



Malaysian Communications and Multimedia Commission

**Undertaking to the Malaysian
Communications and Multimedia
Commission**

Pursuant to section 140(3) of the Communications and
Multimedia Act 1998

28 June 2022

Definition and Interpretation

No	Definitions	Interpretation
1.	1800MHz Spectrum	2x5MHz of spectrum in the 1800MHz band (1745-1750/1840-1845MHz), expiring 30 June 2032, or such other date as revised by MCMC.
2.	2100MHz Spectrum	2x10MHz of spectrum in the 2100MHz band (1950-1960/2140-2150MHz), expiring 1 April 2034, or such other date as revised by MCMC.
3.	2600MHz Spectrum	2x20MHz of spectrum in the 2600MHz band (2530-2540/2650-2660MHz, and 2560-2570/2680-2690MHz), expiring 30 June 2027, or such other date as revised by MCMC
4.	Audit Report	Audit Report based on accepted Malaysian auditing standards as agreed and accepted by MCMC.
5.	Closing	The date of completion of the merger transaction
6.	Divestment Spectrum	1800MHz spectrum, 2100MHz spectrum and 2600MHz spectrum
7.	Divestiture Period	The period of eighteen (18) months from Closing
8.	Divestment Business	The business the Applicant commits to divest i.e. Yoodo
9.	Effective Date	Date of registration of the undertaking
10.	Expiry Date	Three (3) years from date of application to register the undertaking
11.	Integration Period	The period of three (3) years from Closing
12.	MergeCo	The post-closing holding company of the Applicant (to be named "Celcom Digi Berhad")
13.	MergeCo Wholesale Business	The business of MergeCo offering Wholesale Services to MVNOs
14.	MVNO	Mobile Virtual Network Operator
15.	Network Integration Completion	Completion of network site consolidation, expected within three (3) years of Closing
16.	Undertaking	Means this undertaking provided by the Applicant under subsection 140(3) of the CMA
17.	Wholesale Services	Refers to facilities and/or services for access to the mobile network of the MergeCo used to provide public cellular services to the public, for the purpose of a MVNO providing retail mobile communications services to end customers, which may include access to the facilities and services used by MergeCo to provide: (a) voice, data and other application services, as selected by the MVNO; and (b) services over mobile networks including GSM, LTE, IMT-Advanced, LTE-Advanced and any other mobile networks that are available.
18.	Yoodo	The product brand currently owned and operated by Celcom, offering fully digital and customisable retail mobile telecommunications plans, including mobile data, voice, SMS as well as roaming and other international direct dial services, to subscribers under the "Yoodo" brand.

1. Persons giving the Undertaking

- 1.1. This Undertaking is given to the Malaysian Communications and Multimedia Commission (“**MCMC**”) by Celcom Axiata Berhad (“**Celcom**”) and Digi Telecommunications Sdn. Bhd. (“**Digi**”) (collectively referred to as the “**Applicant**”) for the purpose of an authorisation of the proposed merger between Celcom and Digi.Com Bhd (“**Digi.Com**”) (hereafter referred to as “**Proposed Merger**”) under subsection 140(3) of the Communications and Multimedia Act 1998 (“**CMA**”).

2. Background

Parties to the Proposed Merger

- 2.1. On 21 June 2021, Axiata Group Berhad (“**Axiata**”) and Digi.Com entered into a share purchase agreement to combine their respective telecommunications businesses in Malaysia i.e. Celcom and Digi.
- 2.2. Digi.Com is the current holding company of Digi, and will assume full ownership of Celcom by way of the following transactions:
- 2.2.1. Axiata will transfer 100% of its equity interest in Celcom to Digi.Com; and
 - 2.2.2. Digi.Com will issue new shares to Axiata and Telenor Asia Pte. Ltd. such that each recipient entity will hold 33.10% of Digi.Com total issued share capital; and
 - 2.2.3. Axiata together with Malaysian institutional funds will own over 51% of the MergeCo.
- 2.3. Upon completion of the Proposed Merger, Digi.Com will become the holding company of both Celcom and Digi, with the operations of both entities merged, subject to the terms of this Undertaking.

