



Malaysian Communications and Multimedia Commission

Guidelines on Undertakings for the Authorisation of Conduct

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Malaysian Communications and Multimedia Commission
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Foreword

These Guidelines (as defined in the Definition and Glossary below) have been prepared by the Commission (as defined in the Definition and Glossary below) as guidance which outline the procedure in respect of undertakings pursuant to section 140 of the CMA 1998 (as defined in the Definition and Glossary below).

These Guidelines should be read together with the Guidelines on Authorisation of Conduct, the Guideline on Substantial Lessening of Competition, the Guideline on Dominant Position, and where the conduct for which authorisation is sought relates to mergers and acquisitions, the Guidelines on Mergers and Acquisitions.

These Guidelines are not an exhaustive summary of all the factors that the Commission may take into account when considering an undertaking and does not bind or limit it in any way.

These Guidelines are intended only as a guide and should not be relied on as a substitute for the CMA 1998 or any regulations made thereunder, or as a substitute for legal advice.

These Guidelines may be revised by the Commission from time to time as deemed necessary, without prior consultation and notice.

Abbreviation and Glossary

For purposes of these Guidelines, unless the context otherwise requires:

- (a) any term used in these Guidelines shall have the same meaning as in the CMA 1998 or the subsidiary legislations made under it;
- (b) words denoting the singular shall include the plural and vice-versa; and
- (c) the following terms used in these Guidelines shall have the stated meaning:

Commission	the Malaysian Communications and Multimedia Commission
CMA 1998	the Communications and Multimedia Act 1998
Guidelines	Guidelines on Undertakings for the Authorisation of Conduct
SOI	Statement of Issues

Figure

Figure 1	Procedure in respect of a submission and registration of an undertaking for authorisation of conduct
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1 Background

Legislative context

- 1.1 Section 140 of the CMA 1998 provides the Commission with the power to authorise any conduct by a licensee which may be construed to have the purpose or the effect of substantially lessening competition in a communications market if the Commission is satisfied that the authorisation is in the national interest. Prior to authorising the conduct, the Commission, pursuant to subsection 140(3) of the CMA 1998, may require the licensee to submit an undertaking regarding its conduct in any matter relevant to the authorisation.
- 1.2 These Guidelines outline the procedure for the submission of an undertaking pursuant to subsection 140(3) of the CMA 1998, in accordance with section 110 of the CMA 1998, and the Commission's general approach in its consideration to register an undertaking pursuant to section 111 of the CMA 1998.
- 1.3 While section 110 of the CMA 1998 states that 'a person' may provide an undertaking to the Commission, subsection 140(3) of the CMA 1998 provides that 'a licensee'¹ may submit an undertaking to the Commission when applying for an authorisation of conduct. As such, for the purposes of these Guidelines, section 110 must be read together with subsection 140(3) of the CMA 1998 and consequently only licensees may provide an undertaking to the Commission.
- 1.4 Undertakings submitted pursuant to subsection 140(3) of the CMA 1998 are subject to Part V, Chapter 11 of the CMA 1998 which contains general provisions on undertakings, including provisions on the registration, withdrawal and replacement of an undertaking. The provisions under Part V, Chapter 11 are as follows:
 - (a) Section 110 of the CMA 1998 provides, among others, that a person may provide an undertaking to the Commission regarding any matter for which the CMA 1998 makes express provision. The undertaking may also include, among others, the effective date of the undertaking and the date of its expiry.
 - (b) Section 111 of the CMA 1998 provides for the registration of an undertaking including on its validity and enforceability, submission of application, refusal, and conditions for registration by the Commission.
 - (c) Section 112 of the CMA 1998 provides the Minister with the power to make rules in respect of undertakings and provides the Commission with the power to direct the party making the undertakings and all other persons relying on such undertakings to comply with the rules and any registered undertakings.
 - (d) Section 113 of the CMA 1998 provides that a person providing an undertaking may withdraw the undertaking with the approval of the Commission.

¹ Section 6 of the CMA 1998 states that a licensee refers to a person who either holds an individual licence, or undertakes activities which are subject to a class licence, granted under the CMA 1998.

- (e) Section 114 of the CMA 1998 provides that a person may submit a new undertaking to the Commission which deals with the same matter as an existing registered undertaking provided by that person, whereby the existing registered undertaking is taken to be invalid to the extent of any conflict with the new undertaking at the time the new undertaking is registered under section 111 of the CMA 1998.
- (f) Section 115 of the CMA 1998 provides that the Commission shall maintain a register of all existing undertakings in accordance with Chapter 6 of Part V of the CMA 1998.
- (g) Section 116 of the CMA 1998 provides that the Commission or a person may apply to the High Court for the enforcement of a registered undertaking against the person providing the undertaking if the undertaking has not been complied with. It also provides that a direction made by the Commission pursuant to subsection 112(2) of the CMA 1998 may be enforced by the High Court as if the direction is a judgment of the High Court, provided that a certificate has been issued by the Commission to the party seeking to enforce the registered undertaking for leave to proceed to the High Court.

