



**Malaysian Communications and Multimedia Commission**

# **Guidelines on Authorisation of Conduct**

**17 May 2019**

This document is issued as a source of information to interested parties and the general public. The information in this document is intended as a guide only. For this reason, it should not be relied on as legal advice or regarded as a substitute for legal advice in individual cases. The information contained in this document may be subjected to changes without notice.

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Malaysian Communications and Multimedia Commission  
MCMC Tower 1, Jalan Impact, Cyber 6, 63000 Cyberjaya, Selangor Darul Ehsan.  
Tel: +60 3 86 88 80 00 Fax: +60 3 86 88 10 00  
[www.mcmc.gov.my](http://www.mcmc.gov.my)

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**Foreword**

These Guidelines have been prepared by the Malaysian Communications and Multimedia Commission ("Commission") and sets out procedures to submit an application on Authorisation of Conduct pursuant to section 140 of the Communications and Multimedia Act 1998 ("CMA"). It is intended primarily for licensees under the CMA who want to seek an authorisation for conducts that may have the purpose or effect of substantially lessening competition in a communications market.

These Guidelines may be revised by the Commission from time to time.

## 1. Introduction

### Legislative context

- 1.1. Part VI, Chapter 2 of the Communications and Multimedia Act 1998 ("**CMA**") contains provisions on general competition practices. The main thrust of the chapter is on prohibitions of anti-competitive conduct in a communications market in order to promote competition and efficiency in the said market.
- 1.2. Although not explicitly stated, the CMA recognises that there may be circumstances where efficiency objectives differ from national objectives. To ensure that national objectives prevail over other objectives, including efficiency objectives, the CMA has provided for exceptions where licensees can seek for an authorisation of conduct, if the said conduct is construed to have the purpose or effect of substantial lessening of competition, but is in the national interest.<sup>1</sup>
- 1.3. The CMA provides that the Malaysian Communications and Multimedia Commission ("Commission") shall authorise a conduct if the Commission is satisfied that the said conduct is in the **national interest**.<sup>2</sup> In addition, the Commission may require the licensee to submit an undertaking in relation to the authorisation.<sup>3</sup> Licensees can subsequently withdraw the undertaking given in pursuit of an authorisation and in such circumstances, the authorisation that was granted based on the undertaking provided by the licensee will be deemed to have never been given.<sup>4</sup> A licensee can withdraw an application for authorisation of a conduct at any time.<sup>5</sup>
- 1.4. The term 'conduct' is not defined in the CMA or any of its subsidiary legislations. However, the Commission considers it to include commercial and other activities that are undertaken by a licensee in a communications market.<sup>6</sup> The Commission considers that the term 'conduct' could include, for example:
  - (a) entering into or giving effect to a contract with another party;
  - (b) decisions on price setting;
  - (c) decisions on the marketing of products or services;
  - (d) decisions to supply or not supply products or services;
  - (e) decisions on the quality of products or services offered; and
  - (f) a merger or acquisition.<sup>7</sup>

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<sup>1</sup> Subsection 140(1) of the CMA.

<sup>2</sup> Subsection 140(2) of the CMA.

<sup>3</sup> Subsection 140(3) of the CMA.

<sup>4</sup> Subsection 140(4) of the CMA.

<sup>5</sup> Subsection 140(5) of the CMA.

<sup>6</sup> For a more detailed explanation of the term 'conduct', please refer to the Guideline on Substantial Lessening of Competition (24 September 2014) issued by the Commission.

<sup>7</sup> For a detailed explanation of transactions that the Commission deems to be a merger or acquisition, please refer to the Guidelines on Mergers and Acquisitions (17 May 2019) issued by the Commission.

**An overview and scope of authorisation**

- 1.5. Licensees who apply for authorisation of conduct are in fact seeking for immunity from any legal proceedings that may be undertaken by the Commission for contravening the competition provisions of the CMA. The conduct in question is likely to yield considerable benefits to the licensee and possibly to consumers at large, but is against the objective of the CMA that promotes competition. Prior to authorising the conduct, the Commission has to ensure that the benefits of the conduct from the perspective of national interest are greater than the detrimental effect that the conduct is likely to yield by substantially lessening competition.
- 1.6. Licensees should apply for authorisation of a conduct prior to engaging in any conduct that may be construed to have the purpose or effect of substantially lessening competition in a communications market. The Commission takes the view that insofar as a conduct is likely to lead to substantial lessening of competition but is in the national interest, an application should be submitted to the Commission to seek authorisation for the said conduct.
- 1.7. The process of assessing an application for authorisation as set out in Annexure 1 of these Guidelines, is independent of the assessment of substantial lessening of competition and assessment of dominance as set out in the Guideline on Substantial Lessening of Competition and Guideline on Dominant Position (both issued by the Commission). In the process of assessing an application on authorisation of conduct, if the evidence in the preliminary phase indicates that the licensee may be in a dominant position, the assessment of dominance will not be addressed within the context of authorisation of conduct. However, the licensee's case could be adversely affected by the existence of the prima facie evidence of dominance.
- 1.8. The scope of authorisation does not extend to prohibitions on entering into collusive agreements and tying and linking arrangements as per section 135 and section 136 of the CMA respectively as the Commission considers that these are per se prohibitions and the detrimental effects of these conducts have far reaching implications on the development of competition in the communications markets.
- 1.9. The conducts that are specifically prohibited under section 135 of the CMA are as follows:
  - (a) Rate fixing;
  - (b) Market sharing;
  - (c) Boycott of a supplier of apparatus; and
  - (d) Boycott of another competitor

