC views

25.38 The MCMC will replace the amounts for overdue payments to the base rate + 2% per annum, and base rate + 3% per annum for amounts overdue by more than 60 days, but otherwise confirms its preliminary views from the PI Paper on the billing and settlement obligations.

26 Operations and maintenance obligations

Introduction

26.1 In the PI Paper, the MCMC proposed a number of changes to the operations and maintenance obligations under subsection 5.15 in the Draft MSA.

26.2 The MCMC noted that it was still reviewing the 'target times' under the current subsection 5.15.13 of the MSA. In particular, the MCMC was considering whether further examples or alternative fault response and rectification timeframes should be added to the Service Specific Obligations in section 6 of the Draft MSA. However, no changes to this subsection were proposed in the PI Paper.

26.3 The MCMC did not propose any changes to the fault types in the table under subsection 5.15.12, but noted it was considering incorporating the proposal to insert a new column entitled "progress update frequency".

Submissions received

Question 43: In relation to the target times under subsection 5.15.12 of the Draft MSA (formerly subsection 5.15.13), should the MCMC include any Service Specific Obligations with additional examples or different fault response and restoration times? Do you agree with the proposed progress update frequency times, as set out under subsection 5.15.12 of the Draft MSA? Why or why not? If not, please specify what change you consider is required and explain why.

26.4 Altel and Net2One are agreeable to the proposed subsection 5.15.12 of the Draft MSA and has no further comments on the matter.

26.5 The APCC is of the view that there is no need to include any Service Specific Obligations with additional examples or different fault response and restoration times. The APCC considers that Access Providers should not be required to respond to all faults in the same timeframe. The APCC commented that to do so would be operationally unnecessary and place additional administrative burdens i.e. costs to the Access Provider which will eventually flow to the end-users. However, the APCC supports the proportional shortening of the proposed Progress Update Frequency times for Levels 2, 3 and 4 faults to 2 hours, 4 hours and 8 hours respectively.

26.6 Astro commented that the timeframes prescribed for Level 3 and 4 fault types appear out of sync with the timeframes set out in MSQoS. For example, the MSQoS on Customer Service Quality of Service, Restoration Fulfilment requires not less than 95% restored within 24 hours and 100% restored within 48 hours. However, in the Draft MSA, Fault Rectification Target Time in subsection 5.15.12 requires Level 3 fault types to be restored within 72 hours while Level 4 fault types to be restored within 14 days. Astro is of the view that the Access Seeker should not be subjected to higher requirement towards fault restoration for its end customers while the Access Provider is subjected to lower QoS. Astro highlighted that the timeframe for restoration should be synchronized between the MSA and MSQoS. Astro further commented that subsection 5.15.17 does not have a timeframe set out for Complaints Handling as compared to the timeframes provided in the MSQoS. Astro suggested for MSA to adopt the timeframe set out in the MS QoS to encourage swifter resolution of complaint for the customer's best interest.

26.7 Celcom supports the MCMC's proposal to include target times under Service Specific Obligations such as for HSBB Service, with different fault response and restoration times. An example would be faults due to complete network failure and faults relating to passive fibre breakdown.

26.8 Digi disagrees with the newly added Progress Update Rectification Frequency in the Draft MSA under subsection 5.15.12. Digi commented that such periodic updates would significantly impact fault management handling as radical change is required to its operational procedures in handling faults. Currently, Digi's utmost priority is given to fault notification and fault restoration, whereby updates are provided as and when necessary. Furthermore, Digi said that the periodic updates will significantly increase

resources to manage it which will eventually increase operational cost, especially for Level 1 to 4 cases which occur nationwide. Digi insists that periodic updates can be considered on a case-by-case basis depending on the progress and extent of fault management, rather than imposing a standard interval of periodic updates.

26.9 edotco proposes that fault response and restoration times to be amended to take into account of sites which have dependency on government and sites which have no such dependency. This is because restoration time for government-dependent sites needs to take account of local authority approvals to carry out repairs and restoration. For the latter, the sites are usually located in remote and rural/island areas which require longer rectification times due to additional travelling time required.

26.10 Fiberail is of the view that the MCMC should not include any Service Specific Obligations with additional examples or different fault response and restoration times. Fiberail finds the proposed progress update frequency times set out under subsection 5.15.12 is acceptable.

26.11 Maxis is of the view that the target times under subsection 5.15.12 should be retained in the MSA and be used as generally accepted target times for Facilities and/or Services not specified under the Service Specific Obligations. For Facilities and/or Services with the detailed target times and QoS specified in the Service Specific Obligations e.g. for HSBB Network Services, the service specific target times and QoS should take precedence over subsection 5.15.12. For clarity purposes, Maxis also proposed for MNP issues to be added and categorized under Priority Level 2. Maxis is also agreeable to the proposed progress update frequency times set out under subsection 5.15.12.

26.12 MYTV does not agree with the fault restoration times, stating MYTV finds it inadequate due to it being a newcomer.

26.13 Sacofa stated that it normally has fault escalation procedure which is mutually agreed with the customer. It also highlighted that distance may affect restoration time.

26.14 TIME is of the view that the MCMC should not include any Service Specific Obligations with additional examples or different fault response and restoration times as it would require manpower and cost to monitor, rectify and, respond to the fault and restoration times for the affected services. TIME is also agreeable to the proposed progress update frequency times set out under subsection 5.15.12 as it will benefit both Access Seeker and Access Provider in terms of improving on timing. TIME commented that there will be additional manpower or systems required to cater for the progress update until the fault is rectified.

26.15 TM submitted that for subsection 5.15.12 on Target times, the progress update frequency should be every 2 hours instead of every 1 hour as there may not be much progress to update in such a short period. TM also commented that it is very challenging to meet the requirements in subsection 5.15.6 on Network Fault Responsibility as it is challenging to

identify which segment of network is faulty as Access Seeker would usually by default claim that the default is at Access Provider's segment. Accordingly, TM suggested for a new provision requiring Access Seeker to ascertain the fault is beyond its own network before the Access Provider is required to investigate the failure within the Access Provider's network.

26.16 U Mobile is of the view that service specific fault response and restoration times should be included. However, U Mobile disagrees with the proposed timelines. U Mobile is of the view that the fault type does not warrant it to be Level 1 and that an Operator should react based on their internal outage classifications. U Mobile is not agreeable to alerting its customers directly during outages and stated that all communications should be addressed through the respective Customer Service representatives.

26.17 webe is of the opinion that the target times described under subsection 5.15.12 should be maintained. Instead of requiring the Operator to provide progress update, webe suggested for notifications to be sent out to the affected customers once the fault is restored as customers can still contact the Operator's customer service for progress update. webe is of the view that the current list of fault types is sufficient.

26.18 YTL submitted that in practical circumstances, the response time is much shorter. For Level 1, the response time is between 15 minutes to half an hour. For Level 2, the response time is within an hour, Level 3 and Level 4 are within 4 hours. For Progress Update Frequency, Level 1 is every half an hour while Level 2 is every 1 hour. As for Rectification Timeframe, Level 2 is 8 hours, Level 3 is 48 hours while Level 4 is within 7 days.

Question 44: Would operators support making all response times under subsection 5.15.12 (formerly subsection 5.15.13) within 1 hour?

26.19 Altel and Net2One disagree with MCMC's proposal to standardize all response times under subsection 5.15.12 to 1 hour. Altel and Net2One stated that recurrence of Level 2 to 4 fault types is usually more frequent and operators may not have enough time to attend to all faults raised at the same time. Altel and Net2One proposed to maintain the current response time as it has been operating well.

26.20 The APCC does not support making all response times within 1 hour. The APCC commented that to do so would be operationally unnecessary and place additional administrative burdens i.e. costs to the Access Provider which will eventually flow to end-users. However, the APCC supports the proportional shortening of the proposed Progress Update Frequency times for Levels 2, 3 and 4 faults to 2 hours, 4 hours and 8 hours respectively.

26.21 Celcom suggested for the response times to be maintained as per the existing timeframe where response time of 1 hour applies to fault type under priority Level 1, for example major switch outage and major signalling problem.

26.22 Digi strongly disagrees with the addition in paragraph 5.15.2(b) whereby operators are required to provide fault updates in their reporting systems

as it requires major changes operationally, significant increase in resources, adding complexity and costs to implement. Digi is of the opinion that update on faults can be provided on a periodic basis depending on the severity and progress, instead of having a standard interval for periodic updates. Digi commented that strict update requirements on all fault issues will significantly reduce the Access Provider's ability to prioritize on major impact cases.

26.23 Digi agrees with the clarity proposed for subsection 5.15.6 and 5.15.7. Digi disagrees with the proposed addition in paragraph 5.15.10(c) as it will impose strict requirements that all faults are required to be prioritized and will reduce the ability for Access Providers to prioritize on major impact cases and significantly increase resources and operational capability. Digi requested the deletion of paragraph 5.15.10(c). For similar reasons, Digi opposes the strict updates requirement on periodic fault updates. For subsection 5.15.13, Digi commented that the requirement of 10 Business Days' (or longer duration) notice of planned maintenance will be extremely challenging as for urgent corrective matters, immediate action and immediate notice can only be provided.

26.24 edotco disagrees and would not support making all response times under subsection 5.15.12 within 1 hour.

26.25 Fiberail proposed 14 Business Days to notify Access Seeker on planned maintenance.

26.26 Maxis is of the view that the response time should be retained as it is in subsection 5.15.12 and that it should be prioritized depending on the impact of the fault. Referring to subsection 5.15.18 on Routine Testing, Maxis proposed for routine test to be carried out on a yearly basis instead of half yearly intervals as this is the current industry practice.

26.27 MYTV submitted that it cannot agree with this clause as MYTV deals with different vendors from different countries and time zones. MYTV is of the view that the quantum of service level and quality of service should be determined later as agreed by the first party to the agreement with MYTV.

26.28 Sacofa does not support making all response times under subsection 5.15.12 within 1 hour.

26.29 TIME does not support making all response times under subsection 5.15.12 within 1 hour citing that each level has different issues with different process and procedures to be followed before operators could provide response to the other affected parties.

26.30 TM does not agree to the response time standardized to 1 hour regardless of the level of faults as they do not have the capabilities to do so even for their own retail arm.

26.31 U Mobile is of the view that service specific fault response and restoration times should be included. However, U Mobile disagrees with the proposed timelines. U Mobile is of the view that the fault type does not warrant it to

be Level 1 and that an Operator should react based on their internal outage classifications. U Mobile is not agreeable to alerting its customers directly during outages and stated that all communications should be addressed through the respective Customer Service representatives.

26.32 webe suggested for the current timeline to be maintained.

26.33 YTL supports making all response time under subsection 5.15.12 within 1 hour.

Discussion

26.34 The MCMC agrees with the view held by many operators that the target times under subsection 5.12.12 (previously subsection 5.15.12) should be retained in the MSA. The MCMC agrees with Maxis that operators should comply with the target timeframes unless a corresponding target timeframe applies under a Service Specific Obligation instead. In addition, the MCMC agrees with Maxis to add a new item "MNP issues" under Priority Level 2.

26.35 The MCMC acknowledges Astro's concern about the alignment between the MSA and the various Mandatory Standards on Quality of Service. The MCMC proposes to recognise the interaction between these two instruments by adding introductory wording in subsection 5.12.12 (previously subsection 5.15.12) that requires Operators to respond and rectify faults within timeframes which will result in compliance by all affected operators with any applicable Mandatory Standards that apply to service availability and restoration, and in any case, the timeframes set out in that section. The MCMC will also more completely clarify the interactions between timeframes in a Service Specific Obligation and timeframes set out as a general obligation, together with other Mandatory Standards and the non-discrimination obligation.

26.36 The MCMC notes that there is not always a one-to-one relationship between retail service availability and restoration, and the availability and restoration of wholesale inputs to the retail service. For example, an Access Seeker may achieve retail availability and service restoration targets through redundancies and workarounds to unavailable wholesale inputs.

26.37 The MCMC acknowledges operator submissions that they will sometimes be subject to external events outside their control. The MCMC expects that wherever possible, operators will seek to minimise such dependencies. Where that is not possible, the MCMC expects details to be set out in the reporting that the operators give to the MCMC, allowing the MCMC to understand the circumstances that affect service restoration and potentially work with industry to improve restoration performance.

26.38 The MCMC agrees with TM that an Access Seeker must satisfy itself that a fault is beyond its own network boundaries before reporting a fault to an Access Provider. Once the Access Seeker has taken reasonable steps to satisfy itself that this is the case, the Access Provider must accept the fault report. These matters can be set out in RAOs and/or Access Agreements and the manuals issued under them. Subsection 5.12.6 (previously

subsection 5.15.6) only refers to the objective case when a fault is in fact in one operator's network, so it would not prevent such contractual or operational provisions provided they are reasonable.

26.39 The MCMC acknowledges the consensus amongst most operators that preliminary response times should be maintained as-is. The MCMC will not standardise response times to 1 hour.

26.40 On progress updates, the MCMC acknowledges a variety of submissions. On balance, the MCMC proposes the deletion of paragraph 5.15.2(b) in the Draft MSA, which operators have explained would lead to IT development costs. But the MCMC proposes no other change to the Draft MSA. Progress updates can be provided manually or however best suits an Access Provider's operational processes and systems. For clarity, these are not updates provided to retail customers. They are updates provided between operators.

26.41 With regard to Digi's concern about paragraph 5.12.10(c) (previously paragraph 5.15.10(c)), the MCMC observes that this is not a substantive change to the rule that was in MSA 2009. The change simply makes express the necessarily implication of paragraphs 5.12.10 (a) and (b) (previously paragraphs 5.15.10(a) and (b)).

26.42 With regard to concerns about planned maintenance notice requirements, the MCMC notes that the 10 Business Day timeframe does not apply to emergency maintenance.

26.43 With regard to routine testing, the MCMC agrees to reduce the previous half-yearly testing cycle to an annual cycle.

MCMC views

26.44 The MCMC will amend subsection 5.12.6 (previously subsection 5.15.6) to remove the obligation on operators to upgrade their IT systems to permit Access Seekers to receive updates on faults. However, the obligation remains on Access Providers to update Access Seekers on faults regularly.

26.45 The MCMC will amend subsection 5.12.12 (previously subsection 5.15.12) to:

(a) require operators to respond and rectify faults within the lesser of:

(i) timeframes set out in a relevant Service Specific Obligation or, if there is no such timeframe, the response timeframes, progress update frequencies and rectification timeframes set out in the table in subsection 5.12.12 (previously subsection 5.15.12);

(ii) timeframes which will result in compliance by all affected Operators with any applicable Mandatory Standards that apply to service availability and restoration; and

(iii) timeframes equivalent to that which the Access Provider provides to itself; and

(b) add "MNP issues" as a new line item in the Priority Level 2 category.

26.46 The MCMC will amend subsection 5.12.18 (previously subsection 5.15.18) to reduce the interval for routine testing from "half yearly" to "annual".

27 Technical obligations

Introduction

27.1 In the PI Paper, the MCMC proposed to move certain Technical Obligations from subsection 5.16 to apply as Service Specific Obligations under subsection 6.1 of the Draft MSA. For instance, the MCMC proposed to move the Quality of Service obligations from the current subsections 5.16.6 to 5.16.9 to a new subsection 6.1 of the Draft MSA.

27.2 Otherwise, the MCMC's preliminary view was that most of the remaining Technical Obligations under subsections 5.16.1 to 5.16.5 are still applicable and do not require substantive changes.

Submissions received

Question 45: Do you agree with the proposed amendments to subsection 5.16.2 of the Draft MSA? Why or why not?

27.3 Altel, the APCC, Celcom, Digi, Fiberail, Maxis, MYTV, Net2One, Sacofa, TIME, TM, U Mobile and YTL agree with the amendments.

27.4 Celcom agrees with the amendments as they provide clarity on "reasonable measures" taken by an operator to prevent harm to another operator's network whereby they must be no less robust than those applied by itself for incorporating new Facilities and Equipment into its own network. This is important to avoid discrimination in measures taken to prevent technical harm between Access Provider's network and Access Seeker's own network.

27.5 Maxis agrees with the amendments. This is the minimum effort to be taken by one operator to prevent technical harm to the other operator's network, which is no less robust than that which the first operator applies to its network for incorporating new Facilities and Equipment.

27.6 TIME agrees with the amendments. However, the issue is the manner in which parties to the Access Agreement would decide on measures to be taken to ensure that interconnection and access do not cause physical or technical harm to the other operator's network.

27.7 U Mobile agrees with the amendments, and notes that the operator refers to both the Access Provider and Access Seeker for obvious reasons.

27.8 webe views that the additional amendments should be an option for both parties to agree upon, rather than as a default arrangement. It is concerned

that a default arrangement would mean additional charges for the Access Seeker, and this should be assessed by the Access Seeker.

27.9 YTL agrees as the amendments would allow transparency and provide clarity in the process involved.

Question 46: Would operators like to see new services added to the Quality of Service table and, if so, which Access List services should be added?

27.10 Celcom views that it is important to include Quality of Service parameters for HSBB services, and these parameters are found in the Commission Determination on the Mandatory Standards for Quality of Service (Wired Broadband Access Service) Determination No. 2 of 2016.

27.11 Maxis views that new Quality of Service parameters should be included under the respective Service Specific Obligations as they vary between the Facilities and Services. Its further feedback is provided under the respective Service Specific Obligations.

27.12 Sacofa does not consider there is any required addition of new services to the Quality of Service table.

27.13 TIME does not view that new services should be added to the Quality of Service table as the industry has not faced any Quality of Service issue for the other services.

27.14 TM views that flexibility should be applicable to service levels based on mutually agreed terms taking into consideration the Access Seeker's requirements and the capability of the Access Provider's network. It also added that if service levels are included in the MSA, then the costs to comply with the service levels should either be addressed in the MSAP or a commercially negotiated rate should be allowed for the higher service level requirement. In addition, where the facilities and services are not owned by the Access Provider, then it is not possible for the Access Provider to comply with the standards determined by MCMC.

27.15 TM is concerned with the manner in which the MSA is becoming heavy handed without a proper assessment being conducted. With respect to HSBB, TM views that sufficient control is put in place by subjecting HSBA to wholesale QoS as detailed out in subsection 6.6.2 of the Draft MSA, and that it is not necessary to subject the Access Provider to comply with MSQoS which is meant for a retail broadband service. Further TM views that the proposal to incorporate MSQoS in the MSA is inconsistent with the design of HSBA, which is based on the Access Seeker's request. In particular:

(a) The HSBA service is provisioned based on the requirements of the Access Seeker that specifies the capacity at interconnect points which may impact the end-to-end service quality;

(b) As the HSBA service comprise of both Access Provider and Access Seeker's network, it is unfair to impose end-to-end obligations on the Access Provider through the imposition of MSQoS;

(c) The MSQoS parameters are measured at Layer 7 whilst HSBA is offered at Layer 3; and

(d) Some parameters under service performance are dependent on the Access Seeker and it is unjust to place the obligations on the Access Provider.

27.16 However, in TM's view, it is more appropriate to impose MSQoS on end-to-end services such as MVNO Access.

27.17 webe views that the existing list of services is sufficient.

27.18 YTL views that the quality of service table must reflect the mandatory standards and voluntary codes that are in force and applicable to network facilities, network services and application services.

Discussion

27.19 The MCMC thanks operators for their submissions on technical requirements and quality of service.

27.20 By way of clarification, the MCMC notes that any service levels that apply would only apply to the wholesale service supplied by an Access Provider. It would not extend to end-to-end QOS levels. This matter is addressed in greater detail below with respect to HSBB Network Services.

27.21 TM's submissions are also addressed below, in the MCMC's discussion of submissions on the HSBB Network Services.

MCMC views

27.22 The MCMC will adopt the general changes proposed in the Draft MSA for technical and quality of service matters. Changes with respect to specific Facilities and Services are discussed below.

28 Term, suspension and termination obligations

Introduction

28.1 In the PI Paper, the MCMC proposed a number of amendments in relation to the term, suspension and termination obligations under subsection 5.17 of the MSA.

28.2 The MCMC proposed amending subsection 5.17.6 to streamline the review and approval processes by replacing the current requirement for an Access Provider to get the MCMC approval before it can terminate, suspend or materially vary an Access Agreement. The proposed changes would permit the MCMC to intervene only in those cases where necessary, to minimise any delays and possible debts being accrued by the Access Provider.

28.3 The MCMC also proposed to include a new ability for an Access Seeker to respond to an Access Provider's notice, which the MCMC would consider during its review of that notice. The Access Provider would have an express

obligation to minimise any disruption and inconvenience to an Access Seeker's customers.

28.4 In relation to the permitted termination and suspension circumstances in subsections 5.17.3 and 5.17.5, the MCMC expressed the preliminary view that these provisions should remain largely in their current form. The MCMC considered these provisions to be critical protections for Access Seekers and, as such, did not think that these subsections should be left to commercial negotiation between an Access Seeker and an Access Provider as proposed by some operators.

Submissions received

Question 47: Are the terms of supply obligations under subsection 5.17.2 still appropriate (e.g. are the categorisations in the list of Facilities/Services clear, is each minimum term of supply still appropriate, etc.)?

28.5 Celcom, Fiberail, TIME and TM view that the terms of supply obligations under subsection 5.17.2 as appropriate.

28.6 Celcom views that terms of supply under subsection 5.17.2 as appropriate. Operators can negotiate and agree on terms of supply for other Facilities and Services before signing an Access Agreement.

28.7 edotco views that the minimum term of supply for Network facilities access under subsection 5.17.2 should be extended from 3 years to 10 years. This would allow the recovery of costs and/or capital expenditure incurred in constructing the necessary infrastructure for the Access Seeker.

28.8 Maxis proposes minor amendments to subsection 5.17.2 for clarity and completeness. It proposes to include minimum terms for 2 Facilities / Services - HSBB Network Service and Local access e.g. Full Access Service, Bitstream Services, etc., at 12 months.

28.9 MYTV generally agrees with the categorisations as it views that Digital Terrestrial Broadcasting Multiplexing Service falls within Access Services. However, it specifies that its wholesale service do have a minimum term, i.e. 12 months, whilst its retail service has no minimum term.

28.10 Sacofa views that normally the period under subsection 5.17.2 is mutually agreed by the Access Provider and Access Seeker.

28.11 webe comments that more often than not, Facilities and Services are acquired for the long-term. There are also circumstances where Facilities are acquired as a temporary measure. Hence, webe considers that providing flexibility especially for the minimum period that is over 12 months is recommended.

28.12 YTL comments that the current problem for Network facilities access is that state-backed companies impose a minimum term of 10 years plus 10 years rather than 3 years minimum in the MSA. It also adds that state-backed companies are the sole providers in many states now.

Question 48: Do you agree with the MCMC's proposed changes to the term, suspension and termination obligations set out at subsection 5.17 of the Draft MSA? Why or why not? If not, please specify what change you consider is required and explain why.

28.13 The APCC, Celcom, Fiberail, MYTV, Sacofa and YTL agree with the proposed amendments to the term, suspension and termination obligations at subsection 5.17.

28.14 Altel and Net2One view that subsection 5.17.6 is intended to ensure that termination, suspension or material variation can only be effective upon approval from the MCMC. However, the amendments to subsection 5.17.6 are vague and seemed to indicate that termination or suspension will take effect once the Access Provider notifies the MCMC. Hence, Altel and Net2One propose to retain the original subsection.

28.15 Celcom agrees with the MCMC's amendments to term, suspension and termination obligations in subsection 5.17. In particular, Celcom supports the amendment which allows an Access Seeker to make submissions to the MCMC in relation to any proposed termination, suspension or material variation to the Access Agreement.

28.16 edotco agrees with the MCMC's amendment to subsection 5.17.6 to allow the Access Seeker to have the option to make submissions to the MCMC in relation to an Access Provider's notice to terminate. However, edotco views that this submission to the MCMC should only be made as a last resort. In principle, the MCMC should only intervene in the dispute in relation to termination if it cannot be settled by both the Access Provider and Access Seeker. To that effect, edotco proposed that where the parties could not resolve the dispute within forty-five days, the Access Seeker may then make submissions to the MCMC on the proposed termination, suspension or material variation.

28.17 Maxis provides some minor drafting feedback on subsection 5.17.5 and agrees with the amendments to subsection 5.17.8. Maxis provides some feedback to paragraph 5.17.3(b) on winding up. With regard to subsection 5.17.6, Maxis agrees with the MCMC's amendments, and suggests under paragraph 5.17.6(a), to include an indicative timeframe for the MCMC to reply "within 10 Business Days".

28.18 Sacofa generally agrees with the amendments in subsection 5.17, subject to the terms and conditions governing the respective services as mutually agreed by the Access Provider and Access Seeker.

28.19 TIME agrees generally to the proposed changes to the term, suspension and termination obligations in subsection 5.17, except for paragraph 5.17.6(a). TIME views that the Access Provider should be able to proceed to give effect to the proposed termination, suspension or material variation if the MCMC does not respond within a certain timeframe, i.e. 5 days as was previously agreed by the MCMC and the industry. Further, TIME considers that this should be stated in the registered Access Agreement by the MCMC to avoid

further losses to the Access Provider where the Access Seeker fails to comply with subsection 5.17.3 and subsection 5.17.5.

