Malaysian Communications and Multimedia Commission

PUBLIC CONSULTATION REPORT

Review of Rates Rules

9 October 2015

CONTENTS

ABBREVIATIONS AND GLOSSARY

ADC	Access Deficit Contribution
BCDD	Broadband Commission for Digital Development
BR1M	Bantuan Rakyat 1Malaysia (or 1Malaysia People's Aid)
BT	British Telecom
CMA	Communications and Multimedia Act 1998
DEL	Direct Exchange Line
Discussion Paper on RAS	Discussion Paper: Proposal for the Determination of a List of Required Applications Services and the Classes of Network Service Provider who shall provide them under Sections 192 and 193 of the Communications and Multimedia Act 1998 dated 14 June 2002
DSL	Digital Subscriber Line
EPP	Entry Point Projects are defined under the Economic Transformation Programme to propel the performance of the National Key Economic Areas to a higher level
eRas	Extended Radio Access System is Pernec's last mile broadband solution utilizing a hybrid of WiFi and WiMAX technologies
GNI	Gross National Income
GSM	Global System for Mobile Communications
HSBB	High-Speed Broadband
IP	Internet Protocol
ITU	International Telecommunication Union
Kbps	Kilo Bit Per Second
LTE	Long-Term Evolution
MERS 999	Malaysian Emergency Response System 999
MVNO	Mobile Virtual Network Operator
NPO	National Policy Objective
Ofcom	Office of Communications (previously known as Oftel or Office of Telecommunications) in the UK
OKU	Orang Kurang Upaya (or Disabled Person)
OTT	Over-the-Top
Pernec	Pernec PayPoint Sdn. Bhd.
PC Paper	Public Consultation Paper: Review of Rates Rules dated 13 March 2015
PC Paper on Affordable Broadband	Public Consultation Paper: Affordable Broadband Packages dated 13 March 2015
PC Report	This Public Consultation Report
PI Report on Access Pricing	Public Inquiry Report: Review of Access Pricing dated 14 December 2012
PI Report on	Public Inquiry Report: Assessment of Dominance in

Dominance	Communications Market dated 24 September 2014
PCBS	Public Cellular Blocking Service for Lost and Stolen Cellular Mobile Access Device of End Users
PSTN	Public Switched Telephone Network
SMS	Short Messaging Service
RAS	Required Application Service
UK	United Kingdom
USP	Universal Service Provision
VoIP	Voice over IP
WAP	Wireless Application Protocol
WiFi	Wireless Fidelity
WiMAX	Worldwide Interoperability for Microwave Access

SUMMARY OF THE MALAYSIAN COMMUNICATIONS AND MULTIMEDIA COMMISSION'S ("MCMC") FINAL VIEWS

The following Table 1 summarises the MCMC's final views on which retail services should continue to be subject to price regulation. The MCMC would continue to actively monitor the rates for services that are not regulated to ensure compliance with the Communications and Multimedia Act 1998 ("CMA"), and should any issues arise, the MCMC would take appropriate action using the other provisions of the CMA to address the issue(s).

Table 1: Summary of the MCMC's final views

Retail services	MCMC's final view
Public Switched Telephone Network ("PSTN") services	There is no longer a need to regulate the rates for PSTN services.
Payphone services	There is no longer a need to regulate the rates for payphone services.
Required applications services	The rates for operator assistance service and directory assistance service should no longer be regulated, but emergency services should continue to be regulated at no charge to the consumer or the end user.
Internet access services	The rates for Internet access service or Internet dial-up service would no longer be regulated.
Audiotext hosting services	The rates for audiotext hosting services would no longer be regulated.

Retail services	MCMC's final view
Broadband services	The MCMC views that it has a role to play in ensuring that consumer interests are safeguarded, in terms of broadband coverage, quality of service, availability of higher speed services and affordability, in line with the 11^{th} Malaysia Plan for ICT infrastructure and the Communications and Multimedia Action Plan 2020, as the nation approaches 2020. To achieve that, the MCMC would continue to play a dual role, to work together with the industry so that higher broadband speed services are available, and at the same time to continue its regulatory role, to monitor the prices of broadband services (for basic as well as higher speed), and to take the necessary action to ensure compliance to the CMA.

1 INTRODUCTION

1.1 Overview

The MCMC conducted this Public Consultation to review the Communications and Multimedia (Rates) Rules 2002 ("Rates Rules"), which currently regulates the retail rates of PSTN services including rental on exchange lines, local and national call charges, connection and reconnection fees; public payphone services for local calls, national calls and national calls through operator assistance; emergency services; operator assistance service; directory assistance service; Internet access services and audiotext hosting services.

In its Public Consultation Paper on Review of Rates Rules ("PC Paper") released on 13 March 2015, the MCMC explained the following:

(a) the legislative context and purpose of conducting the Public Consultation;

(b) the scope of the Public Consultation; and

(c) the process of the Public Consultation.

Further, the MCMC detailed the approach it proposed to adopt in this Public Consultation in deciding on the following:

(a) which retail services (if any) should continue to be subjected to price regulation;

(b) whether new retail services (if any) should be subject to price regulation; and

(c) if so, the manner in which the prices should be regulated.

The PC Paper also set out the MCMC's preliminary views on the retail services that should be subject to price regulation and specifically sought comment on 16 questions.

1.2 Legislative obligations

As explained in the PC Paper, retail rate regulation is set out in Chapter 4 of Part VIII of the CMA. Section 197 relates to rate setting by service providers, wherein section 198 provides the principles that service providers should follow in setting their rates. Sections 199 to 201 relate to the powers of the Minister to set rates, for example, the

Minister may make rules under section 201, i.e. the current Rates Rules or the Minister may determine special rate regulation regimes under section 200.

Under subsection 201(1) of the CMA, the Minister may make rules to prescribe the level of rates to be charged for specified or classes of network facilities, network services, applications services or content applications services (collectively referred to in this section as "specified or classes of licence categories"). Under subsection 201(2), this includes (but are not limited to) rules about the rates and variation of rates for specified or classes of licence categories, rules about the publication or disclosure of rates for specified or classes of licence categories or rate control mechanisms for specified licensees or classes of licensees, or specified or classes of licence categories.

1.3 Consultation process

In consideration of the importance of retail rate regulation as part of the objects and the national policy objectives of the CMA, such as for the long-term benefit of end users, the MCMC adopted the widest possible consultative approach in order to obtain maximum industry and public impact. In that regard, the MCMC has consulted widely and openly with all interested stakeholders during this Public Consultation, including:

(a) consultations with licensees prior to the release of the PC Paper, as set out in Annexure 1 to the PC Paper;

(b) feedback sought from the members of the Consumer Forum, as mentioned in the PC Paper; and

(c) publication of the PC Paper on 13 March 2015 and a request for comment on the MCMC website.

1.4 Submissions Received

At the close of the Public Consultation period at 12 noon on 30 April 2015, the MCMC had received written submissions from the following parties (in alphabetical order):

Table 2: Summary of written submissions received

No.	Submitting party	Documents
1.	Altel Communications Sdn. Bhd. ("Altel")	1 submission (12 pages)

No.	Submitting party	Documents
2.	Celcom Axiata Berhad ("Celcom")	1 submission (24 pages)
3.	Digi Telecommunications Sdn. Bhd. ("Digi")	1 confidential submission (12 pages) 1 non-confidential submission (12 pages)
4.	Maxis Berhad ("Maxis")	1 submission (31 pages) with Appendix (1 page)
5.	Packet One Networks (Malaysia) Sdn. Bhd. ("Packet One")	1 submission (19 pages)
6.	TIME dotCom Berhad ("TIME")	1 submission (8 pages)
7.	Telekom Malaysia Berhad ("TM")	1 confidential submission (26 pages) 1 non-confidential submission (26 pages)
8.	XOX Com Sdn. Bhd. ("XOX")	1 submission (2 pages)
9.	YTL Communications Sdn. Bhd. ("YTL")	1 submission (10 pages)
10.	A mobile operator	1 confidential submission (7 pages)

Having thoroughly reviewed and assessed the submissions received on the PC Paper against its own preliminary views, the MCMC now presents this PC Report.

The MCMC would also note that some issues raised in the submissions are outside the purview of this Public Consultation. These issues include:

- Whether certain services should be part of or classified under universal service provision ("USP");
- Whether certain services should be in the list of required applications services; and
- Whether certain wholesale services should be regulated or comments on the terms and conditions of certain wholesale services.

1.5 Structure of this PC Report

The remainder of this PC Report is structured broadly to follow the PC Paper to provide a consistent context for the MCMC's specific questions for comment. The 16 questions in the PC Paper are arranged in their respective sections with a summary of the comments received (in alphabetical order of the submitting parties). The MCMC then sets out the rationale of its final views on each issue:

Section 2: Retail price regulation

Section 3: PSTN services

Section 4: Payphone services

Section 5: Required applications services

Section 6: Internet access services

Section 7: Audiotext hosting services

Section 8: Broadband services

Section 9: Conclusion and next steps

2 RETAIL PRICE REGULATION

2.1 Overview

In this section of the PC Paper, the MCMC set forth a forward-looking approach in considering retail rate regulation, having regard to the development in Malaysia as well as regulatory best practices. With the transformation of the communications and multimedia sector in Malaysia over the last two decades, the country has witnessed the privatisation of the monopoly incumbent operator and the liberalisation of the telecommunications sector, to the convergence regime under the CMA and the important role played by competition in the market. In tandem, there have been technological developments and an increase in penetration rates, in particular for mobile telephony, but also for broadband services, increasing the impact of communications in the lives of society.

There were three proposals in this section of the PC Paper. Firstly, in line with international best practices, the MCMC proposed to focus on regulating services at the wholesale level, in order to stimulate competition and innovation at the retail level. The focus of retail regulation would be on meeting social policy obligations. Secondly, the MCMC proposed to consider broadband services as an essential service for the 21st century. This means that there would be less of an emphasis on maintaining rate regulation for legacy PSTN services. Thirdly, in considering that there is less of a need to regulate legacy PSTN services for the mass public, the MCMC proposed instead a targeted approach to address the needs of clearly identified groups of consumers who could be placed in a position of detriment.

2.2 Summary of submissions received

Question 1
Do you agree with the MCMC's approach to focus regulation on wholesale services, and to only regulate retail services on the basis of furthering social policy objectives?

Generally, all respondents, apart from XOX, agreed with the MCMC's proposed approach and preliminary view to focus regulation on wholesale services. Even XOX, based on its comments, appeared to disagree with regulation on retail rates. The respondents were split in their views on whether there should be retail regulation on the basis of furthering social policy objectives. Whilst respondents such as TIME, TM, and Packet One supported the notion that retail regulation can further social policy objectives, others such as Celcom, Digi and YTL viewed USP initiatives as the appropriate mechanism to deal with social policy objectives. Maxis and another mobile operator supported deregulation only when competition is evident in the market.

Altel strongly agreed that regulation should focus on wholesale services as it is a more effective measure to stimulate competition and innovation at the retail level. For new and small operators such as Altel, being able to take advantage of existing active and passive infrastructure is the most efficient and economical way to increase service coverage. Besides reducing the burden of investment and duplication of infrastructure, wholesale regulation also provides an equal opportunity for new operators to compete.

Celcom agreed that regulation should be focused on wholesale services rather than on retail services, in line with the international practices as mentioned in the PC Paper. In Celcom's view, regulation should first attempt to address market failure at the wholesale level. If there are competitive concerns at the retail level, narrowly tailored regulation of wholesale inputs identified as bottlenecks is preferred, allowing other links in the value chain of the end-to-end service to be more responsive to the competitive process. Celcom provided examples of *ex ante* and *ex post* regulation already in place in Malaysia - Wholesale Line Rental Service under the *ex ante* access regime and competition provisions as *ex post* regulation. Further, Celcom opined that the social policy objectives have been successfully achieved through USP, which covered broadband services as well as PSTN and public cellular services. As the USP projects are subsidised by the USP fund and implemented in the most cost-efficient way, retail rates for these services are minimal, and hence addresses the affordability of targeted groups. As such, Celcom did not view that there is a necessity to extend social policy objectives to regulating retail services. In addition, Celcom submitted that retail prices for communications services in Malaysia are notably affordable and do not warrant regulation. As an example, it cited the Report of Household Expenditure Survey by the Department of Statistics, in 2009/2010, where the monthly household expenditure on communications services is only 5.6% as compared to other consumer goods, indicating the low price of communications services in Malaysia.

Digi supported the principle of applying regulation only on wholesale services, such as through the Access List and Mandatory Standard on Access Pricing. With equitable access to wholesale services, operators would be able to compete efficiently and create innovative services at the retail level, ensuring benefits to consumers. Digi did not agree that there should be regulation at the retail level. Despite the regulation of PSTN and payphone services through the Rates Rules, it has not resulted in any impact on the level of competition for fixed telephony and payphone telephony markets. In fact, retail regulation could have the opposite effect of stymying any potential competitors from introducing alternative PSTN and payphone services, as it places a limit on the competitor to charge sufficiently and to recover costs from the consumer.

Further, Digi opined that regulating to meet social policy objectives can be achieved through USP mechanisms. This is because 'underserved' as defined in Communications and Multimedia (Universal Service Provision) Regulations 2002 is no longer confined to a specific geography but also to underserved groups or communities.

Maxis supported the approach to focus regulation on wholesale services, however, it stressed that it is only to be applied to the communications market where there is dominance and where there are possibilities of market failure due to potential abuse of the dominant position. To illustrate its point, it cited fixed broadband and data market where TM is dominant in the retail and wholesale market for high speed, low speed and for both residential and business. Maxis urged the MCMC to strengthen regulation on fixed broadband especially at the wholesale level to ensure competitiveness of fixed broadband retail services for the long-term benefit of end users.

Further, Maxis submitted that timing is very important to consider in deregulating the PSTN services. It viewed that the MCMC should not liberalise retail regulation without ensuring that wholesale regulation has been effectively introduced and has assisted in the development of competitive retail fixed markets. An example is in the United Kingdom ("UK"), where Ofcom removed the retail price controls on BT's residential retail services (including analogue exchange lines, local and national calls, calls to mobiles, international calls and operator-assisted calls) after Ofcom was satisfied that significant developments in both wholesale and retail markets had occurred since the retail price controls were imposed. In addition, the ongoing regulation, including BT's obligations under universal service obligation and assurances from BT were sufficient to ensure that the prices for low-spending consumers are appropriately constrained. Maxis recommended that the MCMC to consider adopting Ofcom's approach and continue existing retail regulation on fixed services until the MCMC is satisfied that there are significant developments in the fixed retail market.