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- 1.10. Section 136 of the CMA stipulates that a licensee shall not, at any time or in any circumstances, make it a condition for the provision or supply of a product or service in a communication market that the person acquiring such product or service in the communications market is also required to acquire or not to acquire any other product or service either from himself or from another person.

### Related Processes

- 1.11. The Guidelines on Mergers and Acquisitions create a process by which licensees may voluntarily apply to the Commission to assess whether their merger or acquisition, breaches or would breach the prohibition in section 133 of the CMA,<sup>8</sup> or would require the Commission to exercise its power to direct the licensees to cease their conduct in a communications market which has or may have the effect of substantially lessening competition in any communications market under subsection 139(1)<sup>9</sup> of the CMA.
- 1.12. The Commission will permit licensees to submit an application for authorisation of conduct in respect of a merger or acquisition before, during or after submitting an application for assessment pursuant to the Guideline on Mergers and Acquisitions, using Form 2, which can be found in Appendix 3 of this Guideline.

### Structure of the Guidelines on Authorisation of Conduct

- 1.13. These Guidelines are structured in the following manner:

- Section 2** Provides explanation on how a licensee can apply for authorisation of a conduct and the relevant information that should be lodged together with the application;
- Section 3** Illustrates the procedures that will be followed by the Commission in assessing an application for authorisation of a conduct and the corresponding timelines;
- Section 4** Describes the type of analysis that is likely to be carried out by the Commission; and
- Section 5** Provides contact details of the Commission.

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<sup>8</sup> Pursuant to section 133 of the CMA, licensees must not engage in any conduct which has the purpose of substantially lessening competition in a communications market.

<sup>9</sup> Pursuant to subsection 139(1) of the CMA, the Commission may direct a licensee in a dominant position in a communications market to cease a conduct in that communications market which has, or may have, the effect of substantially lessening competition in any communications market, and to implement appropriate remedies.

## 2. Application for Authorisation of Conduct

### Information requirement

- 2.1. Licensees who submit an application for authorisation of conduct must ensure that comprehensive information is provided to support the application. The basic information that should be submitted is as follows:
- (a) Name and company registration number;
  - (b) Registered address and contact details;
  - (c) Markets that the conduct is likely to affect;
  - (d) Market characteristic;
  - (e) The time frame for which authorisation is sought;
  - (f) Benefits of the conduct from the perspective of national interest;
  - (g) Who is likely to benefit from the conduct;
  - (h) How are the benefits distributed; and
  - (i) How has the conduct been framed to minimise anti-competitive effect?
- 2.2. Licensees who submit an application for authorisation of conduct, which the Commission deems to be a merger or acquisition must also provide the Commission with the information (Form 1) set out in **Annexure 2** of these Guidelines, application on assessment of Mergers and Acquisitions.<sup>10</sup>
- 2.3. Applications for authorisation may contain information that is confidential. In such instances, the licensee should provide such information in a separate annexure, clearly marked as 'confidential'.

### Application Form

- 2.4. Applications for authorisation must be submitted through a pro-forma application form (Form 2) as set out in **Annexure 3** of these Guidelines.
- 2.5. Any information provided in addition to the pro-forma application (including any additional information required from licensees who submit applications for authorisation of conduct which the Commission deems to be a merger or acquisition) should be submitted as an annexure to that form.
- 2.6. Applicants are required to provide sufficient information to facilitate the assessment to be carried out by the Commission. The Commission may request for additional information, as and when required, if the information provided by the applicant is deemed insufficient.

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<sup>10</sup> Annexure 1 to the Guidelines on Mergers and Acquisitions provides a form that must be completed when a licensee applies for assessment of a merger or acquisition under the said guidelines. The Commission uses the information provided in that form to undertake a Phase 1 review to assess whether a merger or acquisition has the purpose or has, or may have the effect of substantially lessening competition in a communications market.

### **Indicative timeframe**

- 2.7. The Commission has set out an indicative process and the corresponding timelines in **Annexure 1** of these Guidelines. These timelines may be reviewed by the Commission, taking into account the practical consideration in applying the process set out in this annexure.