28.20 TM provides comments to subsection 5.17.6. On paragraph 5.17.6(a), TM seeks clarification whether the Access Provider is able to immediately terminate and suspend a service at its discretion. This is unclear especially in relation to termination where there is non-payment. The Access Provider runs the risk of being unable to mitigate the risk as it accumulates over time. Hence, TM proposes a clear timeline such as after 14 days of the MCMC receiving notice from the Access Provider, the Access Provider should be given the right to terminate or suspend the service.

28.21 Secondly, whilst TM agrees to providing notice prior to termination or suspension, it views that the MCMC should not intervene in commercial arrangements between parties including when and how agreements may be amended, suspended or terminated. Thirdly, it also views that material variation should be distinguished and treated separately from termination and suspension. As any variation of terms would need to be agreed by parties and registered by the MCMC, the approval or notification process for material variation is redundant.

28.22 TM is not agreeable to paragraph 5.17.6(b) which places the obligation on the Access Provider to minimise disruption and inconvenience to the customers of the Access Seeker. TM has no legal contract with the customers of the Access Seeker and does not owe them any obligation, and adds that the Access Seekers are responsible for their own customers.

28.23 webe supports the inclusion of paragraph 5.17.6(b), especially in allowing the Access Seeker the opportunity to make alternative arrangement to settle amounts due, considering that movement of funds from a new investor could take some time. At the same time, the Access Provider should be allowed to reduce their risk of non-payment, such as in the form of minimising further supply of new Facilities or Services to the Access Seeker.

Discussion

28.24 The MCMC observes that there is a general consensus in favour of the minimum terms proposed by the MCMC.

28.25 With regard to edotco's submission that network facilities access should be for a minimum of 10 years, network facilities access can cover a broad range of network facilities, and so the default minimum term must not be excessive. The MCMC regards 10 years as excessive. The MCMC notes that operators can agree different minimum terms in Access agreements if that is appropriate to a particular supply.

28.26 The MCMC acknowledges Maxis' submission on a 12-month minimum timeframe for HSBB Network Services and ANE and will set these out in the MSA.

28.27 The MCMC thanks operators for their considered views on the change to the termination, suspension and variation provision of the MSA. Views differ on

this matter. Firstly, if any operator considers there are ambiguities in how the process would work, they are invited to engage with the MCMC to ensure that the processes adopted by the MCMC are clear and predictable.

28.28 On edotco's submission suggesting that the MCMC should only be involved where a matter cannot be resolved after 45 days, the MCMC notes that this provision applies to an action by an Access Provider to terminate, suspend or vary an Access Agreement – not a dispute. If a dispute arises about the validity of such action, it can be addressed under the existing dispute resolution processes. The process in subsection 5.14.6 relates to the MCMC's oversight role and is already a significant reduction in the extent to which the MCMC is involved in such events.

28.29 The MCMC will adopt Maxis' submission to provide more detail on the insolvency and winding up type events in which termination is permitted under paragraph 5.14.3(b).

28.30 In response to feedback from a number of operators about the need for a specific timeframe for the MCMC's consent in the case of the termination, suspension or material variation an Access Agreement, the MCMC is mindful to balance the need to protect the position of the Access Provider with consumer interests. The MCMC notes that certain events, such as the insolvency of an operator, may be complex and, in such cases, the interests of end-user consumers are paramount. The MCMC will therefore amend the MSA to provide that the MCMC will endeavour to respond within 10 Business Days or such other period that the MCMC considers is reasonable. The MCMC will also clarify that the MCMC's consent is a prerequisite to the proposed termination, suspension or material variation of an Access Agreement.

28.31 The MCMC will also clarify that an Access Provider's notice of suspension or termination to be given to the MCMC under subsections 5.14.3 or 5.14.5 of the MSA is in addition to the Access Provider's notice to the MCMC under section 5.14.6 of the MSA seeking consent for such termination or suspension.

MCMC views

28.32 The MCMC will:

(a) amend subsection 5.14.2 to include 12-month minimum default terms for HSBB Network Services and ANE;

(b) amend subsection 5.14.3(b) to provide more detail on the insolvency and winding up type events in which termination is permitted;

(c) amend subsection 5.14.3 to clarify that a notice provided under this subsection is in addition to a notice to be provided to the MCMC under subsection 5.14.6;

(d) amend subsection 5.14.5 to require a notice of suspension provided under this subsection to be provided to the MCMC and that such a

notice is in addition to a notice to be provided to the MCMC under subsection 5.14.6; and

(e) amend 5.14.6 to provide that:

(i) the MCMC's consent is a prerequisite to a proposed termination, suspension or material variation of an Access Agreement; and

(ii) the MCMC will endeavour to respond within 10 Business Days or such other period that the MCMC considers reasonable.

29 Churn obligations

Introduction

29.1 In the PI Paper, the MCMC expressed the preliminary view that the current Churn provisions remain applicable. The MCMC did not propose to make any substantive changes to subsection 5.18 other than a minor clarification specifying that a Service Provider must not use information disclosed in a Churn request for marketing activities.

29.2 The MCMC noted that it was still considering whether the timelines under subsection 5.18 are appropriate or should be amended. The MCMC expressed concern that the current timelines may be too long and should be shortened.

Submissions received

Question 49: Are the timelines under subsection 5.18 still appropriate or are the current requirements to notify an invalid churn and/or implement a churn within 2 Business Days too short or long?

29.3 Altel, the APCC, Maxis and Net2One view that the current churn obligations remain applicable. The APCC, Fiberail, Digi, Sacofa and webe consider that the timelines under subsection 5.18 as still appropriate. Only Celcom views that churn obligations are not relevant.

29.4 Celcom views that churn obligations should not be retained in the MSA as they relate to mobile number portability, which has been removed from the Access List.

29.5 Digi agrees to maintain the 2 Business Days.

29.6 Maxis views that the churn obligations in subsection 5.18 in the Draft MSA are sufficient for both the Access Seeker and Access Provider.

Discussion

29.7 The MCMC considers that operators were largely supportive of maintaining the current Churn Obligations.

29.8 Only Celcom disagrees with including the Churn Obligations in the MSA, suggesting that the obligations are no longer relevant. The MCMC does not agree. The MCMC considers that the Churn Obligations are still relevant and should continue to apply notwithstanding that mobile number portability is no longer on the Access List.

MCMC views

29.9 The MCMC confirms its preliminary view that the Churn Obligations in subsection 5.15 (previously subsection 5.18) remain applicable and that no substantive change is required other than a minor clarification specifying that a Service Provider must not use information disclosed in a Churn request for marketing activities. Churn obligations are not limited to mobile number portability, though number portability may occur when a service is being churned.

30 Legal boilerplate obligations

Introduction

30.1 In the PI Paper, the MCMC expressed the preliminary view that the Legal Boilerplate Obligations under subsection 5.19 of the MSA should remain largely intact.

30.2 The key changes the MCMC considered related to the security review and additional security provisions under subsections 5.19.7 and 5.19.8, respectively.

30.3 The MCMC proposed to move the conditional supply clause from subsection 5.13.22 of the MSA 2009 to apply as a more general obligation under the legal boilerplate provisions of the MSA.

30.4 The MCMC also considered whether to include an ability to request additional or substitute security where the volume of an order increases. The MCMC noted that a "materiality" threshold might be included if this proposed amendment was implemented.

30.5 The MCMC proposed to amend subsection 5.19.7 to clarify that an operator may vary the amount and type of any security requirements:

(a) a maximum of once in any 12-month period;

(b) if there is a material increase in the credit risk to the Operator due to changes in the estimate of charges and the Access Seeker's creditworthiness; and

(c) if the Operator reasonably determines that the variation will materially reduce its credit risk.

30.6 The new paragraph (a) was intended to limit the number of security reviews that an Operator can do in any given year. However, the MCMC also proposed to expand the types of circumstances that may be considered when determining if an operator's exposure to credit risk has increased,

which aligns with the corresponding changes to the security requirements under subsection 5.3.9 of the MSA.

30.7 Lastly, the MCMC noted that any increases in security that are required as part of a security review should be limited to the amount that is reasonably required to materially reduce or remove any increases in credit risk faced by the operator.

Submissions received

Question 50: Do operators support the proposal to permit an operator to review and request additional security if the volume of Facilities and/or Services ordered by an Access Seeker increases? Why or why not?

30.8 Altel, MYTV and Net2One view that the right to review and request additional security as a result of an increase in Facilities and/or Services required by the Access Seeker is fair. However, they view that subsection 5.19.7 should be strengthened by reasonable and valid circumstances allowing the Access Provider to revise the security requirement. The circumstances that should be added to justify a security review are:

(a) where the amount of the existing security sum is less than the minimum value calculated over a 90-day period, or

(b) to clarify the material increase in the credit risk to the operator, for example, failure to pay on the due date in respect of three invoices rendered in the preceding six months (excluding amounts disputed in good faith).

30.9 The APCC does not support the proposal to allow an operator to review and request additional security. It expresses concern that paragraph 5.3.9(b) could allow Access Providers to request higher security amounts from Access Seekers for Transmission services and Network facilities access, of over 12 months and 3 years, respectively, from the current estimate of value over a 90-day period. Hence, the APCC proposes that the estimates should revert to the previous 90-day period.

30.10 Astro views that request for additional security should only be made based on payment track record and financial standing and not based on volume of Facilities and Services. This would introduce additional cost for new entrants, already having to contend with a dominant incumbent.

30.11 Astro also highlights that the Access Seeker has to bear the full fee for the remaining period of access granted to an end user even though the end user has churned out. Even where a replacement is found, the Access Seeker is expected to pay separate charges for inactive and replacement customer for the same connection. This is because charges are imposed on a per customer (active and inactive) basis rather than on a per active customer or connection basis. Hence, it is arguably an example of exploitative charging practices.

30.12 Celcom supports the proposal to permit an operator to review and request additional security if the volume of Facilities and/or Services ordered by an Access Seeker increases, as this increase may pose a credit risk to the Access Seeker.

30.13 Ceres agrees that the operator should review the security sum based on the volume of Facilities and/or Services of an Access Seeker. It suggests that if the volume of Facilities and Services decreases, there should be a refund of the security sum. Ceres also agrees that the review is limited to once in any 12-month period.

30.14 Digi views that the current security requirement determined over a period of 90-day is a reasonable commercial estimation. It faces financial risk in securing payment from the Access Seeker subject to the following timelines – 30 days to issue invoice, payment due date is 30 days following issuance of invoice and another 30 days is required for seeking payment. Further, Digi also views that a security review once every 12 months may not promptly address the credit risk that arises within the 12-month period. As such, it is important to allow for security review as and when changes in creditworthiness occur.

30.15 Digi also comments in relation to subsection 5.19.14 that it is critical to obtain minimum commitment particularly for traffic-driven services in order to ensure capacity planning and necessary service quality can be provided.

30.16 Fiberail supports the proposal to permit an operator to review and request additional security if the volume of Facilities and/or Services increases as the operator is able to mitigate its risk.

30.17 Maxis agrees with the proposal to permit an operator to review and request additional security if the volume of Facilities and/or Services ordered by an Access Seeker increases. It is in line with the increase of the estimate charges that will be incurred by the Access Seeker under paragraph 5.3.9(b). However, Maxis proposes to delete paragraph 5.19.7(a) to not limit the sequence or time for the operator to vary the amount and type of security. It should be allowed if there is a material increase in the credit risk as and when it happens.

30.18 Maxis proposes to amend subsection 5.19.8, which provides when an operator may request additional or substitute security, to expressly include the additional ground of an increase in volume of existing Facilities and/or Services by the Access Seeker.

30.19 Maxis also strongly agrees with subsection 5.19.14 to overcome the issues of forced bundling and minimum volume commitment imposed by the Access Provider.

30.20 Sacofa supports the proposal to permit an operator to review and request additional security if the volume of Facilities and/or Services increases. The Access Provider and Access Seeker should mutually agree on the terms and conditions for the benefit of all parties.

30.21 TIME only supports the proposal if it involves an Access Seeker who is a bad paymaster with a bad track record for payment, or for new operators in the industry.

30.22 TM agrees with the proposal as it will minimise the Access Provider's risk, taking into consideration the Access Seeker's financial stance and past record on payment. Where there are additional orders by Access Seekers, TM reviews the credit rating of Access Seekers in order to ascertain whether additional security is required given the increase in orders. This will ensure that the value of the bank guarantee is commensurate with the value of the orders and is sufficient to cover any potential risks in payment default. TM cites clause 22.3 in Credit Management and Security Requirements of Singtel – Starhub Reference Interconnect Offer, as support.

30.23 U Mobile supports the proposal to permit an operator to review and request additional security if the volume of Facilities and Services increases, especially if the additional security contributes to mitigating the risk.

30.24 webe supports the proposal to amend subsection 5.19.7 where the review of security is not only based on material increase of supply but also an increase in credit risk. The historical payment performance of the Access Seeker and its creditworthiness should be considered in reviewing the security.

30.25 YTL agrees with the proposal to increase security sum if the volume of Facilities and/or Services ordered by the Access Seeker increases to materially reduce or remove any increases in credit risk that may be faced by the operator.

Discussion

30.26 The MCMC notes that most operators agreed that an operator should be permitted to review and request additional security if the volume of Facilities and/or Services ordered by an Access Seeker increases.

30.27 A number of operators submitted that estimates for security should be based on the value of the access over a 90-day period. The MCMC has properly considered such submissions under section 16 of this PI Report.

30.28 One operator suggested that an Access Seeker should receive a refund on part of the security sum where the volume of Facilities and Services decreases. The MCMC notes that MSA 2009 did not include such a refund mechanism and is not aware of any instances in which the lack of such a mechanism has been problematic for an operator. The MCMC therefore does not consider this change necessary.

30.29 Two operators submitted there should be no restriction on security review frequency—that it is important to allow for security review as and when changes in creditworthiness occur. The MCMC considers that some limit on security review frequency is appropriate, particularly as the MCMC is expanding the range of circumstances that justify a security review. The MCMC is also mindful of the disruptive effect that constant security reviews

may have on an Access Seeker. The MCMC therefore considers that its proposed maximum of one security review in any 12-month period is appropriate in the circumstances.

30.30 The MCMC has been asked by one operator to clarify what is meant by a "material increase in the credit risk to the Operator". The MCMC does not consider this to be necessary. Similar to its approach in MSA 2009, the MCMC does not propose to set out an exhaustive list of the factors that may affect operator's credit rating. If parties have further concerns they may submit specific complaints or otherwise engage with the MCMC on this issue.

30.31 In respect of Maxis' proposal to amend subsection 5.16.8 (previously subsection 5.19.8) to expressly include an increase in volume as an additional ground of when an operator may request additional or substitute security, the MCMC does not consider this necessary. Subsection 5.16.8 (previously subsection 5.19.8) already refers to subsection 5.3, which includes a reference to a commercially reasonable estimate of charges at paragraph 5.3.9(b)i.

30.32 In respect of Astro's additional submission on cancellation penalties, the MCMC properly addresses this issue in section 19 of this PI Report.

MCMC views

30.33 The MCMC confirms its preliminary view in the PI Paper that that the Legal Boilerplate Obligations under subsection 5.16 (previously subsection 5.19) of the MSA should remain largely intact, with key changes being made in respect of security review and additional security under subsections 5.16.7 (previously subsection 5.19.7) and 5.16.8 (previously subsection 5.19.8) respectively.

Part E Service Specific Obligations

31 Overview of proposed changes

31.1 The MCMC has created a new section 6 in the MSA for Service Specific Obligations. The new section sets out more detailed and nuanced terms that will apply specifically for certain services. The details and reasons for this change were discussed in Part E of the PI Paper and are summarised below.

32 Overview of Service Specific Obligations

32.1 New section 6 covers the following services:

(a) O&T Services (subsection 6.1);

(b) Wholesale Line Rental Service (subsection 6.2);

(c) Interconnect Link Service (subsection 6.3);

(d) Access to Network Elements (subsection 6.4);

(e) Digital Subscriber Line Resale Service (subsection 6.5);

(f) HSBB Network Services (subsection 6.6);

(g) Transmission Services (subsection 6.7);

(h) Infrastructure Sharing (subsection 6.8);

(i) Network Co-Location Service (subsection 6.9);

(j) Domestic Connectivity to International Services (subsection 6.10);

(k) Duct and Manhole Access (subsection 6.11);

(l) Digital Terrestrial Broadcasting Multiplexing Service (subsection 6.12); and

(m) MVNO Access (subsection 6.13).

32.2 The Service Specific Obligations in relation to Internet Interconnection Services under subsection 5.22 of MSA 2009 are not included in the above list. As described in the PI Paper, the MCMC considers that the Internet Interconnection Service terms are no longer required as MyIX connectivity is already working well.

32.3 The MCMC has identified some common terms of access that the MCMC considers will benefit from being applied on a service-specific basis. More specifically, the MCMC is splitting out the following elements of an Access Agreement to be applied on a case by case basis to account for the particular characteristics of each service under the new section 6 of the MSA:

(a) **Forecasts** – specific timing requirements that regulate the length of long term forecasts, the intervals of units or times that must be used in a forecast and the frequency of forecast updates;

(b) **Acknowledgement of receipt** – timeframes for an Access Provider to acknowledge receipt of an order, which differ depending on the service being ordered;

(c) **Time for acceptance or rejection** – timing and any other service-specific details relevant for acceptance or rejection of an order (e.g. with or without service qualification for O&T Service orders) that are tailored by service;

(d) **Billing cycle** – unless otherwise agreed by the operators, the MCMC will regulate billing cycle timeframes on a service-specific basis;

(e) **Indicative delivery times** –indicative delivery times at a granular level to account for differences between services, which may require shorter or longer periods to deliver depending on the nature of the service.

32.4 Beyond the above common terms of access, the MCMC also includes other service-specific requirements for certain services.

33 O&T Services

Introduction

33.1 In the PI Paper, the MCMC proposed to move the Technical Obligations in subsections 5.16.6 to 5.16.9 of the current MSA (MSA 2009) to apply as Service Specific Obligations under a new subsection 6.1 for O&T Services.

33.2 The MCMC also proposed service-specific timeframes for the O&T Services.

33.3 The MCMC did not propose to substantially amend the handover principles provisions at this time given that the MSA already allows an Access Seeker to select near and far-end handover for O&T Services and the Access Provider must comply.

Submissions received

Question 51: Do operators agree with the service-specific timeframes that the MCMC has proposed in respect of the O&T Services? Why or why not? If not, please specify and substantiate any proposed changes.

33.4 The APCC and TIME agree with the proposed service-specific timeframes, as they are reasonable and appropriate for O&T services.

33.5 Celcom agrees with the proposed service-specific timeframes with the exception of subsection 6.1.10, and the phrase "within the shorter of the timeframe that the Access Provider would activate a number range for itself". Celcom views that the timeframe of 10 to 30 Business Days to activate the number range is appropriate, as each operator would need to

make the necessary arrangements with its business units. Any shorter timeframe would not be practical.

33.6 Maxis views that for O&T services, only forecast and billing cycle timeframes are applicable to the operators. The other service-specific timeframes, acknowledgement of receipt, time for acceptance or rejection and indicative delivery times are not relevant for O&T services. Once the interconnection is officially established and launched, O&T services are provided by both the Access Provider and Access Seeker without going through the ordering process. Hence, Maxis proposes to delete subsection 6.1.3 to subsection 6.1.5. In relation to subsection 6.1.2 on forecasts, Maxis proposes to change the maximum period to three years (rather than one year), minimum intervals to one year (rather than six months) and update once every year (rather than every six months). The amendments are to reflect the current industry practice which is sufficient for the network planning for both Access Provider and Access Seeker. Maxis agrees with subsection 6.1.6.

33.7 TIME agrees with the service-specific timeframes proposed in respect of O&T services. Further, TIME proposes that the timeframes for acknowledgement of receipt and time for acceptance or rejection should be standardised for all Facilities and Services in order to ease the implementation by the industry.

33.8 TM agrees to the proposed timeframes in subsections 6.1.2, 6.1.3, 6.1.5 and 6.1.6. In relation to forecasting, the current practice is one year forecast period upon request by the Access Seeker, such as a request for an additional POI or new interconnection request. In relation to subsection 6.1.4 on time for acceptance or rejection, TM agrees to 10 Business Days, provided complete information or documentation is given by the Access Seeker. The information includes Letter of Advice and Level Assignment letter from the MCMC and technical proposal including network diagram and traffic utilisation.

33.9 webe agrees with the service-specific timeframes proposed in respect of O&T services, apart from subsection 6.1.4 on time for acceptance or rejection. Its concern is that the readiness of parties especially new entrants will affect the time for acceptance or rejection. webe views that intended delays should be strictly prohibited but should not undermine the real constraint and limitation at the Access Provider's end. Hence, it views that flexibility should be provided.

33.10 YTL indicates that the indicative delivery time differs when there is an existing Interconnect Link Service compared to a new link. Hence, the timeframe is too short for a new Interconnect Link Service.

Question 52: Have Access Seekers experienced any issues with near and far-end handover? If so, please provide examples and possible suggestions for amending the current 'handover principles' in the MSA.

33.11 Celcom has not faced any issues with near and far-end handover as it has sufficient POIs in almost every state in Malaysia, and hence, the calls are

handed over to the terminating party based on far-end handover. However, it notes that there are some Access Seekers with only 1 or 3 POIs, and as such, the calls are handed over based on near-end principle. As such, the issue then arises when some Access Providers view that the interconnect price is higher and justifies a review of Access Pricing.

33.12 Maxis has not experienced any major issue with near and far-end handover principles. However, it highlights that it has an issue with an operator that has direct interconnection established with Maxis, but has illegally routed its domestic traffic to an international operator which was then routed to another domestic operator and finally sent to Maxis. Maxis is concerned that this sort of arrangement could be subject to abuse, cause an unnecessary outflow of payment and a reduction in Quality of Standard, and proposes tighter regulation on routing of O&T services to prevent the reoccurrence of illegal routing for these services.

33.13 TIME has not faced any issues with near and far-end handover with first tier operators that have multiple POIs in every closed area. However, TIME currently faces issues with second tier operators such as U Mobile, webe and Redtone. Even though its outstation customers call those operators' outstation customers, TIME would need to carry the traffic to its POI in central region in order to interconnect with those operators' POIs in central region. In other words, near-end handover only happens in central region, and not in other regions.

33.14 TM proposes to maintain the current handover principles as there are calls to special numbers (toll-free and freephone) that need to be handed over on a regional basis. Having said that, moving towards an IP interconnection environment where there are lesser number of POIs, TM considers that there needs to be further studies undertaken on this.

33.15 U Mobile proposed that moving forward, licensees would increasingly change handover principle from far-end to near-end. It proposes a hybrid handover principle such as a Centralised Handover principle which is a delivery of all calls, regardless of location of the called number to a centralised POI. This will facilitate implementation of all IP interconnection regime in the future. A Centralised Handover is a form of Near End Handover but allows a concentration of transmission from one network to another at centralised location. It obviates the need to maintain POIs in different regions. The more practical and cost efficient IP architecture will invariably require a single rate for terminating traffic.

33.16 webe appreciates the fact that the MCMC has not compelled the Access Seekers to build POIs in all closed number areas. As a new and small player, it is important that it is given time to grow and decide on the number of POIs based on traffic growth. It will allow webe to stagger its investment and focus on delivering quality of service to its customers.

Question 53: Do operators consider the proposed service-specific obligations for O&T Services are sufficient? Please detail any proposed addition, deletion or amendment to the terms currently proposed by the MCMC.

33.17 The APCC agrees that the service-specific obligations for O&T services are sufficient, and proposes to include a "Modularity" provision. It views that it is theoretically feasible for any service or facility to be bundled by an Access Provider with any other service. Hence, there is no reason why the "Modularity" provisions included for some Facilities and Services should not apply on a blanket basis to each of the 13 service-specific obligations.

33.18 Celcom views that the service-specific obligations for O&T services are sufficient, especially with subsection 6.1.16.

33.19 Maxis provided detailed feedback on subsection 6.1. In addition to the feedback on Question 51, Maxis agreed with subsections 6.1.7, 6.1.8, 6.1.9, 6.1.11 and 6.1.12. In relation to subsection 6.1.10, Maxis agreed with the proposed amendments, however, it views that the subsection should only be applicable to MSISDN and PSTN numbers. For short codes used for SMS or specialised services, there are other determinations that impact on service provisioning such that the number range activation period differs. These are non-essential services and typically of low risk, even if they are activated on a different timeframe.

33.20 Maxis suggests four amendments to address the issue highlighted in Question 52. Firstly, it proposes to specify in subsection 6.1.13 on handover principles that handover or routing of calls should be at the agreed point of interconnection to address the issue highlighted under Question 52. Secondly, it also proposes a new subsection where transit call arrangements using a third party's network should be agreed between the Access Seeker, Access Provider and third party. Thirdly, Maxis proposes amendments in subsections 6.1.14 and 6.1.15 so that the limit which applies to CLI being forwarded only if received, applies to "international inbound calls only" and to delete the words "including transit network" from being applicable to dummy CLIs.

33.21 Maxis also suggests a new subsection to ensure the establishment of at least two physically separate points of interconnection to avoid a single point of failure. Further, Maxis proposes a new subsection to ensure that operators establish business contingency plan to cater for unplanned outage due to natural disaster or events that cause a major impact to the networks of operators.