1.5 The Commission's scope for an authorisation of conduct does not extend to prohibitions on entering into collusive agreements under section 135 of the CMA 1998 and tying and linking arrangements under section 136 of the CMA 1998. The Commission considers these as per se prohibitions and the detrimental effect of these conducts have far-reaching implications on the development of competition in a communications market. As such, the Commission shall reject any application for authorisation of conduct, and consequently any undertakings, for conducts under sections 135 and 136 of the CMA 1998.

2 Matters to be considered prior to the submission of an undertaking

- 2.1 This section details the procedure for the submission of an undertaking prior to the issuance of a potential SOI, and the procedure for the submission of an undertaking following the issuance of a potential SOI.

Authorisation of conduct and issuance of a Statement of Issues

- 2.2 Based on subsection 140(1) of the CMA 1998, a licensee may apply to the Commission, prior to engaging in any conduct which may be construed to have the purpose or the effect of substantially lessening competition in a communications market, for authorisation of the conduct.
- 2.3 In this respect, the licensee may be required by the Commission to submit an undertaking prior to authorising the conduct, pursuant to subsection 140(3) of the CMA 1998 (and in accordance with section 110 of the CMA 1998). The submission of an undertaking for authorisation of conduct made pursuant to subsection 140(3) of the CMA 1998 may only occur during the process for the authorisation of a conduct.
- 2.4 An undertaking may be submitted by a licensee prior to, or after the issuance of an SOI by the Commission. The issuance of an SOI will happen upon the conclusion of the Commission's investigative phase, or at any point during the Commission's assessment of the application for an authorisation of conduct. If the Commission reaches the view that it is likely to issue an unfavourable decision, it will issue the licensee with an SOI prior to making a final decision.
- 2.5 An SOI will set out the Commission's preliminary findings from the assessment process and will specify the grounds on which the Commission believes the conduct may contravene or has contravened the prohibition in section 133 of the CMA 1998.
- 2.6 It shall also be noted that the Commission may approve the application of authorisation of conduct without it being subject to an undertaking.

Submission of an undertaking prior to the issuance of a Statement of Issues

- 2.7 Licensees must have first conducted a self-assessment prior to the submission of an application for authorisation of conduct. The purpose of a self-assessment is to ensure that licensees are able to identify any substantial lessening of competition arising from the conduct and to propose appropriate remedies for it. It follows that a licensee should not submit an undertaking without first having conducted a self-assessment as the undertaking must contain proposed remedies that are specific to the harms arising from the conduct.
- 2.8 In its self-assessment, the licensee should determine the following:
- (a) the conduct for which the licensee will apply for authorisation of conduct and whether it qualifies for an authorisation of conduct;

- (b) whether the conduct has the purpose or potential effect of substantially lessening competition in a communications market, including the theories of harm that may arise from the conduct; and
 - (c) remedies that can address and mitigate any substantial lessening of competition in a communications market arising from the conduct.
- 2.9 Where the results of a self-assessment indicate that the conduct has the purpose or effect of substantially lessening competition, the licensee may wish to submit an undertaking together with the application for authorisation of conduct, for the Commission's consideration. The licensee may also still submit an undertaking at any point after the submission of the application for authorisation of conduct.
- 2.10 If the licensee intends to voluntarily submit a draft undertaking for the Commission's consideration before the Commission issues any potential SOI, the licensee is strongly encouraged to submit the draft undertaking as early in the application process as possible. This is to ensure that the Commission is able to carry out its assessment for authorisation of conduct in a timely manner, taking into account the remedies proposed in the licensee's undertaking.
- 2.11 A licensee must be able to identify effective and feasible remedies through its self-assessment. The Commission may reject any undertaking that is deemed unsubstantiated and unmeritorious.
- 2.12 The licensee may also wish to wait for the Commission to reach its findings on the application for authorisation of conduct, which may or may not result in the issuance of an SOI, before submitting an undertaking for the Commission's consideration.

Submission of an undertaking after the issuance of a Statement of Issues

- 2.13 Where the Commission has decided to issue an SOI, the licensee shall address and respond to the concerns raised in the SOI and may submit its proposed remedies to address those concerns through an undertaking. Such submissions shall be made within thirty (30) days from the date of issuance of an SOI.

3 Procedure for submission of an undertaking

3.1 This section sets out the procedure for the submission of an undertaking pursuant to subsection 140(3) of the CMA 1998, in accordance with section 110 of the CMA 1998.

Persons giving the undertaking

3.2 As highlighted in paragraph 1.3 above, an undertaking submitted pursuant to subsection 140(3) of the CMA 1998, in accordance with section 110 of the CMA 1998, is by a licensee.

Procedure

3.3 The procedure for submission of an undertaking for the authorisation of conduct constitutes two phases, namely:

- (a) assessment phase; and
- (b) registration phase.