### **Withdrawal of application**

- 2.8. In accordance with subsection 140(5) of the CMA, licensees may at any time withdraw an application for authorisation of conduct.

### **Undertakings**

- 2.9. Subsection 140(3) of the CMA stipulates that before authorising a conduct, the Commission may request a licensee to submit an undertaking regarding his conduct in any matter relevant to the authorisation. A licensee can also provide an undertaking on its own accord to supplement the application on authorisation of conduct pursuant to section 110 of the CMA.
- 2.10. In line with subsection 140(4) and section 113 of the CMA, a licensee can subsequently withdraw an undertaking that was provided in pursuit of an authorisation of conduct by notifying the Commission in writing. Upon withdrawal of an undertaking, the authorisation corresponding to the undertaking will be deemed as if the same was never given.
- 2.11. An undertaking that is provided in relation to authorisation of conduct shall comply with the provisions on undertaking in Chapter 11, Part V of the CMA and any rules regarding undertakings that may be published by the Minister in the Gazette pursuant to section 112 of the CMA.

### **Register of Authorisations**

- 2.12. All authorisation of conduct granted by the Commission under section 140 of the CMA will be duly registered pursuant to section 141 of the CMA. The register is likely to contain details such as name of the licensee, the conduct for which authorisation is sought and the conditions that are attached to the authorisation. In addition to that, MCMC may also publish a report that outlines the analysis that was undertaken prior to the decision.

### **Validity Period of Authorisations**

- 2.13. The authorisation of any conduct by the Commission pursuant to section 140 of the CMA will be valid for any period specified by the Commission.



### **3. PROCEDURES FOLLOWED BY THE COMMISSION**

#### **Introduction**

- 3.1. The procedure which will be adopted by the Commission in assessing an application for authorisation of conduct is set out in Annexure 1 of these Guidelines. The procedure can be divided into three (3) phases, namely:
- (a) Preliminary phase;
  - (b) Investigative phase; and
  - (c) Decision making phase.

#### **Preliminary Phase**

- 3.2. The aim of the preliminary phase is to establish the facts of the case. The Commission may, if necessary, undertake initial economic, legal and technical analysis to ascertain whether the conduct in question may lead to substantial lessening of competition. If the Commission undertakes such analysis in respect of the conduct which is deemed to be a merger or acquisition, it will do so pursuant to the assessment procedure set out in the Guidelines on Mergers and Acquisitions.
- 3.3. The preliminary phase will commence when the complete application (inclusive of supporting information) for authorisation is received by the Commission. During the preliminary stage, if the Commission is of the view that the information received is incomplete or insufficient, the Commission may seek clarification or additional information from the licensee who has lodged the application.
- 3.4. The completion of the preliminary phase may take up to thirty (30) days from receipt of a complete application.

#### **Investigative Phase**

- 3.5. The Commission will embark on the investigative phase if the prima facie evidence indicates that the conduct in question will lead to substantial lessening of competition.
- 3.6. The main objective of the investigative phase is to determine, based on the available information, if the conduct should be authorised. This may be a lengthy process in which the Commission will carry out a cost benefit analysis. The Commission may also carry out an inquiry if the conduct in question is of significant interest to consumers or licensees.<sup>11</sup>

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<sup>11</sup> An inquiry is a formal consultative procedure that is stipulated in Part V, Chapter 3 of the CMA.

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- 3.7. The completion of the investigative phase may take up to one hundred and twenty (120) days.

### **Decision making phase**

- 3.8. In this phase, the Commission will decide on the appropriate course of action to be taken based on the findings of the investigative phase. The options that are available to the Commission are:

- (a) Approve the application for authorisation of conduct;
- (b) Approve the application for authorisation of conduct subject to an undertaking submitted by the licensee; or
- (c) Reject the application for authorisation of conduct.

- 3.9. This phase may take up to thirty (30) days to complete.

### *Statement of Issues*

- 3.10. If the Commission reaches the view that it will not authorise the conduct, it may, at its absolute discretion, choose to issue to the applicant with a Statement of Issues setting out the Commission's preliminary findings and the grounds for that view.

- 3.11. If the Commission issues a Statement of Issues in the manner set out in section 3.10 above, the applicant will be given thirty (30) days to provide the Commission with submissions in response.

#### 4. ANALYTICAL FRAMEWORK

##### Authorisation Criteria

- 4.1. Subsection 140(2) of the CMA states that the Commission can authorise a conduct if the Commission is satisfied that the authorisation is in the national interest. The Commission is of the view that the best guide as to what is in the national interest is provided by the national policy objectives that are stipulated in subsection 3(2) of the CMA.
- 4.2. In line with this position, the Commission will use the national policy objectives as per subsection 3(2) of the CMA as the basis to decide whether or not a conduct should be authorised. The national policy objectives are extracted in Box 1 below.

**Box 1: National Policy Objectives**

- (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 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.