Finally, Maxis also viewed that the rates of PSTN services should be regularly reviewed. For example, the existing retail rates for local calls are insufficient for cost recovery, where the local call is 8 sen for the first 2 minutes and 4 sen per minute after that, but the single tandem termination rate is at 4.10 sen per minute in 2015. Furthermore, there is a possibility that corporate line rentals cause an over-recovery of costs, to the detriment of corporate efficiency and competitiveness.

Packet One submitted that there are benefits in implementing regulated retail rates, as it will safeguard the welfare of underserved consumers, particularly for basic services. Regulating the retail prices would keep the services affordable for these consumers. As for wholesale services, Packet One viewed that regulating prices is a priority, as it helps to ensure that all players compete at a level playing field, resulting in competition and more choices which will benefit the consumers.

TIME agreed with the MCMC's proposed approach to focus on wholesale regulation as it will allow industry players to compete at the retail level, instead of investing and building their own network. TIME also supported regulating retail services on the basis of furthering social policy objectives, as long as the MCMC promotes competition at both the wholesale and retail level. It viewed that the current rates for PSTN services in the Rates Rules has hindered the offering of differentiated services to its customers, as compared to mobile operators. With the deregulation of PSTN rates, it would encourage healthy competition between fixed operators and mobile operators.

TM viewed that the existing regulation is sufficient for achieving Malaysia's social policy objectives. In general, TM viewed that competitive market forces make additional regulation unnecessary, and retail regulation is only necessary in limited cases and where there is a social requirement. These limited cases include the PSTN service, which constitutes a basic service that should be universally accessible and affordable, and emergency services. TM highlighted two further points. Firstly, broadband services are included under the USP, which means that funding is available to deploy broadband services, which would otherwise be uneconomic. Secondly, according to TM, there is a growth of fixed and mobile substitution, which means that other fixed-line operators and also mobile operators would be able to constrain the prices that it, as a fixed-line operator can charge to its customers. TM added that the trend of convergence has reached a point where mobile telephony can substitute for PSTN voice services, and voice over IP ("VoIP") services are becoming a substitute for voice services, in general. This process of substitution may also apply to broadband services, especially with the expansion of Long-Term Evolution ("LTE") service which can deliver comparable speeds to the High-Speed Broadband ("HSBB") network. Hence, TM concluded that there is no necessity to regulate other PSTN services except for basic PSTN service and emergency services. On the wholesale regulation, TM considered that it is fixed-centric and did not reflect the rise of mobile services. With mobility becoming an essential requirement for most Malaysians, TM proposed that wholesale regulation is adjusted to account for these trends.

XOX did not agree with the MCMC's approach to focus regulation on wholesale services, and to only regulate retail services on the basis of furthering social policy objectives. As a mobile virtual network operator ("MVNO"), it has a cost to pay to the mobile operators, and as such, it would not be able to afford it if the pricing is too low. Further, the pricing in the market is competitive, and subscribers can easily port over to other operators if those operators offer better packages. XOX proposed incentives or subsidies to be offered to MVNOs or smaller operators to assist them, especially when they are relying on the wholesale services from the operators.

YTL agreed that regulation of wholesale services would improve competition at the retail level, provided that wholesale regulation, such as through the Mandatory Standard on Access Pricing, is cost-based, sufficiently low and does not result in margin squeeze. It viewed that there may not be a need to regulate retail services on the basis of furthering social policy objectives, as currently, consumers have ample access to free broadband services under the USP such as WiFi (e.g. through Kampung Tanpa Wayar, Community Broadband Centres, Community Broadband Library) and numerous other WiFi hotspots provided by the MCMC together with other service providers. YTL also highlighted that it is already offering packages of various ranges to cater to the different levels of society.

A mobile operator agreed with the MCMC's proposed approach to focus regulation on wholesale services, as most of the issues can be addressed at the wholesale level, and it would ensure fairness and prevent monopolistic conduct. It also cited Competition Policy Newsletter 2015, as support, that regulatory controls on retail services should only be imposed when the wholesale measures fail to achieve the objective of ensuring effective competition and public interest. As such, to facilitate competition, regulation should not be imposed in the retail market. Once competitive markets exist, the MCMC should withdraw all unnecessary sector-specific regulation and apply the general competition rules, as was practiced in the UK and Australia. Further, the regulatory authorities in Hong Kong and India have also removed retail regulation and left it to market forces.

Question 2
Do you have any views on the approach proposed by the MCMC, which is to consider broadband services as an essential service in the 21st century, and at the same time, to minimise retail regulation on PSTN fixed-line services?

There was general consensus among respondents that broadband services are important. In relation to PSTN fixed-line services, Altel, Celcom, TIME and YTL agreed that PSTN fixed-line services should be deregulated, whilst Maxis, TM and a mobile operator generally viewed that PSTN fixed-line services should continue to be price regulated.

Altel concurred that there has been a major shift in technological advancement where narrowband networks are slowly being replaced by broadband networks. In order for universal service to achieve the aim of bridging the digital divide, broadband services should not only be accessible in underserved areas, but more importantly, underprivileged consumers need to keep pace with the rapid technological development in the digital age. Altel referred to Figure 1 of the PC Paper and commented that there has been a gradual decline of fixed-line services. It viewed that PSTN telephony services are no longer relevant and as technology advances, deregulation of PSTN services will not have any adverse impact to the consumers.

Celcom agreed that broadband service is an essential service in the 21st century, citing the ITU Vision on Broadband. Celcom pointed out that the objective for price regulation, through Rates Rules in 2002, is no longer relevant. According to Celcom, the reason for regulating PSTN retail rate was not based on the consideration of PSTN as an essential service *per se*, but rather, it was to rebalance tariff to address the access deficit. As such, the revised tariff (increase in local calls to reflect the cost and the reduction in national and international calls) in Rates Rules was intended to attract more investment for fixed-line infrastructure. Celcom added that as universal services are now funded through the USP fund, tariff rebalancing is no longer applicable and with it, the objective for price regulation is no longer relevant, and hence, Celcom supports deregulation of PSTN retail rates.

Digi sought clarification on the meaning of "essential service", as the term is not referred to in the CMA. Digi views that essential service is not the same as universal service where the latter refers to specific regulatory intervention to enable network facilities and network services to be made available to underserved areas or underserved groups.

Digi encouraged the MCMC to carry out a detailed study amongst consumers on what they deem as essential services. Further, based on the MCMC's Internet User Survey 2012, it was noted that 36.4% of Malaysians are non-Internet users. The reasons for not using the Internet are as follows: lack of skills (50.5% of this group) and lack of interest (27.9% of the group). Only 13.3% of the same group cited high costs as the reason for not using the Internet. Hence, by Digi's estimations, only 4.8% of all Malaysians cited costs as the deterrent factor to Internet adoption, which is clearly insufficient to classify broadband as an essential service.

Maxis agreed with the MCMC's views that broadband is an essential service in the 21st century. This is supported by the global growth of data consumption on mobile networks which is expected to grow by 60% from 2013 to 2018, with video being a key driver in bandwidth consumption. Further, globally, there is also growth in data consumption per user per month, with the minimal data (of less than 20MB) also diminishing. In Malaysia, broadband services contribute to a significant proportion of the respective major operators' revenue, ranging from 22% to 28% in 2014. Nevertheless, Maxis highlighted the MCMC's view in the PI Report on Assessment of Dominance in Communications Markets, where no operator is dominant in either wholesale or retail market for mobile broadband and data, unlike in the fixed broadband and data market where TM is dominant. It has been accepted by most regulators that where markets can fulfil demand and where there is effective competition, such as for mobile broadband, then regulation is not needed.

However, Maxis viewed that PSTN fixed-line services are still essential in the 21st century. Even though the PC Paper showed a reduction of direct exchange line ("DEL") connections from 2009 to 2013, this is primarily due to reductions in residential connections whilst for business connections, the number of DEL connections is maintained with marginal reduction. In fact, Maxis viewed that there is an increase of fixed-line connections bundled with HSBB services, and the proportion of revenue generated by the incumbent from voice business is significantly high. As such, Maxis viewed that PSTN fixed-line services are still essential in the 21st century, and retail rates on the fixed-line services should continue to be regulated (but to re-price and to rebalance the local calls, residential line rental and corporate line rental) until the MCMC is satisfied that the PSTN market has become competitive.

Packet One viewed that broadband networks are increasingly becoming an integral part of the economy and has become important in almost every aspect of the knowledge economy. Hence, broadband should be a necessity similar to other utilities like electricity and water, and no longer a luxury.

In Packet One's opinion, in comparison with other developing countries, there are no issues of high barriers to entry in Malaysia, and affordability is not the problem of broadband penetration, for reasons as follows:

- As stated in the PC Paper, the entry-level fixed and mobile broadband packages are less than 5% of the average monthly income of the average household and within the goal of affordability set by the Broadband Commission for Digital Development ("BCDD");

- Based on the Internet Users Survey 2012, high cost is not a major barrier for Malaysians to subscribe to broadband services and broadband penetration has in fact reached 70.2% per 100 households, as at Quarter 4 of 2014. Therefore, Packet One opined that the reasons for not subscribing to broadband services are due to a lack of skills, interest or awareness of perceived benefits, rather than due to affordability, and hence, the appropriate reaction should be to focus on efforts and activities on education and awareness of the importance of broadband;

- The various initiatives by the MCMC in expanding the reach of broadband, including the inclusion of broadband service as part of USP, deployment of Pusat Internet 1Malaysia, Kampung Tanpa Wayar, 1Malaysia Wireless Village, construction of communications towers, distribution of 1Malaysia Netbook and affordable broadband packages to secondary school students from low income families and low income earners in coverage areas;

- The MCMC Annual Report 2013 indicated that Malaysia was ranked first in broadband affordability amongst 46 developing countries, based on the Affordability Report 2013, demonstrating that technology innovations combined with open policies and a regulatory environment that stimulates demand and supply for broadband, can hasten the progress to make broadband affordable;

- In Measuring the Information Society 2013 published by the International Telecommunication Union ("ITU"), the ICT Development Index for Malaysia was at 5.04 points, which exceeded the global average of 4.35 points. This means that Malaysia, which has improved in the area of infrastructure and ICT usage due to growth in broadband subscription and total Internet users, has surpassed the target set for developing countries and the average of the world and Asia Pacific.

Packet One concluded that based on the above, affordability in terms of broadband package, is not an issue. Hence, broadband is no doubt an essential service in the 21st century but regulating retail broadband rates is unwarranted.

TIME agreed that broadband services are gaining momentum in major industries in Malaysia, such as business, education and healthcare, and with the increasing number of applications available to Internet users, the importance of broadband is inevitable. TIME further viewed that retail rates of PSTN fixed-line services should be deregulated, and only wholesale services should continue to be regulated. It also viewed that as mobile penetration as at Quarter 4 of 2014 is 148.5%, this showed that PSTN retail services can no longer be considered as an essential service.[1]

TM believed that broadband is very important to consumers and businesses, and is a tool for economic and social development. However, TM submitted that the broadband market has not reached a point where retail price regulation can create meaningful benefits for consumers without creating significant and undesirable distortions to market outcomes. TM believed that the priority for the broadband sector should be to encourage further investment and innovation. Further, broadband services are becoming more accessible to Malaysians, and on a global perspective, Malaysia leads in terms of broadband prices and affordability. However, TM submitted that in contrast, the PSTN service, which is an essential service for Malaysian residential and business consumers, there are less negative economic outcomes resulting from retail price regulation. Further, given the ubiquity of TM's PSTN footprint and the fact that Malaysians continue to rely on PSTN as a basic voice service, it is important to ensure that the service remain affordable for all Malaysians.

XOX agreed with the MCMC's proposed approach. Broadband is the essential service in the 21st century. In addition, people prefer to use mobile phones as compared to PSTN fixed-line services.

YTL concurred with the MCMC's proposed approach. Broadband services are definitely considered as essential services in the 21st century, and would have an implication on the supply and availability as part of local government planning. YTL noted however, that being an essential service should not automatically imply that rates should be regulated. Retail price regulation, which was once implemented for legacy networks when TM was the major service provider, is no longer necessary due to technological evolution, where the market has moved from PSTN to broadband and is heading towards Internet Protocol ("IP") and converged communications network. For the mobile sector, retail rate regulation was lifted due to the presence of competition.

A mobile operator submitted that broadband services are no longer a luxury but should be considered as a human right, as it is essential to gain knowledge, to expand the social circle and to stay in touch with the surroundings. This is also in line with the Minister's vision of being "hyper-connected". Even though the usage of PSTN services is declining, it is still relevant in the 21st century. In 2012, 23.3% of DEL household subscriptions[2] were in rural areas, and as there are still areas with low mobile coverage, they are

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[1] MCMC, *Communications and Multimedia Pocket Book of Statistics, Quarter 4 of 2014*.
[2] *Ibid*.

dependent on PSTN services. This group of consumers should not be exploited or taken advantage of by the PSTN service providers.

Question 3

Do you have any views on the MCMC's approach to consider a targeted approach?

Of all the respondents, only Altel considered that a targeted approach under Rates Rules would be needed.

Altel agreed to consider a targeted approach to protect the interest of consumers who are in a position of disadvantage or hardship. Altel proposed that this group of consumers be categorised by demographics, for example, students, eKasih and OKU. The eligibility criteria under the BR1M scheme can also be adopted, to identify the specific groups of consumers.

Celcom viewed that a targeted approach for PSTN services has already been adopted by the initiatives under USP. Despite the evolution of USP in Malaysia that has seen broadband and public cellular services included as part of the USP targets, PSTN service is still being deployed. PSTN services are implemented as collective telephony access in underserved areas and for underserved groups (including those who live in low cost housing areas who are normally in a position of disadvantage or hardship).

Digi submitted that the existing USP mechanisms such as Kampung Tanpa Wayar, WiFi 1Malaysia, Pusat Internet 1Malaysia as well as other mechanisms such as Pakej Komunikasi Belia and Pakej Mampu Milik Jalur Lebar 1Malaysia are sufficient to address social policy obligations. As such, it did not view that there is a need to embark on other 'targeted approach' to provide specific aid to any particular group beyond that which is currently defined under the USP program. If there is a need, the USP program could be expanded to cover specific groups whose needs are not sufficiently being addressed at the moment.

Maxis agreed with the MCMC's view that there are certain groups of people that rely on the PSTN fixed-line services for example, in the rural areas, the lower income group, older people, OKU etc., and deregulation of PSTN services could affect them significantly. It believed that the Welfare Department could have data to identify these groups. However, Maxis viewed that the bigger issue is the continued regulation of PSTN services to mitigate the impact of dominance, and if this is done, these vulnerable groups would be protected, as well.

TIME submitted that any affordable broadband package should be available to all consumers, and not just to a specific group of consumers. The process to validate whether a particular subscriber is eligible is not finalised, and there is no specific and fool proof method to verify the eligibility of subscribers. Apart from that, it foresaw that costs and resources would need to be allocated for the process. Hence, by offering the affordable broadband package for all, it would eliminate the possibility of fraud and abuse.