ASSESSMENT PHASE

3.4 The assessment phase begins once a licensee submits a draft undertaking to the Commission for assessment ("**Draft Undertaking**"). This may either be done voluntarily or upon request from the Commission for the licensee to submit an undertaking regarding its conduct in any matter relevant to the authorisation of a conduct.

3.5 The submission of the Draft Undertaking to the Commission for assessment should be made in writing and accompanied by the following:

- (a) a cover letter with a brief description of the Draft Undertaking and the corresponding authorisation of conduct; and
- (b) any other information that may be relevant for the assessment of the Draft Undertaking.

3.6 As duly highlighted in Section 2 of these Guidelines, the submission of the Draft Undertaking may be made prior to or following the issuance of an SOI by the Commission to the licensee.

3.7 A list of elements that should be included in the Draft Undertaking is detailed in Section 4 of these Guidelines.

3.8 Once the Draft Undertaking has been submitted to the Commission for assessment, the Commission will assess the Draft Undertaking accordingly, mainly based on the factors set out in Section 5 of these Guidelines.

3.9 The assessment phase may, at the Commission's discretion, constitute the following process:

- (a) consultation between the Commission and the licensee to discuss the Draft Undertaking;
 - (b) public consultation with third parties carried out by the Commission; and
 - (c) finalisation of the Draft Undertaking.
- 3.10 The Commission may also request additional information, as and when required, if the information provided by the licensee in respect of the Draft Undertaking is insufficient.
- 3.11 The Commission may, at any point in the assessment phase, reject the Draft Undertaking if it does not satisfy the factors in Section 5 of these Guidelines.

Consultation between the Commission and the licensee

- 3.12 As part of the assessment phase, the Commission may conduct consultations with the licensee to further discuss, among other things, the licensee's conduct, any purpose or potential effect of substantial lessening of competition in a communications market that may arise from the conduct and the remedies that the licensee may offer to mitigate the effect of any substantial lessening of competition and whether the Draft Undertaking has sufficiently addressed the Commission's concerns.
- 3.13 The Commission may actively engage with the licensee to provide feedback on the Draft Undertaking to meet the conditions and factors listed in Section 5 of these Guidelines. The Commission may choose to engage with the licensee in this manner throughout the procedure for submitting and registering an undertaking.

Public consultation with third parties carried out by the Commission

- 3.14 Once the Commission and licensee have agreed on the contents of the elements of the Draft Undertaking, the Commission may decide to conduct a public consultation with third parties on the Draft Undertaking.
- 3.15 Following the same, the Commission may then carry out further consultation with the licensee to provide feedback based on the results of the public consultation, for the licensee to incorporate into its undertaking, where relevant.

Finalisation of the Draft Undertaking

- 3.16 Following the Commission's assessment and consultation with the licensee, and public consultation with third parties (if any), the licensee may submit a revised Draft Undertaking for final assessment by the Commission.
- 3.17 Once the Commission is satisfied that the revised Draft Undertaking fulfils the necessary assessment criteria in Section 5 of these Guidelines, the Commission will inform the licensee on the outcome of the assessment.
- 3.18 The assessment phase will be done in line with the timeline for the application for authorisation of conduct and may, therefore, take up to a hundred and twenty (120)

days from the date of receipt of submission of the Draft Undertaking to the Commission.

REGISTRATION PHASE

- 3.19 Upon receipt of the Commission's feedback regarding the outcome of its assessment of the Draft Undertaking, the licensee may proceed with the submission of the written application to register an undertaking pursuant to subsection 111(2) of the CMA 1998.
- 3.20 A written application to register an undertaking should include the following:
- (a) a cover letter with a brief description of the undertaking and the corresponding authorisation of conduct;
 - (b) the undertaking to be registered; and
 - (c) any other information that may be relevant for the assessment of the undertaking.
- 3.21 The undertaking should be in line with the elements provided under Section 4 of these Guidelines.
- 3.22 Upon receipt of the written application to register an undertaking from the licensee, the Commission shall have thirty (30) days from the receipt of the application ("**Initial Period**") to notify, the licensee in writing, regarding the Commission's decision on whether the undertaking will be registered or otherwise. The Commission may also, by way of a written notice to the licensee, extend the period by not more than thirty (30) days ("**Extended Period**").

When the registration of an undertaking is deemed refused

- 3.23 If the Commission neither registers nor refuses to register an undertaking within the Initial Period, the Commission is deemed to have refused the registration unless the licensee submitting the written application to register the undertaking is notified of the registration within the Extended Period.

Inclusion in the register of undertakings

- 3.24 If the Commission has decided to register an undertaking, the undertaking shall be included in the register of undertakings in accordance with sections 81 and 115 of the CMA 1998 by the Commission in both physical and electronic form (on the Commission's website).
- 3.25 The undertaking shall remain on the register of undertakings even after its expiry, replacement or withdrawal, as a public record of undertakings that have been registered by the Commission. The register will denote if the undertaking has been withdrawn, replaced or has expired.
- 3.26 A summary of the procedure(s) detailed in Section 2 and Section 3 of these Guidelines is illustrated in **Figure 1**.