- 4.3. The Explanatory Statement to the Communications and Multimedia Bill sets out specific objectives for the economic regulation in Part VI.<sup>12</sup> These objectives explicitly link the prohibitions in Part VI to the implementation of the objects of the CMA, including the national policy objectives for the development of the communications and multimedia industry. These objectives are:

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<sup>12</sup> The Communications and Multimedia Bill 1998, passed as the Communications and Multimedia Act 1998.

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- (a) to promote consumer markets which offer choice, quality and affordability;
  - (b) to promote any-to-any connectivity for network services used for communications between end users;
  - (c) to promote competition in all communications markets; and
  - (d) to promote investment and innovation in network facilities, network services and applications services, and their efficient utilisation.
- 4.4. In addition, the Explanatory Statement also sets out a number of goals for the administration of Chapter 2 of Part VI, including section 140 of the CMA. These goals are:
- (a) to provide protection for smaller operators in the absence of a general competitive policy or trade practices regulatory regime;
  - (b) to provide a context for, and certainty about, the manner in which the general powers and procedures under the CMA should be administered. This reinforces the regulatory intent of the national policy for the development of the communications and multimedia sector; and
  - (c) to establish a framework and clear powers for the Commission to ensure that anti-competitive practices do not undermine the national policy.
- 4.5. The establishment and maintenance of competitive communications markets is closely related to many of these objectives. Competition of itself promotes several kinds of efficiency, which are directly related to the objects of the CMA such as technical or productive efficiency, allocative efficiency and dynamic efficiency. It is therefore a powerful instrument to improve industry performance.

### **Methodology for analysing: cost-benefit analysis**

- 4.6. The Commission will use cost-benefit analysis to examine if a conduct promotes the national policy objectives. In order to authorise a conduct, the Commission must be satisfied that the benefits arising from the conduct are substantial and in line with the national policy objectives. Also, the benefits must clearly outweigh the costs associated with the conduct. Where possible, the Commission will endeavour to carry out quantitative cost-benefit analysis. However, the Commission is mindful that in many circumstances, it may not be possible to carry out a quantitative analysis. In such situations, the Commission will conduct a qualitative analysis.
- 4.7. In carrying out a cost-benefit analysis, the Commission will be guided by the steps outlined below.

**Step 1: Market Definition**

- 4.8. Market definition is a key element in any competition analysis as it sets the boundaries of any given market, based on which market shares can be calculated.
- 4.9. The Commission released a Market Definition Analysis report dated 24 September 2014 ("Report") which sets out the Commission's proposed market definitions for a range of communications-related products, services and facilities to assist its ongoing administration and enforcement of Chapter 2 of Part VI of the CMA.
- 4.10. When undertaking the first step of defining a market, the Commission will rely on the market definitions set out in the said Report or any revised reports published thereafter.
- 4.11. The Commission will not redefine the markets set out in the Report unless a change in circumstances justifies a review, or the Commission determines that the nature of the market being considered and its competitive dynamics require a different market definition. Any review undertaken by the Commission will be in accordance with the framework for defining communications markets as set out in the Guideline on Dominant Position.<sup>13</sup>

**Step 2: Market structure analysis**

- 4.12. The objective of this step is to establish the relationship between market share and the competitive dynamics of the market to establish the context within which to determine if conduct has the purpose or effect of substantially lessening competition.
- 4.13. The Commission will conduct this step in accordance with the Guideline on Substantial Lessening of Competition and the Guidelines on Mergers and Acquisitions (if the conduct relates to a merger or acquisition). In particular, the Commission will:
  - (a) define the context in which the conduct occurs i.e. whether the licensee is in a dominant position,<sup>14</sup> by:
    - (i) assessing the structure of the market and the nature of competition in the market;
    - (ii) assessing the barriers to entry and expansion;
    - (iii) assessing countervailing buyer power;
    - (iv) assessing the nature and effectiveness of economic regulation;and

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<sup>13</sup> Guideline on Dominant Position (24 September 2014) issued by the Commission.

<sup>14</sup> Guideline on Dominant Position (24 September 2014) issued by the Commission.

- (b) assess in the context of the market and the dynamics of the market determined in (a) above, whether the licensee's conduct has the effect or purpose of substantially lessening competition by assessing the nature and degree of future competition in the market **with** the conduct and **without** the conduct.<sup>15</sup>

### **Step 3: Analysis of economic impact**

- 4.14. Detrimental effects of a conduct which substantially lessens competition will be analysed from the perspective of economic efficiency, namely production efficiency, allocative efficiency and dynamic efficiency.
- 4.15. **Production efficiency** takes place when production methods and scale minimises costs and eliminates waste and production inefficiency. Production efficiency is deemed to have taken place when average total cost is minimised and prices set are just sufficient to cover production cost.
- 4.16. **Allocative efficiency** is accomplished when efficient level of output is produced. Allocative efficiency results in lower prices and higher consumption of goods and services and these results in a reduction in deadweight loss.
- 4.17. **Dynamic efficiency** exists when there is an optimal trade-off between current consumption and investment in research and development and technological progress.