As TM supported continued regulation of the PSTN service, it viewed that a targeted approach is not required. Regulation would maintain PSTN as an essential public service. A targeted approach, for example, based on eligible income thresholds, could add to administrative complexity and cost, whilst undermining the principle of a universally affordable PSTN service.

YTL submitted that it is already offering packages that cater to different needs within the society. A targeted approach is preferred to address sections of society in accordance with socio-economic considerations. However, this should be considered under USP, utilising the USP fund to address the needs of a targeted group, such as the extreme poor (based on eKasih or Welfare list as guideline), the handicapped and other special persons.

A mobile operator submitted that its mission is to provide affordable broadband services to all. Whilst it agreed that there should be a targeted approach, it is only logical in theory, but is not feasible to implement. There are implementation issues, such as abuse of the lower rates and it would be difficult and costly to implement the lower rates to the targeted group of consumers.

2.3 MCMC's final views

The MCMC appreciates the comments provided by the respondents, and has taken careful note of each comment in forming its final views, and sets them out as follows:

2.3.1 Approach on wholesale and retail regulation

The MCMC notes the general support on its proposal to apply *ex ante* regulation at the wholesale level such as through the access regime, in order to stimulate competition and innovation at the retail level, rather than through retail regulation. In addition, as explained in the PC Paper, in the event that there is anti-competitive conduct engaged by any licensee in any market (whether at wholesale or retail), the MCMC would rely on its *ex post* competition provisions to remedy the conduct.

In terms of the role of retail regulation to further social policy objectives, the MCMC notes the divergence in opinion of the respondents. The MCMC agrees that USP programs play an important role in furthering social policy objectives and in ensuring affordability of communications services, however, that does not mean that rate regulation cannot also play a role in this regard, either to support or in conjunction with the USP programs.

With regard to the proposal from Maxis, which is to deregulate the PSTN services once the MCMC is satisfied that wholesale regulation has been efficiently introduced and that there are significant developments in the fixed retail market, the MCMC notes that there are three issues. Firstly, Rates Rules currently apply to the specified or classes of network facilities, network services, applications services or content applications services ("specified or classes of licence categories") and hence, the rates applies to all licensees who provide the specified or classes of licence categories and not just to TM. Having said that, the MCMC is mindful that the CMA does provide for rates to be applied to specified licensees for good cause or as public interest may require or where the rates are not set in accordance with rate setting principles under section 198. Secondly, as the MCMC has already put a robust wholesale regulation in place under the CMA, the MCMC does not consider that there is sufficient basis to retain Rates Rules to ensure a competitive outcome is to be achieved. Thirdly, even though the Rates Rules has been in place for 13 years, it has not brought about a competitive outcome for the PSTN fixed-line services, the MCMC is not convinced that by retaining the Rates Rules, a competitive outcome could be achieved for the fixed retail market.

In relation to TM's submission, the MCMC agrees generally that a competitive market would render retail regulation unnecessary, except where it is to achieve a social outcome. This is in line with international precedents. However, the MCMC does not agree with the argument on fixed and mobile substitution or on the substitution between LTE and HSBB. This was considered in detail during the Public Inquiry on Assessment of Dominance in Communications Market and the MCMC has concluded that mobile services are not substitutable for fixed-line telephony services, though broadband-based VoIP services are substitutes for fixed-line telephony services.[3] Likewise, the MCMC also held that mobile and other wireless broadband services are not substitutes to fixed broadband services.[4]

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[3] MCMC, *Market Definition Analysis: Definition of Communications Market in Malaysia*, 24 September 2014, pp. 19-20, 22-24 and 26.
[4] *Ibid*. pp. 28 and 68.

The MCMC notes the comments from XOX, and observes that its comments seem to relate to retail regulation. In relation to its proposal of incentives or subsidies, it is generally not the practice of the MCMC, unless the services fall under underserved areas or for underserved groups within the USP regime.

The MCMC reaffirms its preliminary view to focus regulation on the wholesale level in order to stimulate competition and innovation at the retail level. The focus for retail regulation would be on the basis of social policy objectives, where there is an established need.

2.3.2 Essential service in the 21st century

The MCMC notes that almost all respondents commented on the importance of broadband services, for both consumers and businesses based on consumption patterns, and some also emphasised that broadband services should be considered as a human right and a necessity and no longer a luxury.

With regard to Digi's comments that there is no reference to essential services in the CMA, the MCMC would like to highlight that in conducting this Public Consultation, the MCMC is guided by the national policy objectives ("NPOs") and principles in the CMA. For example, one of the tenets of the CMA is technology neutrality, but it is not specifically mentioned in the CMA. In that light, to have every single term or concept to be included in the CMA would not only be backward looking, it would be restrictive and counter-productive in the fast moving technological age. The MCMC is being consistent with the direction that the country is taking with regard to broadband and is also consistent with the direction globally. Hence, even if essential service or reference to broadband may not be specifically mentioned in the CMA, the MCMC views that it is within the ambit of the CMA.

It is observed that some respondents have commented on the affordability of broadband services, the MCMC would respond to this under section 8 of the PC Report. Further, there are also submissions that regard PSTN services as continuing to be essential in the 21st century, this aspect would be considered under section 3 of the PC Report.

2.3.3 Targeted approach

There was generally a lack of support for a targeted approach under the Rates Rules. The MCMC observes that there was a lack of submission on groups that could benefit from a targeted approach, and notes the suggestions from Altel and Maxis and may consider this approach at a later stage, if needed.

3 PSTN SERVICES

3.1 Overview

This section of the PC Paper discussed two areas, principally the changes in the market for PSTN services since the Rates Rules was introduced as well as access deficit.

Under the Rates Rules, the rates of PSTN services which were provided over the copper or fixed-line network, such as rental on exchange lines, local and national call charges, connection and reconnection fees, were regulated. However, the PC Paper also highlighted that there are bundled packages available in the market, which offer rates that are cheaper than those regulated under Rates Rules.

Secondly, the PC Paper also discussed access deficit. The MCMC has reviewed international experiences and the circumstances in Malaysia and has arrived at the preliminary view that there is no rationale to implement a mechanism to address access deficit. Instead, the MCMC proposed that retail regulation be relaxed to allow service providers to align the retail prices with cost.

Hence, in light of the above, as well as the fact that PSTN services are slowly being replaced by broadband services over the fibre network, making the charging under Rates Rules less relevant, the MCMC proposed to no longer regulate retail PSTN services. Instead, the MCMC would rely on its other provisions under the CMA to safeguard the interests of consumers.

3.2 Summary of submissions received

Question 4
Do you agree with the MCMC's assessment that there is little rationale, if any, to implement a mechanism to address access deficit? If indeed there is access deficit, do you agree with the MCMC's proposal to address the issue by relaxing retail rate regulation on PSTN services to allow the pricing structure to be more closely aligned to costs?

All respondents apart from TM agreed that a mechanism to address access deficit is not warranted.

Altel agreed with the MCMC's assessment that a mechanism to address access deficit is no longer applicable. With technological advancements, services using the PSTN are no longer stand-alone services. Secondly, Altel also viewed that the existing mechanisms under USP and the government funding for deployment of HSBB network is sufficient to ensure continuous investment in the fixed network as they are designed to incentivise investment in providing basic services in underserved areas. Further, given that competition exists in the telecommunications industry and the decline in demand for PSTN service, allowing the pricing structure to be more closely aligned to costs would not be detrimental to consumers as there are substitutable services in the market.

Celcom agreed with the MCMC's preliminary view that a mechanism to address access deficit is not warranted. Celcom reiterated its arguments under Question 2 that rate regulation for PSTN services was the mechanism used for tariff rebalancing to address access deficit. The access deficit, according to Celcom, is the shortfall between the cost for TM to provide the PSTN services and the revenues that it is able to receive under the Rates Rules. Tariff rebalancing is no longer applicable as universal services are now funded by the USP fund.

Digi agreed that access deficit is unwarranted since there is already a USP program which contributes significantly to the provision of services in underserved areas and communities. In addition, the government is subsidising key projects involving the rollout of HSBB network. Removal of retail price regulation would encourage the PSTN providers to further invest and provide flexible packages for the benefit of the consumers. Furthermore, deregulation of PSTN service may encourage new entrants.

Maxis submitted that when competition was introduced in Malaysia through the implementation of equal access, the local access fund which is a similar mechanism to access deficit contribution ("ADC") was implemented from 1999 to 2003 and at that time, it was set at 10 sen per minute for all originating calls. Maxis viewed that now, after more than 10 years, there is no rationale to re-implement the ADC mechanism. Moreover, with the existence of the USP regime where service providers are required to contribute 6% of their weighted net revenue annually to the USP fund and TM's rate regulated services are exempted, there is no reason to re-introduce the ADC mechanism. The first tariff rebalance in 2002 would have addressed this issue and there is the further benefit of TM charging an unregulated 30 sen/minute for fixed calls to mobile despite the declining interconnection tariffs.

Further, Maxis also concurred with the MCMC's views that the international benchmark on ADC found that only several countries around the world have implemented it, and it was only implemented as a short-term measure at the earlier stage when competition was introduced. As of now, Maxis is not aware of any country that is still implementing the ADC.

TIME agreed with the MCMC's approach as it could restructure its retail rate to recover the cost for providing retail services and avoid an access deficit. Furthermore, to be more competitive, it could offer differentiated PSTN services.

TM submitted that an access deficit still exists for TM, and explained that it has started to bear the access deficit since the local access funding was established in 1999 where it was appointed as the sole provider of universal service under the Determination of Cost-Based Interconnect Prices and the Cost of Universal Service Obligation or TRD006/98. Subsequently, according to TM, Rates Rules set the line rental and the usage charge far lower than the underlying cost. Hence, TM submitted that even if the PSTN services are deregulated, TM would not be able to rebalance the tariff as the Rates Rules has set the historical price benchmark on PSTN service from the customers' perspective. Further, any rate increase would be against TM's commercial interest due to the impact of fixed to mobile substitution and competition from mobile and Internet-based players. Any increase in rate would expedite migration of customers and cause access deficit to further increase. In addition, TM also noted that the existence of access deficit was also acknowledged in the Review of Access Pricing in 2006, when the annualised wholesale cost of TM's access network is around RM56 per month which is more than the consumer line rental of RM25 per month. The Review of Access Pricing in 2006 had also proposed to undertake a separate study to assess whether there is a need to implement access deficit in Malaysia.

TM did not agree with the MCMC's proposal that relaxing PSTN retail rate regulation would address the access deficit issues that it highlighted above. TM submitted that PSTN services should remain regulated in its current form to provide affordable and accessible voice service for all Malaysians. TM reiterated that with the fixed and mobile substitution and competition from mobile and Internet-based players, any rate increase would not be viable. In the event that competitive pressures allow an increase of PSTN rates, it might allow TM to provide a commercially sustainable service; however, it would be against the interest of consumers especially the low income consumers and those in rural and remote areas. Furthermore, TM would not legally be permitted to continue with existing prices (which are below cost) as this could be potentially deemed as predatory pricing and could be anti-competitive. In addition, with the economic uncertainty globally and Malaysia's fiscal policy challenges, including the introduction of Goods and Service Tax on 1 April 2015, an increase in price of basic voice services may be seen by consumers as a regressive measure. As a result, TM viewed that a mechanism to address access deficit is still necessary and justified.

YTL submitted that access deficit is a concept that has little evidence to substantiate. Furthermore, both access deficit and retail regulation of PSTN services are no longer relevant based on the following reasons:

- With competition, a pervasive last mile, backbone and international infrastructure is no longer relevant and cannot be used to support retail rate regulation anymore;

- Access deficit is more relevant during the 'voice' and equal access days. Currently, fixed-lines also carry data and content, and as these services cannot be separated, the combined revenue fully exceeds the cost of providing the services, hence, access deficit is no longer relevant;

- PSTN operators are migrating from traditional circuit-switched to packet-switched networks and IP networks, and are able to offer services to both fixed and mobile numbers at competitive rates. As such, there is no need to regulate the prices for PSTN services; and

- In a converged environment, where networks are able to deliver seamless voice, data and content services, regulating only the voice portion is no longer feasible.

Hence, YTL agreed that PSTN services should no longer be price regulated, and to allow market forces and competition to determine the price and packages, and with this, consumers will be the biggest beneficiary of deregulation.

A mobile operator viewed that there is little rationale to implement an access deficit mechanism, considering the international experiences particularly that of the UK and Australia, wherein it hindered the establishment of a transparent and competitive interconnection system, and it also caused a distortion in the market.

Further, the mobile operator agreed with the MCMC that rather than implementing an access deficit mechanism, it is better for retail rate regulation to be relaxed and to allow the pricing structure to be more closely aligned to cost. This would ensure that investment incentives are maintained so that deployment can be done in loss-making areas.

Question 5

(a) Do you agree with the MCMC's preliminary view? Please state your reasons.

(b)	Do you have any views on groups that would be disadvantaged from this proposal? Please clearly identify the group.

Celcom, Digi, TIME and YTL agreed with the MCMC's preliminary view to no longer regulate retail PSTN services, whilst Altel, Maxis, Packet One, TM and a mobile operator disagreed with it.

Altel noted that as shown in Figure 1 in the PC Paper, PSTN services are in a declining trend, due to the availability of VoIP services as a substitute to the traditional PSTN telephony service. VoIP service allows cost-saving hence, it reduces the usage charge for long-distance and international calls and ensures affordability.

However, despite the declining demand of PSTN services, Altel opined that the MCMC needs to consider the socio-economic responsibility in certain industries, such as hospitals and insurance services, which may lead to high communications cost being passed down to consumers. Hence, Altel recommended maintaining regulation of retail price of PSTN services.

Celcom agreed with the MCMC's preliminary view that there is no longer a need to regulate rates for PSTN services for the following reasons:

- Tariff rebalancing via Rates Rules is no longer applicable as universal services are now funded by USP fund;

- PSTN lines are low cost and usually packaged as part of a double play service with broadband or as a triple play service when video is added, or are packaged to enable other digital home lifestyle applications such as home security, interactive games and other services; and

- According to the TM Annual Report 2012, TM's overall migration of PSTN exchanges to all-IP Next Generation network will continue and is expected to be completed by 2015.

Further, Celcom did not view that there would be any group who would be disadvantaged from the PSTN rates being deregulated.

Digi agreed with the MCMC's preliminary view that PSTN services should be deregulated. TM is no longer burdened by the need to provide services to rural or underserved areas. In fact, Digi strongly concurred with the MCMC's observations of Oftel's and ACCC's comments in the PC Paper. Further, Digi viewed that prices of wholesale fixed voice services should be regulated to ensure competition and transparency and to allow market forces to determine retail prices.