Withdrawal of an undertaking

- 3.27 The licensee may withdraw an undertaking that has been registered by the Commission, with the approval of the Commission.
- 3.28 Where an undertaking is withdrawn, any authorisation of a conduct issued by the Commission corresponding with the withdrawn undertaking shall be deemed never to have been given.

Replacement of an undertaking

- 3.29 The licensee may replace a registered undertaking by submitting a new undertaking which deals with the same matter as the registered undertaking provided by the same licensee. In such a case, the registered undertaking is taken to be invalid to the extent of any conflict with the new undertaking at the time that the new undertaking is registered under section 111 of the CMA 1998.
- 3.30 The replacement of an existing undertaking does not affect the validity of a corresponding authorisation of conduct.

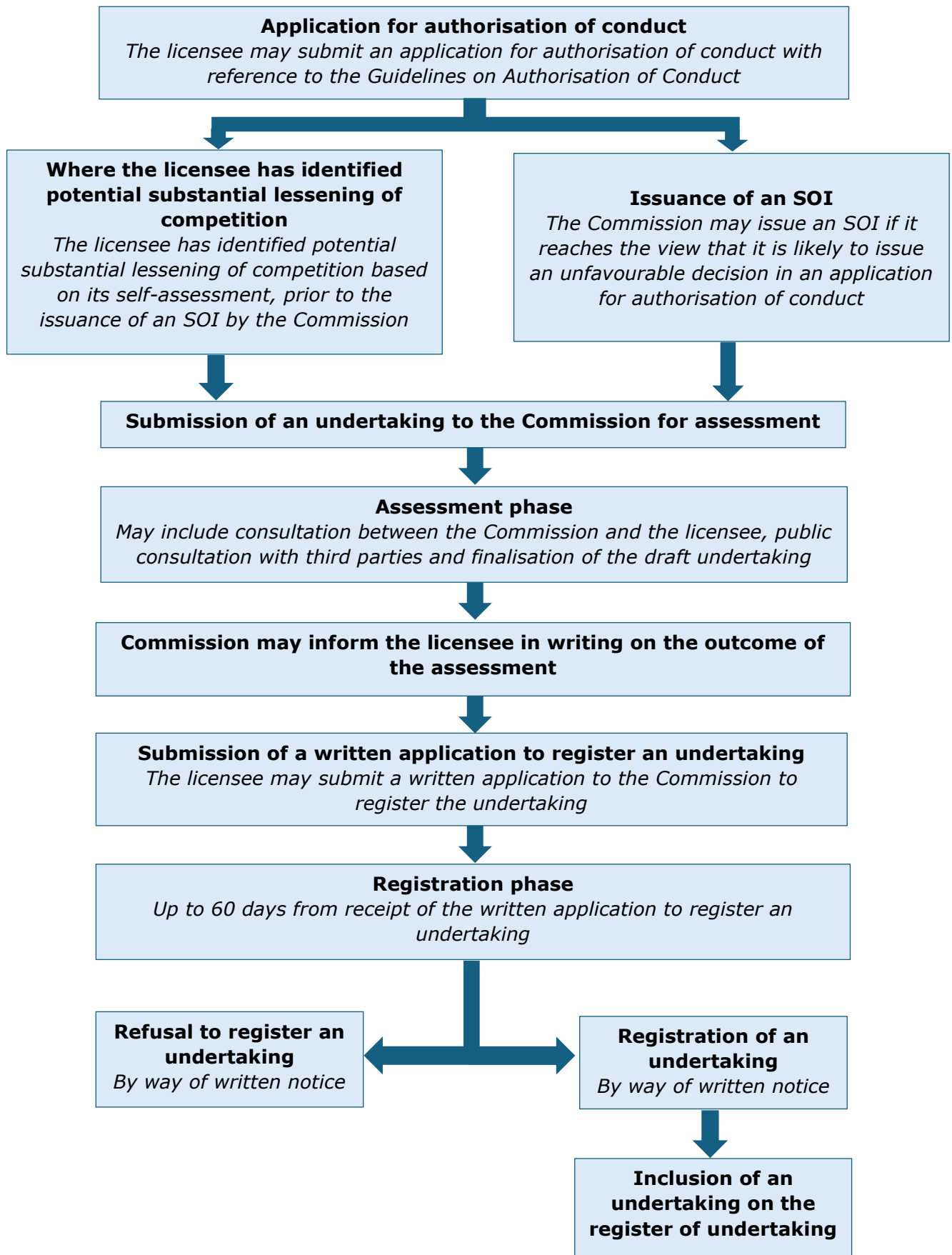


Figure 1 - Procedure in respect of the submission and registration of an undertaking for authorisation of conduct