### **Step 4: Analysis of benefits from the perspective of national interest**

- 4.18. The objective of this process is to identify the benefits that are likely to arise from the conduct and to ensure that the benefits are in line with the national policy objectives.

### **Context of the proposed analytical framework**

- 4.19. The proposed analytical framework above is indicative in nature and should not be taken as the only approach that Commission will adhere to in assessing applications for authorisation. In carrying out its duties and responsibilities, Commission will exercise discretion and may, if necessary, vary some of the steps set out above.

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<sup>15</sup> Guideline on Substantial Lessening of Competition (24 September 2014) issued by the Commission.

**5. Submission of Application**

Completed applications for authorisation should be submitted in the prescribed pro-forma application form and should be addressed to:

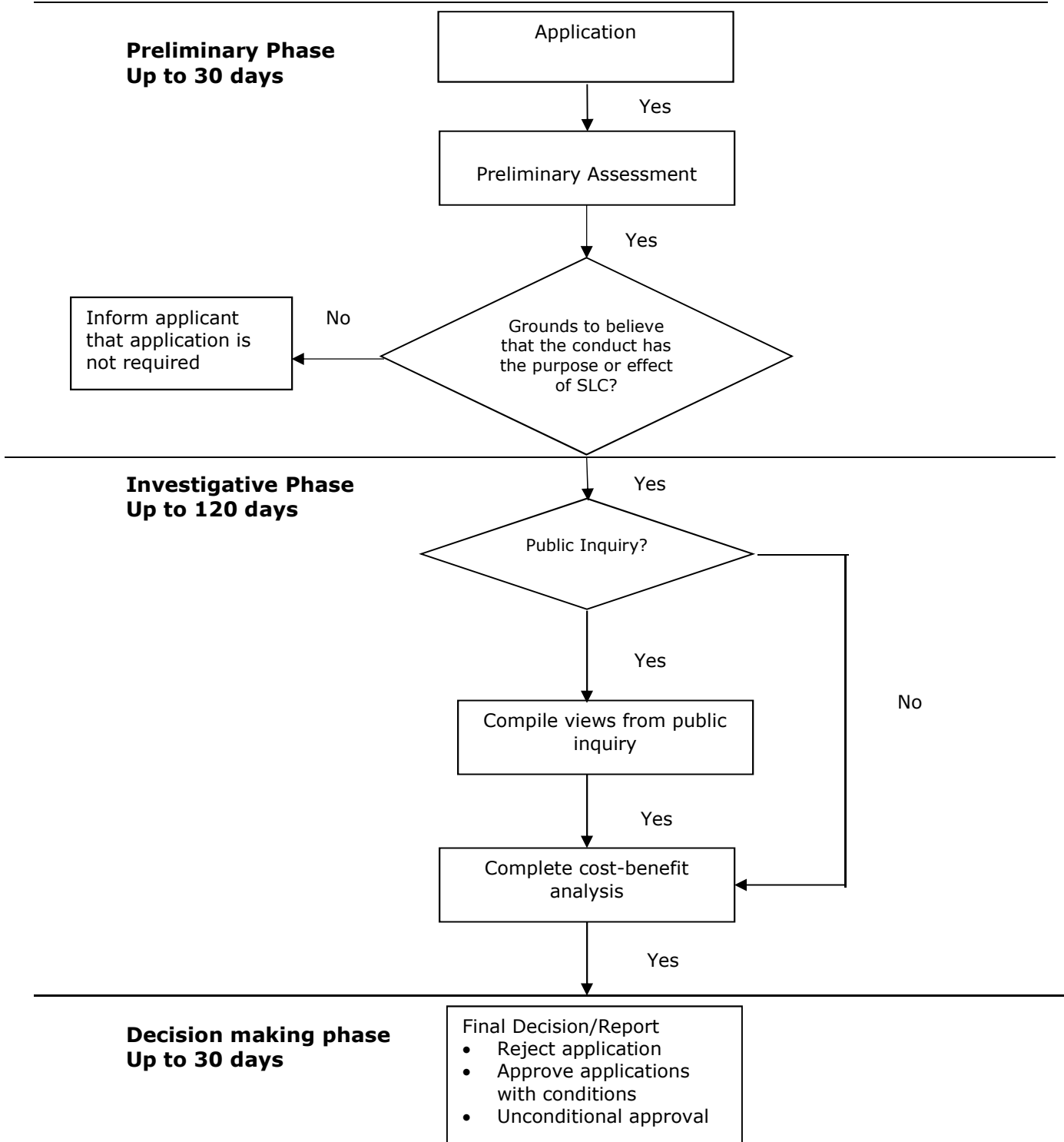
Head  
Competition Department  
Compliance Division  
Malaysian Communications and Multimedia Commission  
MCMC Tower 1  
Jalan Impact, Cyber 6  
63000 Cyberjaya  
Selangor Darul Ehsan  
[www.mcmc.gov.my](http://www.mcmc.gov.my)

Contact Number: 603-8688 0000

The Commission will provide a written acknowledgement to the applicant within two (2) weeks from the date of receipt of the application for authorisation of conduct.