33.22 Finally, Maxis proposes detailed amendments to subsections 6.1.16. In relation to subsection 6.1.16 on quality of service, Maxis proposes to include in the table under 2.2, a new category of "other network fault" with a responding threshold of "≤3%".

33.23 TIME is of the opinion that the proposed service-specific obligations for O&T services are sufficient. However, it adds that the obligations should be included in the Operations and Maintenance Manual, to be executed or negotiated after the Access Seeker accepts the RAO and signed the offer.

33.24 TM is agreeable to moving network conditioning, technical obligation of handover principle, CLI, dummy CLI and Quality of Service to Service Specific Obligations for O&T services. In relation to timeframe for number

range activation under subsection 6.1.10, TM agrees to the proposed timeframe provided that there are no problems or issues which arises during activation which are beyond its control.

33.25 webe provided feedback in relation to subsection 6.1.10, where it is challenging to determine the exact timeframe. Opening of new number level would normally require both parties, i.e. the requestor and the other individual service providers, to do the testing. The challenge is in obtaining the dates from the respective providers. However, a tentative timeframe is possible. In addition, the phrase "the shorter of the timeframe that the Access Provider would activate the code or number range for itself" is not necessary.

Discussion

Order processing

33.26 Celcom was concerned that operators should not have to activate number ranges for O&T Services in less than 10-30 Business Days even if the operator provides itself with shorter activation timeframes. This condition is key to the equivalence of inputs approach the MCMC has adopted for the MSA. No change is proposed to that approach.

33.27 The MCMC appreciates Maxis and TM's comments on the different timeframes that are currently used for specific processes. As other operators have agreed with the MCMC's proposed changes to these periods and the MCMC considers that shorter timeframes will generally permit more flexible service development and innovation, the MCMC intends to adopt the periods proposed in the PI Paper.

33.28 The MCMC appreciates TIME's proposal to align order processes across all Facilities and Services. However, the MCMC does not consider this to be practical given differences in the nature of the various Facilities and Services. This view is confirmed by comments from other operators, which confirm that there need to be differences in order processing timeframes between different Facilities and Services. The MCMC does not propose to adopt alignment across all Facilities and Services.

33.29 The MCMC acknowledges TM's comments on the need for Access Seekers to provide complete information and documentation with their orders. Access Providers must make all order requirements clear up front and work with Access Seekers to process orders within the periods specified in the MSA.

33.30 The MCMC acknowledges webe's comments regarding new entrants' abilities to comply with strict timeframes. The MCMC invites all operators with similar capability concerns to work with the MCMC to ensure that the MSA's requirements are appropriately implemented.

33.31 The MCMC appreciates YTL's concerns about the timeframes for implementing new Interconnect Link Services. However, as YTL has not proposed an alternative timeframe, and other operators have not raised

similar concerns, the MSA will adopt the MCMC's proposal in the PI Paper and operators will need to implement these timeframes.

Handover

33.32 The MCMC welcomes the general support from operators for the MSA regulation of near-end and far-end handover.

33.33 With regard to specific issues raised with routing, the MCMC requests that operators engage with the MCMC and provide specifics that will allow the MCMC to investigate the issues described.

33.34 With regard to U Mobile's proposal, the MCMC suggests that U Mobile provide a detailed proposal that the MCMC can consider. However, the current proposal is not well enough developed to allow it to be considered for the present MSA.

Other comments on service-specific obligations for O&T Services

33.35 The MCMC appreciates the APCC's suggestion on modularity. The MCMC agrees that all Facilities and Services should be supplied on a modular basis. This is provided for under the CMA and the MSA – for example, see subsection 4.4.1 and subsection 5.16.14 (previously subsection 5.19.14) of the MSA. Hence, the MCMC does not consider any further amendments are required.

33.36 The modularity provisions for specific Facilities and Services in the MSA are not supposed to impose an additional or different standard for those Facilities and Services. Rather, those provisions are intended to specify how the modularity principle applies in specific circumstances. The same need to provide specific direction does not apply to all Facilities and Services. For example, the Trunk Transmission Service and End-to-End Transmission Service already specify the level of modularity required by the scope of the Access List description of those services.

33.37 The MCMC appreciates Maxis' detailed comments and responds to them below in the order summarised above.

33.38 The MCMC does not propose to amend the forecasting timeframes applicable to O&T Services. The MCMC considers that a forecasting period of 3 years is too long for this Service.

33.39 The MCMC does not propose to make exceptions for particular number ranges as they may be important to particular Access Seekers or use cases.

33.40 The MCMC understands Maxis' concerns on specific handover and routing issues. However, it does not propose to address those concerns through the MSA. The MCMC invites Maxis to submit a specific complaint or dispute on these matters, or otherwise engage with the MCMC to understand if the MSA or Access Agreements are being operationalised in unexpected ways.

33.41 The MCMC understands that Maxis' proposed amendment to CLI forwarding reflects that only inbound international calls should ever be received without

CLI. Nevertheless, if an operator forwards a call and does not receive CLI (e.g. due to a technical issue with the upstream operator's network) then the operator forwarding the call should have no obligation to pass on CLI. Therefore, the MCMC does not consider any change is necessary.

33.42 The principle that dummy CLIs must not confuse other operators' networks, including on transit networks, is important for efficient routing and integrity of CLI, billing and other purposes. While the MCMC understands and shares Maxis' desire to minimise regulatory constraints, the MCMC is satisfied that the dummy CLI provisions should be adopted in the form described in the PI Paper.

33.43 The establishment of resilient networks is an important goal. However, the MCMC does not consider that the specific network design and configuration goals described by Maxis should be pursued through the MSA, as the MSA relates to the terms on which a wholesale service is supplied between operators.

33.44 Similarly, in respect of business continuity, the MCMC considers that it is not necessary to mandate this in the MSA. The MCMC notes it is open to operators who wish to provide for such matters to consider incorporating the relevant provisions in their RAOs or Access Agreement negotiations.

33.45 The MCMC does not consider that a third category of network fault is required in subsection 6.1.17 (previously subsection 6.1.16) as proposed by Maxis. All faults should be either internal or external to each operator. Therefore, the two existing fault categories are sufficient.

33.46 The MCMC appreciates the generally positive responses from TM and webe. With regard to webe's comment on the necessity for the requirement to activate services in a shorter timeframe from the specified times where an Access Provider provides a shorter timeframe to itself, the MCMC reiterates its earlier comments about the importance of the equivalence of inputs approach to the MCMC's revised MSA regime.

MCMC views

33.47 The MCMC appreciates operators' engagement with the Public Inquiry process and the detailed submissions provided. As discussed above, the MCMC intends to adopt the O&T Services obligations in the MSA as they were set out in the PI Paper.

34 Wholesale Line Rental Service

Introduction

34.1 Subsection 5.25 of the MSA currently sets out a series of service-specific obligations that apply for the Wholesale Line Rental Service. In the PI Paper, the MCMC did not propose to substantively change the existing Wholesale Line Rental Service provisions under subsection 5.25. However, the current obligations would be moved to a new subsection 6.2, which would also include additional obligations (e.g. new time requirements for forecasts,

etc.) to align with the approach taken in the rest of the Service Specific Obligations.

34.2 The MCMC also proposed service-specific timeframes for the Wholesale Line Rental Service.

Submissions received

Question 54: Do operators agree with the service-specific timeframes that the MCMC has proposed in respect of the Wholesale Line Rental Service? Why or why not? If not, please specify and substantiate any proposed changes.

34.3 The APCC, Maxis, Sacofa and YTL agree with the proposed service-specific timeframes for Wholesale Line Rental Service.

34.4 Maxis agrees with the service-specific timeframes proposed for Wholesale Line Rental Service. It views that Wholesale Line Rental Service is still an important access service for fixed line, and should continue to be retained in the MSA. As of June 2016, there are still more than 4.2 million fixed line customers that are still active and can benefit from the regulation of the service-specific timeframes.

34.5 TM wishes to highlight that TM no longer offers Wholesale Line Rental Service due to migration from PSTN-based network to IP-based network. Hence, it proposes to remove the provisions on Wholesale Line Rental Service from the MSA. It cites that removal of old legacy services is consistent with the move to NGN-based services in other countries, such as nbnco and Telstra in Australia.

Question 55: Do operators consider the proposed service-specific obligations for Wholesale Line Rental Service are sufficient? Please detail any proposed addition, deletion or amendment to the terms currently proposed by the MCMC.

34.6 The APCC, Maxis, Sacofa and YTL agree that the service-specific obligations for Wholesale Line Rental Service are sufficient.

34.7 The APCC agrees that the service-specific obligations for Wholesale Line Rental Service are sufficient, and proposes to include a "Modularity" provision. It views that it is theoretically feasible for any service or facility to be bundled by an Access Provider with any other service. Hence, there is no reason why the "Modularity" provision should not apply on a blanket basis to each of the 13 service-specific obligations.

34.8 Maxis agrees that the proposed service-specific obligations for Wholesale Line Rental Service are sufficient and should be retained in the MSA.

34.9 TM proposes to remove the provisions of Wholesale Line Rental Service, as it no longer provides this service.

Discussion

34.10 The MCMC appreciates that there are contrary views on the continued relevance of Wholesale Line Rental. As discussed in detail in the PI Paper,

the MCMC is confident that the continued regulation of Wholesale Line Rental is key to competition in fixed line services as Malaysia moves to next generation networks and reiterates to TM that it must continue offering Wholesale Line Rental Service because it is on the Access List, so long as it is offering the retail services to consumers (which uses Wholesale Line Rental Service) as an input.

34.11 With regard to the APCC's suggestion on modularity, the MCMC refers to its comments at paragraph 33.35.

MCMC views

34.12 The MCMC proposes to adopt the service-specific obligations for Wholesale Line Rental service as described in the PI Paper without any change.

35 Interconnect Link Service

Introduction

35.1 In the PI Paper, the MCMC proposed to include a new subsection 6.3 that sets out the detailed terms that would apply specifically for access to the Interconnect Link Services.

35.2 The MCMC also proposed service-specific timeframes for the Interconnect Link Services.

Submissions received

Question 56: Do operators agree with the service-specific timeframes that the MCMC has proposed in respect of the Interconnect Link Service? Why or why not? If not, please specify and substantiate any proposed changes.

35.3 The APCC, Celcom and TIME agree with the proposed service-specific timeframes for Interconnect Link Service.

35.4 Altel and Net2One agree to the service-specific timeframes in respect of the Interconnect Link Service, apart from subsection 6.3.5 on indicative delivery timeframe. The proposed indicative delivery timeframe did not factor in the process of installation and commissioning before the link is ready for service. It normally takes at least 25 Business Days to be completed. Hence, Altel and Net2One propose that the indicative delivery timeframe excludes the site preparation and proposes the additional words commencing after 20 Business Days" from initiation of the installation of Service up to the commissioning of such Service."

35.5 Maxis agrees with the proposed service-specific timeframes in subsections 6.3.2, 6.3.3 and 6.3.4. In relation to subsection 6.3.5 on indicative delivery timeframe, Maxis proposes 20 Business Days for existing POIs and 8 months for the new POIs. It clarifies that to establish a new POI, a longer timeframe would be required by the operators. In relation to subsection 6.3.6, Maxis proposes to change the billing cycle from monthly to quarterly to reflect the current industry practice.

35.6 TIME agrees with the service-specific timeframes proposed in respect of Interconnect Link services. Further, TIME proposes that the timeframes for acknowledgement of receipt and time for acceptance or rejection should be standardised for all Facilities and Services in order to ease the implementation by the industry.

35.7 TM commented on subsections 6.3.5 and 6.3.6. TM is agreeable to indicative delivery timeframe of 20 Business Days in subsection 6.3.5 if no new infrastructure is required. If new infrastructure is required, TM would require an additional period of 4 months' maximum in order to verify the order, carry out installation and test either the SDH or mini-mux. TM has adopted optimisation of network assets by not keeping stock of old legacy technology. With regard to subsection 6.3.6, TM considers that the first time billing should be on an annual basis and is agreeable to monthly billing cycle thereafter. This is in line with the current industry practice.

35.8 webe suggests that the proposed indicative delivery timeframe in subsection 6.3.5 be used as an indicative timeframe but the actual delivery should be upon mutual agreement.

35.9 YTL views that the indicative delivery timeframe in subsection 6.3.5 should be greater than one month.

Question 57: Do operators consider the proposed service-specific obligations for Interconnect Link Service are sufficient? Please detail any proposed addition, deletion or amendment to the terms currently proposed by the MCMC.

35.10 Altel, the APCC, Celcom and TIME agree that the service-specific obligations for Interconnect Link Service are sufficient.

35.11 The APCC agrees that the service-specific obligations for Interconnect Link Service are sufficient, and proposes to include a "Modularity" provision. It views that it is theoretically feasible for any service or facility to be bundled by an Access Provider with any other service. Hence, there is no reason why the "Modularity" provision should not apply on a blanket basis to each of the 13 service-specific obligations.

35.12 TIME is of the opinion that the proposed service-specific obligations for Interconnect Link Service are sufficient. However, it adds that the obligations should be included in the Operations and Maintenance Manual, to be executed or negotiated after the Access Seeker accepts the RAO and signed the offer.

35.13 TM comments that in-span interconnection is the preferred method for voice interconnection. As such each operator is responsible for their outgoing traffic and this also results in both parties' interests being addressed.

Discussion

35.14 The MCMC appreciates the submissions provided on provisioning the Interconnect Link Service, particularly with respect to new sites. The MCMC proposes to adopt a longer timeframe of 4 months to establish an

Interconnect Link Service at a new site, in line with TM's submission. The MCMC acknowledges that Maxis proposed a longer timeframe, and other operators proposed a total exception for new sites, the MCMC is concerned to adopt a timeframe that does not create undue delays for Access Seekers.

35.15 The MCMC agrees with Maxis to change the Billing Cycle for the Interconnect Link Service from monthly to quarterly.

35.16 With regard to the APCC's suggestion on modularity, the MCMC refers to its comments at paragraph 33.35.

35.17 The MCMC acknowledges TIME's view that greater detail should be left to Operations and Maintenance documents agreed between the Access Provider and Access Seeker. However, for the reasons described in the PI Paper, the MCMC is concerned that meaningful access is not always being provided to the Interconnect Link Service as required under the MSA. It is therefore necessary to set out specific obligations in the MSA.

35.18 The MCMC does not agree with TM's view that in-span interconnection should be a method of interconnection to be preferred over others. TM should not confuse its preference for in-span interconnection with the interests of others, or TM's obligation under the Access List and MSA to provide forms of interconnection as requested by Access Seekers.

MCMC views

35.19 The MCMC will adopt an indicative delivery timeframe of 20 Business Days for existing POIs and 4 months for new POIs.

35.20 The MCMC will also adopt a quarterly Billing Cycle for the Interconnect Link Service.

35.21 The MCMC does not propose any other changes to the Interconnect Link Service service-specific obligations set out in the PI Paper.

36 Access to Network Elements

Introduction

36.1 In the PI Paper, the MCMC did not propose to substantively change the existing ANE provisions under subsection 5.24. However, the MCMC proposed to move the current obligations to a new subsection 6.4, which would also include additional obligations (e.g. new time requirements for forecasts, etc.) to align with the approach taken in the rest of the Service Specific Obligations.

36.2 The MCMC also proposed timeframes in relation to ANE.

Submissions received

Question 58: Do operators agree with the service-specific timeframes that the MCMC has proposed in respect of the Access to Network Elements? Why or why not? If not, please specify and substantiate any proposed changes.

36.3 The APCC, Astro and Maxis agree with the proposed service-specific timeframes for ANE.

36.4 Astro agrees with the proposed service-specific timeframes and the indicative delivery timelines. However, it seeks clarification on whether the indicative delivery timelines reference the period taken to secure an appointment date for installation through to activation of the service.

36.5 Maxis agrees with the proposed service-specific timeframes in respect of the ANE, and it should continue to be regulated in the MSA. It estimates that as at September 2016 that there are still more than 4.2 million fixed lines and more than 1.4 million ADSL ports that are active in the market. The continued regulation of the service-specific timeframes for ANE would definitely benefit those end users.

36.6 YTL agrees with the proposed service-specific timeframes for ANE, except for time for acceptance or rejection under subsection 6.4.7 that requires at least 5 Business Days.

Question 59: Do operators consider the proposed service-specific obligations for Access to Network Elements are sufficient? Please detail any proposed addition, deletion or amendment to the terms currently proposed by the MCMC.

36.7 The APCC agrees that the service-specific obligations for ANE are sufficient, and proposes to include a "Modularity" provision. It views that it is theoretically feasible for any service or facility to be bundled by an Access Provider with any other service. Hence, there is no reason why the "Modularity" provision should not apply on a blanket basis to each of the 13 service-specific obligations.

36.8 Astro provides some detailed feedback on subsection 6.4. Firstly, on subsection 6.4.9, Astro recommends clarifying that the concept of equivalence is referring to Equivalence of Inputs, and further, recommends to consider its definition of "non-discrimination" under subsection 4.1.6 above. Secondly, in relation to subsection 6.4.6 where the exemption of providing to access to ANE Services only applies where the Access Provider provides evidence that those premises are actively connected to and retail services are being provided using a HSBB Network Service, Astro proposes to make it clear that the obligation is owed to the Access Seeker by inserting after the word "evidence", the words "to the Access Seeker". Further, Astro supports the reporting of refusals to the MCMC. Thirdly, Astro understood that subsection 6.6.9 is meant to facilitate the Access Seeker that has an Access Agreement for ANE services and is acquiring ANE services at the premises that will be served by HSBB Network Service within 5 years, by providing them with crucial information to enable deployment of marketing plans on an equivalent basis with the Access Provider's service.

36.9 Astro also expresses concern over the use of vectoring technology that is applied to an entire bundle of copper cables, and thus has the potential to restrict competition by excluding competitive unbundling of such lines. It cites that in June 2016, the European Commission approved the use of

vectoring technology by a German telco subject to requiring adequate competitive safeguards to be put in place. This includes the removal of restrictions on the number of alternative operators who could access street cabinets to provide connectivity services and to grant access to ducts and dark fibre for two years to those alternative operators currently present at the local exchange. Astro thus recommends intervention of the MCMC over the use of vectoring technology as this risks compromising the availability of certain Facilities and Services higher up in the Open System Interconnect (OSI) layer, which in turn frustrates the objective of the Access List. Access Providers should be subject to an approval requirement before being allowed to utilise this technology. In addition, Astro also comments that Access Seekers should also be notified when a request for vectoring is put in by the Access Provider, so that they can be given an opportunity to make submissions to the MCMC and that the full impact of the decision can be assessed.

36.10 Maxis agrees to the proposed amendments in subsections 6.4.2, 6.4.3, 6.4.4, 6.4.5, 6.4.7, 6.4.8, 6.4.9, 6.4.10, 6.4.11 and 6.4.12. In particular, Maxis highlights the importance of ensuring equivalence of input to the Access Seeker such as under subsections 6.4.2, 6.4.3 and 6.4.9. In relation to subsection 6.4.6 on grounds for refusal, Maxis proposes changes to ensure that the Access Seeker would have equivalence of input in terms of the capability to provide broadband services to end users using both ANE and HSBB Network, either concurrently or separately, as long as the Access Provider is providing the retail services using both networks and technologies, either concurrently or separately. In relation to subsection 6.4.9, Maxis also proposes for this subsection to be applicable to subsection 6.6 on HSBB Network Services.

36.11 Consistent with its response to Question 54 above, TM wishes to highlight it is migrating from PSTN-based network to IP-based network. Hence, TM proposes to remove the provisions on ANE from the MSA. It cites that removal of old legacy services is consistent with the move to NGN-based services in other countries, such as nbnco and Telstra in Australia.

Discussion

Timeframes

36.12 The MCMC thanks those operators who confirmed their agreement with the service-specific timeframe obligations proposed for ANE.

36.13 In response to Astro's question, the MCMC confirms that the indicative delivery timeframes proposed by the MCMC include all matters necessary for activation of the ANE.

36.14 In response to YTL's submission that a longer timeframe is required for order rejection, the MCMC notes that no supporting reasoning or evidence has been provided. As other operators have not raised any issues with these proposed timeframes, the MCMC does not have any basis on which to vary the timeframes for the final MSA.

Other comments on service-specific obligations for ANE

36.15 With regard to the APCC's suggestion on modularity, the MCMC refers to its comments at paragraph 33.35.

36.16 With regard to Astro's comments on clarifying the non-discrimination obligation, and more specifically the description of the equivalence of inputs standard, the MCMC refers to its comments in Part C, and the changes proposed there.

36.17 The MCMC agrees with Astro's proposed clarification that "evidence" of HSBB Network Services should be provided "to the Access Seeker".

36.18 The MCMC understands the concerns raised by Astro with respect to vectoring. The MSA relates to the terms on which regulated wholesale services are supplied by an Access Provider to an Access Seeker. As the vectoring concern raised by Astro is relevant to an Access Provider's operation of services supplied to its own retail business units. However, the MCMC appreciates the concern raised by Astro and invites Astro to discuss the development of appropriate vectoring codes or regulations through the MAFB or directly with the MCMC.

36.19 The MCMC acknowledges Maxis' submission that an Access Provider should supply both ANE and HSBB Network Services concurrently if it provides both types of services to itself. However, the MCMC considers that the primary benefit of continuing to regulate ANE at the wholesale level is to ensure that all operators can compete for retail Customers across all access networks while next generation networks continue to be in the rollout phase. It is consistent with the principle of proportional regulation that wholesale regulation of ANE be removed where alternative access to HSBB Network Services is available. The MCMC notes that Access Providers must still notify the MCMC if they reject ANE on the basis that alternative HSBB Network Services are available. The MCMC intends to review whether meaningful access to HSBB Network Services are made available in such cases.

36.20 On a related point, the MCMC confirms that the continued regulation of ANE is key to competition in fixed line services as Malaysia moves to next generation networks and reiterates to TM that it must continue offering ANE as listed in the Access List, as long as it is offering the retail services to consumers which uses ANE as an input.

MCMC views

36.21 The MCMC will amend the MSA to make clear that if an Access Provider rejects a request for ANE on the basis that HSBB Network Services are available as an alternative, the Access Provider must make evidence available to the Access Seeker.

36.22 The MCMC does not propose any other changes to the ANE service-specific obligations set out in the PI Paper.

37 Digital Subscriber Line Resale Service

Introduction

37.1 In the PI Paper, the MCMC proposed to include a new subsection 6.5 that sets out the detailed terms that would apply specifically for access to the Digital Subscriber Line Resale Service.

37.2 In addition, the MCMC proposed to include a new ground for refusal, which would permit an Access Provider to refuse an access request for Digital Subscriber Line Resale Services in respect of a particular premises if the Access Provider can provide evidence that the premise is already actively connected and being served by a retail HSBB Network Service.

37.3 The MCMC also proposed service-specific timeframes for the Digital Subscriber Line Resale Service.

Submissions received

Question 60: Do operators agree with the service-specific timeframes that the MCMC has proposed in respect of the Digital Subscriber Line Resale Service? Why or why not? If not, please specify and substantiate any proposed changes.

37.4 The APCC agrees with the proposed service-specific timeframes in respect of Digital Subscriber Line Resale Service, apart from the indicative activation timeframe, which the APCC considers should be 5 Business Days instead of 10 Business Days.

37.5 Astro agrees with the proposed service-specific timeframes in respect of Digital Subscriber Line Resale Service, which appear consistent with other like services.

37.6 Maxis agrees with the proposed service-specific timeframes in respect of Digital Subscriber Line Resale Service, except that it considers that the timeframe for activations should be 5 Business Days instead of 10 Business Days, and should be absolute rather than indicative. Maxis views that as at September 2016, there are still more than 1.4 million ADSL ports that are active in the market. The continued regulation of the service-specific timeframes for Digital Subscriber Line Resale Service would definitely benefit those end users.

37.7 TM is agreeable to timeframe for forecasts under subsection 6.5.2 and monthly billing cycle under subsection 6.5.7. TM prefers to maintain the existing timeframe of 2 Business Days under subsection 6.5.4 to acknowledge receipt. In relation to subsection 6.5.5, TM is not agreeable to the proposed timeframe of 1 Business Day to accept or reject an order. It requires more time to check the infrastructure, i.e. the availability of Digital Subscriber Line Access Multiplexer port. Therefore, TM proposes the current timeframe of 14 Business Days considering the ground work that needs to be carried out in the notice of acceptance.

Question 61: Is the indicative activation timeframe of 10 Business Days appropriate? Would it be more appropriate to include a shorter activation timeframe instead?

37.8 The APCC considers that the indicative activation timeframe of 10 Business Days as too long, and considers a shorter timeframe of 5 Business Days as more appropriate.

37.9 Astro considers that the indicative activation timeframe of 10 Business Days as too long, and should be reduced to 3 Business Days to be consistent with the timeframe proposed for HSBB Network Services.

37.10 Maxis considers that the indicative activation timeframe of 10 Business Days as too long, it should be similar to Bitstream Service, i.e. 5 Business Days, as the activation processes for both are almost similar.

37.11 TM is not agreeable to the indicative activation timeframe of 10 Business Days and is unable to comply with the proposed timeline. TM requires approximately 17 Business Days to complete the activation.

Question 62: Do operators consider the proposed service-specific obligations for Digital Subscriber Line Resale Service are sufficient? Please detail any proposed addition, deletion or amendment to the terms currently proposed by the MCMC.