4 Elements of an undertaking

- 4.1 This section details the elements that should be included in the undertaking submitted to the Commission.
- 4.2 The undertaking may include, but is not limited to, the following:
- (a) information on the licensees providing the undertaking;
 - (b) nature and details of the conduct by the licensee;
 - (c) background on the application for authorisation of conduct;
 - (d) the Commission's assessment of the conduct (relevant where the Commission has carried out its assessment and has issued an SOI related to the conduct) or, where the Commission has not issued an SOI, the details of the substantial lessening of competition arising from the conduct that have been identified by the licensee in its self-assessment;
 - (e) undertakings by the licensee which set out its proposed remedies; and
 - (f) the date of commencement and duration of the undertaking.
- 4.3 The undertaking should also include the following for the purposes of its enforcement and execution:
- (a) obligations for independent audits;
 - (b) conditions for cessation of the undertaking;
 - (c) enforcement of the undertaking;
 - (d) reporting obligation;
 - (e) disclosure of the undertaking;
 - (f) no derogation;
 - (g) costs;
 - (h) governing law; and
 - (i) notices.
- 4.4 An example of the undertaking is as provided in **Annexure 1: Template for an undertaking for authorisation of conduct**. The same may be subject to change from time to time, based on the discretion of the Commission.

Nature and details of conduct by a licensee

- 4.5 Licensees are required to include the nature and a summary of the conduct, including any transactions relevant to the conduct.

Background on the application for authorisation of conduct

- 4.6 Licensees shall include the date of application for authorisation of conduct and, where the undertaking is submitted at a later stage in the application for authorisation of the conduct, the licensee should also include a brief description of the stages of assessment that has already occurred, including the date of issuance of an SOI, if any.

The Commission's assessment of the conduct

- 4.7 Where the Commission has issued an SOI, licensees should also include in the draft undertaking the competition concerns raised by the Commission in the SOI.
- 4.8 Where the Commission has not issued an SOI, licensees may choose to voluntarily offer undertakings following the procedure detailed in Section 3 of these Guidelines. The contents of the draft undertaking should reflect the findings of a licensee's self-assessment conducted prior to the submission of a draft undertaking to the Commission for assessment. The details of a self-assessment are included in paragraph 2.8 of these Guidelines.

Remedies undertaken by the licensee

- 4.9 The undertaking shall also include remedies that address the competition concerns that have been raised by the Commission in an SOI or are likely to arise as a result of the conduct.
- 4.10 Remedies may broadly be categorised into structural and behavioural remedies.
- 4.11 Structural remedies alter a licensee's organisational structure and consequently the market structure in a communications market. They aim to restore or maintain the level of competition prevailing before the conduct. An example of this may be an undertaking to divest certain assets, brands or subsidiary companies owned by the licensee.
- 4.12 Behavioural remedies constrain a licensee's behaviour when engaging in activities in a communications market. An example of this may be an undertaking for the licensee not to enter into any new exclusive agreements for the duration of the undertaking.
- 4.13 Undertakings offered to the Commission may require a combination of structural and behavioural remedies. Licensees should seek to identify the most appropriate and effective remedies to address the competition concerns that have been raised by the Commission in the SOI or may potentially arise as a result of the conduct.
- 4.14 The Commission will carry out an assessment to determine whether the undertakings offered by the licensee are adequate to address the Commission's concerns while determining whether the conduct qualifies for authorisation under section 140 of the CMA 1998. The factors for assessment of a Draft Undertaking are detailed in Section 5 of these Guidelines.

Date of commencement and duration of an undertaking

- 4.15 An undertaking shall only take effect on the date of its registration or such later date as the undertaking may specify.
- 4.16 Therefore, the undertaking must also specify its date of expiry, which shall be three years from the date of the application to register the undertaking or such other period as agreed by the Commission.

Confidentiality

- 4.17 The Commission is cognisant that any submission of a draft or final undertaking may include sensitive and confidential information. As such, where an undertaking for authorisation of conduct relates to, or contains confidential information, the undertaking may make general reference to the information while providing the details of the confidential information to the Commission separately for the Commission's assessment.

5 Assessment by the Commission

- 5.1 This section sets out the position of the law and the relevant factors considered by the Commission when assessing an undertaking submitted to the Commission during the assessment phase. The same would also be considered when the Commission undertakes the evaluation during the registration phase.
- 5.2 The Commission, in its assessment, may also make reference to the Guidelines on Authorisation of Conduct, the Guidelines on Mergers and Acquisitions, the Guideline on Dominant Position and the Guideline on Substantial Lessening of Competition.

Position of the law

- 5.3 Subsection 111(3) of the CMA 1998 provides for the statutory requirements that warrants the registration of an undertaking for an authorisation of conduct.
- 5.4 For the purposes of undertakings submitted pursuant to subsection 140(3) of the CMA 1998, the Commission shall register an undertaking under subsection 111(3) of the CMA 1998 if it is satisfied that the undertaking:
- (a) is consistent with the objects of the CMA 1998;
 - (b) is consistent with any instrument made under the CMA 1998;
 - (c) is consistent with any relevant provisions in the CMA 1998; and
 - (d) will expire within three years from the date of the application to register the undertaking or such other period agreed by the Commission.
- 5.5 An undertaking can also be registered pursuant to subsection 111(5) of the CMA 1998.
- 5.6 Any undertaking registered by the Commission should be in line with the relevant laws, including the CMA 1998 and the subsidiary legislations made thereunder.