**Annexure 1**

**PROCESS FLOW AND INDICATIVE TIMELINES FOR  
AUTHORISATION OF CONDUCT**





## Annexure 2

### FORM 1 – APPLICATION FOR ASSESSMENT FOR AUTHORISATION OF MERGERS AND ACQUISITIONS

All applicants are required to provide answers in respect of this part. The responses should be comprehensive and substantiated with evidence. Failure to provide sufficient information may render the application to be invalid as it will impact the Commission's assessment of the application.

#### PART A

##### Applicant and Target

- 1. In respect of the applicant and the target, provide the details below:**
  - a) Name and Company Registration Number, and place of registration;
  - b) Describe the business or businesses carried on including the products and services supplied, and the level in the supply chain of the product or service.
  - c) Provide details of all related bodies corporate including the Company Registration Number;
  - d) Address in Malaysia for service of documents;
  - e) Name and address of any person for whose benefit or on whose behalf the shares or assets to be acquired will be held; and
  - f) A copy of Annual Report for the past three (3) financial years.
  
- 2. Reporting Obligation**

An applicant is required to notify the Commission of its obligations to notify other relevant agencies or authorities in respect of their merger or acquisition and the applicable timelines by those agencies or authorities.
  
- 3. Transaction**

Provide the following details in respect of the transaction:

  - a) Transaction structure, i.e. merger or acquisition, acquisition, obtaining corporate control, joint venture;
  - b) Transaction status i.e. completed or anticipated;
  - c) Describe the market the transaction is occurring/will occur in;
  - d) When was the transaction publicly announced? Attach any documents prepared to evaluate the proposed transaction;
  - e) Timelines and key milestones planned for the transaction, including, if it is a proposed merger or acquisition, the expected date of completion; and
  - f) Commercial rationale (including strategic and economic) for the transaction.

- g) Valuation of the merged or acquired entity.
- h) Shareholding structure of the merged or acquired entity.
- i) Composition of the management team in the merged/acquired entity. Provide details of the Chief Executive Officer, Chief Operating Officer and Chief Financial Officer.

**4. Background to the Parties**

- a) List all goods and services sold by both parties to the merger or acquisition in Malaysia. Describe the areas of overlap between the parties and any related bodies corporate (including overlapping goods or services sold by both merger or acquisition parties), and areas over which the parties are current or potential competitors;
- b) Composition of customer segment currently served by application, for example, Residential, Government/Government Linked Companies, Small Medium Enterprise, Education, Corporate, Students, Youths, etc

Segment	Percentage of subscription
Residential	
Government	
SME	
Education	
Corporate	
Students	
Youths	
Others: Please specify	

- a) Provide details of any existing horizontal or vertical arrangements between the parties;
- b) Describe any other cooperative arrangements to which any of the parties to the merger or acquisition is a party;
- c) Provide details of any acquisitions made by the parties to the merger or acquisition and any other acquisitions made in the [industry sector/market] during the past five (5) years; and
- d) Provide details of the total group turnover for each party to the merger or acquisition (Worldwide and Malaysia).

**5. Relevant Communications Market**

Relying on the communications market set out in the Market Definition Analysis report, identify:

- a) the communications market the merger or acquisition has taken place in; or
- b) if the merger or acquisition is proposed, the communications market the merger or acquisition it is proposed to take place.

**6. Market share**

For each of the relevant markets which the merger or acquisition takes place in, or is proposed to take place in, as identified above,<sup>16</sup> provide details of the following, for the last five (5) years and measured by reference to revenue, number of subscribers, total assets and any other measurement deemed suitable, for example, number of towers, etc:

- a) total market size individually and after the merger or acquisition;
- b) market share for each of the merger or acquisition parties as well as after the merger or acquisition; and
- c) market share of competitors.

**PART B  
ASSESSMENT**

**7. Dominant positions of the parties to the merger or acquisition**

Where applicable, identify whether either of the parties to the merger or acquisition (applicant or target) are licensees which have been subject to a prior determination that they are a licensee in a dominant position.

