



Malaysian Communications and Multimedia Commission

**PUBLIC INQUIRY REPORT ON ASSESSMENT OF
DOMINANCE IN COMMUNICATIONS MARKET - ERRATA**

Due to an inadvertent oversight, the MCMC is issuing the following errata to replace section 28.3 on pages 127 to 128 of the Public Inquiry Report on Assessment of Dominance in Communications Market. All other parts of the Public Inquiry Report shall remain the same. The MCMC would like to offer its sincere apologies for the omission.

28.3 The MCMC's Final Views

The MCMC has considered the range of responses concerning access to dark fibre and notes that there was a wide variety of views that have aided the MCMC in its understanding of this market and the assessment of dominance.

The MCMC has considered the criticism of its market definition raised by Fibrecomm, Telekom Malaysia and P1, that access to dark fibre cannot constitute a market because it is not a product that operators sell in its pure form and that most operators have dark fibre of their own.

The MCMC notes this argument but considers that there are several conclusions that can be drawn from this information. The fact that this product is not available in its pure form may be an indication that there is an absence of competition, or that dominant players in the market are withholding access to dark fibre from their competitors. The MCMC considers that the current absence of dark fibre as a product in the Malaysian communications markets does not necessarily mean that there is no market for such products.

There were mixed views from the respondents as to whether there were effective substitutes for dark fibre, with Altel supporting the MCMC's market definition and stressing the importance of dark fibre for backhaul purposes and noting that tails and inter-exchange transmissions are not effective substitutes because fibre provides for a much higher degree of scalability and economies of scale. Telekom Malaysia and U Mobile have noted that there are other substitutes for dark fibre, mainly transmission technologies such as copper networks, however the MCMC is persuaded by the consideration that these transmissions technologies do not offer the scalability or economies of scale that dark fibre does which is increasingly relevant with larger volumes of traffic.

The MCMC has considered Celcom's argument that SBCs should also be declared dominant in their respective states as some do not allow trenching. The MCMC notes that this is a disconcerting development however, this does not necessarily mean that the SBC is dominant; the question of whether trenching is permitted would inform the question of whether there are barriers to entry in this market, but it does not mean that SBCs own, control, or even have market power over access to dark fibre. This is but one competitive constraint on the access to the dark fibre market, and by itself is not enough to prompt a finding of dominance in relation to SBCs.

The MCMC carefully considered Maxis' comment that Fiberail and Fibrecomm should also be declared dominant together with Telekom Malaysia as they are partially owned or controlled by Telekom Malaysia. The MCMC understands that this view is not out of step with the MCMC's own position in the market for Transmission (inter-exchange) where it found Telekom Malaysia, Fibrecomm and Fiberail dominant in the aggregate. However, in that particular market there was clear market data that showed that Fiberail and Fibrecomm both owned extensive backbone networks across key transmission routes such as Peninsular Malaysia.

The MCMC notes Telekom's Malaysia's response that the preliminary finding of dominance was incorrect based on the principle that the market should not have been defined. For the reasons set out above the MCMC considers the market for access to dark fibre was correctly defined.

The MCMC notes that responses varied in their ultimate conclusions of how many operators should be assessed as dominant. The MCMC also notes that Telekom Malaysia is not the only operator who owns dark fibre infrastructure and that there are many others such as TIME, Maxis and Celcom Timur who have similar infrastructure. In addition, the MCMC is also concerned that a declaration of dominance in this market may further detract investment in dark fibre.

The MCMC's final view is that there is a national market for the wholesale provision of access to dark fibre, however, since there are many operators who own dark fibre infrastructure, the MCMC does not believe that it is appropriate at this time to make findings on dominance. In addition, as stated above, the MCMC is also concerned about future investment in dark fibre.

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