Factors for assessment of an undertaking

- 5.7 The Commission may consider, in addition to the conditions listed in subsection 111(3) of the CMA 1998, the following factors in its assessment of the undertaking:
- (a) the effectiveness of the remedies in addressing the competition concerns arising from the conduct;
 - (b) the licensee's ability to implement the remedies offered in the undertaking within the duration of the undertaking; and
 - (c) the feasibility of the Commission to monitor the remedies offered by the licensee.
- 5.8 The Commission's scope for an authorisation of conduct does not extend to prohibitions on entering into collusive agreements under section 135 of the CMA 1998 and tying and linking arrangements under section 136 of the CMA 1998. The

Commission considers these as per se prohibitions and the detrimental effect of these conducts have far-reaching implications on the development of competition in a communications market. As such, the Commission shall reject any application for authorisation of conduct, and consequently any undertakings relating to it, for conducts under sections 135 and 136.

6 Enforcement of an undertaking

- 6.1 Once the Commission has registered an undertaking, the licensee providing an undertaking is required to comply with the terms and remedies in the registered undertaking within the duration stipulated in the undertaking.
- 6.2 Where a registered undertaking has not been complied with, there are several enforcement or regulatory actions available to the Commission or to the person that has been affected by the non-compliance of the registered undertaking.
- 6.3 Without limiting the Commission's powers under the CMA 1998 and otherwise at law, the Commission may take action against the licensee at any time during the period of the undertaking based on, and not limited to, the following grounds:
- (a) the information provided by the licensee to the Commission was false or misleading other than in an immaterial respect;
 - (b) the conduct effected is materially different to the proposed conduct submitted to the Commission for assessment; or
 - (c) there has been a material change of circumstance since the Commission approved the application for authorisation of conduct.
- 6.4 In relation to the Commission, the following enforcement or regulatory actions are available:
- (a) pursuant to subsection 112(2) of the CMA 1998, the Commission may issue a direction under section 51 of the CMA 1998 to direct a licensee making the undertakings and all other persons relying on such undertakings to comply with the registered undertakings;
 - (b) pursuant to subsections 116(1) and (3) of the CMA 1998, the Commission may apply to the High Court for the enforcement of a registered undertaking against the licensee providing the undertaking without requirement for the Commission to obtain certificate for leave; and
 - (c) pursuant to subsections 116(2) and (3) of the CMA 1998, where the Commission has issued a direction under section 51 of the CMA 1998 directing compliance, the issued direction may be enforced by the High Court as if the direction is a judgment of the High Court without requirement for the Commission to obtain certificate for leave.
- 6.5 In relation to a person that has been affected by the non-compliance of the registered undertaking, the following enforcement actions are available:
- (a) pursuant to subsection 116(1) of the CMA 1998, a person that has been affected by the non-compliance of the registered undertaking may apply to the High Court for the enforcement of a registered undertaking against the licensee providing the undertaking; and
 - (b) pursuant to subsection 116(2) of the CMA 1998, where the Commission has issued a direction under section 51 of the CMA 1998 directing compliance,

a person that has been affected by the non-compliance of the registered undertaking shall obtain a certificate from the Commission for leave to proceed to the High Court for the enforcement of a registered undertaking, and the issued direction made pursuant to subsection 112(2) of the CMA 1998 may be enforced by the High Court as if the direction is a judgment of the High Court.

- 6.6 The procedure for the enforcement of a registered undertaking under section 116 of the CMA 1998 shall be subject to the rules of courts as may be applicable or in such manner as the High Court may deem just or expedient.

Annexure 1: Template for an undertaking for authorisation of conduct

**Undertaking for the Authorisation of Conduct to
the
Malaysian Communications and Multimedia
Commission**

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

[Date]

Definition and Interpretation

[Include the definition of terms and abbreviations used in the document here]

1. Persons giving the Undertaking

- 1.1 This undertaking ("**Undertaking**") is given to the Malaysian Communications and Multimedia Commission ("**Commission**") by [*insert the name of the applicant*] (thereafter, "**Applicant**") for the purpose of an authorisation of [*insert conduct*] under subsection 140(3) of the Communications and Multimedia Act 1998 ("**CMA 1998**").

2. Background

The proposed conduct

[*Describe the nature of the conduct² requiring authorisation under section 140 of the CMA 1998. For a merger or acquisition³, describe:*

- (a) *The structure of the transaction;*
- (b) *The change in control⁴ pre- and post-transaction;*
- (c) *Shareholding structure of the new or acquired entity; and*
- (d) *The market the transaction will occur in.]*

Persons engaged in the proposed conduct

[*Briefly provide a background of each person engaged in the conduct, which may include, among others:*

- (a) *The date of incorporation and current ownership of each person;*
- (b) *The business or businesses carried out by each person, including the goods, products, and services supplied;*
- (c) *The licence(s) awarded by the Commission to each person and the period of validity; and*
- (d) *Any other information related to the relevant business(es) in the communications market.]*

² For a detailed explanation of the term 'conduct', please refer to the Commission's Guideline on Substantial Lessening of Competition (24 September 2014).