Applicant’s Background

Digi

- 2.4. Digi.Com is listed on Bursa Malaysia and its mobile service operations are undertaken by its subsidiary, Digi. Digi commenced operations in May 1995 when it launched its fully digital GSM1800 services. It offers mobile voice, data, roaming and value-added services on both prepaid and postpaid plans. Over the last twenty-six (26) years, Digi had established a mobile network with 10.32 million subscribers¹ (as at Q4 2021). Digi

¹ https://digi.listedcompany.com/misc/InvestorPresentation/4Q2021_Investor_Pres.pdf

currently holds an individual Network Facilities Provider (“**NFP**”) licence and an individual Network Service Provider (“**NSP**”) licence, both of which are valid until 2025, and an Applications Service Provider (“**ASP**”) class licence. Additionally, Digi operates a nationwide mobile network, utilising spectrum in the 900 MHz, 1800 MHz, 2100 MHz and 2600 MHz bands.

Celcom

- 2.5. Celcom was incorporated in Malaysia on 5 January 1988 and commenced business on 21 August 1989. It offers mobile voice, data, roaming and value-added services on both prepaid and postpaid plans. Celcom’s business is focused on the domestic mobile services segment, and it operates a nationwide mobile network utilising 900 MHz, 1800 MHz, 2100 MHz and 2600 MHz spectrum bands. Celcom currently holds an individual NFP licence and an individual NSP licence, both of which are valid until 2025, and an ASP class licence. As at Q4 2021, Celcom has 9.60 million subscribers.²

3. MCMC’s assessment on the Proposed Merger

- 3.1. On 23 September 2021, MCMC commenced Phase 1 assessment of the Proposed Merger upon receiving a complete Form 1 on Application for Assessment on Mergers and Acquisitions and on 23 November 2022, MCMC commenced Phase 2 assessment upon receiving a complete Form 2 on Application for Assessment on Mergers and Acquisitions.
- 3.2. On 1 April 2022, MCMC issued a Statement of Issues (“**SOI**”) to the Applicant. The SOI sets out MCMC’s preliminary view on competition effects that could arise from the Proposed Merger and invited the Applicant to submit their comments and remedies to address the concerns.

MCMC’s competition concerns

- 3.3. MCMC’s preliminary assessment indicated that the Proposed Merger is likely to raise competition concerns in the following communications markets:
- 3.3.1. the national retail market for mobile and low-speed fixed broadband and data services, including the related local distribution channel market(s);
 - 3.3.2. the national retail market for mobile voice and Person-to-Person (“**P2P**”) messaging services, including the related local distribution channel market(s);
 - 3.3.3. the national wholesale market for mobile voice and P2P messaging services (including network sharing arrangements); and

² <https://www.axiata.com/investors/quarterly-results/>

- 3.3.4. the national wholesale market for mobile broadband services (including network sharing arrangements).
- 3.4. As such the Applicant reverted with proposed remedies to alleviate MCMC's competition concerns namely in five (5) areas i.e. spectrum, mobile virtual network operators ("MVNO") arrangement, prepaid divestment, resellers and branding.
- 3.5. The Applicant has agreed to provide this Undertaking and MCMC is authorising this conduct (i.e. the merger as described in this Undertaking) under section 140 of the CMA, on condition that the Undertaking is provided. The remedies provided will address the MCMC's concerns about the Proposed Merger having the purpose or effect of substantially lessening of competition ("SLC") in the identified communications markets as per paragraph 3.3.

Undertakings

- 3.6. The Applicant hereby undertakes that it shall commit to carry out the following undertakings to alleviate MCMC's concerns:

Spectrum Divestment

- 3.7. The Applicant shall divest a total of 70MHz of spectrum in the following three (3) bands (each referred to as a "Band") to address the issue of spectrum concentration post-merger.
- 3.7.1. Divest 10MHz in the 1800MHz spectrum band
- 3.7.2. Divest 20MHz in the 2100MHz spectrum band
- 3.7.3. Divest 40MHz in the 2600MHz spectrum band
- 3.8. The Applicant shall complete technical handover of the Divestment Spectrum by the earlier of the date of Network Integration Completion and the expiry of the Integration Period, which is at most **three (3) years** from Closing. The spectrum divestment will occur in the form of the spectrum being returned to MCMC in phases during the 3-year period.
- 3.9. The Applicant shall return to MCMC the first Band of Divestment Spectrum within **two (2) years** from Closing. The Applicant shall return to MCMC the second and third Bands of the Divestment Spectrum within **three (3) years** from Closing. The Applicant will notify MCMC **six (6) months** after Closing, of which Band will be returned within **two (2) years** from Closing and which Bands will be returned within **three (3) years** from Closing.
- 3.10. The Applicant shall bear all the fees and charges associated with spectrum divestment and technical handover.