Digi did not have any data to ascertain if there are any particular groups or communities who will suffer if PSTN retail rates are deregulated. Certain groups earning below a certain income threshold may require a low-priced service, while the disabled and aged groups would also require subsidised services. However, these groups could be sufficiently addressed under the USP program.

Maxis submitted that it is appropriate to continue regulating existing retail rates on the PSTN fixed-line services but to be only applicable to the dominant operator, until the MCMC is satisfied that there are significant developments and effective competition has been established. In addition, Maxis also viewed that the Rates Rules should be regularly reviewed to ensure that the rates reflect the actual cost of providing services to the end users.

Further, Maxis viewed that there are certain groups of consumers, such as those living in rural areas, the lower income group, older people, OKU etc. that still depend on PSTN fixed-line services. If the PSTN rates are deregulated, and should the dominant operator increase their PSTN rates, there could be significant impact to these groups of consumers. In order to identify the groups, Maxis recommended that the MCMC to work closely with the Welfare Department.

Packet One submitted that even though there is a trend inclined towards mobile amongst the consumers, PSTN services continue to have its own market. Houses in the rural areas may continue to depend on DELs as their main mode of communications. This group may be disadvantaged if retail rates for PSTN services are deregulated.

TIME agreed with the MCMC’s preliminary view that PSTN is no longer an essential service in Malaysia. In addition, broadband services enable telephony service over IP which is more cost-effective or is free-of-charge for broadband users.

TM did not agree with the MCMC’s preliminary view. TM submitted that PSTN services should continue to be regulated to ensure that basic telecommunications services remain universally affordable for all Malaysians. In addition, it believed that the current approach has been effective in achieving this important social policy objective, and should remain in its current form.

Further, TM viewed that some rural or regional groups may be disadvantaged by deregulation, especially if it is carried out in isolation. In particular, in the absence of an appropriate measure to address the access deficit, there would be a disconnection between the cost the operators must charge in order to make rural or regional deployments viable and the ability of rural or regional consumers to bear those costs.

YTL agreed that there is no longer a need to regulate the rates for PSTN services at the retail level as the services are migrating towards IP for the following reasons. Firstly, PSTN operators are now able to offer services to both fixed and mobile numbers at competitive rates. Secondly, in a converged environment, where networks are able to deliver seamless voice, data and content services, regulating only the voice portion is no longer feasible. Finally, YTL submitted that deregulation would cause the rates to drop, to the benefit of end users.

A mobile operator submitted that though the usage of PSTN services is slowly declining, it is still relevant in the 21st century. It agreed that regulation of PSTN services can be minimised, but to completely deregulate the rates for PSTN service would not be the right move for the following reasons. Firstly, even though there is no indication of a price hike by PSTN service providers, there is still a significant number of people that rely on PSTN services, whether in the city or sub-urban areas. Secondly, PSTN services are dominated by TM, and with the existence of a dominant player, there is a possibility that consumers could be exploited. It recognised that action can be taken against the wrongdoer after the fact; however, irreversible damage may have already occurred.

3.3 MCMC's final views

The MCMC appreciates the comments provided by the respondents and has set out its final views as follows:

3.3.1 Access deficit

The MCMC notes that generally the respondents, apart from TM, agreed with the international experiences and the rationale in arriving at the MCMC's preliminary view that a mechanism to address access deficit is not warranted. Celcom and Maxis also viewed that the tariff rebalancing in 2002 via Rates Rules would have already addressed the issue. Further, Maxis viewed that after more than 10 years, there is no longer a reason to re-introduce ADC, which was implemented by countries, as a short-term measure at the initial stage when competition was introduced. Both Celcom and Maxis also viewed that with the USP regime, it is no longer necessary. Under the USP, service providers are required to contribute 6% of their weighted net revenue (except for rate regulated services) to the USP fund and universal services are funded by the USP fund.

The MCMC notes that TM made an assertion that access deficit still exists, however, there was no evidence provided in support of the assertion, apart from the mention of the annualised wholesale cost of TM's access network at around RM56 per month.[5] This was also noted in the PC Paper, however, the MCMC observed that the wholesale cost of RM56 per month in 2005 dropped to around RM36 in 2013 and RM34 in 2016, and this was probably due to the transition from PSTN to fibre or HSBB network.[6] TM did not dispute on this point.

Further, the MCMC notes that TM disagreed that a relaxation of PSTN retail rate regulation would address the access deficit issues that it faces. The MCMC makes a few observations on TM's comments. Firstly, whilst TM submits that PSTN services should remain regulated in its current form to provide affordable and accessible voice service for all Malaysians, the MCMC views that PSTN rate regulation in its current form would not achieve that stated purpose. This is because TM is already in the process of replacing PSTN services with HSBB services, and as Celcom highlighted, TM's migration of PSTN exchanges to all-IP Next Generation network is expected to be completed by 2015. Hence, even if the PSTN rates continue to be regulated, without applying the rates to IP calls, it would render the regulation as irrelevant. Secondly, TM highlighted that in the event of an increase in prices, the more vulnerable consumers would be the low income consumers and those in rural and remote areas. The MCMC does not consider that it is proportionate to maintain rate regulation for PSTN services for all consumers, nor does the MCMC consider it a compelling argument that the current economic challenges (which are short-term in nature) should be seen as an argument to maintain PSTN rate regulation, which has a longer term effect. The MCMC has already pre-empted the possibility in the PC Paper and has expressed a willingness to consider a targeted approach to address the needs of those who could be affected. Thirdly, to maintain PSTN rate regulation that enables TM to continue with existing below cost prices, is inconsistent with the principles on rate setting in the CMA and is all the more reason that PSTN retail rates should no longer be regulated. Hence, based on the above, the MCMC is not presented with any compelling argument that would require a reconsideration of its preliminary view. Consequently, the MCMC reaffirms its preliminary view that there is no rationale to implement a mechanism to address access deficit.

3.3.2 Rate regulation of PSTN services

Celcom, Digi, TIME and YTL agreed with the MCMC's preliminary view, whilst Altel, Maxis, Packet One, TM and a mobile operator disagreed with it.

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[5] MCMC*, A Report on a Public Inquiry: Access Pricing*, 30 November 2005, p. 108.
[6] Please refer to pp. 35-36 of the PC Paper for further details.

Celcom, Digi, TIME and YTL generally agreed that rates for PSTN services should be deregulated, either due to technological development or because tariff rebalancing via Rates Rules is no longer applicable as TM is no longer burdened with the provisioning of universal services.

As explained above, the MCMC does not consider that it is viable to maintain Rates Rules to be applicable only for the dominant operator, until there are significant developments and effective competition in the retail fixed-line market. The MCMC also views that it is not appropriate to maintain Rates Rules as a measure to prevent any abuse of dominance by the dominant operator. The more appropriate approach for any such abuse is provided for under the *ex post* competition provisions under Chapter 2 of Part VI of the CMA.

The MCMC notes that there is no consensus amongst respondents to deregulate PSTN rates, however, most respondents who had proposed to retain regulation had highlighted that there could be certain industries or groups (in rural or regional areas) who could be disadvantaged, rather than consumers as a whole.

As such, the MCMC views that the reasons it expressed in the PC Paper, such as the continual decline of DEL and PSTN due to the replacement with fibre, as well as the availability of cheaper alternatives, continue to hold. The MCMC notes that there could be groups of consumers who could be disadvantaged if the rates for PSTN services are no longer regulated, however, it is not proportionate to continue to maintain rate regulation for PSTN services for all consumers. The MCMC's final view is that there is no longer a need to regulate the rates for PSTN services. The MCMC would continue to monitor the rates for PSTN services to ensure compliance with the CMA, and should any issue arise, the other provisions of the CMA would be used to address the issue(s).

In relation to any groups that could be disadvantaged, there does not appear to be sufficient data submitted currently to make a decision. Nevertheless, the MCMC thanks the respondents for all the useful feedback, and could reconsider this issue again, when there is further data submitted or feedback is received from other agencies, such as the Welfare Department.

4 PAYPHONE SERVICES

4.1 Overview

This section of the PC Paper discussed on the rates and usage of payphone services in Malaysia.

Under the Rates Rules, three types of calls made from public payphones are regulated, which are local calls, national calls and national calls through operator assistance. The MCMC has considered that there is a decline in the usage of payphone services generally and foresees that going forward, with the continued increase in mobile telephony, there would continue to be a decline. As such, the MCMC considered that there is little merit in continuing to regulate the rates for payphone services, and would rely on other provisions under the CMA to safeguard the interests of consumers.

4.2 Summary of submissions received

Question 6
Do you have any views on groups that would be disadvantaged if the retail rate of public payphone services are no longer regulated? Please provide justification for your view.

Altel submitted that foreign workers and villagers would be affected by deregulation of payphone services. Students, on the other hand, have student packages for mobile services as an alternative, and thus, are not as affected, except in places where strict rules for usage of mobile devices are imposed. Altel also remarked that public payphones are no longer relevant for several reasons, which include the wide range of affordable devices and voice plans available, as well as the small number of public payphones deployed in the market, as highlighted in the PC paper, making payphones inaccessible to most users.

Celcom submitted that according to Pernec PayPoint Sdn. Bhd. ("Pernec"), payphones are mostly used by students, foreign workers and villagers. In turn, Pernec's payphone booths are mostly placed at schools, public transport stations and shopping malls. Celcom asserted that these groups of people should not be disadvantaged if payphone retail rates are deregulated. Celcom believed that calls made through payphone are normally brief in nature, with the intention to leave short messages. Longer duration calls are commonly made from mobile phones, as many mobile packages, such as "family and friends" packages, offer cheap or free calls to subscribers. Celcom also commented that there has not been specific end user research in Malaysia to examine payphone usage trends.

Digi did not believe that any group would be disadvantaged with deregulation of retail payphone rates as calls from mobile could be considerably cheaper. For instance, outgoing call rates to off-net numbers offered by mobile prepaid packages can be as low as 11 sen per minute. Digi remarked that the pervasiveness of mobile phone services has contributed to the decline of the popularity of payphones.

Maxis viewed that there are minor groups of people that find public payphones relevant, such as rural dwellers and students in boarding schools with strict rules pertaining to mobile phone usage. Nevertheless, deregulation of the service should not put such groups at a disadvantage since public payphones are not the main option for customers to make calls. As an example, based on revenue data collected by Maxis from January to December 2014 for the payphone services it provides in 6 rural areas under the USP project, it observed that the usage of payphone services declined by 70% over the period. This trend might be caused by increased mobile penetration as well as attractive mobile plans that offer cheaper call rates. Most operators are also offering "Friends and Family" type packages with calls that are free or are charged at very low rates.

Packet One submitted that deregulation of payphone call rates will not negatively impact users. However, negative impact if any, will result in migration to mobile phones and it will not be beneficial to payphone providers. Therefore, in the event of deregulation, the MCMC should continue monitoring retail payphone rates to ensure compliance with the principles in the CMA.

TIME was of the opinion that the current mode of payphone service is no longer a relevant service.

TM opined that there may be a few consumers that will be affected by deregulation of public payphone call rates. However, based on the increase in mobile penetration and the decline in call minutes, the number of people relying on payphone services is shrinking. TM highlighted that payphones would be needed during emergency situations, and this should be covered by the continued regulation of emergency calls at no charge. Hence, TM submitted that in deregulating call rates for payphones, it should not include emergency calls. It finally concluded that the increase in vandalism, the decreased usage of public payphones, as well as increased availability and affordability of mobile services show that regulation of public payphones is no longer necessary in Malaysia.

YTL viewed that the need to regulate depends on usage and dependency of the service by the public. With the increase in personal phones and competitive rates, there would be low dependency on public payphones. Further, the regulation of payphone rates has seen a drop in the provisioning of the services. Hence, payphones may no longer be commercially viable. However, having said that, payphones remain as a public utility for those without access to other forms of communications, such as people in underserved areas and underserved persons within a community. Deregulation may cause the price to hike to a level beyond the affordability of this group. Hence, YTL submitted that this is a good reason to classify payphones as a USP service and be made available with regulated rates. YTL also suggested that the MCMC should revamp the public payphone service by making it IP-based and incorporating WiFi hotspots.

A mobile operator submitted that students (mainly primary), senior citizens, villagers and low income citizens would be affected by deregulation. These groups of consumers may not be able to afford or have access to their own mobile device or to PSTN lines; hence public payphones are the only viable communications medium especially in the event of an emergency. The mobile operator viewed that the rates for public payphones should be regulated, as there is a social importance attached to the continual provision of subsidized voice access.

Question 7

Do you agree with the MCMC's preliminary view? Please state your reasons.

Celcom, Maxis, Packet One, TIME and TM agreed with the MCMC's preliminary view to no longer continue to regulate the rates for payphone services. On the other hand, YTL and a mobile operator disagreed with the MCMC's preliminary view.

Celcom agreed with the MCMC that there is little merit in continuing to regulate rates of local calls, national calls and international calls through operator assistance made from payphones for the following reasons:

- Mobile phones are becoming the preferred medium for making calls. Calls made from payphones are usually short calls, while mobile phones are becoming the preferred alternative by users out of convenience and because of the availability of cheap rates and free calls through "family and friends" mobile packages; and

- Payphone technology is moving away from PSTN and towards broadband. For example, Pernec has launched eRas, an extended radio access system service for its payphone service, where 35,000 of its payphones (under the brand Helo) can be utilized to provide not only voice services, but also broadband services and credit loading facilities, in both rural and urban areas. Further, under the Entry Point Projects 3 ("EPP3'): Connecting 1Malaysia initiative, Pernec and its French media agency partner, Kaatchi will work together to install new PayPoint booths that can provide public WiFi and mobile phone reload services, aside from calling services. In Australia, Telstra is already in the process of rolling out 500,000 WiFi hotspots nationwide by converting shops and part of their ageing payphone network to include wireless broadband connections. Hence, Celcom viewed that regulating the rates for payphone services under the Rates Rules are no longer applicable.

Digi agreed with the MCMC's preliminary view to deregulate retail rates for payphone services.

Maxis agreed that there is little merit to regulate the retail rates for local calls, national calls and national calls through operator assistance made from payphones. Maxis also submitted that Ofcom (Oftel at that time) in 2000, decided that there should be no price control on the public payphones market, while continuing to monitor the market in case of irregular price increment. Maxis reiterated that payphones have become a secondary option and are only used in cases of emergency. There are many affordable mobile plans in the market, and mobile phones are also more convenient than payphones in terms of mobility. For instance, Maxis' prepaid weekend super saver plan offers a low domestic call rate over the weekend at 1.7 sen per minute, while the Active10 plan charges 12 sen per minute to call 10 Maxis numbers registered by the user.