37.12 The APCC agrees that the service-specific obligations for Digital Subscriber Line Resale Service are sufficient, and proposes to include a "Modularity" provision. It views that it is theoretically feasible for any service or facility to be bundled by an Access Provider with any other service. Hence, there is no reason why the "Modularity" provision should not apply on a blanket basis to each of the 13 service-specific obligations.

37.13 Astro proposes that service-specific obligations for ANE Services and HSBB Network Services such as interface to OSS, service fulfilment timelines and service assurance timelines should be equally applicable to Digital Subscriber Line Resale Service.

37.14 Maxis proposes that under subsection 6.5.3 for grounds for refusal, the Access Seeker should have the equivalence of input in terms of capability to provide broadband services to the end users using both the Digital Subscriber Line Resale Service and HSBB Network either concurrently or separately, as long as the Access Provider is providing the retail services using both networks and technologies either concurrently or separately.

37.15 TM considers that apart from its comments provided in Questions 60 and 61, the proposed service-specific obligations for Digital Subscriber Line Resale Service are sufficient.

Discussion

37.16 The MCMC appreciates operators' detailed responses to the proposed service-specific timeframes for the Digital Subscriber Line Resale Service.

37.17 The majority of operators who commented on the activation timeframe considered that it should be 5 Business Days or less. However, TM stated that it requires 17 Business Days to complete activations.

37.18 Maxis supported its submission with the observation that the processes required to activate the Digital Subscriber Line Resale Service are similar to those required for Bitstream Services, and that the timeframes should therefore be the same. The other operators who supported a shorter activation timeframe did not provide supporting reasons or evidence.

37.19 With regard to Maxis' proposal to delete the 'indicative' aspect of the notice of the timeframe for a notice of acceptance, the MCMC notes that this change is not required because of the timeframe in subsection 6.5.6 supports the operative obligation in paragraph 5.7.13(a)i, which is mandatory in effect.

37.20 TM's submission that it requires 17 Business Days to activate a service appears to be linked to its submission that it requires 14 Business Days to check port availability and undertake similar preparatory works before accepting or rejecting an order. The MCMC has rejected that as being an unreasonable timeframe and it follows that the MCMC considers that 17 Business Days to activate a service is unreasonable.

37.21 On balance, the MCMC considers that a shorter indicative delivery timeframe of 5 Business Days for activation of a Digital Subscriber Line Resale Service, supported by a number of operators, is preferable for the reasons explained by Maxis. The MCMC expects that TM will be able to streamline and expedite its processes to comply with the MSA.

37.22 With regard to the APCC's suggestion on modularity, the MCMC refers to its comments at paragraph 33.35.

37.23 With regard to Astro's submission that all timelines for ANE and HSBB Network Services should apply equally to the Digital Subscriber Line Resale Service, the MCMC notes that the proposal is appealing at a high level, but is not supported by reasoning or evidence of the benefits that would flow from a shorter timeframe or its practicality.

37.24 With regard to Maxis' submission on equivalence of inputs, the MCMC refers to its comments at paragraph 36.19.

37.25 The MCMC has also responded to TM's further submissions, above.

MCMC views

37.26 The MCMC considers that the indicative delivery timeframe for activation of Digital Subscriber Line Resale Services should be shortened to 5 Business Days.

37.27 The MCMC does not propose any other changes to the MSA on service-specific obligations regarding the Digital Subscriber Line Resale Service.

38 HSBB Network Services

Introduction

38.1 In the PI Paper, the MCMC proposed to move the current HSBB Network Service obligations to a new subsection 6.6, which would also include additional obligations (e.g. new time requirements for forecasts, etc.) to align with the approach taken in the rest of the Service Specific Obligations.

38.2 The MCMC proposed a number of initial changes to the current Service Specific Obligations that apply for access to HSBB Network Services, including:

(a) the common terms of access (e.g. Forecasts, indicative activation timeframes, etc.) for HSBB Network Services;

(b) requirements for an Access Provider to make certain information available on its publicly available website;

(c) clarification that any information provided to an Access Seeker under an Implementation and Migration Plan must allow the Access Seeker to carry out certain activities on the same basis as the Access Provider;

(d) express requirements for an Access Provider to make available certain information to an Access Seeker as soon as the Access Provider makes that information available to itself; and

(e) the inclusion of new reporting obligations that set out details such as location and product availability of HSBB Network Services, which an Access Provider would be required to notify to the MCMC on a bi-annual basis.

38.3 The MCMC noted that many of its proposed changes in relation to HSBB Network Services were already relatively common in other jurisdictions. For example, in Australia, the wholesale high speed broadband provider, **nbn**, regularly provides Access Seekers with detailed forecasting and network rollout information. **nbn** also provides key service information and updates to its customers via an online service portal and/or a B2B gateway. The MCMC noted that similar measures should be available in Malaysia, which would help to ensure all Access Seekers have equivalent access to key service information.

Submissions received

Question 63: Do operators agree with the service-specific timeframes that the MCMC has proposed in respect of the HSBB Network Services? Why or why not? If not, please specify and substantiate any proposed changes or amendments.

38.4 The APCC and TIME agreed with the proposed service-specific timeframes, saying that they are reasonable and appropriate.

38.5 Astro agreed with the service-specific timeframes, noting that they would promote efficiency. Astro sought further clarification on whether the "indicative activation timeframe" includes BTU installation appointments and the distinction between premises connected to the HSBB Network and premises not already connected to the HSBB Network including by premises type, such as condominiums.

38.6 Celcom commented that a number of timeframes were acceptable, but proposed some changes, as follows:

(a) Celcom proposed that service gateway configuration should be performed within 3 Business Days instead of 5 Business Days;

(b) Celcom proposed that Access Providers should not have 7 days to provide premises information that is not included on its website or self-service portal, but instead should have to keep the two information sources aligned in real time, and provide a rebate should it fail to do so. Celcom submitted that this approach was in line with the "equivalence of inputs" concept;

(c) Celcom proposed that the graduated service levels to obtain appointment slots for BTU installation to be replaced by a flat requirement to confirm 100% of BTU installation orders within 24 hours of an Access Seeker requesting an appointment in an available slot. Celcom commented that it could not see why the Access Provider would need any longer;

(d) Celcom proposed that the provisions for return order management should expressly deal with BTUs that do not meet an Access Seeker's requirements, which Celcom noted had resulted, in the past, in failures to complete installations. It also commented that 21 days was too long to rectify BTU issues upon installation. It proposed a 5-day period instead;

(e) Celcom proposed stricter timeframes for non-BTU, infrastructure-related, fault restoration;

(f) Celcom also proposed that throughput should be measured as between the end user and MyIX; and

(g) Finally, Celcom submitted that the indicative activation timeframe should be amended for consistency with the MSQoS.

38.7 Maxis strongly agreed with several of the service-specific timeframes and other service-specific obligations, but proposed various changes, as follows:

(a) Maxis submitted that for HSBB Network services, forecasts should have a maximum period of 1 year and a minimum interval of 3 months, rather than the MCMC's proposal in the PI Paper of a maximum period of 3 months with an interval of 1 month. Maxis submitted that if an Access Seeker does not provide an updated forecast each month, the previous forecast should be taken to apply;

(b) Maxis proposed that there should be a timeframe of 5 Business Days for the Access Provider to complete any post-Order Service Qualification, to avoid any delays that might otherwise flow;

(c) Maxis proposed that references to an "indicative activation" timeframe should be replaced with "installation timeframe" and that those timeframes should expressly apply "from the date of Order received from the Access Seeker". Maxis similarly submitted that service gateway and BTU upgrades/downgrade timeframes should expressly apply "from the date of Order received from the Access Seeker";

(d) In the PI Paper, the MCMC proposed that different indicative activation timeframes should apply for premises depending on whether they are connected to the HSBB Network or not. Maxis has proposed that the distinction should be between "premises/areas" connected or not yet connected to the HSBB Network. Maxis has suggested a similar change throughout the service-specific obligations for the HSBB Network Service;

(e) Maxis submitted that additional detail should be added to the billing cycle provision for HSBB Network Services, to say that billing information provided by the Access Provider to the Access Seeker must be made available in a timely manner;

(f) Maxis proposed changes to Access Providers' public information obligations, to specify that such information must align with the service fulfilment timeframes, service assurance timeframes and network performance obligations set out elsewhere in the MSA;

(g) Maxis suggested a minor clarification that the public information requirement to allow "any person" to access specified information to mean "any person (including the Access Seeker)";

(h) Maxis submitted that service restoration information which is required to be made publicly available should be supplemented by access to network performance information, a common ticketing system, and a common appointment slot system;

(i) Maxis submitted that all updates to publicly available information should be provided no longer than 1 Business Day from the Implementation and Migration Plan completion date;

(j) Maxis submitted that service gateway configuration should expressly be performed "and completed" within the specified timeframe of 5 Business Days. Maxis submitted that the configuration timeframe should run from the date where connectivity to the Access Seeker's equipment has been established "or from the date of Order received from the Access Seeker.";

(k) In the PI Paper, the MCMC proposed a timeframe of 7 days for Access Providers to give information to Access Seekers about a premises

where that information is not available on an Access Provider's website or self-service portal. Maxis submitted that the timeframe should be expressed as 5 Business Days;

(l) Like Celcom, Maxis proposed that BTU installation appointments should be confirmed within 1 Business Day in 100% of cases;

(m) In the PI Paper, the MCMC proposed a graduated performance metric in subsection 6.6.12 for BTU installations to be done within a certain number of hours from the agreed installation time. Maxis submitted that these timeframes should be removed and the BTU installation should simply be done within the number of days the Access Provider is given from the Access Seeker's order as set out in subsection 6.6.6;

(n) Maxis also proposed a new service activation timeframe that reflects the activation timeframes that apply under the MSQoS;

(o) Maxis proposed that return order management for BTUs should include returns for faulty or incomplete activations due to the Access Provider and should be expressed as 15 Business Days from notification from the Access Seeker (instead of 21 calendar days, as described in the PI Paper);

(p) Maxis proposed changes to the service assurance timeframes and network performance metrics to directly reflect the MSQoS;

(q) Maxis proposed minor drafting changes to assurance appointment provisions for clarity;

(r) Maxis also proposed a new obligation on Access Providers to make available interfaces to its Operational Support Systems for service fulfilment, service assurance, network performance and other matters;

(s) Maxis proposed that the reporting obligations set out in section 6.6.15 should apply to the incumbent Access Provider for HSBB Network Services only; and

(t) More broadly, Maxis proposed the exclusion of several HSBB Network Service obligations for operators with less than RM3 billion in fixed revenue, fixed assets, or both. It submitted that this was consistent with the approach adopted for Accounting Separation.

38.8 TM submitted that the ecosystems and commercial relationships that TM had established for HSBB Network Services were working well and did not require or justify the regulatory obligations proposed by the MCMC. TM also submitted that a number of the Draft MSA timeframes appeared to be based on indicative timeframes in TM operations and maintenance documents which should not be converted to compulsory timeframes.

38.9 TM submitted that there had been insufficient consultation on the proposed new timeframes, and that some of these timeframes seemed "impossible to comply with".

38.10 TM's specific concerns were as follows:

(a) The Draft MSA released with the PI Paper proposed that: if an Access Seeker placed an order through a self-service portal, and the order would require capacity augmentation to fulfil, the Access Provider's notice of acceptance should include a timeframe for capacity augmentation. TM submitted that HSBA is offered based on availability and new requests requiring new infrastructure were subject to viability studies and TM's internal requirements;

(b) TM agreed to the post-order qualification and queueing provisions proposed by the MCMC, but noted that TM's system was unable to provide queue or position numbers;

(c) TM noted that it does not use customer forecasting to trigger infrastructure development, but rather it uses forecasting to plan for network dimensioning in existing coverage areas. It submitted that commercial arrangements were sufficient for such purposes. TM submitted that forecasts should be for 3 years at the initial stage, not 3 months and that updates should be 3-monthly, not 1-monthly, to provide sufficient time for procurement, e.g. of BTUs;

(d) TM submitted that a timeframe of 1 hour for Acknowledgement of Receipt was impossible to comply with given the contents required for a Notice of Acknowledgement under subsection 5.7.6 of the MSA and submitted that 5 Business Days is workable;

(e) TM submitted that post-Order Service Qualifications are required for all service gateway and BTU orders, and consequently, subsection 6.6.5 of the MSA should require a notice of acceptance or rejection to an Access Seeker within 1 Business Day of any post-Order Service Qualification;

(f) TM submitted that an activation timeframe of 5 Business Days should apply under paragraph 6.6.6(a) where a premises is already connected to the HSBB Network, on the basis that TM requires a minimum of 3 Business Days for network configuration in all cases. TM agreed with the MCMC's proposal of 20 Business Days to activate services for premises that are not already connected to the HSBB Network;

(g) TM expressed concern with the requirement to make information publicly available in subsection 6.6.8 on the basis that the MSA is properly concerned with wholesale/industry issues and not retail/consumer issues;

(h) The Draft MSA released with the PI Paper proposed that the Access Provider must make available, through its publicly available website

or a self-service portal, premises connected to the HSBB Network or whether the Access Provider intends to connect a premises to an HSBB Network within 6 months. TM submitted that it is unable to provide detailed information on future rollouts until its network team has completed a viability study for a given area. TM proposed an alternative obligation, that Access Providers should permit Access Seekers to query whether there is HSBB Network coverage in a particular exchange area and whether a street is connected to an HSBB Network; and

(i) TM submitted that the MCMC prohibits an Access Provider from sharing sensitive information with its retail arm, including premises connected to the HSBB Network, and that Access Seekers should be in the same position as the Access Provider's retail arm.

38.11 Regarding other information that the Access Provider would be required to provide to Access Seekers under the Draft MSA provided by the MCMC with the PI Paper, TM:

(a) agreed with paragraph 6.6.8(c) regarding the provision of information of maximum BTU bitrates based on access network type;

(b) submitted that POI information is Access Seeker specific and therefore should not be published as proposed in paragraph 6.6.8(d); and

(c) submitted that the information and parameters listed in paragraph 6.6.8(e), regarding matters such as signal strength and throughput are not available, signal strength is not relevant to the HSBA service and TM does not provide any such information to itself.

38.12 With regard to the proposed Implementation and Migration Plan under subsections 6.6.9 and 6.6.10 of the Draft MSA, TM submitted that not all information listed is available, provided to its own retail arm or should be made available to the public.

Question 64: Do operators think that the MCMC's proposed changes to the Service Specific Obligations for access to HSBB Network Services are sufficient to address the current issues prohibiting competitive negotiation and supply of HSBB services? If not, please provide reasons to support your position and any proposed improvements.

38.13 The APCC agreed with the proposed changes to the service specific obligations for HSBB Network Services. The APCC submits that MCMC should plan to review the efficacy of the new provisions after they have been in operation for 24 months.

38.14 Astro expressed concerns that competitive negotiations and the supply of HSBB Services may be jeopardised if mechanisms are not put in place to prevent margin squeeze. Astro submits that clear articulation of the EOI concept is needed. Astro also notes that Malaysian viewers have come to expect a predictable level of service quality for both satellite and broadcast

services, and proposes introducing corresponding QoS parameters for video services with respect to Access Providers of IPTV services.

38.15 Celcom commented that the Service Specific Obligations for HSBB Network Services are "insufficient" to address the current issues prohibiting competitive negotiation and supply of HSBB services. Celcom submitted that because Access Seekers are dependent on the incumbent Access Provider for the supply of services, the Access Provider should indemnify Access Seekers for any penalties arising from an Access Seeker's failure to adhere to the Mandatory Standard on Quality of Service. Celcom submits that Access Providers should bear all costs resulting from cancelled or delayed installations in certain circumstances, and that Access Seekers should also be entitled to a rebate where information in the Access Provider's self-service portal is inconsistent with information on the Access Provider's publicly accessible website.

38.16 Maxis is of the view that MCMC's proposed changes are sufficient to address the current issues prohibiting competitive negotiation and supply of HSBB services, though it noted a significant range of issues with current HSBB Network Services. In addition to the MCMC's proposed regulatory remedies, Maxis proposed enhanced Equivalence of Inputs obligations on the incumbent Access Provider of HSBB Network Services, with regard to products and product features, service activation, management and restoration and OSS integration and information availability.

38.17 TM submitted statistics of customers by other operators against its own customers, which it argued showed the adequacy of current arrangements for the HSBB Network. Further, TM submitted that discriminatory or anti-competitive conduct can be addressed by MCMC under the current instrument, after detailed investigation of any complaint.

38.18 TIME proposes that a new Ready for Service site for open access should be made available to the Access Seeker from day one of the Ready for Service date, and that the Access Provider should not have an exclusive right of first refusal.

Question 65: Do operators agree with the inclusion of more detailed Service Specific Obligations in relation to service fulfilment and service assurance of the HSBB Network Service? If so, please provide feedback on the proposed timelines under subsections 6.6.12 to 6.6.14 of the Draft MSA.

38.19 The APCC agrees with the inclusion of more detailed Service Specific Obligations.

38.20 Astro agrees with the proposed timelines. Astro submits that the MCMC may need to make "tweaks" to the Service Fulfilment timelines so that the standards are consistent with the MSQoS standards. Astro also proposes an additional QoS is required for Service Delivery which relates to the time period for the agreed installation time. There should also be a time limit on setting the date of an appointment following a request for installation. Astro seeks further clarification on the distinction between "Premises connected

to the HSBB Network" and "Premises not already connected to the HSBB Network."

38.21 Celcom agrees with including more detailed service-specific obligations. Celcom comments that subsection 6.6.14 on QinQ implementation is "acceptable". Celcom agrees that this provision is essential in line with the concept of "equivalence of inputs".

38.22 Maxis submits that the inclusion of more detailed service-specific obligations is "urgently and critically needed" in the MSA. Maxis submits that the "detail Quality of Services" adhered to by Nucleus Connect in Singapore could be used as a benchmark for obligations in the new MSA.

38.23 TM submitted that it did not agree with the MCMC's proposals on service specific obligations regarding HSBB Network Services. TM submitted that service fulfilment timelines and service assurance timelines should remain in operational and technical documents referenced in commercial agreements between operators.

38.24 In the alternative, TM submitted that service configurations for service gateways should have a timeframe of 25 Business Days (instead of the 5 Business Days proposed in subsection 6.6.12 the Draft MSA released with the PI Paper).

38.25 TM agreed with the MCMC's proposal of 7 days to provide service availability checks on premises not listed as serviceable by the HSBB Network Service.

38.26 TM provided clarification that in reality, end user appointments are not directly arranged between TM and Access Seeker's end users, but rather are arranged via the Access Seeker.

38.27 TM proposed alternative BTU installation and return order management timeframes based on its current commercial practices. In particular, TM proposed to distinguish between BTU returns due to issues within TM's control versus those that are outside TM's control.

38.28 TM agreed with the service gateway and BTU upgrade and downgrade provisions but stipulated that the timeframes and obligations should only apply where capacity is available, on the basis that no change will be executed if there is no capacity available.

38.29 TM proposed an alternative set of more permissive service fault restoration, network fault restoration and passive fibre breakdown restoration timeframes than those proposed by the MCMC. TM also proposed an extensive list of exclusions where TM would not be responsible for restoration within the specified timeframes. It submitted that timeframes for passive fibre breakdown should be indicative only.

38.30 TM proposed on-site support on Business Days only, and not on weekends or public holidays. TM noted that this aligns with the support it performs for itself.

38.31 TM confirmed that it has a common ticketing framework for service assurance as proposed by the MCMC in subsection 6.6.13 of the Draft MSA released with the PI Paper.

38.32 TM proposed the removal of throughput obligations proposed by the MCMC and noted that throughput (to the end user) is dependent on matters that are outside an Access Provider's control, such as Wi-Fi routers and other customer equipment in the premises such as contention ratio in the Access Seeker's network or contention ratio of the Service Gateway (as negotiated by the Access Seeker for the service).

38.33 More generally, TM submitted that MSQoS regulation at the retail level together with commercial arrangements at a wholesale level are sufficient and a number of regulatory measures proposed in the MSA are not appropriate.

38.34 TM submitted that it does not provide a Layer 2 HSBB Network Service. On that basis, it submitted that:

(a) there should be no Layer 2 network latency measure; and

(b) that it could not offer QinQ or double tagged Virtual Local Area Network functionality.

38.35 TM also submitted that it does not offer any service availability, including to itself, and so Access Seekers are no worse off than TM's retail arm.

38.36 TM raised an additional concern with regard to the capacity allocation policy requirements at subsection 5.7.32 of the Draft MSA released with the PI Paper. It noted that HSBA is made available on a supply-driven and not a demand-driven basis and on a first-come-first serve basis. It stated that new speed offerings were subject to lab testing which was made available on a first come first serve basis and subject to BTU constraints.

38.37 TIME agreed with the MCMC's proposals, but submits that these obligations should be included in the "Operation & Maintenance Manual" which is to be executed or negotiated after the Access Seeker accepted the RAO and signed the offer, instead of in the main RAO.

Question 66: Do operators consider that an Access Provider that fails to comply with the accuracy obligation under subsection 6.6.8 should be required to provide the Access Seeker with a rebate? Why or why not?

38.38 The APCC considers that an Access Provider should be required to provide a rebate for failing to comply with the accuracy obligation under subsection 6.6.8. The APCC notes that in the absence of any sanction, an Access Seeker's only remedy would be to seek the informal intervention of the MCMC or to take the matter to dispute resolution. Given the various problems with the HSBB service, the APCC's view is that an effective sanction should be available in case of breach of this subsection by an Access Provider. Access Seekers rely and act on information provided by

Access Providers and will be making important investment and technical decisions based on the information provided.

38.39 Astro submits that given the scope for discrimination, a rebate/compensation mechanism will provide the Access Provider with a greater incentive to ensure parity in treatment of information. Astro would prefer a compensation mechanism as rebates limit the scope of what is recoverable recurring Access charges. Astro notes that rebates could be part of the compensation mechanism devised.

38.40 Celcom supports the requirement for Access Provider to provide Access Seekers with a rebate if the Access Provider fails to comply with the accuracy obligation with respect to the information available on the Access Provider's self-service portal. This is because Access Seeker would depend on the information published by the Access Provider on the self-service portal to fulfil customers' requests for service. Celcom proposes introducing rebates for all other obligations which affect customers' experience (not limited to subsection 6.6.8).

38.41 Maxis submits that the rebate should only apply to the incumbent Access Provider in view of the significant impact that it would have to the overall fixed broadband wholesale market in Malaysia.

38.42 TM submits that a rebate is not relevant as the information provided is for reference purposes only and may change from time to time. TM notes that some of this information is not within the Access Provider's control, giving the example of information on the throughput of its subscribers. TM further notes that meeting the obligation may depend on the Access Seeker's inputs.

38.43 TIME submits that a rebate may be necessary as a deterrent, so that the Access Provider understands that data accuracy is of "the utmost importance" and inaccurate data can damage an Access Seeker's reputation with its customers, causing Access Seekers to make promises that they cannot later fulfil. TIME submits that rebates may not be necessary at a later stage when the Access Provider has rectified the issues that were causing earlier data inaccuracies.

Discussion

Preliminary comments

38.44 It was clear from operator submissions that different operators have understood aspects of the end-to-end service timeframes proposed in the MSA in different ways. Operators also provided a great deal of useful detail to help the MCMC develop the MSA to reflect operational realities.

38.45 As a preliminary matter, the MCMC notes the following principles:

(a) Service gateway configuration does not have a 1:1 relationship with individual service fulfilment. For example, an Access Seeker may require one Service Gateway at a POI which serves dozens or

hundreds of individual HSBB Network Services. Accordingly, operators should not assume that the fulfilment time for a Service Gateway will add to the time required for fulfilment of each BTU order. Typically, Service Gateway fulfilment will require a longer configuration time up-front when a POI is established or expanded, and then will have no ongoing impact on the fulfilment of new service BTU orders associated with the POI.

(b) The Draft MSA that was released with the PI Paper includes some timeframes that overlap with the MSQoS. The MCMC agrees that the interaction between the two sets of obligations need to be carefully aligned to ensure that the MSA provides support at the wholesale level for the fulfilment of the mandatory QoS measures at the retail level.

(c) Where the MSQoS imposes end-to-end timeframes or performance requirements, the MSA should not simply impose the same timeframes or performance requirements for a wholesale Facility and/or Service, which is only one part of the end-to-end retail service, as suggested by some operators.

(d) However, that does not mean that the MSA is redundant or has no role to play. The MSA should set out supporting obligations to ensure that any wholesale supply supports the operator with the retail service obligation. This may mean that the wholesale supply must achieve stricter timeframes and performance requirements than those in the MSQoS, leaving some margin for additional service elements. For example, for the retail operator to supply a low network latency service from the end user to MyIX as required by the MSQoS, the Access Provider that supplies the access network elements, but not the links all the way to MyIX, might have to supply network latency that is even lower than the MSQoS, to account for the additional latency that will be added by interfaces at each operator's service boundary.