**8. The Industry, Competitors, Suppliers and Customers**

Provide details of the following:

- a) details of each competitor for the markets identified above;
- b) the market shares of each competitor;
- c) the competitive dynamics in the market, including but not limited to pricing behaviour, indirect constraints to competition due to market share, levels of innovation;
- d) the degree of vertical integration in the market;
- e) the existence of a vigorous and effective competitor;
- f) the supply chains of which the overlapping goods or services are a part;
- g) intermediate customers (distributors etc.);
- h) end customers;
- i) the extent to which intellectual property rights are necessary to compete in the market;
- j) the extent to which regulation already deals with anti-competitive activities, or the extent to which regulation imposes or reduces barriers to entry; and
- k) current industry trends and developments.

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<sup>16</sup> For clarity, market share information is not required for every communications market set out in the Market Definition Analysis report dated 24 September 2014

**9. Countervailing buyer power:**

- a) the number and size of customers in the market;
- b) the ability for customers to bypass the supplier by acquiring products from other suppliers, sponsoring a new market entrant, or vertically integrating;
- c) the switching costs borne by customers in the market and the time it takes to switch between suppliers;
- d) the ability of suppliers to switch from supplying inputs to the parties to the merger or acquisition to other avenues;
- e) the ability of competitors to increase supply;
- f) which market participants hold the market power; and
- g) to what extent will this power constrain the parties to the merger or acquisition, post-merger or acquisition.

**10. Barriers to entry**

Provide details in respect of the existence of any of the following barriers to entry in each of the markets identified above.

- a) Costs of entry/expansion including, but not limited to, sunk costs and capital investment required;
- b) access to key resources, facilities and inputs, including but not limited to, infrastructure, spectrum and content;
- c) contractual restrictions, including long term supply contracts in a market or preferential terms of supply;
- d) economies of scale/scope
- e) regulatory and legal restraints;

In each of the markets identified above, provide details of the following:

- a) any exclusivity in relation to the merger or acquisition parties' access to infrastructure; and
- b) any exclusive government funding, public partnership arrangements, or any special government contracts which are held by the parties to the merger or acquisition.

**11. Counterfactual**

Provide details of what competition in the market would look like without the merger or acquisition taking place.

**12. Vertical effects**

Describe whether the transaction would, or would be likely to, result in any vertical relationship between firms involved at different functional levels in the relevant markets.

Describe the extent of vertical integration in competitors.

**13. Failing firm**

If relevant, state whether one or more merger or acquisition parties is a failing firm and if so, provide reasons why the merger or acquisition should be allowed to proceed on this basis, including evidence that:

- a) the financial situation of the firm has deteriorated to such an extent that without the merger or acquisition, it and its assets would exit the market in the near future;
- b) there are no prospects for reorganising the business; and
- c) there are no less anti-competitive alternatives to the merger or acquisition.

**14. Efficiencies**

Detail any beneficial effects of the merger or acquisition on competition e.g. economies of scale and scope, pooling of resources, etc.

**15. Supporting documents**

- a) Economic data relating to price elasticity in the market;
- b) Any statement made by an applicant in an application must be accompanied by evidence in support;
- c) A copy of final or near to final versions of all documents for the transaction;
- d) Annual reports and accounts for each merger or acquisition party for the past three (3) years;
- e) Copies of all analyses, reports, studies, surveys, and similar documents prepared for the purpose of assessing, analysing or giving a view on the merger or acquisition with respect to market shares, competitive conditions, competitors (actual and potential), the rationale for the merger or acquisition, potential for sales growth or expansion into other product or geographic markets, and/or general market conditions;
- f) Copies of the two most recent business plans for each party to the merger or acquisition and, where available, a copy of the (draft) business plan for the merged or acquired entity; and
- g) Copies of any relevant market research reports that are available to either of the merger or acquisition parties. Where geographic markets are arguably wider than national, market research that focuses on areas outside of, or including Malaysia, is relevant.

**16. Third party contact details**

Each party to the merger or acquisition is to provide names and contact details of a representative sample of small, medium and large sized competitors, suppliers and customers in the relevant communications market in which it operates as follows:

Size	Value Chain	Company Name	Contact Details (Physical Address, telephone, fax, email address, website address)	Name and Position of Contact Person	Contact details of the contact person (email address, direct telephone number)	Communication Market
Small	Competitor					
	Supplier					
	Customer					
Medium	Competitor					
	Supplier					
	Customer					
Large	Competitor					
	Supplier					
	Customer					
Date of Verification:						

**17. Other information**

Provide any other information, which may be relevant to the application.

**18. Applicant Contact details:**

In the event there are further enquires to the information submitted in this Form 1, please designate a contact person for the Commission to contact as follows:

Name : \_\_\_\_\_  
 Designation : \_\_\_\_\_  
 Office Tel : \_\_\_\_\_  
 Hand phone : \_\_\_\_\_  
 Email address : \_\_\_\_\_  
 Date : \_\_\_\_\_

Form 1: Application for Assessment on Mergers and Acquisitions

**Declaration**

Pursuant to section 241 of the Communications and Multimedia Act 1998, a person who knowingly gives false or misleading information to the Malaysian Communications and Multimedia Commission commits an offence and shall, on conviction, be liable to a fine or to imprisonment as set out in the above-mentioned Act.