Packet One agreed that payphone retail rates are to be deregulated, but emergency services should still be regulated at no charge. Packet One submitted that users are shifting away from payphones because of the increased use of mobile phones, the rise of Internet-based free or cheap communications, and the availability of affordable mobile services, as a result of competition in the market. Hence, deregulation of rates could help to make this shrinking business a little more enticing.

Payphones, however, are needed to be put in place under certain circumstances, such as at schools where mobile phones are prohibited and in public areas in case of emergency or when a consumer's mobile phone battery runs out. In this regard, Packet One suggested that payphone deployment should still be part of USP, but to expand it to serve not only rural but identified locations such as public places, residential schools and higher education institutions.

TIME was of the opinion that the current mode of payphone service is no longer a relevant service.

TM agreed with the MCMC's preliminary view and believes that monitoring and use of appropriate CMA provisions (such as section 198) is best to replace regulation on public payphones in the long-term. With the decline in usage of public payphones, continued regulation would not achieve much since other provisions in CMA are in place to monitor rates.

YTL did not agree to deregulate the rates for payphone services. With the low usage of payphones and the high commercial rates that would be set, it would mean the "demise" of the payphone service. YTL viewed that the payphone service needs to be retained as it is a utility for underserved areas and for underserved groups. As the service may no longer be commercially viable, it should be classified as a USP service with funding from USP fund and with regulated prices.

A mobile operator viewed that rates for payphone services should still be regulated. Payphones are still being used as a fall back plan for people who could not afford or do not have access to mobile phones. The mobile operator also suggested that with the increasing usage of mobile services, the MCMC should re-evaluate the location of public payphones. Public payphones should be situated in underserved areas where mobile access is unlikely and at locations that are convenient to be accessed, with low likelihood of vandalism. Therefore, the mobile operator suggested that public payphones should be placed in community service areas, where the payphone is easily accessible and monitored by the community to prevent vandalism.

4.3 MCMC's final views

The MCMC notes that most of the respondents supported the MCMC's preliminary view and agreed that the retail rates for local calls, national calls and national calls through operator assistance made through the payphone should be deregulated. The reasons include the decline of payphone usage, the pervasiveness of mobile phones and the availability of mobile packages (that offer cheaper rates than the regulated rates for payphone services) and the irrelevance of the regulated call rates under Rates Rules due to the evolvement of the payphone, which offers broadband and other services (no longer limited to voice calls only).

Some respondents have highlighted that payphones are important especially during an emergency, with Packet One and TM emphasising that emergency calls at no charge should continue to be made available from payphones. The MCMC notes the concern, and clarifies that emergency services, which would be discussed in section 5, are not included in the call services made from payphones that are proposed to be deregulated.

The MCMC notes that the two submissions that did not agree with the MCMC's preliminary view had concerns about the non-availability of payphones in underserved areas should the rates of payphones no longer be regulated. Packet One and YTL also viewed that payphones should be considered under the USP program, as a way to address the needs of the groups of consumers who are reliant on payphones. The MCMC takes note of these comments, including the comments from the mobile operator on the location of payphones. The MCMC would like to highlight that deregulation of call rates made from payphones does not mean that payphone services in underserved areas would be discontinued. Conversely, the deregulation may provide an impetus for the payphone operators to reconsider their rates and service offerings in a holistic manner and if need be, revamp their business to ensure sustainability and to compete effectively in the market. The MCMC will continue to monitor and if the need arises, the MCMC may address the issue of payphone availability through other initiatives, which may include USP.

Having considered the above, the MCMC's final view is that there is no longer a need to regulate the rates for payphone services. The MCMC would continue to monitor the rates for payphone services to ensure compliance with the CMA, and should any issue arise, the other provisions of the CMA would be used to address the issue(s). In relation to any groups that could be disadvantaged, apart from the proposal mentioned above to address their needs through the USP program, there does not appear to be any other data submitted requiring a targeted approach under the Rates Rules.

5 REQUIRED APPLICATIONS SERVICES

5.1 Overview

This section of the PC Paper discussed on the required applications services ("RAS") in Malaysia.

Under the Rates Rules, the rates for three RAS, i.e. emergency services, operator assistance service and directory assistance service are regulated. The MCMC's preliminary view is to continue to regulate emergency services only at no charge to the consumer or the end user. As operator assistance service and directory assistance service are no longer as important or will continue to decline in importance, the rates for both services were proposed to no longer be regulated.

5.2 Summary of submissions received

Question 8
Do consumers still regard directory assistance services as an important way to obtain fixed-line telephone numbers of businesses or residential customers? Please provide justification for your view.

Most respondents generally agreed that directory assistance service is no longer essential to obtain fixed-line telephone numbers of business and residential customers.

Celcom submitted that consumers no longer regard directory assistance service as the prominent way to obtain fixed-line telephone numbers. Consumers have other alternatives such as online search through E-Yellow Pages, FINDIT and other websites.

Maxis viewed that directory assistance service is still being used but is no longer the most important means to obtain fixed-line telephone numbers since search has evolved to online methods and mobile directory services. Based on a report published by the Star on Google,[7] where it was highlighted that 53% of Malaysians are smartphone users, Maxis estimated that about 10 million smartphone users search for information through their mobile phones. The same report also suggests a shift towards online directory

[7] The Star, *Google: Malaysia sees nearly 300% smartphone increase since 2011*, 3 September 2013. <http://www.thestar.com.my/Tech/Tech-News/2013/09/03/Google-Malaysia-sees-nearly-300-smartphone-increase-since-2011/>

services, as one of the main alternatives. In addition, Maxis' FINDIT has 201,000 unique users who downloaded the FINDIT application since its launch.

Based on the statistics provided in the PC Paper, Packet One believed that the number of enquiries (9.2 million) made in 2013 is significant and directory assistance service is still being used in spite of the availability of alternatives such as the Internet and thus, needs to exist. However, since FINDIT was only launched in 2014, Packet One suggested that statistics after that period would be a better indicator to see if directory assistance service is still important that it should remain as a RAS.

TIME submitted that directory assistance service is not a key service in obtaining fixed-line telephone numbers of business and residential customers since most business information could be obtained on the Internet, while most consumers do not have fixed-line telephone and use mobile phones, instead.

TM commented that increasing competition from online directories and a significant decline in number of enquiries suggest that directory assistance service is no longer essential to customers. TM also highlighted that the use of print directories is significantly declining, while the use of domestic and global online directories and search companies is growing. On the same note, TM agreed with Option 2 in the PC Paper, which is to not regulate the retail rates for directory assistance service. TM mentioned that Option 2 is in line with regulatory developments in other markets, such as in the UK and Singapore, where operators are free to charge for directory assistance services on a commercial basis. TM also noted that directory services reforms are now occurring in several global markets, including in Europe (e.g. in Ireland).

XOX submitted that directory assistance service is no longer important. This is largely because subscribers can easily obtain fixed-line telephone numbers immediately via search engines on the Internet for free, and that the number of subscribers who call to directory assistance service is negligible.

YTL submitted that directory service and directory assistance service are no longer important and should be removed from the list of RAS because of several reasons: telephone numbers are personal data that require consent prior to publication and disclosure, there is risk of abuse through spamming of telephone numbers for scams or direct marketing, and the implementation of Mobile Number Portability could make information published on the directories inaccurate and outdated. YTL added that directory services can instead be left to innovative entrepreneurs who wish to improve the service whilst complying with existing laws.

A mobile operator submitted that directory assistance service is no longer essential to obtain fixed-line telephone numbers of business and residential customers since other alternatives are available, such as searching via the Internet.

Question 9

Do you agree with the MCMC's preliminary view that there is no need to regulate the rates for directory assistance service? Or do you think that there are other options that should be considered? Please state your reasons.

Celcom, Maxis, Packet One, TM and XOX agreed with Option 2, which is that there is no need to regulate the rates for directory assistance service.

Celcom agreed with Option 2, and reiterated that end users have alternative ways of obtaining fixed-line telephone numbers and addresses, such as via online search, making the service no longer essential to end users.

Maxis agreed with the MCMC's preliminary view on Option 2 which is to deregulate rates for directory assistance service. Maxis added that the existing retail rate for directory assistance service is regulated at 30 sen per call, while TM charges 95 sen per call to operators at the wholesale level. Deregulation will also allow alternative fixed operators to not suffer an unjust loss.

Packet One opined that Option 2 should be implemented. This option benefits both consumer and operator, where consumers have the option to continue using directory assistance service, if they wish, and operators are allowed to charge users at a cost-oriented price.

TIME currently offers directory assistance service to its customers, although TIME has to subsidize the calls made. TM owns the database and directory calls are routed to TM's call center since all operators are dependent on TM's database. TM charges TIME 95 sen per call, whilst TIME is only able to charge its customers 30 sen per call under Rates Rules. TIME proposed that the directory assistance service to be split into two facilities, a database service and a call centre service. TIME suggested that the database service should be made available to all at cost, with the call center service available to operators via commercial arrangements.

TM concurred with Option 2 as directory assistance service is no longer essential to consumers. TM commented that as rates for directory assistance service calls from mobile are not regulated, and there is a lack of evidence that this is socially problematic, this indicates that regulation may not be necessary for directory assistance service calls made from fixed-line, as well. Furthermore, prices of the directory assistance service will be constrained by competition from online directory service, which is the clear preference for customers. Hence, there is no longer any merit in regulating directory assistance service rates or the directory services altogether. Thus, TM proposes that directory assistance service to be removed from the list of RAS.

XOX also agreed with Option 2 in the PC Paper, as every operator has its own cost for services provided.

YTL believed that rates for directory assistance service should not be regulated to encourage innovation. Rates should then be determined by rate setting principles as outlined in the CMA.

A mobile operator agreed that there is no need for regulation, since alternatives are easily available and rates for directory assistance should be set commercially, as the service is not a necessity but a privileged service.

Question 10
Do you agree with the MCMC's preliminary view? Please state your reasons.

A majority of respondents agreed with the MCMC's preliminary view.

Celcom submitted that calls to emergency services should be charged due to two reasons. Firstly, 99% of the 2.8 million emergency calls each month in 2014 were reported as non-genuine calls, which include crank calls and silent calls. To ensure minimal charge to consumers, the retail rate should be cost-based. Secondly, calls routed to Malaysian Emergency Response System 999 ("MERS 999") are managed by TM. Celcom currently pay to TM for emergency calls originating from Celcom's network. The rate that Celcom pays to TM for emergency services originating from its network is almost five times more expensive than normal calls originating from its network. Celcom believed that other operators are experiencing similar issues, and thus, urges the MCMC to conduct a cost study on routing of calls to MERS 999 to ensure transparency.

With regard to operator assistance service, Celcom agreed with the MCMC's preliminary view that the service is becoming less important. Celcom cited the Discussion Paper on RAS in June 2002, wherein it provided the types of operator assistance service that need to be provided, such as call set up assistance for domestic and international calls, assistance with general enquiries and information about network service. Celcom commented that those services are now provided through other platforms such as International Direct Dialing and operator's call center.

Celcom also agreed with the MCMC's preliminary view to not regulate the retail rate of directory assistance service, and added that currently Celcom is providing the service via TM, who charges Celcom 95 sen per directory call, as compared to the 30 sen that TM charges its own retail customers. For transparency purposes, Celcom wishes to seek clarification on the cost of TM directory service for other operators.

Digi agreed that emergency services are critical and thus the service should be regulated at no charge for the end user. However, Digi highlighted that TM charges a commercially negotiated wholesale price to operators, which may differ between operators. Digi believed that as a provider of emergency services, TM should waive the charge to operators, since TM has been appointed to provide MERS 999, which is fully funded by the Government.

Maxis also agreed that emergency services should be regulated at no charge, and to limit emergency service for calls, excluding other services such as subscriber's details. Maxis also pointed out that while the retail rate for emergency calls is zero, operators incur an interconnection charge. Maxis submitted that this arrangement should be reviewed as the MERS 999 is a fully funded government project, making the interconnection charges unnecessary.

Packet One agreed with the MCMC's preliminary view. Operator assistance service and directory assistance service should remain as RAS but the rates for these two services should no longer be regulated. Operator assistance services are usually used by users on fixed-lines, while consumers on mobile phones would usually dial phone numbers directly. Emergency services should be regulated at no charge as they are critical to consumers. Although there is little mention of public cellular blocking service for lost and stolen cellular mobile access device of end users ("PCBS") in the PC Paper, Packet One opined that the fact that operators are prohibited from charging customers for PCBS should be discussed.

TIME agreed to the MCMC's preliminary view that emergency services, operator assistance service and directory assistance service continue to be provided as RAS, and to no longer regulate rates for operator assistance service and directory assistance service, and to only regulate emergency services at no charge.

TM agreed with the MCMC's preliminary view, and proposed that operator assistance service and directory assistance service should no longer be regulated under the Rates

Rules and to be removed from the list of RAS, as well. As for regulation of emergency services at no charge, TM believed that it is an important obligation that operators should be proud to offer, nationally. The critical nature of an emergency service call indicates that consumers should not be charged when they use the service.

XOX agreed with the MCMC's preliminary view. XOX submitted that emergency services is necessary to allow the public to obtain assistance and to ensure safety, thus it should be a free service, to be used by everyone, anytime and anywhere.

YTL submitted that operator assistance service and directory assistance service should not be RAS. YTL believed that the two services should be left to commercial, market and innovative considerations, subject to rate setting principles.

A mobile operator agreed with the MCMC's preliminary view, since emergency services are critical while operator assistance and directory assistance services have alternatives available. Call rates for operator assistance and directory assistance should be set commercially since the services are not a necessity but are considered as a privileged service.

5.3 MCMC's final views

In general, a majority of respondents agreed with the MCMC's preliminary view, which is to no longer regulate the rates for operator assistance service and directory assistance service, and only to regulate the rate of emergency services at no charge to the consumer or the end user.

Several respondents have made comments or proposals on the scope of certain RAS or services to be removed from the list of RAS. Whilst the MCMC takes note of the comments, they are not directly relevant to this Public Consultation which deals with the rates of the RAS under Rates Rules. In the same vein, the MCMC notes Packet One's submission about PCBS's rates, however, it did not elaborate on the issue further.

The MCMC disagrees with Celcom's proposal that emergency services should be charged, as emergency services are critical to end users. With regard to non-genuine calls, there are other more appropriate ways to deal with them, such as through education, awareness and enforcement. The MCMC does not agree that either the number of non-genuine emergency calls or the interconnect charges warrant that emergency services should be charged.

Further, the MCMC notes that Celcom, Digi and Maxis requested for a review of the interconnect arrangement or a costing study to be conducted on the MERS 999. Even though the interconnect arrangement for MERS 999 is not regulated, the provider of the service is still bound by the provisions in the CMA. In the event that parties view that there is any non-compliance with any provision under the CMA, parties can submit a complaint (with appropriate evidence) to the MCMC for further investigation.