(e) Not all MSQoS and MSA timeframes or performance requirements overlap, even if they deal with the same subject matter. For example, the MSA proposes an activation timeframe of 20 Business Days for a premises not yet passed by the HSBB Network. The MSQoS requires service activation fulfilment of 95% of services within 24 hours of the time and date agreed with customers and 100% within 72 hours of the time and date agreed with customers (excluding non-Business Days). These measures are complementary. If the Access Seeker arranges for the Access Provider to activate a HSBB Network Service to a premises not yet passed by the HSBB Network within 15 Business Days, this complies with the MSA. The Access Seeker might have agreed with the customer that the retail service will be activated by the 16th Business Day from the customer's order. The MSQoS requires that, at worst, the service must be activated by the 19th day (72 business hours after the time agreed with the customer). The agreement between the Access Seeker and the customer should

always take into account the lead time required by the Access Provider. By setting a limit on that lead time in the MSA, the Access Seeker can agree on a service activation timeframe with the end user and be confident that it will achieve that timeframe.

(f) An Access Provider cannot simply decline to supply a Facility and/or Service in the Access List due to commercial decisions or rely on current inefficiencies to justify non-compliance with standards set out in the MSA. For example, Layer 2 HSBB Network Services must be supplied by Access Providers. Referring to Layer 3 commercial service statistics as proof of successful commercial arrangements between operators does not mean that the obligations of the Access Providers under the CMA are not applicable. All listed Facilities and Services must be offered and supplied on request, and such supply must comply with the MSA.

38.46 The MCMC proposes several changes to terminology as well as to substantive obligations in response to operators' submissions, as discussed below in detail. At a high level, the MCMC anticipates the following illustrative flow of transactions with regard to HSSB Network Services:

(a) The Access Provider will publish an Implementation and Migration Plan on an Equivalence of Inputs basis.

(b) At least at the same time it provides the information to itself, and well before its retail arm begins any marketing activity, the Access Provider will make available to Access Seekers, information of streets to be connected to the HSBB Network, via required interfaces.

(c) At any time, an Access Seeker may query whether a particular premises or building is "serviceable" by the HSBB Network. The MCMC expects that this would usually mean that the premises or building either has a BTU installed or the premises or building does not have a BTU installed, but it is on a street that has been connected to the HSBB Network.

(d) If the premises does not show as "serviceable" but the Access Seeker would like confirmation – e.g. in case the serviceability information is not properly recorded, or an address is not properly recognised – the Access Seeker may raise a query and the Access Provider must respond in specified timeframes.

(e) If the premises, which was previously not "serviceable", is established as being serviceable, the Access Seeker may raise an Order.

(f) The Access Provider must provide an acknowledgement of receipt of order within specified timeframes. If the Access Provider needs to conduct any post-Order Service Qualification, it must do so in accordance with the MSA, noting that service fulfilment timeframes in the MSA will not be extended, excluded or "paused" due to post-Order Service Qualification requirements.

(g) The Access Provider and Access Seeker must then complete all steps to fulfil installation and service activation in accordance with the timeframes in the MSA (and the MSQoS to the extent that instrument applies). For example, the Access Seeker must arrange an appointment at the premises for the installation and activation of the BTU, and the Access Provider must complete the installation and activation in accordance with the specified MSA timeframe. (See the discussion above regarding how this timeframe interacts with the MSQoS requirements).

38.47 The MCMC intends to make a number of minor amendments to the MSA for clarity, primarily as suggested by Maxis, and to standardise the expression of timeframes on Business Days, rather than calendar days, also as suggested by Maxis.

Forecasts

38.48 The MCMC acknowledges TM's submission that it uses Access Seekers' forecasts for network conditioning and not for infrastructure development. Taking this fact into account, and having considered differing operators' submissions, the MCMC considers that forecasts should have a maximum period of 1 year with minimum intervals of 3 months.

38.49 If requested by Access Providers, Access Seekers must provide 3 monthly updates.

Service information

38.50 The MCMC confirms that Access Providers need only provide serviceability information to other operators – not to the public at large. However, the mechanism that the Access Provider uses to do so must be either, or both, of a publicly available website or a self-service web portal. The MSA will prescribe measures to ensure that these mechanisms are not used to the disadvantage of Access Seekers.

38.51 If the same information is provided through both means, they must be aligned at all times, as submitted by Celcom.

38.52 However, there may be circumstances where a premises is not listed in either information source. This would normally be the case where the address was not properly recorded, as explained above, or a premises is not served by an HSBB Network and there are no current plans to connect it to an HSBB Network. In such circumstances, Access Seekers should have a right to query the serviceability of the premises and have the Access Provider confirm whether it will be able to supply HSBB Network Services to the premises.

38.53 In contrast to the example above, the MCMC has been informed that Access Providers sometimes supplies a service to a premises at a retail level whilst at the same time, the information provided at the wholesale level indicates that the same premises is not serviceable. In such a case, if the Access Seeker has requested confirmation of whether the premises is serviceable,

the Access Provider should respond in writing within a mandatory timeframe. If the Access Provider confirms that the service information is correct and that the premises is *not* serviceable but then it serves the premises itself, the earlier response to the Access Seeker would provide the MCMC with a basis to investigate and the Access Provider will need to explain its breach of its non-discrimination obligations.

38.54 Given Access Providers' submissions on the type of rollout information that they have available, and Access Seekers' submissions on the type of service availability information that they seek, the MCMC proposed to amend subsections 6.6.6, 6.6.8, 6.6.9 and 6.6.12 to clearly specify on an equivalence of inputs basis, when each of the following events is planned or has occurred, as applicable:

(a) a premises has a BTU installed;

(b) a street is connected to the HSBB Network but at a premises where no BTU is installed; and

(c) the HSBB Network is available in an exchange area or part thereof.

38.55 Access Providers will not be obliged to publish POI information, but they must publish the Access Provider locations at which they offer to establish POIs with Access Seekers.

Service gateway configuration

38.56 Operators had very different views on the appropriate timeframes for service gateway configuration. For example, Maxis agreed with the 5 Business Days, whilst Celcom proposed 3 Business Days. TM proposed 25 Business Days. TM provided details of the steps required for service gateway configuration. The MCMC acknowledges that such configuration is relatively infrequent and does not delay services fulfilment after the initial lead time which would affect the first services supplied using the service gateway. Nevertheless, the first-mover advantage is an important one and the Access Provider gains a benefit simply by virtue of configuring all elements in its network. Accordingly, the MCMC is concerned that the process should be as efficient as possible to minimise or eliminate any disadvantage to Access Seekers. The MCMC considers that a 20 Business Day timeframe is reasonable.

Post-Order Service Qualification, acceptance and rejection

38.57 In response to TM's submission that post-Order Service Qualification will always be necessary for HSBB Network Services, the MCMC notes that Access Seekers contend that this would not normally be required for streets connected to the HSBB Network. The MCMC considers it appropriate to maintain HSBB Network Service order processing timeframes both with and without post-Order Service Qualification in subsections 6.6.4 and 6.6.5 of the MSA. The appropriate timeframe will apply for each Order in any case. Further, given that the Access Seeker should have some certainty of the final acceptance or rejection of an Order, the MCMC intends to include a

timeframe of 5 Business Days for post-Order Service Qualifications for HSBB Network Services. Based on the understanding provided by Access Seekers, in respect of premises connected to the HSBB, there is not a necessity to require post-order Service Qualification. In that case, the MCMC clarifies that an Access Provider must not require a post-Order Service Qualification.

38.58 Given the MCMC's concerns about non-discrimination and achieving a true equivalence of inputs, the MCMC has determined that Access Providers must comply with the proposed queuing obligations in subsection 5.7.30 of the Draft MSA released with the PI Paper, including the provision of queuing information. Access Providers must develop this capability or process workarounds if it does not have systems capable of complying with the obligation.

BTU installation appointments

38.59 The MCMC agrees with operators' submissions that BTU installation appointments should be confirmed within 24 hours of an Access Seeker's request 100% of the time.

38.60 The MCMC agrees that the expression of this timeframe should make clear that the Access Provider is confirming an appointment requested by the Access Seeker and that the confirmation is being provided to the Access Seeker. The reference to the "end user" in the MSA is unnecessary.

38.61 The proposal in subsection 6.6.13 (previously subsection 6.6.12) of the MSA of a graduated performance metric for BTU installations to be done within a certain number of hours from the agreed installation time is designed to ensure that if an Access Provider agrees to an installation time with an Access Seeker, and the Access Seeker arranges for the end user to attend the premises at that time, to allow technicians to perform the installation, the Access Provider will perform the installation at the agreed time. There are related service metrics for activation in subsection 6.6.7 (previously subsection 6.6.6) and in the MSQoS, but they address different aspects of service activation. Accordingly, the MCMC does not propose any change to BTU installation performance metrics in subsection 6.6.13 (previously subsection 6.6.12).

Service activation

38.62 The service activation timeframes should be clarified. In subsection 6.6.7 (previously subsection 6.6.6) of the Draft MSA released with the PI Paper:

(a) the 5 Business Day timeframe for service activation is where a street is connected (including the date of the appointment); and

(b) otherwise, the 20 Business Day timeframe for service activation applies.

38.63 Whether the five or 20 Business Day timeframe for service activation applies, it includes setting an appointment and installing the BTU in that timeframe. The Access Provider will be required to perform such activations

within the shorter of these timeframes, a non-discriminatory timeframe and within the time that would permit the Access Seeker to comply with the MSQoS.

38.64 All activation timeframes apply as specified under subsection 5.7.14.

38.65 With regard to Celcom's concern that the activation timeframes should be aligned with the retail broadband standards imposed by the MSQoS, the MCMC considers no changes are required.

38.66 The relevant MSA timeframes represent absolute times from the time that an Access Seeker submits an order for HSBB Network Service until that order is fulfilled. By comparison, the MSQoS requirements quoted by Celcom in its submission relate to the time and date agreed between an operator with its retail customer, and the time and date that an order is fulfilled. So, for example, the end customer could request a retail service from Operator A which requires HSBB Network Service as an input. If Operator A is an Access Seeker of Operator B's HSBB Network Service and knows that Operator B may take up to 20 Business Days to activate the HSBB Network Service, Operator A might agree with the end customer to activate the retail service 21 Business Days later. The MSQoS would then require that Operator A to activate the retail service 22 Business Days later (i.e. 24 hours of the agreed timeframe) and at any rate, 24 Business Days later (i.e. 72 hours of the agreed timeframe).

Return order management

38.67 The MCMC agrees with Celcom's submission, that BTU installation issues should be resolved in 5 Business Days. In response to TM's submission, the MCMC will clarify that this timeframe does not apply where BTU installation fails for reasons outside the Access Provider's reasonable control, such as:

(a) problem with internal wiring at the premises;

(b) being unable to access the premises; or

(c) bad copper quality in a multi-storey building.

Service gateway and BTU upgrades and downgrades

38.68 The MCMC accepts TM's submission that service gateway and BTU upgrade request timeframes should only apply where capacity exists in the HSBB Network to support the upgrade. The MCMC will include an additional service-specific obligation requiring the Access Provider to notify the Access Seeker and the MCMC within the 1 Business Day if the Access Provider rejects an upgrade request on the basis of a lack of capacity. This timeframe is consistent with the timeframe within which the Access Provider is required to provide a notice of acceptance or rejection in subsection 6.6.6 of the MSA.

Service assurance timeline and on-site support

38.69 The MCMC considers that, for all service assurance timeframes that have a direct MSQoS equivalent, the MSA should specify a timeframe that is "As

required to permit the Access Seeker or a downstream operator to comply with the MSQoS".

38.70 The MCMC acknowledges that compliance with the MSQoS is not wholly within the Access Provider's control. However, to the extent that the Access Provider contributes to end-to-end timeframes or service performance metrics, the Access Provider must ensure its inputs do not contribute to non-compliance.

38.71 The MCMC notes the submission from TM on on-site support that it provides to itself, and agrees to amend the amendments to reflect that on-site support would be available on Business Days.

Network performance

38.72 The MCMC does not agree to include in the MSA the additional network performance metrics proposed by Maxis. In this respect, the MCMC considers that application of the non-discrimination obligation on an equivalence of inputs basis, together with a new requirement to ensure that network performance is as required to support compliance with the MSQoS, should sufficiently ensure that there is a level playing field.

OSS interfaces

38.73 The MCMC intends to include a new service specific obligation that requires the Access Provider to make OSS interfaces available to Access Seekers which are reasonable taking into consideration the number of Orders by the Access Seeker. This obligation will be similar to the obligation in subsection 6.4.9, with respect to OSS interfaces for ANE. As in that context, the MCMC considers that the obligation is important to achieving the equivalence of inputs standard of non-discrimination adopted in the MSA.

Asymmetric regulation

38.74 As noted above, the CMA does not implement an asymmetric regulatory scheme and the MCMC does not intend to implement HSBB Network Service obligations which apply solely to incumbent Access Providers.

Rebates

38.75 Given the strong support for rebates as contemplated by question 66 of the PI Paper, the MCMC proposes to set a rebate of RM44.75 per item of incorrect information provided to an Access Seeker under subsection 6.6.9 of the MSA. The amount of the rebate is a sum that the MCMC considers reasonably approximates the Access Seeker's marketing and sales costs which were unnecessarily incurred (including customer acquisition).

Regulation of HSBB Network Services

38.76 TM submitted figures which suggest that it has a greater than 85% market share of retail HSBB services in Malaysia, compared with a less than 15% market share for all other operators in Malaysia combined. TM submitted that this showed that the commercial agreements established between TM

and other operators are working well. The MCMC does not agree—and, instead, considers that such figures support its view that regulation of HSBB Network Services is required to promote the national policy objectives for the communications and multimedia industry.

38.77 As a further example, the MCMC notes a claim received from one operator that it is unable to offer similar retail products as the incumbent Access Provider, as:

(a) only symmetrical download and upload speeds were offered by the Access Provider to the Access Seeker; while

(b) the Access Provider itself offered retail high-speed broadband services with asymmetrical download and upload speeds.

38.78 While the MCMC considers that this Public Inquiry is not the correct forum to resolve such claims, or other potential competition issues raised in operator submissions, the MCMC remains willing to investigate issues in accordance with the procedures the MCMC has put in place in respect of anti-competitive conduct. Such behaviour would breach both the MSA and the Access List: in not complying with the non-discriminatory principle based on equivalence of inputs and in not complying with the service description of Layer 2 HSBB Network Service with QoS and Layer 3 HSBB Network Service.

Equivalence of Inputs

38.79 The MCMC reiterates its view on the importance of the equivalence of inputs approach to the revised MSA regime, including in respect of HSBB Network Services. The MCMC agrees with Maxis' proposal to incorporate, as a Service Specific Obligation, an 'equivalence of inputs' provision that specifically applies to HSBB Network Services.

38.80 The new subsection on equivalence of inputs will provide that an Access Provider must:

(a) provide HSBB Network Services to itself and to Access Seekers on the same product including speed tier, timescale, speed, price and service level performance and terms and conditions;

(b) provide access to Operational Support Systems for HSBB Network Services to itself and to Access Seekers using the same systems and processes (including for information management, service fulfilment, service assurance and network performance); and

(c) ensure that Access Seekers are able to use the HSBB Network Services and OSS systems and processes that are used by the Access Provider in the same way and with the same degree of reliability, performance, accuracy and up-to-date information as it provides to itself.

MCMC views

38.81 The MCMC has described, in the discussion above, a number of changes it proposes to make to the service-specific obligations for the HSBB Network Services, both to reflect the practicalities that Access Providers face and the challenges that Access Seekers face.

39 Transmission Services

Introduction

39.1 In the PI Paper, the MCMC proposed to include a new subsection 6.7 that sets out the detailed terms that would apply specifically for access to, and supply of, Transmission Services.

39.2 In addition, the MCMC proposed to include new reporting obligations that would apply specifically for Transmission Services. The MCMC noted that these more detailed reporting obligations for Transmission Services are intended to improve transparency and to allow for greater monitoring by the MCMC, which should address some of the concerns raised by Access Seekers in relation to the supply of Transmission Services (e.g. being required to order bundled tail transmission and trunk transmission services).

39.3 The MCMC also proposed service-specific timeframes and a number of additional Service Specific Obligations in relation to the supply of Transmission Services.

Submissions received

Question 67: Do operators agree with the service-specific timeframes that the MCMC has proposed in respect of the Transmission Services? Why or why not? If not, please specify and substantiate any proposed changes or amendments.

39.4 Altel and Net2One submitted that the MCMC should extend the indicative delivery timeframe in paragraph 6.7.5(a) to 30 Business Days and the timeframe in paragraph 6.7.5(b) to 150 Business Days. Altel submits that this extended timeframe is more feasible. They otherwise agree with the proposed timeframes.

39.5 The APCC agrees with the proposed service-specific timeframes, stating that they are reasonable and appropriate. The APCC notes that there is no corresponding question as to whether the service specific obligations for Transmission Services are sufficient (which might perhaps be a drafting oversight). Subsection 6.7.8 makes reference to bundling, which MCMC has identified in the PI Paper as a particular cause for concern. The APCC submits that the following should be added to subsection 6.7.8, at the beginning of that subsection, after the words "No bundling": *"An Access Provider must provide Transmission Services on a modular and unbundled basis so that the Access Seeker does not have to acquire network components, Facilities or Services, or other services such as maintenance, that are not required for Transmission Services to be provided."*

39.6 Celcom, Digi, Fiberail, Sacofa and TIME agree with the proposed timeframes.

39.7 edotco submits that the indicative delivery timeframe of 60 Business Days in paragraph 6.7.5(b) is insufficient. edotco proposes amending this timeframe to 90 Business Days because consideration should be given to the additional time that is required to secure local authority approvals, ordering, deployment, trenching work, installation, testing and commissioning.

39.8 Maxis agrees with the timeframes, but proposes changes to clarify that they run "from the date of Order receipt from the Access Seeker" and also proposes other minor clarifications. Maxis submits the indicative delivery timeframe should not be indicative, but rather a set timeframe for delivery. Maxis also submits that the Billing Cycle under 6.7.6 should be quarterly rather than monthly. Maxis is ultimately of the view that service-specific timeframes should be retained in the MSA to overcome issues of delay in delivery of the Transmission Services by Access Providers.

39.9 TM has a number of concerns with the proposed timeframes. TM generally agrees with the proposed timeframe for forecasts under subsection 6.7.2 but expressed concerns with MCMC's proposal for forecasts to be updated regularly. TM noted that for effective delivery of transmission services, frequent updates in forecasts would disrupt network planning, and disturb the work involved in securing a budget and awarding contracts to vendors which will lead to a "delay in overall deliverables".

39.10 TM submits that it would be unable to comply with the proposed timeframe of 10 Business Days for acceptance or rejection under subsection 6.7.4. TM would like to propose a minimum of 17 days as it submits that more time is required to check the infrastructure, obtain the necessary approvals, and assess whether to accept or reject the access request. It noted that transmission capacity may also involve various regions including Sabah and Sarawak.

39.11 TM submits that the proposed indicative delivery timeframe of 60 Business Days under paragraph 6.7.5(b) should not be adopted and that the existing delivery timeline in the MSA should be maintained.

39.12 TM notes that the reporting requirements in subsection 6.7.7 will lead to additional costs for Access Providers, who will require additional resources to prepare detailed reports for submission to the MCMC instead of focusing on negotiations with Access Seekers. TM submits that MCMC should only request a report as and when necessary. TM submits that mandating regular reporting "is counterproductive to the industry given that there is no critical issue to be addressed regularly".

39.13 YTL commented that beside the reporting obligations for network interface points under subsection 6.7.7, an Access Provider should consider the possible points of network interface requested by an Access Seeker on an equivalence of inputs basis. YTL notes that in the past Access Providers have stipulated points that are not economically feasible or practical.

Discussion

39.14 Different operators have taken different positions on the appropriateness of the timeframes that the MCMC has proposed for delivery of the Transmission Services. On balance, the MCMC is not persuaded that those operators requesting longer timeframes have expressed compelling reasons to delay the rollout and expansion of facilities and services that are dependent on Transmission Services. Accordingly, the MCMC proposes no change to those timeframes.

39.15 With regard to the APCC's suggestion on modularity, the MCMC refers to its comments at paragraph 33.35.

39.16 With regard to Maxis' proposed change to remove the "indicative" element of this timeframe, the MCMC refers to its comment at paragraph 37.19.

39.17 The MCMC agrees with Maxis to change the Billing Cycle for Transmission Services from monthly to quarterly.

39.18 The MCMC notes that TM's proposed change to the timeframe of a notice of acceptance does not differ greatly from the MCMC's proposed timeframe. TM's submission is expressed in calendar days whereas the MSA timeframe is expressed in Business Days. The MCMC proposes no change to this timeframe.

39.19 With regard to TM's concern about compliance costs, the MCMC notes that there have been sustained issues with access to Transmission Services, and that the reporting requirements are a direct response to those issues.

MCMC views

39.20 The MCMC will adopt a quarterly Billing Cycle for Transmission Services and otherwise confirms its preliminary view on Transmission Services in the PI Paper.

40 Infrastructure Sharing

Introduction

40.1 In the PI Paper, the MCMC proposed to include a new subsection 6.8 that sets out the detailed terms that would apply specifically for Infrastructure Sharing arrangements. In addition, as part of the proposal to apply the existing Content Obligations as Service Specific Obligations, the MCMC proposed to move some of the obligations under the current subsection 5.13 to this new subsection 6.8 of the Draft MSA.

40.2 The MCMC also proposed service-specific timeframes in relation to Infrastructure Sharing.

Submissions received

Question 68: Do operators agree with the service-specific timeframes that the MCMC has proposed in respect of Infrastructure Sharing? Why or why not? If not, please specify and substantiate any proposed changes or amendments.

40.3 Altel and Net2One agree with the proposed timeframes, subject always to the clearance of site acquisition.

40.4 The APCC, Fiberail and Sacofa agree with the proposed timeframes.

40.5 Celcom notes that the current average service delivery timeframe is 3 to 6 months from the date of access request. Celcom submits that dominant Infrastructure operators should be required to comply with the proposed timeframes to avoid the delays in service delivery that Access Seekers currently experience, particularly with state-backed companies.

40.6 edotco submits that subsections 5.7.14 (indicative delivery times) and 5.7.33 (late delivery) of the MSA should be amended to take into account delays which are caused by external factors such as delays in obtaining state authority consent(s) and/or approval(s). edotco submits that concessions should be granted for delays that are not attributable to the Access Provider and/or Access Seeker. edotco further submits that the delivery deadlines stipulated in the MSA present a "particular challenge", as they do not distinguish between the different approval and/or consent requirements of different landowners. For example, most state authorities or agencies have differing and dissimilar application procedures for consent to access a site or to construct the necessary infrastructure. edotco considers the prescribed timeframe of 2 days for giving notice of receipt to be insufficient, as edotco must conduct a number of checks in this time. edotco proposes extending the timeframes for Infrastructure Sharing to 5 Business Days for acknowledgement of receipt, 21 Business Days for acceptance or rejection, and 6 months for indicative delivery times (subject to external factors, such as approval from local authorities).

40.7 Maxis proposes a number of changes to the service-specific timeframes for Infrastructure Sharing.

40.8 Maxis submits that the indicative delivery timeframe of 40 Business Days under 6.8.5 should be for existing sites where no new network facilities are required to supply the Infrastructure Sharing. Maxis further submits that the Billing Cycle under 6.8.6 should be 1 year in advance for the first year, and quarterly in advance for the subsequent years. Maxis proposes a 60-minute response time, rather than a 30-minute response time, for escort services outside ordinary business hours under subsection 6.8.7(b). Maxis submits that the Access Seeker should have to provide five Business Days' notice to the Access Provider of its intention to access the Access Provider's property. Maxis also proposes to extend the timeframe for an escort to arrive at the Access Provider's property under 6.8.8 to 60 minutes.

40.9 PPIT proposes amending the maximum time period for Infrastructure Sharing forecasts in subsection 6.8.2 from one year to three years, as

Infrastructure Sharing Services is a long-term arrangement and PPIT has 10 to 20 year terms with other licensees. PPIT also proposes amending the time period for acceptance or rejection of an Order from 10 Business Days to 30 Business Days, as PPIT needs to undertake a field study exercise to evaluate each Order and check the loading factor at the towers concerned. PPIT submits that the Indicative Delivery Timeline for Infrastructure Sharing Services in subsection 6.8.5 should be extended from 40 Business Days to eight months. PPIT notes that the proposed timeframe may be impossible to meet as the provision of Infrastructure Sharing Services may involve building new towers to accommodate the requirements from the Access Seeker, and the delivery of the service is also dependent on the availability of certain equipment. PPIT submits that the Billing cycle should be monthly "unless otherwise agreed between the Access Provider and the Access Seeker."

40.10 TM's preference is for detail terms to be in O&M manuals. Otherwise TM has no strong objection to the timeframes proposed by MCMC in subsections 6.8.2, 6.8.3, 6.8.4, 6.8.5 and 6.8.6.

40.11 webe submits that the proposed timeframe should be used as an indicative timeframe, and that actual delivery time should be determined by mutual agreement. webe submits that the indicative delivery time of 40 Business Days is too long.

40.12 YTL agrees with the overall timeframes, but proposes increasing the timeframe for acceptance and rejection (review) to 14 days. YTL explains that more time is needed for review since it involves several different teams. YTL also proposes additional service specific timeframes including for Request for Survey, Survey Report Preparation and Submission and Tenancy/contract sign off within a timeframe of 7 days.