The applicant as listed below declares and confirms that all information and supporting documentation provided with this application is true and correct to the best of their knowledge and belief.

Signed for and on behalf of the applicant Company, identified below, in accordance with section 66 of the Companies Act 2016.

\_\_\_\_\_  
Company name (Applicant)

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Full name of director (print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of director/secretary

\_\_\_\_\_  
Full name of director/secretary (print)

\_\_\_\_\_  
Date

## Annexure 3

### FORM 2 – APPLICATION FOR AUTHORISATION OF CONDUCT

All applicants are required to provide answers in respect of this part. The responses should be comprehensive and substantiated with evidence. Failure to provide sufficient information may render the application to be invalid as it will impact the Commission's assessment of the application.

#### 1. Parties to the proposed conduct

1.1 Provide details of the applicants for authorisation, including:

- a) name, company registration number and place of registration, address (registered office) and telephone number
- b) contact person's name, position, telephone number and email address
- c) a description of business activities
- d) e-mail address/address in Malaysia for service of documents.

1.2 If applicable, provide details of the other persons and/or classes of persons who also propose to engage, or become engaged, in the proposed conduct and on whose behalf authorisation is sought. Where relevant provide:

- a) name, company registration number and place of registration, address (registered office) and telephone number
- b) contact person's name, telephone number and email address
- c) a description of business activities.

#### 2. The proposed conduct

Provide details of the proposed conduct, including:

- a) a description of the proposed conduct and any documents that detail the terms of the proposed conduct
- b) the relevant markets that the conduct is likely to affect
- c) the market characteristic
- d) the rationale for the proposed conduct
- e) who is likely to benefit from the conduct
- f) how are the benefits distributed
- g) how the conduct has been framed to minimise anti-competitive purpose and/or effect
- h) the timeframe for which authorisation is sought and reasons for seeking this period
- i) provide documents submitted to the applicant's board or prepared by or for the applicant's senior management for purposes of assessing or



## Form 2: Application for Authorisation of Conduct

making a decision in relation to the proposed conduct and any minutes or record of the decision made.

- j) provide the names of persons, or classes of persons, who may be directly impacted by the proposed conduct; suppliers or acquirers of the relevant products or services) and detail how or why they might be impacted.

### **3. Market Information and Concentration**

- a) Describe the products and/or services, and the geographic areas, supplied by the applicants and identify all products and services in which two or more parties to the proposed conduct overlap (compete with each other) or have a vertical relationship.
- b) In respect of the overlapping products and/or services identified, provide estimated market shares for each of the parties where readily available.
- c) Describe the competitive constraints on the parties to the proposed conduct, including any likely change to those constraints should authorisation be granted. You should address:
- existing or potential competitors
  - the likelihood of entry by new competitors
  - any countervailing power of customers and/or suppliers
  - any other relevant factors.

### **4. Public benefit**

Describe the benefits to the public that are likely to result from the proposed conduct **from the perspective of national interest**. Provide information, data, documents or other evidence relevant to the Commission's assessment of the public benefits.

### **5. Public detriment (including likely competitive effects)**

Describe any detriments to the public likely to result from the proposed conduct, including those likely to result from any lessening of competition. Is the lessening of competition substantial? Provide information, data, documents, or other evidence relevant for the Commission's assessment of the detriments.

### **6. Contact details of relevant market participants**

Identify and/or provide contact details (phone number and email address) for likely interested parties such as actual or potential competitors, key customers and suppliers.

**7. Other information**

Provide any other information or documents you consider relevant to the Commission's assessment of the application.

**8. Applicant Contact details:**

In the event there are further enquires to the information submitted, please designate a contact person for the Commission to contact as follows:

Name : \_\_\_\_\_  
Designation : \_\_\_\_\_  
Office Tel : \_\_\_\_\_  
Hand phone : \_\_\_\_\_  
Email address : \_\_\_\_\_  
Date : \_\_\_\_\_

Form 2: Application for Authorisation of Conduct

**Declaration**

Pursuant to section 241 of the Communications and Multimedia Act 1998 ("**CMA**"), a person who knowingly gives false or misleading information to the Malaysian Communications and Multimedia Commission commits an offence and shall, on conviction, be liable to a fine or to imprisonment as set out in the CMA.

The applicant as listed below declares and confirms that all information and supporting documentation provided with this application is true and correct to the best of its knowledge and belief.

Signed for and on behalf of the applicant Company, identified below, in accordance with section 66 of the Companies Act 2016.

\_\_\_\_\_  
Company name (Applicant)

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Full name of director (print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of director/secretary

\_\_\_\_\_  
Full name of director/secretary (print)

\_\_\_\_\_  
Date