3.11. MCMC will compensate the Applicant on a prorated basis for the remaining duration of the spectrum assignments and/or apparatus assignment, after undertaking due diligence, following the handover of the spectrum in the related spectrum Bands.

MVNO Wholesale Remedy

3.12. The Applicant will ensure MVNOs are no worse off (compared to the position immediately prior to the Effective Date) and there is continuity of access for existing and new MVNOs to wholesale services provided by MergeCo for a duration of **three (3) years** from Closing.

3.13. In fulfilling its obligations, the Applicant must:

3.13.1. ensure the continuity of access to wholesale services for existing and new MVNOs for the duration of **three (3) years** from Closing by (subject to acceptance by MVNOs):

- (a) ensuring fair pricing, fair and non-discriminatory access and to maintain and promote healthy competition in the retail and wholesale mobile market;
- (b) introducing price capping (no increase from current rate as at the Effective Date);
- (c) removal/waiver of any contractual lock-in agreements in place as at the Effective Date; and
- (d) implementing fair usage policy to ensure any excessive usage by MVNOs and their subscribers is charged fairly.

3.13.2. The Applicant will establish a separate independent MVNO wholesale business ("**MVNO Business Unit**") and transfer the MergeCo Wholesale Business to the MVNO Business unit, thereby ensuring separation from MergeCo's retail mobile business, within **six (6) months** from Closing. The Applicant shall maintain the separation for a period of **three (3) years** after implementing transfer to MVNO Business Unit.

- (a) The Head of MVNO business unit will report directly to the Chief Executive Office ("**CEO**") and administratively to a CxO in MergeCo's fixed line business unit (the "**Fixed CxO**"). The structure of the MVNO Business Unit will be as contained in **Schedule 1** of this Undertaking.
- (b) The MVNO Business Unit shall maintain a Reference Access Offer and make its services available to all new and existing MVNOS through

commercially negotiated access agreements, unless otherwise agreed by an MVNO.

- (c) The Head of MVNO is empowered to make all decisions pertaining to the commercial terms of MVNO access agreements (including, but not limited to, wholesale pricing), independent of the Fixed CxO. Matters pertaining to the commercial terms of MVNO access agreements and pricing shall not be discussed with or otherwise disclosed to the Fixed CxO or the Management Committee. Similarly, matters pertaining to retail mobile pricing of MergeCo shall not be discussed with or otherwise disclosed to the Head of the MVNO Business Unit.
- (d) The relationship and reporting lines between the Head of the MVNO Business Unit and the Fixed CxO will be limited to administrative and human resource matters only which amongst others include approval of Head of the MVNO Business Unit's:
 - (i) annual leave;
 - (ii) expenses and benefits claims;
 - (iii) operating budget such as travel, entertainment, team-building, training, etc (i.e. not related to commercial terms of the MVNO agreements or arrangements); and
 - (iv) approval of hiring, training and career development plans for employees of the MVNO Business Unit.
- (e) The relationship and reporting lines between the Head of the MVNO Business Unit and CEO will cover all strategic and operational areas related to the MergeCo's wholesale business, which includes:
 - (i) Setting of the MVNO's Business Unit's targets and investment, including KPI for the Head of the MVNO Business Unit;
 - (ii) Evaluation of the Head of the MVNO Business Unit KPIs and performance;
 - (iii) Performance management and monitoring of the MVNO Business Unit; and
 - (iv) Decisions relating to wholesale pricing, access, and other contractual terms of new and existing MVNOs.