Question 69: Do operators consider the proposed service-specific obligations for Infrastructure Sharing are sufficient? Please detail any proposed addition, deletion or amendment to the terms currently proposed by the MCMC.

40.13 The APCC submits that this section should include a new "Modularity" provision, which specifically mandates the provision of facilities and services by the Access Provider on a "modular and unbundled" basis, as per the wording proposed in the APCC's response to Question 67.

40.14 The APCC also notes that it is not clear that the proposed sharing arrangements for the cost of ancillary services include use of these services by the Access Provider itself. The subsection only makes reference to sharing the costs between Access Seekers. The APCC supports the principle that the Access Provider should also pay its share of the ancillary service costs. Otherwise the APCC considers that the proposed obligations are sufficient.

40.15 Celcom submits that the Access Provider should provide Access Seekers with temporary infrastructure following a delay in access, as "normally the delay is caused by pending approval from local authorities".

40.16 edotco submits that in subsections 6.8.7 and 6.8.8 of the Draft MSA, the timeframe to provide the required escort should differentiate between the Access Seeker's critical and non-critical sites (i.e. collector versus cell sites). edotco notes that it can be difficult to comply with the 30-minute timeframe due to the difference in site design between mobile and fixed sites. Fixed network operators may not require certain premises (i.e. hill stations) to be manned whereas mobile operators may design the hill station sites as their critical sites. With reference to subsection 5.13.5, edotco submits that Access Seekers should not be able to enter an Access Provider's property without an escort or without the Access Provider's permission, as per 6.9.10. In relation to subsection 6.8.10(e), edotco submits that an Access Provider cannot absolutely guarantee the security of a location and the protection of equipment. An Access Provider should only be required to use its best endeavours and reasonable efforts to ensure that its agents, representatives or sub-contractors do not damage any equipment and to keep the location secure and protected from vandalism/theft. edotco further proposes to add the words "*and ancillary costs*" after "*The utility costs"* in subsection 6.8.11 of the Draft MSA.

40.17 Fiberail and Maxis agree with the proposed obligations.

40.18 PPIT notes that the previous subsection 5.13.2 of MSA has been omitted from section 6.8 of the Draft MSA.

40.19 Sacofa proposes to amend clause 6.85 (Indicative delivery timeframe) for Infrastructure Sharing from 40 Business Days to 60 Business Days subject to obtaining approval from the local authorities. Sacofa also proposes to amend clause 6.8.10 (Utilities and ancillary services) particularly on access to roads which is to be limited to "access road to tower site" only.

40.20 TM notes that it is a common practice in the industry to swap towers among the big operators. TM submits that this conduct has caused a barrier to market entry where a new entrant does not have infrastructure to offer in a swap. TM is of the view this conduct should be prohibited.

40.21 webe states it is important that no Access Seeker shall proceed to enter an Access Provider's property without an escort or without the Access Provider's permission. webe submits that proper arrangements are required between parties for operational purposes. webe also proposes amending clause 6.8.10 to insert the words "where possible" in relation to ensuring an Access Seeker benefits from access to the same extent that the Access Provider does.

Discussion

40.22 Given the service-specific issues affecting Infrastructure Sharing, the MCMC agrees with edotco that the obligation in subsection 5.7.33 to pay rebates on late delivery should not apply where a late delivery is due solely to consents or authorisations required from third parties. However, the burden will be on the Access Provider to show that this is the case and that the Access Provider has done all things reasonably practicable to minimise or

avoid such late delivery. Both of these amendments will be included in subsection 5.7.33.

40.23 The MCMC does not agree with TM that tower swapping arrangements should be prohibited. The MCMC notes that this practice is not just common in Malaysia as TM indicates, but also internationally, and that it can be quite efficient to do so. The MCMC also notes that Infrastructure Sharing is in the Access List. The provision of Infrastructure Sharing is not dependent on a swap—each piece of infrastructure must be shared irrespective of whether there is a barter or exchange of infrastructure happening or not.

40.24 The MCMC considers that the exception for late delivery rebates appropriately reflects that Infrastructure Sharing is particularly affected by third party consents to an extent that other Facilities and Services are not and further extensions or exceptions to the proposed delivery times are not warranted.

40.25 With regard to other timeframes raised by operators, the MCMC notes that a notice of acknowledgement and a notice of acceptance or rejection can both be subject to post-Order Service Qualification.

40.26 In response to submissions about extended timeframes for new network facilities, the MCMC notes that the Facilities and Services regulated by the Access List and therefore the subject of MSA obligations are existing facilities and services.

40.27 The MCMC agrees with Maxis to change the Billing Cycle for Infrastructure Sharing from monthly to '1 year in advance for the first year, and quarterly in advance for subsequent years'.

40.28 In respect of physical access, including escorts, the MCMC considers it appropriate to apply the same changes discussed in section 24.69 of this PI Report to Infrastructure Sharing. The MCMC will also clarify the Access Seeker's right to physically access the Access Provider's facilities in new subsections 6.8.7 and 6.8.8.

MCMC views

40.29 The MCMC will vary the late delivery rebate regime in subsection 5.7.33, as described above.

40.30 The MCMC will also adopt a Billing Cycle for Infrastructure Sharing that is 1 year in advance for the first year, and quarterly in advance for subsequent years.

40.31 The MCMC will also change the service-specific obligations on physical access for Infrastructure Sharing as discussed above.

40.32 The MCMC will make the same changes regarding costs in subsection 6.8.13 (previously subsection 6.8.11) as it proposes to make in respect of subsection 6.9.25 (previously subsection 6.9.21).

41 Network Co-Location Service

Introduction

41.1 In the PI Paper, the MCMC proposed to include a new subsection 6.9 that sets out the detailed terms that would apply specifically for access to the Network Co-Location Service. In line with the broader proposal to apply the existing Content Obligations as Service Specific Obligations, the MCMC proposed to move most of the existing subsection 5.13 to this new subsection 6.9.

41.2 The MCMC also proposed service-specific timeframes for access to the Network Co-Location Service.

Submissions received

Question 70: Do operators agree with the service-specific timeframes that the MCMC has proposed in respect of the Network Co-Location Service? Why or why not? If not, please specify and substantiate any proposed changes or amendments.

41.3 Altel and Net2One submitted that the MCMC should extend the timeframe for acceptance or rejection in subsection 6.9.4 to 15 Business Days and the indicative delivery timeframe in subsection 6.9.5 to 30 Business Days. They otherwise agreed with the proposed timeframes.

41.4 The APCC, Celcom, Fiberail, Sacofa, TIME and YTL agree with the proposed timeframes.

41.5 edotco submits that subsections 5.7.14 (indicative delivery times) and 5.7.33 (late delivery) of the MSA should be amended to take into account delays which are caused by external factors such as delays in obtaining state authority consent(s) and/or approval(s). edotco submits that concessions should be granted for delays that are not attributable to the Access Provider and/or Access Seeker. edotco further submits that the delivery deadlines stipulated in the MSA present a "particular challenge", as they do not distinguish between the different approval and/or consent requirements of different landowners. For example, most state authorities or agencies have differing and dissimilar application procedures for consent to access a site or to construct the necessary infrastructure. edotco considers the prescribed timeframe of 2 days for giving notice of receipt to be insufficient, as edotco must conduct a number of checks in this time. edotco proposes extending the timeframes for Network Co-Location to 5 Business Days for acknowledgement of receipt, 21 Business Days for acceptance or rejection, and 6 Months for indicative delivery times (subject to external factors, such as approval from local authorities).

41.6 Maxis proposed a number of changes to the timeframes. Maxis submits that the maximum period of time covered by Forecasts regarding Network Co-Location Service should be extended to three years under paragraph 6.9.2(a). Maxis also submits that a clarification should be added to subsection 6.9.2 that "the format of the Forecasts is to be mutually agreed

between the Access Seeker and the Access Provider in the Access Agreement".

41.7 Maxis proposes that the indicative delivery timeframe under subsection 6.9.5 should be 40 Business Days for existing sites where no new network facilities are required to supply the Network Co-Location Service.

41.8 Maxis submits that the Billing Cycle under subsection 6.9.6 should be 1 year in advance for the first year, and quarterly in advance for the subsequent years.

41.9 Maxis proposes a 60-minute response time, rather than a 30-minute response time, for escort services outside ordinary business hours under paragraph 6.9.9(b). Maxis submits that the Access Seeker should have to provide five Business Days' notice to the Access Provider of its intention to access the Access Provider's property under subsection 6.9.9.

41.10 Maxis proposes to extend the timeframe for an escort to arrive at the Access Provider's property under subsection 6.9.10 to 60 minutes. Maxis submits that after 60 minutes has passed the Access Seeker should only be able to enter the Access Provider's property with the assistance of the Access Provider's Security Personnel.

41.11 Maxis submits that the period of time for measuring rate of growth under subsection 6.9.12 should be three years rather than two. Maxis proposes adding a clarification in subsection 6.9.13 that "the Access Seeker shall submit its technical proposal for both parties to agree on".

41.12 Maxis submits that the reporting obligation for Network Co-Location Services under subsection 6.9.16 should only apply on a case by case basis, as the MCMC requires.

41.13 Maxis proposes deleting subsection 6.9.27 regarding the "Publication of locations" as it is of the view that there is no need for the Access Provider to publish its Network Co-Location list. Instead, Maxis submits this list can be provided to the Access Seeker on a per-request basis. Maxis notes that it has not seen any major issues to date regarding the list and therefore it does not think that an additional obligation on the Access Provider to publish the list of locations is necessary.

41.14 TM's preference is for detail terms to be in O&M manuals. Otherwise TM has no strong objection to the timeframes proposed by MCMC in subsections 6.9.2, 6.9.3, 6.9.4, 6.9.5 and 6.9.6.

41.15 webe submits that the proposed timeframe should be used as an indicative timeframe, and that actual delivery time should be determined by mutual agreement.

Question 71: Do operators consider the proposed service-specific obligations for Network Co-Location Service are sufficient? Please detail any proposed addition, deletion or amendment to the terms currently proposed by the MCMC.

41.16 The APCC does not consider that the proposed obligations will be sufficient in all cases. The APCC submits that this section should include a new "Modularity" provision, which specifically mandates the provision of facilities and services by the Access Provider on a "modular and unbundled" basis.

41.17 The APCC considers that the physical inspection rules are quite restrictive, specifically as they require a 5 Business Day advanced notice period. The APCC supports a shorter notice period, or a fast-track process, for gaining physical access to inspect the access provider's physical network facilities.

41.18 The APCC submits that it is unclear whether the proposed sharing arrangements for the cost of ancillary services under subsection 6.9.21 include use of these services by the Access Provider itself. The subsection only makes reference to sharing the costs between Access Seekers. Further, the APCC submits that the current drafting of subsection 6.9.25 could have the unintended effect of disallowing an Access Seeker physical access in order to undertake maintenance services, on the grounds that the equipment to be maintained is not "similar" to other equipment. The APCC proposes deleting the last sentence of this subsection.

41.19 The APCC supports the new escort provisions, provisions on publication of locations, and provisions on space in favour of the Access Seeker. The APCC also supports the principle that the Access Provider should also pay its share of the ancillary service costs.

41.20 Astro questions the practicality of 6.9.10 especially where it concerns the access to CNII premises. Astro submits that this should be a reportable incident for the MCMC to have a better idea of the frequency of this type of conduct.

41.21 Celcom, Fiberail, Maxis and YTL agree with the proposed obligations.

41.22 edotco submits that in subsections 6.9.9 and 6.9.10 of the Draft MSA, the timeframe to provide the required escort should differentiate between the Access Seeker's critical and non-critical sites (i.e. collector versus cell sites). edotco notes that it can be difficult to comply with the 30-minute timeframe due to the difference in site design between mobile and fixed sites. Fixed network operators may not require certain premises (i.e. hill stations) to be manned whereas mobile operators may design the hill station sites as their critical sites.

41.23 With reference to subsection 5.13.5, edotco submits that Access Seekers should not be able to enter an Access Provider's property without an escort or without the Access Provider's permission, as per subsection 6.9.10. In relation to paragraph 6.9.20(e), edotco submits that an Access Provider cannot absolutely guarantee the security of a location and the protection of equipment. An Access Provider should only be required to use its best endeavours and reasonable efforts to ensure that its agents, representatives or sub-contractors do not damage any equipment and to keep the location secure and protected from vandalism/theft. edotco further proposes to add the words "*and ancillary costs*" after "*The utility costs"* in subsection 6.9.21 of the Draft MSA.

41.24 TM is of the view that the requirements for Access Provider personnel in subsection 6.9.7 are not required and that the current provision in the MSA should be retained.

41.25 TM submits that the current provision relating to escorts (paragraph 6.9.9(c)) is unfair and warrants a review to establish a new provision that is fair for both parties. TM proposes that where the Access Provider provides an escort to an Access Seeker, the Access Provider should be able to recover all of the relevant costs from the Access Seeker (consistent with cost causation concept).

41.26 TM is of the view that the obligation under paragraph 6.9.16(a) to notify the MCMC of the lack of space or with respect to the notice of refusal is unnecessary as these are purely operational matters and the access could be offered in a different form, such as "virtual" and "meet me" fibre or "in span". TM submits that the MCMC should only request information on a case by case basis.

41.27 Regarding paragraph 6.9.16(b), TM notes that it already publishes the list of POI in the ARD for the purpose of network interconnection. TM submits that "only this information is critical" for the Access Seeker (especially new entrants) to plan for their network rollout. TM submits that other POI locations are not necessary and are "cumbersome" for AP to publish given that there might be many possible POI locations. TM submits that an Access Seeker needs to plan their POIs based on what they need rather than referring to TM's established POI locations.

41.28 TM proposes a new provision for paragraph 6.9.19(c), which provides "*In the event the delay is caused by the Access Seeker, the Access Seeker shall compensate the Access Provider for the cost it has incurred as a result of delay, subject to the AP using reasonable endeavours to mitigate those costs".*

41.29 With reference to subsection 5.4.11 (Grounds for Refusal), TM would like to highlight the difficulty in providing network co-location in premises where there is high level of security due to national interest, i.e. Critical National Information Infrastructure (CNII) premises and other premises such as certain cable landing stations and hill stations where safety and security is of utmost importance.

41.30 Regarding paragraph 6.9.16(a), TM wishes to highlight that it does not currently keep records of infrastructure or inventory. As such, TM requires a site survey for each request by Access Seekers. In addition, due to resource limitations, TM is unable to prepare separate reports and rely on the information available on its website for updates for any change in relation to POI for interconnect voice and POI for transmission service. TM also wishes to highlight that detail around any space or capacity constraints can only be provided after Service Qualification upon request by Access Seekers.

41.31 TM disagrees with subsection 6.9.26. TM provides the space for the Access Seeker based on the availability of such spaces. Allowing an Access Seeker

to undertake physical extensions of TM's building space would compromise the safety of the building. Any additional space requirement, modifications etc. should be channelled back to TM for consideration and approval.

41.32 TIME agrees with the proposed obligations, but submits that these obligations should be included in the "Operation & Maintenance Manual" which is to be executed or negotiated after the Access Seeker accepted the RAO and signed the offer.

41.33 webe strongly disagrees with the proposed requirement for reporting, stating that "the requirement is superfluous". webe notes that licensees are already required to provide detailed information on a range of matters, and that new Access Seekers can seek information through systems such as CIMS and Magic Maps. webe submits that it would be "very challenging" if information regarding all its infrastructure sites was publicly available and that this would expose webe to security risks. webe notes that "the industry is working well without this requirement" and is in favour of maintaining the status quo.

Discussion

41.34 Most operators agreed with the proposed service-specific timeframes for Network Co-Location. In response to Maxis' comment, the MCMC reiterates that the Access List only governs access to existing facilities and services. Accordingly, the obligations in the MSA only relate to existing facilities and services.

41.35 While the MCMC acknowledges that there are some impacts of third parties on Network Co-Location, as indicated by edotco, these impacts are not as great as for Infrastructure Sharing. Consequently, the MCMC does not propose to make the same changes here as discussed for Infrastructure Sharing, above.

41.36 The MCMC agrees with Maxis that operational details such as the format of Forecasts and technical proposals should be governed by processes agreed between the parties. However, it does not consider that it is necessary to specify that matter out as a service-specific obligation.

41.37 The MCMC acknowledges operator concerns regarding the public availability of Network Co-Location details. Subsection 6.9.13 (previously subsection 6.9.27) will be amended to limit the obligation to the matters in paragraphs i-iii of that subsection. Paragraph iii will be amended to require regular reporting to the MCMC on a 6 monthly basis of the locations at which each Access Provider is offering to supply Network Co-Location, the locations at which Access Seekers have requested Network Co-Location and the locations at which Access Providers are actively supplying Network Co-Location.

41.38 The MCMC agrees with the APCC that subsection 6.9.25 (previously subsection 6.9.21) should refer to the sharing of costs between all Access Seekers and the Access Provider on an equivalent basis. The MCMC agrees

with edotco that both references to cost in that subsection should be to "utility and ancillary costs".

41.39 The MCMC also agrees with the APCC's proposal to delete the last sentence of subsection 6.9.29 (previously subsection 6.9.25) for the reasons set out by the APCC.

41.40 The MCMC considered Astro's proposal that Access Providers should be required to report to the MCMC of incidences of late or non-attendance of an escort in order to give the MCMC a better idea of the frequency of this type of conduct, particularly as it may not always be a practical remedy for an operator to enter a premises (such as a CNII premises) without an escort. However, the MCMC considers that this may be too prescriptive, as there are other provisions already available, such as refusals of physical co-location, measures applicable at security and critical national information infrastructure as well as bi-annual reporting.

41.41 The MCMC does not agree with TM's submission that the provision of escorts should be a chargeable item. It is standard practice for the Access Provider to bear this cost given that it is the Access Provider's requirement.

41.42 The MCMC does not agree with TM's view that a lack of space is "purely operational" or that virtual and in-span interconnection is a sufficient substitute for physical Network Co-Location. The MCMC is concerned that Access Providers are denying Access Seekers access to Facilities and Services in breach of Access Providers' standard access obligations.

41.43 On a related point, the MCMC expects operators to comply with the obligations in subsection 6.9.20 (previously subsection 6.9.16) and subsection 6.9.30 (previously subsection 6.9.26) including the preparation and giving of reports that will allow Access Seekers and the MCMC to hold Access Providers to account for breaches of their obligations to provide meaningful physical Network Co-Location. The MCMC considers that concerns about safety and modification of facilities can, and routinely are, addressed operationally between operators. The MCMC expects operators to resolve any such issues expediently.

41.44 The MCMC agrees with Maxis to change the Billing Cycle for the Network Co-Location Service from monthly to '1 year in advance for the first year, and quarterly in advance for subsequent years'.

MCMC views

41.45 The MCMC will amend the Network Co-Location site publication requirements in the MSA and replace publication requirements with an enhanced reporting requirement.

41.46 The MCMC will amend the cost sharing provisions for Network Co-Location to make them clearer as discussed above and make minor changes to the maintenance requirements to avoid any unintended consequences.

41.47 The MCMC will also make the change to the "absence of escort" provision discussed at section 41.40 of this PI Report.

41.48 The MCMC will also adopt a Billing Cycle for the Network Co-Location Service that is 1 year in advance for the first year, and quarterly in advance for subsequent years.

42 Domestic Connectivity to International Services

Introduction

42.1 Subsection 5.21 of the MSA currently sets out a series of service-specific obligations that apply for Domestic Connectivity to International Services. In the PI Paper, the MCMC did not propose to substantively amend the existing obligations under subsection 5.21. However, the MCMC proposed to move the current obligations to a new subsection 6.10, which would also include additional obligations (e.g. new time requirements for forecasts, etc.) to align with the approach taken for the rest of the Service Specific Obligations.

42.2 In addition, as part of the proposal to apply the existing Content Obligations as Service Specific Obligations, the MCMC proposed to move some of the obligations under the existing subsection 5.13 to this new subsection 6.10.

42.3 The MCMC also proposed timeframes for the Domestic Connectivity to International Services.

Submissions received

Question 72: Do operators agree with the service-specific timeframes that the MCMC has proposed in respect of the Domestic Connectivity to International Service? Why or why not? If not, please specify and substantiate any proposed changes or amendments.

42.4 Altel and Net2One submitted that the time for acceptance or rejection stipulated in subsection 6.10.4 be extended to 15 Business Days and the indicative delivery timeline stipulated in 6.10.5 be extended to 30 Business Days. They agreed with other proposed timeframes in respect of the Domestic Connectivity to International Services.

42.5 The APCC, Celcom, Sacofa, TM and YTL agreed with the proposed timeframes.

42.6 Celcom also noted that it does not acquire or supply DCIS, although it does acquire a service based on connection at a Point of Access on a commercially-agreed basis from the Access Provider.

42.7 Maxis agreed with the timeframes set out by the MCMC in subsections 6.10.2, 6.10.3, 6.10.4 and 6.10.5, and also agreed with the obligations set out in subsections 6.10.7 and 6.10.12. Maxis commented that it agrees with the MCMC's proposed changes to subsection 6.10.8, as these changes reflect provision on an equivalent basis to that which the Access Provider provides access to itself. Maxis also referred to its submissions on

subsection 5.9.11 (Security and critical national information infrastructure), commenting that it "strongly agrees" with the MCMC's changes to 6.10.9 (Access and co-location), which it submits "must be included in the MSA", and that it agrees with the obligations to publish locations under subsection 6.10.13.

42.8 Maxis proposed retaining the modularity statement on Domestic Connectivity to International Service, for clarity and to avoid potential differences in understanding between Access Seeker and Access Provider regarding the bundling of products and services for DCIS.

42.9 Maxis proposed amending subsection 6.10.6 (Billing Cycle) to change monthly billing to billing one year in advance for the first year then quarterly in advance for subsequent years. Maxis submitted that this aligns with current industry practice.

42.10 Maxis submitted that it agrees with the escort obligations in subsections 6.10.10 and 6.10.11 proposed by the MCMC, and noted that DCIS is usually supplied at manned sites (unlike infrastructure sharing and network co-location, which may be sometimes unmanned and/or remote). Maxis was of the view that the 30-minute timeframe suggested by the MCMC is reasonable.

42.11 Sacofa stated that the delivery date should be mutually agreed by the Access Provider and Access Seeker, but agreed with the rest of the MCMC's proposal.

42.12 TIME agreed with the timeframes proposed, but would like to propose that the timeframes for acknowledgement of receipt, acceptance or rejection and acceptance or rejection be standardised.

Question 73: Do operators consider the proposed service-specific obligations for the Domestic Connectivity to International Service are sufficient? Please detail any proposed addition, deletion or amendment to the terms currently proposed by the MCMC.

42.13 The APCC commented that it considers the proposed service-specific obligations for DCIS are "likely to be sufficient", except that this section should include a new 'modularity' provision to prohibit forced bundling, as explained in greater detail elsewhere in the APCC's submission. The APCC also noted that it will only be possible to determine whether the proposed changes will prove sufficient with experience, so the APCC submits that the MCMC should plan to review the efficacy of the new provisions after they have been in operation for 24 months.

42.14 Celcom considers that the proposed service-specific obligations for the DCIS are sufficient at this point in time. Celcom noted that it supports the revised definition in the Access List and proposed changes to subsection 6.10.9 of the MSA as this would eliminate forced bundling (Celcom gave the example of bundling of active elements to provide specific bandwidth capacity) and thus limit anti-competitive conduct by the incumbent providers. Celcom also noted that this regulation is extremely important as there are only two licensees operating submarine cable landing stations in Malaysia (Telekom

Malaysia for international and Peninsular to East Malaysia connectivity, and Sacofa for Peninsular to East Malaysia connectivity).

42.15 Maxis commented that the proposed service-specific obligations for DCIS are sufficient, with the inclusion of its proposed inputs (which are outlined in the Maxis response to question 72).

42.16 TM strongly disagreed with the MCMC's proposal in relation to subsection 6.10.9, as TM considered that it would be held responsible for any unforeseen incidents that put Malaysia at risk such as disruption to telecommunication services due to sabotage or threat by subversives or terrorists. TM's interpretation was that the MCMC proposes that the Access Provider should provide access to nationally or operationally secure sites and may only put in place reasonable security procedures and processes. TM requested that given the high potential risks to security, the MCMC should allow different security arrangements to be mutually agreed between the Access Seeker and Access Provider.

42.17 TM noted that TM Security has established a site access request procedure for all TM sites which must be adhered to, including at national critical landing stations. TM submitted that globally it is understood that there are significant security risks in relation to submarine cables and landing stations which need to be addressed. It also cited examples from regional markets like Australia, where the regulator has lead the introduction of new legislation to upgrade protection for submarine cables, and noted that this approach has been praised by the International Cable Protection Committee and APEC as a global best practice example.

42.18 YTL agreed with the MCMC's proposals on the Domestic Connectivity to International Services.

Discussion

42.19 As summarised above, there is broad support amongst operators for the service-specific timeframes that the MCMC has proposed in respect of Domestic Connectivity to International Services.

42.20 The MCMC acknowledges concerns about the modular supply of Domestic Connectivity to International Services. However, the MCMC confirms that all Facilities and Services must be supplied in a modular basis and refers to its further comments on the topic at paragraphs 33.35 and 33.36. As a consequence, a service specific statement on this matter is not required in the MSA. If an Access Seeker is unable to acquire Domestic Connectivity to International Services on a modular basis, it should raise a complaint or dispute with the MCMC.