In conclusion, the MCMC's final view is that the rates for operator assistance service and directory assistance service would no longer be regulated, but emergency services will continue to be regulated at no charge to the consumer or the end user. However, for clarification, these three services continue to be RAS and should be provided by the licensees who provide PSTN, public cellular services and/or public payphone services.[8]

The MCMC would continue to monitor the rates for operator assistance service and directory assistance service to ensure compliance with the CMA, and should any issue arise, the other provisions of the CMA would be used to address the issue(s).

[8] Ministerial Determination on Required Applications Services, Determination No. 2 of 2005.

6 INTERNET ACCESS SERVICES

6.1 Overview

This section of the PC Paper discussed on the rates and usage of Internet access service or Internet dial-up service in Malaysia.

Under the Rates Rules, the rate for Internet access service or Internet dial-up service is regulated. The MCMC's preliminary view is that the rate for Internet access service would no longer be regulated, as there are only three providers providing the service, there is a decrease in the number of subscribers from year to year and broadband packages are available to suit the budget of light users. The MCMC would rely on other provisions under the CMA to continue to safeguard the interests of consumers.

6.2 Summary of submissions received

Question 11
Do you agree with the MCMC's preliminary view? Please state your reasons.

The respondents unanimously agreed with the MCMC's preliminary view to no longer regulate rates for Internet access service, since the service is being phased out and various affordable alternatives with improved speeds are available.

Celcom agreed with the MCMC, that Internet dial-up service should be deregulated, since there is little or no incentive for Internet dial-up providers to increase prices due to competitive pressures from mobile broadband service, in the absence of price regulation.

Digi opined that the demand for Internet dial-up service via short code access is rapidly declining and therefore need not be regulated.

Maxis also agreed with the MCMC's preliminary view, since there are various low priced and affordable broadband packages in the market, making Internet dial-up less attractive for users. Maxis, for instance, has the #Hotlink plan that offers Free Basic Internet once the users' quota is reached, enabling users to be online for free throughout the validity period of the plan.

Packet One supported the MCMC's preliminary view that no regulation is required for Internet dial-up services, based on the decreasing trend of demand and offerings. Alternative packages are also readily available in the market should the current Internet dial-up customers opt to upgrade, or should a provider decide to stop providing Internet dial-up service due to economic reasons.

TIME also supported the MCMC's preliminary view. TIME submitted that it is no longer offering Internet dial-up service and foresees a decline with no increase in take-up for the service. TIME also viewed that competition from fixed and mobile broadband packages with higher speeds will definitely attract new subscribers and motivate migration from Internet dial-up to newer packages.

TM agreed with the MCMC's preliminary view that Internet dial-up should no longer be regulated. The service, which is in its sunset stage, is declining in penetration and the trend is not going to reverse. With low cost broadband packages available in the market, it would cater to the needs of light or intermittent users. Deregulation would also not significantly impact the current price of Internet dial-up due to competitive pressures from mobile and fixed broadband services.

XOX agreed that there is no need to regulate the rates of Internet dial-up, since subscribers are now looking for higher speed Internet. Further, broadband services provide a better service as compared to Internet dial-up service.

YTL agreed that retail rates for Internet dial-up services should not be regulated, as competitive fixed and mobile broadband packages are being introduced continually to suit the varying needs of consumers.

A mobile operator agreed with the MCMC's preliminary view, and submitted that demand for the service is declining with no increase in subscription. Jaring, for instance, has stopped accepting new subscribers and is only maintaining current ones. In addition, according to the Linux information project, the maximum speed of Internet dial-up is only up to 56 Kbps. With the LTE deployment of higher speed Internet and affordable broadband starter packs, Internet dial-up services are expected to become less relevant in the future.

6.3 MCMC's final views

The MCMC notes the unanimous agreement of the respondents. Hence, the MCMC's final view is that the rates for Internet access service would no longer be regulated. The MCMC would continue to monitor the rates for Internet access service to ensure compliance with the CMA, and should any issue arise, the other provisions of the CMA would be used to address the issue(s).

7 AUDIOTEXT HOSTING SERVICES

7.1 Overview

This section of the PC Paper discussed on the rates and usage of audiotext hosting services in Malaysia.

Under the Rates Rules, audiotext hosting rates are regulated. The MCMC's preliminary view is that audiotext hosting rates would no longer be regulated, as the service is no longer important to consumers as they use alternative platforms. The MCMC would rely on other provisions under the CMA to safeguard the interests of consumers.

7.2 Summary of submissions received

Question 12
Do you agree with the MCMC's preliminary view? Please state your reasons.

All respondents apart from Packet One agreed that the rates for audiotext hosting services should no longer be regulated.

Celcom agreed that audiotext hosting rates should not be regulated, since end users are now increasingly using the Internet to obtain information, which is a more attractive method than dialling numbers for information.

Digi submitted that there is little or no demand for audiotext hosting services. From Digi's experience, more consumers are using value-added services from other platforms including over-the-top ("OTT") applications.

Maxis agreed with the MCMC's preliminary view, and commented that impact of deregulation should not be significant. Maxis explained that previously, audiotext hosting services delivered various types of content, with premium charges to customers. Content delivery is now widely available with better quality and cheaper prices by content providers via SMS or WAP, and by OTT players. Nevertheless, Maxis submitted that TM still offers audiotext hosting services to some of its corporate customers. While TM charges Maxis a commercially set interconnection rate, Maxis is obliged to charge retail customers at the regulated retail rate. Maxis thus wished to highlight when retail rates are no longer regulated, operators will need to review interconnection arrangements to be consistent with changes in retail rate for adequate returns.

Packet One proposed that audiotext hosting charges should still be regulated especially when it allows a commercial entity to use the service as their customer service contact number. Further, Packet One recommended that the rates for audiotext hosting service should be reviewed to avoid unfair charges to consumers.

TIME agreed with the MCMC's preliminary view due to the reason that audiotext hosting services could be replaced by other platforms, such as the Internet. TIME also viewed that deregulation of audiotext hosting retail rates will not affect users, as alternatives are available.

TM agreed with the MCMC's preliminary view and believed that deregulation is unlikely to create a great impact on existing users. TM also remarked that prevalence of other platforms constrains the service providers' ability to increase prices. Even if prices were to rise, it is unlikely to cause long-term impact to subscribers, as they can switch to one of the other platforms.

YTL agreed that the rates for audiotext hosting service should be deregulated since various alternative platforms could be used in place of audiotext hosting service.

A mobile operator also agreed with the MCMC's view to deregulate the rates for audiotext hosting services as the demand for the service has been declining, and alternative platforms for consumers such as OTT services are in the market.

7.3 MCMC's final views

All respondents apart from Packet One agreed with the preliminary view of the MCMC to no longer regulate the rates for audiotext hosting service.

The MCMC notes Packet One's submission and clarifies that the rates of audiotext hosting services are actually charged by TM to its customers, including the commercial entity.[9]

The MCMC also takes note of the comment from Maxis. Even though the interconnect arrangement for audiotext hosting services is not regulated, the provider of the service is still bound by the provisions in the CMA. As mentioned under section 5.3, in the event that Maxis views that there is any non-compliance with any provision under the CMA, it

[9] Please refer to PC Paper, p. 57 for the details.

can submit a complaint (with appropriate evidence) to the MCMC for further investigation.

In conclusion, the MCMC's final view is that the rates for audiotext hosting services should no longer be regulated. The MCMC would continue to monitor the rates for audiotext hosting services to ensure compliance with the CMA, and should any issue arise, the other provisions of the CMA would be used to address the issue(s).

8 BROADBAND SERVICES

8.1 Overview

This section of the PC Paper discussed on broadband services in Malaysia.

It commenced with a review of the international regulatory approaches on broadband services at the wholesale and retail level. Then, the MCMC conducted an analysis of the affordability of broadband packages in Malaysia, and observed that as a proportion of household income, for all income categories, whether for an entry-level fixed broadband or mobile broadband package, it is within the goal of affordability as that set by the Broadband Commission for Digital Development, i.e. less than 5% of the average monthly income of the average household. However, the services are less affordable for the lower income group, as compared to the other segments of society. The MCMC considered that though there are initiatives and incentives available in the market, there may be a need for regulatory intervention for this lower income group, and sought feedback on whether the alternative to regulation, such as the development of affordable broadband packages by the industry on their own accord, could be a more flexible approach in meeting the changing needs of the lower income group.

8.2 Summary of submissions received

Question 13

Do you agree with the MCMC's view that wholesale regulation is more appropriate to ensure that there is broadband competition at the retail level?

All respondents agreed with the MCMC's view that wholesale regulation is more appropriate to ensure that there is broadband competition at the retail level.

Altel agreed that wholesale regulation for access to facilities and services is crucial to ensure a more competitive market at the retail level. Altel stated that it relies on the incumbent mobile network operators' infrastructure for delivery of its services. Altel submitted that its high operational expenditure costs, which are due to high commercial rates imposed by mobile network operators, impact upon Altel's design and costing of its services. Wholesale regulation would thus enable small operators such as Altel to enjoy a more competitive rate from incumbents.

Celcom agreed that wholesale regulation is more appropriate to ensure broadband competition at the retail level. Specifically, Celcom opined that the HSBB service requires regulation, where TM is operating in both the upstream and downstream markets.

In order to enhance competition and to provide broadband at affordable prices for end users, Celcom urged the MCMC to address the wholesale market for HSBB by considering the following three measures:

- The MCMC should closely monitor arrangements to access HSBB infrastructure to enhance competition. Since the HSBB services offered at Layer 3 are not included in the Access List, effective access to HSBB is more difficult. Close monitoring by the MCMC is crucial, as HSBB exhibits bottleneck characteristics, such as high barriers to entry and a lack of available close substitutes;

- The MCMC should regulate wholesale prices for access to HSBB services, as this would avoid predatory pricing and margin squeeze by TM, who is also competing to secure market share; and

- EPP7 has identified that many residential units were not equipped with readily-installed ducts. Retro-fitting access causes inconvenience and raises costs to end users. To tackle this issue, all states need to gazette the amended Uniform Building By-Laws 1984, which requires that developers provide communications infrastructure for all new housing or commercial developments. Celcom submitted that developers and the MCMC should discuss and find operators to take over the ducting and provide open access to all other operators.

Digi fully supported the MCMC's view that wholesale regulation is more appropriate and that retail regulation could result in adverse effects to the competitive environment. Digi believed that some key services are not effectively addressed through the Access List, especially those controlled by licensees deemed as dominant, such as high bandwidth transmission services, dark fiber, physical infrastructures such as ducts, access to buildings and right-of-way to lay fiber. For instance, Digi added that the cost of Transmission Services will rise as a result of a review of the charges by TM. The existing practice of charging on an end-to-end basis is now replaced with a combination of transmission and tails which, together with port charges, resulted in higher overall costs. Digi noted that this is in spite of the MCMC's determination of declining transmission prices for 2013-2015 in the last Access Pricing review.

Maxis agreed that wholesale regulation is more appropriate in ensuring competition at the retail broadband market. However, regulation should only be applied on the wholesale market that lacks effective competition and only on dominant operators that have the potential to abuse their market power and engage in anti-competitive practices. Maxis also asserted that as noted in the PC Paper and based on benchmarking of advanced markets such as Japan, South Korea and the UK, most regulators opt to regulate fixed broadband services at the wholesale level and on dominant operators.

Maxis also reiterated the status of broadband markets in Malaysia as follows:

- The mobile broadband service is competitive and no operator is dominant: Based on the PI Report on Dominance, it was concluded that there is no dominant operator in the mobile broadband market (for both wholesale and retail). The regulatory practice generally has been a move away from price control regulation or regulatory remedies when there is effective competition and where the markets are functioning; and

- The fixed broadband market is not competitive with TM as the dominant operator: In the PI Report on Dominance, it was concluded that TM is the dominant provider for fixed broadband and data services in retail and wholesale markets for both residential-grade and business-grade services. Maxis submitted that it sells broadband services to consumers at a lower price than the incumbent despite paying significantly for the wholesale services, however, this means that there is less scope for price reduction. Further, as a small operator with less than 5% of market share, it is not able to impact the end user prices unless the wholesale price is reduced. Hence, Maxis emphasised that wholesale regulation at the fixed broadband market is critical to ensure that there is competition of broadband services at the retail level.

Packet One agreed that more focus should be placed on wholesale regulation to ensure effective competition in broadband. This will benefit consumers and also promote innovation from new entrants.

TM submitted that the existing wholesale regulation and other initiatives on broadband are sufficient and the focus should be on wholesale regulation. In contrast, regulation of broadband retail prices is unnecessary and could result in a negative outcome for consumers. The comments are as follows:

- Existing wholesale regulation and initiatives on broadband are sufficient and effective: Based on ITU's Measuring the Information Society, Malaysia ranks highly for broadband affordability on both a regional and global level. The cost of fixed broadband has also decreased to 2.42% of Gross National Income ("GNI") per capita in 2013, which is below the 5% target set by BCDD. This has been due to Malaysia's current regulatory framework, which promotes sectorial investment and development as well as policies and initiatives to expand broadband coverage. TM considered that regulatory measures has successfully preserved competition at the retail level and ensured access to essential wholesale services;

- Retail broadband prices are competitive and regulation of retail broadband prices are unnecessary: Malaysia's broadband market is highly integrated, with high degree of substitution between fixed and wireless broadband services at lower prices and speeds supported by the existing wholesale regulation. TM also proposed that the restriction over spectrums other than 2.6 GHz (and some 1.8 GHz) for the LTE deployment be lifted, so that there could be even greater competition in the broadband market. In this light, retail regulation is unnecessary and the focus should be on effective regulation of wholesale services; and

- Retail price regulation would result in a negative outcome for consumers: Retail price regulation adversely impact network investment and the ability of operators to offer attractive tariff plans and bundled services that can cater to the needs of different consumers. Broadband has not yet reached maturity, and is still at the deployment stage with ongoing investment in broadband network. Hence, retail regulation at this phase is very risky. Furthermore, in comparison to the voice-centric services where price regulation has been effective, the broadband value chain is more complex and the ability of providers to bundle different broadband products is more important to consumers. Therefore, TM suggested that the MCMC should aim at maximizing competitive market pricing while encouraging investment and innovation in the broadband sector.

TIME agreed with the MCMC's view as the Government has partly funded TM in the HSBB project, including the backhaul and access section of the HSBB network. TIME submitted that by continuing to regulate the wholesale services, including the HSBB transmission and access services, the industry can focus on competing at the retail level, providing consumers with more choices in terms of prices and service offerings. TIME further emphasised that the MCMC would need to regulate the terms and conditions of the HSBB service and not just the prices.

XOX agreed with the MCMC's view to regulate at the wholesale level. As an MVNO, XOX incurs cost from the mobile operator. XOX submitted that ISP wholesale rates should be regulated because the cost saving would enable operators to provide consumers with more affordable broadband packages.