³ For a detailed explanation of what constitutes a 'merger' or 'acquisition', please refer to the Commission's Guidelines on Mergers and Acquisitions (19 July 2024).

⁴ For a detailed explanation of the term 'control', please refer to the Commission's Guidelines on Mergers and Acquisitions (19 July 2024).

3. The Commission's assessment of the proposed conduct

3.1 *[Briefly provide a summary and timeline of the application⁵ by including, among others:*

- (a) The date of submission of the application;*
- (b) The Commission's findings in its assessment to date (if any, e.g., whether the proposed conduct will likely lead to a substantial lessening of competition);*
- (c) The date of issuance of a Statement of Issues ("SOI") by the Commission to the Applicant (if any); and*
- (d) Whether the Commission has required the Applicant to submit an undertaking to alleviate the Commission's competition concerns, or if the undertaking was submitted voluntarily by the Applicant.]*

The Commission's competition concerns

3.2 *[Briefly describe how the conduct has the purpose or effect of substantially lessening competition, in each relevant market.]*

3.3 As such, the Applicant submitted the Undertaking to alleviate the Commission's competition concerns namely in *[number]* areas, i.e., *[elaborate the category and nature of the remedies]*.

3.4 The Commission has conducted its assessment of the Undertaking and is authorising the proposed conduct under section 140 of the CMA 1998, on condition that the Undertaking is provided. This Undertaking will address the Commission's concerns about the proposed conduct having the purpose or effect of substantially lessening competition in the relevant markets as per paragraph **[3.2]**.

4. Undertakings

4.1 The Applicant hereby undertakes to implement the following to alleviate the Commission's competition concerns:

*[Categorise as per paragraph **[3.3]** and briefly describe the agreed set of remedies⁶, including, where applicable:*

- (a) The timeline and deadline for implementation; and*
- (b) The threshold to trigger the implementation of the remedy.]*

⁵ For the procedure to submit an application for authorisation of conduct, please refer to the Commission's Guidelines on Authorisation of Conduct (17 May 2019).

⁶ For examples of remedies in relation to a merger or acquisition, please refer to paragraph 8.9 of the Commission's Guidelines on Mergers and Acquisitions (19 July 2024).

5. Commencement and terms of the Undertaking

- 5.1 This Undertaking comes into effect when it is accepted and registered by the Commission ("**Effective Date**").
- 5.2 This Undertaking will expire on [*insert date*] ("**Expiry Date**"). The Applicant undertakes to submit a new undertaking [*insert period*] prior to the Expiry Date of the Undertaking to fulfil any obligations under this Undertaking that extend beyond the Expiry Date, if any.

6. Cessation of ongoing obligations

Withdrawal

- 6.1 In line with section 113 of the CMA 1998, this Undertaking may be withdrawn with the approval of the Commission.

Survival

- 6.2 The Undertaking is enforceable unless and until the earlier of:
- 6.2.1 The Commission's approval of a withdrawal made by the Applicant in accordance with section 113 of the CMA 1998; or
- 6.2.2 The Expiry Date.

7. Enforcement

- 7.1 The Applicant acknowledges that the Commission may apply to court for the enforcement of the Undertaking in accordance with the CMA 1998 if the Applicant does not comply with the Undertaking.
- 7.2 Without limiting the Commission's powers under the CMA 1998 and otherwise at law, the Applicant acknowledges that the Commission may take action against the Applicant at any time during the period of the Undertaking on the following grounds:
- 7.2.1 The information provided by the Applicant to the Commission was false or misleading other than in an immaterial respect;
- 7.2.2 The conduct effected is materially different to the proposed conduct submitted to the Commission for assessment; or
- 7.2.3 There has been a material change of circumstance since the Commission approved the application for authorisation of conduct.

8. Reporting Obligation

- 8.1 From the date the [*proposed conduct*] comes into effect, and until this Undertaking is fulfilled, the Commission has the right to supervise and inspect the Applicant [(if applicable) and the new merged entity] in connection with this Undertaking.
- 8.2 The Applicant is required to report their compliance with this Undertaking to the Commission on a [*frequency (monthly/quarterly/bi-annual)*] basis, commencing with a report for the [*insert time period*].