Prepaid Divestment – Yoodo

- 3.14. The Applicant undertakes to divest the business of Celcom’s Yoodo brand (that is, the **Divestment Business**) within **eighteen (18) months** from Closing via a sales auction process at a minimum floor price no less than the cost incurred by the Applicant in providing the products and services.
- 3.15. If the Applicant fails to divest the Divestment Business **within eighteen (18) months** from Closing, the Applicant commits to cease Yoodo’s operation **within three (3) months** of the expiry of Divestiture Period.
- 3.16. This divestment of the Divestment Business includes:
- 3.16.1. All tangible and intangible assets (including intellectual property rights) used exclusively by Yoodo or which are necessary for the operation of the Yoodo business;
 - 3.16.2. The employment or engagement of personnel who exclusively and predominantly work for Yoodo to the purchaser (which personnel, if consent to transfer with Yoodo is required by law, has given such consent);
 - 3.16.3. all contracts, leases, and commitments related to Yoodo; and
 - 3.16.4. all subscribers, credit and other business records of Yoodo.
- 3.17. The Divestment Business shall not include assets not used exclusively by Yoodo or are not otherwise necessary for the operation of Yoodo.
- 3.18. The Applicant shall make available to the purchaser the details of all suppliers currently supporting the operation of Yoodo.
- 3.19. The purchaser of Yoodo shall be independent of the Applicant and its stakeholders.
- 3.20. The Applicant shall, for a period of **three (3) years** after the completion of the sale of the Divestment Business, not acquire, whether directly or indirectly, the possibility of exercising influence over the whole or part of the Divestment Business, unless otherwise approved by MCMC.
- 3.21. Upon cessation of Yoodo’s operations in accordance with paragraph 3.15 above, the Applicant shall not restore or otherwise revive the Yoodo brand.
- 3.22. The Applicant shall not absorb directly or indirectly Yoodo’s subscribers from the Effective Date until the **three (3) year period** referred to in paragraph 3.20 has expired.
- 3.23. At the option of the purchaser (who shall communicate its uptake of such option within a deadline prior to completion of the sale of the Divestment Business), the Divestment Business would include the benefit, for a transitional period of up to **six (6) months**

after the date of completion of the sale of the Divestment Business and on terms and conditions to be negotiated, of all current arrangements under which the Applicant supplies products or services to Yoodo, provided that the supply of such products and services shall be provided:

- 3.23.1. in the same manner as provided during the last **twelve (12) months** prior to completion of the sale of the Divestment Business, save for a reasonable ramp-down of those supplies by the end of the transitional period;
 - 3.23.2. at the current consideration but at no less than the costs incurred by the Applicant in providing the products and services; and
 - 3.23.3. on a reasonable efforts basis with liability of the Applicant to the purchaser being limited to events of wilful misconduct.
- 3.24. In order to enable potential purchasers to carry out reasonable due diligence of the Divestment Business, the Applicant shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process, provide potential purchasers sufficient information with regards to the Divestment Business.

Retail Distribution Dealership Remedy

3.25. The Applicant undertakes the following:

- 3.25.1. Before the expiry of the Integration Period i.e. **three (3) years** from closing, to remove exclusive arrangements with its exclusive distributors³ in Sabah, Labuan, Sarawak, Terengganu, Pahang and Kelantan; and
- 3.25.2. For a period of **three (3) years** after Closing, the Applicant will not enter into any new exclusivity arrangements with exclusive distributors or other distributors in these regions, unless otherwise approved by MCMC.

3.26. The list of exclusive distributors is contained in **Schedule 2** of this Undertaking.

Single Corporate Brand

- 3.27. The Applicant will position Digi and Celcom's prepaid and postpaid brands as products under a single corporate brand **within two (2) years** from Closing.
- 3.28. The Applicant shall ensure that the processes and systems are in place to fulfil the commitment in paragraph 3.27 within the specified duration.

³ Exclusive distributors are distributors servicing non-Celcom or Digi branded retail outlets with whom the Applicant has entered into contractual arrangements for the exclusive sale and distribution of retail mobile telecommunications services in specific geographical locations.

4. Commencement and terms of the Undertaking

- 4.1. This Undertaking comes into effect (Effective Date) when MCMC accepts and registers this Undertaking.
- 4.2. In accordance with subsection 111(3) of the CMA, an undertaking will expire **three (3) years (Expiry Date)** from the date of the application to register the undertaking. The Applicant undertakes to submit a new undertaking **six (6) months** prior to the Expiry Date of this Undertaking to fulfill the requirements under this Undertaking that extend beyond the Expiry Date.
- 4.3. As the timelines stipulated in this Undertaking will commence from Closing, the Applicant is required to notify MCMC of the official date of Closing on or around the date of Closing.