42.21 In response to TM's submission, the MCMC notes that TM must distinguish between:

(a) reasonable and proportional security measures, which are acceptable under subsection 6.10.9; and

(b) security measures which effectively prevent or prohibit access to Domestic Connectivity to International Services on an unbundled basis (requiring interconnection downstream of the submarine cable landing station).

42.22 The international precedents described by TM all relate to workable security procedures and processes that do not result in an Access Provider impermissibly controlling or affecting the Access Seeker's technical, operational and business models or ability to access international capacity.

42.23 Australia's legislation for submarine cable protection do not prevent inter-operator wholesale supply of interconnection to international cable capacity.

42.24 In respect of physical access, including escorts, the MCMC considers it appropriate to apply the same changes discussed in section 24.69 of this PI Report to Domestic Connectivity to International Services.

42.25 The MCMC agrees with Maxis to change the Billing Cycle for Domestic Connectivity to International Services from monthly to '1 year in advance for the first year, and quarterly in advance for subsequent years'.

MCMC views

42.26 The MCMC will change the service-specific obligations on physical access for Domestic Connectivity to International Services, as discussed above.

42.27 The MCMC will also adopt a Billing Cycle for Domestic Connectivity to International Services that is 1 year in advance for the first year, and quarterly in advance for subsequent years.

42.28 The MCMC otherwise proposes no changes to the Draft MSA with regard to Domestic Connectivity to International Services.

43 Duct and Manhole Access

Introduction

43.1 In the PI Paper, the MCMC's preliminary view was that the common terms of access (e.g. forecasts, acknowledgement of receipt, etc.) should apply to Duct and Manhole Access, along with additional reporting requirements.

43.2 The MCMC proposed to include a new subsection 6.11 that sets out the detailed terms that would apply specifically for Duct and Manhole Access. In addition, as part of the proposal to apply the existing Content Obligations as Service Specific Obligations, the MCMC proposed to move some of the obligations under the existing subsection 5.13 to this new subsection 6.11.

43.3 The MCMC proposed to include new reporting obligations that would apply specifically for Duct and Manhole Access, which were intended to improve transparency and to allow for greater monitoring by the MCMC.

43.4 The MCMC also proposed an additional ground of refusal where an Access Provider has entered into an exclusive arrangement for communications

infrastructure, including to ducts and manhole infrastructure in Putrajaya with the Government of Malaysia. The MCMC proposed that such an arrangement must have existed as at the date of the MSA Determination and must not be amended or extended. Reporting obligations to the MCMC would apply in respect of such a refusal.

43.5 The MCMC further proposed service-specific timeframes for Duct and Manhole Access.

Submissions received

Question 74: Do operators agree with the service-specific timeframes that the MCMC has proposed in respect of Duct and Manhole Access? Why or why not? Please specify and substantiate any proposed changes or amendments.

43.6 Altel and Net2One proposed that the indicative delivery timeline stipulated in subsection 6.11.5 be extended to 30 Business Days, but agreed with other proposed timeframes in respect of duct and manhole access.

43.7 The APCC and Fiberail agreed with the proposed timeframes.

43.8 Celcom did not object to the service-specific timeframes that the MCMC has proposed. However, Celcom expressed concern that under subsection 6.11.14 of the MSA the Access Provider may refuse to grant access to duct and manhole infrastructure in Putrajaya if there is a pre-existing exclusivity arrangement in place prior to the effective date of the revised MSA. Celcom is concerned that this may set a precedent that exclusivity is acceptable in the access regime, and may cause state-backed companies who are dominant operators to refuse access to infrastructure on the grounds of their exclusivity arrangements with the state government. Celcom proposed deleting subsection 6.11.14 to address this issue.

43.9 edotco's submission was that the proposed timeframes should be reduced to facilitate Access Seekers' access to infrastructure. To support its submission edotco compared the timeframes for the Dominant Licensee to provide access to lead-in ducts and lead-in manholes under the Reference Interconnect Offer in Singapore with those proposed by the MCMC. Under the RIO in Singapore, edotco submitted that Singtel is required to notify the Requesting Licensee of whether its application has been accepted or rejected within 1 Business Day of the Request Date. If the request is accepted, Singtel must complete its desk study and inform the Requesting Licensee of the in-principle approval or rejection within 5 Business Days of the Request Date.

43.10 Maxis agreed with the timeframes set out by the MCMC in subsections 6.11.2, 6.11.3, 6.11.4 and 6.11.5, and also agreed with the obligations set out in subsections 6.11.10, 6.11.11 and 6.11.12.

43.11 Maxis proposed amending subsection 6.11.6 (Billing Cycle) to change monthly billing to billing one year in advance for the first year then quarterly in advance for subsequent years. Maxis submitted that this aligns with current industry practice. Maxis also commented that the reporting

obligation in subsection 6.11.7 should be on an "as and when required" basis, as the MCMC's proposed twice-yearly report may not be necessary as this is a new service.

43.12 Maxis proposed amending the escort obligations from 30-minute response time for on-call escort services to 60 minutes (in subsections 6.11.8 and 6.11.9), and to add an obligation to subsection 6.11.8 on the Access Seeker to provide 5 Business Days' notice to the Access Provider of its intention to access the Access Provider's property.

43.13 Maxis agreed with the MCMC's proposed subsection 6.11.13, with a minor amendment to paragraph (f) to ensure that the Access Provider notifies the Access Seeker as well as the MCMC if they receive any written direction from the Government to prohibit an Access Seeker from physically accessing ducts or manholes.

43.14 On a related topic, Maxis also submitted that, given the addition of a new ground for refusal on the basis of exclusivity arrangements in Putrajaya in subsection 6.11.14, there should be a requirement for the Access Provider to offer alternative Facilities or Services to the Access Seeker in Putrajaya on a reasonable and non-discriminatory basis, including the commercial and technical terms and conditions.

43.15 Sacofa stated that the delivery date should be mutually agreed by the Access Provider and Access Seeker, but agreed with the rest of the MCMC's proposal.

43.16 TM submitted that generally the timeframes proposed by the MCMC are too stringent and challenging to comply with, given that Duct and Manhole Access has just been added to the Access List. TM's view is that the timeframes have been set without proper consideration or without studies on the various constraints involved in delivering this service. Hence, TM proposed what it considers to be more reasonable timeframes to ensure that all necessary preliminary groundwork can be carried out prior to the service offering. In particular, TM explained that it requires at least 26 Business Days to determine whether it will be able to provide the service (and therefore accept or reject the request). TM provided details of the processes making up this timeframe, such as 5 days for first level verification with the Access Seeker, 14 days to obtain permit and approval from the local authority and 7 days for conducting a joint site survey and testing. TM also stated that this timeframe is heavily reliant on other contingencies, so TM would like to propose that the timeframe is indicative until the industry can measure actual capability.

43.17 TM was agreeable to the forecasts set out in subsection 6.11.2, the 10 Business Day timeframe in subsection 6.11.5 (on the condition that Access Seekers will apply for all local authority permit/wayleave) and with the acknowledgement of receipt timeframes in subsection 6.11.3, upon completion of service order qualification.

43.18 TIME submitted that it agrees with the timeframes proposed, but would like to propose that the timeframes for acknowledgement of receipt, time for acceptance or rejection be standardised.

43.19 YTL agreed with the MCMC's proposals on the Duct and Manhole Access.

Question 75: Do operators consider the proposed service-specific obligations for Duct and Manhole Access are sufficient? For example, do Access Seekers require the ability to require Access Providers to undertake detailed field studies or the ability for an Access Seeker to undertake its own 'Make Ready Work' (e.g. conduct structural analysis, strengthening or augmenting existing infrastructure, etc.) prior to access being granted by an Access Provider? Please detail any proposed addition, deletion or amendment to the terms currently proposed by the MCMC.

43.20 The APCC submitted that the proposed service-specific obligations for Duct and Manhole Access are likely to be sufficient, but made the following specific comments. The APCC indicated that it supports the new escort provisions in subsections 6.11.8 and 6.11.9. The APCC observed that there is provision for a joint survey in cases where Service Qualifications are undertaken, but no provision other than dispute resolution options to deal with disagreements on the survey results. The APCC noted that this is an area in which disputes between experts can arise easily as many survey issues are matters of interpretation. The APCC submits that the MCMC should consider including a provision for appointment of an independent expert to mediate disagreements over survey results.

43.21 The APCC also submits that the additional Capacity Allocation policy obligations should be stated to not detract from core obligations in subsection 5.7.32, and that this subsection should include a new 'modularity' provision. The APCC supports the new operational manual provisions, but submits that these should also include an obligation to make the manual available to Access Seekers.

43.22 Celcom provided comments on two proposed subsections. In relation to subsection 6.11.11 (Joint survey), Celcom explained that it does not have any objection to the proposal where the Access Provider and Access Seeker may jointly decide on the scope of the survey. However, in order to ensure consistency, Celcom also suggested that it should be applicable to the Transmission Service, because, in relation to this service, Celcom has not been able to verify the Access Provider's charges (which are based on the length of cables used). A joint survey would help to ascertain the length of cables and ensure more accurate charges.

43.23 In relation to subsection 6.11.14, Celcom expressed concern about the exemption from providing access where exclusivity arrangements are in place in Putrajaya. Celcom is concerned that this may set a precedent that exclusivity is acceptable within the access regime, and as a result state-backed companies who are dominant operators may claim that they are allowed to refuse access to their infrastructure based on their exclusivity arrangements with state government. Celcom proposed deleting subsection 6.11.14 to address this.

43.24 edotco noted that the MCMC had proposed an additional ground under which an Access Provider may refuse access to Ducts and Manhole Access to the extent that the Access Provider has entered into exclusive arrangement for access to ducts and manholes infrastructure in Putrajaya with the Government of Malaysia. edotco requested the MCMC to reconsider its position under this subsection as without access to ducts and manhole in this area, Access Seekers are further hindered from making infrastructure investment in the Putrajaya region which will undermine competition in the long run. edotco observed that it is not clear why this additional ground of refusal has been provided, but noted that one possible rationale is the concerns regarding security, as only certain operators have security clearance to operate fibre networks (including duct and manhole services) in Putrajaya. edotco suggested that, if this is the correct rationale, a security vetting mechanism which is clear and transparent should be put in place to allow other operators to gain access.

43.25 Fiberail commented that service providers have to undertake detailed field studies to evaluate the viability of investments prior to providing any services to customers.

43.26 Sacofa agreed with the MCMC's proposals on duct and manhole access.

43.27 TM indicated that it is agreeable to the MCMC's proposals in relation to subsection 6.11.6, to the joint survey process in subsection 6.11.11 (because there are currently no preventative maintenance obligations to ensure that duct and sub-ducts are ready), and to the option of site visits contemplated by subsection 6.11.11, provided visits do not entail carrying out physical work. TM also suggested that visits should be categorised as either visits without carrying out work (which follow subsection 6.11.11), and visits involving carrying out work (for example, cable pulling), in which case Access Seeker must comply with the Access Provider's requirements including obtaining necessary certification and qualification (such as OSHE), and Access Seekers must also undertake and ensure that only authorised persons certified by the relevant Certifying Agency can carry out work.

43.28 TM expressed concerns about providing "on call" escorts in accordance with subsection 6.11.8, and proposed developing processes and procedures for escort services including making arrangements and appointments for escorts, and imposing charges for escorts. TM reiterated its proposal that there should be a 2 hour, rather than a 30-minute response time for unplanned escort services, which TM considers is "more reasonable and practical". TM also expressed concerns about allowing Access Seekers to enter properties without escorts under subsection 6.11.9, due to safety and security issues and the likelihood of tampering and damaging TM and third parties' property. TM referred to its previous comments in response to questions 68 and 70 and explained that Access Seekers entering premises without an escort are required to provide reports detailing the works and activities carried out at the site, and noted that TM considers that the terms and conditions of entering a site without an escort should be provided in an Access Agreement between the parties.

43.29 TM referred to its comments in response to question 8 regarding reporting and noted that TM only has information on routing path and manhole specifications. TM further noted that some of the information required under subsection 6.11.7 is already provided to the MCMC by TM on a half-yearly basis for CIMS data population, and that it has previously highlighted (and the MCMC is aware) that TM does not have information and details about the capacity of ducts and manholes due to the complex processes and high costs involved in providing this information, which TM estimates would be around RM100 million and take around 10 years to complete.

43.30 TM stated that it is "not agreeable" with the Capacity Allocation Policy in subsection 6.11.12, as it already has its own process and policy in place regarding capacity, which is effective. TM also submitted that there should be no reservation and the service should be fully charged upon billing activation (i.e. when the sub-duct is ready for service). In particular, in relation to paragraph 6.11.12(b)ii, TM highlighted that reservation of capacity is for a maximum period of 4 years, as development and construction takes 3 years on average from submission of the plan. TM also noted that, in the case of a 4-way duct, TM usually occupies 2 ducts and uses another for maintenance, meaning the remaining duct may be excess capacity. In relation to paragraph 6.11.12(c)ii, TM agreed to the proposed timeframe of 7 months but requested an exception where the Access Provider has a "specific plan" to use the available duct within 4 years of the date of completion of development.

43.31 TM strongly supported the proposal to introduce a special measure in relation to exclusivity arrangements in Putrajaya, and requested that this exclusion be extended to any similar arrangement where the Government of Malaysia (including but not limited to its agencies and companies) appoints an operator exclusively. TM noted that this aligns with the Trans Pacific Partnership Agreement, which allows for regulatory forbearance in relation to matters of national safety and security. TM submitted that this will allow the government to deal with safety and security threats that arise from the higher degree of market liberalization upon ratification of the Trans Pacific Partnership Agreement.

43.32 TIME expressed the opinion that the proposed service-specific obligations for duct and manhole access are sufficient, as they provide clearer processes for access to these facilities by any Access Seeker. However, TIME also submitted that the obligations should be included in the 'Operation and Maintenance Manual' which is to be executed or negotiated after the Access Seeker has accepted the RAO and signed the offer, instead of in the main RAO.

43.33 YTL commented that it agrees with the timelines for duct and manhole access.

Discussion

43.34 The MCMC acknowledges concerns regarding exclusivity in Putrajaya. The MCMC does not generally support or endorse exclusivity arrangements.

Operators should refrain from exclusive arrangements and must not use arrangements with third parties as an excuse for non-compliance with their obligations under the CMA. Duct and manhole access in Putrajaya is in a special category because the Duct and Manhole Access Service has been included on the Access List for the first time in the recent review of that instrument, and exclusivity arrangements were entered into before the Service was included on the Access List. In this context, the MCMC considers acknowledging the reality that this is an exceptional case which is different from all other access obligations and making it clear that the exception is a limited one which must be brought to an end, is appropriate.

43.35 With regard to escorted access, the MCMC expects that duct and manhole access would not ordinarily require an escort. Adding complexity to duct and manhole access on the assumption that an escort will ordinarily be present is therefore inappropriate. On a related note, the MCMC does not agree with TM that an escort is always necessary due to a "likelihood" of tampering or damaging property. All operators are responsible for the work that they do and in ensuring that no damage is done to other operators' property. In the event of any damage, the operator that accessed the duct and manhole infrastructure and caused the damage will take full responsibility to rectify and pay for the damages. It is standard practice in comparable markets for operators to access each other's ducts and manholes subject to notice, but without an escort.

43.36 The MCMC acknowledges edotco's submission regarding expedited access timeframes. Firstly, the MCMC notes that where the Access Provider delivers itself access on a shorter timeframe than ten Business Days, it must also give access on that shorter timeframe to Access Seekers. Secondly, given that Duct and Manhole Access Service is a new Service on the Access List, and the MCMC does not have historical information about the practicalities of supplying access to ducts and manholes in the Malaysian context, the MCMC will monitor the operation of the Service for the coming period of the MSA and evaluate whether access is being efficiently provided.

43.37 The MCMC rejects the reverse submission by TM, that providing access could take 26 Business Days or more. To the MCMC's knowledge, this timeframe would be totally without merit or precedent and would be significantly longer than any practice in any comparable jurisdiction. This is one reason for the operational processes specified in subsection 6.11.12. The MCMC expects TM and all other operators to streamline their processes and give meaningful access to ducts and manholes within the times set out in the MSA. The MCMC also notes that the timeframe proposed by TM seems to include 15 Business Days related to Service Qualification provided under the MSA – if such period is deducted, that leaves 11 Business Days (which is approximately 10 Business Days). The MCMC therefore considers that no change is required.

43.38 On a related note, the MCMC considers reporting in the initial period of the Service being on the Access List is important, including for the assessment of matters like access timeframe practicalities and compliance, and the reporting obligation will remain in the MSA.

43.39 The MCMC agrees with Maxis that if the Access Provider refuses access on the ground of a government direction, the Access Seeker should be notified of the grounds of refusal. However, no amendment is required to the MSA for this purpose. This obligation applies under paragraph 5.4.10(a) of the MSA. Paragraph 6.11.13(f) does not displace this obligation, it adds an additional reporting obligation.

43.40 The MCMC acknowledges the APCC's submission regarding the need for effective dispute resolution of joint survey issues. The MCMC observes that the parties have access to the Dispute Resolution Procedures in Annexure A of the MSA in the circumstance described by the APCC. Accordingly, the MCMC proposes no further change to the MSA in this regard.

43.41 In relation to the APCC's submission on the Capacity Allocation Policy provision in subsection 6.11.12, the MCMC notes that the subsection is already expressed to be "in addition to subsection 5.7.32" and so no further change is required to make this clear.

43.42 With regard to the APCC's submission on modularity, the MCMC refers to its comments at subsection 33.35.

43.43 The MCMC agrees with the APCC's submission that subsection 6.11.13 should specify that operational manuals must be made available to Access Seekers.

43.44 The MCMC agrees with TM's submissions that no work is intended to be done on site visits under subsection 6.11.11. The MCMC expects that site visits for the purpose of performing works will be governed by operational manuals under subsection 6.11.13. However, the MCMC draws operators' attention to paragraphs 6.11.13(e)-(g). The content and implementation of operational manuals is one matter that the MCMC will consider carefully through the reporting obligations in the MSA.

43.45 With regard to the reporting obligations in subsection 6.11.7, the MCMC notes that it is not requiring Access Providers to proactively document all of their duct network and capacity. Apart from paragraph 6.11.7(a) and (b), which is discussed below, the reporting obligations in subsection 6.11.7 are only triggered after an Access Seeker requests access to duct and manhole, in which case the Access Provider must undertake studies to accept or reject the Order and will have information available to report to the MCMC.

43.46 With regard to paragraph 6.11.7(b) on exclusive rights to develop or maintain mainline ducts and associated manhole infrastructure, the MCMC assumes that any claim of exclusive rights will be documented and that the documentation will be properly kept to permit verification, otherwise a claim of exclusivity will be invalid. Accordingly, the MCMC expects reporting under that subsection can be performed without extensive field or desktop studies. With regard to paragraphs 6.11.7(a) and (b), the MCMC takes note of TM's submission that TM only has information on routing path and manhole specifications and that TM provides information for CIMS. However, as mentioned earlier, the information provided for other purposes may not be suitable for the purposes of overseeing and enforcing the MSA. The MCMC

further takes note that TM is working on updating its duct and manhole infrastructure, hence, the MCMC would not expect that TM has all the information ready and available at the Effective Date of the MSA. However, the MCMC would expect that on a regular six-monthly period, that TM updates the MCMC of any new ducts and manhole infrastructure that has been added to TM's system, since the last reporting period.

43.47 The MCMC has discussed some of TM's submissions on subsection 6.11.12 above. The MCMC rejects TM's other submissions on reserving ducts including for maintenance purposes and for development on a 4-year horizon. The MCMC considers such practices excessive and would breach the principles adopted in subsection 6.11.12.

43.48 The MCMC agrees with Maxis to change the Billing Cycle for Duct and Manhole Access from monthly to '1 year in advance for the first year, and quarterly in advance for subsequent years'.

MCMC views

43.49 The MCMC will amend the MSA to make clear that operational manuals under subsection 6.11.13 must be made available to Access Seekers.

43.50 The MCMC will also adopt a Billing Cycle for Duct and Manhole Access that is 1 year in advance for the first year, and quarterly in advance for subsequent years.

43.51 The MCMC will remove the escort provisions. The MCMC has included physical access provisions similar to provisions used in respect of other Services.

43.52 The MCMC otherwise maintains its preliminary views on Duct and Manhole Access.

44 Digital Terrestrial Broadcasting Multiplexing Service

Introduction

44.1 In the PI Paper, the MCMC did not propose to substantively change the existing obligations under subsection 5.23. However, the MCMC proposed to move the existing obligations that apply for access to the Digital Terrestrial Broadcasting Multiplexing Service to a new subsection 6.12. This new subsection would include additional obligations (e.g. new time requirements for forecasts, etc.) to align with the approach taken for the rest of the Service Specific Obligations. The MCMC also proposed timeframes for access to the Digital Terrestrial Broadcasting Multiplexing Service.

Submissions received

Question 76: Do operators agree with the service-specific timeframes that the MCMC has proposed in respect of the Digital Terrestrial Broadcasting Multiplexing Service? Why or why not? If not, please specify and substantiate any proposed changes or amendments.

44.2 The APCC agreed with the service-specific timeframes proposed in respect of the Digital Terrestrial Broadcasting Multiplexing Service, and stated that it considers the proposed timeframes are reasonable and appropriate for this particular service.

44.3 Maxis commented that it has not subscribed to the Digital Terrestrial Broadcasting Multiplexing Service, however it is of the view that its service-specific timeframes could be more or less similar to those for Transmission Services, as the services are more or less the same.

44.4 MYTV proposed some amendments to the timeframes proposed by the MCMC. MYTV requested a timeframe of 5 Business Days for acknowledgement of receipt under subsection 6.12.3, to allow sufficient time to fulfil the required internal processes, and a timeframe of 15 Business Days for acceptance or rejection under subsection 6.12.4, to allow sufficient time for internal deliberation and decision-making.

44.5 MYTV also recommended a total indicative timeframe of 170 Business Days under subsection 6.12.5, to include required preparation time (particularly for deployment of a new multiplexer). In addition to the extended milestones set out above, this would include 150 Business Days for provision of the service. MYTV also commented that subsection 6.12.6 (Billing Cycle) should be read as Digital Terrestrial Broadcasting Multiplexer service.

44.6 TM stated that as a matter of principle, it does not consider it is appropriate to regulate the service before rollout.

Question 77: Do operators consider the proposed service-specific obligations for the Digital Terrestrial Broadcasting Multiplexing Service are sufficient? Please detail any proposed addition, deletion or amendment to the terms currently proposed by the MCMC.

44.7 The APCC submitted that it considers that the proposed service-specific obligations for the Digital Terrestrial Broadcasting Multiplexing Service are likely to be sufficient, except that this section should include a new 'modularity' provision.

44.8 MYTV proposed some amendments to the service-specific obligations regarding Digital Terrestrial Broadcasting Multiplexing. In relation to forecasting, MYTV requested that the period in paragraph 6.12.2(a) be amended to 18 months, given that the industry is in its infancy and that the period in paragraph 6.12.2(b) be amended to 6 months.

44.9 MYTV also requested that the service level in subsection 6.12.9 be "99.9% of the time or as mutually agreed by the Access Provider and the Access Seeker". MYTV also requested that subsection 6.12.10 be amended to read: "Compression: An Access Seeker must provide its transport stream at the standard bit-rate allocation specified by the Access Provider, including digital compression and decompression device/equipment as appropriate."

Discussion

44.10 With regard to the APCC's submission on modularity, the MCMC refers to its comments at paragraph 33.35.

44.11 Maxis' submission may relate to broadcasting transmission to towers. For clarity, this service is for access to multiplexed broadcasting services as described in the Access List.

44.12 With regard to MYTV's submissions on acknowledgement, acceptance and rejection timeframes, the MCMC notes that the measurement of these timeframes include some flexibility, such as allowances for post-Order Service Qualification to occur. Accordingly, the MCMC does not consider that any change is required to the timeframes in the MSA.

44.13 With regard to MYTV's submission on the indicative timeframe, the MCMC notes that the Access List, and therefore the MSA, only regulates access to an existing facility or service. Therefore, the MCMC does not understand the MSA to regulate the timeframe for rollout of a new multiplexer, but rather the addition of a new Access Seeker or new content stream from an existing Access Seeker to an existing multiplexer.

44.14 With regard to MYTV's submission about service levels, the MCMC rejects the submission. Redundancy must be provided to ensure availability at all times. The MCMC will include "and decompression" in subsection 6.12.10.

44.15 The MCMC agrees with the varied forecasting provisions proposed by MYTV.

MCMC views

44.16 The MCMC will vary subsection 6.12.2 to provide for a maximum forecast period of 18 months with a minimum interval of 6 months with a maximum update requirement of once every 6 months.

44.17 The MCMC will vary subsection 6.12.10 to include "and decompression" as specified above.

45 MVNO Access

Introduction

45.1 In the PI Paper, the MCMC proposed to take a relatively light-handed approach to the regulation of MVNO Access, which would be applied as follows:

(a) the Content Obligations would not apply for MVNO services, except to the extent that Service Specific Obligations apply for MVNO Access under a new subsection 6.13 of the MSA; and

(b) the Disclosure Obligations and Negotiation Obligations under the MSA would apply for MVNO Access.