YTL supported that wholesale regulation is appropriate. Nevertheless, YTL emphasised that the MCMC needs to ensure that wholesale pricing is set at a reasonably fair rate to promote effective competition and to prevent margin squeeze, and to also factor in subsidies received from the government or USP fund to ensure that these benefits are received at the retail level. Further, the setting of wholesale access prices must be transparent and should not be open to *ex post* interpretations that negate the purpose of the access prices. For example, there was a change to the basis of charging resulting in higher total cost of the service, rather than the expected savings from the lower transmission prices in the Mandatory Standard on Access Pricing.

A mobile operator agreed with the MCMC that wholesale regulation is more appropriate to ensure that there is broadband competition at the retail level. Setting of retail prices for broadband services should be avoided, and instead, facilitating retail competition through wholesale regulation of broadband services should be encouraged. Wholesale regulation is necessary to protect consumers' interest, as it is of limited scope and does not distort market development. Hence, with wholesale regulation, policy objectives of broadband availability and affordability can be met with minimal market distortion.

Question 14

(a) Do you have any views on the affordability of broadband services in Malaysia? Please provide data to support your views.

(b) Do you have any views whether there are some segments of the Malaysian population who might not be able to afford broadband services? Please provide data as justification.

Generally, all respondents viewed that broadband services are affordable. On whether there are segments of the Malaysian population who might not be able to afford broadband services, Celcom and a mobile operator viewed that there is no segment that could not afford broadband services due to declining prices, whilst Digi submitted that it is only a small percentage. TM and YTL both suggested that a review should be done to identify the group, whilst Digi, Maxis and YTL viewed that affordability could be addressed through initiatives such as USP or short-term promotions.

Celcom conducted an analysis and concluded that broadband services are affordable to the bottom 40% of households, with a median monthly income of RM1,852. With broadband price at RM38 for 2GB plus freebies, Celcom concluded that the low income earners are spending about 2.5% of their monthly income on broadband services. This is within the BCDD's goal of broadband affordability.

Further, Celcom submitted that broadband service is affordable to all segments of the Malaysian population, due to the declining price trends and growth in the broadband market. According to the Economic Report 2014/2015 published by the Ministry of Finance, the inflation rate had increased as compared to the rate in 2013, due to upward adjustments in fuel prices, electricity tariffs, sugar and cigarettes since September 2013. In contrast, prices in the communications sector continue to decline amid strong competition. Celcom expected that the communications services will keep growing, supported by strong demand for cellular and broadband services, as seen through the launch of attractive packages and new devices by service providers.

Digi concurred with the MCMC that mobile broadband prices against GNI per capita is showing a declining trend, as the average price per GB of Digi's plans over the last three years has also been reducing, with more value-added services being bundled into plans. Digi submitted that as a result of competitive forces, Digi and other operators have been required to offer attractive broadband plans. For example, Digi offers low cost access to popular OTT applications such as 50 sen Daily Facebook, RM3 weekly for unlimited Social Messaging (WeChat, Whatsapp) and Internet Surfing (via Opera Mini).

Further, Digi also submitted that retail prices of mobile broadband services offered in the market are reasonable and competitive, as evidenced by the following:

- The Affordability Index Report 2013 shows that Malaysia ranked first among emerging countries in terms of broadband affordability;

- In 2013, Malaysia's mobile broadband price as against GNI per capita has declined to 1.39% (from 3.2% in 2012), which satisfies the BCDD target of 5%; and

- As a result of competition in broadband pricing, Malaysia has reached a high broadband penetration rate, which is at 70.2% in Quarter 4 of 2014, as compared to just 22% in 2008.

On whether there are segments of the Malaysian population who might not be able to afford broadband services, Digi submitted that the percentage is small at approximately 4.8%. Digi opined that this segment of the population can be addressed via successful intervention programs such as Kampung Tanpa Wayar, WiFi 1Malaysia, and via non-USP initiatives such as Pakej Komunikasi Belia and Pakej Mampu Milik Jalur Lebar 1Malaysia.

Maxis submitted that mobile broadband is significantly more affordable than fixed broadband in Malaysia. This is seen from the larger reduction in mobile broadband prices as compared to fixed broadband prices.[10] In addition, Maxis was of the view that while the data in the PC Paper shows that there is income disparity and the proportion of income spent by wealthier households is considerably less for broadband, this is not solely a telecommunications phenomenon. Maxis submitted that a narrow focus on the communications sector only would not address issues on income disparity, as typically such policy matters involve wider decisions on taxation, social services or welfare and key government initiatives. For example, the 2015 tax reform exercise shows a reduction across the board, including for the lower income households. The group of bottom 40% of households would enjoy approximately RM300 of tax relief, about RM25 per month of savings, and a portion of that could be spent on telecommunications. In view of the above, Maxis did not support a longer term mandated policy for affordable mobile broadband. Further, competition, entry of new players, as well as a liberal licensing and spectrum award regime would aid in further price reduction over time.

On the segments of the Malaysian population who might not be able to afford broadband services, Maxis stated that it is aware that the year 2015 presents economic challenges to Malaysia and it would contribute its part as required for short-term promotions. Nevertheless, Maxis would like to highlight the following points on short-term promotions:

- The BR1M criteria proposed in the PC Paper on Affordable Broadband may not be suitable: BR1M is actually focused on households, whilst cellular usage is typically personal and on a per user basis. Further, there would be significant costs involved in upgrading databases and systems to verify BR1M recipients and this may actually discourage operators;

- Prepaid broadband is more suitable than postpaid broadband: Prepaid methods are also preferred by cost sensitive users because prepaid plans provide users with better control over their usage. In addition, LTE services are available for prepaid and postpaid packages, hence, even the "low spend customer" is not disadvantaged from accessing LTE services;

- Prepaid customers prefer lower quota despite shorter validity period: Based on Maxis' observation of cost sensitive prepaid users, they prefer to reload every few days at smaller Ringgit denominations e.g. reloading RM3 four or five times a month, instead of reloading RM20 or RM30 once a month;

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[10] Please refer to the PC Paper, p. 62 for further details.

- Applicability for selected areas and groups on a short-term basis: Maxis suggested that operators could offer the affordable packages at underserved areas, USP towns or areas where previously regional broadband packages were offered. In terms of duration, Maxis viewed that a short-term promotion taking account of the economic headwinds would be appropriate. Longer termed policies would require further study; and

- Affordable devices: Maxis also suggested that the cost of broadband device, i.e. the fixed wireless modems should be addressed. For example, USP claw back for smartphone could be extended to fixed wireless modem to ensure that certain segments can overcome the initial barrier of equipment availability.

Packet One reiterated its response to Question 2 in section 2.2. In summary, Packet One submitted that entry-level broadband packages are affordable in Malaysia as they are below the 5% threshold set by BCDD. Secondly, the reasons for non-subscription to broadband services are due to a lack of skills, interest or awareness of perceived benefits, rather than due to affordability. Thirdly, there are various initiatives undertaken by the MCMC to expand the reach of broadband. Fourthly, Malaysia is ranked first in broadband affordability amongst 46 developing countries based on The Affordability Report 2013. Fifthly, Measuring the Information Society 2013 showed that Malaysia achieved greater than the global average in the ICT Development Index, indicating an improvement in infrastructure and ICT usage due to growth in broadband subscription and total Internet users. Hence, based on the above, Packet One concluded that affordability in terms of broadband package is not an issue in Malaysia. Whilst broadband is no doubt an essential service in the 21st century, regulating retail broadband rates is unwarranted.

TIME commented that Malaysia has achieved the target set by the BCDD, which is less than 5% of GNI per capita and that is equivalent to RM159 for basic fixed broadband package. TIME was of the opinion that there are other household expenditures on communications that should be addressed which include payments for pay-TV and mobile communications.

TIME also submitted that establishing WiFi hotspots at schools will help to increase the usage of broadband by students and at the same time, reduce the household expenditure for broadband subscriptions. TIME also viewed that wireless broadband access such as 3G and 4G should be emphasised and hastened in rural areas, as there is already sufficient competition for access in urban areas. In addition, TIME submitted that the tie up of wired broadband services with PSTN services discourages broadband subscription, especially since the usage of fixed-line phones at home is declining.

Furthermore, TIME viewed that 1Mbps broadband services can easily be offered over digital subscriber line ("DSL") platforms, and that it is odd that local loop unbundling for DSL infrastructures is not allowed in areas where the incumbent has rolled out Gigabit Ethernet Passive Optical Network or GPON infrastructures.

TM highlighted that based on Measuring the Information Society 2014, Malaysia is among the most affordable countries for both fixed and mobile broadband compared to neighbouring countries, and believed that this is due to the overall regulatory environment that enabled investment and growth in the broadband services.

TM submitted that, as outlined in the PC Paper, existing broadband packages should be affordable in relative terms (as compared with global and regional averages) and in objective terms (as defined by the BCDD). However, affordability of broadband packages is also dependent on the economic means and needs of the individual consumer. Hence, based on the analysis by the MCMC and the ITU, though the cost of broadband in Malaysia is lower than the 5% benchmark of the BCDD, it may still be unaffordable for some low income consumers. Nevertheless, TM highlighted that in most of these bottom 40% households, broadband services are considered as a lesser priority as opposed to entertainment services such as pay-TV services. Accordingly, TM proposed that an assessment on affordability should also consider consumers' spending trends and priorities on other related services such as satellite pay-TV.

XOX submitted that broadband services in Malaysia are affordable. XOX, for example, offers a 500MB per month plan for RM18 and its statistics shows that this plan constitutes 45% of XOX's total mobile prepaid data subscriptions. XOX also viewed that as different areas have different living status, there might be consumers in some areas that may not be able to afford broadband service. Although the 500MB for RM18 plan is affordable, XOX feels a 1GB monthly plan is ideal for a standard and affordable package for consumers. However, based on its current wholesale rate for data, it would not be able to offer a lower priced package for 1GB data plan.

YTL viewed that affordability is a relative concept, and viewed that the categories of people who could not afford broadband services need to be identified, and reasons of "in-affordability" discerned. YTL also submitted the possibility that those who could not afford broadband services might find that broadband is low in priority, when weighed against other needs. The promoted benefits of broadband, such as e-government and e-services might not mean so much for those with lower income as they would rather pay bills personally at the post office if it means saving a few ringgit. Specifically addressing these groups will surely contribute to an increase in broadband penetration. Further, overall reduction of broadband prices through regulation would most likely lead to an increase in consumption and churn within existing subscribers, instead of an increase in broadband penetration. In addition, YTL commented that currently, only major contributors are allowed to utilise USP funds for subsidies for devices. This arrangement could be extended to all service providers.

YTL also submitted that there are underserved sections within the community that still find broadband services unaffordable. Data on the poor from Government authorities and agencies could be used to target broadband services to the specific groups. YTL reiterated its view expressed in Questions 6 and 7, that payphones should be regarded as a utility that is relied upon by sections of society that do not have access to broadband services or have appropriate access devices. Thus, payphones should be retained under the USP program with regulated rates and funding from USP, with improvement to include Internet access.

A mobile operator submitted that broadband services in Malaysia are already considerably affordable. The mobile operator also presented that from the comparison of affordability indexes provided in the Affordability Report 2013, Malaysia is listed in the top 5 emerging countries with affordable broadband. The mobile operator emphasized that the affordability index is strongly correlated to lower broadband prices. Furthermore, there have been various efforts to reduce prices of broadband packages, such as the recent launching of affordable package at RM25 monthly with 1GB data and at least 3G-HSPA for both prepaid and postpaid services. The mobile operator thus, viewed that all segments of the Malaysian population could afford broadband services as the prices for mobile services have continually been reducing. Moreover, based on the statistics on Malaysian household income noted by the MCMC in the PC Paper[11], the RM25 affordable package constitutes only 1.35% of the total income of the bottom 40% of households, and is much lower than the 5% threshold of affordability set by the BCDD, further strengthening the point that broadband services in Malaysia are affordable.

Question 15
Do you view that short-term measures such as developing affordable broadband packages is sufficient to address the affordability of broadband for the lower income group? Would a longer term approach such as regulation be required to address the affordability of broadband for this same group? Please justify your view.

[11] Refer to p. 74 for further details.

Only Maxis and TIME generally supported the short-term measure such as developing affordable broadband packages to address affordability for the lower income group. Some respondents, such as Altel, TIME, XOX and YTL viewed that a long-term solution that enhances effective competition or considers the cost drivers to providing services, would be required. Celcom, Digi, Maxis, TM, YTL and a mobile operator generally did not support price regulation of broadband services.

Altel submitted that short-term measures are not sufficient to address affordability of broadband for the lower income group. Altel strongly believed that regulation should be applied to the wholesale market for access to facilities and services, as excessive prices in the retail markets are the results of market dominance in the upstream wholesale market.

Celcom recommended that the provision of affordable broadband packages should be market driven rather than through development of an affordable package within a specified time. The Malaysian broadband market comprises of various service providers, MVNOs, small players and new entrants. Each service provider has its own strategy to win market share and thus, this would promote continuous healthy competition. Celcom concluded that when the prices are market driven, there will be an abundance of service offerings that will benefit the end users.

Digi viewed that short-term measures are not necessary since market forces are sufficient in ensuring that operators will focus on offering bundled services to suit the needs and preferences of all level of society. Some mobile operators, for instance, have thrown in free basic Internet, while there are other operators, including Digi that offer tenure bonus and bonus quota with every reload. Digi strongly believed that any regulatory intervention would distort competition, hinder innovation and investment, as well as increase barriers to market entry.

Maxis fully supported the MCMC's view that short-term measures such as developing affordable broadband packages are sufficient to make broadband services more affordable for the lower income group. The measure should also be reviewed after two or three months of implementation, to see whether continuation of the measure is necessary. Maxis has also been offering regular prepaid Internet promotions, such as additional free data with reloads of RM10, 100MB free Internet with the purchase of any weekly or monthly Pass and affordable device plans with free 500MB data per month for 6 months. It also offers free basic Internet that comes with the prepaid #Hotlink plan. Maxis opined that the postpaid Maxis One Plans are also attractive to consumers, given that the data, voice and SMS bundles offered are unlimited under some conditions. With regard to the Minister's call for affordable broadband plans, Maxis will work to launch a prepaid offer that suits the required criteria.

Furthermore, Maxis expressed concerns against any formal regulation of mobile broadband prices, as this would require more study and data collection. Income inequality should be addressed through a wider policy encompassing all sectors, which is beyond the scope of the communications sector. Maxis reiterated the conclusions of the PI Report on Dominance which states that competitive forces are functioning in the mobile market, including for data. Finally, Maxis submitted that the impact of formal price regulation on the operators' incentives to invest should be considered - operators such as it has spent on capital expenditure to expand LTE services and to increase quality of service. This improvement despite the competitiveness of broadband services is facilitated by appropriate returns on investment, and hence, would need to be taken into consideration when a policy decision on mobile broadband is made.