5. Cessation of ongoing obligations

Withdrawal

- 5.1. In line with subsection 140(4) and section 113 of the CMA, the Applicant may withdraw this Undertaking at any time by notifying MCMC in writing.
- 5.2. Upon withdrawal of this Undertaking, the authorisation corresponding to this Undertaking shall be deemed never to be given and the conduct may be subjected to regulatory actions.
- 5.3. Without limiting paragraph 6, the MCMC may, at any time, revoke its acceptance of this Undertaking and the authorisation corresponding to this Undertaking shall be deemed never to be given if the MCMC becomes aware that any information provided to it at any time by the Applicant was false or misleading other than in an immaterial respect.

Survival

- 5.4. This Undertaking will continue to be enforceable unless and until the earlier of:
 - 5.4.1. this Undertaking is withdrawn by the Applicant in accordance to section 113 of the CMA;
 - 5.4.2. a new undertaking has been registered in accordance to section 114 of the CMA; or
 - 5.4.3. the Expiry Date.

6. Enforcement

- 6.1. The Applicant acknowledges and agrees that MCMC may apply to court for the enforcement of this Undertaking if this Undertaking has not been complied with in accordance with the CMA.
- 6.2. Without limiting the MCMC's powers under the CMA and otherwise at law, the Applicant acknowledge and agree that MCMC may take action against the Applicant at any time during the period of Undertaking on the following grounds:
 - 6.2.1. the information provided by the Applicant to MCMC was false or misleading other than in an immaterial respect;
 - 6.2.2. if the Proposed Merger effected is materially different to the transaction submitted to MCMC for assessment; or
 - 6.2.3. there has been a material change of circumstance since MCMC approved the application for authorisation of conduct.

7. Reporting Obligation

- 7.1. From the date of Closing, and until each undertaking is fulfilled, MCMC has the rights to supervise and inspect the Applicant and MergeCo in connection with this Undertaking.
- 7.2. The Applicant is required to report their compliance with this Undertaking to MCMC on a quarterly basis, commencing no less than **three (3) months** after the Effective Date.

8. Independent Audit

Obligation to appoint an Approved Independent Auditor

- 8.1. The Applicant must, at their own cost, appoint within **three (3) months** of the Effective Date and maintain throughout the term of this undertaking the appointment of an approved independent auditor to audit and report the Applicant's compliance with this undertaking.
- 8.2. MCMC shall have the discretion to approve or reject in writing with regards to the identity of the proposed independent auditor proposed to be appointed by the Applicant.
- 8.3. Without limiting MCMC's discretion in deciding whether to approve a proposed independent auditor, the factors that MCMC may have regard to include:

- 8.3.1. the qualification and experience of the identified auditor;
 - 8.3.2. whether the identified auditor is fully independent of the Applicant; and
 - 8.3.3. whether draft terms of the appointments and the draft audit plan are consistent with this undertaking and acceptable to MCMC.
- 8.4. MCMC may revoke an approved independent auditor's status if MCMC becomes aware that any information provided to it in relation to the appointment of the approved independent auditor was incorrect, inaccurate or misleading.
- 8.5. If MCMC rejects a proposed independent auditor or revokes approval of an approved independent auditor, the Applicant must promptly propose a new independent auditor in accordance with this paragraph 8.
- 8.6. If the Applicant does not promptly appoint (or re-appoint) an independent auditor in accordance with this paragraph 8, MCMC may appoint such an auditor and they will be considered to be the approved independent auditor for the purposes of this Undertaking.

Audit Report

- 8.7. The approved independent auditor must conduct an audit and prepare a detailed report ("**Audit Report**") that includes:
- 8.7.1. the approved independent auditor's procedures in conducting the audit, or any change to audit procedures and processes since the previous Audit Report;
 - 8.7.2. a full report of the Applicant's compliance with this Undertaking;
 - 8.7.3. identify any areas of uncertainty or ambiguity contained in this Undertaking;
 - 8.7.4. all the reasons for the conclusions reached in the Audit Report;
 - 8.7.5. any qualifications made by the approved independent auditor in forming his or her views;
 - 8.7.6. any recommendations by the approved independent auditor to improve the audit plan, the auditing process, the Applicant's processes or reporting systems in relation to the compliance with this Undertaking and the Applicant's compliance with this Undertaking; and
 - 8.7.7. the implementation and outcome of any prior recommendations by the approved independent auditor.
- 8.8. The approved independent auditor shall provide an Audit Report to MCMC within 30 days from the end of each quarter in a calendar year while this Undertaking is in force.
- 8.9. The Applicant must implement any recommendations made by the approved independent auditor in the Audit Report, and notify MCMC of the implementation of the

recommendations, within **ten (10) business days** after receiving the Audit Report or such other period as agreed in writing with MCMC.