45.2 In line with the approach taken for the other Service Specific Obligations, the MCMC proposed to apply the following common terms of access for MVNO Access:

(a) Forecasting;

(b) Ordering and Provisioning;

(c) Billing and Settlement;

(d) Term, Suspension and Termination; and

(e) Legal Boilerplate Obligations.

45.3 The MCMC noted that its proposed approach to regulating MVNO Access strikes a balance between the need to regulate the key terms of access to help facilitate the entry of new "thick" MVNOs, while still providing a higher degree of flexibility for parties to commercially negotiate the substantive content of an Access Agreement.

Submissions received

Question 78: Do operators agree with the service-specific timeframes that the MCMC has proposed in respect of MVNO Access? Why or why not? If not, please specify and substantiate any proposed changes or amendments.

45.4 Altel agreed with the timeframes the MCMC proposed in respect of MVNO access.

45.5 The APCC agreed with the service specific timeframes proposed in respect of MVNO access, saying they are reasonable and appropriate for the particular service.

45.6 Celcom commented that the service specific timeframes the MCMC has proposed in respect of MVNO access are not applicable to MVNO access as provisioning of the service does not involve ordering and provisioning obligations.

45.7 Ceres was supportive of the proposed service-specific timeframes for MVNO Access. Ceres suggested that the MCMC look into and support the entry of "thick" MVNOs. Ceres stated that timeframes they have received from access providers can be more than 6 months, and with a high estimated cost with no exact cost provided. They also said that they are facing numerous challenges when dealing with access providers due to the technical integration of both parties' systems and platforms.

45.8 Digi disagreed with the MCMC proposal relating to time for acceptance or rejection. Digi says that each submission or request to an Access Provider may require complete technical assessment of an overall solution to support a MVNO's requirements. Digi says that "imposing a timeline of 10 Business Days is not practical under such an environment".

45.9 Digi suggests that Access Providers evaluate each request on a case by case basis, but within a period of no longer than 60 to 90 Business Days. Further, Digi says in relation to indicative delivery times as proposed by the MCMC in the Draft MSA, the MCMC should consider allowing a longer duration of 3 to 6 months, or longer depending on the type of MVNO access service being requested by the Access Seeker.

45.10 Maxis disagrees with the service-specific timeframes proposed by the MCMC and requests that they be removed from subsection 6.13.4 to 6.13.7 of the MSA. Maxis says that the mobile markets are competitive at retail and wholesale levels and MVNO access therefore should not be regulated and no provisions for MVNO are required in the MSA. Instead, Maxis says the best approach is to let the Access Seeker and the Access Provider find processes and timeframes that work best for them. Further, Maxis submits MVNOs are already subject to regulations of Commission Determination on the Mandatory Standard for the Provision of Services through a Mobile Virtual Network issued by the MCMC effective 15 January 2016, and are concerned that additional regulation by the MCMC via the MSA would create unnecessary restrictions.

45.11 Nevertheless, Maxis provided the following feedback on timeframes for the following sections: 6.13.4 – acknowledgment of receipt within 2 Business Days; 6.13.5 – time for acceptance or rejection to be according to the agreed timeframes in the Access Agreement; 6.13.6 – indicative delivery timeframe to be mutually agreed between the Access Seeker and the Access Provider in the Access Agreement; 6.13.7 billing cycle to be mutually agreed between the Access Seeker and the Access Provider in the Access Agreement.

45.12 U Mobile proposed that the total number of days of indicative delivery should be 45 days, calculated as follows: change request to ISD & network – 22 days; notify MNVO on the cost that may be incurred which will be borne by then – 2 days; MVNO to notify UM – 10 days; concept/approval/IC paper preparation and management approval – 11 days.

45.13 webe commented that timeframes will vary between MVNO arrangements – with a thin MVNO requiring at least 3 months, whereas with a thicker MVNO at least 6 months may be required. webe suggests that the timeframe be open for both parties to agree upon.

45.14 YTL suggested that the indicative delivery times be 60 Business Days.

Question 79: Are there any other Content Obligations that operators think should be applied as Service Specific Obligations in relation to MVNO Access?

45.15 The APCC did not consider that other content obligations should be applied as Service Specific Obligations in relation to MVNO access.

45.16 Celcom does not believe that any obligations including Content Obligations specified under the MSA are applicable, because MVNO access is different to access to other network facilities and network services. Celcom proposed the requirement of compliance to Commission Determination on the

Mandatory Standard for the Provision of Services through a Mobile Virtual Network, Commission No. 3 of 2015 to protect consumers in the event the MVNO terminates the service.

45.17 Digi says that Content Obligations should not be applied to MVNO Access at all and gave reasons for its submission. Digi emphasises that any consideration to impose strict conditions will significantly reduce the ability of mobile operators to offer bespoke agreements to suit different types of access requests.

45.18 Maxis did not believe any other Content Obligations should be applied as Service Specific Obligations in relation to MVNO access. It took the position that only light regulation should be applicable to MVNO Access, and that Service Specific Obligations should not be included in the MSA.

45.19 Nevertheless, Maxis provided its feedback that subsections 6.13.2 to 6.13.9 are workable for MVNO Access. Maxis suggested amending subsection 6.13.1 so that Content Obligations do not apply in respect of MVNO Access with the exception of the subjections listed by the MCMC with the following variations: exclude subsection 5.7.9 on completion timeframes for service qualifications, exclude the disclosure obligations in subsection 5.3.4 regarding RAOs, 5.3.7 regarding information disclosure and subsection 5.3.12 regarding reporting, and exclude negotiation obligations in subsections 5.4.20 and 5.4.21 regarding fast track processes. Maxis also suggested amending subsection 6.13.10 in respect of modularity to cater for situations where both parties agree bundling of services or network components for technical or commercial reasons.

45.20 TM is of the view that all Content Obligations should be applied to MVNO Access except for paragraph 5.5.1(d) which relates to point of interface procedures.

45.21 webe did not believe any other Content Obligations should be applied as Service Specific Obligations in relation to MVNO Access.

Question 80: Do you consider there are any particular kinds of information or details relating to MVNO Access which ought to be reported to the MCMC or is the general reporting obligation under subsection 6.13.8 of the Draft MSA sufficient? If so, please specify.

45.22 Altel believes the general reporting obligations under subsection 6.13.8 of the Draft MSA are sufficient. Altel prefers the reporting of matters of significance as implied by subsection 6.13.8 to the proposed periodic reporting obligation as stipulated in subsection 5.3.12. Altel also believe that including compliance monitoring by the MCMC, active intervention by the MCMC would enable "a more effective resolution of issues faced by operators during access negotiations".

45.23 The APCC submitted that the general reporting obligations are sufficient.

45.24 Celcom felt that MVNO access should not be subject to reporting obligations, due to the "light-handed approach" they propose to be adopted by the MCMC.

45.25 Digi disagreed with subsection 4.4.1 in the Draft MSA that expressly prohibits exclusivity arrangements. Digi says that the intention of an access obligation cannot be to supply an Access Seeker with a competitive advantage compared to mobile operators, and that mobile operators would be concerned if regulated access to different mobile networks are used to obtain "significant competitive advantages" in the retail market by the MVNOs compared with mobile operators' own operations, and could also reduce mobile operators' incentive to invest in network infrastructure etc. In respect of subsection 4.4.2, Digi is unclear of the benefits of expressly prohibiting the prevention of resale of facilities of services and would be "concerned with the severe disadvantage to the market and consumers" if the provision is used to encourage unhealthy market behaviour by unviable MVNOs and its resellers. Digi also recommends the removal of subsection 6.13.10, noting that MVNO access services are relatively customised to the Access Seeker's requirements as stipulated by the Access Seeker.

45.26 Maxis is of the view that the general reporting obligation under subsection 6.13.18 of the Draft MSA is sufficient in line with the light regulation they propose to be applied for MVNO Access.

45.27 TM is of the view that the reporting obligations for MVNO Access are a double standard compared to obligations imposed on fixed operators, and propose the provision to be applied consistently for all services.

45.28 webe are of the view that the requirement in subsection 6.13.8 is sufficient and that reporting should only be based upon request.

Discussion

45.29 The MCMC proposes to continue with the light-handed regulation of MVNO Access proposed in the PI Paper. A number of Operators made submissions regarding Mandatory Standard for the Provision of Services through a Mobile Virtual Network. In response to those submissions, the MCMC notes that the relevant Mandatory Standard relates to the services that MVNOs provide to their end customers at a retail level. The only amendments that the MCMC proposes to make is to clarify that if wholesale support is required to permit the MVNO / Access Seeker to meet its obligations under the Mandatory Standard for the Provision of Services through a Mobile Virtual Network, the Access Provider must provide such support.

45.30 The MCMC considers that Digi's concerns about resale and exclusivity are not warranted for the reasons that follow.

45.31 With regard to resale – if an MVNO is able to resell its services as a secondary wholesale provider (e.g. by aggregating an MNO's wholesale services with billing, customer care and other functions to a retail operator with a strong brand), there is no reason it should be constrained from doing so. Market forces such as the retail packages that end customers are willing

to pay together with the prices charged by MNOs and other cost inputs will provide the only constraints necessary to ensure efficiency in this regard.

45.32 With regard to exclusivity – if an MVNO is able to aggregate services from multiple MNOs, charges a retail price reflective of such wholesale inputs, and end customers are willing to pay such a retail price for the advantages or perceived advantages, the MCMC would again see no reason to constrain such behaviour.

45.33 With regard to submissions by various parties on the timeframes for Orders for MVNO Access to be accepted or rejected and indicative delivery timeframes, the MCMC does not consider that any change to the proposed timeframes in the Draft MSA is warranted. The MCMC notes that the proposed indicative delivery timeframe of 40 Business Days is similar to U Mobile's submission which specifies a 45-day period.

45.34 In response to TM's concerns about symmetry in regulation, the MCMC notes that regulation reflects the competitive concerns that are associated with particular Facilities and Services. Fixed line networks have strong natural monopoly characteristics not present in mobile networks. The MSA regulates each type of Facility and Service accordingly.

45.35 There are no specific reporting obligations in subsection 6.13, however, it does not mean that there is no reporting applicable. MVNO Access is one of the Facilities and/or Services that are subjected to the bi-annual reporting. Hence, the Access Providers are still required to comply with the reporting obligations under subsection 5.3.12.

MCMC views

45.36 The MCMC proposes to add to the MSA that if wholesale support is required to permit an Access Seeker or downstream Operator to meet its obligations under the Mandatory Standard for the Provision of Services through a Mobile Virtual Network, the Access Provider must provide such support.

Part F Standard Administration, Compliance and Dispute Resolution

46 Standard administration and compliance

Introduction

46.1 In the PI Paper, the MCMC considered amending the Standard Compliance and Administration provisions to align with broader amendments to the rest of the MSA. The MCMC also proposed a few key changes.

46.2 The MCMC noted its aim to provide Access Providers with a reasonable period to achieve compliance with the MSA while ensuring that Access Seekers have fair and effective access to Facilities and Services on the Access List without undue delay. The MCMC proposed implementing a grace period or transition period to allow operators to comply with new MSA requirements. The MCMC also considered imposing reporting requirements during any such grace period to allow the MCMC to track progress towards implementation.

46.3 The MCMC proposed changes to the Standard Administration and Compliance provisions to clarify that the MCMC may make a direction to require an operator to incorporate particular content into their Reference Access Offer or Access Agreement. The MCMC also proposed to clarify that the MCMC may check for compliance with the MSA at the time it is reviewing a RAO.

Submissions received

Question 81: What grace period to operators consider is reasonable for an Access Provider to implement the terms of the MSA, either on a per service basis or for application of the MSA as a whole? Please provide information to support your submission.

46.4 The APCC considers a grace period of 6 months is "reasonable for an access provider to implement the terms of the MSA, as a whole".

46.5 Astro provided feedback to question 81 and 82 jointly and recommended that the power under subsection 7.1.4 be elevated to a power to incorporate particular content or modify RAOs and Access Agreements. Astro commented that such a power could, as an example, ensure rapid intervention by the MCMC to address anti-competitive practices such as margin squeezes where retail price changes occur or when the margin squeeze is discovered.

46.6 Celcom considers that "no grace period should be given to Access Providers who are in a dominant position" to apply subsection 7.2.4 (existing agreements) and 7.2.6 (timeline for implementation). On this basis, Celcom consider that Access Providers who are dominant players should prepare Reference Access Offers no later than 90 days after the effective date of a revised MSA, and should conclude revision of existing agreements no later than 210 days after the said effective date. Celcom noted that such a

position is important as dominant players, such as TM, are the access provider for HSBB Services. On this basis, Celcom noted that TM "must open access to HSBB Services in accordance with standard access obligations to ensure effective competition in the broadband market", to ensure effective competition in the broadband market, and subsequently achieve the target for the Eleventh Malaysia Plan.

46.7 Digi raised a "concern that abrupt transitions to the RAO model, especially for complex services such as Mobile Access, would be extremely challenging". Digi noted that it is "imperative" for the MCMC to consider an interim or transitional period from the current regime to the RAO, at a minimum of 12 months.

46.8 edotco proposed a grace period for implementation of at least 6 months from the date the final MSA comes into force, due to the extensive commercial reworking that is required to adapt edotco's current operations (which are "vastly dissimilar"), the need to engage consultants to rework the access instrument framework to comply with the final MSA and have additional personnel and administrative processes in place to facilitate compliance.

46.9 Fiberail considers that a reasonable period for an access provider to implement the terms of the MSA would be 6 to 12 months.

46.10 Maxis is of the view that given its position that the appropriate regulatory approach to be adopted by the MCMC on the access instrument model for incumbent Access Providers and Critical Services is a Reference Access Offer model, an appropriate implementation grace period is within three months from the effective date of the standard. For other facilities e.g. O&T Services, MVNO Access, Interconnect Link Services, Infrastructure Sharing, Ducts and Manholes, Maxis is of the view that the Access Reference Document (ARD) model is sufficient for regulation. Under the ARD model, Maxis is of the view that an appropriate implementation period is six months from the Effective Date of the Standard.

46.11 MYTV considers that it is a new entity and has no prior RAO model. As such, MYTV requests 180 days to implement the terms of the MSA.

46.12 Sacofa took the view that 7 months is a reasonable grace period for an Access Provider to implement the terms of the MSA.

46.13 TM took the view that a reasonable grace period for Duct and Manhole services was 3 years. For Layer 3 HSBB Network Services, TM proposed a grace period of 5 years to allow sufficient time for TM to recover its high cost of investment. TM notes that it and the Government of Malaysia has agreed for TM to provide access to other service providers based on Part C, Section 7 of the HSBB PPP agreement.

46.14 TIME took the view that only new facilities and/or services and Access Agreements should be required to comply with the revised MSA so as to avoid additional manpower and costs incurred to complete the exercise of renegotiating, revising and concluding existing Access Agreements with

other licensed network operators (OLNOs) which have been registered with the MCMC.

46.15 webe commented that if the whole proposal were to be implemented without change and apply to Access Agreements that have been entered into already, it will take a long time to implement the terms of the MSA. webe took the view that this "new enforcement" should only be applicable to new agreements. webe took the view that 210 days seems long enough, but recognises that all licensees will be "doing it simultaneously" and thus arranging sessions for discussions and negotiation will be difficult. webe reiterated that the current arrangements are sufficient to support the industry.

Question 82: Do operators have any other feedback on the proposed amendments to the Standard Administration and Compliance provisions?

46.16 Astro provided feedback to question 81 and 82 jointly and recommended that the power under 7.1.4 be elevated to a power to incorporate particular content or modify RAOs and Access Agreements. Astro's commented that such a power could, as an example, ensure rapid intervention by the MCMC to address anti-competitive practices such as margin squeezes where retail price changes occur or when the margin squeeze is discovered.

46.17 Celcom did not have an objection to the proposed amendments to the standard administration and Compliance provisions under Section 7 of the Draft MSA. Celcom took the view that the proposed amendments take into account new provisions on Reference Access Offer and Service Specific Obligations.

46.18 edotco "essentially disagrees" with the deletion proposed to paragraph 7.5.6(c) of the Draft MSA as it removes a step in the public inquiry process which edotco believes "is much needed". edotco took the view that publication of draft changes is critical for the industry and stakeholders to be able to assess whether proposed changes to the MSA are consistent with matters set out for review, and to consider whether their initial comments regarding the review of the MSA have been accurately taken into account by the MCMC. edotco commented that removing this step will remove the "public's opportunity to comment on any actual changes to the MSA in the future".

46.19 Maxis appeared to agree with the MCMC's proposed amendments, and, in addition, proposed varying timeframes for each Facility and Service for the implementation of the Operator Access Obligations (set out in Table 3 of its submission under its response to Questions 5 and 6), being 3 months for the HSBB Network Service and 6 months for other Facilities and Services.

46.20 MYTV "does not agree" with subsection 4.4.2, commenting that it should not be applicable to MYTV under the DTB Multiplexing Service, as MYTV has been appointed by the Government as the single entity responsible for the service.

46.21 TM believed that the current ARD regime should be maintained, and referred to its general commentary in its submission. In that general commentary TM commented that a proposed change from an ARD to a RAO model would be costly for Access Providers to comply with; that a RAO model would not work efficiently as all major operators are both Access Seekers and Access Providers at the same time who enter into an Access Agreement and thus are unlikely to be able to enter into a single Access Provider's RA; that the current ARD regime is transparent and working well as all licensees are able to enter into Access Agreements and can submit them to the MCMC for registration in accordance with the CMA. TM was "strongly of the view" that the current access regime does not favour a RAO approach, and the current ARD approach should be allowed to continue with enhancements to address any weaknesses.

46.22 TIME commented that while it believes the new RAO concept may be timely, its concern is that "the MCMC is tweaking the existing framework without undertaking a thorough review". It questioned why the ARD method, in existence for a decade or so, needs to be replaced by the RAO concept. TIME believes that the MCMC should review the entire access regime and "if there are good grounds to revise and improve the same via switching from an ARD to a RAO concept" it will at least allow the industry to understand the rationale behind any move. TIME noted that with a RAO concept, the nature of the arrangement is different, and all the Access Seekers need to do is "issue a notice of acceptance of the RAO and there is in law and by the Contracts Act, a legally binding agreement that the Courts will enforce". TIME contrasts this against the "ex-ante regulation" rationale of an access regime. TIME is of the opinion that the "MCMC should follow the RAO model currently being implemented by Singapore and Qatar regulators, which should only be applicable to dominant operators". TIME provides further comments in respect of the applicability of the MSA in alignment with the Determination on Dominant Position.

Discussion

46.23 The MCMC acknowledges operators' concerns that transitioning to the RAO will be a challenging process requiring commercial reworking and negotiations, and that sufficient time will be needed to complete this process. The MCMC notes that a range of timeframes were proposed for compliance, with the most common proposal being a grace period of at least 6 months or 7 months. Only two operators suggested a grace period of 12 months or longer, including TM's request for a grace period of:

(a) for Duct and Manhole Access, 3 years; and

(b) Layer 3 HSBB Network Service, 5 years.

46.24 The MCMC considers that a grace period of 6 months is a reasonable period for the implementation of the obligations in respect of RAO publication in the MSA. Existing Access Agreements will then need to be reviewed within a further 3 months (i.e. a total of 9 months for both RAO and Access Agreements).

46.25 The MCMC notes the submission from some operators that either the RAO model or the MSA should only apply to new Facilities, Services and Access Agreements. While the MCMC does not consider it sustainable to maintain two types of access instrument (the ARD and the RAO) in the long term, the MCMC does acknowledge that there are efficiencies to be had by allowing operators to temporarily maintain existing Access Agreements. The MCMC will therefore provide for such a transitional provision in the MSA.

46.26 The MCMC has considered operators' views on the proposed amendments to the Standard Administration and Compliance provisions. The MCMC agrees with TIME that additional manpower and costs will need to be incurred to complete the exercise of renegotiating, revising and concluding existing Access Agreements with OLNOs which have been registered with the MCMC

46.27 The MCMC has declined to make changes in respect of certain other proposals, including:

(a) amending subsection 4.4.2 so that this provision does not apply to MYTV;

(b) introducing a grace period that does not apply to dominant operators;

(c) limiting the application of the RAO model to dominant operators; and

(d) maintaining the current ARD approach rather than moving to a RAO model.

46.28 The MCMC has considered edotco's concerns regarding the MCMC's proposed deletion in paragraph 7.5.6(c) of the MSA. The MCMC notes that the deleted provision provided the MCMC with an option—not an obligation—to publish draft changes to the MSA. The MCMC considers that, in appropriate cases where it considers the industry would benefit from doing so, the MCMC is not prohibited from publishing such draft changes to the MSA despite the deletion in paragraph 7.5.6(c). Rather, the intention for making the amendments was to more closely align the processes in the MSA with those under the CMA. The MCMC does not therefore propose to reverse this deletion.

46.29 The MCMC has also considered Astro's proposal to grant the MCMC the power to modify RAOs and Access Agreements in the MSA to address anticompetitive practices. The MCMC considers that such an interventionist approach is contrary to international best practice and is not warranted at this stage.

MCMC views

46.30 In addition to making the changes to the Standard Administration and Compliance provisions and Dispute Resolution Procedures set out in the PI Paper and Draft MSA, the MCMC determines to adopt a grace period or transition period of 6 months to apply in respect of the obligations for RAO

publication. Further, for the alignment of the existing Access Agreements to the MSA, 9 months will apply.

47 Dispute resolution

Introduction

47.1 In the PI Paper, the MCMC noted that operators appeared to be generally satisfied with the current Dispute Resolution Procedures under Annexure A of the MSA. The MCMC expressed the preliminary view that no substantive changes are required to the Dispute Resolution Procedures.

Submissions received

Question 83: Do you agree with the MCMC's preliminary view that no substantive change is required to the Dispute Resolution Procedures? If not, please specify what change you consider is required and explain why.

47.2 The APCC, Maxis, MYTV, U Mobile, webe and YTL agreed that no substantive change is required to the Dispute Resolution Procedures.

47.3 edotco submitted that the MCMC should take into account international practice, as it believes "the current position under the MSA which provides for the MCMC to be the final arbiter is inconsistent with international practices". edotco submits that parties should be given the right to appeal to the High Court if they are not satisfied with the MCMC decision. edotco then provides an overview of the dispute resolution processes in Singapore and the EU. edotco highlights that the procedure in Singapore, as set out in Section 11.3 of the Telecom Competition Code, only applies where a requesting licensee intends to enter into individualised interconnection agreement with a dominant licensee, but they fail to voluntarily reach agreement on the terms. In all other cases, the IMDA will not intervene in disputes and will leave licensees to resolve their own disputes. edotco also points out that with the EU, parties can call on the national regulatory authority to resolve a dispute when the dispute is between "undertakings" in the same Member State and where the aggrieved party has failed to reach agreement. For such member state disputes, under Article 20(1) of the Framework Directive, the national regulatory authority can issue a binding decision to resolve the dispute. In the case of cross border disputes, under Article 21, the national regulatory authorities shall coordinate their efforts and may consult the Body of European Regulators for Electronic Communications for its opinion. edotco notes that Articles 20(5) and 21(4) do not preclude parties from bringing actions before the courts. In respect of Malaysia, edotco highlights "the inadequacies that are present in the appellate system upon the exhaustion of avenues stated in Annexure A", and "urges the MCMC to formally set up the Appeal Tribunal …as a matter of urgency…".

47.4 PPIT agreed with the MCMC that no substantive change is required for the Dispute Resolution Procedure. However, it commented that as suggested in its submission, the Interconnect steering group and the inter-party working

group may see some duplication across its personnel, causing "duplicity and delay in the resolution process". It commented that Access Charges to Infrastructure Sharing are agreed between parties upfront and therefore need not require a resolution process level that "merely delays the resolution".

47.5 TIME agreed with the MCMC's preliminary view thus far that "the industry do not face much issues on resolving disputes due to sufficient dispute resolution processes already in place which is based on MSA 2009 and stated in the existing AAs".

47.6 TM commented that "taking into consideration no dispute between operators until today", it supports the MCMC's view that no substantive change is required to the dispute resolution procedures.

Discussion

47.7 The MCMC notes the overwhelming support from operators that no substantive change to the Dispute Resolution Procedures is required, with the exception of edotco's submission which proposed the establishment of a formal appeal tribunal.

47.8 The MCMC considers the lack of use of the Dispute Resolution Procedures to date indicates that the industry does not have much issue resolving disputes and, therefore, does not consider there to be a demonstrable need to establish an appeal tribunal.

47.9 The MCMC has also considered the proposal by PPIT to exclude Access Charges to Infrastructure Sharing from the Dispute Resolution Process. For a similar reason as above, the MCMC does not see a strong need to exclude any particular matter from the Dispute Resolution Procedures and therefore declines to make this change. On PPIT's other comment, the MCMC clarifies that the inter-party working group and the Interconnect Steering Group are two steps in the Dispute Resolution Procedures. If the parties to the dispute are able to resolve the dispute at the inter-party working group level, there is no necessity to escalate the dispute to the higher level, i.e. the Interconnect Steering Group. Hence, there is neither duplication nor delay intended in the Dispute Resolution Procedures.

MCMC views

47.10 The MCMC confirms its preliminary view that no substantive change to the Dispute Resolution Process is required.