Packet One believes that broadband packages in Malaysia are already affordable, as shown in various statistics. Thus, efforts should be concerted towards ensuring that consumers are placing broadband on top of their list of needs, such as through tax incentives and on educating consumers on the importance of broadband services.

TIME submitted that any affordable broadband package (for the short-term) should be offered to all and not to a specific group of consumers, as the process to validate eligible consumers is an additional administrative cost to operators and is open to misuse and fraud. For the longer term, competition would be more effective to lower prices, hence, the focus should be on increasing effective competition.

TM submitted that retail regulation should only be used as a measure of last resort. With regard to price regulation, TM viewed that such a practice may result in an increase in administrative costs, stifle operators' ability to offer attractive price plans and bundles and have an adverse impact on consumer demand and on operators' profitability. Therefore, TM strongly submitted that the MCMC should consider retail price regulation only after other pro-competitive measures have been implemented and been given sufficient time to take effect; that there is, or likely to be, an abuse of market power in the retail market that is detrimental to consumer welfare and sustainability of the market; when the Government has fully considered effective demand-side measures to improve the affordability of services for low income consumers; when the MCMC has developed a transitional mechanism to allow for the removal of retail price control once sufficient affordability or penetration has been achieved; and when the MCMC has conducted extensive analyses that support the economic benefits of retail price regulation.

TM submitted that an industry-led response to develop targeted affordable broadband packages will create a more sustainable outcome than regulatory intervention. TM also viewed that an affordable package is a long-term measure, and should be offered for as long as the policy is required to achieve the Government's broadband penetration goal. Although generally customers tend to choose either fixed or mobile broadband packages based on non-price factors, TM submitted that for the lower income group, the overriding factor in deciding which broadband technology to choose is price and cost of device. Referring to the MCMC's analysis of affordability of basic mobile and basic fixed broadband packages in the PC Paper[12], TM broadly agreed with the analysis and recognized that for individual consumers, broadband may be less affordable for some than it is for others. TM considered itself as a direct competitor to mobile broadband providers in offering competitive prices for consumers of all income groups. TM viewed that at the low income range, consumers are moving away from fixed services in favour of lower cost mobile services. TM also suggested that an assessment of affordability of other services, including satellite pay-TV, is required to consider the impact on consumer well-being.

In addition, TM is strongly supportive of the MCMC's objective of increasing broadband affordability and penetration. TM also addressed this issue by increasing TM's Streamyx penetration at low cost housing areas through offering cheaper packages. TM had also proposed affordable packages in response to the PC Paper on Affordable Broadband, which are anticipated to be ready by end of June 2015 for the MCMC's consideration. Further, it viewed that a targeted approach is more effective in promoting broadband penetration, as it ensures that affordable packages are provided to only those who require them while minimizing economic costs, and that the criteria in BR1M could be used as a benchmark to identify eligible low income earners. TM also submitted that support from the Government such as the National Broadband Initiative and the Broadband with Personal Computer will help to stimulate take up of the affordable broadband packages.

XOX viewed that regulating broadband is a short-term measure only. A longer term solution would be to address the supply chain from the top-down. XOX submitted that fixed broadband should firstly be regulated to a more affordable rate so that it can promote beneficial Internet activities and encourage the provision of more WiFi hotspots.

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[12] Refer to p. 74 for further details.

YTL submitted that a long-term view is preferred, as any drastic reduction of price via price regulation may result in non-viability of new players. YTL opined that it is important to look into cost drivers of telecommunications services, in particular cost of technology, permitting fees, assessment rates, rentals for towers and roof tops, right-of-way, annual permit renewals and regulatory cost. For example, the tendency for exclusivity in providing infrastructure in certain states further increases cost, and the use of higher frequency for LTE means heavier costs and investments in infrastructure as more base stations are required. In terms of increasing regulatory costs, YTL submitted that the use of higher frequencies requires more base stations and increases costs for spectrum licenses. Further, new requirements on fiberisation and submission of electromagnetic field simulation reports are also impacting costs that are, in YTL's view, avoidable.

YTL also submitted that a targeted approach is required to address both the cost of broadband services and access devices. Unlike GSM, access devices for WiMAX have not been standardized, resulting in service providers having their own proprietary devices that cannot operate on other networks. In the short-term, affordable access could be addressed through affordable and cheaper devices. Regulation of rates will make broadband plans rigid. A key feature of broadband service is the variety and flexibility of offerings which benefits consumers as they are able to purchase plans based on their needs and preferences. Regulating rates will cast the affordable package in stone, resulting in its users losing out due to evolution of technology and services over time. Hence, YTL supported assisting targeted groups through affordable plans that are subsidized by both the service provider and USP fund.

A mobile operator cited the ITU Broadband Report 2015 as support that regulators should refrain from regulating prices in broadband markets, particularly in markets that are still developing, with further investment required and where demand is uncertain. Where possible, reliance should be placed on *ex post* intervention in the event of anti-competitive conduct; and where some form of *ex ante* regulation is required, then that regulation should be focused on the relevant wholesale markets, as far upstream in the supply chain as possible. The mobile operator also submitted that the industry is committed to reducing the consumers' burden, ensuring that broadband penetration is increased, as well as ensuring that the lower income groups are not left behind in the digital age, even without intervention from the MCMC. The mobile operator also commented that based on the MCMC's report on Broadband Access and Trends, broadband packages are becoming more affordable; broadband price per month was RM90 in 2004, RM68 in 2007 and RM25 in 2015, showing a reduction of more than 50%.

Question 16

Do you agree with the MCMC's preliminary view? Please state your reasons.

Altel, Celcom, Digi, Maxis, Packet One, TM and a mobile operator generally did not agree that there should be retail price regulation on broadband services. TM, XOX, YTL and a mobile operator considered that developing affordable broadband packages is an alternative to regulation; whilst Altel, Maxis and XOX generally supported wholesale regulation in order to have more competition at the retail level or to enable affordable broadband packages to be provided.

Altel disagreed with the MCMC's preliminary view to regulate the retail rate for broadband services. Altel also submitted that regulation at the wholesale level is more appropriate in encouraging service providers to design more affordable broadband packages, and the ability to access wholesale facilities and services is essential for the provision of competing services.

Celcom submitted that broadband prices and offerings should be left to market forces and competition. It cited the report by the Canadian Telecommunications Policy Review Panel in 2006, which explained that in order to set prices and conditions benefiting service providers and end users, a large amount of information is required and this is greater than what a single organisation, whether government or the private sector, can gather, keep up to-date and use. In competitive markets, changes to prices and terms and conditions are normally made through trial and error, and the competitive process is able to process more information and can do so better than any single organisation. Further, Celcom added that even though rates for broadband services have never been regulated, Malaysia has achieved the difficult target of 50% broadband penetration rate per 100 households in 2010, and has achieved 67.1% in Quarter 4 of 2014.

Digi disagreed that there is a need for intervention from the MCMC especially in the form of rate regulation. Digi echoed the ITU's view in Regulating Broadband Prices, that "price intervention in the broadband markets is a risky proposition and potentially damaging to the long-term development of those markets", and that retail price regulation is a last resort to address specific market failures. Digi stated that Malaysia has successfully surpassed the difficult target of 50% broadband penetration rate per 100 households in 2010 within a short time frame, even without regulation. Digi viewed that with current market conditions, operators will be introducing new and better plans with more competitive prices for all consumers. Regulating retail rates would be counter-productive as it distorts competition and provides a negative incentive for innovation and continual investments.

Maxis highlighted that based on the key points highlighted in its responses for Question 13, 14 and 15, Maxis submitted that existing initiatives and incentives are sufficient to address the affordability of mobile broadband services to the lower income group, and thus finds it difficult to support formal regulatory intervention on mobile broadband services. For the fixed broadband market however, Maxis fully supported regulation on the dominant operator to ensure that wholesale prices for fixed broadband are fair. Maxis further highlighted a few issues in dealing with the incumbent operator on wholesale fixed broadband services as follows:

- Expiration of the deferment: In the Ministerial Direction on High-Speed Broadband and Access List, Direction No. 1 of 2008, for Full Access Service, Line Sharing Service and Sub-loop Service where those facilities and services are provided over the HSBB network, their implementation is deferred until 15 September 2015. Maxis submitted that where the end user does not wish to upgrade to Unifi (or HSBB services), TM allows them to continue with Streamyx; however, there is no retail competition from other service providers. This is because with the above deferment, it has removed 102 exchanges from obligations to provide those wholesale services to other service providers. Hence, Maxis proposed to allow the deferment to lapse, so that TM could provide wholesale access in those areas where HSBB and Streamyx are concurrently provided, so that there is competition for the benefit of consumers;

- Regulation of key components for fixed broadband services, the poles, ducts and manholes: Based on the PI Report on Dominance, TM is dominant in the national market for lead-in ducts and manholes. Hence, Maxis proposed that since they are key elements for operators to expand their network coverage, and that they are currently not offered by the dominant operator, they should be regulated in the Access List; and

- Regulation on the incumbent fixed operator to maintain a sufficient margin between its wholesale and retail fixed HSBB services: Ofcom has imposed new pricing regulation on BT in April 2015 for the incumbent to maintain a sufficient margin between its wholesale and retail superfast broadband charges so that alternative operators can profitably match its prices. Maxis proposed that a similar approach be considered in Malaysia.

Packet One submitted that affordability in terms of broadband package is not an issue in Malaysia as proven in the studies and reports provided in its submission. Therefore, regulating retail broadband charges are unwarranted even though broadband is an essential service in the 21st century.

TIME agreed with the MCMC's preliminary view that the industry should develop the affordable broadband packages at their own accord. However, the MCMC should continue to conduct research and provide guidance to the industry on the broadband requirements in the country. TIME opined that the USP projects and Public-Private Partnership programs i.e. HSBB and Broadband for General Population should cater to the requirements of the lower income group and rural areas through affordable broadband packages.

TM acknowledged that existing initiatives are not sufficient in addressing the affordability of broadband rates, but disagreed that regulation is needed to address this issue. TM instead submitted that proposals initiated by operators for the development of affordable broadband packages are the best long-term solution to the broadband affordability and penetration issue. TM, for example, had introduced two new packages as a response to the PC Paper on Affordable Broadband. Other operators have also shown support and proposed their own lower priced packages. Therefore, TM submitted that there is no necessity to regulate in order to achieve affordability.

XOX agreed with the MCMC's preliminary view and proposed that the lower income group should be subsidised via the 1Mbps package (RM25 for 1GB Data) as long as wholesale rates are properly managed and regulated. XOX submitted that a cheaper package can be offered for the lower income group, however, considering the fixed cost incurred by operators, offering such a package could be challenging. Hence, XOX suggested that subsidies or incentives for the affordable packages be channelled to the operators offering the packages, so that the cost factor is addressed.

YTL submitted that a targeted approach based on subsidies from the USP fund, rather than a broad-market approach is needed to address affordability of broadband packages for the lower income group. This approach should involve all broadband service providers. To ensure equitable provisioning for the lower income group, YTL proposed that the MCMC maintain a database against which service providers can check the status of would-be applicants. YTL submitted that this scheme should only be offered to eligible persons from the lower income group without any current broadband subscription. Otherwise, it will merely lead to churn without increasing penetration. As mentioned in the earlier section, YTL was not in favour of price regulation since competition is already lowering prices, and that retail price regulation will hamper innovation in the broadband market.

A mobile operator agreed with the MCMC that there are alternatives to regulation, such as development of affordable broadband packages by the industry on their own accord, which is more flexible in meeting changing needs. Regulatory intervention in the form of retail rate regulation is inappropriate and could lead to market distortion and dissuade new market entrants. Retail rate regulation, if exercised, should be limited to lower capacity entry-level broadband services. This limited regulation will ensure affordability of basic broadband services, while retaining the flexibility for service providers to experiment and be creative in retail pricing.

8.3 MCMC's final views

The MCMC notes the unanimous agreement of the respondents that wholesale regulation is more appropriate to ensure that there is broadband competition at the retail level.

In relation to the other comments received on wholesale services or wholesale prices, the MCMC would encourage the participants to submit detailed comments during the appropriate reviews, such as for the review on the Access List.

The MCMC appreciates the efforts taken by the service providers in supporting the Minister's call to reduce prices of communications services and in developing affordable broadband packages.[13] This also includes measures taken by the industry to make high speed broadband more affordable, such as the introduction of 30 Mbps broadband package (plus 8 Mbps for Internet TV) at the price of RM199.[14]

In the long-term, the MCMC considers that competition between the service providers would continue to ensure that the welfare of consumers can be maximised, and in that sense, would allow the prices of broadband services to continue to be affordable, even for those in the lower income group. Having said that, the MCMC views that it has a role to play in ensuring that consumers' interests are safeguarded, in terms of broadband coverage, quality of service, availability of higher speed services and affordability, in line with the 11th Malaysia Plan for ICT infrastructure and the Communications and Multimedia Action Plan 2020, as the nation approaches 2020. To achieve that, the MCMC would continue to play a dual role, to work together with the industry so that higher broadband speed services are available, and at the same time, to continue its regulatory role, to monitor the prices of broadband services (for basic as well as higher speed) and to take the necessary action to ensure compliance to the CMA.

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[13] MCMC, *Press Release: Average 14% Price Reductions in Basic Mobile Broadband Packages and 57% Reduction for Basic Fixed Packages, says Shabery*, Putrajaya, 15 April 2015 <http://www.skmm.gov.my/skmmgovmy/media/General/pdf/150415-Presser-BB-Package-Reductions_1.pdf>.

[14] MCMC, *Press Release: Improving Broadband Coverage, Affordability and Speed a Priority for MCMC*, Cyberjaya, 1 October 2015. <http://www.skmm.gov.my/skmmgovmy/media/General/pdf/Internet-Coverage-Press-Release.pdf>

9 CONCLUSION AND NEXT STEPS

Based on the discussion above, the MCMC would take steps to recommend to the Minister to deregulate the retail rates for PSTN services, payphone services, operator assistance service, directory assistance service, Internet access service and audiotext hosting service. However, emergency services would continue to be regulated at no charge to the consumer or the end user due to the critical nature of the service. The MCMC may rely on the Required Applications Service provisions under Chapter 2 of Part VIII of the CMA to regulate emergency services.

The MCMC is also mindful that in the event Rates Rules is revoked, it could affect the contribution to the USP Fund as the revenue from services that are regulated via Rates Rules has zero weightage in the return of net revenue calculation. However, to avoid any uncertainty, the contribution to the USP Fund remains as it is, until amendments have been made to the Communications and Multimedia (Universal Service Provision) Regulations 2002.