9. Disclosure of this Undertaking

- 9.1. The Applicant acknowledges that MCMC shall maintain a register of this Undertaking, in both physical form and electronic media as provided for under section 81 of the CMA.

10. No Derogation

- 10.1. This Undertaking does not prevent MCMC from taking enforcement action at any time whether during or after the period of this Undertaking in respect of any breach by the Applicant of any term of this Undertaking.
- 10.2. Nothing in this Undertaking is intended to restrict the right of MCMC to take action under the CMA in the event that the Applicant does not fully implement and/or perform its obligations under this Undertaking or in any other event where MCMC decides to take action under the CMA for other non-compliances.

11. Costs

- 11.1. The Applicant shall bear all costs incurred in relation to this Undertaking, including the costs of any independent auditor appointed pursuant to section 8.

12. Governing Law

- 12.1. The Applicant recognises and acknowledges that this Undertaking shall be governed and construed in all respects in accordance with the Malaysian law.
- 12.2. In the event of a dispute or claim arising from this Undertaking, the Applicant undertakes to submit to the courts of Malaysia.

13. Notices

- 13.1. Any notice or communication to the MCMC pursuant to this Undertaking must be sent to:

Head, Market Regulation Division

Malaysian Communications and Multimedia Commission

MCMC Tower 1, Jalan Impact

63000 Cyberjaya

Selangor.

Executed as an Undertaking

Executed by Celcom Axiata Berhad and Digi Telecommunications Sdn. Bhd. pursuant to section 140(3) of the CMA.

Sign by
For and on behalf of
CELCOM AXIATA BERHAD
(Company Reg. No.: 198801000113
(167469-A))
Date: 28 June 2022

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DATUK IDHAM NAWAWI
Chief Executive Officer

Sign by
For and on behalf of
DIGI TELECOMMUNICATIONS SDN BHD
(Company Reg. No.: 199001009711
(201283-M))
Date: 28 June 2022

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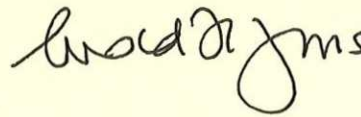


PRAVEEN RAJAN
Director & Acting Chief Executive Officer

Accepted by Malaysian Communications and
Multimedia Commission pursuant to section
140(3) of the Communications and Multimedia
Act 1998

Sign by
For and on behalf of
MALAYSIAN COMMUNICATIONS AND
MULTIMEDIA COMMISSION
Date: 28 June 2022

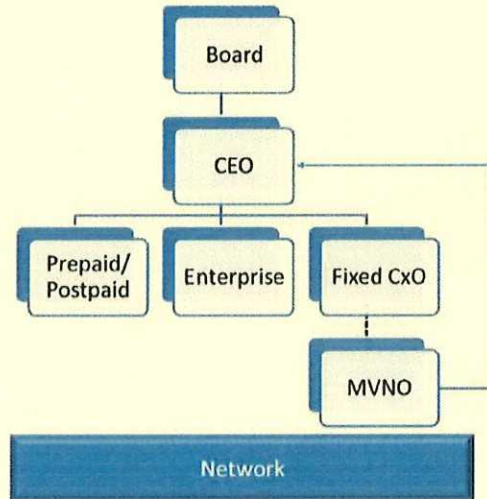
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MOHD ALI HANAFIAH MOHD YUNUS
Chief Operating Officer

SCHEDULE 1: MVNO BUSINESS UNIT SEPARATION STRUCTURE

Structure of MVNO Business Unit



SCHEDULE 2: LIST OF RETAIL EXCLUSIVE DISTRIBUTORS

Distributor	Location	Touchpoints
[C-I-C]	Sabah & Labuan	[C-I-C]
[C-I-C]	Sarawak	[C-I-C]
[C-I-C]	Kelantan, Pahang & Terengganu	[C-I-C]
Total		4,801