9. Independent Audit

Obligation to appoint an approved independent auditor

- 9.1 The Applicant must, at their own cost, appoint within three (3) months of the Effective Date and maintain throughout the term of this Undertaking the appointment of an independent auditor that is approved by the Commission ("**Approved Independent Auditor**") to audit and report the Applicant's compliance with this Undertaking. If the Applicant is unable to appoint an Approved Independent Auditor within the prescribed period, the Applicant is required to request for an extension from, and must provide justification for the same to, the Commission.
- 9.2 The Commission may revoke the Approved Independent Auditor's status if the Commission becomes aware that any information provided to it in relation to the appointment of the independent auditor was incorrect, inaccurate, or misleading.
- 9.3 The Commission may approve any proposal by, or alternatively may direct, the Applicant to terminate the appointment of the Approved Independent Auditor if in the Commission's view the approved independent auditor fails to perform their role to the satisfaction of the Commission.
- 9.4 If the Commission revokes the status or terminates the appointment of the Approved Independent Auditor's in accordance with paragraphs 9.2 and 9.3 above, the Applicant must promptly propose a new independent auditor within **thirty (30) days** of such decision by the Commission.
- 9.5 Where the Applicant has proposed a new independent auditor in accordance with paragraph 9.4 above, the Commission shall have the discretion to approve or reject in writing the independent auditor proposed to be appointed by the Applicant ("**Proposed Independent Auditor**").
- 9.6 Without limiting the Commission's discretion in deciding whether to approve the Proposed Independent Auditor, the factors that the Commission may have regard to include:
- 9.6.1 the qualification and experience of the Proposed Independent Auditor;

- 9.6.2 whether the Proposed Independent Auditor is fully independent of the Parties; and
 - 9.6.3 whether the draft terms of the appointments of the Proposed Independent Auditor and the draft audit plan are consistent with this Undertaking and acceptable to the Commission.
- 9.7 If the Applicant does not promptly appoint (or re-appoint) an independent auditor within **thirty (30) days** in accordance with paragraph 9.4, the Commission may appoint an auditor at its discretion, and they shall be deemed to be the Approved Independent Auditor for the purposes of this Undertaking.

Audit Report

- 9.8 The approved independent auditor must conduct an audit and prepare a detailed report ("**Audit Report**") that includes:
- 9.8.1 The approved independent auditor's procedures in conducting the audit, or any changes to audit procedures and processes since the previous Audit Report;
 - 9.8.2 A full report of the Applicant's compliance with this Undertaking;
 - 9.8.3 Identify any areas of uncertainty or ambiguity contained in this Undertaking;
 - 9.8.4 All the reasons for the conclusions reached in the Audit Report;
 - 9.8.5 Any qualifications made by the approved independent auditor in forming his or her views;
 - 9.8.6 Any recommendations by the approved independent auditor to improve the audit plan, the auditing process, the Applicant's processes or reporting systems in relation to the compliance with this Undertaking and the Applicant's compliance with this Undertaking;
 - 9.8.7 The implementation and outcome of any prior recommendations by the approved independent auditor; and
 - 9.8.8 Any other matters required by the Commission for the purposes of monitoring the Applicant's compliance with this Undertaking.
- 9.9 ***[State the agreed submission cycle of the Audit Reports to the Commission while this Undertaking is in force, including timeline for submission of the Audit Reports.]***
- 9.10 The Applicant must implement any recommendations made by the Approved Independent Auditor in the Audit Report and notify the Commission of the implementation of the recommendations, within ***[insert time period]*** **business days** after receiving the Audit Report or such other period as agreed in writing with the Commission.

10. Disclosure of this Undertaking

- 10.1 The Applicant acknowledges that the Commission shall maintain a register of the Undertaking, in both physical form and electronic media as provided for under sections 81 and 115 of the CMA 1998.

11. No Derogation

- 11.1 The Undertaking does not prevent the Commission from taking enforcement action at any time whether during or after the period of the Undertaking in respect of any breach by the Applicant of any term of the Undertaking.
- 11.2 Nothing in the Undertaking is intended to restrict the right of the Commission to take action under the CMA 1998 in the event that the Applicant does not fully implement and/or perform its obligations under this Undertaking or in any other event where the Commission decides to take action under the CMA 1998 for other non-compliances.

12. Costs

- 12.1 The Applicant shall bear all costs incurred in relation to this Undertaking, including the costs of any independent auditor appointed pursuant to paragraph 9.

13. Governing Law

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

14. Notices

- 14.1 Any notice or communication to the Commission pursuant to this Undertaking must be sent to:

Head, Market Regulation Division
Malaysian Communications and Multimedia Commission
MCMC HQ, Tower 1, Jalan Impact, Cyber 6, 63000 Cyberjaya
Selangor Darul Ehsan, Malaysia

Executed as an Undertaking

This Undertaking is executed by [the Applicant].

Signed by]
For and on behalf of]
]]
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]]
]]
Date:]

[Add or delete the number of signatories accordingly]

Signed by]
For and on behalf of]
]]
]]
]]
]]
Date:]

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

Signed by]
For and on behalf of]
MALAYSIAN COMMUNICATIONS AND]
MULTIMEDIA COMMISSION]
Date:]

Schedules/Appendices/Annexure

[Include any attachments to be enclosed with the Undertaking here]