

TENDER FOR THE PROVISIONING OF CONSULTANCY SERVICES ON REVIEW OF MARKET DEFINITION AND ASSESSMENT OF DOMINANCE IN COMMUNICATIONS MARKET

Questions & Answers

No	Questions	Answers
1	<p>We are aware of the MCMC Guideline on Dominant Position 24 September 2014.</p> <p>a. Is this the most recent and current guidance?</p> <p>b. Does the MCMC require the study team to modify, add to or rewrite the current guidance?</p>	<p>a. Yes</p> <p>b. We believe the existing guideline is comprehensive and does not require any review at this point in time.</p>
2	<p>We are also aware of the MCMC Market Definition Analysis of 24 September 2014.</p> <p>a. Is this the most recent and current set of market definitions and determinations of dominance?</p> <p>b. Is the study to update this document, essentially producing a new current version of this document? Is the 2014 document a good example of what is expected as the final output from this study?</p>	<p>a. Yes</p> <p>b. We expect the consultant to apply the analytical framework in the Guideline on Dominant Position to define markets and carry out an informal consultation with service providers. Based on the feedback from service providers, the Market Definition Analysis is amended, if the need arises. Thereafter, consultant will carry out assessment to identify if there are any operators dominant in the defined markets. Once the assessment of dominance has been carried out, consultant is required to carry out public inquiry on both i.e. Market Definition Analysis and Assessment of Dominance. Based on the responses from public inquiry, consultant is required to make the necessary amendments. The expected outcome from this study will be the market definition analysis report and the assessment of dominance report, based on the identified markets.</p>

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3	<p>The Tender specifies (43.3) that the consultant's team should comprise "...economists, lawyers and other relevant fields...". Does this mean there is a need to include a qualified or practicing lawyer in the team, or is it sufficient to have an individual(s) who has legal qualifications related to competition, including market definitions and dominance assessment?</p>	<p>It is not necessary to have qualified or practicing lawyers. Anyone with legal background with competition/antitrust background, to address legal issues raised by respondents during the public inquiry may suffice.</p>
4	<p>a. It is not clear to us what purpose will the study of the Tender be put to. In paragraph 1.1 of the Tender it states: <i>".....with the objective to <u>enhance and promote sustainable competition</u> in the long run in the communication markets."</i> This suggests that the output of the study is to be used in the design and implementation of ex-ante regulation. However in the introduction of the 2014 Guideline on Dominant Position (paragraph 1.2) it notes: <i>"The determination that a licensee is in a dominant position is a prerequisite to the exercise by the Commission of its powers under section 139(1) of the CMA (but not a pre-requisite to the examination of conduct as discussed below) to direct a licensee in a dominant position to cease conduct which has, or may have, the effect of substantially lessening competition."</i> Section 139 of the CMA is an ex-post competition power. We are also aware that the MCMC regulates the communications markets by way of the Access List and associated regulations. It is not clear to us what, if any, is the relationship between the Market Definition and Assessment of Dominance study and regulation implemented via the Access list.</p>	<p>The study is merely to review the market definition and assessment of dominance. It neither requires assessment of anti-competitive conducts nor the review of the Access List. However, the outcome of this study, namely the Market Definition Analysis may be used by MCMC for review of Access List.</p>

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	<p>b. Will the output of the Tender study be one or more of the following?</p> <ul style="list-style-type: none"> i. Solely for ex-post competition law purposes? ii. For ex-ante regulation of dominant operators in markets in addition? iii. To differentiate between dominant and non-dominant operators when regulating products in the access list so as to focus regulation only on those licensees that have dominance or market power? 	<ul style="list-style-type: none"> i. Yes ii. The Communication and Multimedia Act 1998 does not allow ex-ante regulation to be imposed on dominant operators. The study will be useful for the Commission in assessing ex-post anti-competitive conducts. iii. The Communication and Multimedia Act 1998 does not allow ex-ante regulation to be imposed on dominant operators. The study will be useful for the Commission in assessing ex-post anti-competitive conducts.
5	<p>We are aware that the MCMC has embarked on a Strategic Review of the Communications Markets in Malaysia.</p> <ul style="list-style-type: none"> a. Will the Strategic Review be substantially concluded prior to this study commencing? b. Is this study take the outputs from the Strategic Review as inputs or will this study provide inputs to the Strategic Review? 	<ul style="list-style-type: none"> a. The study on Strategic Review is only expected to be completed by Q1 2020. b. This study is specific to the review of market definition and assessment of dominance in the communications market. Hence this study will not be reliant on the study currently being undertaken on Strategic Review.
6	<p>Please could you kindly confirm the industry forums that are registered under CMA, as per Appendix H iii. Disclosure of Any Commercial Relationship or Interest (as per requirement in sub paragraph 15.8 of the tender document) in relation to the above mentioned tender.</p>	<p>There are currently 4 forums registered under the CMA namely:</p> <ul style="list-style-type: none"> (a) Access Forum Berhad; (b) Communications and Multimedia Content Forum; (c) Consumer Forum of Malaysia; and (d) Malaysian Technical Standards Forum Bhd.

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7	Based on our reading of the RFP, the MCMC does not require in either the technical submission or the financial submission any description or explanation of the tenderer's proposed methodology or technical approach for completing the project / terms of reference. Is this correct?	The tenderer may propose alternative approach that is more efficient and effective, as per paragraph 42.2 of the RFP.
8	On page 6 of the MCMC's Request for Proposal (RFP) it states that the technical submission is to "comprise of the following documents: [which includes among others] (i) Section 5...". However, the "technical checklist" on page 55, which also lists the information that must be included in the technical submission, does not include any reference to "section 5". It is unclear to us what the reference on page 6 to the "inclusion of the section 5 document" means and what it requires us to do. Would MCMC please clarify how section 5 is to be incorporated into or reflected in the technical submission?	Section 5 is part of the technical proposal and the tenderer is allowed to elaborate further on the proposed consultancy services. Apart from that, Section 5 is also refers to the Appendix G of the tender document.